

-

H2A Addendum Narrative Report

Vasquez Citrus & Hauling, Inc.

70 Harrison Road
Lake Placid, Florida 33852
Home: [REDACTED] 7C/6
Fax: (863) 465-5813

Mailing Address:
Same as Above

FEIN [REDACTED] EX 4

Contact: President – Juan Vasquez

Related Files: Vasquez Citrus & Hauling, Inc. - FLC (Case id. 1765166)

Under investigation by WHI [REDACTED] 7C/6

Introduction:

This file was set up by the Little Rock District Office as a result of an accident on November 6, 2015 involving the death of six H-2A agricultural workers. The passengers included [REDACTED] EX4 H-2A workers, [REDACTED] MSPA workers, and one non-worker passenger. The Little Rock District Office conducted an investigation of the accident and submitted the file as a BEFA file to the MODO office (Tampa) for further action on December 8, 2015. The Little Rock District Office requested the following from the Tampa District:

Contact the Farm Labor Contractor to obtain additional information about their registration, authorizations, etc. WHI Hernandez interviewed FLC Vasquez and his brother Roberto, the driver, and obtained the required registration and authorization. Note: the bus involved in the accident was not authorized or registered on his FLC certification. [REDACTED] 7E

7E)

Determine if joint employment and/or joint responsibility is applicable to this investigation. The H-2A contract work site is in Michigan and is currently under investigation by the Detroit District Office. (See Related File, Case id. 1765166) Please contact this office for joint employment and joint responsibility determination. This could not be established from Florida.

Obtain insurance information on the bus to determine if the bus complied with 500.105 DOT standards. The insurance is not in compliance with either Act. The worker's compensation insurance was not applicable at the time of the accident and claims were denied by the insurance company. 7E)

Determine if the bus complied with 501.105 DOT standards. WHI could not inspect the bus as it is in Arkansas, however, there is no evidence of any safety violations provided by the either the Little Rock District Office or the Highway Patrol.

Recommend assessment of Civil Money Penalties. A civil money penalty in the amount of \$501,500 was computed for H-2A violations of 17a Transportation resulting in death/serious injury and 40 –Related laws (MSPA). Additionally, a civil money penalty in the amount of \$4,000 is computed for MSPA Items 15 Insurance, ^{EX4} Transported workers without certificate authorization, and Item 28 Failure to amend certificate.

The above is addressed in this report and sent back to the Little Rock for the completion of this investigation. However, on March 21, 2016, an e-mail from Hanz K. Grunauer, District Director for the Little Rock, AK office indicated that he was sending the file back to the Tampa DO for completion. Mr. Grunauer indicated that the file should have been sent as a permanent transfer and not as a BEFA fie.

(7E)

Investigative Period and Tool: The investigation period is November 6, 2015, the date of the accident. This investigation is 7E to the accident on November 6, 2015. No other issues will be addressed or explored. Note: the above is currently under investigation for this time period and H-2A contract. (

7E)

MODO and Investigative History

A MODO request was sent to the Southeast Regional Office for Wage and Hour. MODO Managers Ty Cox and Mike Rios instructions were to “Handle locally unless systemic problem”.

History includes the following:

1758150 – H-2A/2015 - Violations H2A -5, 15, 20, 27- \$1,103.04 due to one employee, 39, and 40; FLSA – MW – \$20,573.92 due to 121 employees, and MSPA Item 1 Disclosure. Employer agreed to comply and pay back wages in the total amount of \$21,676.96. Civil Money Penalties have been recommended in the amount of \$130,800 for H-2A violations and \$200 for MSPA violations. The civil money penalties are under review by the Southeast Regional Office. (7E)

1738739 – H-2A/MSPA/FLSA/OSHF/2014 – No Violations Disclosed. (7E)

1722092 - MSPA/2014 - MSPA violation item 9. Subject agreed to comply in the future and pay back wages in the amount of \$428.22. (7E)

1499962 - MSPA/2007 - MSPA violation item 1 Disclosure. Subject agreed to comply in the future. (7E)

H-2A Coverage

Job Order 5702636 04/01/2015 to 11/30/2015

2010 Regulations were applicable since the application for the use of H-2 workers was submitted for approval to ETA after May 15, 2010.

Contents of Job Offer (20 CFR 655.122)

Copies of the form ETA-9142 Application for Temporary Employment Certification with Appendix A.2 (case number: EX 4) certified 04/27/2015 to 11/30/2015 and form ETA-790 Agricultural and Food Processing Clearance Order with Attachment Job number 5702636, are enclosed in the case file. 7E) A summary of the approved job order certification is as follows:

Certification Granted:

Job Order 5702636

Job Title: Fruit and Vegetable Hand Harvester

Employment Area: Carleton and Monroe, Michigan

Crop Activity: Beets, Broccoli, Cabbage, Cantaloupe and Cauliflower

Certification Period: 04/27/2015 to 11/30/2015

#H-2A workers approved: EX 4

Hours Weekly: 35 (6 hours Monday through Friday and 5 hours Saturdays - 6 days per week.)

Rate of Pay: \$11.56 per hour (AEWR).

Piece Rate: .N/A

(7E)

Location of field:

5280 Stewart Rd.

Monroe, Michigan

Approved Housing Site(s):

Chestnut Hill Apartments

2840 N. Monroe St.

Monroe, Michigan

Transportation

This investigation is 7E to the accident on November 6, 2015. The vehicle in question is a1997 Van

Hool Bus VIN [REDACTED] EX 4 [REDACTED] The vehicle was not inspected. However, there did not appear to be any safety violations pertaining to the vehicle. The driver, Roberto Vasquez, was properly licensed and registered. [REDACTED] 7E [REDACTED]

Employment Relationship:

No issues. It appears that the passengers on the bus were clearly employees of this farm labor contractor. Additionally, it does not appear that the passengers were employees of any other firm. ([REDACTED] 7E [REDACTED])

Joint Employment:

Not addressed by the Tampa District Office. However, WHI Kristopher Downing of the Detroit District Office is currently investigating this contract and advised WHI Hernandez that his determination is no joint employment exists. Mr. Downing provided the portion addressing this issue from his narrative. ([REDACTED] 7E [REDACTED])

H-2A Exemptions/Exceptions

The employer exceeded the 500 man day test and was not exempt from the obligation to hire U.S. workers through the first 50% of the contract. Subject requested [REDACTED] EX 4 [REDACTED] workers in the second quarter of 2015, therefore, the subject used 500 man-days worth of agricultural labor in approximately 3 days [REDACTED] 7E [REDACTED]).

H-2A Status of Compliance

**-
Violations**

Item 17a. Transportation violation resulting in death/serious injury [20 CFR 655.122(h)(4)]:

The Arkansas Highway Patrol reported to the Division that on November 6, 2015, Roberto

Vasquez was driving a bus carrying 19 H-2A workers, 1 crew leader and his son, returning back to Mexico after completion of an H-2A contract. An accident occurred 12:55 a.m. on interstate 40 in Pulaski County in North Little Rock, Arkansas. The driver, Roberto Vasquez, stated to the police that he hit a bump and lost control of the bus and hit a bridge under pass. As a result of this accident, 6 H-2A workers were killed. Additionally, an Arkansas Motor Vehicle Crash Report indicates an additional 7 workers listed as receiving a non-incapacitating injury and 1 worker with a possible injury. Of the above 8 workers, 4 filed a worker's comp claim. Unfortunately, the insurance coverage held by the employer was not in compliance. The worker's compensation insurance did not cover the workers and all claims were denied because there was no employer/employee relationship between employee and employer at time of accident and the employee was not engaged in work performed for the employer. The worker's compensation was purchased through the leasing

company, [REDACTED] EX 4
through [REDACTED] EX 4
7C/6, EX 4 provided a Notice of Denial for the six workers killed and the four workers seriously injured. Additionally, the vehicle insurance provided by [REDACTED] EX 4 was only for \$ [REDACTED] EX 4 which is less than the required \$100,000 per seat. The surety bond at \$ [REDACTED] EX 4 was also inadequate. Therefore, the insurance was not in compliance with the Act. [REDACTED] 7E

Civil Money Penalties

Base Amount	# of Violations	Subtotal	Mitigating Factors	Subtotal
\$50,000	10	\$500,000	0	\$500,000

Factor 1: Previous history of violation(s) of H-2A requirements; this factor does not apply because the employer has history with the Division under the H-2A Act. The employer is currently under investigation by the Detroit District Office.

Factor 2: The number of H-2A workers, workers in corresponding employment, or U.S. workers who were and/or affected by the violations; this factor does not apply because the violation affected all persons on the bus.

Factor 3: The gravity of the violation(s); this factor does not apply because 6 workers were killed and 4 were seriously injured.

Factor 4: Efforts made in good faith to comply; this factor does not apply. There is no evidence of any good faith efforts made on the part of the employer to ensure that the insurance was in compliance with H-2A regulations.

Factor 5: Explanation from the person charged with the violation(s); this factor does not apply. The owner, Juan Vasquez, did not have an adequate answer except that he did not know that the worker's compensation insurance did not cover the travel back to Mexico.

Factor 6: Commitment to future compliance; this factor does not apply. Mr. Vasquez did not provide any adequate response to grant this factor.

Factor 7: The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers; the factor does not apply. Six workers were killed and four workers were seriously injured.

Factor 8: Other; this factor does not apply.

Note: due to the seriousness of this violation, a conference call was held with ADD Garvey and ADD Rogers on February 17, 2016. A determination was made by all parties involved that no factors would apply to this violation.

CORRECTION TO THE ABOVE VIOLATION:

The above violation, due to the civil money penalties being above \$50,000, was submitted to the regional and national office for review. Whitney Ford, Senior Policy Advisor Immigration and Farm Labor, of the

National Office and Mike Rios, Regional Enforcement Coordinator advised by e-mail on Wednesday March 30, 2016 to remove the above violation because the lack of adequate insurance did not result in the six deaths or in any passenger being seriously injured. Ms. Ford and Mr. Rios advised WHI 7C/6 to charge the violation below and remove related MSPA civil money penalties. 7E

Item 17 Transportation failed to meet safety requirements [20 CFR 655.122(h)(4)]:

The Arkansas Highway Patrol reported to the Division that on November 6, 2015, Roberto Vasquez was driving a bus carrying 19 H-2A workers, 1 crew leader and his son, returning back to Mexico after completion of an H-2A contract. An accident occurred 12:55 a.m. on interstate 40 in Pulaski County in North Little Rock, Arkansas. The driver, Roberto Vasquez, stated to the police that he hit a bump and lost control of the bus and hit a bridge under pass. As a result of this accident, 6 H-2A workers were killed. Additionally, an Arkansas Motor Vehicle Crash Report indicates an additional 7 workers listed as receiving a non-incapacitating injury and 1 worker with a possible injury. Of the above 8 workers, 4 filed a worker's comp claim. Unfortunately, the insurance coverage held by the employer was not in compliance. The worker's compensation insurance did not cover the workers and all claims were denied because there was no employer/employee relationship between employee and employer at time of accident and the employee was not engaged in work performed for the employer. The worker's compensation was purchased through the leasing

company, 7C/6, EX 4
provided a Notice of Denial for the six workers killed and the four workers seriously injured. Additionally, the vehicle insurance provided by 7C/6, EX 4 was only for \$ EX 4 which is less than the required \$100,000 per seat. The surety bond at \$ EX 4 was also inadequate. Therefore, the insurance was not in compliance with the Act. 7E

Civil Money Penalties

Base Amount	# of Violations	Subtotal	Mitigating Factors	Subtotal
\$1,500	22	\$33,000	0	\$33,000

Factor 1: Previous history of violation(s) of H-2A requirements; this factor does not apply because the employer has history with the Division under the H-2A Act. The employer is currently under investigation by the Detroit District Office.

Factor 2: The number of H-2A workers, workers in corresponding employment, or U.S. workers who were and/or affected by the violations; this factor does not apply because the violation affected all persons on the bus.

Factor 3: The gravity of the violation(s); this factor does not apply because 6 workers were killed and 4 were seriously injured.

Factor 4: Efforts made in good faith to comply; this factor does not apply. There is no evidence of any good faith efforts made on the part of the employer to ensure that the insurance was in compliance with H-2A regulations.

Factor 5: Explanation from the person charged with the violation(s); this factor does not apply. The owner, Juan Vasquez, did not have an adequate answer except that he did not know that the worker's compensation insurance did not cover the travel back to Mexico.

Factor 6: Commitment to future compliance; this factor does not apply. Mr. Vasquez did not provide any adequate response to grant this factor.

Factor 7: The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers; the factor does not apply. Six workers were killed and four workers were seriously injured.

Factor 8: Other; this factor does not apply.

Note: due to the seriousness of this violation, a conference call was held with ADD Garvey and ADD Rogers on February 17, 2016. A determination was made by all parties involved that no factors apply to this violation.

Item 40. Failed to follow all applicable federal, state, and local laws and regulations [20 CFR 655.135 (e):

Due to the accident discussed above, the employer is in violation of MSPA Items 15 – Failure to obtain prescribed insurance coverage, Item 25 – Transported workers without certificate authorization, and Item 28 – Failure to apply to amend certificate.

Civil Money Penalties

Base Amount	# of Violations	Subtotal	Mitigating Factors	Subtotal
\$1,500	1	\$1,500	0	\$1,500

Factor 1: Previous history of violation(s) of H-2A requirements; this factor does not apply because the employer has history with the Division under the H-2A Act. The employer is currently under investigation by the Detroit District Office.

Factor 2: The number of H-2A workers, workers in corresponding employment, or U.S. workers who were and/or affected by the violations; this factor does not apply because the violation affected all persons on the bus.

Factor 3: The gravity of the violation(s); this factor does not apply because 6 workers were killed and 4 were seriously injured.

Factor 4: Efforts made in good faith to comply; this factor does not apply. There is no evidence of any good faith efforts made on the part of the employer to ensure that the insurance was in compliance with H-2A regulations.

Factor 5: Explanation from the person charged with the violation(s); this factor does not apply. The owner, Juan Vasquez, did not have an adequate answer except that he did not know that the worker's

compensation insurance did not cover the travel back to Mexico.

Factor 6: Commitment to future compliance; this factor does not apply. Mr. Vasquez did not provide any adequate response to grant this factor.

Factor 7: The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers; the factor does not apply. Six workers were killed and four workers were seriously injured.

Factor 8: Other; this factor does not apply.

Note: due to the seriousness of this violation, a conference call was held with ADD Garvey and ADD Rogers on February 17, 2016. A determination was made by all parties involved that no factors would apply to this violation.

Total Civil Money Penalties \$34,500

No Violations

Item 01. H-2A workers given preferential treatment [20 CFR 655.122(a)]:

Item 02. Unlawful rejection of US worker [20CFR 655.122(a)]:

Item 03. Job qualification deviate from accepted [20 CFR 655.122(b)]:

Item 04. Failed to provide housing [20 CFR 655.122(d)]:

Item 05. Housing fails to meet S & H requirements [20 CFR 655.122(d)(1)(i) &.102(d)]:

Item 06. Failed to provide housing at no cost [20 CFR 655.122(d)(1)]:

Item 07. Failure to obtain housing pre-occupancy certification [20 CFR 655.122(d)(2)]:

Item 08. Family housing req. but not provided [20CFR 655.122(d)(5)]

Item 09. Unlawful charges for public housing [20 CFR 655.122(d)(4)]:

Item 10. Unlawful deposits – bedding/other items [20 CFR 655.122(d)(3)]:

Item 11. Failed to comply – unavailable housing requirements [20 CFR 655.122(d)(6)]:

Item 12. Failed to comply workers compensation requirements [20 CFR 655.122(e)]:

Item 13. Failed to comply with ER provided items requirement [20 CFR 655.122(f)]:

Item 14. Failed to comply with meals requirements [20 CFR 655.122(g)]:

Item 15: Failure to comply- Inbound Transportation

Item 16. Failed to provide transportation to/from worksite [20 CFR 655.122(h)(3)]:

Item 19. Failure to comply with $\frac{3}{4}$ guarantee [20 CFR 655.122(i)]:

Item 20. Failed to record why HW< hours offered [20 CFR 655.122(j)(3)]:

Item 21. Failed to provide housing/trans until departure [20 CFR 655.122(i)(5)]:

Item 22. Failure to comply earnings records requirements [20 CFR 655.122(j)(1)]:

Item 23. Failed to make required records available [20 CFR 655.122(j)(2)]:

Item 24. Failed to keep records 3 years [20 CFR 655.122(j)(4)]:

Item 25. Failure to comply pay statement requirements [20 CFR 655.122(k)]:

Item 26: Failure to provide copy of work contract

Item 28. Unlawful deductions [20CFR 655.122(p)]:

Item 29. Failure to comply frequency of pay requirements(s) [20CFR 655.122(m)]:

Item 30. Failure to comply abandonment/termination [20CFR 655.122(n)]:

Item 31. Failure to comply contract impossibility requirements [20 CFR 655.122(o)]:

Item 32. ER sought waiver of rights from worker [29 CFR 501.5]

Item 33. Failure to cooperate with investigation [29 CFR 501.7]:

Item 34. Not fixed site ER H2ALC, assoc. or agent [29 CFR 501.8]:

Item 35. Failed to contact prior US worker(s) [20 CFR 655.153]:

Item 36. Position vacant due to strike, lay-off, etc. [20 CFR 655.135(b)]:

Item 37. US workers laid off in violation [20 CFR 655.135(g)]

Item 38. Failed to cooperate with SWA [20 CFR 655.135(c) & (d)]

Item 39. Failure to comply recruiting requirements [20 CFR 655.135(c)]:

Item 41. Unlawful cost shifting [20 CFR 655.135(j)]:

Item 42. Failed to contractually forbid cost shifting [20 CFR 655.135(k)]:

Item 43. Failed to inform H2A workers to leave US [20 CFR 655.135(i)]:

Item 44. Discriminate, intimidate, threaten, etc. [20 CFR 655.135(h)]:

Item 45. H2A LC failure to comply surety bond requirements [29 CFR 501.9]:

Item 46. H2A LC failed to conduct separate recruitments [20 CFR 655.132(a)]:

Item 47. H2A LC improperly required US worker to participate in multiple contracts or itinerary. [20 CFR 655.132(a)]:

Item 48. H2A LC provided invalid fixed site information [20 CFR 655.132(b)(1)]:

Item 49. H2A LC provided invalid MSPA FLC certification information [20 CFR 655.132(b)(2)]:

Item 50. H2A LC failed to amend application [20 CFR 655.132 and 29 CFR 501.8]:

Item 51. ER failed to post H-2A Poster [20 CFR 655.135(l)]:

Disposition

A final conference was held at the establishment with owner/president Juan Vasquez on February 9, 2016. Investigator **7C/6** represented the Division.

WHI **7C/6 advised Mr. Vasquez of the following violation:**

Item 17 Transportation failed to meet safety requirements: The Arkansas Highway Patrol reported to the Division that on November 6, 2015, Roberto Vasquez was driving a bus carrying 19 H-2A workers, 1 crew leader and his son, returning back to Mexico after completion of an H-2A contract. An accident occurred 12:55 a.m. on interstate 40 in Pulaski

County in North Little Rock, Arkansas. The driver, Roberto Vasquez, stated to the police that he hit a bump and lost control of the bus and hit a bridge under pass. As a result of this accident, 6 H-2A workers were killed. Additionally, an Arkansas Motor Vehicle Crash Report indicates an additional 7 workers listed as receiving a non-incapacitating injury and 1 worker with a possible injury. Of the above 8 workers, 4 filed a worker's comp claim. Unfortunately, the insurance coverage held by the employer was not in compliance. The worker's compensation insurance did not cover the workers and all claims were denied because there was no employer/employee relationship between employee and employer at time of accident and the employee was not engaged in work performed for the employer. The worker's compensation was purchased through the leasing company [REDACTED] 7C/6, EX 4 [REDACTED]. [REDACTED] provided a Notice of Denial for the six workers killed and the four workers seriously injured. Additionally, the vehicle insurance provided by [REDACTED] 7C/6 [REDACTED] was only for

\$ [REDACTED] EX 4 [REDACTED] which is less than required \$100,000 per seat. Therefore, the insurance was not in compliance with the Act.

Item 40 Failed to follow all applicable federal, state, and local laws and regulations: Due to the accident, the employer is in violation of MSPA Items 15 – Failure to obtain prescribed insurance coverage, Item 25 – Transported workers without certificate authorization, and Item 28 – Failure to apply to amend certificate.

Mr. Vasquez did not know that the worker's comp insurance would not apply to the travel back to Mexico and thought his insurance met the requirements of the Act. He did state that his vehicle insurance (Granite) was providing compensation to the workers

Mr. Vasquez will do the following:

- 1) Purchase separate insurance in compliance with the Act for ALL travel to and from Mexico or hire a separate entity to provide this transportation. Mr. Vasquez will comply with all MSPA requirements. Mr. Vasquez is not currently working and states that he is not sure if he will work this year.**

Civil Money Penalties in the amount of \$34,500 were computed based on new guidelines. However, WHI 7C/6 recommends a reduction for the following reasons. There does not appear to be any negligence on the part of this employer. There is no evidence of any safety issues in regards to the vehicle. The Little Rock District Office and the Arkansas Highway Patrol did not cite or address any issues with safety of the vehicle and the driver did not receive any infraction from the Highway Patrol. The employer did have insurance, just not the adequate insurance levels to meet MSPA and H-2A requirements. The vehicle insurance was for \$ EX 4 which is providing compensation to the workers.

7C/6

Investigator

May 9, 2016

MSPA Addendum Narrative Report

Vasquez Citrus & Hauling, Inc.

7C/6 Issued 09/01/2015 Exp. 08/31/2017 TA, HA, DU

70 Harrison Road

Lake Placid, Florida 33852

Home: 7C/6

Fax: (863) 465-5813

Mailing Address:

Same as Above

FEIN: 7C/6, EX 4

Contact: President – Juan Vasquez

7C/6 Issued 07/01/2015 Exp.06/30/2017 TU, HA, DA

Related Files: Vasquez Citrus & Hauling, Inc. - FLC (Case id. 1765166)

Under investigation by WHI 7C/6

Introduction:

This file was set up by the Little Rock District Office as a result of an accident on November 6, 2015 involving the death of six H-2A agricultural workers. The file was sent to the MODO office (Tampa) for further action. The Little Rock District Office requested the following from the Tampa District:

- Contact the Farm Labor Contractor to obtain additional information about their registration, authorizations, etc.
- Determine if joint employment and/or joint responsibility is applicable to this investigation.
- Obtain insurance information on the bus to determine if the bus complied with 500.105 DOT standards.
- Determine if the bus complied with 501.105 DOT standards.
- Recommend assessment of Civil Money Penalties.

The above is addressed in this report. 7E

Investigative Period and Tool: The investigation period is November 6, 2015, the date of the accident. This investigation is 7E to the accident on November 6, 2015. No other issues will be addressed or explored. Note: the above is currently under investigation for this time period and H-2A contract. (7E)

MODO and Investigative History

A MODO request was sent to the Southeast Regional Office for Wage and Hour. MODO Managers Ty Cox and Mike Rios instructions were to “Handle locally unless systemic problem”.

History includes the following:

1758150 – H-2A/2015 - Violations H2A -5, 15, 20, 27, 39, and 40; FLSA – MW, and MSPA Item 1 Disclosure. Employer agreed to comply and pay back wages in the amount of \$21,676.96. (7E)

1738739 – H-2A/MSPA/FLSA/OSHF/2014 – No Violations Disclosed. (7E)

1722092 - MSPA/2014 - MSPA violation item 9. Subject agreed to comply in the future and pay back wages in the amount of \$428.22. [REDACTED] 7E

1499962 - MSPA/2007 - MSPA violation item 1 Disclosure. Subject agreed to comply in the future. [REDACTED] 7E)

Employment Relationship:

Not Explored or Addressed

Joint Employment:

Not Explored or Addressed

Transportation:

This investigation is limited to the accident on November 6, 2015. The vehicle in question is a 1997 Van Hool Bus VIN [REDACTED] EX 4, 7C/6 [REDACTED]. The vehicle was not inspected. However, there do not appear to be any safety violations pertaining to the vehicle. The driver, Roberto Vasquez, was properly licensed and registered. ([REDACTED] 7E [REDACTED])

MSPA Coverage:

Vasquez Citrus & Hauling, Inc. and President Juan Vasquez is a registered farm labor contractor, who for a fee, either recruited, solicited, hired, employed, furnished, or transported (FRESH-T) migrant agricultural workers to harvest fruit and vegetables for agricultural employer [REDACTED] 7C/6 [REDACTED]. Vasquez has has approximately [REDACTED] EX 4 workers employed during the season, with the majority having H-2A visas. There is a current investigation out of the Detroit District Office. This investigation is limited to the accident that occurred on November 6, 2016.

Title I: Any person engaging in farm labor contracting activities must be registered with the Secretary and

authorized to perform. Vasquez Citrus & Hauling, Inc. is currently registered under number EX 4 TA, HA, DU effective 09/01/2015 until 08/31/2017 and is authorized to transport and house workers.

MSPA Exemptions

Section 4(a)(1): The Family Business Exemption from MSPA does not apply to Vasquez Citrus & Hauling, Inc. because he does not exclusively own or operate the farms in which contracting activities were performed. The farm is owned by agricultural employer 7C/6.

Section 4(a)(2): Small Business Exemption does not apply to Vasquez Citrus & Hauling, Inc. because this exemption does not apply to farm labor contractors.

Section 4(a)(3)(D): 25 mile/13 week exemption is not applicable. Vasquez Citrus & Hauling, Inc. participated in the named activities of furnishing, recruiting, employing, soliciting, hiring, and transporting agricultural workers for approximately 7 months. Vasquez Citrus & Hauling, Inc. harvests fruits and vegetables from approximately April to November every year.

Section 203(c): Exclusion from housing safety and health requirements is not applicable. This employer's "ordinary course of business" is considered to be as a farm labor contractor, not as a property owner or landlord. Due to Vasquez Citrus & Hauling, Inc. having an H-2A contract, housing is provided free of charge at the Chestnut Hill Apartments in Monroe, Michigan.

MSPA Status of Compliance

MSPA Item 15: Failure to obtain prescribed insurance coverage:

On November 6, 2015, Roberto Vasquez (MSPA worker) was driving a bus carrying 19 H-2A workers, 1 crew leader (2nd MSPA worker) and his son, returning back to Mexico after completion of an H-2A contract. An accident occurred 12:55 a.m. on interstate 40 in Pulaski County in North Little Rock, Arkansas. The driver, Roberto Vasquez, stated to the police that he hit a bump and lost control of the bus and hit a bridge under pass. As a result of this accident, 6 H-2A workers were killed. Additionally, an Arkansas Motor Vehicle Crash

Report indicates an additional 7 workers listed as receiving a non-incapacitating injury and 1 worker with a possible injury. Of the above 8 workers, 4 filed a worker's comp claim. Unfortunately, the insurance coverage held by the employer was not in compliance. The worker's compensation insurance did not cover the workers and all claims were denied because there was no employer/employee relationship between employee and employer at time of accident and the employee was not engaged in work performed for the employer. The worker's compensation was purchased through the leasing company, EX 4, 7C/6

EX 4, 7C/6
provided a

Notice of Denial for the six workers killed and the four workers seriously injured. Additionally, the vehicle insurance provided by 7C/6, EX 4 was only for \$ EX 4 which is than required \$100,000 per seat. Therefore, the insurance was not in compliance with the Act. (7E)

Factor 1: Previous history of violation(s) of MSPA; this factor does not apply because the employer has history with the Division under the MSPA Act. The employer is currently under investigation by the Detroit District Office.

Factor 2: The number of workers affected by the violation; this factor does not apply because the violation affected all persons on the bus.

Factor 3: The gravity of the violation(s); this factor does not apply because 6 workers were killed and 4 were seriously injured.

Factor 4: Efforts made in good faith to comply; this factor does not apply. There is no evidence of any good faith efforts made on the part of the employer to ensure that the insurance was in compliance with H-2A regulations.

Factor 5: Subject's explanation of the violation; this factor does not apply. The owner, Juan Vasquez, did

not have an adequate answer except that he did not know that the worker's compensation insurance did not cover the travel back to Mexico.

Factor 6: Commitment to future compliance; this factor does not apply. Mr. Vasquez did not provide any adequate response to grant this factor.

Factor 7: The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers; the factor does not apply. Six workers were killed and four workers were seriously injured.

Factor 8: Other; this factor does not apply.

Note: due to the seriousness of this violation, a conference call was held with ADD Garvey and ADD Rogers on February 17, 2016. A determination was made by all parties involved that no factors would apply to this violation.

Prescribed CMP: **\$0***

*Regional Enforcement Coordinator Mike Rios advised WHI Hernandez by e-mail Wednesday, March 30, 2016 to remove CMP because this violation will be charged under H-2A. (7E)

MSPA Item 25: Transported workers w/o certificate authorization:

The bus involved in the accident, a 1997 Van Hool, was not an authorized vehicle on his card and he had not initiated any action to add the vehicle to his card. Note: the employer was authorized to transport, just not this vehicle.

Factor 1: Previous history of violation(s) of MSPA; this factor does not apply because the employer has history with the Division under the MSPA Act. The employer is currently under investigation by the

MSPA Item 28: Failure to amend certificate:

The bus discussed above and involved in the accident was not listed on his card.

Factor 1: Previous history of violation(s) of MSPA; this factor does not apply because the employer has history with the Division under the MSPA Act. The employer is currently under investigation by the Detroit District Office.

Factor 2: The number of workers affected by the violation; this factor does apply because the violation affected all persons on the bus.

Factor 3: The gravity of the violation(s); this factor does not apply because 6 workers were killed and 4 were seriously injured.

Factor 4: Efforts made in good faith to comply; this factor does not apply. There is no evidence of any good faith efforts made on the part of the employer to ensure that the insurance was in compliance with H-2A regulations.

Factor 5: Subject's explanation of the violation; this factor does not apply. The owner, Juan Vasquez, did not have an adequate answer except that he did not know that the worker's compensation insurance did not cover the travel back to Mexico.

Factor 6: Commitment to future compliance; this factor does not apply. Mr. Vasquez did not provide any adequate response to grant this factor.

Factor 7: The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers; the factor does not apply. Six workers were killed and four workers were seriously injured.

Factor 8: Other; this factor does not apply.

Note: due to the seriousness of this violation, a conference call was held with ADD Garvey and ADD

EX 4, 7C/6

provided a Notice of Denial for the six workers killed and the four workers seriously injured. Additionally, the vehicle insurance provided by EX 4, 7C/6 was only for \$ EX 4 which is than required \$100,000 per seat. Therefore, the insurance was not in compliance with the Act.

MSPA Item 25: Transported workers w/o certificate authorization:

The bus involved in the accident, a 1997 Van Hool, was not an authorized vehicle on his card and he had not initiated any action to add the vehicle to his card. Note: the employer was authorized to transport, just not this vehicle.

MSPA Item 28: Failure to amend certificate:

The bus discussed above and involved in the accident was not listed on his card.

Mr. Vasquez stated that he did not know that his insurance was not in compliance. He stated that he thought the worker's comp policy covered the travel back to Mexico. He admitted that he had not added the bus on his card.

Mr. Vasquez will do the following:

Mr. Vasquez will purchase additional insurance in compliance with the Act for ALL travel to and from Mexico or he will hire an outside entity to transport the workers to and from Mexico.
Note: Mr. Vasquez is not currently working and does not plan on working this year.

Mr. Vasquez will only transport workers on vehicles authorized on his card.

Civil Money Penalties in the amount of \$2,000 were computed. WHI 7C/6 recommends full

assessment due to the seriousness of the violations.

7C/6

Investigator
May 9, 2016