Some personal identifiers have been redacted for privacy purposes.

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, Complainant, v. DARLING INGREDIENTS, INC., Respondent.	OSHRC Docket No. 21-0240

DECISION AND ORDER

Attorneys and Law firms

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JUDGE: John B. Gatto, United States Administrative Law Judge.

I. INTRODUCTION

This case involves a tragic accident that occurred at Darling Ingredients, Inc.'s chicken-rendering facility in Byram, Mississippi, which resulted in the death of two of its employees. The United States Department of Labor, through its Occupational Safety and Health Administration (OSHA), conducted an investigation and ultimately issued[1] a citation on February 9, 2021, alleging repeated[2] violations of 29 C.F.R. §1910.147(c)(4)(ii) and 29 C.F.R. §1910.147(c)(4)(ii)(B), the control of hazardous energy (lockout/tagout or LOTO) standard under the Occupational

[1] The Secretary of Labor has assigned responsibility for enforcement of the Act to OSHA and has delegated his authority under the Act to the Assistant Secretary for Occupational Safety and Health, who heads OSHA. *See* Order No. 1–2012, Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health, 77 Fed. Reg. 3912 (Jan. 25, 2012). The Assistant Secretary has redelegated his authority to OSHA's Area Directors to issue citations and proposed penalties. *See* 29 C.F.R. §§ 1903.14(a) and 1903.15(a). The terms "Secretary" and "OSHA" are used interchangeably herein.

[2] The Act contemplates various grades of violations of the statute and its attendant regulations—"willful"; "repeated"; "serious"; and those "determined not to be of a serious nature" (the Commission refers to the latter as "other-than-serious"). 29 U.S.C. § 666.

Safety and Health Act of 1970 (the Act), 29 U.S.C. § 651-78. These regulations address the types of steps that must be included in an employer's LOTO procedures.

The parties stipulated the Commission has jurisdiction over this action, Darling is a covered employer under the Act, and Darling's principal place of business is in Irving, Texas (Jt. Pretrial Order, Attach. C.; Joint Preliminary Report and Discovery Plan ¶12). Based on the stipulations and the record evidence, the court concludes the Commission has jurisdiction over this proceeding under section 10(c) of the Act, and Darling is a covered employer under section 3(5) of the Act. 29 U.S.C. §§ 659(c), 652(5).

The court held a trial on February 2, 2022, and the parties filed post-trial briefs on April 22, 2022. Pursuant to Commission Rule 90, after hearing and carefully considering all the evidence and the arguments of counsel, the court issues this Decision and Order, which constitutes its final disposition of the proceedings under section 12(j) of the Act. 29 U.S.C. § 661(j).[3] For the reasons indicated *infra,* the court holds the Secretary has proven his prima facie case with regard to the cited items and therefore, the court **AFFIRMS** Items 1a and 1b of Citation 1 and **ASSESSES** a group penalty of $75,092.00.

II. BACKGROUND

Darling is in the animal-rendering industry. (Tr. 71:10-13). In 2010, Darling bought the Byram chicken-rendering facility (the "worksite") from Griffin Industries. (Tr. 70:20-21). Each of Darling's facilities maintains its own operations group management. (Tr. 74:22 – 75:1). At the Mississippi facility, the general manager, Scott Brown, oversees the management of the plant; the operations manager, Sam Badalucco, oversees daily operations and its personnel; and the maintenance manager, Mike Jennings, oversees maintenance and its personnel. (Tr. 74:22 – 75:8, 76:16-23). Plant management then reports up the corporate chain through either the eastern or western division. (Tr. 75:9-15). The Mississippi plant reports through the eastern division. (Tr. 74:8-21).

Hydrolizer[4] A breaks down chicken feathers using pressurized steam similar to a pressure cooker. (Tr. 26:21-25, 82:17 – 83:3). Periodically, material will start to collect and adhere itself within the Hydrolizer, creating a blockage. (Tr. 77:21 – 78:15). When a blockage occurs, the

[3] All arguments not expressly addressed have nevertheless been considered and rejected. If any finding is in truth a conclusion of law, or if any stated conclusion is in truth a finding of fact, it shall be deemed so.
[4] Although OSHA referred to the machine as a "Hydrolyzer" in its citation, the company in its LOTO procedure referred to it as a "Hydrolizer." The court adopts the company's spelling.

pressure is unable to release through the inlet side of the Hydrolizer, causing the whole process to stop. (Tr. 78:3-15). When this occurs, the process operator will attempt to relieve the pressure by "shuttling the gates" and/or opening the pressure relief valve on the Hydrolizer itself. (Tr. 77:2-7, 80:14-21, 86:4-10).

On August 10, 2020, David Abston, a Process Operator, was operating Hydrolizer A at the worksite. (Ex. R-11, 1:1; Ex. R-6, 9). The Hydrolizer A apparently became clogged, and the pressure was not releasing inside the Hydrolizer. (Tr. 28:11-14; Tr. 77:2-5; Ex. R-11, 1:1, 2). As part of the normal operating procedures, Abston tried "shuttling" the gates to release the pressure. (Tr. 77:2-7). "Shuttling the gates" refers to when an operator opens one gate (in a series of gates) to let part of the material come out, then closes that gate, and then opens another gate to let the material out. (Tr. 78:16-25). Unsuccessful in his attempts to release the pressure, Abston called his supervisor, Sam Badalucco, operations manager, to notify him of the issue with Hydrolizer A. (Tr. 77:8; Ex. R-11, 1:1). Badalucco in turn contacted the maintenance team. (Tr. 77:9, 81:9-13; Ex. R-11, 1:3). The maintenance department sent a team of three maintenance workers – [redacted], [redacted], and [redacted] – to address the issue at Hydrolizer A. (Tr. Ex. R-11, 1:2).

The maintenance team double-checked the normal procedures followed by the process operator. (Ex. R-11, 1:3). First, the team opened the shuttle gate, with no decrease in pressure, and then opened the manual pressure relief valve, and there was still no decrease in pressure. (Ex. R-11, 1:3). Through his discussions with plant personnel, Corporate Safety Director Wayne Stanberry determined that the team then de-energized the electrical circuits and isolated the steam valve feeding into Hydrolizer A. (Tr. 87:5-9; Ex. R-6; Ex. R-11, 2:14b). At this point, because normal procedures did not clear the pressure in the Hydrolizer, the team should have waited for the Hydrolizer to cool down. Stanberry explained that you always do it the same way. (Tr. 86:18). He stated,

> You always wait until it cools down. When the equipment cools down the steam condenses, the pressure goes away and you end up with zero pressure and then you take the bolts out of that flange and that allows you to get in and actually dig out the material that's inside there and clear whatever blockage there was.

(Tr. 86:18-24).

While the Hydrolizer is cooling down, maintenance can re-route the material to Hydrolizer B or vice versa. (Tr. 81:14 – 82:13). The Mississippi plant installed a duplicate

Hydrolizer as a back-up system to continue to process the material if one is taken offline. (Tr. 81:20 – 82:13). However, even if both Hydrolizers are down, the product can sit for days because feathers do not go bad. (Tr. 83:4-7). Stanberry explained, “We still have some plants that only have one Hydrolizer. And that’s exactly what they do, they just stop processing and wait till it cools down and they fix it and get back into running.” (Tr. 83:13-18).

Unfortunately, one of the employees decided to loosen the bolts attached to a 4” flange on the side of the hydrolyzer to let the trapped steam escape. As the employees loosened the bolts, steam would flow out of the machine. This process continued for 10-15 minutes until the flange blew off, and steam and hot material from inside the hydrolyzer spewed out of the machine, covering the three maintenance employees. [redacted] and [redacted] were killed as a result of the injuries they sustained.[5] (Ex. R-11). No manager was aware that [redacted] and his crew were removing bolts from the flange on August 10, 2020. (Tr. 55:12-16, 84:4-8). At no time did the employees stop work and insist that the proper procedures be utilized as taught in Darling’s training. (Ex. R-11, 4:2).

III. ANALYSIS

The fundamental objective of the Act is to prevent occupational deaths and serious injuries. *Whirlpool Corp. v. Marshall*, 445 U.S. 1, 11 (1980). The Act “establishes a comprehensive regulatory scheme designed ‘to assure so far as possible safe and healthful working conditions’ for ‘every working man and woman in the Nation.’” *Martin v. Occupational Safety and Health Review Comm'n (CF&I Steel Corp.)*, 499 U.S. 144, 147 (1991) (*quoting* 29 U.S.C. § 651(b)). “The Act imposes a general duty on employers to furnish employees a workplace ‘free from recognized hazards that are causing or are likely to cause death or serious physical harm.’” *Houston Aquarium, Inc. v. Occupational Safety & Health Rev. Comm'n*, 965 F.3d 433, 439–40 (5th Cir. 2020) (*quoting* 29 U.S.C. § 654(a)(1)). “It delegates authority to promulgate specific safety standards to the Secretary of Labor.” *Id.* (*citing id.* § 655).

“[T]he Commission is responsible for the adjudicatory functions under the OSH Act” *StarTran, Inc. v. Occupational Safety & Health Rev. Comm'n*, 290 F. App'x 656, 670 (5th Cir. 2008), and serves “as a neutral arbiter and determine whether the Secretary's citations should be enforced over employee or union objections.” *Cuyahoga Valley Ry. Co. v. United Transp. Union,* 474 U.S. 3, 7 (1985) (per curiam). Thus, Congress vested the Commission with the “adjudicatory

[5] [redacted] is the only surviving witness to the accident and these facts are based upon OSHA’s investigation and Stanberry’s investigation and interviews with [redacted].

powers typically exercised by a court in the agency-review context." *CF&I Steel Corp*., 499 U.S. at 151.

When there has been a violation of any specific OSHA regulation, such as the alleged violations in the instant case, such violation constitutes violation of the "special duty clause" of the Act, 29 U.S.C. § 654(a)(2). *Sw. Bell Tel. Co. v. Chao,* 277 F.3d 1374 (5th Cir. 2001).[6] Under the law of the Fifth Circuit where this case arose,[7] "[t]o establish an employer has violated a regulation, the Secretary has the burden to prove (1) 'that the cited standard applies'; (2) that the employer has not complied with the cited standard; (3) that employees have 'access or exposure to the violative conditions'; and (4) 'that the employer had actual or constructive knowledge of the conditions,' i.e., that it actually knew of the conditions or, with the exercise of reasonable diligence, should have known." *Southern Hens, Inc. v. Occupational Safety & Health Rev. Comm'n*, 930 F.3d 667, 675 (5th Cir. 2019) (quoting *Sanderson Farms, Inc. v. Perez*, 811 F.3d 730, 735 (5th Cir. 2016)).

Grouped Items 1a and 1b: Alleged Serious Violations of §1910.147(c)(4)(ii) and §1910.147(c)(4)(ii)(B)

Grouped Item 1a alleges that on or about August 10, 2020, Darling violated 29 CFR 1910.147(c)(4)(ii), OSHA's lockout-tagout (LOTO) standard, when "employees removing a clog were exposed to a serious burn hazard from trapped steam and condensation, in that the procedures did not clearly and specifically address appropriate lockout, tagout procedures for steam trapped in [Hydrolizer] during clog removal." (Compl. Ex. A.) This provision of the LOTO standard mandates in relevant part that Darling's "procedures shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy[.]" 29 C.F.R. §1910.147(c)(4)(ii).

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[6] "To implement its statutory purpose, Congress imposed dual obligations on employers. They must first comply with the 'general duty' to free the workplace of all recognized hazards." *ComTran Grp., Inc. v. U.S. Dep't of Labor*, 722 F.3d 1304, 1307 (11th Cir. 2013). "They also have a 'special duty' to comply with all mandatory health and safety standards." (*Id.*)

[7] The employer or the Secretary may appeal a final decision and order to the federal court of appeals for the circuit in which the violation allegedly occurred or where the employer has its principal office, and the employer also may appeal to the D.C. Circuit. *See* 29 U.S.C. §§ 660(a) and (b). Here, the violation occurred in Mississippi, and Darling's principal place of business is located in Texas, both in the Fifth Circuit. The Commission has held that where it is highly probable that a case will be appealed to a particular circuit, it generally has applied the precedent of that circuit in deciding the case— even though it may differ from the Commission's precedent. *Kerns Bros. Tree Serv*., 18 BNA OSHC 2064, 2067 (No. 96-1719, 2000). The court therefore applies the precedent of the Fifth Circuit in deciding the case where it is highly probable the case would be appealed.

Grouped Item 1b alleges that on or about August 10, 2020, Darling violated 29 CFR 1910.147(c)(4)(ii)(B), when its LOTO "procedures did not clearly and specifically outline the steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy. (Compl. Ex. A.) This provision of the LOTO standard mandates, more specifically, that Darling's LOTO procedures shall include "[s]pecific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy[.]" 29 C.F.R. §1910.147(c)(4)(ii)(B).

(1) The Cited Standards Apply

Section 147 "covers the servicing and maintenance of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees." 29 C.F.R. § 1910.147(a)(1). "This standard applies to the control of energy during servicing and/or maintenance of machines and equipment." 29 C.F.R. §1910.147(a)(2)(i). "Normal production operations are not covered by this standard." 29 C.F.R. §1910.147(a)(2)(ii). Darling admits that the procedure its employees subsequently undertook-- taking the cover off the flange by removing its bolts-- was service and/or maintenance work on Hydrolizer A. (Tr. 85.) Therefore, the Secretary has established the cited standards applied to the cited conditions.

(2) Darling Has Not Complied With Cited Standards

There is no dispute that Darling had a LOTO policy in place as well as a separate LOTO procedure specific to the Hydrolizer. The question is whether Darling's LOTO procedure met Section 147's requirements that it "clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy," including "[s]pecific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy[.]" The Secretary asserts that it did not.

Darling argues that its "LOTO Policy and Procedure must be read in conjunction with the hydrol[i]zer manual and the training provided on how to isolate the thermal energy." (Resp't's Br. p. 9.) The court finds no merit in Darling's position. As indicated *supra*, the LOTO standard mandates that Darling's "procedures shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy[,]" including "[s]pecific procedural steps for shutting down, isolating, blocking and securing

machines or equipment to control hazardous energy[.]" 29 C.F.R. §1910.147(c)(4)(ii), (B) (emphasis added).

Darling also argues its LOTO Procedures "actual[ly] provide all needed information to safely and effectively lockout the Hydrol[i]zer A." (Resp't's Br. 17.) Again, the court does not agree. Darling's LOTO procedure specific to the Hydrolizer A contained the following relevant Step:

6. Make all of the following sources of <u>stored</u> energy (capacitors, flywheels, springs, pressure lines of hydraulics/steam/air/water/grease) safe by relieving pressure, restraining, disconnecting, or discharging:
   a. Relieve internal pressure

(Ex. R-4, p. 2) (emphasis in original). Stanberry explained:

> If you've got internal pressure and you have already gone through the normal processes of shuttling the gates and trying the pressure relief valve, you cannot accomplish step number 6. There are no procedures that are applicable. So our people know for a fact there aren't any procedures. If you get there and there's still pressure there, you're done. And you've got to wait for that thing to cool down and get rid of the pressure.

(Tr. 102.) By Darling's own admission, step 6 is erroneous since, if there is still internal pressure when the employee gets to step 6, the employee cannot "relieve [the] internal pressure." Darling's LOTO procedures must say more. The LOTO standard requires the employer's LOTO procedure to "clearly and specifically outline the . . . techniques to be utilized." Step 6 of Darling's LOTO procedure instructs employees to relieve the internal pressure of Hydrolizer A. Darling's employees cannot accomplish this step, however, if the usual methods of pressure relief have not been successful and internal pressure remains. Therefore, at a minimum, Darling could have, and should have, simply instructed employees at step 6 to stop and wait for Hydrolizer A to cool down until the pressure dissipates to a nonhazardous level before moving to the next step.

Thus, the Secretary has established Darling did not comply with cited standard's requirement that its LOTO "procedures shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy[,]" including "[s]pecific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy[.]"

(3) Darling Employees were Exposed to a Hazard

There is no question that at a minimum, the two employees that died as a result of the accident were exposed to a serious burn hazard. Therefore, the Secretary has established Darling employees had access or exposure to the violative conditions.

(4) Darling had Actual or Constructive Knowledge of the Conditions

To prove a serious violation of the Act, § 666(k) "imposes liability on the employer only if the employer knew, or 'with the exercise of reasonable diligence, [should have known] of the presence of the violation.' 29 U.S.C. § 666(k)." *W.G. Yates & Sons Const. Co. Inc. v. Occupational Safety & Health Rev. Comm'n*, 459 F.3d 604, 607 (5th Cir. 2006). Therefore, "to impart liability to an employer for a violation of the special duty clause, the Secretary must prove that an employer had knowledge of the violation as part of its prima facie case." *Sw. Bell*, 277 F.3d at 1378.

The Fifth Circuit has "dealt with employer knowledge as a fact-specific, practical inquiry, looking to company practice, the details of specific incidents, knowledge of supervisors imputable to the company, and commonsense inferences about what a company and its supervisors should know and do." *W.G. Yates*, 459 F.3d at 607. "To prove the knowledge element, 'the Secretary must show that the employer knew of, or with exercise of reasonable diligence could have known of the non-complying condition.'" *Sw. Bell*, 277 F.3d at 1378 (quoting *Trinity Indus. v. Occupational Safety and Health Review Comm'n*, 206 F.3d 539, 542 (5th Cir.2000)).

Thus, in this case, the Secretary must show that Darling knew or should have known that its LOTO procedures did not "clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, and the means to enforce compliance including, but not limited to, the following: (B) Specific procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy[.]"

Darling asserts that it did not know the maintenance workers were going to remove the flange while the Hydrolyzer A was under pressure, nor would it have known so through the exercise of reasonable due diligence. (Resp't's Br. 18.) Darling's assertion is a red herring. What is relevant is that Darling knew or, with the exercise of reasonable diligence, should have known of the conditions constituting the violation, i.e., its failure to implement a LOTO procedure that met the requirements of the LOTO standard. Darling knew of the contents of its own LOTO

procedure, and also knew it had recently been cited for a similar LOTO violation, i.e., its failure to implement a LOTO procedure that met the requirements of the LOTO standard. Thus, Darling knew or should have known that its procedure was deficient. Therefore, the Secretary has established Darling had actual or constructive knowledge of the violation.

Characterization of the Violations

The Secretary characterized the violations as "serious" and "repeat" violations. A violation is a "serious" one "if there is a substantial probability that death or serious physical harm could result from" the violative condition. 29 U.S.C. § 666(k). "This means that the Secretary must show that death or serious physical harm is a probable consequence *if* an accident results from the violative condition—he is not required to show that an accident is itself likely." *Home Rubber Co., LP,* No. 17-0138, 2021 WL 3929735, at *5 (OSHRC Aug. 26, 2021) (emphasis in original) (citations omitted). Here, there is no questions the violations were serious —death did occur and it was a probable consequence if an accident resulted from the violative condition. Item 1a and 1b were appropriately characterized as serious.

As to the "repeated" characterization, in the Fifth Circuit, a "violation is repeated if, at the time it occurred, 'there was a Commission final order against the same employer for a substantially similar violation.'" *Deep S. Crane & Rigging Co. v. Harris*, 535 F. App'x 386, 390 (5th Cir. 2013) (quoting *Bunge Corp. v. Sec'y of Labor*, 638 F.2d 831, 837 (5th Cir.1981)). "The employer … would then have the burden of disproving the substantial similarity of the conditions, or proving any affirmative defenses such as impossibility of complying with the prior citation, lack of notice of the prior violation, or lack of a reasonable time to comply with the prior citation." *Bunge*, 638 F.2d at 838. "For violations of the same specific standard, 'rebuttal may be difficult since the two violations almost have to be substantially similar in nature in order to constitute violations of the specific standard.'" *Id.* at 837.

Here, the Secretary asserts the violations were properly characterized as repeated violations since Darling was previously cited for violations of the same provisions of the LOTO standard, § 1910.147(c)(4)(ii) and § 1910.147(c)(4)(ii)(B), regarding OSHA Inspection Number 1471984, Citation 1, Item 1a and Item 1b, which were affirmed as a final order on June 18, 2020, with respect to a workplace located in Idaho. *See* Ex C-5. On its face the court concludes the two violations appear to be substantially similar in nature since they both deal with Darling's failure to implement a LOTO procedure that met the requirements of § 1910.147(c)(4)(ii) and §

1910.147(c)(4)(ii)(B). Therefore, the burden shifts to Darling to disprove the substantial similarity of the conditions, or prove any affirmative defenses.

Darling argues that in the present case, "the equipment-specific procedures for a highly specialized hydrolyzer that breaks down chicken feathers is very different from the equipment-specific procedures that applied in the [previous] case[,]" which dealt "with pneumatic air-powered equipment that pushes cow carcasses." (Resp't's Br. 1.) While it is true the equipment may have been different, the violations were substantially similar in nature— both violations were caused by the same hazard, i.e., Darling's failure to implement LOTO procedures that met the requirements of § 1910.147(c)(4)(ii) and § 1910.147(c)(4)(ii)(B). *See Deep S. Crane*, 535 F. App'x at 390 (even when prior violation involved a different type of equipment that caused a different injury, the violations were substantially similar in nature because "both violations were caused by the same hazard.") Therefore, the Secretary has established the violations were properly characterized as repeated violations.

Affirmative Defenses

Darling pleaded the affirmative defense of independent employee misconduct. "This affirmative defense isn't found in a statute or regulation; it's implied 'by the scope of the Act's prohibitions.'" *TNT Crane & Rigging, Inc. v. Occupational Safety & Health Rev*. Comm'n, 821 F. App'x 348, 355 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (2021) (quoting *Southern Hens*, 930 F.3d at 678). "The affirmative defense of employee misconduct requires a showing that the employer 1) has established work rules designed to prevent the violation, 2) has adequately communicated these rules to its employees, 3) has taken steps to discover violations, and 4) has effectively enforced the rules when violations have been discovered." *W.G. Yates*, 459 F.3d at 609 n.7. Here, Darling failed to offer any evidence in support of the affirmative defense of employee misconduct at trial and did not mention it in its post-trial brief, let alone point to any evidence in the record showing it had met its burden. Therefore, the court concludes Darling has waived this defense.[8]

IV. PENALTY DETERMINATION

The Act provides that an employer who commits a "repeated" violation may be assessed a civil penalty in an amount not to exceed $70,000. *See* 29 U.S.C. § 666(a). However, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil

[8] Darling failed to offer any evidence in support of any of the other affirmative defenses raised in its answer, which the court concludes are also waived by Darling.

Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Department of Labor to annually adjust its civil money penalty levels for inflation no later than January 15 of each year. Therefore, at the time of the issuance of the citation, the maximum penalty for a repeated violation was $136,532.00. *See* 29 CFR § 1903.15(d)(2) (2021); *see also* 86 FR 2969, Jan. 14, 2021. The Secretary proposed a group penalty of $75,092.00 for Item 1a and 1b.

The Commission is empowered to "assess all civil penalties" provided in this section, "giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations." 29 U.S.C. § 666(j). "[G]enerally speaking, the gravity of a violation is the primary element in the penalty assessment." *J.A. Jones Constr.*, 15 BNA OSHC 2201, 2216 (No. 87-2059, 1993) (*citing Trinity Indus., Inc.*, 15 BNA OSHC 1481, 1483 (No. 88-2691, 1992)). "Moreover, while gravity is normally the primary factor in assessing appropriate penalties, an employer's substantial history of prior violations may skew the importance of gravity in the final penalty determination." *Quality Stamping Prods. Co.*, 16 BNA OSHC 1927, 1929 (No. 91-414, 1994).

The gravity of the violations was high. Darling employs more than 250 people and is therefore not entitled to a reduction in the penalties based upon its size. Darling is also not entitled to a reduction in the penalties based upon a lack of history, or a good faith reduction since it has a repeated violation of the same cited standards. Giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, for grouped Item 1a and 1b, the court finds a penalty of $75,092.00 is appropriate. Accordingly,

V. ORDER

IT IS HEREBY ORDERED THAT Items 1a and 1b of the Citation are **AFFIRMED** and a group penalty of $75,092.00 is **ASSESSED**.

SO ORDERED.

/s/______________________________
JOHN B. GATTO, Judge

Dated: May 17, 2022

Atlanta, GA