

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, 1983 - JUNE 30, 1984
VOLUME V

ISSUED BY THE VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

P. O. BOX 12064

RICHMOND, VA 23241-0064

VOLUME V

TABLE OF CONTENTS

	<u>Page</u>
Part I: Occupational Health Cases	1
Commonwealth v. Virginia Veneer and Plywood, Inc., No. -- (Danville General District Court, November 30, 1983)	2
Commonwealth v. Lane Construction Company, No. -- (Richmond General District Court, November 10, 1983)	6
Commonwealth v. Webster Brick Company, Inc., No. -- (Botetourt County General District Court, March 28, 1984) ...	7
Part II: Industrial Safety Contested Cases	11
Commonwealth v. Henricks Tile Manufacturing Company, Inc., No. C83-5739 (Chesterfield County General District Court, November 1, 1983)	12
Commonwealth v. McFarland's Mill, Inc., No. C83-629 (Frederick County General District Court, December 1, 1983) .	14
Commonwealth v. Rehrig International, Inc., No. E96375 (Richmond General District Court, April 25, 1984)	16
Part III: Construction Safety Contested Cases	21
Commonwealth v. R.L. Rider and Company, No. L-60670 (Fairfax County Circuit Court, July 19, 1983)	22
Commonwealth v. Asplundh Tree Expert Company, No. L83-1391 (Norfolk Circuit Court, August 16, 1983)	23
Commonwealth v. Universal Construction Company, Inc., No. -- (Richmond General District Court, November 9, 1983)	24
Commonwealth v. Davis Electrical Constructors, Inc., No. 9-1755 (Augusta County General District Court, December 9, 1983) ...	27
Commonwealth v. Davis Electrical Constructors, Inc., No. 9-1755 (Augusta County Circuit Court, January 4, 1984)	32
Commonwealth v. Southern Iron and Steel, Inc., No. C84-00172 (Henrico County General District Court, January 9, 1984)	34
Commonwealth v. The Bethesda Asphalt and Bituminous Company, Inc., No. 84-762 (Fairfax County General District Court, January 26, 1984) ...	39

Part III: Continued

	<u>Page</u>
Commonwealth v. Bragunier Masonry Contractors, Inc., No. C83-03993 (Winchester General District Court, February 9, 1984)	41
Commonwealth v. EGA, Inc., No. E91-527 (Richmond General District Court, February 27, 1984)	42
Commonwealth v. W.M. Paris and Associates, Inc., No. F10218 (Richmond General District Court, March 2, 1983)	43
Commonwealth v. Taylor and Parrish, Inc., No. F37353 (Richmond General District Court, March 5, 1984)	45
Commonwealth v. Shenandoah Masonry, Inc., No. F29605 (Richmond General District Court, March 6, 1984)	47
Commonwealth v. Dean Steel Erection Company, Inc., No. -- (Augusta County General District Court, March 12, 1984)	49
Commonwealth v. Capital Masonry Corporation, No. C83-16930 (Henrico County General District Court, March 19, 1984)	51
Commonwealth v. N.W. Martin and Bros., Inc., No. C83-16931 (Henrico County General District Court, March 19, 1984)	54
Commonwealth v. Southern Brick Contractors, No. C84-02518 (Henrico County General District Court, April 5, 1984)	55
Commonwealth v. Catlett-Johnson Corporation, No. F32201 (Richmond General District Court, April 9, 1984)	57
Commonwealth v. J.A. Walder, Inc., No. -- (Richmond General District Court, April 27, 1984)	59
Commonwealth v. A.A. Beiro Construction Company, Inc., No. L83-2254 (Norfolk Circuit Court, May 14, 1984)	61
Commonwealth v. R.J. Smith Builders, Inc., No. C83-001259 (Williamsburg General District Court, June 7, 1984)	63
Subject Index	65
Standards Index	67

PART I
OCCUPATIONAL HEALTH

COMMONWEALTH

v.

VIRGINIA VENEER AND PLYWOOD, INC.

November 30, 1983

GENERAL DISTRICT COURT FOR THE CITY OF DANVILLE

Commonwealth's Attorney, City of Danville, for Plaintiff
Before the Honorable T. Ryland Dodson, Judge

Disposition: Final, by Trial

Nature of the case: The following violations of the VOSH standards for general industry are alleged for which a \$480.00 penalty is recommended:

Serious Violations:

- 1a. 1910.95(a) Protection against the effects of noise was not provided for employee exposed to sound levels which exceeded those listed in Table G-16 of subpart G of 29 CFR 1910:
- (a) Employee exposed to the harmful effects of noise while operating hog, Capital Machine Company, serial number 112.
- 1b. 1910.95(b)(1) Employee was subjected to sound levels exceeding those listed in Table G-26 of subpart G of 29 CFR part 1910 and feasible administrative or engineering controls were not utilized to reduce sound levels:
- (a) Employee exposed to the harmful effects of noise while operating hog, Capital Machine Company, serial number 112.
- 1c. 1910.95(b)(3) Sound levels exceeded the values in Table G-16 of subpart G of 29 CFR 1910 and a continuing, effective hearing conservation program was not administered:
- (a) Employee exposed to the harmful effects of noise while operating hog, Capital Machine Company, serial number 112.

For compliance purposes, a minimally effective hearing conservation program consists of the following items:

- (1) A baseline audiogram for all employees exposed to noise levels equal to or in excess of the standard.

- (2) Periodic audiograms for each overexposed employee.
- (3) Analysis of audiogram results with retesting and/or referral to an otolaryngologist or qualified physician when a significant threshold shift occurs. A significant shift will be considered to be equal to or greater than 20 dB at any test frequency.
- (4) Where insert earplugs or custom-molded devices other than self-fitted, malleable plugs are utilized, individual employee fitting shall be conducted by a trained person, and employees shall be instructed in the care and use of the devices.

ABATEMENT NOTE

*Step 1 - Effective personal hearing protection shall be provided and used by employee(s) as an interim protective measure.

*Step 2 - Submit to the Regional Supervisor a written detailed plan of abatement outlining a schedule for the implementation of engineering and/or administrative measures to control employee exposures to noise as referenced in this citation. This plan shall include, at a minimum, target dates for the following actions which should be consistent with the dates required by this citation:

- (a) Evaluation of the extent and location of the hazard source;
- (b) Evaluation of control measure options;
- (c) Selection of optimum control method(s);
- (d) Determination of control measure design;
- (e) Ordering and delivery of equipment and materials;
- (f) Installation of control measures;
- (g) Training of employees in proper operation and maintenance of newly implemented control measures; and
- (h) Assurance of effective performance of control measures.

All proposed control measures shall be evaluated for each particular use by a technically qualified person. Sixty (60) day progress reports are required during the abatement period.

*Step 3 - Correction shall be completed by the implementation of feasible engineering and/or administrative controls and their effectiveness at achieving compliance verified.

ORDER

This day came the plaintiff, by counsel, the Commonwealth's Attorney of Danville and defendant, by counsel; the above-styled case was heard and the following evidence presented:

1. There is pending before this Court a summons filed by the plaintiff on September 12, 1983, directing defendant to show cause why he should not be held in violation of Title 40.1, Code of Virginia, as amended, and the Virginia Occupational Safety and Health Standards as specified in the summons in three citations issued by the Virginia Department of Labor and Industry to defendant on August 9, 1983. Copies of this summons and the citations were posted at the defendant's work place for three or more days.
2. Defendant is and has been engaged in the processing of wood at its plant located in Danville.
3. On August 9, 1983, the Bureau of Occupational Health conducted an inspection and investigation of defendant's work place in Danville as authorized by Sections 40.1-51.3 and 40.1-40 of the Code of Virginia for compliance with Occupational Safety and Health Standards.
4. As a result of the inspection, plaintiff issued the citations referred to above as authorized by Sections 40.1-6(2) and 40.1-49.4, alleging three serious violations of said standards.
5. After a proper hearing of the evidence in this case, I, T. Ryland Dodson, Judge of the General District Court of Danville, Virginia, do hereby find for the plaintiff based on the following findings of fact and conclusions of law: An employee operating a machine called a hog was exposed to noise levels exceeding 90dB during his work shift on August 3, 1983, without hearing protection being provided by the defendant in violation of Section 1910.95(a) of the Virginia Occupational Safety and Health standards; the defendant failed to utilize feasible administrative or engineering controls under these circumstances, in violation of Section 1910.95(b)(1); the defendant failed to administer a continuing effective hearing conservation program where sound levels exceeded the permissible limits as shown in Table G-16.
6. Defendant will post a copy of this Order at the site of the violations for three working days or until abatement of the violations whichever period is longer.

WHEREFORE, in accordance with the terms of this Order and pursuant to the Code of Virginia (1950), as amended, Section 40.1-49.4, it is

ADJUDGED, ORDERED and DECREED, that defendant abate the violations cited in the citations of August 9, 1983, and be assessed a civil penalty for said violations as follows:

<u>Citation</u>	<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
\$1910.95(a)		No protection was provided by the defendant for employees against sound levels exceeding 90dB.	3/1/84	
\$1910.95(b)(1)		The defendant failed to utilize feasible administrative or engineering controls when employees were subjected to sound levels exceeding 90dB.	3/1/84	
\$1910.95(b)(3)		The defendant failed to administer a continuing effective hearing conservation program where sound levels exceeded the values shown Table G-16.	3/1/84	Total fine for three citations \$160.00.

The abatement dates in this order may be extended by the procedures enumerated in Section 1900.28 of the Administrative Procedures Rules and Regulations for Enforcement of Occupational Safety and Health Standards adopted by the Virginia Safety and Health Codes Commission on July 28, 1978.

The clerk within ten (10) days of the entry of this order shall transmit a certified copy of this order to the Commissioner of Labor and Industry, Fourth and Grace Streets, Richmond, Virginia 23219, and a copy to the Commissioner of Health, Madison Building, 109 Governor Street, Richmond, Virginia 23219.

The funds collected as civil penalties pursuant to this Order shall be transmitted to the Treasurer of the Commonwealth to the credit of the general fund.

COMMONWEALTH

v.

LANE CONSTRUCTION COMPANY

November 10, 1983

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

Before the Honorable W. J. Roberts, Judge

Disposition: Final, by Trial

Nature of the case: A general duty violation of Section 40.1-51(a) of the Code of Virginia was cited for the employer's failure to provide each of his employees safe employment and a work place free from recognized hazards.

ORDER

This day came the plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and defendant, pursuant to a summons, to be heard upon the defendant's contest of a Virginia Occupational Safety and Health citation issued by the plaintiff. Upon consideration of the evidence and the arguments of the parties, the Court finds as follows:

1. Subsequent to an inspection by the plaintiff of the defendant's work place in this jurisdiction, the plaintiff 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 proposing civil penalties for the violations.

2. The defendant filed a timely notice of contest to the citation.

3. The court finds for the plaintiff and ORDERS that the citation be affirmed as to Section 40.1-51(a), Code of Virginia, as amended. The court further ORDERS that the defendant pay the plaintiff \$250.00 as civil penalties.

4. The clerk shall forthwith mail certified copies of this order to each of the parties.

5. The defendant shall forthwith post a copy of this order at the site of each of the alleged violations; the copy shall remain posted for three working days or until the violation is abated, whichever is longer.

COMMONWEALTH

v.

WEBSTER BRICK COMPANY, INC.

March 28, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF BOTETOURT

Robert C. Hagan, Jr., Commonwealth's Attorney, for Plaintiff
Richard E.B. Foster, Esquire, for Defendant
Before the Honorable E.C. Westerman, Jr., Judge

Disposition: Final, by Consent Agreement

Nature of the case: The following violations of the VOSH standards are alleged.

Serious Violations:

- 1a. 1910.1000(c) Employees were exposed to material in excess of the eight hour time weighted average limits for that material in Table Z-3 of subpart Z of 29 CFR part 1910:
- (a) An employee was exposed to respirable dust with 17% quartz at a TWA of 1.6 mg/M^3 with a PEL of .53 while operating the extruder in plant number 2 on October 27, 1983. Silica is capable of causing a pneumoconiosis; silicosis.
 - (b) An employee was exposed to respirable dust with 18% quartz at a TWA of $.92 \text{ mg/M}^3$ with a PEL of $.5 \text{ mg/M}^3$, 1.8 times the permissible exposure level, while loading overhead hoppers with sand mixtures on October 27, 1983. Silica is capable of causing a pneumoconiosis; silicosis.
- 1b. 1910.1000(e) Feasible administrative or engineering controls were not determined and implemented to reduce employee exposures:
- (a) Extruder operator in plant number 2 exposed to the harmful effects of silica on October 27, 1983.
- 1c. 1910.134(e)(5) Training did not provide the individuals with the opportunity to handle the respirator, have it fitted properly, test its face-piece-to-face seal, wear it in normal air for a long familiarity period, and finally wear it in a test atmosphere:

- (a) Extruder operator in plant number 2 exposed to a TWA of respirable silica exceeding the standard while wearing a Willson half mask cartridge respirator on October 27, 1983. Fit testing of respirator was not conducted prior to September 16, 1983.
- (b) Texture man in plant number 2 exposed to a TWA of respirable silica exceeding the standard while wearing a Willson half mask cartridge respirator on October 27, 1983. Fit testing of respirator was not conducted prior to September 16, 1983.

ABATEMENT NOTE:

*Step 1 - Effective respiratory protection shall be provided and used by employee(s) as an interim protective measure.

*Step 2 - Correction shall be completed by the implementation of feasible engineering and/or administrative controls and their effectiveness at achieving compliance verified.

A \$240.00 penalty was recommended.

ORDER

This day came plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and 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, stipulated and agreed as follows:

The defendant is before this court pursuant to Section 40.1-49.4E contesting a citation VOSH No. V1449-045-83 issued to it by the plaintiff. A copy of the citation, the summons in this matter, and this sketch order were each posted at the defendant's work place for three working days or longer.

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

Plaintiff and defendant have agreed to the schedule of abatement and penalties set forth in the amended citation, attached hereto as Exhibit A.

In entering this agreement, the defendant does not admit to any violation or to any civil liability arising from any violations alleged in this matter.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited in this matter within the time shown in the amended citation attached hereto as Exhibit A. Each such violation cited in Appendix A is hereby affirmed. It is further ORDERED that the defendant pay the plaintiff \$ 0.00 as civil penalties for these violations.

Let the clerk forthwith transmit certified copies of this order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this Order at the site of the violation for three working days or until abatement of the violations, whichever period is longer.

EXHIBIT A

The following items, as described in the original citation, are amended as follows.

Serious Citation Amended to Other Than Serious Citation.

	<u>Abatement Date</u>
1-1a	5/1/84
(Abatement date modified and penalty deleted.)	
1-1b	5/1/84
(Abatement date modified.)	
1-1c	5/1/84
(Abatement date modified.)	

PART II
INDUSTRIAL SAFETY

COMMONWEALTH

v.

HENDRICKS TILE MANUFACTURING COMPANY, INC.

No. C83-5739

November 1, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

Elizabeth Shaffer, Commonwealth's Attorney for Plaintiff
Before the Honorable John E. Dodson, Judge

Disposition: Final, by Consent Agreement

Nature of the case: A citation was issued following a general schedule safety inspection. Violations alleged were:

Serious Violation:

- 1a. 1910.213(h)(1) Radial saw(s) did not have an upper hood that completely enclosed the upper portion of the blade down to a point including the end of the saw arbor, and the sides of the lower exposed portion of the blade were not guarded to the full diameter of the blade by a device that automatically adjusted itself to the thickness of the stock and remained in contact with the material being cut:
- (a) Reinforcing rod shed, near north wall. DeWalt 18" Radial Saw. Serial No. 3-46.
- 1b. 1910.213(h)(3) Radial saw(s) were not provided with an adjustable stop to prevent the forward travel of the blade beyond the position necessary to complete the cut in repetitive operations:
- (a) Reinforcing rod shed, near north wall. DeWalt 18" Radial Saw. Serial No. 3-46.
- 1c. 1910.213(h)(4) Radial saw(s) were not installed in a manner so as to cause the cutting head to return gently to the starting position when released by the operator:
- (a) Reinforcing rod shed, near north wall. DeWalt 18" Radial Saw. Serial No. 3-46.

Other Than Serious Violations:

1. 1910.23(d)(1) Flight(s) of stairs with 4 or more risers, less than
(iii) 44 inches wide and having both sides open were not equipped with one standard stair railing on each side:

- (a) Office trailer. Left side ascending, five risers x 48" tread length. No standard stair railing.
- 2. 1910.213(h)(5) A permanent label reading "danger: do not rip or plough from this end" was not affixed to the rear of guard(s) at approximately the level of the arbor on radial saw(s):
 - (a) Reinforcing rod shed, near north wall. DeWalt 18" Radial Saw. Serial No. 3-46.
- 3. 1910.215(a)(4) Work rest(s) on grinding machinery were not adjusted closely to the wheel with a maximum opening of one-eighth inch:
 - (a) Welding shop on bench near north wall. Jet Bench Grinder Model BG - 10. Left tool rest 5/16 from wheel, right tool rest 7/16 from wheel.
- 4. 1910.215(b)(9) Guard for abrasive wheel machine where the operator stands in front of the machine was not constructed so that the peripheral protecting member could be adjusted to the constantly decreasing diameter of the wheel:
 - (a) Welding shop, on bench near north wall, Jet Bench Grinder, Model BG - 10. Had no adjustable tongue on left end.

A recommended penalty of \$120.00 was assessed.

ORDER

Judgment was rendered in this case in favor of the plaintiff. By agreement, the amount of penalty in this case is \$50.00.

COMMONWEALTH

v.

MCFARLAND'S MILL, INC.

No. C83-629

December 1, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF FREDERICK

Glenn R. Williamson, Commonwealth's Attorney, for Plaintiff
Before the Honorable David Simpson, Judge

Disposition: Final, by Trial

Nature of the case: Violation of the VOSH standards for general industry were cited following a general schedule inspection.

1. The following violations of VOSH standards for general industry were cited:

1-1	\$1910.213(d)(1)	4-7	\$1910.23(c)(1)
2-1	\$1910.213(h)(1)	4-8	\$1910.242(b)
3-1a	\$1910.219(d)(1)	4-9	\$1910.303(b)(1)
3-1b	\$1910.219(e)(1)(i)	4-10	\$1910.303(f)
3-1c	\$1910.219(e)(3)(i)	4-11	\$1910.303(g)(1)(i)
4-1	\$1910.22(a)(1)	4-12	\$1910.303(g)(1)(ii)
4-2	\$1910.23(a)(8)	4-13	\$1910.303(g)(2)(i)
4-3	\$1910.23(c)(1)	4-14	\$1910.304(f)(4)
4-4	\$1910.157(c)(1)	4-15	\$1910.305(b)(2)
4-5	\$1910.213(b)(3)	4-16	\$1910.305(g)(2)(iii)
4-6	\$1910.213(b)(6)	4-17	\$1910.305(j)(4)(iv)(b)

ORDER

On the 1st day of December, 1983, came the Plaintiff by counsel, and Assistant Commonwealth's Attorney of this jurisdiction, and Defendant, by its President, without counsel, pursuant to a summons, to be heard upon the Defendant's contest of a Virginia Occupational Safety and Health citation issued by the Plaintiff. Upon consideration of the evidence and the arguments of the parties, the Court finds as follows:

1. Subsequent to an inspection by the Plaintiff of the Defendant's work place in this jurisdiction, the Plaintiff issued a timely citation, VOSH No. J1290-016-83, 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 to contest.

3. Copies of the citation and summons in this matter were posted at the Defendant's work place for three (3) or more working days. No employee

or representative of employees of the Defendant has appeared to seek party status in this matter.

4. The Court finds for the Plaintiff and ORDERS that the citation be affirmed, which citation is attached hereto as Appendix A, for the following reasons: The Virginia Occupational Safety and Health Law, Standards, or Regulations require the proper guards on the machinery at the Defendant's work place as set forth in the aforesaid citation, and that such guards were not on such machinery on the dates of inspection, but have since been installed and, thus, the violations have been corrected.

Judgment is hereby granted to the Plaintiff against the Defendant for \$30.00 as civil penalties for the violations shown in Appendix A., said judgment having been paid in full by the Defendant to the Plaintiff as evidenced by the endorsement hereof by Counsel for the Plaintiff, and the Clerk is directed to mark same as having been paid and satisfied in full. The Clerk is further directed to forthwith mail certified copies of this Order to each of the parties hereto.

The Defendant shall forthwith post a copy of this Order at the site of each alleged violation; the copy shall remain posted for three (3) working days.

COMMONWEALTH

v.

REHRIG INTERNATIONAL, INC.

No. E96375

April 25, 1984

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

G. Edgar Dawson, III, Assistant Commonwealth's Attorney, for Plaintiff
D. Philip Goodell, Chief Counsel, for Defendant
Before the Honorable E.L. Turlington, Jr., Judge

Disposition: Final, by Trial

Nature of the case: Citations were issued as a result of an inspection initiated by a complaint.

ORDER

Plaintiff, Commonwealth of Virginia, Department of Labor and Industry, by counsel, the Commonwealth's Attorney for the City of Richmond, and the defendant, Rehrig International, Inc., appeared before this court on a contest of the following matters:

1. Following a safety inspection initiated by an anonymous complaint letter expanded based upon the LWDI rate to a comprehensive inspection, the Department of Labor and Industry, Occupational Safety Division, issued four citations alleging serious violations of the Virginia Occupational Safety and Health Standards, specifically:

1. 1910.219(d)(1) Pulley(s) with part(s) seven feet or less from the floor or work platform were not guarded in accordance with the requirements specified in 29 CFR 1910.219(m) and (o):
 - (a) Tubing room south side, tubing cutter, pulleys are not guarded.
 - (b) Machine Shop south side, Buffalo Forge Pedestal Drill Press Serial No. 53-9553, step pulleys are inadequately guarded.
 - (c) Tubing room northwest area, Jet Bench Drill Press Serial No. 59732, cone pulleys are inadequately guarded.
 - (d) Regrind room northeast corner, Air Compressor and Motor for the sprinkler system, pulleys are not guarded.

2. 1910.219(e)(1) Horizontal belts which had both runs forty-two inches or less from the floor level were not fully enclosed by guards conforming to requirements specified in 29 CFR 1910.219(m) and (o):
 - (i)
 - (a) Regrind room northeast corner, Air Compressor for the sprinkler system, Horizontal V-belts are not guarded.
 - (b) Tubing room northwest area, Jet Bench Drill Press Serial No. 59732, V-belt is inadequately guarded.
 - (c) Machine Shop south side, Buffalo Forge Pedestal Drill Press Serial No. 53-9553, V-belts are inadequately guarded.
3. 1910.219(e)(3) Vertical on inclined belt(s) were not enclosed by guard(s) conforming to the requirements specified at 29 CFR 1910.219(m) and (o):
 - (i)
 - (a) Tubing room south side, Tubing Cutter, V-belts are not guarded.
4. 1910.219(f)(1) Gear(s) were not guarded by a complete enclosure or by one of the methods specified in 29 CFR 1910.219(f)(1)(ii) and (f)(1)(iii):
 - (i)
 - (a) Tubing room northwest corner, Nilson Four Slide Serial No. 75960, two drive gears are not guarded.
5. 1910.252(c)(2) The point(s) of operation on resistance press welding machine(s) were not guarded to protect against the possibility of the operator's fingers being under the point of operation:
 - (iv)
 - (a) Resistance welding area, Acme Resistance Welder W-6 Serial No. 11000, no point-of-operation protection is provided.
6. 1910.303(g)(2) Live parts of electric equipment operating at 50 volts or more were not guarded against accidental contact by approved cabinets or other forms of approved enclosures, or other means listed under this provision:
 - (i)
 - (a) Resistance welding area, Acme Resistance Welder, No. 4 Serial No. 7089, rear access covers are missing exposing live electrical parts.
 - (b) Resistance welding area, Acme Resistance Welder W-3 Serial No. 4656, rear access covers are missing exposing live electrical parts.

- (c) Air compressor area west side, covers are missing from the panel and control boxes on the panel/control board exposing live electrical parts.
- (d) Injection Molding department south side, covers are missing from two panel boxes on the Natco 450 ton Molding Machine exposing live electrical parts.

2. The parties stipulate to the non-serious violations and the abatement thereof. The non-serious violations are:

1910.23(c)(1)
1910.36(b)(1)
1910.36(b)(6)
1910.37(q)(1)
1910.101(b) Section 3.4.4
1910.101(b) Section 3.4.4
1910.132(a)
1910.134(b)(1)
1910.178(g)(10)
1910.178(p)(1)
1910.212(a)(5)
1910.215(a)(4)
1910.215(b)(9)
1910.217(e)(1)(i)
1910.219(c)(4)(i)
1910.252(a)(2)(ii)(b)
1910.252(a)(2)(ii)(d)
1910.252(a)(2)(iv)(c)
1910.252(c)(2)(iii)
1910.252(c)(2)(vi)
1910.252(c)(6)
1910.304(a)(2)
1910.305(a)(1)(i)
1910.305(b)(2)
1910.305(b)(1)(iii)
1910.305(g)(2)(ii)
1910.305(j)(4)(ii)(f)

Upon consideration of the evidence presented and the applicable law, the Court found the defendant in violation of the serious citations, as written.

IT IS THEREFORE ADJUDGED, ORDERED and DECREED that citations one through four for serious violations be affirmed as written.

A civil penalty of \$100.00 each is assessed for citations one through three. A civil penalty of \$200.00 is assessed for citation four. The sum of all penalties is \$500.00.

IT IS FURTHER ORDERED that defendant, Rehrig International, Inc., deliver to the clerk of this court the sum of \$500.00 and pursuant to Section 40.1-49.2H the clerk shall forward said sum to the Treasury of the Commonwealth in care of the Department of Labor and Industry.

Let the clerk send a certified copy of this Order to counsel of record for each party.

PART III
CONSTRUCTION SAFETY

COMMONWEALTH

v.

R. L. RIDER AND COMPANY

No. L-60670

July 19, 1983

CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

Stephen Moriarty, Commonwealth's Attorney, for Plaintiff
Gerald I. Katz, for Defendant
Before the Honorable Thomas J. Middleton, Judge

Disposition: Final, by Trial

Nature of the case: Case was heard de novo from an appeal taken by the Commonwealth. A citation was issued for a violation of 1926.651(i)(1) of the VOSH standards for construction. The defendant argued successfully that the spoil from the section trench in question had reached its angle of repose and offered no indication of sliding into the trench.

The court finds that 1926.651(i)(1) has not been violated in this instance and therefore orders this cause be DISMISSED.

COMMONWEALTH

v.

ASPLUNDH TREE EXPERT COMPANY

No. L83-1391

August 26, 1983

CIRCUIT COURT FOR THE CITY OF NORFOLK

John R. Doyle, III, Commonwealth's Attorney, City of Norfolk
Steven R. Semler, Esquire; Joseph B. Cox, Jr., Esquire, for Defendant
Before the Honorable Morris B. Gutterman, Judge Circuit Court

Disposition: Final, by Settlement Agreement

Nature of the case: Appeal by Asplundh from General District Court decision
in favor of the Commonwealth on June 2, 1983.

ORDER

This day came the parties, in person and by counsel and none of the
parties demanding a jury, the whole matter of law and fact was heard and
determined by the Court.

Thereupon during the course of hearing evidence, the parties announced
unto the Court that they had reached an accord.

Whereupon this cause is dismissed and as signified by endorsement of
counsel to this Order.

COMMONWEALTH

v.

UNIVERSAL CONSTRUCTION COMPANY, INC.

November 9, 1983

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William B. Bray, Commonwealth's Attorney, for Plaintiff
Before the Honorable J.R. Davila, Jr., Judge

Disposition: Final, by Trial

Nature of the case: The following violations of the VOSH standards for the construction industry are alleged:

Serious Violations:

- 1a. 1926.28(a) and 1926.105(a) Employees were not protected against falls of more than 25 feet by use of safety nets, ladders, scaffolds, catch platforms, safety lines, safety belts or other appropriate personal protective equipment:
- (a) Employees were working on a flat open-sided roof which was not provided with fall protection nor were they wearing personal protective equipment to prevent falling. Fall hazard 28 feet.
- 1b. 1926.500(d)(1) Open-sided floors or platforms, 6 feet or more above adjacent floor or ground level, were not guarded by a standard railing or the equivalent on all open sides:
- (a) Laborers were working on an open-sided platform used for trash collection and removal. Platform was not protected by guardrails or other means of fall protection. West side of building. Fall hazard 24 feet to floor below.

A \$350.00 penalty was recommended.

Other Than Serious Violations:

1. 1926.152(g)(9) Conspicuous and legible signs prohibiting smoking were not posted in service and refueling areas:
- (a) The sign prohibiting smoking was lying on the ground and was not visible, adjacent to a partially full 200 gallon above ground diesel storage tank. West side of jobsite near office trailers.
2. 1926.450(a)(9) The side rails of ladder(s) did not extend more than 36 inches above landing(s):

- (a) On the north side of the building (interior) an aluminum ladder, giving access to the roof, extended only 22 inches above the landing. Fall hazard 14 feet.
3. 1926.500(d)(1) Open-sided floors or platforms, 6 feet or more above adjacent floor or ground level, were not guarded by a standard railing or the equivalent on all open sides:
- (a) An open-sided sloping runway connecting the art storage room and the service basement was not protected by guardrails or other means of fall protection. Fall hazard 7 feet to the floor below.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney of the City of Richmond, and the defendant, Universal Construction Company, Inc., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

Alleged Violation	Type	Demand Penalty	Recommended Penalty
1a-1926.28(a) and 1926.105(a) 1b-1926.500(d)(1)	Serious	\$350	\$350
1-1926.152(g)(9)	Other	0	0
2-1926.450(a)(9)	Other	0	0
3-1926.500(d)(1)	Other	0	0

In making this recommendation, the plaintiff has considered the gravity of the alleged violations, as well as defendant's good faith, size, knowledge of the existence of the violations and history of previous violations.

2. Defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$350.00 will be paid in full pursuant to this Order.
- b. That complete abatement of the violative conditions noted in the citations accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citations unless such dates are extended by the Commissioner of the Department of Labor and Industry.

- c. That a copy of this Order will be posted at the site of the violations for three working days or until abatement of the violations, whichever period is the longer.
3. If a Notice of Contest was filed, defendant stipulates:
- d. That defendant has posted its Notice of Contest; and
 - e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties, it is

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$350.00, together with the costs of this proceeding.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.4.D of the Code of Virginia (1950), as amended, the Clerk of this Court shall transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$350.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

DAVIS ELECTRICAL CONSTRUCTORS, INC.

No. 9-1755

December 9, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF AUGUSTA

David I. McCaskey, Commonwealth's Attorney, for Plaintiff
Carl Carruth, for Defendant
Before the Honorable T. H. Wood

Disposition: Trial; Appealed

Nature of the case: Citations were issued following a general schedule safety inspection for violations of the following VOSH standards for construction:

CITATION 1:

1. 1926.152(c)(4) (i) Portable outdoor storage tanks for flammable or combustible liquids were nearer than 20 feet from the building(s): 265 gallon gasoline tank and dispenser located only 7 feet from storage trailer, located on east side of wood frame shed.
2. 1926.152(g)(9) Conspicuous and legible signs prohibiting smoking were not posted in service and refueling areas: 265 gallon gasoline tank and dispenser located on east side of wood frame shed.
3. 1926.250(a)(3) Aisle(s) and/or passageway(s) were not kept clear to provide for the free and safe movement of material handling equipment or employees: Utility room, north end was cluttered with wire, conduit, cutting torch, hoses and other items causing unsafe passage for employees.
4. 1926.352(a) When practical, objects to be welded, cut or heated were not moved to a designated safe location or if the objects to be welded, cut or heated could not be readily moved, all moveable fire hazards in the vicinity were not taken to a safe place or otherwise protected: steel rebar was being cut with a gas cutting torch on a wooden table with flammable materials stored under and around the table. Wood frame building on north side of site.
5. 1926.352(d) Suitable fire extinguishing equipment was not immediately available in the work area(s) where welding, cutting, or heating was being performed: Steel rebar was being cut with a gas cutting torch on a wooden table

located in a wood frame building with flammable materials stored under and around the table, north side of site.

6. 1926.450(a)(2) Defective ladder(s) were in use by employee(s): 13 foot wood side, metal ladder used while first rung was broken. Providing access to the second floor of tower roof, located above the J-28 line.
7. 1926.450(a)(7) Portable ladder(s) were not used at such a pitch that the horizontal distance from the top support to the foot of the ladder(s) was about one-quarter of the working length of the ladder(s): 15 foot wood ladder with metal rungs providing access on roof over the E-6 line. Working height was 11 feet and the horizontal spacing was 8 feet.
8. 1926.450(a)(10) Portable ladder(s) in use were not tied, blocked or otherwise secured to prevent their being displaced: 15 foot wood ladder with metal rungs providing access on roof over the E-6 line, not tied off.
9. 1926.451(e)(4) Platform(s) on manually propelled mobile scaffold(s) except for the necessary entrance opening were not tightly planked for the full width of the scaffold: Mobile scaffold with three 4 foot, 6 inch bucks with only 1/3 decking. Employee installing conduit in the secondary peanut processing area.
10. 1926.501(k) The tread width of the stairs was not uniform throughout the flight of stairs: Six loose masonry blocks were stacked to create access from roof to third floor. Blocks were not placed in line and there was a six inch gap between the first step from the roof and the second step.

CITATION 2:

1. 1926.402(a)(11) Electrical extension cords were not protected against accidental damage: 100' yellow 12/3 extension cord used to supply electrical drill and wire puller. Exposed to vehicle traffic and located between temporary outlet and substation "B".

CITATION 3:

1. 1926.450(a)(1) Ladder(s) were not used to give safe access to all elevations: Employee was working on pipe rack, 90 feet west of main plant, 17 feet above ground and gaining access by climbing scaffold and walking 12 foot wide steel beam for a distance of 100 feet, 20 foot fall hazard while walking beam.
- 1a. 1926.451(e)(5) A ladder or stairway affixed or built into manually

propelled mobile scaffold(s) was not provided for proper access and exit: Located under the pipe rack, 190 feet west of main plant a rubber tire wagon frame fitted with a tubular welded frame scaffold, two bucks high was used to climb, not approved for climbing.

1b. 1926.451(e)(2) The casters on manually propelled mobile scaffold(s) were not provided with a positive locking device to hold the scaffold(s) in position: Located under the pipe rack, 190 feet west of main plant a rubber tire wagon frame fitted with a tubular welded frame scaffold was used to provide access, non-locking wheels.

1c. 1926.451(e)(4) Platform(s) on manually propelled mobile scaffold(s) except for the necessary entrance opening, were not tightly planked for the full width of the scaffold: Located under the pipe rack, 190 feet west of main plant a rubber tire wagon frame fitted with a tubular welded frame scaffold, two bucks high was used with only 1/3 decking.

ORDER

This matter involved three citations issued by the Virginia Department of Labor and Industry against Davis Electrical Constructors, Inc., Citation No. 2 containing ten items, Citation No. 1 containing one item and Citation No. 3 containing one item.

A hearing was held on this matter in the Augusta County General District Court on September 27, 1982. Defendant submitted a brief on January 28, 1983.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The defendant was one of several contractors involved in the construction of a large plant for the Hershey Chocolate Company near Stuarts Draft, Virginia. The supervisory personnel of the defendant were cooperative with the compliance officers. The defendant had an active, positive safety program for its employees.

CITATION 3 - ITEMS 1, 1A, 1B AND 1C:

One of the defendant's employees was observed using a mobile scaffold to gain access to a work station approximately twenty feet high. When the apparent violation was pointed out, defendant's employees dismantled the scaffold. There was no ladder present at this point. A "JLG Manlift" owned by defendant was in the area at this time and was being used by other employees of defendant. The wheels on the mobile scaffold were not secured, and the platform was not properly planked.

On these facts, the Court concludes that the violations alleged in Citation 3, Items 1, 1B and 1C have been proved and that the violation alleged in Item 1A has not been proved. The penalty assessed is \$300.00.

CITATION 2:

Defendant's employees were observed using an electrical extension cord, part of which was lying on the floor in a traveled portion of the plant. The cord was not damaged. On February 9, 1982, defendant had been notified of a similar condition in a similar location. On this prior occasion, the cord had been damaged.

On these facts, the Court concludes that the cord was not adequately protected against accidental damage ". . . as may be caused by traffic . . ." . The penalty assessed is \$100.00

CITATION 1:

Items 1, 2:

A portable gasoline tank was situated seven feet from a trailer used for storage. There were no "NO SMOKING" signs posted. The storage trailer and tank were owned by defendant.

The Court concludes that the violation alleged in each item has been proved. There is no penalty assessed for either violation.

Item 3:

This alleged violation was dismissed at the time of the hearing.

Item 4, 5:

Defendant's employees were observed using a torch to cut a steel "rebar" on a wooden bench in a shed. Large spools of wire were stored under the bench. There was no fire extinguisher present in or around the shed. The wooden bench showed some evidence of charring, but the evidence does not disclose the presence of any material subject to explosive or rapid combustion. Any danger of fire would have been removed by the presence of a suitable fire extinguisher.

On these facts, the Court concludes that the alleged violation contained in Item 4 has not been proved, but that the alleged violation contained in Item 5 has been proved. The penalty assessed is \$50.00.

Item 6:

The bottom run on a ladder used by defendant's employees was broken. The ladder was properly secured. There was no evidence as to how or when the rung broke.

The Court concludes that, if this constitutes a violation, it is de minimis.

Items 7, 8:

A portable ladder fifteen feet in length was used to climb an eleven foot height. The horizontal spacing was eight feet. Neither the bottom nor top of the ladder was secured.

The Court concludes that these alleged violations have been proved. No penalty is assessed for either.

Item 9:

Defendant's employees were using a planked scaffold as a work station. This station was approximately fifteen feet high. The scaffold was not planked for its entire width but was planked as fully as possible at the level used by the employees. The employees using the scaffold were using safety belts except when climbing to or from the work station.

On these facts, the Court concludes that the alleged violation has not been proved.

Item 10:

Defendant's employees were observed using a stack of cinder blocks as a temporary step from the third floor to the roof. The total height involved was approximately eighteen inches. The blocks were not secured.

The Court concludes that, if this condition constitutes a violation, it is de minimis.

The Commonwealth and the defendant each object to any finding or conclusion which may deem contrary to its interests.

COMMONWEALTH

v.

DAVIS ELECTRICAL CONSTRUCTORS, INC.

No. 9-1755

January 4, 1984

CIRCUIT COURT FOR THE COUNTY OF AUGUSTA

David I. McCaskey, Commonwealth's Attorney, for Plaintiff
Carl Carruth, Esquire, for Defendant
Before the Honorable William S. Moffeit, Judge

Disposition: Final, by Settlement Agreement

Nature of the case: Appeal from order in General District Court entered December 9, 1983.

ORDER

This matter is before the Court pursuant to Section 40.1-49.5 of the Code of Virginia of 1950, as amended, as the result of an appeal taken by Respondent from the portion of the May 5, 1983, Order of the Augusta County General District Court in which the General District Court affirmed certain alleged violations of Virginia's occupational safety and health standards. The portion of the Court's order which vacated certain alleged violations was not appealed and is therefore final.

The parties have entered into and filed a Stipulation and Settlement Agreement with respect to the citations and proposed penalties before this Court, whereby the Complainant withdraws Citation No. 1, Item 8; Citation Number 3, Item 1C. Complainant further moves to amend the proposed penalty for Citation No. 3 to propose a penalty of \$210.00 in lieu of the \$420.00 previously proposed and assessed by the General District Court. Respondent represents that all of the conditions alleged to be in violation have been abated and further agrees to pay the \$210.00 penalty.

Having reviewed the Stipulation and Settlement Agreement and finding that same is in order and in the best interest of the Occupational Safety and Health Laws of the Commonwealth of Virginia, it is,

ORDERED that

1. The Stipulation and Settlement Agreement entered into between the parties is hereby approved.
2. Citation No. 1, Item 8 is hereby vacated.
3. Citation No. 2, Item 1 and the penalty proposed therefore are hereby vacated.

4. Citation No. 3, Item 1C is hereby vacated.
5. Citation No. 1, Items 1, 2, 5 and 7 are hereby affirmed with no penalty.
6. Citation No. 3, Items 1 and 1B are hereby affirmed and a penalty of \$210.00 is hereby assessed for said violations.
7. Respondent's appeal is hereby dismissed.
8. The Clerk is directed to provide all counsel of record with a certified copy of this Order.

COMMONWEALTH

v.

SOUTHERN IRON AND STEEL, INC.

No. C84-00172

January 9, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Assistant Commonwealth's Attorney, for Plaintiff
Before the Honorable D.R. Howren, Judge

Disposition: Final, by Trial

Nature of the case: A citation was issued for the following violations:

Serious Violation:

1. 1926.500(b)(2) Crawler, truck or locomotive cranes in use did not meet the applicable requirements for operation as prescribed in the ANSI B30.5-1068 safety code for crawler, locomotive and truck cranes. The employer did not comply with Section 5-3.2.3e in that the crane operator did hoist, lower, swing or travel while someone was on the load or hook:
 - (a) Employees involved in steel erection and operation rode headache ball to and from work areas and walked steel girders that were suspended by crane hook. Fall hazard of 26'6".

A \$400.00 penalty was imposed.

Other Than Serious Violations:

1. 1926.51(a)(4) The common drinking cup was not prohibited:
 - (a) Employee's used glass soft drink bottle to obtain water from cooler located on ground level.
2. 1926.251(a)(1) Defective rigging equipment was not removed from service:
 - (a) 6'½" wire rope sling had eleven broken wires in a three inch run of cable. Broken wires protruded one inch beyond edge of sling creating a puncture hazard. Location - center of structure.
3. 1926.351(b)(2) Welding cable(s) in use were not free from improper repair or splices for a minimum distance of ten feet from the cable end to which the electrode holder was connected:

- (a) Welding lead insulation was torn and taped at points 5'3", 7' and 8' from the electrode holder. Numerous other areas beyond the 10' point were damaged and taped. Two other areas exposed bare conductors. Location - Northeast section of structure.

A \$50.00 penalty was proposed.

- 4. 1926.550(a)(2) Rated load capacities, recommended operating speeds, special hazard warnings or instructions, were not conspicuously posted on equipment:

- (a) Capacity chart of Model 3445 Warner Swasey hydraulic crane, Serial #103068, used to hang steel was not posted. Chart consisted of one sheet of paper without any identification markings or special instruction. Crane located adjacent southeast corner of building.

A \$50.00 penalty was proposed.

- 5. 1926.550(a)(6) Employer did not maintain a record of the dates and results of annual inspections for hoisting machines or equipment:

- (a) Bucyrus - Erie hydraulic crane (H-5-Series 2), Serial #128107. Location - southwest corner of jobsite.

A \$50.00 penalty was proposed.

- 6. 1926.550(a)(9) Accessible area(s) within the swing radius of the rear of the rotating superstructure of crane(s) were not barricaded in such a manner as to prevent employees from being struck or crushed by the crane:

- (a) Swing radius of Model 8445 Warner Swasey hydraulic crane, Serial #103068, used to hang steel was not barricaded. Crane located adjacent southeast corner of building.

- 7. 1926.550(b)(2) Section 5-1.9.3d, American National Standards Institute, B30.5-1968. Safety Code for Crawler, Locomotive and Truck Cranes as adopted by 1926.550(b)(2): Means were not provided for securely fastening outrigger floats to outriggers when in use:

- (a) Four outrigger floats of Model 8445 Warner Swasey hydraulic crane, Serial #103068, were not equipped with pins to secure floats to outriggers. Crane set up adjacent southeast corner of building.

A \$50.00 penalty was proposed.

8. 1926.550(b)(2) Section 5-2.1.5, American National Standards Institute, B30.5-1968, Safety Code for Crawler, Locomotive and Truck Cranes as adopted by 1926.550(b)(2): Written, dated and signed inspection reports and records on critical items such as brakes, crane hooks and ropes were not made and kept where readily available:

(a) Bucyrus - Erie hydraulic crane H-5 Series 2, Serial #128017, located southwest corner of jobsite.

(b) Model 8445 Warner Swasey hydraulic crane, Serial #103068, used to hang steel. Crane set up along southwest corner of structure.

A \$50.00 penalty was proposed.

9. 1926.752(a)(1) Containers provided for storing rivets, bolts and drift pins were not secured against accidental displacement when aloft:

(a) Five gallon metal bolt bucket was stored aloft and not secured. Location - bar joist approximately center of structure at 26 foot level.

A \$50.00 penalty was proposed.

ORDER

This day, came the Commonwealth of Virginia, at the relations of the Commissioner of Labor and Industry, by counsel, the assistant Attorney for Commonwealth of Henrico County; and the defendant, Southern Iron and Steel, Inc., who failed to appear after having been served with substitute process upon a clerk of the State Corporation Commission, such substitute service being made after personal service could not be effected upon the registered agent, Edward L. Walker; to be heard upon the following Occupational Safety and Health Standard violations:

<u>Alleged Violation</u> <u>Description</u>	<u>Type</u>	<u>Penalty</u>
Citation 1 #1 Sec.1926.550(b)(2)	Serious	\$ 400.00

Crawler, truck or locomotive cranes in use did not meet the applicable requirements for operation as prescribed in the ANSI B30.5-1968 safety code for crawler, locomotive and truck cranes. The employer did not comply with Section 5-3.2.3e in that the crane operator did hoist, lower, swing or travel while someone was on the load or hook.

Citation 2

#1 Sec.1926.51(a)(4) Non-Serious 0

The common drinking cup was not prohibited.

#2 Sec.1926.251(a)(1) Non-Serious 0

Defective rigging equipment was not removed from service.

#3 Sec.1926.351(b)(2) Non-Serious 0

Welding cable(s) in use were not free from improper repair or splices for a minimum distance of ten feet from the cable end to which the electrode holder was connected.

#4 Sec.1926.550(a)(2) Non-Serious 0

Rated load capacities, recommended operating speeds, special hazard warnings or instructions, were not conspicuously posted on equipment.

#5 Sec.1926.550(a)(6) Non-Serious 50.00

Employer did not maintain a record of the dates and results of annual inspections for hoisting machines or equipment.

#6 Sec.1926.550(a)(9) Non-Serious 0

Accessible area(s) within the swing radius of the rear of the rotating superstructure of crane(s) were not barricaded in such a manner as to prevent employees from being struck or crushed by the crane.

#7 Sec.1926.550(b)(2) Non-Serious 50.00

Section 5-1.9.3d, American National Standards Institute, B30.5-1968, Safety Code for Crawler, Locomotive and Truck Cranes as adopted by 1926.550(b)(2): Means were not provided for securely fastening outrigger floats to outriggers when in use.

#8 Sec.1926.550(b)(2) Non-Serious 50.00

Section 5-2.1.5, American National Standards Institute, B30.5-1968, Safety Code for Crawler, Locomotive and Truck Cranes as adopted by 1926.550(b)(2): Written, dated and signed inspection reports and records on critical items such as brakes, crane hooks and ropes were not made and kept where readily available.

#9 Sec.1926.752(a)(1)

Non-Serious

50.00

Containers provided for storing rivets, bolts and drift pins were not secured against accidental displacement when aloft.

After the hearing of evidence, judgment by default was entered in favor of the Commonwealth and against Southern Iron and Steel, Inc., in accordance with the above listed violation.

Therefore, it is ORDERED that the defendant pay the sum of seven hundred dollars (\$700.00) as a civil penalty to Eva S. Teig, Commissioner, Department of Labor and Industry, 205 North Fourth Street, Post Office Box 12064, Richmond, Virginia 23241 and that the Commissioner deposit such civil penalty with the Treasurer of the Commonwealth in compliance with Section 40.1-49.4(E) Code of Virginia (1950) as amended.

It is further ORDERED that the Clerk shall mail a certified copy of this Order to Southern Iron and Steel, Inc., c/o Edward L. Walker, 6625 Sugarloaf Drive, Mechanicsville, Virginia 23111 and to the Honorable Eva S. Teig, Commissioner, Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241 and transmit a copy to the Attorney for the Commonwealth.

COMMONWEALTH

v.

THE BETHESDA ASPHALT AND BITUMINOUS COMPANY, INC.

No. 84-762

January 26, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Melinda S. Norton, Commonwealth's Attorney, for Plaintiff
Mark B. Weeks, Vice President, Bethesda Asphalt, for Defendant
Before the Honorable Frank B. Perry, III, Judge

Disposition: Final, by Settlement Agreement.

Nature of the case: Citations were issued following a general schedule safety inspection. Employees were waterproofing basement walls with asphalt (cold) and were located in an 11' deep excavation, exposed to danger from moving ground.

AGREED FINDING OF FACT

1. On October 17, 1983, a crew of The Bethesda Asphalt and Bituminous Company, Inc., was engaged in waterproofing the exterior wall of a foundation located at Wiehle Drive, Reston, Virginia, in Fairfax County, Virginia.

2. The foreman of the job was Paul Martin.

3. That morning, employees were waterproofing basement walls with cold asphalt from a five gallon bucket. Employees were located in an excavation that was eleven feet deep and were exposed to danger from moving ground, not guarded by any means.

4. The workmen were observed not to be wearing any eye protection nor protective head gear.

5. The Bethesda Asphalt and Bituminous Company, Inc., was cited by Richard W. Thomas of the Virginia Department of Labor and Industry, with violation of Virginia O.S.H.A. Standard 1926.651(c); 1926.102(a), 1926.650(e).

AGREED CONCLUSION OF LAW

(A) The citation issued to The Bethesda Asphalt and Bituminous Company, Inc., was proposed in accordance with the rules and procedures of the Department of Labor and Industry for the Commonwealth of Virginia. A notice of contest of the violation was timely filed by The Bethesda Asphalt and Bituminous Company, Inc.

(B) The court has jurisdiction over this action pursuant to Section 40.1-49.4 of the Code of Virginia, as amended.

(C) The employees were in an unguarded excavation and were not wearing protective eye and head gear.

(D) A fine of \$210.00 is assessed.

COMMONWEALTH

v.

BRAGUNIER MASONRY CONTRACTORS, INC.

No. C83-03993

February 9, 1984

GENERAL DISTRICT COURT FOR THE CITY OF WINCHESTER

David S. Whitacre, Commonwealth's Attorney, for Plaintiff
Joseph Repp, employee of Bragunier, for Defendant
Before the Honorable D.G. Simpson, Judge, General District Court

Disposition: Final, by Trial

Nature of the case: Citations were issued following a general schedule safety inspection in this case, two violations of the VOSH standards for construction. Specifically:

Serious Violation:

1. 1926.500(d)(1) Open-sided floors or platforms, six feet or more above adjacent floor or ground level, were not guarded by a standard railing or the equivalent on all open sides:
 - (a) Employees exposed to a fall hazard while working on the third floor of a structure which was an open-sided floor thirty feet from the ground west side of the building. They were receiving materials from a lift truck and working in the same area.

Penalty recommended: \$210.00

Other Than Serious Violation:

1. 1926.25(a) Debris was not kept cleared from the following areas:
 - (a) Employees exposed to a fall hazard while working in a structure which had scrap lumber, metal studs, broken blocks, wiring, pipe and other miscellaneous items on the floors of the structure at Boscawen Street.

No penalty assessed.

ORDER

It is hereby ORDERED that the plaintiff(s) recover from the defendant(s) the amount of \$210.00.

COMMONWEALTH

v.

EGA, INC.

No. E91-527

February 27, 1984

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

G. Edgar Dawson, Commonwealth's Attorney, for Plaintiff
Gary Marshall, Esquire, McGuire, Woods and Battle, for Defendant
Before the Honorable Henry J. Schrieberg, Judge

Nature of the case: The company was cited for the following violations of the VOSH standards for construction: 1926.905(i) and 1926.905(h) for which a penalty of \$210.00 was proposed. Subsequently the violation of 1926.905(i) was dropped.

ORDER

It appearing to the Court that the defendant stands charged with violation of standard, regulation or section of law number 1926.905(h).

The evidence adduced by the complainant showed that the defendant's equipment was in operation within fifty feet of the bore holes loaded with explosives.

The Court, after considering this evidence and the statement of counsel for the complainant assessed a fine of \$210.00, as suggested by said counsel.

COMMONWEALTH

v.

W. M. PARIS AND ASSOCIATES, INC.

No. F10218

March 2, 1984

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

G. Edgar Dawson, Commonwealth's Attorney, for Plaintiff
Philip C. Baxa, for Defendant
Before the Honorable E.L. Turlington, Jr., Judge

Disposition: Final, by Trial

Nature of the case: Defendant was cited for one serious and two "other" type violations as a result of an inspection on September 9, 1983.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney of the City of Richmond, and the defendant, W.M. Paris and Associates, Inc., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

<u>Alleged Violation</u>	<u>Type</u>	<u>Demand Penalty</u>	<u>Recommended Penalty</u>
1. 1926.651(c)	S	\$ 480.00	\$ 480.00
2. 1926.650(e)	O	-----	-----
3. 1926.450(a)(9)	O	-----	-----

In making this recommendation, the plaintiff has considered the gravity of the alleged violations, as well as the defendant's good faith, size, knowledge of the existence of the violations and history of previous violations.

2. Defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$480.00 will be paid in full pursuant to this Order.
- b. That complete abatement of the violative conditions noted in the citations accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citations unless such dates are extended by the Commissioner of the Department of Labor and Industry.

c. That a copy of this Order will be posted at the site of the violations for three working days or until abatement of the violations, whichever period is the longer.

3. If a Notice of Contest was filed, defendant stipulates:

d. That defendant has posted its Notice of Contest; and

e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties, it is

ADJUDGED, ORDERED and DECREED that the defendant pay forthwith unto the Clerk of the Court the sum of \$480.00.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.4.D of the Code of Virginia (1950), as amended, the Clerk of this Court shall transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$480.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

TAYLOR AND PARRISH, INC.

No. F37353

March 5, 1984

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

G. Edgar Dawson, Commonwealth's Attorney, for Plaintiff
Before the Honorable Robert Harris, Judge

Disposition: Final, by Consent Agreement

Nature of the case: A violation of the following VOSH standard for construction is alleged.

1. 1926.304(f) Section 4.19(a) American National Standards
Institutes 01.1-1961, Safety Code for Woodworking Machinery as adopted by 29 CFR 1926.304(f): The sides of the lower exposed portion of the blade of radial saw(s) were not guarded to the full diameter of the blade by a device that automatically adjusted itself to the thickness of the stock and remained in contact with the material being cut:
 - (a) Radial saw, Craftsman #670, 10' size, in use during construction at Children's Hospital was not equipped with guards for the bottom approximate 160° of cutting blade.

A \$160.00 penalty was recommended.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney of City of Richmond, and the defendant, Taylor and Parrish, Inc. in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

<u>Alleged Violation</u>	<u>Type</u>	<u>Demand Penalty</u>	<u>Recommended Penalty</u>
1. 1926.304(f)	S	\$ 160.00	\$ 160.00

In making this recommendation, the plaintiff has considered the gravity of the alleged violations, as well as the defendant's good faith, size, knowledge of the existence of the violations and history of previous violations.

2. Defendant agrees and stipulates to the following:
 - a. That the recommended penalties amounting to \$160.00 will be paid in full pursuant to this Order.
 - b. That complete abatement of the violative conditions noted in the citations accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citations unless such dates are extended by the Commissioner of the Department of Labor and Industry.
 - c. That a copy of this Order will be posted at the site of the violations for three working days or until abatement of the violations, whichever is longer.
3. If a Notice of Contest was filed, defendant stipulates:
 - d. That defendant has posted its Notice of Contest; and
 - e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties, it is

ADJUDGED, ORDERED and DECREED that the defendant pay forthwith unto the Clerk of the Court the sum of \$160.00.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.4.D of the Code of Virginia (1950), as amended, the Clerk of this Court shall transmit a certified copy of this order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$160.00 to the Treasury of the Commonwealth, as provided by the statute.

COMMONWEALTH

v.

SHENANDOAH MASONRY, INC.

No. F29605

March 6, 1984

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

G. Edgar Dawson, III, Commonwealth's Attorney, for Plaintiff
Before the Honorable R. W. Duling, Judge

Disposition: Final, by Consent Agreement

Nature of the case: A citation was issued following a general schedule inspection of defendant's jobsite. The violation alleged and contested was:

1. 1926.451(d)(10) Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than ten feet above the ground or floor:
 - (a) On the north side of the building, interior, masons were laying block while working on scaffolds which were not provided with guardrails or toeboards. Fall hazard 19'6".
 - (b) Masons were working on a tubular welded frame scaffold 19'6" high which was not provided with toeboards or a center rail on the guardrails. North side of building exterior.
 - (c) On the east side of the building along service corridor #1 and in front of columns 9 and 10 a mason was working on a tubular welded frame scaffold which did not have guardrails. Fall hazard 13'.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney of the City of Richmond, and the defendant, Shenandoah Masonry, Inc., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

<u>Alleged Violation</u>	<u>Type</u>	<u>Demand Penalty</u>	<u>Recommended Penalty</u>
1926.451(d)(10)	Serious	\$ 280.00	\$ 140.00

In making this recommendation, the plaintiff has considered the gravity of the alleged violations, as well as defendant's good faith, size, knowledge of the existence of the violations and history of previous violations.

2. Defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$140.00 will be paid in full pursuant to this Order.
- b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.
- c. That a copy of this Order will be posted at the site of the violation for three working days or until abatement of the violations, whichever period is the longer.

3. If a Notice of Contest was filed, defendant stipulates:

- d. That defendant has posted its Notice of Contest; and
- e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties, it is

ADJUDGED, ORDERED and DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$140.00.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.4.D of the Code of Virginia (1950), as amended, the Clerk of this Court shall transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$140.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

DEAN STEEL ERECTION COMPANY, INC.

March 12, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF AUGUSTA

David I. McCaskey, Commonwealth's Attorney, for Plaintiff
Cleveland M. Martin, representative, for Defendant
Before the Honorable Joseph E. Hess, Judge

Disposition: Final, by Consent Agreement

Nature of the case: Citation was issued following an accident investigation.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney of Augusta County, and the defendant, Dean Steel Erection Company, Inc., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

<u>Alleged Violation</u>	<u>Type</u>	<u>Demand Penalty</u>	<u>Recommend Penalty</u>
1. 1926.700(a)	S	\$ 480.00	\$ 300.00

In making this recommendation, the plaintiff has considered the gravity of the alleged violations, as well as the defendant's good faith, size, knowledge of the existence of the violations and history of previous violations.

2. Defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$300.00 will be paid in full pursuant to this Order.
- b. That complete abatement of the violative conditions noted in the citations accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citations unless such dates are extended by the Commissioner of the Department of Labor and Industry.
- c. That a copy of this order will be posted at the site of the violations for three working days or until abatement of the violations, whichever is the longer.

3. If a Notice of Contest was filed, defendant stipulates:

d. That defendant has posted its Notice of Contest; and

e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties, it is

ADJUDGED, ORDERED and DECREED that the defendant pay forthwith unto the Clerk of the Court the sum of \$300.00.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.4.D of the Code of Virginia (1950), as amended, the Clerk of this Court shall forward the sum of \$300.00 to the Treasury of the Commonwealth, as provided by the statute.

COMMONWEALTH

v.

CAPITAL MASONRY CORPORATION

No. C83-16930

March 19, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Commonwealth's Attorney, for Plaintiff
James Hatcher Johnson, Esquire, for Defendant
Before the Honorable Joseph F. Spinella, Judge

Disposition: Final, by Trial

Nature of the case: A citation was issued following an inspection initiated by a newspaper article. Specifically, a three part serious violation, and a two part other than serious violation is alleged.

Serious Violations:

- 1a. 1926.451(d)(10) Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than ten feet above the ground or floor:
- (a) Nineteen foot tubular welded frame scaffold erected along north side of stair tower was not equipped with guardrails.
 - (b) Nineteen foot tubular welded frame scaffold erected along east side of stair tower was not equipped with guardrails.
 - (c) 12'8" tubular welded frame scaffold erected along south side of stair tower was not equipped with guardrails.
- 1b. 1926.451(a)(2) Unstable objects were used to support scaffolds or planks:
- (a) Footing of nineteen foot scaffold tower erected along east side of stair tower consisted of concrete block, scrap 2x4's and pieces of plywood. Scaffold legs without baseplates were placed directly upon horizontal pine 2x10's, one end of which was supported by the block footing.
- 1c. 1926.451(a)(13) An access ladder or equivalent safe access was not provided:

- (a) Ladder not provided for access to deck of nineteen foot scaffold erected along north side of stair tower. Employees climbed scaffold frames.

Other Than Serious Violations:

1. 1926.51(a)(4) The common drinking cup was not prohibited:
 - (a) Individual drinking cups were not being used. Employees drank from same glass soft drink bottle and large paper cup.
2. 1926.400(a) Section 400-10, National Electrical Code, NFPA 70-1971, as adopted by 29 CFR 1926.400(a): Flexible cord(s) were not connected to device(s) and to fitting(s) so that tension would not be transmitted to joint(s) or terminal screw(s):
 - (a) 110 volt outlet cord of Clipper masonry saw was pulled out of its proper location at switch housing causing inner conductors to rub against metal housing. Saw located in center of first level.

ORDER

On March 19, 1984, came the plaintiff by its representative and by its counsel, Gary Aronhalt, Assistant Commonwealth's Attorney for Henrico County and came also the defendant by counsel, in response to a summons issued by the plaintiff pursuant to 40.1-49.4 of the Code of Virginia, duly served upon the defendant, and the court having heard the evidence and arguments by counsel for both parties, the court finds the following facts:

1. That on September 6, 1983, a representative of the plaintiff inspected a construction site at Cox and Innslake Drives, in Henrico County, Virginia, where the defendant was performing its services in construction of a building.

2. That as a result of said inspection the plaintiff found a number of violations to exist and pursuant to such findings a citation and notification of penalty was issued to the defendant on September 15, 1983, citing the defendant with violations enumerated therein, a copy of which has been filed herein as an exhibit and to which reference is made for description of the violations cited and penalty imposed.

3. That the plaintiff served the defendant with a copy of said citation by mailing same to it on September 15, 1983, by certified mail, said citation having been received by the defendant on September 16, 1983.

4. That defendant notified the plaintiff by letter dated October 6, 1983, received by the plaintiff October 7, 1983, that the defendant contested all violations and penalties contained in the citation.

5. That the court finds that all violations cited are violations of law and further that the defendant has corrected all violations.

6. That the penalty assessed for violation 1A, 1B and 1C is a fair penalty and is affirmed.

It is therefore ordered that the citation 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 \$560.00 be and it is hereby affirmed and the defendant is ordered to pay said sum of \$560.00 to the Virginia Department of Labor and Industry forthwith.

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, Post Office Box 12064, Richmond, Virginia 23241.

Enter Nunc Pro Tunc as of March 19, 1984.

COMMONWEALTH

v.

N. W. MARTIN AND BROS., INC.

No. C83-16931

March 19, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Commonwealth's Attorney, for Plaintiff
J. Hatcher Johnson, Esquire, for Defendant
Before the Honorable Joseph F. Spinella

Disposition: By Trial; Appealed

Nature of the case: Defendant was cited for serious violations of VOSH standards for construction. Specifically:

Section 1926.500(g)(1)

Section 1926.500(g)(5)

Section 1926.500(g)(6)(ii)

ORDER

On March 19, 1984, came the plaintiff by counsel, the Commonwealth's Attorney for this jurisdiction, and the defendant, by counsel, pursuant to a summons that was caused to be issued by the plaintiff pursuant to Section 40.1-49.4E. Upon consideration of the evidence and the arguments of the parties, the Court finds as follows:

1. On September 19, 1983, a representative of the plaintiff inspected the roof work being done by the defendant at the Byrd Field Flight Operations Center in Henrico County.

2. The Commonwealth has presented no evidence of the issuance of a citation, order of abatement, or notice of proposed penalty, as required by Section 40.1-40.4.

3. No employee or representative of employees of the defendant has appeared to seek party status in this matter.

4. The Court finds for the defendant and ORDERS the citation of the Commissioner vacated on the ground that the Commonwealth has failed to prove the Commissioner's compliance with the requirements of Section 40.1-49.4.

(Appealed and overturned)

COMMONWEALTH

v.

SOUTHERN BRICK CONTRACTORS

No. C84-02518

April 5, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Commonwealth's Attorney, for Plaintiff
Before the Honorable Joseph F. Spinella, Judge

Disposition: Final, by Trial

Nature of the case: A citation for violation of 1926.451(a)(13)

ORDER

On April 5, 1984, came the plaintiff by its representative and by its counsel, Gary K. Aronhalt, Assistant Commonwealth's Attorney for Henrico County, and came also the defendant by its representative, Stephen Catlett, in response to a summons issued by the plaintiff pursuant to Section 40.1-49.4 of the Code of Virginia, duly served upon the defendant, and the Court having heard the evidence and arguments by counsel for both parties, the Court finds the following facts:

1. That on December 16, 1983, a representative of the plaintiff inspected a construction site at Westmoreland Avenue and Thalboro Street, in Henrico County, Virginia, where the defendant was performing its services in the construction of a building.

2. That as a result of said inspection, the plaintiff found a violation to exist and pursuant to such finding, a citation and notification of penalty was issued to the defendant on January 3, 1984, citing the defendant with the violation enumerated therein, a copy of which has been filed herein as an exhibit and to which reference is made.

3. That the plaintiff served the defendant with a copy of said citation by mailing same to it on January 4, 1984, by certified mail, said citation having been received by the defendant on January 4, 1984.

4. That defendant notified the plaintiff by letter dated January 25, 1984, received by the plaintiff January 27, 1984, that the defendant does contest the violation set forth in the citation, no penalty having been set by the Commissioner.

5. That the court finds from the evidence that the violation cited is a violation of law in that the defendant furnished a ladder for use by its employees, that the ladder could not be kept in place due to the movable nature of the platform in use, that the employee used the supports of the scaffolding to descend from the platform rather than call for the ladder to be

put in place, and for that reason the defendant was in violation. The defendant took immediate steps to correct the situation.

6. That the court was of the opinion that the defendant cooperated fully and should not be held accountable for the violation under these circumstances,

It is therefore ORDERED that the citation issued by the plaintiff pursuant to Section 40.1-49.4 Code of Virginia be vacated.

The clerk is ordered to send a certified copy of this order to counsel for Plaintiff and to the representative of the defendant, Stephen H. Catlett, 2403 Westwood Avenue, Richmond, Virginia 23230, and to the Department of Labor and Industry, Virginia Occupational Safety and Health Program, Post Office Box 12064, Richmond, Virginia 23241.

COMMONWEALTH

v.

CATLETT-JOHNSON CORPORATION

No. F32201

April 9, 1984

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

Before the Honorable Henry J. Schrieberg, Judge, General District Court

Disposition: Final, by Trial

Nature of the case: Citations were issued following an inspection initiated by a complaint that violations of VOSH standards for construction existed on the jobsite. Specifically, one repeat violation is alleged.

1. 1926.450(a)(2) Defective ladder(s) were in use by employee(s).
 - (a) Ten foot wooden step ladder used on fifth floor had split bottom tread - corner braces were pulled loose as well.
 - (b) Top hinges of ten foot wooden step ladder used on northeast corner of fifth floor were not securely attached to side rails. Side rails at top and bottom were split out also.
 - (c) Third step of ten foot wood step ladder was completely cracked through for its entire length. Location - fifth floor, northeast corner.
 - (d) Eleven foot wooden step ladder used in fourth floor cart elevator area was missing its first step.

ORDER

On April 9, 1984, came the plaintiff by its representative and by its counsel, G. Edgar Dawson, III, Assistant Commonwealth's Attorney for the City of Richmond and came also the defendant by representative in response to a summons issued by the plaintiff pursuant to Section 40.1-49.4 of the Code of Virginia, duly served upon the defendant, and the court having heard the evidence and arguments by counsel for both parties, the court finds the following facts;

1. That on November 30, 1983, a representative of the plaintiff inspected a construction site at 403 North 13th Street in the City of Richmond, Virginia, based upon a complaint, where the defendant was performing its services in construction of a building.

2. That as a result of said inspection the plaintiff found a violation of VOSH standard 1926.450(a)(2) to exist. Such violation was classified as a repeat violation as the same violation had been found on the same jobsite as a result of an inspection on February 1-8, 1983. Pursuant to such findings a citation and notification of penalty was issued to the defendant on December 9, 1983, citing the defendant with the violation enumerated therein, a copy of which has been filed herein as an exhibit and to which reference is made for description of the violations cited and penalty imposed.

3. That the plaintiff served the defendant with a copy of said citation by mailing same to it on December 19, 1983, by certified mail, said citation having been received by the defendant on December 22, 1983.

4. That defendant notified the plaintiff by letter dated December 30, 1983, received by the plaintiff January 3, 1984, that the defendant contested all violations and penalties contained in the citation.

5. That the court finds that the violation cited is a violation of law and further that the defendant has corrected the violation.

6. That the penalty assessed for violation 1 is a fair penalty and is affirmed.

It is therefore ORDERED that the citation 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 \$200.00 be and it is hereby affirmed and the defendant is ordered to pay said sum of \$200.00 to the Virginia Department of Labor and Industry forthwith.

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, Post Office Box 12064, Richmond, Virginia 23241.

COMMONWEALTH

v.

J. A. WALDER, INC.

April 27, 1984

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

G. Edgar Dawson, Commonwealth's Attorney, for Plaintiff
Before the Honorable E.L. Turlington, Jr., Judge

Disposition: Final, by Consent Agreement

Nature of the case: The following serious violation of the VOSH standards for construction is alleged and a \$400.00 penalty recommended.

1. 1926.651(v) In locations where oxygen deficiency or gaseous conditions were possible, air in the excavation was not tested:
 - (a) Employees entered caissons along G-line in the course of their work and atmospheric tests were not made to determine if hazardous conditions existed. Location caisson G-6.

SETTLEMENT AGREEMENT

Came this day plaintiff by counsel, the Commonwealth's Attorney for the City of Richmond, and defendant, by representative as allowed by Section 40.1-49.4.0, in order to provide for the safety, health and welfare of defendant's employees and to conclude this matter without further litigation, stipulated and agreed as follows:

1. The defendant is before this court pursuant to Section 40.1-49.4E contesting a citation VOSH No. W8522-076-83 issued to it by the plaintiff.
2. A copy of the citation, 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.
3. No employee or employee representative has appeared in this matter or has filed a notice of contest of the abatement time.
4. Plaintiff and Defendant have agreed that a violation of 1926.651(v) existed on the jobsite, that such violation was determined to be "serious" and that a \$200.00 amended penalty was assessed.
5. Plaintiff and Defendant have agreed that the following "other than serious" violations existed on the jobsite for which no penalty is assessed:
 - (a) 1926.251(a)(1): defective rigging equipment was not removed from service.

- (b) 1926.400(a): cord entering vibrating motor housing was rubbing against motor's metal casing. Flexible cord was not connected to motor to prevent strain on terminal screws.
- (c) 1926.550(a)(9): accessible areas within the swing radius of the rear of cranes were not barricaded.

6. Plaintiff and Defendant have agreed to the withdrawal of "other than serious" violations of:

- (a) 1926.402(a)(4): Unsafe attachment plugs.
- (b) 1926.550(b)(2): Illegible capacity chart for crane.

7. Such agreements have been embodied in an amended citation attached herewith as Appendix A.

8. In entering this agreement, the defendant does not admit to any violation or to any civil liability arising from any violations alleged in this matter.

WHEREFORE, upon the agreement of the parties and for good cause shown and pursuant to Section 40.1-49.4, it is

AGREED that the defendant abated the violations cited in this matter within the time shown in the amended citation attached hereto as Appendix A. Each such violation cited in Appendix A is hereby affirmed. \$200.00 as civil penalties for the serious violation has been assessed.

The Defendant shall transmit a check in this amount payable to the Treasury of Virginia together with this signed agreement to Virginia Occupational Safety and Health, Post Office Box 12064, Richmond, Virginia 23241. The Defendant shall post a copy of this agreement at the site of violation for three working days or until abatement of the violation, whichever period is longer.

COMMONWEALTH

v.

A. A. BEIRO CONSTRUCTION COMPANY, INC.

No. L83-2254

May 14, 1984

CIRCUIT COURT FOR THE CITY OF NORFOLK

Leah A. Darron, Legal Intern, Virginia Department of Labor and Industry,
for Commonwealth, Appellee
Gerald I. Katz, Esquire, for Appellant
Before the Honorable Alfred W. Whitehurst, Judge, Circuit Court

Disposition: Final, by Trial

Nature of the case: This case was heard on appeal from a finding in favor of the Commonwealth in General District Court on June 17, 1983. The case was heard de novo.

ORDER

This case comes on a summons issued by the Commonwealth against the defendant for violations of workers standards.

FACTS

1. 1926.451(d)(10) Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than 10 feet above the ground on floor:
 - (a) Employees working on the tubular welded frame scaffold 41 feet above the sidewalk were not protected from falling due to guardrails not installed around the working surface.
2. 1926.451(a)(13) An access ladder or equivalent safe access to scaffold(s) was not provided:
 - (a) A ladder was not used to give safe access to the various working levels on the tubular welded frame scaffold. The frames used were not designed to be used as a ladder.
3. 1926.400(a) Section 110-17(a), National Electrical Code, NFPA 70-1971, as adopted by 1926.400(a): Live part(s) of electrical equipment operating at 50 volts or more were not guarded against accidental contact by approved cabinet(s) or other form(s) of approved enclosure(s) or any other approved means:

- (a) A receptacle located on the second floor, south wall, being used to supply a 7¼ inch skill circular saw did not have a faceplate installed to prevent accidental contact with 120 volts A.C. by employees working in the area.

The third violation was dismissed in the General District Court; the search without a warrant is not contested.

OPINION

The defendant was engaged in the renovation of a building on Granby Street in Norfolk. The Compliance Officer by chance happened by and noticed the work in progress. Witnesses were presented and examined by the Commonwealth and defense.

The Court finds that the defendant company has an excellent safety program, but on this occasion there were two violations:

1. Some of the employees were working on a scaffold 41 feet above the sidewalk not protected by guardrails nor were the workmen wearing safety belts.
2. The ladder-like corner braces of the scaffolding were not a proper ladder substitute to reach the scaffold. They did not extend beyond the scaffold to allow safe entry to the platform. There also existed a number of pins protruding from the bar between the rungs which presents a danger to catch the pants-leg.

The Court imposes a penalty of \$500.00.

COMMONWEALTH

v.

R. J. SMITH BUILDERS, INC.

No. C83-001259

June 7, 1984

GENERAL DISTRICT COURT FOR THE CITY OF WILLIAMSBURG

George C. Fairbanks, IV, Assistant Commonwealth's Attorney, for Plaintiff
Joseph Stellute, for Defendant
Before the Honorable J.R. Zepkin, Judge

Disposition: Final, by Trial

Nature of the case: Citations were issued following an accident investigation.
Violations included:

Serious Violation:

1. 1926.500(c)(1) Wall opening(s) from which there was a drop of more than four feet, and the bottom(s) of the opening(s) 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) Employees were working closer than six feet to an unguarded wall opening on the third floor of the building. The wall opening was a doorjamb, providing access to a later to be installed staircase, midway of the south side of the building. The fall distance from the work elevation to the ground floor slab was 16'10".

Other Than Serious Violations:

1. 1926.50(d)(1) First-aid supplies approved by the consulting physician were not easily accessible when required:
 - (a) No first-aid supplies were available for use on employees in the event of an emergency.
2. 1926.100(a) Employee(s) working where there was a possible danger of head injuries were not protected by protective helmets:
 - (a) Employees were allowed to work in several areas in and around the building without the benefit of head protection.

ORDER

This day came the plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and defendant, by counsel, pursuant to a summons, to be heard upon the defendant's contest of a Virginia Occupational Safety and Health citation issued by the plaintiff. Upon consideration of the evidence and the arguments of the parties, the Court finds as follows:

1. Subsequent to an inspection by the plaintiff of the defendant's work place in this jurisdiction, the plaintiff issued a timely citation VOSH No. W2065-022-83 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 to contest.

3. The Court finds for the defendant and ORDERS that the citation be vacated on the following grounds: Failure of the Commonwealth to show that the defendant, R.J. Smith Builders, Inc., was negligent in maintaining a guardrail for the protection of workers on the second story.

SUBJECT INDEX

	<u>Page</u>
A	
ABRASIVE WHEEL MACHINERY	13
AIR CONTAMINANTS	7
B	
C	
CRANES AND DERRICKS	35-36,60
D	
DERRICKS (see CRANES AND DERRICKS)	
E	
ELECTRICAL	17-18,28 52,60,61
EXCAVATION, TRENCHING AND SHORING	22,39,59
EXPLOSIVES	42
F	
FIRE PROTECTION Flammable and Combustible Liquids	24,27
G	
GENERAL DUTY CLAUSE	6
GUARDRAILS, HANDRAILS AND COVERS	24,27,41 63
H	
HOUSEKEEPING	27,41
I	
J	
K	
L	
LADDERS	24,28,57
LIFE SAVING EQUIPMENT (see PERSONAL PROTECTIVE EQUIPMENT)	
M	
MATERIALS HANDING, STORAGE, USE AND DISPOASL	27,34,59
MECHANICAL POWER TRANSMISSION APPARATUS	16,17
MEDICAL SERVICES AND FIRST AID	63

	<u>Page</u>
	N
NOISE EXPOSURE	2
	O
	P
PERSONAL PROTECTIVE EQUIPMENT	
Eye and Face Protection	39
Head Protection	63
Respiratory Protection	7-8
Safety Nets	24
	Q
	R
RADIAL SAWS	12
	S
SANITATION	34,52
SCAFFOLDING	28,29,47 51,52,61
SHORING (see EXCAVATION, TRENCHING AND SHORING)	
STAIRWAYS	12,28
STEEL ERECTION	36
STORAGE REQUIREMENTS	27
	T
TRENCHING (see EXCAVATION, TRENCHING AND SHORING)	
	U
	V
	W
WELDING AND CUTTING	
Arc	34
Fire Prevention	27
Generally	17
WOODWORKING MACHINERY REQUIREMENTS	12,13,45
WOODWORKING TOOLS	45

STANDARDS INDEX
GENERAL INDUSTRY STANDARDS

	<u>Page</u>
<u>SUBPART D -- WALKING-WORKING SURFACES</u>	
1910.22 General Requirements	14
1910.23 Guarding Floor and Wall Openings	
(a)(8)	14
(c)(1)	14,18
(d)(1)(iii)	12
<u>SUBPART E -- MEANS OF EGRESS</u>	
1910.36 General Requirements	18
1910.37 Means of Egress, General	18
<u>SUBPART G -- OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROL</u>	
1910.95 Occupational Noise Exposure	2,5
<u>SUBPART H -- HAZARDOUS MATERIALS</u>	
1910.101 Compressed Gases	18
<u>SUBPART I -- PERSONAL PROTECTIVE EQUIPMENT</u>	
1910.132 General Requirements	18
1910.134 Respiratory Protection	
(b)(1)	18
(e)(5)	7
<u>SUBPART L -- FIRE PROTECTION</u>	
1910.157 Portable Fire Extinguishers	14
<u>SUBPART N -- MATERIALS HANDLING AND STORAGE</u>	
1910.178 Powered Industrial Trucks	18
<u>SUBPART O -- MACHINERY AND MACHINE GUARDING</u>	
1910.212 General Requirements	18

SUBPART O -- Continued

	<u>Page</u>
1910.213 Woodworking Machinery Requirements	
(b)(3)	14
(b)(6)	14
(d)(1)	14
(h)(1)	12,14
(h)(3)	12
(h)(4)	12
(h)(5)	13
1910.215 Abrasive Wheel Machinery	13,18
1910.217 Mechanical Power Presses	18
1910.219 Mechanical Power-Transmission Apparatus	
(c)(4)(i)	18
(d)(1)	14,16
(e)(1)(i)	14,17
(e)(3)(i)	14,17
(f)(1)	17

SUBPART P -- HAND AND PORTABLE POWERED TOOLS AND OTHER
HAND-HELD EQUIPMENT

1910.242 Hand and Portable Powered Tools and Equipment, General	14
1910.252 Welding, Cutting and Brazing	17,18

SUBPART S -- ELECTRICAL

1910.303 General Requirments	14,17
1910.304 Wiring Design and Protection	
(a)(2)	18
(f)(4)	14
1910.305 Wiring Methods, Components, and Equipment for General Use	
(a)(1)(i)	18
(b)(1)(iii)	18
(b)(2)	14,18
(g)(2)(ii)	18
(g)(2)(iii)	14
(j)(4)(ii)(f)	18
(j)(4)(iv)(b)	14

SUBPART Z -- OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS

1910.1000 Air Contaminants	7
----------------------------------	---

STANDARD INDEX
CONSTRUCTION STANDARDS

	<u>Page</u>
GENERAL DUTY	32
 <u>SUBPART C -- GENERAL SAFETY AND HEALTH PROVISIONS</u>	
1926.25 Housekeeping	41
1926.28 Personal Protective Equipment	24
 <u>SUBPART D -- OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS</u>	
1926.50 Medical Services and First Aid	63
1926.51 Sanitation	34,52
 <u>SUBPART E -- PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT</u>	
1926.100 Head Protection	63
1926.102 Eye and Face Protection	39
1926.105 Safety Nets	24
 <u>SUBPART F -- FIRE PROTECTION AND PREVENTION</u>	
1926.152 Flammable and Combustible Liquids	
(c)(4)(i)	27
(g)(9)	24,27
 <u>SUBPART H -- MATERIALS HANDLING, STORAGE, USE, AND DISPOSAL</u>	
1926.250 General Requirements for Storage	27
1926.251 Rigging Equipment for Material Handling	34,59
 <u>SUBPART I -- TOOLS -- HAND AND POWER</u>	
1926.304 Woodworking Tools	45
 <u>SUBPART J -- WELDING AND CUTTING</u>	
1926.351 Arc Welding and Cutting	34
1926.352 Fire Prevention	27

	<u>Page</u>
<u>SUBPART K -- ELECTRICAL</u>	
1926.400 General Requirements	52,60,61
1926.402 Equipment Installation and Maintenance	
(a) (4)	60
(a) (11)	28
<u>SUBPART L -- LADDERS AND SCAFFOLDING</u>	
1926.450 Ladders	
(a) (1)	28
(a) (2)	28,57
(a) (7)	28
(a) (9)	24,43
(a) (10)	28
1926.451 Scaffolding	
(a) (2)	51
(a) (4)	52
(a) (13)	51,55,61
(d) (10)	47,51,61
(e) (2)	29
(e) (4)	28,29
(e) (5)	28
<u>SUBPART M -- FLOOR AND WALL OPENINGS AND STAIRWAYS</u>	
1926.500 Guardrails, Handrails and Covers	
(b) (2)	34
(c) (1)	63
(d) (1)	24,25,41
(g) (1)	54
(g) (5)	54
(g) (6) (ii)	54
1926.501 Stairways	28
<u>SUBPART N -- CRANES, DERRICKS, HOISTS, ELEVATORS, AND CONVEYORS</u>	
1926.550 Cranes and Derricks	
(a) (2)	35
(a) (6)	35
(a) (9)	35,60
(b) (2)	35,36,60
<u>SUBPART P -- EXCAVATIONS, TRENCHING AND SHORING</u>	
1926.650 General Protection Requirements	39,43

<u>SUBPART P -- Continued</u>	<u>Page</u>
1926.651 Specific Excavation Requirements	
(c)	39,43
(i) (1)	22
(v)	59
 <u>SUBPART Q -- CONCRETE, CONCRETE FORMS, AND SHORING</u>	
1926.700 General Provisions	49
 <u>SUBPART R -- STEEL ERECTION</u>	
1926.752 Bolting, Riveting, Fitting-Up, and Plumbing-Up	36
 <u>SUBPART U -- BLASTING AND THE USE OF EXPLOSIVES</u>	
1926.905 Loading of Explosives or Blasting Agents	42

STANDARD INDEX
CONSTRUCTION STANDARDS

	<u>Page</u>
GENERAL DUTY	32
 <u>SUBPART C -- GENERAL SAFETY AND HEALTH PROVISIONS</u>	
1926.25 Housekeeping	41
1926.28 Personal Protective Equipment	24
 <u>SUBPART D -- OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS</u>	
1926.50 Medical Services and First Aid	63
1926.51 Sanitation	34,52
 <u>SUBPART E -- PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT</u>	
1926.100 Head Protection	63
1926.102 Eye and Face Protection	39
1926.105 Safety Nets	24
 <u>SUBPART F -- FIRE PROTECTION AND PREVENTION</u>	
1926.152 Flammable and Combustible Liquids	
(c) (4) (i)	27
(g) (9)	24,27
 <u>SUBPART H -- MATERIALS HANDLING, STORAGE, USE, AND DISPOSAL</u>	
1926.250 General Requirements for Storage	27
1926.251 Rigging Equipment for Material Handling	34,59
 <u>SUBPART I -- TOOLS -- HAND AND POWER</u>	
1926.304 Woodworking Tools	45
 <u>SUBPART J -- WELDING AND CUTTING</u>	
1926.351 Arc Welding and Cutting	34
1926.352 Fire Prevention	27