

FINAL ORDERS OF THE VIRGINIA
GENERAL DISTRICT COURTS
AND
CIRCUIT COURTS
IN
CONTESTED CASES ARISING UNDER THE
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT
JULY 1, 1988 - JUNE 30, 1989
VOLUME X



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Carol A. Amato, Commissioner

PREFACE

This publication contains the orders of the Virginia General District and Circuit Courts in contested cases from July 1, 1988, through June 30, 1989, 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 Section 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. The full texts of decisions are categorized as Health or Safety and are arranged and indexed in chronological order.

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 Commission pursuant to Section 40.1-22 of the Code of Virginia, as amended. The standard's Index provides a reference to cases which involved these regulations. The Subject Index provides an alphabetical listing of the matters involved.

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OCCUPATIONAL HEALTH

PART I

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 88-73213

v.

BRAKE SUPPLY COMPANY,
Defendant

AGREED ORDER

This day came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Richmond, and the defendant by its President Garnett Lee, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on May 5, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Plaintiff and Defendant now agree to the following modifications of the citations at issue:

1. Citation 1, item 1, a repeat violation of Section 1910.94(d)(9)(iii) of the VOSH Standards for General Industry regarding provision of impervious gloves for employees working around a dip tank shall be vacated. Plaintiff agrees that the leather gloves provided by Defendant to employees satisfy the requirements of this standard so long as the gloves remain dry. Defendant agrees that if an employee's gloves become saturated during a workshift, that employee must immediately wash his hands and put on dry gloves.

2. Citation 1, item 2, a repeat violation of Section 1910.94(d)(9)(vii) requiring quick drench and eye flush facilities near the dip tank has been abated by Defendant. Defendant agrees to withdraw its contest of this item and Plaintiff agrees to reduce the penalty to \$70.00.

3. Citation 1, item 3, a repeat, violation of Section 1910.106(e)(2)(iv)(D) regarding provision of a self-closing valve on an isopropyl alcohol storage tank has been abated by Defendant. Defendant agrees to withdraw its contest of this item, and Plaintiff agrees to reduce its penalty to \$70.00.

4. Citation 1, item 4, a repeat violation of Section 1910.108(b)(1) has not yet been abated. Defendant agrees to withdraw its contest of this item, involving provision of mechanical ventilation for the dip tank, and Plaintiff agrees to extend the abatement date until February 1, 1989, and to reduce the penalty to \$70.00.

5. Citation 1, item 5, a repeat violation of Section 1910.108(g)(6)(i) regarding automatic closure of dip tank covers in case of fire, has not been abated. Defendant agrees to withdraw its contest of this item, and Plaintiff agrees to extend the abatement date until February 1, 1989, and to reduce the penalty to \$70.00.

6. Citation 2, item 1, an other-than-serious violation of Section 1910.94(d)(9)(v), regarding provision of eye protection for employees working around the dip tank, has been abated. Defendant agrees to withdraw its contest of this item.

7. Citation 2, item 2, an other-than-serious violation of Section 1910.1001(d)(3), regarding periodic monitoring of employees exposed to asbestos, has been abated. Defendant agrees to withdraw its contest of this item.

8. Citation 2, item 3, an other-than-serious violation of Section 1910.1001(k)(4), regarding use of HEPA-filtered vacuuming equipment for asbestos clean-up, has been abated. Defendant agrees to withdraw its contest of this item.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, items 2, 3, 4, and 5 be AFFIRMED as serious violations with a penalty of \$280.00, that Citation 2, items 1, 2, and 3 be AFFIRMED as other-than-serious violations with no penalty, and that Citation 1, item 1 be VACATED. Judgement is hereby granted for the Plaintiff against the Defendant in the amount of \$280.00 as civil penalty for the serious violations.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241. The Defendant shall post a copy of this order for 3 working days or until abatement of these violations is complete, whichever period is longer.

ENTER: 11/29/88

VIRGINIA:

IN THE CIRCUIT COURT FOR SPOTSYLVANIA COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor & Industry
Plaintiff

v.

SPRINGFIELD CONTRACTING CORPORATION,
Defendant

ORDER

On August 10, 1987, came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Spotsylvania, and the defendant by counsel, to be heard upon the defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on September 19, 1986. Upon consideration of the evidence and arguments of the parties, this Court makes the following findings:

1. Following an inspection by plaintiff between June 14, 1986, and August 15, 1986, of defendant's worksite on Route 17 in Spotsylvania County, the plaintiff issued a citation to the defendant, alleging a violation of the Virginia Occupational Safety and Health regulations.

2. The citation alleged an other-than-serious violation of Sections 1920.1001(d)(2)(iv)(a) [sic], 1910.1001(f)(1), and 1910.1001(f)(2)(1) [sic] of the VOSH Standards for General Industry, for which no penalty was proposed.

3. Defendant's employees were performing asbestos removal, and the citations alleged that defendant did not establish a proper respirator protection program, that initial monitoring was not conducted, and that proper personal monitoring was not conducted.

CONCLUSIONS OF LAW

1. The Court finds Citation 1a, Section 1910.1001(d)(2)(iv)(a), was violated by defendant, as the evidence established that defendant had no written program for respirator use. The Court does not find a violation of this standard for failure to properly fit-test the respirators and for wearing respirators with facial hair, as alleged by plaintiff.

2. This Court further finds that no initial monitoring and no personal monitoring was performed, in violation of Sections 1910.1001(f)(1) and 1910.1001(f)(2)(1).

3. This Court finds for the plaintiff, and ORDERS that this citation be affirmed. No penalty or fine against the defendant is assessed.

4. The Clerk shall forthwith mail certified copies of this order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

5. The defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 8/1/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF RICHMOND,
CIVIL DIVISION

COMMONWEALTH OF VIRGINIA, EX REL
Commissioner of Labor and Industry

v.

Case #88-62699

STUART CIRCLE HOSPITAL CORPORATION

ORDER

This day came the Commonwealth of Virginia , by counsel, Assistant Commonwealth's Attorney William B. Bray, and represented to the court that a settlement of the case has been reached between the parties, and a written agreement executed whereby the defendant, Stuart Circle Hospital Corporation, has agreed to withdraw her notice of contest in this matter, and the Commonwealth of Virginia, Ex Rel Commissioner of Labor and Industry, submitted a motion to nonsuit pursuant to Virginia Code Section 8.01-380.

It appearing to the court that it is appropriate to grant the plaintiff's motion, it is ADJUDGED, ORDERED and DECREED that this cause be, and hereby is, nonsuited at plaintiff's request.

ENTER: 9/30/88

INDUSTRIAL SAFETY

PART II

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF ROANOKE

COMMONWEALTH OF VIRGINIA, ex rel.
Commissioner of Labor and Industry,

Plaintiff,

v.

Case NO. 88-14985

TRINITY INDUSTRIES, INC.
t/a MOSHER STEEL-VIRGINIA,

Defendant.

AGREED ORDER

This day came the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Roanoke, and the Defendant by counsel, and in order to provide for the health, safety and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on Defendant's contest of Virginia Occupational Safety and Health citations issued by Plaintiff on June 6, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Plaintiff and Defendant now agree to the following modifications of the citation at issue:

1. Citation 1, item 1a, alleging a serious violation of Section 1910.217(c)(2)(i)(b) of the VOSH Standards for General Industry shall be vacated.

2. Citation 1, item 1b, alleging a serious violation of Section 1910.217(e)(1)(i) shall be reduced to an other-than-serious violation with no penalty. Defendant agrees to abate this violation by amending its present TRI 648 Safety Inspection Form to provide for specific identification of machines that are inspected in accordance with the standard by February 20, 1989.

3. Citation 1, items 2a and 2b, alleging a serious violation of Sections 1910.219(d)(1) and 1910.219(e)(3)(i) are vacated.

4. Citation 1, items 3a and 3b, alleging a serious violation of Sections 1910.303(g)(1)(i) and 1910.303(g)(1)(iii), involving sufficient access to and space around electrical equipment, shall remain a serious violation. Plaintiff agrees to reduce the penalty to \$180.00, and Defendant agrees to abate the violation by December 16, 1988, by moving the electrical switch boxes so that employees do not have to reach over the compressor to operate the switch.

5. Citation 1, item 4, alleging a serious violation of Section 1910.303(g)(2)(i), is amended to an other-than-serious violation with no penalty. Defendant represents that this item has been abated.

6. Citation 2, item 1, alleging an other-than-serious violation of Section 1910.215(b)(9), shall be vacated.

7. Citation 2, item 2, alleging an other-than-serious violation of Section 1910.215(d)(1), shall be vacated.

By entering into this Order, Defendant does not admit to any violations of the occupational safety and health laws. Defendant is entering into this Order only for the purpose of avoiding the expense, inconvenience, uncertainty and delay incident to further litigation, and to settle this action, to the end that Defendant can devote its full energies to conducting its business.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, items 3a and 3b be AFFIRMED as serious violations with a penalty of \$180.00; that Citation 1, items 1b and 4 be AFFIRMED as other-than-serious violations with no penalty; and that Citation 1, items 1a, 2a, 2b, and Citation 2, items 1a and 2a be VACATED. Judgment is hereby granted for the Plaintiff against the Defendant in the amount of \$180.00 as civil penalty for the serious violation.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241. The Defendant shall post a copy of this Order for three working days or until abatement of these violations is complete, whichever period is longer.

ENTER: 01/03/89

CONSTRUCTION SAFETY

PART III

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF RICHMOND
CIVIL DIVISION

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No. 88-058430

v.

AMERICAN ROOFING COMPANY,
Defendant

ORDER

On this November 21, 1988, came the plaintiff by an Assistant Commonwealth's Attorney for the City of Richmond, to be heard on plaintiff's summons on a contest of certain enumerated items from the Virginia Occupational Safety and Health ("VOSH") Citation issued February 8, 1988; David Mosteller appeared on behalf of the defendant on July 27, 1988, the return day, but the defendant did not appear for trial on the merits of the plaintiff's summons; after consideration of evidence, the Court makes the following findings of fact and conclusions of law:

1. Following an inspection by plaintiff's inspector, Danny Burnett, on January 22, 1988, of defendant's roofing operation at 1701 East Main Street, Richmond, Virginia, plaintiff issued citations to the defendant, alleging violations of VOSH regulations;
2. The first citation alleged a serious violation of Section 1926.500(g)(1) of the VOSH Standards for the Construction Industry, and proposed a penalty of \$280; the second citation alleged six (6) other-than-serious violations of Sections 1926.25(a), 1926.100(a), 1926.450(a)(9), 1926.500(b)(8), 1926.500(e)(1)(ii), of the VOSH Standards for the Construction Industry, and Section 11.3A of the VOSH Administrative Regulations Manual; defendant filed a timely Notice of Contest to these citations;
3. Plaintiff's evidence proved a violation of Section 1926.500(g)(1) plaintiff established that defendant's employees were observed working on a low-pitched roof with unprotected edges, and that the roof presented a fall hazard of 60 feet; plaintiff furthermore established by uncontested evidence that the defendant did not provide any of the alternative means of protection outlined in VOSH Section 1926.500(g)(1)(i)-(iii), defendant failed by its absence to establish that it had in place a Motion Stopping Safety (MSS) System, a warning line, or a safety monitoring system;
4. Plaintiff's evidence established that defendant's employees were exposed to a tripping hazard in violation of section 1926.25(a), in the form of debris which was not cleared from their work site;

5. Plaintiff's evidence established that defendant's employees were not wearing hard hats where there was a possible danger of head injuries, in violation of Section 1926.100(a);

6. Plaintiff's evidence further established that the ladder provided to allow defendant's employees access to the roof extended only 12 inches above the landing, rather the 36 inches required under Section 1926.450(a)(9).

7. Plaintiff's evidence established that defendant's employees were exposed to unguarded floor holes on the first floor of the work site as they entered the building to gain access to the roof; this hazard was a violation of Section 1926.500(b)(8);

8. Plaintiff's evidence established that a stair railing was not provided on a six flight stairway, and that employees were exposed to this condition in violation of Section 1926.500(e)(1)(ii);

9. Plaintiff's evidence established that defendant failed to post a Job Safety and Health notice at the work site, in violation Section 11.3A of VOSH's Administrative Regulations Manual.

The Court finds for the plaintiff on said citations, and ORDERS that the citation for violation of Section 1926.500(g)(1) be affirmed as a serious violation of the VOSH Standards for the Construction Industry with a civil penalty in the amount of \$280.00, and that the said other-than-serious violations are also affirmed as violations of the VOSH Standards for the Construction Industry, and judgment be and is hereby granted to the plaintiff to the amount of \$280.00.

The Clerk shall mail certified copies of this order to William B. Bray, Assistant Commonwealth's Attorney for the City of Richmond, Suite 205, John Marshall Courts Building, 800 East Marshall Street, Richmond, Virginia 23219-1998, to Mr. Stanley Konwerski, President of American Roofing Company, 6517 Ludwig Road, Richmond, Virginia 23222 and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

It is further ORDERED that the defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 11/28/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF CHESTERFIELD COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 87-7607

v.

FRED BARNES CONSTRUCTION COMPANY,
Defendant

ORDER

On October 25, 1988, came the plaintiff, by counsel, the Assistant Commonwealth's Attorney for the County of Chesterfield, and the defendant, by counsel, pursuant to a summons, to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on May 15, 1987. Upon consideration of the evidence and arguments of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Following an inspection by plaintiff's inspector, Harold Williams, on February 20, 1987, of defendant's trenching operation at the intersection of Route 10 and Jefferson Davis Highway in Chesterfield County, plaintiff issued citations to the defendant, alleging violations of Virginia Occupational Safety and Health regulations.

2. The citation alleged willful violations of Sections 1926.651(i)(1), 1926.652(b), and 1926.652(h) of the VOSH Standards for the Construction Industry, and proposed a penalty of \$6,000. Defendant filed a timely notice of contest to these citations.

3. Plaintiff's inspector, Harold Williams, died before this action came to trial, and plaintiff sought to have certain documents prepared by Williams introduced at trial as official government documents.

4. Plaintiff's photograph and Williams' observation that the spoils pile was "stored on the edge" of the trench establishes a violation of Section 1926.651(i)(1) which requires excavated material to be stored at least 2 feet from the edge of the excavation.

5. Plaintiff's evidence and defendant's admissions established a violation of Section 1926.652(b). Defendant admitted in its Grounds of Defense that the trench was 12 feet, 6 inches deep, dug in soft and unstable soil, and that the trench contained one 6 foot trench box, leaving unprotected vertical side walls of 6 feet 6 inches which were not shored, braced, or sloped properly. Defendant's expert testified at trial that the soil was compacted angular gravel, but admitted that such material must be sloped at a 63 degree angle. Evidence established that defendant's employees were required to enter the trench box to perform work, and that their exposure to the hazard was more than momentary.

6. Plaintiff's evidence further established that no ladder was in the trench which would allow defendant's employees to exit the top 6 feet of the trench, in violation of Section 1926.652(h).

7. Defendant had been cited for willful violations of the trenching standards in 1985, and the same foreman was on the jobsite for both inspections.

CONCLUSIONS OF LAW

1. The Court finds that the documents authored by Harold Williams reflecting the results of his inspection, as excised by the parties and the Court, are admissible under the Official Government Documents exception to the Hearsay Rule to the extent that those documents state facts rather than opinion.

2. The Court finds for the plaintiff on all three violations, and ORDERS that the citation for violations of Sections 1926.651(i)(1), 1926.652(b), and 1926.652(h) be affirmed as serious, rather than willful, violations of the VOSH Standards for the Construction Industry.

3. In consideration of defendant's prompt abatement of the hazards, the Court is reducing the proposed penalty of \$3,000. Judgment is hereby granted to the plaintiff in the amount of \$3,000.

4. The Clerk shall mail certified copies of this Order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

5. Defendant shall post a copy of this Order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 1/20/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 88-16341

v.

BEACON MASONRY CORPORATION,
Defendant

ORDER

On August 11, 1988, came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Fairfax, and the defendant by counsel, pursuant to a summons, to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on October 26, 1987. Upon consideration of the evidence and arguments of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Following an inspection by plaintiff's inspector, David Cline, on September 24, 1987, of a jobsite on Sullyfield Circle in Chantilly, Virginia, where defendant's employees were observed working on a scaffold, plaintiff issued citations to the defendant, alleging violations of Virginia Occupational Safety and Health regulations.

2. The citation alleged a serious violation of Sections 1926.451(a)(13) and 1926.451(d)(3) of the VOSH Standards for the Construction Industry, and proposed a penalty of \$560. Defendant filed a timely notice of contest to these citations.

3. The scaffold was 25 feet, six inches high and 49 feet long, and was missing 17 of the required cross braces. No ladder was provided for access to the scaffold, and defendant's employees were observed climbing the scaffold frame.

CONCLUSIONS OF LAW

1. The Court finds that defendant violated Sections 1926.451(a)(13) and 1926.451(d)(3) of the VOSH Standards for the Construction Industry. However, while the Court finds that a fall from 25 feet could cause death or serious physical injury, in this case, employees of defendant were closing down the job and dismantling the scaffold. The violations therefore were not serious.

2. The Court finds for the plaintiff on both violations, and ORDERS that the citation for the violations of Sections 1926.451(a)(13) and 1926.451(d)(3) be affirmed as other-than-serious violations of the VOSH Standards for the Construction Industry, and that the proposed penalty be reduced to \$200. Judgment is hereby granted to the plaintiff in the amount of \$200.

3. The Clerk shall mail certified copies of this order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

4. Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 12/2/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No. GV89-19104

v.

BRICKCRAFT MASONRY COMPANY,
Defendant

AGREED ORDER

Comes now the plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Virginia Beach, and the defendant, in order to provide for the health, safety, and welfare of defendant's employees and to conclude this matter without the necessity of further litigation, do stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on December 14, 1988.

No employee or employee representative has appeared in this matter or has filed a notice of contest.

Plaintiff and defendant now agree that, in consideration for a reduction in penalty, defendant will withdraw its contest of the following citations and admit liability therefore, furthermore, defendant certifies that all cited conditions have been abated:

1. Citation 1, violation 1: §1926.100(a), regarding failure to provide hard hats, shall be affirmed as a Serious violation of the VOSH Standards for the Construction Industry with a civil penalty in the amount of \$100;

2. Citation 2, violation 1: §1926.451(d)(10), regarding failure to provide guard rails on scaffolds, shall be affirmed as a Repeat violation of the VOSH Standards for the Construction Industry with a civil penalty of \$600;

3. Citation 3, violations 1-7: §1926.28(a), 1926.102(a)(1), 1926.152(a)(1), 1926.451(a)(13), 1926.602(c)(1)(i), and 1926.602(c)(1)(vi) of the VOSH Standards for the Construction Industry, and §11.3.A of the VOSH Administrative Regulations Manual shall be affirmed as Other Than Serious violations with no civil penalty;

4. Upon mutual agreement, plaintiff has agreed to lower the civil penalty from \$1,190 to \$700;

By entering into this order, defendant does not admit to any civil liability arising from this violation, other than for the purpose of subsequent proceedings pursuant to Section 40.1 of the Code of Virginia.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ORDERED that the above mentioned citations for violations of VOSH Standards for the Construction Industry be affirmed, with an agreed penalty in the amount of \$700;

The Clerk shall mail certified copies of this order to both parties listed below, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

The defendant shall be ordered to post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 7/14/89

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

v.

CAPITOL INTERIOR CONTRACTORS, INC.,
Defendant

ORDER

This day came the Commonwealth of Virginia by its Assistant Commonwealth's Attorney and the defendant, to be heard upon the defendant's contest of a Virginia Occupational Safety and Health citation issued by the Commonwealth. The defendant admits the violations. Upon consideration of the evidence and the argument of the Commonwealth:

FINDINGS OF FACT

1. Subsequent to an inspection by Commonwealth of the defendant's workplace in this jurisdiction, the Commonwealth issued a timely citation to the defendant alleging violations of the Virginia Occupational Safety and Health Law, standards or regulations, requiring abatement of those violations, and proposed civil penalties for the violations.
2. The defendant filed a timely notice to contest.
3. Copies of the citations and the summonses in this matter were posted at defendant's workplace for three or more working days.
4. The defendant did not appear in Court to contest the citation.

CONCLUSIONS

1. The Court finds for the Commonwealth and ORDERS that the citation be affirmed as follows.

Violation	Type	Penalty
1. Section 1926.451(a)(13); An access ladder or its equivalent was not provided to the employees who working on a scaffolding 37' high and 97' long along the North exterior wall of the building.	Serious of \$320.00	Combined penaltys [sic]
2. Section 1926.451(d)(4); The tubular welded frame scaffold(s) was not set on a foundation adequate to support the	Serious	See Above

maximum rated load. The scaffold was placed on 3/4" plywood on an uneven surface.

3. Section 1926.451(d)(10); Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffold more than 10' above the ground or floor. The working platform that was located [sic] not have mid-rails installed, nor were the ends guarded.	Serious	See Above
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Judgement is hereby granted to the Commonwealth against the defendant for \$320.00.

2. The Clerk shall forthwith mail certified copies of this Order to each of the parties.

3. The defendant shall forthwith post a copy of this Order at the workplace site which is to remain there for three or more days.

ENTER: 9/30/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE COUNTY OF CHESTERFIELD

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

v.

CAPITAL MASONRY CORPORATION
Defendant

ORDER

Comes now the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Chesterfield, and the defendant by counsel, and in order to provide for the health, safety, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on August 15, 1988.

No employee or employee representative has appeared in this matter or has filed a notice of contest.

Plaintiff and defendant now agree that, in consideration for a reduction in penalty, defendant will withdraw its contest of the following citations:

Citation 1, Serious Violations 1a and 1b: 1926.100(a) and 1926.451(a)(6):

Employees were not wearing hard hats, and scaffold did not have protective wire mesh, or equivalent, to protect employees below from falling brick. Civil penalty \$600;

Citation 1, Serious Violations 2a & 2b: 1926.451(a)(8) and 1926.451(b)(14):

Employees were working on a scaffold 27'5" high on which planks for the platform were damaged or missing, and those planks failed to extend adequately past their end supports. Civil penalty \$600;

Citation 2, Repeat Violation 1: 1926.451(a)(2):

Employees were working on a scaffold 27'5" high on which the legs were supported by unstable material. Civil penalty \$200;

Citation 2, Repeat Violation 2: 1926.451(a)(13):

Employees were working from a scaffold 27'5" high without an access ladder to ascend and descend the scaffold. Civil penalty \$1,400;

Citation 2, Repeat Violation 3: 1926.451(d)(10):

Employees were working from a scaffold 27'5" high on which there were on guardrails on open sides. Civil penalty \$1,400;

Citation 3, Other than serious Violation 1: 1926.451(d)(6)

Employees were working on a scaffold 27'5" high which was not locked together to prevent uplift and separation;

Citation 3, Other than serious Violation 2 : 1926.451(d)(7)

Employees were working on a scaffold 27'5" high which was not secured to the building at least every 26' vertically;

2. Upon mutual agreement, defendant has withdrawn its notice of contest to the above mentioned citation, admits liability under the VOSH Standards mentioned, and certifies that the cited condition has been abated;

3. Upon mutual agreement, plaintiff has agreed to lower the civil penalty from \$4,200 to \$3,000;

By entering into this order, defendant does not admit to any civil liability arising from this Violation, other than for the purpose of subsequent proceedings pursuant to Section 40.1 of the Code of Virginia.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that the citations for violations of Sections 1926.100(a), 1926.451(a)(6), (a)(8), and (a)(14) be affirmed as Serious violations of the VOSH Standards for the Construction Industry with an agreed civil penalty in the amount of \$1,200;

Furthermore, the citations for violations of Sections 1926.451(a)(2), (a)(13), and (d)(10) be affirmed as Repeat violations of the VOSH Standards for the Construction Industry with an agreed civil penalty in the amount of \$1,800;

And, the citations for violations of Sections 1926.451(d)(6) and (d)(7) be affirmed as Other than serious violations of the VOSH Standards for the Construction Industry with no civil penalty;

Judgement be and is hereby granted to the plaintiff to the total amount of \$3,000.

The Clerk shall mail certified copies of this order to both parties listed below, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

It is further ORDERED that the defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 5/11/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF SPOTTSYLVANIA [sic] COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

v.

CATLETT-JOHNSON CORPORATION,
Defendant

ORDER

On October 26 and December 14, 1988, came the plaintiff by counsel, the Commonwealth's Attorney for the County of Spottsylvania [sic], and the defendant by its vice-president, Carlyle P. Britton, Jr., to be heard on defendant's contest of citations issued by plaintiff on March 3, 1988, for violations of the Virginia Occupational Safety and Health Standards for the Construction Industry. Defendant originally contested all citations issued by plaintiff, but later withdrew its contest of seven other-than-serious citations. The only citation before this Court was Citation 1, items 1a and 1b, a repeat violation of Sections 1926.500(e)(iii) [sic] and 1926.500(e)(1)(iv).

Upon consideration of the evidence and arguments of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Following an inspection by plaintiff's inspector, Danny J. Burnett, on January 29, 1988, of defendant's jobsite at an elementary school on Smith Station Road in Spottsylvania, Virginia, plaintiff issued citations to the defendant, alleging violations of Virginia Occupational Safety and Health regulations.
2. The citation alleged a repeat violation of Sections 1926.500(e)(1)(iii) and 1926.500(e)(1)(iv) of the VOSH Standards for the Construction Industry, and proposed a penalty of \$180. Defendant filed a timely notice of contest to the citation.
3. Defendant does not deny the lack of guardrails which gave rise to this citation, but does contest the repeat nature of the citation.
4. Defendant was cited for a violation of Section 1926.500(e)(1)(iii) in January of 1986 at a different jobsite in a different county. This citation was not contested and became a final order of the Commissioner of Labor and Industry.

CONCLUSIONS OF LAW

1. The Court finds that defendant violated Sections 1926.500(e)(1)(iii) and 1926.500(e)(1)(iv), and that this violation was a repeat of the citation issued by plaintiff in 1986. The citation is hereby **AFFIRMED**, and judgment is granted to the plaintiff in the amount of \$180.00.

2. The Clerk shall mail certified copies of this order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

3. Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 1/11/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case #C88-14473

v.

CRISS BROTHERS, INC.,
Defendant

AGREED ORDER

THIS DAY, came the PLAINTIFF by counsel, the Commonwealth's Attorney for this jurisdiction, and defendant, and in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed as follows:

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by plaintiff on April 8, 1988. The citation alleged a serious violation of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry Sections 1926.28(a) and 1926.105(a) (employee(s) were not protected against falls or more than 25 feet by the use of safety nets, ladders, scaffolds, catch platforms, temporary floors, safety lines, safety belts, or other appropriate personal protective equipment). A penalty of \$240.00 was proposed for this violation.

Plaintiff and defendant have agreed that the citation for the violation of Section 1926.28(a) and Section 1926.105(a) will remain as serious. The penalty of \$240 will be reduced to \$120.

Defendant has abated the aforesaid violations, and agreed to pay the penalty within 15 days of the entry of this Order.

By entering into this agreement, the defendant does not admit to any civil liability arising from said violation alleged in this matter other than for the purposes of Title 40.1 of the Code of Virginia.

WHEREFORE, upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that the VOSH citation for violation of §1926.28(a) and §1926.105(a) is affirmed as a serious violation. This violation having been abated, judgment is granted for the plaintiff in the amount of \$120.00.

Let the Clerk transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, Virginia, 23241.

ENTER: 9/7/88

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. A2507

v.

DEE SHORING COMPANY, INC.,
Defendant

AGREED ORDER

This day came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Henrico, and the defendant by counsel, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on December 15, 1986.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Plaintiff and Defendant now agree to the following modifications of the citations at issue:

1. Citation 1, item 1a, a repeat violation of Section 1926.500(b)(1) of the VOSH Standards for the Construction Industry regarding floor openings that were not guarded by standard railings and toeboards as required by this section, is reduced to an other-than-serious violation, with no penalty.

2. Citation 1, item 1b, a repeat violation of Section 1926.500(d)(1) requiring open-sided floors or platforms, 6 feet or more above adjacent floor or ground level, were not guarded by a standard railing or its equivalent on all open sides, shall be reduced to an other-than-serious violation with no penalty. As the Defendant is no longer on this site, the violations have been abated.

3. By entering into this agreement, the defendant will conduct periodic monitoring of its jobsites to determine that its employees are in compliance with the VOSH regulations and the company's safety program which require adequate fall protection (including guardrails and safety belts and lifelines) when employees are exposed to fall hazards encountered while working near open-sided floors and/or floor openings.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, items 1a and 1b be AFFIRMED as other-than-serious violations. Judgement is hereby granted for the Plaintiff against the Defendant.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 1/6/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Docket #88-28536

v.

DYNALECTRIC COMPANY,
Defendant

AGREED SETTLEMENT ORDER

Comes now the plaintiff, Commonwealth of Virginia, by counsel, and the Defendant, by counsel, and in order to provide for the safety, health and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is hereby stipulated and agreed:

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by the plaintiff on October 7, 1988. This citation (Citation 1, item 1a) alleged a serious violation of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, Section 1926.416(a)(1), in that employees of the defendant were permitted to work in proximity to electric power circuits and were not protected against electric shock by de-energizing and grounding the circuits. A penalty of \$640 was proposed for this violation. The remaining citations issued to the defendant (Citation 1, item 1b and Citation 2) have not been contested and the penalty has been paid.

Plaintiff has agreed to amend the citation as follows:

Citation 1, item 1a--Section 1926.416(a)(1): Dynalectric employees were working in the proximity of an electric power circuit and did not protect against electric shock by de-energizing and grounding the circuits or effectively guarding the circuits by insulation or other means:

(a) At 11115 Bowen Avenue, Great Falls, Virginia, on the west side near the garage-end of the house employees were checking to determine whether a 110 volt circuit was energized prior to installing flood lights at that location. They did not de-energize or effectively guard the circuit prior to working on it. On 7/7/88, at approximately 1:35 p.m., the employee on the ladder sustained fatal injuries when he came in contact with the energized circuit and subsequently fell approximately 18' to the ground.

The proposed penalty of \$640.00 will remain.

Defendant has abated the aforesaid violation and agreed to pay the penalty within fifteen (15) days of the entry of this Order.

By entering into this agreement, the defendant does not admit to any civil liability arising from said violation other than for the purposes of future enforcement under Title 40.1 of the Code of Virginia.

WHEREFORE, upon agreement of the parties and for good cause shown, it is hereby

ADJUDGED, ORDERED AND DECREED that the Virginia Occupational Safety and Health (VOSH) violation of Section 1926.416(a)(1), as amended, is affirmed as a serious violation. This violation having been abated, judgment is granted for the plaintiff against the defendant in the amount of \$640.

Let the Clerk transmit certified copies of this Order to all counsel of record and to the Commissioner of Labor and Industry, 205 North Fourth Street, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 2/6/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

v.

DOLPHIN RUN CONDOMINIUM ASSOCIATION, INC.,
Defendant

AGREED ORDER

THIS DAY came the Commonwealth of Virginia, by counsel, and the Defendant, and in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed:

The Defendant is before this court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by the Plaintiff on July 29, 1988. This citation alleged an other-than-serious violation of the Virginia Occupational Safety and Health (VOSH) Standard for the Construction Industry Sections 1926.58(f)(2)(i), 1926.58(1)(1) [sic], and Administrative Regulation Section 11.3A (employees were not provided with monitoring of asbestos levels, proper respirators, and proper vacuuming equipment; the employee also failed to post a Job Safety and Health notice).

Plaintiff and Defendant have agreed that the citation will remain as issued. Defendant has taken all action required by the citations and withdrawn its contest against the citations.

By entering into this agreement, the Defendant does not admit to any civil liability arising from said violation alleged in this matter or admit to the violation.

WHEREFORE, upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, and DECREED that the VOSH citation for violation of Section 1926.58(f)(2)(i), 1926.58(f)(2)(i), 1926.58(h)(1)(ii), 1926.58(1)(1), and ARM 11.3A is affirmed as an other-than-serious violation. This alleged violation having been abated, the citation stands as issued and the suit is dismissed agreed.

Let the clerk transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241.

ENTER: 11/23/88

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

v.

DOUGLAS CONSTRUCTION AND SUPPLY CORPORATION,
Defendant

ORDER

Comes now the plaintiff by counsel, the Assistant Commonwealth's Attorney for this jurisdiction, and the defendant by counsel, and in order to provide for the health, safety, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on March 28, 1988.

No employee or employee representative has appeared in this matter or has filed a notice of contest.

All violations at issue in this matter have been abated.

Plaintiff and defendant now agree that, in consideration for a reduction in penalty, defendant will withdraw its contest of the following citations:

Citation 1, item 1, a serious violation of Section 1926.100(a) of the VOSH Standards for the Construction Industry (allowing employees to walk and work beneath block laying and steel erection operations without wearing protective helmets).

Citation 1, items 2a and 2b, a serious violation of Sections 1926.21(b)(2) and 1926.451(a)(13) (allowing employees to climb a scaffold 18'6" high without an access ladder, and not training those employees to recognize and avoid such unsafe practices).

Citation 1, items 3a and 3b, a serious violation of Sections 1926.451(d)(7) and 1926.451(d)(10) (allowing employees to work atop a scaffold 18'6" high and 91' long which lacked guardrails and was not secured to the building every 30 feet horizontally).

Citation 2, items 1, 2, and 4, other-than-serious violations of section 1926.50(f) and sections 11.1F and 11.1A of the VOSH Administrative Regulations Manual (failing to post on the jobsite an annual summary of injuries and illnesses, a job safety and health notice, and a list of emergency telephone numbers).

Citation 2, items 3 and 5, other-than-serious violations of Section 1926.50(d)(1) and 1926.51(a)(1) (failing to provide first-aid supplies and a supply of drinking water for employees on the jobsite).

Citation 2, item 6, an other-than-serious violation of Section 1926.152(a)(1) (using a gasoline container that did not have self closing valves or a pressure relief system).

Citation 2, item 7, an other-than-serious violation of Section 1926.403(h) (failing to label the disconnects on a 100 amp load center for temporary electrical service at the jobsite).

Plaintiff agrees to reduce the penalty assessed for these violations from \$1680.00 to \$840.00.

By entering into this order, defendant does not admit to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that the above-listed citations be AFFIRMED. Judgement is hereby granted for the plaintiff in the amount of \$840.00 as civil penalty for these violations.

The Clerk shall mail certified copies of this order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 12/12/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR HANOVER COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. _____

v.

DOUGLAS CONSTRUCTION AND SUPPLY CORPORATION,
Defendant

ORDER

On October 3, 1988, came the plaintiff, by counsel, the Assistant Commonwealth's Attorney for this jurisdiction. Defendant, after proper service of process, did not appear on its contest of a Virginia Occupational Safety and Health citation issued by plaintiff. Plaintiff made a motion for a default judgment to be entered against the defendant.

The Court finds for the plaintiff and orders that the following citations be affirmed:

a serious violation of section 1926.100(a) (failure to wear protective helmets);

a serious violation of sections 1926.21(b)(2) and 1926.451(a)(13)(failure to provide safe access to scaffold or training in the recognition and avoidance of the unsafe condition);

a serious violation of sections 1926.451(d)(7) and 1926.451(d)(10)(failure to secure scaffold to building or to provide standard guardrails);

other-than-serious violations of section 11.1(F) and 11.3(A) of the VOSH Administrative Regulations Manual (posting the annual summary of injuries and illnesses and the Job Safety and Health notice); and of section 1926.50(d)(1), 1926.50(f), 1926.51(a)(1), 1926.152(a)(1), and 1926.403(h) of the VOSH Standards for the Construction Industry (relating to provision of first aid supplies, emergency phone numbers, potable water, proper containers for storage of gasoline, and labeling of electrical disconnects).

Judgment is hereby granted to the plaintiff against the defendant for \$1,560 as a civil penalty for violation of these standards.

The Clerk shall forthwith mail certified copies of this order to each of the parties and to the Commissioner of Labor & Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 10/7/88

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

DYER AND SONS, INC.,
Plaintiff

Case No. _____

v.

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Defendant

ORDER

This day came the parties, by counsel, and moved the Court that the parties have reached an agreement for the resolution of this matter. In consideration of the agreement of the parties it is ORDERED that the Commonwealth of Virginia, Department of Labor and Industry shall have judgment against the petitioner, Dyer and Sons, Inc., for the sum of \$7,000.00, in satisfaction of the penalty assessed by the said Department of Labor and Industry on December 30, 1987, payable in 24 monthly installments of \$291.25 each beginning August 1, 1989 and continuing until paid.

And nothing further be done this matter is to be placed among the ended causes.

ENTER: 6/9/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF LEXINGTON

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No. V88-1337

v.

E AND F MASONRY, INC.,
Defendant

AGREED ORDER

THIS DAY came the Commonwealth of Virginia, counsel, and the defendant, and in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed:

The Defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by the Plaintiff on June 23, 1988. This citation alleged a serious violation of the Virginia Occupational Safety and Health (VOSH) Standard for the Construction Industry; Section 1926.500(c)(1) - wall opening(s) from which there was a drop of more than four feet, and the bottom(s) of the openings were less than three feet above the working surface(s) were not guarded by rail(s) in a manner that would effectively reduce the danger of falling. A penalty of two hundred and forty dollars (\$240.00) was assessed.

Defendant has abated the aforesaid violations, and agreed to pay the penalty within fifteen (15) days of the entry of this Order.

By entering into this agreement, the defendant does not admit to any civil liability arising from said violation other than for the purposes of Title 40.1 of the Code of Virginia.

WHEREFORE, upon agreement of the parties and for good cause shown, it is hereby

ADJUDGED, ORDERED, AND DECREED that the VOSH citation for violation of §1926.500(c)(1) is affirmed as a serious violation. This violation having been abated, judgment is granted for the plaintiff against the defendant in the amount of \$240.00.

Let the Clerk transmit certified copies of this Order to all counsel of record and to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, Virginia, 23241.

ENTER: 11/17/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 88-15123

v.

J. B. EURELL COMPANY,
Defendant

ORDER

On this day comes the plaintiff by an Assistant Commonwealth's Attorney for the County of Henrico, to be heard on plaintiff's summons on a contest of certain enumerated items from the Virginia Occupational Safety and Health ("VOSH") citation issued on October 4, 1988. Upon the defendant's agreed withdraw [sic] of contest from the citation, the Court makes the following findings of fact and conclusions of law:

1. Following an inspection by plaintiff's inspector, Danny Burnett, on July 29, 1988, of a construction site at 7400 Impala Drive, Richmond, Virginia, plaintiff issued a citation to the defendant, alleging the following violation of VOSH regulations;

2. The citation alleged a serious violation of section 1926.500.f.5.ii of the VOSH Standards for the Construction Industry, and proposed a penalty of \$810; the violation consisted of exposing employees to floor opening covers that were not installed properly as to prevent accidental displacement, resulting in the death of an employee; defendant filed a timely notice of contest to the citation;

3. Upon mutual agreement, defendant has withdrawn its notice of contest to the above mentioned citation, admits liability under the VOSH Standard mentioned, and certifies that the cited condition has been abated;

By entering into this order, defendant does not admit to any civil liability arising from this violation, other than for the purpose of subsequent proceedings pursuant to Title 40.1.

The Court finds for the plaintiff on said citation, and for good cause shown it is hereby ADJUDGED, ORDERED, AND DECREED that the citation for violation of Section 1926.500.f.5.ii be affirmed as a serious violation of the VOSH Standards for the Construction Industry with an agreed civil penalty in the amount of \$450.00, and judgement be and is hereby granted to the plaintiff to the total amount of \$450.00.

The Clerk shall mail certified copies of this order to Gary K. Aronhalt, Assistant Commonwealth's Attorney, P.O. Box 27032, Henrico Courthouse, Richmond, Virginia 23273, to Ms. Sharon A. Fitzgerald, Attorney for J.B. Eurell Company,

Inc., at 411 East Franklin Street, Richmond, Virginia 23219-2205, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

It is further ORDERED that the defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 3/3/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA, ex. rei.
Commissioner of Labor and Industry,
Plaintiff

Case No. 88-26652

v.

FAIRFAX GLASS COMPANY, INC.,
Defendant

AGREED ORDER

This day came the plaintiff by counsel, the Assistant Commonwealth's Attorney for Fairfax County, and the defendant by its president, Robert Caplan, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on August 22, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

All cited items have been abated.

Plaintiff and Defendant now agree to the following modifications of the citations at issue:

1. For Citation 1, item 1, a repeat violaion of Section 1926.105(a) of the VOSH Standards for the Construction Industry (regarding provision of fall protection), defendant agrees to withdraw its contest and plaintiff agrees to reduce the proposed penalty to \$420.00.

2. For Citation 2, item 1, an other-than-serious violation of Section 1926.25(a) (regarding debris on the jobsite), plaintiff agrees to vacate the citation. The hazardous condition was created and controlled by the General Contractor, and defendant took appropriate steps to bring the hazard to the attention of the General Contractor.

3. For Citation 2, item 2, an other-than-serious violation of Sections 1910.150(c)(1)(i) [sic] (regarding provision of fire extinguishers), defendant agrees to withdraw its contest.

4. For Citation 2, item 3, an other-than-serious violation of Section 1926.404(f)(6) (regarding grounding of electrical equipment), plaintiff agrees to vacate the citation on defendant's assurance that its employees were using double insulated tools.

5. For Citation 2, item 4, an other-than-serious violation of Section 1926.500(b)(8) (regarding unguarded floor openings), defendant agrees to withdraw its contest.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, item 1 be AFFIRMED as a repeat violation with a penalty of \$420.00, and that Citation 2, items 2 and 4 be AFFIRMED as other-than-serious violations with no penalty, and that Citation 2, items 1 and 3 be VACATED. Judgement is hereby granted for the Plaintiff against the Defendant in the amount of \$420.00 as civil penalty for the repeat violation.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 1/4/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 88-28209

v.

WILLIAM A. HAZEL, INC.,
Defendant

AGREED ORDER

This day came the Plaintiff by counsel, the Assistant Commonwealth's Attorney for Fairfax County, and the Defendant by counsel, and in order to provide for the health, safety and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on Defendant's contest of Virginia Occupational Safety and Health citations issued by Plaintiff on August 9, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

All cited items have been abated.

Plaintiff and Defendant now agree to the following modifications of the citations at issue:

1. For Citation 1, a serious violation of Section 1926.601(b)(14) of the VOSH Standards for the Construction Industry (regarding guarding of belts and pulleys on a roller machine), Plaintiff agrees that employee exposure to the hazard created by the missing guard is minimal, and agrees to vacate the citation and the proposed penalty.

2. For Citation 2, a serious violation of Section 1926.651(c) (regarding shoring or sloping of the walls of an excavation), Citation 3a, a serious violation of Section 1926.652(b) (regarding shoring or sloping of the walls of a trench), and Citation 3b, a serious violation of Section 1926.652(h) (regarding failure to provide a ladder in the trench), Defendant agrees to withdraw its contest and Plaintiff agrees to combine the violations into a single citation:

2a.

1926.651(c): The walls or faces of excavation(s) in which employee(s) were exposed to danger from moving ground were not guarded by a shoring system, sloping of the ground, or some other equivalent means:

(a) On the jobsite near the corner where the east tower and the south tower join, an employee was working in an excavation which was not provided with sloping or shoring with near vertical walls on the east and west sides (minimum 6 foot depth).

(b) On the jobsite near the corner where the east tower and the south tower join, an employee was working in an unshored portion of the above excavation, 6 to 8 feet in depth, with near vertical walls on the east and west sides between two imbedded concrete box ducts.

2b.

1926.652(h): Employee(s) were required to be in a trench which was more than 4 feet deep, and an adequate means of exit, such as a ladder or steps, was not provided, or locate [sic] so as to require no more than 25 feet of lateral travel:

(a) On the jobsite near the corner where the east and the south tower join, an employee was working in the portion of the above excavation between the two imbedded concrete box ducts in an area which measured 3 feet wide by 6 feet 8 inches long, and 6 to 8 feet in depth, and was not provided with a ladder or other adequate means of exit.

Plaintiff and Defendant agree to a single penalty of \$480.00 for this violation.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1 be VACATED, and that Citation 2a and 2b, as amended by the parties, be AFFIRMED as a serious violation with a penalty of \$480. Judgement is hereby granted for the Plaintiff against the Defendant in the amount of \$480.00 as civil penalty for the serious violation.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 2/28/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF LOUDOUN COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Civil Docket No. V88-5215

v.

L. F. JENNINGS, INC.,
Defendant

ORDER

The two citations in the summons in the above matter came on for hearing on the 8th of September, 1988.

The Court, upon consideration of the evidence adduced at said hearing, finds that the evidence was insufficient to establish that the Defendant L. F. Jennings, Inc. was guilty of either of the alleged violations charged in the two citations.

Whereupon the Court ORDERS that both of the citations issued by the Commissioner of Labor and Industry against the defendant be and they hereby are, vacated.

ENTER: 3/31/89

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Docket No. L-74292

v.

MILLER AND LONG CONCRETE
CONSTRUCTION, INC.,
Defendant

ORDER

This matter came before the Circuit Court for the County of Fairfax on September 28, 1987, upon the appeal of Miller and Long Concrete Construction, Inc., from a judgment entered against it and in favor of the Commonwealth of Virginia, Department of Labor and Industry by the General District Court for the County of Fairfax on May 22, 1986.

And it appearing to the Court that Miller and Long Concrete Construction, Inc., is withdrawing its appeal in this matter as is indicated by signature of its counsel to this Order, and that this withdrawal is acknowledged and consented to by the Commonwealth of Virginia, Department of Labor and Industry as is indicated by signature of its counsel, it is hereby ORDERED that the appeal by Miller and Long Concrete Construction, Inc., be, and it hereby is, dismissed, as having been withdrawn;

AND IT IS FURTHER ORDERED that the Clerk for the Circuit Court of Fairfax County pay over to the Commonwealth of Virginia, Department of Labor and Industry the sum of \$300.00 presently held on behalf of Miller and Long Concrete Construction, Inc., as its civil appeal bond.

AND IT IS FURTHER ORDERED that upon payment of said \$300.00, the Clerk shall note that the judgment in this matter is satisfied in full.

THIS ORDER IS FINAL.

ENTER: 9/16/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Docket No. V88-34-548

v.

PHILIP MOSSER COMPANY, INC.
Defendant

ORDER

Disposition: Final by trial on the merits.

Nature of the Case: Citations were issued for alleged violations of VOSH Standards §1926.404(f)(6), §1926.451(a)(13), §1926.451(d)(3), §1926.451(d)(10), §1926.50(d)(1), and §1926.100(a).

A penalty of \$1400 was recommended.

FINDING OF FACT

1. Subsequent to an inspection by the Plaintiff of the Defendant's workplace in this jurisdiction, the Plaintiff issued a timely citation VOSH No. M6121-015-88 to the Defendant, alleging violations of the Virginia Occupational Safety and Health Law, standards or regulations, requiring abatement of those violations and proposing civil penalties for the violations.

2. The Defendant filed a timely notice of contest.

3. Specifically, the Defendant was cited for repeat violations of Section 1926.404(f)(6), Section 1926.451(a)(13), Section 1926.451(d)(3), and Section 1926.451(d)(10). The Defendant was also cited for Other-Than-Serious violations of Section 1926.50(d)(1) and Section 1926.100(a).

4. Compliance Safety and Health Officer (CSHO) H.C. McDaniel testified that he conducted a safety inspection at 711 Church Street, Norfolk, Virginia. The Defendant, Philip Mosser Company, Inc., was working plastering the outside wall of a building at the time of the inspection. The employees were working from a tubular welded frame scaffold that was twenty (20) feet high that lacked standard guardrails, cross-bracing, and an access ladder. In addition, these employees were also using a one-hundred (100) foot extension cord that did not have a grounding pin for protection of the employees in the event of an electric short circuit. There was no first-aid kit on the construction site, and none of the Defendant's employees were wearing hard hats while working in, under, and around the scaffolding.

5. The Defendant did not dispute the facts as presented by the Compliance Officer. However, the Defendant stated that the employees on the site were not his and were employed by Alpha Exteriors, a subcontractor that the Defendant had hired to do the plastering work on the jobsite.

6. The Defendant also testified that the scaffolding used on the jobsite was owned by him and supplied to Alpha Exteriors. He stated that Alpha Exteriors erected the scaffolding and that missing guardrails, cross-bracing, and an access ladder could have been provided to Alpha Exteriors if they so requested.

7. The Defendant stated that he was not responsible for the erection of the scaffold, nor was he responsible for the actions of Alpha Exteriors or its employees.

8. The Plaintiff countered that on a multi-employer worksite the Defendant would be responsible for the scaffolding violations.

9. Plaintiff vacated the citations for violations of Section 1926.404(f)(6), Section 1926.50(d)(1), and Section 1926.100(2) [sic], as these violations were the responsibility of Alpha Exterior on the jobsite.

CONCLUSIONS OF LAW

The Court, upon hearing evidence and argument on behalf of both the Plaintiff and Defendant, finds for the Defendant.

ORDER

It is therefore, ADJUDGED, ORDERED and DECREED that the citation for repeat violations of Section 1926.451(a)(13), §1926.451(d)(3), and Section 1926.451(d)(10) are hereby dismissed.

The clerk is ordered to send a certified copy of this Order to counsel for Plaintiff and Defendant and to the Department of Labor and Industry, Virginia Occupational Safety and Health Program, P.O. Box 12064, Richmond, Virginia 23241.

ENTER: 6/14/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF FLOYD COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Docket No. V89-01

v.

ROSS E. PEACEMAKER COMPANY,
Defendant

Disposition: Final by trial on the merits

Nature of the Case: Pursuant to an inspection conducted at a construction site of a single family dwelling at which defendant was a contractor, the Plaintiff, Virginia Occupational Safety and Health (VOSH) issued citations to the defendant for its alleged serious violations of the following VOSH regulations:

Section 1926.451(y)(3): The platform bracket shall be fully decked and the planking secured. Planking or its equivalent shall be erected in accordance with the requirements of Section 1926.451(a);

Section 1926.451(y)(4)(iii): Poles shall be secured to the work wall by rigid triangular bracing or its equivalent, at the bottom, top and other points necessary to provide a maximum vertical spacing of not more than 10 feet between braces;

Section 1926.451(y)(11) and Section 1926.451(a)(4): Pump jack scaffolds shall be provided with standard guardrails as defined by section 1926.451(a)(5), but no guardrail is required when safety belts with lifelines are provided for employees. Section 1926.451(a)(4) requires that guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor.

A penalty of \$540.00 was recommended.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon the testimony of the Commonwealth's witnesses, the Court finds that the defendant allowed its employees to work upon the pump jack scaffold without proper decking, bracing and guardrails, in violation of the aforementioned VOSH regulations.

The Defendant's employees were engaged in construction work at a single family dwelling located at H.C. 67, Box 148, Alum Ridge, Floyd County, Virginia. The two employees were working on a pump jack scaffold that was approximately 24 feet above a concrete floor. A pump pole broke, causing both employees to fall, resulting in the death of one employee and serious injuries to the other.

Through its first witness, Michael Mammi (owner of the dwelling) the Commonwealth established that Mr. Mammi had entered into an agreement with Ross E. Peacemaker Company to do some work on a dwelling that he was constructing. Mr. Mammi stated that the employees of the defendant were working to complete some carpentry work and framework at the time of the accident. The scaffolding had been erected by Mr. Mammi at a height of 7-8 feet. The employees had raised the height of the pump jack scaffold to 20' and then 24' prior to the accident. Mr. Mammi further testified that Mr. Peacemaker had been to the construction site a few days prior to the accident and had himself worked off the scaffold. He also stated that prior to the accident he had spoken with Mr. Peacemaker and told him that the scaffolding was required to be braced when it was raised to the second and third heights, to which Mr. Peacemaker responded that he did not believe that the bracing was required.

Compliance Safety and Health Officer (CSHO) Charles Ferguson testified that he had conducted an inspection at the jobsite on May 25, 1988. At the time of the inspection, CSHO Ferguson took pictures of the site and scaffolding upon which the two employees were working at the time of the accident. CSHO Ferguson testified that the VOSH regulations required that the scaffold be fully decked to 24 feet, the scaffold on site was only decked to 12 feet. The poles of the scaffold are required to be braced by triangle bracing at the top and bottom of the scaffold, the bracing at the bottom was missing. Furthermore, there was no bracing underneath the scaffold to prevent movement of the poles and scaffolding. The regulations also required that guardrails be installed at open sides and ends of the scaffold. There were no guardrails installed on this scaffold at any time prior to the accident.

CSHO Ferguson testified that the violations were cited as serious because there was a substantial probability that death or serious physical harm could result from the conditions as they existed. He also explained how he arrived at the penalty figure of \$540.

Mr. Ross E. Peacemaker testified on his own behalf. He stated that he was not at fault. He testified that he had entered into an agreement with Mr. Mammi to do some exterior work on the dwelling. Mr. Peacemaker stated that when he arrived at the site the day before the accident, the men had completed the work that they were required to do on the scaffolding. He stated that when Mr. Weeks (deceased) fell, he had [sic] fell on his head.

Mr. Peacemaker believed that the employees were doing work that they were not required to do. He also testified that he had been on the scaffold one day prior to the accident. Mr. Peacemaker was aware that bracing supports were required, he was not aware that the scaffold had to be fully decked or that guardrails were required to be installed.

The Court, after hearing the evidence and arguments on behalf of both the plaintiff and the defendant, finds for the plaintiff on the serious violations that were issued.

ORDER

It is therefore, ORDERED that the serious citation for violation of Section 1926.451(y)(3), Section 1926.451(y)(4)(iii) and Section 1926.451(y)(11) and Section 1926.541(a)(4) [sic] issued by the plaintiff pursuant to Section 40.1-49.4 of the

Code of Virginia and the penalty assessed therein in the amount of \$540.00 be and hereby is affirmed and that the defendant is hereby ordered to pay this amount to the Virginia Department of Labor and Industry within fifteen (15) days after the entry of this order.

The clerk is ordered to send a certified copy of this Order to counsel for the plaintiff and the defendant and to the Department of Labor and Industry, Virginia Occupational Safety Enforcement, 205 North Fourth Street, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 2/16/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF AMHERST COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. V89-002

v.

LELAND PRIBBLE,
Defendant

AGREED ORDER

This day came the plaintiff by counsel, the Commonwealth's Attorney for the County of Amherst, and the defendant, Leland Pribble, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on September 12, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Plaintiff and Defendant now agree to the following settlement of the citations at issue:

1. Citation 1, item 1, a serious violation of section 1926.451(a)(13) of the VOSH Standards for the Construction Industry regarding provision of an access ladder for a tubular welded frame scaffold, has been abated. Defendant agrees to withdraw his contest and Plaintiff agrees to reduce the penalty to \$150.00.

2. Citation 1, item 2, a serious violation of Section 1926.451(d)(10) requiring guardrails on a 12'8" scaffold, has been abated. Defendant agrees to withdraw its contest of this item and Plaintiff agrees to reduce the penalty to \$210.00.

3. Citation 1, items 3a and 3b, a serious violation of Sections 1926.451(d)(3) and 1926.451(d)(4) requiring proper bracing and an adequate foundation for a scaffold, has been abated. Defendant agrees to withdraw its contest of this item, and Plaintiff agrees to reduce its penalty to \$150.00.

4. Citation 1, item 4, a serious violation of Section 1926.100(a) requiring use of hard hats, has been abated. Defendant agrees to withdraw its contest of this item, and Plaintiff agrees to reduce the penalty to \$150.00.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, items 1, 2, 3a and b, and 4 be AFFIRMED as serious violations with a total penalty of \$660.00. Judgement is hereby granted for the Plaintiff against the Defendant in the amount of \$660.00 as civil penalty for the serious violations.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241. The Defendant shall post a copy of this order for 3 working days or until abatement of these violations is complete, whichever period is longer.

ENTER: 4/21/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 88-21475

v.

POTOMAC CONTRACTORS, INC.,
Defendant

AGREED ORDER

On October 4, 1988, came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Fairfax, and the defendant, by its Safety Director William Hackney, to be heard upon the defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on July 11, 1988, and in order to provide for the safety, health, and welfare of defendant's employees and in order to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The defendant is before this Court pursuant to section 40.1-49.4 of the Code of Virginia, contesting a citation issued to it by plaintiff on July 11, 1988, for one serious violation of Section 1926.652(b) of the VOSH Standards for the Construction Industry. Plaintiff alleged that employees of defendant were working in a trench in Falls Church, Virginia, on June 15, 1988, which lacked proper shoring and bracing. Plaintiff proposed a penalty of \$420.00.

Defendant does not dispute that it violated Section 1926.652(b), but desires a reduction in penalty. Plaintiff is willing to reduce the penalty to \$210.00. Defendant has abated the violation.

By entering into this agreement, defendant does not admit to any civil liability arising from this violation other than for the purposes of subsequent proceedings pursuant to Title 40.1 of the Code of Virginia.

No employee or employee representative has appeared in this matter or has contested the abatement period.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby

ADJUDGED, ORDERED, AND DECREED that the violation of Section 1926.652(b) be affirmed, and judgment be granted for the plaintiff in the amount of \$210.00 as a civil penalty.

The Clerk shall forthwith mail certified copies of this order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia, 23241. The defendant shall post a copy of this order, at a place where notices to employees are customarily posted, for 3 working days.

ENTER: 10/4/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-20309

v.

QUAIL OAK, INC.,
Defendant

ORDER

On this day comes the plaintiff by an Assistant Commonwealth's Attorney for the City of Richmond, to be heard on plaintiff's summons on a contest of certain enumerated items from the Virginia Occupational Safety and Health ("VOSH") citation issued on November 15, 1988. After consideration of the evidence, the Court makes the following findings of fact and conclusions of law:

1. Following an inspection by plaintiff's inspector, Danny Burnett, on November 3, 1988, of excavation and construction site at the southeast corner of Langston and Overbrook Streets, Richmond, Virginia, plaintiff issued citations to the defendant, alleging violations of VOSH regulations;

2. The first citation alleged a serious violation of sections 1926.651.i.1 and 1926.652.b of the VOSH Standards for the Construction Industry, excavated material was not effectively retained at least two feet from the edge of the excavation which employees were required to enter, and the sides of the excavation were not appropriately shored or sloped; the citation was grouped into a single violation, and proposed a penalty of \$420;

3. The second citation alleged one other-than-serious violation of section 1926.602.a.9.ii, of the VOSH Standards for the Construction Industry; a Koering 6612 Excavator was being used without an operable backup alarm, defendant filed a timely notice of contest to these citations;

4. Plaintiff's evidence established that violations of the above standards existed and that citations were properly issued;

The Court finds for the plaintiff on said citations, and for good cause shown it is hereby ADJUDGED, ORDERED, AND DECREED that the citation for violation of sections 1926.651.i.1 and 1926.652.[sic] be affirmed as a serious violation of the VOSH Standards for the Construction Industry with a civil penalty in the amount of \$420.00, and that the said other-than-serious violation is also affirmed as a violation of the VOSH Standards for the Construction Industry, and judgement be and is hereby granted to the plaintiff to the total amount of \$420.00.

The Clerk shall mail certified copies of this order to William B. Bray, Assistant Commonwealth's Attorney, Suite 205, 800 East Marshall Street,

Richmond, Virginia 23219-1998, to Mr. Curtis G. Harris, President of Quail Oak, Inc., P.O. Box 15145, Richmond, Virginia 23227, and to the Commissioner of Labor and Industry, 205 North Fourth Street, Post Office Box 12064, Richmond, Virginia 23241.

It is further ORDERED that the defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 7/6/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF ARLINGTON

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. #V88-10159

v.

SALCO MECHANICAL CONTRACTORS,
Defendant

AGREED SETTLEMENT ORDER

This day came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Arlington, and the defendant by counsel, and in order to provide for the health, safety and welfare of the defendant's employees and to conclude this matter without the necessity of further litigation, it is hereby stipulated and agreed as follows:

The parties are before this court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on the defendant's contest of the Virginia Occupational Safety and Health (VOSH) citations issued by plaintiff on April 29, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Plaintiff and the Defendant now agree to the following modifications and citations at issue:

1. Citation 1, item 1, a serious violation of Section 1926.28(a) of the VOSH Standards for the Construction Industry requiring the wearing of appropriate personal protective equipment is reduced to an other-than-serious violation.
2. Citation 1, item 2a, a serious violation of Section 1926.352(d) requiring the use of suitable fire extinguishing equipment in work areas where welding, cutting or heating was being performed is reduced to an other-than-serious violation.
3. Citation 1, item 2b, a serious violation of Section 1926.350(d)(2) requiring the use of a special wrench to close a valve on a fuel cylinder is reduced to an other-than-serious violation.
4. Citation 1, item 2c, a serious violation of Section 1926.150(c)(1)(iv) requiring that at least one fire extinguisher be located adjacent to stairway on each floor of a multistory building is reduced to an other-than-serious violation.
5. Citation 1, item 2d, a serious violation of Section 1926.150(c)(1)(iv) requiring a fire extinguisher, rated not less than 10B must be provided within 50 feet of wherever more than 5 gallons of flammable or combustible liquids are being used on the jobsite is reduced to an other-than-serious violation.

6. Citation 1, item 3, a serious violation of Section 1926.500(d)(1) requiring the guarding of open-sided floors by a standard railing is hereby reduced to an other-than-serious violation.

7. Citation 2, item 1 and 2 requiring the posting of the annual log of occupational illness and injuries and the posting of the Job Safety and Health poster will remain as other-than-serious violations.

8. The defendant hereby agrees to develop and adhere to a comprehensive safety program in cooperation with the defendant's liability insurer, providing for job-site weekly safety meetings, written reports relating to compliance with all safety regulations and signed statements by all employees acknowledging adherence to the comprehensive safety program.

9. The defendant also agrees to provide affidavits, six months and one year from the date of this Order, signed by a corporate officer of the Defendant, swearing full compliance with its own internal comprehensive safety program and with all provisions of the Virginia Occupational Safety and Health (VOSH) standards, regulations and laws as set forth in Title 40.1, Code of Virginia, and providing detailed information concerning any violations occurring during the previous period.

10. Defendant agrees to refrain from any violations of the Virginia Occupational Safety and Health (VOSH) standards, laws and regulations.

11. The Defendant further agrees to be completely cooperative, forthright and truthful before the Commissioner or any of her duly authorized agents with regard to any inquiries made of the Defendant concerning the matters and issues set forth in the citation issued by plaintiff on April 29, 1988.

By entering into this Order, Defendant does not admit to any violations or to any civil liability arising from these violations, however, Defendant agrees that this Order may be used in subsequent proceedings, if any, brought pursuant to Title 40.1 of the Code of Virginia, providing further, however, that this Order and the facts underlying it, may not be the sole basis of any further proceedings against Defendant.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED and DECREED that Citation 1, item 1; citation 1, items 2a, 2b, 2c and 2d; Citation 1, item 3 and Citation 2, items 1 and 2 are hereby affirmed as other-than-serious violations, with no penalty.

Let the Clerk forthwith transmit certified copies of this Order to the Plaintiff, Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 3/14/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF FREDERICKSBURG

COMMONWEALTH OF VIRGINIA, ex. rel.,
Commissioner of Labor and Industry,
Plaintiff

Case No. #V88-1829

v.

PERRY R. SISSON, INC.,
Defendant

ORDER

This day came the plaintiff by counsel, the Commonwealth's Attorney for the City of Fredericksburg, and the defendant, by counsel, who in order to provide for the safety, health, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The defendant is before this court pursuant to Section 40.1-49,44.E. [sic] contesting citations VOSH No. C1209-043-87 issued to it by the plaintiff. A copy of the citations, the summons in this matter, and the draft of this order were each posted at the defendant's work place for three working days or longer.

No employee or employee representative has appealed in this matter or has filed a notice of contest of the abatement time.

Plaintiff and defendant have agreed to the penalties set forth below:

Citation 01/1--Serious Violation--\$1,000.00
(Failure of employer to instruct each employee in the recognition and avoidance of unsafe conditions)

Citation 02/1--Willful Violation--\$7,000.00
(Material handling equipment with roll-over protective structures or adequate canopy protection was not provided with seat belt)

Citation 02/2--Willful Violation--\$7,000.00
(Earth moving equipment, to wit:
One DJB 25-ton capacity off-highway truck was instructed to be operated with knowledge that truck's braking system(s) was incapable of stopping and holding the truck during operation on jobsite--i.e., that brake systems did not meet minimum required performance criteria)

By entering into this agreement, the defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, it having been represented to the Court that a copy of this order was posted at the premises of Perry R. Sisson, Inc., located off Route 700 in Stafford County, Virginia, for three working days prior to entry of this order, upon agreement of the parties and for good cause shown, pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that each violation previously listed shall be and hereby is affirmed. It is further ORDERED that defendant abate the violations cited in this matter, which defendant certifies has been done prior to this date. It is further ADJUDGED, ORDERED and DECREED that judgment shall be and hereby is granted for the plaintiff against the defendant for \$15,000.00 as civil penalties for these violations.

It is ORDERED that the Clerk of this Court shall forthwith transmit certified copies of this order to the defendant and to the Commissioner of Labor and Industry at the address indicated.

ENTER: 4/15/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. #V88-6484

v.

SHIRLEY CONTRACTING CORPORATION,
Defendant

ORDER

This cause came to be heard upon the submission of an order consented to by the parties, as evidenced by the signatures of their duly authorized counsel below. Upon consideration of such order, it is accordingly

ORDERED, that citation No. 1 (serious), citation 1A (serious - repeat) and citation 1B (serious - repeat) be and hereby are vacated and reduced to "other-than-serious" violations, with all monetary penalties to be vacated.

FURTHER ORDERED, that the Department of Labor and Industry is hereby directed to reflect on its official records that the aforesaid citations have been reduced to "other than serious, without penalty".

FURTHER ORDERED, that each party shall bear its own costs.

ENTER: 1/24/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF ARLINGTON

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. #V88-6485

v.

SMC CONCRETE CONSTRUCTION, INC.,
Defendant

AGREED ORDER

This day, came the Commonwealth of Virginia, by counsel, and SMC Concrete Construction, Inc., (hereafter "SMC Concrete") by counsel, and in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed:

1. The defendant, SMC Concrete, is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting citations issued to it on February 24, 1988, by the Commissioner of Labor and Industry under the Occupational Safety and Health Act, Code of Virginia Section 40.1-44.1, et seq. The citations alleged:

- A. a serious violation of the Virginia Occupational Safety and Health Standards for the Construction Industry Section 1926.28(a) (appropriate personal protective equipment was not worn by employee(s) in all operations where there was exposure to hazardous conditions), for which a penalty of \$700.00 was proposed.
- B. a repeat violation of VOSH Standards for the Construction Industry Section 1926.500(d)(1) (open-sided floor or platform was not guarded by a standard railing), for which a penalty of \$1400.00 was proposed; and
- C. four (4) other-than-serious violations of the VOSH Standards for the Construction Industry:
 - (i) Section 1926.150(c)(1)(vi) (fire extinguishers were not provided);
 - (ii) Section 1926.350(d)(2) (special wrench to close valve of fuel cylinder was not left in position);
 - (iii) Section 1926.500(b)(8) (floor holes were not guarded by a standard rail); and
 - (iv) Section 1926.500(e)(1)(iv) (stairways more than 44 inches wide was not provided with one standard stair railing).
No penalties were proposed for these violations.

2. Plaintiff has agreed to consolidate the serious violation of Section 1926.28(a) and the repeat violation of Section 1926.500(d)(1), grouping them as one serious violation of Section 1926.28(a) with two instances cited for failure of employees to wear appropriate personal protective equipment. The penalty of \$700 for the serious violation, as amended, will be \$700. The penalty of \$1400 for the repeat violation has been rescinded, such that the total penalty is \$700. Two of the other-than-serious violations; Section 1926.350(d)(2) and §1926.500(e)(1)(iv) have been reduced to de minimis violations. The two other-than-serious violations will remain.

3. Defendant has abated the aforesaid violations and agreed to pay the penalty within fifteen (15) days of the entry of this order.

4. Defendant expressly denies any violation of the VOSH Regulations and expressly denies that any of its employees were exposed to any alleged violations.

5. By entering into this agreement, the defendant does not admit to any fault or liability, civil or otherwise, or that the alleged conditions contributed a hazard or violation of the Act, except that the Defendant does agree that this agreement may be used in future proceedings under the Act.

WHEREFORE, upon agreement of the parties; and for good cause shown, it is hereby

ADJUDGED, ORDERED AND DECREED that the serious violation of Section 1926.28(a) and the repeat violation of Section 1926.500(d)(1) are consolidated and affirmed as one serious violation of Section 1926.28(a). The other-than-serious violations of Section 1926.350(d)(2) and Section 1926.500(e)(1)(iv) are affirmed as de minimis violations and the violations of Section 1926.150(c)(1)(iv) and Section 1926.500(b)(8) are affirmed as other-than-serious violations. These violations having been abated, judgement is granted for the plaintiff against the defendant in the total amount of \$700.

Let the Clerk transmit certified copies of this Order to all counsel of record and to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241.

ENTER: 9/1/88

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

v.

SOUTHWOOD BUILDERS, INC.,
Defendant

-
ORDER

On April 25, 1988, came the parties and counsel to be heard upon the defendant's contest of the Virginia Occupational Safety and Health citation issued by the plaintiff. The defendant moved the Court to dismiss the appeal of the plaintiff on the grounds that it had not been timely filed under Section 16.1-106 and 40.1-49.5 of the Code, and further upon the ground that the writ tax required by Sections 16.1-107 and 14.1-112(17) had not been paid. Upon due consideration the Court denied the defendant's motions, to which the defendant duly excepted.

Thereupon the plaintiff presented its evidence in prosecution of its summons and rested its case. The defendant moved the Court to strike the plaintiff's evidence and render judgment for the defendant. Upon consideration whereof, the Court finds that the defendant violated the Virginia Standards for the Construction Industry Sections 1926.651(c) and 1926.651(h) and 1926.651(j) and other non-serious violations of Section 1926.650(e); that the violations were not willful nor intentional; that the defendant abated the hazards promptly after consultation with plaintiff and Ty Looney, a safety consultant, and all cited conditions were corrected prior to the issuance of the citation and that sanctions against the defendant are not appropriate.

The Court finds for the defendant and orders that the citation against defendant be vacated.

ENTER: 6/11/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF CHESTERFIELD COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. _____

v.

J. K. TIMMONS & ASSOCIATES, P.C.,
Defendant

ORDER

On December 13, 1988, and January 17, 1989, came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Chesterfield, and the defendant by counsel, pursuant to a summons, to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on February 6, 1988. Upon consideration of the evidence and arguments of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff's inspector, Cary Letellier, conducted an inspection on January 21, 1988, of a jobsite on Midlothian Turnpike in Chesterfield County where defendant's employees were performing surveying and staking work. These employees were working beside a building below a roofing crew which was installing sheet metal components on the roof above them. They were not wearing hard hats.

2. Plaintiff issued a citation to the defendant, alleging a repeat violation of Virginia Occupational Safety and Health Standards for the Construction Industry Section 1926.100(a) for failure to wear protective helmets where there is a possible danger of head injury.

3. The citation proposed a penalty of \$1000. Defendant filed a timely notice of contest to the citation.

4. Defendant has not contested the violation itself, but has objected to the characterization of the violation as a "repeat".

5. Defendant contends that it was not properly notified of the prior violation of Section 1926.100(a). This prior citation was issued as a result of an inspection in 1987 in Henrico County, and was delivered by registered mail to defendant's branch office. John Fallon, a Survey Coordinator in the branch office, responded to the citation, but failed to notify the main office of defendant that a citation has been received. Defendant contends that Fallon did not have authority to accept notice on behalf of the corporation.

CONCLUSIONS OF LAW

1. The Court finds that as a matter of law, notice to defendant of the prior citation was not properly perfected, thus this violation cannot be characterized as a repeat.

2. As defendant did not contest the violation itself, the Court finds for the plaintiff on the violation.

3. Because the violation is considered a first offense, the Court is reducing the proposed penalty to \$500, with \$400 suspended. Judgment is hereby granted to the plaintiff in the amount of \$100.

4. The Clerk shall mail certified copies of this order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

5. Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 4/18/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. V88-15800

v.

WHITING-TURNER CONTRACTING COMPANY,
Defendant

ORDER

On this day comes the plaintiff by an Assistant Commonwealth's Attorney for the County of Henrico, to be heard on plaintiff's summons on a contest of certain enumerated items from the Virginia Occupational Safety and Health ("VOSH") citation issued on October 4, 1988. Upon the defendant's withdraw [sic] of contest from the citation, the Court makes the following findings of fact and conclusions of law:

1. Following an inspection by plaintiff's inspector, Danny Burnett, on July 29, 1988, of a construction site at 7400 Impala Drive, Richmond, Virginia, plaintiff issued a citation to the defendant, alleging the following a single violation of VOSH regulations;
2. The citation alleged a serious violation of section 1926.16.c of the VOSH Standards for the Construction Industry, and proposed a penalty of \$900; the citation related to the joint liability between defendant and a subcontractor, for conditions resulting in the fatality of an employee of the subcontractor; defendant filed a timely notice of contest to the citation;
3. Defendant has withdrawn its notice of contest to the above mentioned citation, admits liability under the VOSH Standard mentioned, and certifies that the cited condition has been abated;

By entering into this order, defendant does not admit to any civil liability arising from this violation, other than for the purpose of subsequent proceedings pursuant to Title 40.1.

The Court finds for the plaintiff on said citation, and for good cause shown it is hereby ADJUDGED, ORDERED, AND DECREED that the citation for violation of Section 1926.16.c be affirmed as a serious violation of the VOSH Standards for the Construction Industry with a civil penalty in the amount of \$900.00, and judgement be and is hereby granted to the plaintiff to the total amount of \$900.00.

The Clerk shall mail certified copies of this order to Gary K. Aronhalt, Assistant Commonwealth's Attorney, P.O. Box 27032, Henrico Courthouse, Richmond, Virginia 23273, to Mr. Donald D. Anderson, attorney for defendant, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, VA 23241.

It is further ORDERED that the defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 3/3/89

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

At Law No. 84797

v.

WILLIAMS STEEL ERECTION COMPANY, INC.,
Defendant

ORDER

On December 5, 1988, came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Fairfax, and the defendant by counsel, to be heard on defendant's appeal of a decision of the General District Court of Fairfax County. The General District Court vacated 1 serious citation and affirmed 1 serious and 3 other-than-serious citations for violations of the Virginia Occupational Safety and Health Standards for the Construction Industry. Plaintiff did not appeal the General Court's dismissal of Citation 1, item 2, a serious violation of Section 1926.750(b)(1)(iii), and Defendant withdrew its contest of the three other-than-serious violations, Sections 1926.152(e)(4), 1926.152(g)(9), and 1926.152(g)(11), prior to trial. The only citation before this Court was Citation 1, item 1, a serious violation of Section 1926.500(d)(1).

Upon consideration of the evidence and arguments of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Following an inspection by plaintiff's inspector, Michael McCullion, between August 10th and August 13th, 1987, of defendant's jobsite at 4050 Legato Road in Fairfax County, plaintiff issued citations to the defendant, alleging violations of Virginia Occupational Safety and Health regulations.
2. The citation alleged a serious violation of Section 1926.500(d)(1) of the VOSH standards for the Construction Industry, and proposed a penalty of \$350. Defendant filed a timely notice of contest to the citation.
3. Plaintiff's citation alleged that employees of defendant were working on the 4th level of a building under construction which had improper perimeter guarding in violation of Section 1926.500(d)(1).
4. Defendant alleged that Plaintiff had cited the wrong standard, and that Section 1926.500(d)(1) was inapplicable.

CONCLUSIONS OF LAW

1. The Court finds that Section 1926.500(d)(1) is inapplicable to the 4th floor of the structure, and ORDERS that the citation at issue be VACATED.

2. The Clerk shall mail certified copies of this order to all parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

3. Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 12/28/88

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff,

Case No. V-88-5179

v.

WORSHAM SPRINKLER CO., INC.,
Defendant.

NATURE OF THE CASE

Pursuant to an inspection conducted at a multi-employer construction site, the plaintiff, Virginia Occupational Safety and Health (VOSH), issued citations to the defendant, Worsham Sprinkler Co., Inc. ("WSC") for its alleged serious violations of the following VOSH regulations:

Section 1926.500(d)(1): Every open-sided floor or platform 6 feet or more above adjacent floor or ground level shall be guarded by a standard railing, or the equivalent, as specified in paragraph (f)(1) of this section, on all open sides

Section 1926.500(e)(1): Every flight of stairs having four or more risers shall be equipped with standard stair railings or standard handrails as specified below, the width of the stair to be measured clear of all obstructions except handrails: . . . (iv) On stairways more than 44 inches wide but less than 88 inches wide, one hand rail on each enclosed side and one stair railing on each open side

A penalty of \$700.00 was recommended.

FINDINGS OF FACT

1. Subsequent to an inspection by VOSH of WSC'S work place in this jurisdiction, VOSH issued a citation, VOSH No. L8325-027-88, to WSC alleging violations of the Virginia Occupational Safety and Health Law, standards or regulations, requiring abatement of those violations and proposing civil penalties for the violations.
2. WSC filed a timely notice of contest.
3. Specifically, WSC was cited for serious violations of Section 1926.500(d)(1) and Section 1926.500(e)(1)(iv).
4. Compliance Safety and Health Officer (CSHO) Cary C. Letellier testified that he conducted a safety inspection at a construction site located at 13300 Midlothian Turnpike, Chesterfield County, Virginia, on January 28, 1988. George W. Kane, Incorporated was the general contractor on site and WSC was one of nine subcontractors on site. WSC was responsible for installing the fire protection system in the buildings under construction.

5. At the time of the inspection CSHO Letellier observed employees of WSC working in Building No. 5. The employees were using, for access to Building No. 5, stair landings, balconies and walkways that were not guarded by a standard railing or its equivalent. He also noted that these employees were using a set of stairs, 48 inches wide, to go from the ground level to the second level. These stairs had no handrails.

6. WSC stipulated that there were no guardrails on balconies present in Building No. 5 at the time of the inspection. WSC also stipulated that there were no rails on the stairways in Building No. 5.

7. WSC introduced evidence through its safety director, William P. Gladysz, and its foreman on the job site, Mike Bruce.

8. WSC presented evidence that its employees were working in Building No. 5 at the time of the inspection, but that none of said employees were working on the third level. The testimony of Mr. Bruce was that said employees were working on the second level of Building No. 5, and would not have begun work on level three since the work on level two had not been completed at that time. Mr. Bruce also stated that WSC's employees never came closer than two to three feet from any unguarded edge. When using the stairways, the employees were told to be careful, and, further, when traveling up stairways, employees of WSC were instructed to stay away from the unguarded edge of the stair tread.

9. Testimony was introduced by WSC that weekly safety meetings were conducted at the job site by WSC.

CONCLUSIONS OF LAW

1. The Court, upon hearing evidence and arguments on behalf of both VOSH and WSC, finds that the conditions that existed are in violation of the Virginia Occupational Safety and Health Regulations, but that said conditions are other than serious violations.

ORDER

It is therefore, ADJUDGED, ORDER [sic] and DECREED that the citations for serious violation of Section 1926.500(d)(1) and Section 1926.500(e)(1)(iv) are reduced to citations for other-than-serious violation. The penalty of \$350.00 for each violation is hereby reduced to \$75.00 per violation, a total penalty of \$150.00. Such penalty is to be paid within fifteen (15) days after the entry of this Order.

The Clerk is ordered to send a certified copy of this Order to counsel for both parties and to the Department of Labor and Industry, Virginia Occupational Safety and Health Program, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 1/3/89

VIRGINIA:

IN THE SMYTH GENERAL DISTRICT COURT

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No. V-87-1591

v.

W-L CONSTRUCTION & PAVING, INC.,
Defendant

ORDER

This matter came to be heard on December 7, 1987 pursuant to the summons issued by Jay Withrow, VOSH Technical Services Director, charging the defendant with an occupational safety and health citation number E-3061-044-87, which charge against the defendant is "the employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to the employees".

The Court heard the testimony of the witness for the Commissioner of Labor and Industry concerning this matter, and witnesses for the defendant herein.

The citation against the defendant tracks the language of the statute (40.1-55.1) [sic] which states:

"It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety, and health rules and regulations promulgated under this title".

The above cited section of the Code provides for the general duty of all employers within the Commonwealth of Virginia to furnish to its employees a place of employment that is reasonably free from recognized hazards.

Before the Court, it was conceded by both the representatives of the Commissioner of Labor and Industry and by the defendant, that no actions could guarantee an absolutely safe work place. All rules and regulations promulgated by the Commissioner of Labor and Industry are designed to provide to the worker a work place reasonably free from recognized hazards.

Section 40. 1-51.2, further imposes upon the employees of a business within the Commonwealth of Virginia the following duty:

"It shall be the duty of each employee to comply with all occupational safety and health rules and regulations issued pursuant to this chapter, and any orders issued thereunder which are applicable to his own action and conduct".

In this proceeding, the Commissioner has cited the Virginia Occupational Safety and Health Standards for the Construction Industry Booklet, and particularly Subpart N - Cranes, Derricks ... at Page 123 (1926.550(a)(15)(iv), which states:

"A person shall be designated to observe clearance of the equipment and give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by visual means".

The Court has had the benefit of the photographic exhibits introduced in this case. It has further had the benefit of the testimony of Walter Owens, a blasting expert, and Jerry B. Lewis, Treasurer of the defendant. Mr. Owens testified that on the evening before the incident in question that he met with the decedent and staked and flagged an area in which the decedent was required to drill on the following day. Mr. Owens testified that he pointed out the proximity of the power line to the decedent and flagged the area of drilling so that a clearance of approximately 25 feet existed between the area where the decedent would have been drilling on the following day, and the area of the incident in question.

Mr. Lewis testified that on the morning of the incident that he met with the decedent and they again discussed the power line which was approximately 25 feet from the area in which the decedent was to drill blasting on the date of his death. Mr. Lewis further testified that he discussed with the decedent the proximity flagged by Mr. Owens on June 12, 1987. The Court further had the benefit of the testimony of Mr. Paul Rouse who was a superintendent for W-L and in charge of the operations of the decedent on June 13, 1987.

Based upon the evidence before the Court and further based upon the requirements of Section 40.1-51.1 and Section 40.1-51.2 of the 1950 Code of Virginia, as amended, the Court doth further find as follows:

1. The decedent was an experienced crane operator and had followed his calling for a number of years, including previous employment with the defendant.
2. Prior to the incident in question on June 13, 1987, the employer had secured the services of an independent expert, who had marked and flagged the area in which the decedent was to drill on June 13, 1987. These flags are visible and photographic evidence introduced before the Court and in the diagram introduced on behalf of the defendant by Mr. Owens.
3. The Treasurer of the defendant, Mr. Jerry B. Lewis, was present on the scene shortly before the incident on June 13, 1987, and discussed the drilling procedure and drilling area with the decedent. This discussion included the fact that the power line was approximately 25 feet from the area in which the decedent would be drilling on that day and he should exercise reasonable care for his own safety in remaining within in the flagged and marked area for his drilling operations.
4. The foreman, Mr. Rouse, further met with the decedent on June 13, 1987 and also discussed the proximity of the power line to the drilling area, and received from the decedent assurances that the drilling area would be within the marked and flagged area.

5. That Section 1926.550(a)(15)(iv) indicates that an observer is necessary only where it is difficult for the operator to maintain the desired clearance by visual means. All evidence in this case indicates that the power line was fully visible to the decedent and was pointed out to him on at least two occasions on the morning of the incident and by Mr. Owens on the evening prior to the incident.

6. That the employer herein used reasonable care to furnish unto his employee a place of employment safe from recognized hazards.

Based upon the foregoing findings of fact, and in accordance therewith, the Court doth therefore find that Section 40.1-51.1 and Section 40.1-51.2, imposing duties upon the employee, indicate unto the Court that based upon the facts proven before this Court and the hearing herein, that the defendant, W-L Construction & Paving, Inc., was in compliance with its duties under §40.1-51(a) [sic] and that no violation of law by the defendant was committed thereby.

The Court further finds that the Commonwealth has failed, by a preponderance of the evidence, to bear the burden herein of showing any violation upon the defendant, and doth, therefore, find that the defendant herein did not violate the cited provisions of the Code of Virginia, to-wit: §40.1-51.1(a) [sic] and doth, therefore, dismiss this matter as to the defendant.

The Clerk of this Court is directed to certify a copy hereof to the attorney for the Commonwealth of Smyth County and to John H. Tate, Jr., Attorney at Law, P.O. Box 26, Marion, Virginia 24354-0026, Counsel of record for the defendant.

Nothing further remaining to be done herein, this matter is removed from the docket.

ENTER: 11/30/88

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