

FINAL ORDERS OF THE VIRGINIA COURTS
IN
CONTESTED CASES ARISING UNDER THE
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT

VOLUME XX
JULY 1, 1998 - JUNE 30, 1999



The Virginia Department of Labor and Industry
Powers-Taylor Building
13 South Thirteenth Street
Richmond, Virginia 23219

PREFACE

This publication contains the orders of the Virginia Circuit Courts in contested cases from July 1, 1998, through June 30, 1999, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of §40.1-49.7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, C. 354)."

The Table of Contents provides an alphabetical listing of the reported cases for the fiscal year. Reference is made to Title 29 of the Code of Federal Regulations, Parts 1910 and 1926. These regulations were adopted by the Virginia Safety and Health Codes Board pursuant to § 40.1-22, as amended.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY

JOHN MILLS BARR , Commissioner of)	
Labor & Industry,)	
)	
Plaintiff,)	
v.	)	Chancery No. V 13353
)	
BEAVERS & CECIL CONTRACTORS, INC.)	
)	
Defendant.)	

FINAL ORDER

This matter came before the Court for trial on April 19, 1999. After hearing all of the evidence presented by both parties, the Court ruled as follows:

1. Citation 1, item I a, § 1926.651(k)(1) and Citation 1, item 1 b, § 1926.652(a)(1) are affirmed as a serious violation.

2. A penalty of \$2500.00 is assessed for the violation.

The Defendant shall pay the \$2500.00 penalty within fifteen (15) days of the date entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia.

The Defendant shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted.

The Commissioner may, use this order in future proceedings under Virginia Code §§.40.1-49.4(1), -49.4(J), -49.4(K), or any other authority.

It is ORDERED, ADJUDGED, and DECREED that judgment be and is hereby entered in favor of the Plaintiff, John Mills Barr, Commissioner of Labor & Industry in the amount of \$2500.00. This matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court.

Entered this 18 of May, 1999.

The Clerk shall send an attested copy of this Order to all counsel of record.

A. Dow Owens
The Honorable A. Dow Owens
Circuit Court Judge

WE ASK FOR THIS:

JOHN MILLS BARR, Commissioner
of Labor and Industry

Diane L. Duell
Diane L. Duell
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219
804/786-4289
Counsel for Plaintiff

SEEN AND OBJECTED TO:

BEAVERS & CECIL CONTRACTORS, INC.

Douglas G. Campbell
Douglas G. Campbell, Esquire
KATZ, KANTOR, PERKINS & CAMPBELL
996 Ben Bolt Avenue
Tazewell, Virginia 24651
540/988-6554
Counsel for Defendant

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF DINWIDDIE

JOHN MILLS BARR , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH-98-68
)	
CATLETT-JOHNSON CORPORATION)	
)	
Serve: John C. Hildebrand, III)	
Registered Agent)	
5711 Greendale Road)	
Richmond, Virginia 23228)	
)	
Defendant)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner John Mills Barr's Motion for Decree Pro Confesso against Catlett-Johnson Corporation, declaring that the contested Virginia Occupational Safety and Health (VOSH) citation and penalty totaling \$700.00, identified by VOSH Inspection Number 125455667 and as attached to the Commissioner's Bill of Complaint, be upheld. The Defendant did not appear at the hearing.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one days have elapsed since service of process on the Defendant, and that no answer or other responsive pleading has been filed by the Defendant, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be and hereby is awarded judgment by default in this cause affirming the VOSH citation and penalty of \$700.00. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall send to the Defendant a copy of this Decree by certified mail.

Thomas V. Warren

March 24, 1999

Judge

Date

I ASK FOR THIS:

JOHN MILLS BARR,
Commissioner of Labor and Industry

By: *T. O. Rainey, III*
Counsel

Hon. T. O. Rainey, III
Commonwealth's Attorney
County of Dinwiddie
Post Office Box 296
Dinwiddie, Virginia 23841
804/ 469-4536

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

JOHN MILLS BARR , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
V.	)	Chancery No. CH-96001015-00
)	
W. W. ENROUGHTY & SON, INC.)	
)	
Defendant)	

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. *Willful citation 1, item 1* and the proposed penalty are vacated;
2. *Willful citation 1, item 2* is amended and affirmed as a Serious violation, and the Defendant shall pay \$3,000.00 in lieu of the original proposed penalty;
3. that the Defendant shall pay the \$3,000.00 penalty within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia, with VOSH inspection number 123663775 noted on the payment;
4. that the Defendant withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;
5. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order shall not be construed as an admission of liability by the Defendant of civil liability for any violation alleged by the Commissioner;
6. that the Employer certifies that the violation affirmed in this Order has been abated;
7. that the Clerk shall strike this matter from the docket of this Court, place it among the ended

chancery cases, and shall send an attested copy of this Order to all counsel of record.

Entered this 3rd day of March, 1999.

James E. Kulp
Judge James E. Kulp

WE ASK FOR THIS:

JOHN MILLS BARR,
Commissioner of Labor and Industry

By: Theodore D. Bruns 1/20/99
Counsel Date

Theodore D. Bruns, Esquire
Assistant Commonwealth's Attorney
County of Henrico
Post Office Box 27032
Richmond, Virginia 23272
804/ 501-4218

SEEN AND AGREED:

W. W. ENROUGHTY & SON, INC.

By: Blackwell N. Shelley, Jr. 1/21/99
Counsel for Defendant Date

Blackwell N. Shelley, Jr., Esquire
Butler, Macon, Williams & Pantele. P.C.
1309 East Cary Street
Richmond, Virginia 23219
804/ 648-4848

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

JOHN MILLS BARR , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
V.	)	Chancery No. 155695
)	
T. M. EVANS ELECTRIC, INC.)	
)	
Defendant)	

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. *Serious citation 1, item 1* is affirmed and the proposed penalty of \$7,000.00 is amended to \$3,500.00;
2. *Serious citation 1, item 2* and the proposed penalty were previously vacated by the Commissioner of Labor and Industry (Commissioner);
3. *Serious citation 1, item 3* and the proposed penalty were previously vacated by the Commissioner;
4. that T. M. Evans Electric, Inc. (T. M. Evans) shall pay the amount of \$3,500.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia, with VOSH inspection number 126628916 noted on the payment;
5. that in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, T. M. Evans will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at its workplaces in Virginia in

- conspicuous locations where notices to its employees are generally posted;
6. that T. M. Evans withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;
 7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; and this Order shall not be construed as an admission of liability by T. M. Evans of civil liability for any violation alleged by the Commissioner;
 8. that T. M. Evans certifies that the violation affirmed in this Order has been abated;
 9. that the Clerk shall strike this matter from the docket of this Court, place it among the ended chancery cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 4th day of March, 1999.

Robert W. Woolridge, Jr.
Judge

WE ASK FOR THIS:

JOHN MILLS BARR,
Commissioner of Labor and Industry

By: John R. Murphy
Counsel for Plaintiff

3/2/99
Date

John R. Murphy
Assistant Commonwealth's Attorney
County of Fairfax
4110 Chain Bridge Road, Ste. 123
Fairfax, Virginia 22030
703/ 246-2776

SEEN AND AGREED TO:

T. M. EVANS ELECTRIC, INC.

By: Lesia L. Byrum
Counsel for Defendant

2/26/99
Date

Lesia L. Byrum
Kasimer & Ittig, P.C.
7653 Leesburg Pike
Falls Church, Virginia 22043
703/ 893-3914

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

JOHN MILLS BARR , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
v.	)	Chancery No. 152089
)	
GENERAL MASONRY, INC.)	
)	
Defendant)	

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. that *Repeat citation 1, item 1* is amended to a Serious classification and the proposed penalty of \$3,000.00 is affirmed;
2. that General Masonry, Inc. shall pay the amount of \$3,000.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia, with VOSH inspection number 126631563 noted on the payment;
3. that General Masonry, Inc. will take the following actions:
 - A. General Masonry, Inc. will train all of its employees, who are expected or will be expected to work on or around scaffolding, on the scaffold standards requirements contained in the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, as described in VOSH standard § 1926.454, Training Requirements. Within 60 days of the effective date of this Agreement, General Masonry, Inc. will submit proof of such training, including copies of the employee attendance sheets, the agenda for the training session, and all hand-outs from the training session, to

the Department of Labor and Industry at the following address:

Charles E. Franklin
Acting Regional Director
Manassas Regional Office
Virginia Department of Labor and Industry
10515 Battleview Parkway
Manassas, Virginia 20109

- B. Six months after General Masonry, Inc. holds the training described in paragraph 3A above, it will hold refresher training on the requirements of the scaffold standards for all of its employees. General Masonry, Inc. will repeat such refresher training every six months for a period of two years. Documentation from each training session, including copies of the employee attendance sheets, the agenda for each training session, and all hand-outs from each training session, will be submitted to the Department of Labor and Industry at the address listed in paragraph 3A above within 30 days of each of the training sessions.
 - C. General Masonry, Inc. will incorporate into its written safety and health program the requirements of the scaffold standards. Within 60 days of the effective date of this Agreement, General Masonry, Inc. will submit a copy of its modified safety and health program to the address listed in paragraph 3A above. General Masonry, Inc. also will inform all employees of these changes to the safety and health program during the training sessions required in paragraphs 3A and 3B.
- 4. that in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, General Masonry, Inc. will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at its workplaces in Virginia in conspicuous locations where notices to its employees are generally posted;
 - 5. that General Masonry, Inc. withdraws its original notice of contest filed with respect to the

above-styled case and waives its right to contest the terms contained in this Order;

6. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; and this Order shall not be construed as an admission of liability by General Masonry, Inc. of civil liability for any violation alleged by the Commissioner;

7. that General Masonry, Inc. certifies that the violation affirmed in this Order has been abated;

8. that the Clerk shall strike this matter from the docket of this Court, place it among the ended chancery cases, and shall send an attested copy of this Order to both counsel of record.

Entered this 28th day of April, 1999.

F. B. Bach
Judge

WE ASK FOR THIS:

JOHN MILLS BARR,
Commissioner of Labor and Industry

By: John R. Murphy
Counsel for Plaintiff

John R. Murphy
Assistant Commonwealth's Attorney
County of Fairfax
4110 Chain Bridge Road, Ste. 123
Fairfax, Virginia 22030
703/ 246-2776

SEEN AND AGREED TO:

GENERAL MASONRY, INC.

By: Maurice E. Moylan
Counsel for Defendant

Maurice E. Moylan
MATRICARDI & MOYLAN
North Springfield Professional Center II
5411-D Backlick Road
Springfield, Virginia 22151
703/ 569-7000

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF LOUDOUN

JOHN MILLS BARR, Commissioner of)
 Labor and Industry,)
)
 Plaintiff,)
)
 v.)
)
CHARLES LAWSON d/b/a Grass Plus)
)
 Defendant.)

Chancery No. 18878

FINAL ORDER

This cause came to be heard upon Commissioner John Mills Barr's cause filed against Charles Lawson, doing business as Grass Plus, concerning the contested Virginia Occupational Safety and Health (VOSH) citation and penalties totaling \$7,900.00, identified by VOSH Inspection Number 125434910, and as attached to the Commissioner's Bill of Complaint. The Defendant did not appear at the scheduled trial date of April 21, 1999. The Commissioner presented his evidence before the Court, supporting his Bill of Complaint and refuting each of the Defendant's contradictory responses made in its Answer.

The Commissioner's evidence provided a sufficient factual and legal basis justifying the following violations and penalties:

1. Serious citation 1, Item 1 citing VOSH Standard § 1910.147(c)(1), for failing to develop a lockout/tagout program, is affirmed as written, with a penalty of \$7,000.00.
2. Serious citation 1, Item 2 citing VOSH Standard § 1910.151(b), for failing to train employees to provide first aid, is affirmed as written, with a penalty of \$450.00.
3. Serious citation 1, grouped Item 3a through 3b, citing VOSH Standard §§ 1910.1200(e)(1), 1910.1200(g)(8), and 1910.1200(h), for failing to develop a written hazard communication program, to maintain and provide material safety data (MSD) sheets, and to train employees in

the requirements of the hazard communication standard, is affirmed as written, with a penalty of \$450.00.

UPON CONSIDERATION WHEREOF, it appearing to the Court that the Commissioner's evidence is sufficient to support a judgment in its favor, and that the Defendant received notice but chose not to appear at either the docket date or the trial date, it is therefore ADJUDGED, ORDERED, and DECREED that the Commissioner be and hereby is awarded judgment in this cause affirming the VOSH citation and penalties totaling \$7,900.00, and requiring abatement of the violations. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall send to the Defendant a copy of this Decree by certified mail.

Jean H. Clements
Judge

April 21, 1999
Date

I ASK FOR THIS:

JOHN MILLS BARR,
Commissioner of Labor and Industry

By: Karin H. Cather
Counsel

Karin H. Cather
Assistant Commonwealth's Attorney
County of Loudoun
20 East Market Street
Leesburg, Virginia 20176
703/ 777-0242

VIRGINIA:

IN THE CIRCUIT COURT OF GRAYSON COUNTY

Theron J. Bell, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff	)	Chancery No. 97-135
)	
VS.)	
)	
Billy F. McMickle)	
t/a McMickle Logging,)	
)	
Defendant)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell's Motion for Degree Pro Confesso against Billy F. McMickle, declaring that the contested Virginia Occupational Safety and Health (VOSH) citations and proposed penalties totaling Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750.00), identified by VOSH Inspection Number 126641778 and as attached to the Commissioner's Bill of Complaint, be upheld.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one days have elapsed since service of process on the Defendant and that no responsive pleading has been filed by the Defendant, it is therefore

ADJUDGED, ORDERED and DECREED that Plaintiff be and hereby is awarded judgment by default in this case affirming the VOSH citations and order of abatement and proposed penalties of Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750.00). The Clerk shall send a copy of this Decree to the Defendant.

Enter this 7th day of August, 1998.

J. Colin Campbell
Judge

I ASK FOR THIS:

Theron J. Bell
Commissioner of Labor and Industry

By: *J. D. Bolt*
 Counsel

J. D. Bolt
Commonwealth's Attorney
County of Grayson
P.O. Box 445
Independence, VA 24348

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

JOHN MILLS BARR, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 312-96
)	
PIEDMONT ELECTRICAL, INC.)	
)	
Defendant.)	

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. That the citations attached to the Bill of Complaint are hereby amended as follows:
 - a) Serious Citation 1, Items 1a, 1b and 1c are affirmed with an assessed penalty of \$375;
 - b) Serious Citation 1, Item 2 is reduced to Other-Than-Serious with no penalty;
 - c) Other-Than-Serious Citation 2, Item 1 is affirmed as written;
 - d) Other-Than-Serious Citation 2, Item 2 is vacated; and
 - e) Other-Than-Serious citation 2, Item 3 is vacated.
2. That the Defendant shall pay a penalty of \$375.00 within fifteen (15) days of the date entry of this order. Payment shall be made by check or money order, payable to the Common-wealth of Virginia, with VOSH inspection number 125459594 noted on the payment;
3. As consideration for the modification of the terms of the original citations, the Defendant agrees to provide first-aid certification training for its employees. The Defendant shall provide to the Commissioner, for review, records of this first aid training, including the names of those employees who

attended the sessions, the dates of the training sessions, an outline of the materials covered and the names and qualifications of the instructors. These records shall be sent within thirty (30) days of the date of this Order to:

Richard C. Angell, Compliance Manager
Virginia Department of Labor & Industry
Main Street Station, Suite 222
Richmond, Virginia 23219

4. In the event that the Defendant fails to comply with paragraphs 2 and 3 of this Order citation amendments described above shall be null and void and the citations shall be reinstated as originally issued and shall become a final order;
5. That the Defendant shall withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order;
6. That the Defendant shall certify within fifteen (15) days of the entry date of this Order that all violations affirmed in this Order have been abated;
7. That the Defendant shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
8. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
9. That this Order does not purport to limit the effect of Virginia Code § 40.1-51.3:2;
10. That the Commissioner may use this order in future proceedings under Virginia Code §§ 40.1-49.4(I), -49.4(J), -49.4(K), or any other authority; and
11. That each party shall bear its own costs in this matter.

It is ORDERED, ADJUDGED, and DECREED that this matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court.

Entered this 15th day of September, 1998.

The Clerk shall send an attested copy of this Order to all counsel of record.

Dixon L. Foster
Circuit Court Judge

WE ASK FOR THIS:

JOHN MILLS BARR, Commissioner
of Labor and Industry

John Pritchard
John Pritchard, Esq.
Assistant Commonwealth's Attorney
County of Hanover
Post Office Box 470
Hanover, Virginia 23069
804/537-6185
Counsel to Commissioner Barr

SEEN AND AGREED:

PIEDMONT ELECTRICAL COMPANY

John M. Schilling
John M. Schilling, Esq.
300 West Main Street
Richmond, Virginia 23220
804/782-1111
Counsel to Piedmont Electrical Company

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF BLAND

JOHN MILLS BARR , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH98-36
)	
P & L TIMBER COMPANY)	
)	
Serve: Steve Brown, Partner)	
Route4, Box 417)	
Princeton, West Virginia 24740)	
)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner John Mills Barr's Motion for Decree Pro Confesso against P & L Timber Company, declaring that the contested Virginia Occupational Safety and Health (VOSH) citation and penalties totaling \$2,100.00, identified by VOSH Inspection Number 125424861 and as attached to the Commissioner's Bill of Complaint, be upheld. The Defendant did not appear at the hearing.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one days have elapsed since service of process on the Defendant's statutory agent, and that no answer or other responsive pleading has been filed by the Defendant, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be and hereby is awarded judgment by default in this cause affirming the VOSH citation and penalties totaling \$2,100.00, and requiring abatement of the violation. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall send to the Defendant a copy of this Decree by certified mail.

J. Colin Campbell
Judge

3/22/99
Date

I ASK FOR THIS:

JOHN MILLS BARR,
Commissioner of Labor and Industry

By: James W. Dudley
Counsel

Hon. James W. Dudley
Commonwealth's Attorney
County of Bland
P.O. Box 276
Bland, Virginia 24315
540/ 688-3821

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

Theron J. Bell, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH-98-600
)	
PLUMB-INN, INCORPORATED,)	
)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell's Motion for Decree Pro Confesso against Plumb-Inn, Inc., declaring that the contested Virginia Occupational Safety and Health (VOSH) citations and penalties totaling \$1,600.00, identified by VOSH Inspection Number 125452318 and attached to the Commissioner's Bill of Complaint, be affirmed.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one days have elapsed since service of process on the Defendant, and that no answer or other responsive pleading has been filed by the Defendant, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause affirming Citation No. 1, Item 1, the accompanying proposed penalty in the amount of \$1,600.00, and the order of abatement. It is also

ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall send to the Defendant a copy of this Decree by certified mail.

August 12, 1998
Date

Herbert Gill, Jr.
Judge

I ASK FOR THIS:
Theron J. Bell
Commissioner of Labor and Industry

By: *Kenneth E. Nickels*
Counsel

Kenneth E. Nickels
Deputy Commonwealth's Attorney
County of Chesterfield
Post Office Box 25
Chesterfield, Virginia 23832
(804) 748-1221

VIRGINIA

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

JOHN MILLS BARB,)
Commissioner of Labor and Industry .)
)
Plaintiff,)
)
v.) Chancery No. 143704
)
SHIRLEY CONTRACTING CORPORATION)
)
Defendant.)

AGREED ORDER

Upon this agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The parties have agreed that the citations set forth in and attached to the Bill of Complaint in this matter are amended as follows:
 - a. Citation 1, Item 1 is amended to an unclassified violation and affirmed with a reduced penalty of \$20,000.
 - b. Citation 2, item 1 is vacated.
2. Shirley Contracting Corporation will pay the penalty as follows:
 - a. Commissioner Barr acknowledges receipt of \$11,000.00 as the initial partial payment.
 - b. Should Shirley, between June 1, 1999, and May 31, 2000, be issued a citation for violation of § 1926.652(a)(1) of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction industry that forms the basis for Citation 1, Item 1 affirmed by this agreement, Shirley will pay the sum of \$4,500 within fifteen days of such violation becoming a final order.

- c. Should Shirley, between June 1, 2000, and May 31, 2001, be issued a citation for violation of § 1926.652(x)(1) of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry that forms the basis for Citation 1, Item 1 affirmed by this agreement, Shirley will pay the sum of \$4,500 within fifteen days of such violation becoming a final order.
 - d. Nothing contained herein will prevent Shirley from contesting any citation issued by VOSH or exercising any right allowed to Shirley by Code §40.1-49.4.
 - e. The parties expressly understand that failure to comply with the terms of this settlement agreement is a breach of this Final Order. Any breach will mean the unpaid amount becomes due and payable 15 days following the breach. The responsibilities and duties of the Employer under this agreed order over and above its responsibilities and duties under applicable law and regulation, will cease on May 31, 2001, if all penalty amounts due the Commonwealth have been paid in full. In the event penalties are owed or are being paid to the Commonwealth on the above date, the responsibilities and duties of Employer under this settlement agreement will continue until all such amounts have been paid in full and no further penalty amounts are due.
3. It is expressly understood that the penalty payments referred to in paragraphs 2b and 2c above, are in addition to and separate from any penalties that may be assessed for the subsequent repeat violations of § 1926.652(x)(1) which trigger the partial payments addressed above. It is further expressly provided that Shirley's obligation to pay the partial payments not yet due and payable will cease on May 31, 2001, if all the requirements of this agreement have been satisfied and no triggering event has occurred. On that date, the remaining amount of the penalty that has not yet become due and payable to the Commonwealth because of subsequent violations will be forgiven.

4. The violations affirmed by this agreement may not be used as the basis for a repeat violation after May 31, 2001.
5. Shirley Contracting Corporation will post a copy of this order for ten (10) consecutive days at each of its worksites in Virginia where a Job Safety and Health Protection Poster is posted. The order will be in a conspicuous location, where notices to its employees are generally posted.
6. Under Code § 40.1-49D, the defendant's agreement to this settlement does not admit to any civil liability for the alleged violations. This Order does not purport to limit the effect of Code § 40.1-51.3:2. The defendant's agreement to the entry of this Order will not limit the Commissioner's use of this Order in future proceedings under Code § 40.1-49.4.1, -J, or -K, or under any other authority. This Order will be construed to advance the purpose of Code § 40.1-3.
7. Each party will bear its own costs in this matter.

The Bill of Complaint is dismissed with prejudice. The Clerk will strike this matter from the docket. and place it among the ended chancery cases: The Clerk will certify copies of this order to counsel.

Entered this 2nd day of June, 1999

F. B. Bach
Judge

WE ASK FOR THIS

John R. Murphy
John R. Murphy
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County of Fairfax
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(703) 893-6944 Fax
Counsel for Shirley Contracting Corporation

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

THERON J. BELL,)	
Commission of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 311-96
)	
S. W. RODGERS CO., INC.)	
)	
Defendant)	

FINAL ORDER

This matter came before the Court for trial on April 21, 1999. After the Commissioner presented its evidence, Defendant, S. W. Rodgers Co., Inc. moved to strike the Plaintiff's evidence on the-following grounds:

1. The Commissioner had offered no evidence that any employee of S. W. Rodgers Co., Inc. had been exposed to the conditions which were the subject of the citations, and absent evidence of employee exposure, the Commissioner had not adduced evidence to support the citations; and

2. This action was filed approximately fifteen (15) months after the citations in this action were issued. Code of Virginia Title 40.1-49.4(E) requires that an action to enforce a citation be filed immediately, and fifteen (15) months did not constitute immediate filing.

Upon consideration, for the reasons stated in open court, the Court denies the Motion to Strike on the first ground, but grants the Motion to Strike because the Court finds that this action was not timely filed and no evidentiary justification was provided for the delay.

Accordingly, judgment be and hereby is entered in favor of Defendant, S. W. Rodgers Co., Inc. and the Complaint is dismissed with prejudice.

Entered this 12th day of May, 1999.

Richard H. C. Taylor
Richard H. C. Taylor, Circuit Court Judge

SEEN AND OBJECTED TO with respect to the court's refusal to grant the Motion to Strike on the ground of lack of employee exposure.

KASIMER & ITTIG, P.C.

Joseph H. Kasimer

Joseph H. Kasimer, VSB #15171
7653 Leesburg Pike
Falls Church, Virginia 22043
(703) 893-3914
(703) 893-6944 Fax
Counsel for Defendant

SEEN AND OBJECTED TO with respect to the court's granting of the Motion to Strike with respect to the timeliness of the filing of suit.

John Pritchard

John Pritchard
Assistant Commonwealth's Attorney
P. O. Box 470
Hanover, Virginia 23069
(804) 371-2327
(804) 371-6524 Fax
Counsel for Complainant

VIRGINIA:
IN THE CIRCUIT COURT OF THE COUNTY OF RICHMOND

John Mills Barr, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
v.) CHANCERY NO. 96-03
)
Virginia Sprinkler Company, Inc.,)
)
Defendant)

AGREED ORDER

Upon this agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The parties have agreed that the citations set forth in and attached to the Bill of Complaint in this matter are amended as follows:
 - a. Serious citation 1, items 1a and 1c are vacated.
 - b. Serious citation 1, item 1b is affirmed.
 - c. Serious citation 1, item 2 is vacated.
 - d. Serious citation 1, item 3 is reduced to other than serious:
 - e. Other-than-serious citation 2, item 1 is vacated.
2. Commissioner Bell acknowledges receipt of \$2,500 as the total agreed payment in lieu of penalties.
3. Virginia Sprinkler Company, Inc. agrees to review and revise its safety program if necessary to clearly state:
 - a. The respective responsibilities of management, supervisors, and field employees regarding safety on the worksite;
 - b. That the person responsible for inspecting each Virginia Sprinkler Company, Inc. worksite shall be determined prior to the company's first entry onto the site;

c. That the identity of such person shall be conveyed to each employee who will be working at the site and that employees can report safety hazards to such person without fear of reprisal;

d. That the intervals at which a worksite will be inspected will be determined prior to Virginia Sprinkler Company's first entry onto the site;

e. That the schedule of inspections for each Virginia Sprinkler Company, Inc. job shall be determined prior to the company's first entry onto the site;

f. Who shall be responsible, should any hazardous condition(s) be revealed during any inspection of the worksite, for notifying the general contractor;

g. By what method the general contractor will be notified of any hazardous condition(s);

h. That, should Virginia Sprinkler Company, Inc. notify the general contractor of any hazardous condition(s) in writing, copies of such notification will be kept with all other documents concerning the job; and

I. That authority and responsibilities shall be given to supervisors for the enforcement of safety rules. Virginia Sprinkler Company, Inc. shall delegate authority to job foremen to report violations of its safety and health rules to the location superintendent, the safety director or others in Virginia Sprinkler Company's management as necessary. The foreman shall also have the authority to halt unsafe work likely to cause injury or death, when observed on the site.

4. Virginia Sprinkler Company, Inc. also agrees to conduct a training session instructing its employees on any new inspection and notification procedures described above.

5. Virginia Sprinkler Company, Inc. shall review and revise its safety program within sixty (60) days of the effective date of this Agreed Order, and will submit a copy of the program to the Virginia Department of Labor and Industry at the following address:

Richard C. Angell
Compliance Supervisor.
Virginia Department of Labor and Industry
Main Street Station
1500 East Main Street, Suite 222
Richmond, Virginia 23219

6. Virginia Sprinkler Company, Inc. will post a copy of this order for thirty consecutive days at its workplaces in Virginia in a conspicuous location where notices to its employees generally are posted.

7. Pursuant to Code § 40.1-49.4.D, the defendant's agreement to this settlement does not admit to any civil liability for the alleged violations. This agreement does not purport to limit the effect of Code § 40.1-51.3:2. The defendant's agreement to the entry of this order shall not limit the Commissioner's use of this order in future proceedings under Code § 40.1-49.4.1, -J, or -K, or under any other authority. This order shall be construed to advance the purpose of Code § 40.1-3.

8. Each party will bear its own costs in this matter.

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies of this order to counsel.

Enter this 27th day of July, 1998

Joseph E. Spruill
Judge

We ask for this:

JOHN MILLS BARR, Commissioner
of Labor and Industry

By: Robert B. Feild
Robert B. Feild
Special Assistant Commonwealth's Attorney
13 South Thirteenth Street
Richmond Va. 23219
(804) 786-4777

Seen and Agreed:

VIRGINIA SPRINKLER COMPANY, INC.

By: Jessica S. Jones
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