

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

VOLUME XXIII
JULY 1, 2001 - JUNE 30, 2002



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

PREFACE

This publication contains the orders of the Virginia Circuit Courts in contested cases from July 1, 2001, through June 30, 2002, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of §40.1-49.7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, C. 354)."

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

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

C. RAY DAVENPORT,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH02-108
)	
A. D. WHITTAKER CONSTRUCTION, INC.)	
)	
Defendant.)	

AGREED ORDER

WHEREAS, on or about September 29, 2000, the Commissioner issued a citation to the defendant A. D. Whittaker Construction, Inc. (A. D. Whittaker) alleging two Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry, and proposing total penalties of \$3,375.00. (A copy of the citation identified as VOSH inspection number 303249825 is attached); and

WHEREAS, A. D. Whittaker filed, within 15 working days from the date of the receipt of the citations, a written notice contesting all violations and proposed penalties, as provided for in § 40.1-49.4 of the Code of Virginia; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of A. D. Whittaker, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be

amended as follows:

- a. *Serious citation 1, Item 1* and the proposed civil penalty of \$2,500.00 is affirmed as issued.
- b. *Serious citation 1, Item 2a-b* and the \$875.00 proposed civil penalty is vacated.

These amendments will be made, provided A. D. Whittaker complies with requirements listed in paragraphs 2 through 5 below;

2. that A. D. Whittaker shall pay \$2,500.00 to the Commissioner upon execution of this Agreed Order; due within fifteen days of receipt of the same, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 303249825 noted on the payment;

3. that A. D. Whittaker will post a copy of this Agreed Order at each of its work sites in Virginia, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;

4. that A. D. Whittaker certifies that the affirmed violation Item 1-1 referenced above in this Agreed Order has been corrected and abated; If not already provided, the Employer agrees to provide to the Commissioner within thirty (30) days of the effective date of this Order documentation verifying abatement of the violation affirmed above. The documentation shall comply with §307.E.2. of the VOSH Administrative Regulations Manual, providing that “Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records.” The documentation shall be provided to:

Ron Graham, VOSH Compliance Manager
Virginia Department of Labor and Industry, Richmond Regional Office
Main Street Station, 1500 E. Main Street, Suite 222
Richmond, VA 23219
Phone 804/ 371-0444

5. that A. D. Whittaker’s failure to comply with the terms of the above terms, particularly the terms of paragraphs 2 through 4 above, shall constitute a breach of this Agreed Order; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become**

a final order of the Commissioner; and any unpaid amount shall become due and payable 15 days following the breach;

6. that A. D. Whittaker withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by A. D. Whittaker of civil liability for any violation alleged by the Commissioner;

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

Entered this 24th day of April, 2002.

John Richard Alderman
Judge John Richard Alderman

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Alfred B. Albiston (VSB #29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8418

Seen and agreed:

A. D. WHITTAKER CONSTRUCTION, INC.

Lisa Spickler Goodwin
Lisa Spickler Goodwin (VSB #37804)
Counsel for Defendant
Hirschler, Fleischer, PC
P. O. Box 500
Richmond, Virginia 23218-0500

804/ 771-9500, Fax 644-0957

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

C. RAY DAVENPORT , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH01-12,277
)	
BATESON CONSTRUCTION, INC. ,)	
Successor corporation in fact to N & D Corporation Inc.)	
)	
Defendant.)	

**DECREE PRO CONFESSO AND
SUBSTITUTION OF PLAINTIFF**

This cause came to be heard upon former Commissioner Jeffrey D. Brown’s Motion for Decree Pro Confesso against Bateson Construction, Inc., argued before this Court on March 4, 2002, declaring that a \$20,000.00 proposed civil penalty arising from a contested Virginia Occupational Safety and Health (VOSH) citation, identified by VOSH Inspection Number 301824587 and as attached to the Commissioner's Bill of Complaint, be upheld as a final order of this Court, and plaintiff furthermore moved that C. Ray Davenport, Commissioner of Labor and Industry, be substituted as party plaintiff.

Former Commissioner Jeffrey D. Brown filed a bill of complaint against Bateson Construction, Inc., Defendant, on January 3, 2002. Virginia Governor Mark Warner subsequently appointed C. Ray Davenport to succeed Jeffrey D. Brown as Commissioner of Labor and Industry, effective March 4, 2002.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days elapsed since service of process on the Defendant, and that during that twenty -one day period, and over the thirty days subsequent to its default, the Defendant filed no responsive pleading, nor made an

appearance in this action on its behalf; it is therefore

ADJUDGED, ORDERED, and DECREED the Plaintiff be awarded judgment by default in this cause against the Defendant, affirming that Bateson Construction, Inc. be held liable for payment to the Commonwealth of Virginia of a \$20,000.00 civil penalty, arising from the contested Virginia Occupational Safety and Health (VOSH) citation identified under Inspection No. 301824587, and FURTHERMORE, that Commissioner Davenport, under Rule 2:16 of the Rules of the Supreme Court of Virginia, be substituted as party plaintiff in this action as successor in interest to Jeffrey D. Brown;. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket, place it among the ended chancery cases, and shall mail certified copies of this order to the Defendant and Plaintiff's legal counsel. Pursuant to Rule 1:13, endorsement by defense counsel shall be dispensed with.

JUDGE: Paul M. Peatross, Jr.

ENTER: 4/2/02

I ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: Alfred B. Albiston
Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8419

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

JEFFREY D. BROWN,)	
Commissioner of Labor and Industry,)	
Plaintiff,)	
)	
v.)	Chancery No. CH00021347
)	
BEST G. C., INCORPORATED)	
Defendant.)	

MOTION FOR DECREE PRO CONFESSO

Jeffrey D. Brown, Commissioner of the Virginia Department of Labor and Industry, by counsel, moves that a Decree Pro Confesso be entered against Best G. C., Incorporated. (Best), and -in support of this motion, alleges as follows

1. This cause of action was brought by the Commissioner for violations of the occupational safety and health provisions of Chapter 3, Title 40.1 of the Code of Virginia, and standards, rules and/or regulations adopted pursuant to statutory authority.
2. On October 16, 2000, the Commissioner filed a Bill of Complaint with the Clerk of this Court against Best pursuant to Code § 40.1-49.4(E).
3. The Bill of Complaint was served on Best's Registered Agent on October 25, 2000.
- d. Best has not filed an answer or otherwise responsive pleading in this action nor has any appearance herein been entered on its behalf. Best had twenty-one (21) days from October 25, 2000, the date service was made upon it, in which to file it's pleadings in response to the Plaintiff's Bill of Complaint. The twenty-on(21) day period expired on November 15, 2000. Best has therefore taken Plaintiffs Bill to be Confessed..

ON THIS BASIS, the Commissioner of Labor and Industry moves the court to issue a DECREE PRO CONFESSO affirming each of the violations attached in Exhibit A, the combined penalties of

\$2480 and requiring abatement of all violations.

THE DECREE IS SO ORDERED, this 11th day of September, 2001:

J. Leyburn Mosby, Jr.
Judge

I ASK FOR THIS:
Jeffrey D. Brown, Commissioner

By: Carol L. Alston

Carol L. Alston (VSB# 43415)
Special Assistant Commonwealth's Attorney
Virginia Department of Labor and Industry
13 South 13th Street, Powers-Taylor Building
Richmond; Virginia 23219
Phone: (804) 786-0682

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

C. RAY DAVENPORT, Commissioner of)
 Labor and Industry,)
)
 Plaintiff,)
)
 v.)
)
CLYDE S. GAY,)
d/b/a CREDO CONSTRUCTION COMPANY,)
)
 Defendant)

Chancery No. CH02-12

AGREED ORDER

WHEREAS, on or about June 8, 1999, the Commissioner issued a citation to Credo Construction Company, under the sole proprietorship of Clyde S. Gay (Clyde Gay) alleging three Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry. The Commissioner proposed total penalties of \$2,100.00. (A copy of the citation is attached);

WHEREAS, Clyde Gay filed, within 15 working days from the date of the receipt of the citations, a written notice contesting all violations and proposed penalties, as provided for in § 40.1-49.4 of the Code of Virginia; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Clyde Gay, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:

- a. *Serious citation 1, Item 1* is affirmed. Clyde Gay owes \$200.00 in lieu of the proposed penalty of \$750.00.
- b. *Serious citation 1, Item 2* is affirmed as issued. Clyde Gay owes \$200.00 in lieu of the proposed penalty of \$600.00.
- c. *Grouped Serious citation 1, Item 3a and 3b* is affirmed as issued. Clyde Gay owes \$200.00 in lieu of the proposed penalty of \$750.00.

These amendments will be made, provided Clyde Gay complies with requirements listed in paragraphs 2 through 5 below;

2. that Clyde Gay shall pay \$600.00 to the Commissioner upon his execution of this agreement; made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 301807756 noted on the payment;
3. that Clyde Gay will post a copy of this Agreed Order at each of its work sites in Virginia, if any exist, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;
4. that Clyde Gay certifies that all violations referenced above in this agreement have been corrected and abated;
5. that Clyde Gay's failure to comply with the terms of this Settlement Agreement, particularly the terms of paragraphs 2 through 5 above, shall constitute a breach of this agreement; **upon the occurrence of any such breach, the original penalties for this citation will be affirmed and become a final order of the Commissioner;** and any unpaid amount shall become due and payable 15 days following the breach;
6. that Clyde Gay withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;
7. that this Order is meant to compromise and settle the above contested claims, and does not

purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Clyde Gay of civil liability for any violation alleged by the Commissioner;

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

Entered this 9th day of April, 2002.

J. P. Fulton
Judge

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Alfred B. Albiston (VSB #29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8418

Seen and agreed:

CLYDE S. GAY

Clyde S. Gay
Clyde S. Gay, President and Owner
Credo Construction Company
1051 Naval Avenue
Portsmouth, Virginia 23704
757/ 692-7770

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL

JEFFREY D. BROWN, Commissioner of)
Labor and Industry,)

Plaintiff,)

v.)

Chancery No. CH 01-32

INTERIOR SPECIALTY CONSTRUCTION, INC.,)

Serve: James D. Schimpf, Jr., Registered Agent)
Interior Specialty Construction, Inc.)

10407 Dow-Gil Road)

Ashland, Virginia 23005,)

Defendant.)

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Jeffrey D. Brown’s Motion for Decree Pro Confesso against Interior Specialty Construction, Inc., declaring that the contested Virginia Occupational Safety and Health (VOSH) citation and penalty totaling \$3,500.00, identified by VOSH Inspection Number 301821815 and as attached to the Commissioner's Bill of Complaint, be upheld. At the hearing on June 6, 2001, the Court determined that the Defendant had not filed an answer or other responsive pleading within twenty-one days of March 20, 2001, the date that service of process was made on the Defendant’s statutory agent. The Court ordered the parties to enter into negotiations to determine the amount of penalty to be paid by Defendant, and, if no agreement could be reached, to set a date to hear evidence and fix the amount of Defendant’s penalty. The parties, by their attorneys, have agreed that Defendant will pay a new total penalty of \$2,800.00, as outlined in the attached settlement agreement duly executed by both parties.

UPON CONSIDERATION WHEREOF, it appearing to the Court that for good cause shown Plaintiff's motion should be granted, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be and hereby is awarded judgment by default in this cause affirming the VOSH citation and the new, negotiated penalty totaling \$2,800.00, and requiring abatement of the violations. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall strike this matter from the docket and place it among the ended chancery cases.

The Clerk shall mail certified copies of this Decree to both parties.

James Dalton
Judge

7/20/01
Date

I ASK FOR THIS:

JEFFREY D. BROWN,
Commissioner of Labor and Industry

By: Elizabeth A. Andrews
Counsel

Elizabeth A. Andrews, Esq.
Special Assistant Commonwealth's Attorney
Virginia Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
(804) 786-4921

SEEN AND AGREED TO:

INTERIOR SPECIALTY CONSTRUCTION, INC.

By: John S Morris, III
Counsel

John S. Morris, III, Esq.
Beale, Balfour, Davidson & Etherington, P.C.
Suite 1200
701 East Franklin Street
Richmond, Virginia 23219-2503
(804) 788-1500

VIRGINIA.:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JEFFREY D. BROWN,)	
Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No: CH01-491
)	
JOHN STEVENSON)	
)	
Defendant)	

MOTION FOR DECREE PRO CONFESSO

Jeffrey D. Brown, Commissioner of the Virginia Department of Labor and Industry, by counsel, moves that a Decree Pro Confesso be entered against John Stevenson (Stevenson), and in support of this motion, alleges as follows:

1. This cause of action was brought by the Commissioner for violations of the occupational safety and health provisions of Chapter 3, Title 40.1 of the Code of Virginia, and standards, rules and/or regulations adopted pursuant to statutory authority.
2. On March 20, 2001, the Commissioner filed a Bill of Complaint with the Clerk of this Court against Stevenson pursuant to Code § 40.1-49.4(E).
3. The Bill of Complaint was served on Stevenson on May 19, 2001.
4. Stevenson has not filed an answer or otherwise responsive pleading in this action nor has any appearance herein been entered on its behalf. Best had twenty-one (21) days from May 19, 2001, the date service was made upon it, in which to file its pleadings in response to the Plaintiffs Bill of Complaint. The twenty-one (21) day period expired on June 8, 2001. Stevenson has therefore taken Plaintiff's Bill to be Confessed.

ON THIS BASIS, the Commissioner of Labor and Industry moves the court to issue a DECREE PRO CONFESSO affirming each of the violations attached in Exhibit A, the combined penalties of \$3000 and requiring abatement of all violations.

THE DECREE IS SO ORDERED, this 24th day of August, 2001:

Everett A. Martin, Jr.

Judge

I ASK FOR THIS:

Jeffrey D. Brown, Commissioner

By: Carol L. Alston
Carol L. Alston (VSB# 43415)
Special Assistant Commonwealth's Attorney
Virginia Department of Labor and Industry
13 South 13th Street, Powers-Taylor Building
Richmond, Virginia 23219
Phone: (804) 786-0682
Facsimile: (804) 786-8418

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF MECKLENBURG

JEFFREY D. BROWN, Commissioner of)	
Labor & Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH00-259
)	
JONES BROS., INC.)	
)	
Defendant.)	

FINAL ORDER

This matter came before the Court for trial on August 2, 2001, based upon Jones Bros. Inc.'s (Jones Bros.'s) contest of Virginia Occupational Safety and Health (VOSH) citations and proposed penalties issued to it by the Commissioner of Labor and Industry (Commissioner Brown). After hearing all of the evidence presented by both parties, the Court, as recorded in the attached Transcript, ruled as follows:

1. Commissioner Brown proved by a preponderance of the evidence, with regard to each violation, that the cited regulation applied, that there was failure to comply with each regulation, that an employee had access to a hazardous condition, and that Jones Bros. knew, or should have known with reasonable diligence, that the condition existed.
2. With reference to the affirmative defense of intentional employee misconduct, Jones Bros did not prove by a preponderance of the evidence that it took reasonable measures to discover employee misconduct or to enforce its internal work rules.
3. Citation 1, item 1a, § 1926.501(b)(1) and Citation 1, item 1b, § 1926.501(b)(4)(ii) are affirmed as a single grouped serious violation, and a civil penalty of \$1,875.00 is assessed for the violation.
4. Citation 1, item 2, § 1926.701(b) is affirmed as a serious violation, and a civil penalty of

\$1,875.00 is assessed for the violation.

5. Citation 2, item 1, § 1926.51(c)(1) is affirmed as an other-than-serious violation with no civil penalty assessed.

It is ORDERED, ADJUDGED, and DECREED that judgment be and is hereby entered in favor of the Plaintiff, Jeffrey D. Brown, Commissioner of Labor & Industry in the amount of \$3,750.00. The Defendant shall pay the civil penalty within fifteen (15) days of the entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia. The Defendant shall post a copy of this Order for thirty consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted. The Commissioner may use this order in future proceedings under *Virginia Code* §§ 40.1-49.4(I), -49.4(J), -49.4(K), or any other authority. This matter be, and hereby is, dismissed with full prejudice and stricken from the docket of this Court.

Entered this 29th day of October, 2001.

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

William L. Wellons
The Honorable William L. Wellons
Circuit Court Judge

WE ASK FOR THIS:

JEFFREY D. BROWN, Commissioner
of Labor and Industry

Alfred B. Albiston

Alfred B. Albiston (VSB # 29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
(804)786-4289/ 786-8418 Fax

SEEN AND OBJECTED TO:

JONES BROS., INC.

Fred R. Kozak

Fred R. Kozak (VSB # 17791)
Rick & Kozak
P. O. Box 358
Powhatan, Virginia 23139
(804) 598-8315/ Fax 598-8655

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA

JEFFREY D. BROWN, Commissioner of)	
Labor & Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH01-557
)	
KENMOR ELECTRIC CO., L.P.,)	
)	
Defendant.)	

FINAL ORDER

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

1. That the violations in the citation attached to the Bill of Complaint are affirmed as written, but the total penalty is reduced to \$4,500.00;
2. That the Defendant shall pay the total penalty of \$4,500.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 301810263 noted on the payment;
3. That, as consideration for the modification of the original penalty, the Defendant agrees to submit to the Commissioner, within fifteen (15) days of the date of entry of this order, a sworn affidavit from Defendant's president that the company will not conduct business in Virginia within the next five (5) years. The affidavit shall be sent to:

Thomas R. Rozman, Regional Director
Virginia Department of Labor & Industry
Richmond Regional Office, Main Street Station
1500 East Main Street, Suite 222
Richmond, Virginia 23219

4. That, in the event that the Defendant fails to comply with paragraph 3 of this Order, the penalty reduction described above shall be null and void and the citation and penalty shall be reinstated as originally issued and shall become a final order;
5. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;
6. That the Defendant shall certify within fifteen (15) days of the entry date of this Order that all violations affirmed in this Order have been abated;
7. That the Defendant shall post a copy of this Order for thirty (30) consecutive days, beginning from the date of entry of this Order, at its workplaces in Virginia in a conspicuous location where notices to its employees are generally posted;
8. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;
9. That this Order does not purport to limit the effect of Virginia Code § 40.1-51.3:2;
10. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority;
11. That, pursuant to Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party; and
12. That each party shall bear its own costs in this matter.

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

Entered this 26th day of October 2001.

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

W. H. Ledbetter, Jr.
Circuit Court Judge

WE ASK FOR THIS:

JEFFREY D. BROWN, Commissioner of Labor and Industry

Elizabeth A. Andrews

Elizabeth A. Andrews, Esq.
Special Assistant Commonwealth's Attorney
County of Spotsylvania
13 South Thirteenth Street
Richmond, Virginia 23219
804/786-4921
Counsel to Commissioner Brown

SEEN AND AGREED:

KENMOR ELECTRIC CO., L.P.

David D. Van Vleet

David D. Van Vleet, Esq.
Post Office Box 2220
Purcellville, VA 20134
540/338-0599
Counsel to KenMor Electric Co., L.P.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

JEFFREY D. BROWN,)
Commissioner of Labor and Industry,)
)
Plaintiff,)
v.)
)
MELVIN T. MORGAN ROOFING AND)
SHEET METAL COMPANY, INC.)
)
Defendant.)

CHANCERY NO. CH00-11794

AGREED ORDER

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

1. *Willful citation 1, item 1* is upheld as issued, and \$17,000.00 will be paid by Melvin T. Morgan Roofing and Sheet Metal Company, Inc. (Morgan Roofing), in lieu of the proposed penalty of \$30,000.00;
2. that Morgan Roofing will not contest a Virginia Occupational Safety and Health (VOSH) citation arising from inspection number 304130859, consisting of one Serious violation and a proposed penalty of \$3,000.00, which was issued to Morgan Roofing on September 6, 2001;
3. that Morgan Roofing will begin payment of \$20,000.00 to the Commonwealth, upon execution of this Order, in the form of an initial payment of \$5,000.00, and five (5) subsequent monthly payments of \$3,000.00 each. Each subsequent payment is due on the first day of each month for the next five (5) successive months beginning November 1, 2001. Payments will be made by check or money order and will be payable to the Commonwealth of Virginia, with VOSH inspection numbers 301811824 and 304130859 noted on each payment;
4. that Morgan Roofing's failure to comply with the terms of this Agreed Order in a timely manner,

- particularly the terms of paragraph 3 above, shall constitute a breach of this Order;
5. that in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, Morgan will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at its workplaces in Virginia, in conspicuous locations where notices to its employees are generally posted;
 6. that Morgan Roofing withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order; and that Morgan Roofing certifies that the violation affirmed in this Order has been abated;
 7. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Morgan Roofing of civil liability for any violation alleged by the Commissioner;
 8. that the Clerk will strike this matter from the docket of this Court, place it among the ended chancery cases, and shall send an attested copy of this Order to both parties.

Entered this 29th day of October, 2001.

Paul M. Peatross, Jr.
Judge Paul M. Peatross, Jr.

We ask for this:

JEFFREY D. BROWN,
Commissioner of Labor and Industry

Alfred B. Albiston
Alfred B. Albiston (VSB #29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8418

Seen and agreed:

MELVIN T. MORGAN ROOFING AND SHEET METAL COMPANY, INC.

Guy C. Growgey
Guy C. Crowgey (VSB #26499)
Legal Counsel
Eck, Collins & Marsteller
16 South Second Street
Richmond, Virginia 23219
804/ 788-4457, Fax 788-4891

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF WESTMORELAND

JEFFREY D. BROWN , Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.)	Chancery No. 01-51
)	
PITTMAN'S TREE & LANDSCAPING, INC. ,)	
)	
Defendant)	

AGREED ORDER

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

1. That the citation attached to the Bill of Complaint is hereby amended as follows:
 - a) Serious Citation 1, Item 1a is affirmed as written, with an assessed penalty of \$525.00;
 - b) Serious Citation 1, Items 1b and 1c are vacated; and
 - c) Serious Citation 1, Item 2 is amended to cite a violation of § 1910.151(b), with an assessed penalty of \$525.00;
2. That the Defendant shall pay the total penalty of \$1,050.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 301809364 noted on the payment;
3. That, as consideration for the modification of the terms of the original citation, the Defendant agrees to develop, document and utilize lockout/tagout procedures sufficient to meet the requirements of § 1910.147(c)(4)(I); to provide its employees with lockout/tagout training sufficient to meet the requirements of § 1910.147(c)(7)(I); and to provide first-aid and cardiopulmonary resuscitation (CPR) training for its employees sufficient to meet the

requirements of § 1910.269(b)(1)(I). These requirements are in addition to the abatement required for the Defendant's violation of § 1910.147(c)(1), as cited in Serious Citation 1, Item 1 a;

4. That the Defendant shall provide to the Commissioner, for review, its lockout/tagout program and procedures, and records of all training required by this Order, including the names of those employees who attended the sessions, the dates of the training sessions, an outline of the materials covered, and the names and qualifications of the instructors. These records shall be sent within thirty (30) days of the date of this Order to:

Thomas R. Rozman, Regional Director
Virginia Department of Labor & Industry
Richmond Regional Office, Main Street Station
1500 East Main Street, Suite 222
Richmond, Virginia 23219

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

11. That this Order cannot be construed as limiting or constraining the Commissioner from citing the Defendant in the future for violations of any provisions of the Virginia Logging Operations Standard, § 1910.266;
12. That the Commissioner may use this Order in future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, or any other authority;
13. That, pursuant to Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party; and
14. That each party shall bear its own costs in this matter.

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

Entered this 21st day of September, 2001

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

Horace Revecomb

Circuit Court Judge

WE ASK FOR THIS:

JEFFREY D. BROWN, Commissioner of Labor and Industry

Elizabeth A. Andrews

Elizabeth A. Andrews, Esq.
Special Assistant Commonwealth's Attorney
County of Westmoreland
13 South Thirteenth Street
Richmond, Virginia 23219
804/786-4921
Counsel to Commissioner Brown

SEEN AND AGREED:

PITTMAN'S TREE & LANDSCAPING, INC.

Steven R. Semler

Steven R. Semler, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
2400 N Street, N.W.,
Fifth Floor Washington, D.C. 20037
202/887-0855
Counsel to Pittman's Tree & Landscaping, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

JEFFREY D. BROWN, Commissioner of)
Labor and Industry,)
Plaintiff,)
)
v.) Chancery Number: CH000021346
)
SPARTA, INC.)
Defendant.)

AGREED ORDER

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

1. *Willful citation 1, items 1a and 1b* are affirmed with a penalty reduction from \$15,000 to \$500.
2. Sparta, Inc. shall pay \$500 to the Commonwealth of Virginia.
3. That in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, the Defendant will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at the company's workplace if any exists, in conspicuous locations where notices to the employees are generally posted;
4. Sparta, Inc. agrees to provide to the Commissioner within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational Safety and Health (VOSH) Administrative Regulations Manual, which states that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to: 3704 Old Forest Road, Suite B, Lynchburg, Virginia 24501.
5. That as consideration for modifying the penalties above, Sparta agrees to withdraw the original

notice of contest filed with respect to the above-styled case, waives its right to contest the terms contained in this Order, and certifies that all violations alleged in the citations have been abated;

6. That this Order is meant to compromise and settle the above contested claims, and pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party; that this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; furthermore, that this Order will not be construed as an admission of liability by the Employer of civil liability for any violation alleged by the Commissioner;
7. That the Clerk will strike this matter from the docket of this Court, place it among the ended chancery cases, and will send an attested copy of this Order to both parties.

Entered this day of 2nd day of May, 2002.

Mosby G. Perrow

Judge

We ask for this:

JEFFREY D. BROWN,
Commissioner of Labor and Industry

Carol L. Alston
Carol L. Alston, (VSB# 43415)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
Phone: 804/786-0682
Facsimile: 804/ 786-8418

4/29/02
Date

Seen and Agreed:

SPARTA, INC.

R. Douglass, Esq.
Daniel Douglass Esq..
Stites & Harbison PLLC
3350RiverwoodParkway, uite1700
Atlanta, GA 30339
Phone: 770/850-7000
Facsimile: 770/850-7070

4/25/02
Date

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

JEFFREY D. BROWN, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
)
v.)
)
S.W. RODGERS CONTRACTING CO., INC.)
)
Defendant.)

Chancery Number: 178-01

AGREED ORDER

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

1. *Serious citation 1, item 1* and the accompanying proposed penalties are vacated;
2. That in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, S.W. Rodgers will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at the company's workplace if any exists, in conspicuous locations where notices to the employees are generally posted;
3. That as consideration for modifying the penalties above, S.W. Rodgers agrees to withdraw the original notice of contest filed with respect to the above-styled case, waives its right to contest the terms contained in this Order, and certifies that all violations alleged in the citations have been abated;
4. That this Order is meant to compromise and settle the above contested claims, and pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for

personal injury or property damage sustained by any party; that this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; furthermore, that this Order will not be construed as an admission of liability by the Employer of civil liability for any violation alleged by the Commissioner;

5. S.W. Rodgers agrees to provide to the Commissioner within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational Safety and Health (VOSH) Administrative Regulations Manual, which states that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to: Main Street Station, 1500 East Main Street, Suite 222, Richmond, Virginia 23219.
6. That the Clerk will strike this matter from the docket of this Court, place it among the ended chancery cases, and will send an attested copy of this Order to both parties.

Entered this 5 day of February, 2002

John R. Alderman
Judge

We ask for this::

JEFFREY D. BROWN,
Commissioner of Labor and Industry

Carol L. Alston
Carol L. Alston, (VSB# 43415)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
Phone: 804/786-0682
Facsimile: 804/ 786-8418

1/31/02
Date

Seen and Agreed:

S.W. RODGERS CONTRACTING CO., INC.

Joseph H. Kasimer
Joseph H. Kasimer, Esq.
Kasimer & Annino, P.C.
76 Leesburg Pike
Falls Church, Virginia 22043
Phone: (703) 893-3914
Facsimile: (703) 893-6944

1/25/02
Date

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

JEFFREY D. BROWN, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
)
v.)
)
)
)
S.W. RODGERS CONTRACTING CO., INC.)
)
Defendant.)

Chancery Number: 292-01

AGREED ORDER

Upon agreement of the parties and for good cause shown, it is hereby ORDERED,

ADJUDGED, and DECREED as follows:

1. Serious citation 1, item 1 a is vacated;
2. Serious citation 1, item 1 b is reduced to Other-than-Serious;
3. Serious citation 1, item 1 c is affirmed as Serious with a penalty of \$4250;
4. S.W. Rodgers Contracting Company, Inc., (S.W. Rodgers) shall pay \$4250 to the Commonwealth of Virginia.
5. That in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, S.W. Rodgers will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at the company's workplace if any exists, in conspicuous locations where notices to the employees are generally posted;
6. S.W. Rodgers agrees to provide to the Commissioner within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational Safety

and Health (VOSH) Administrative Regulations manual, which states that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to: Main Street Station, 1500 East Main Street, Suite 222, Richmond, Virginia 23219.

7. That as consideration for modifying the penalties above, S.W. Rodgers agrees to withdraw the original notice of contest filed with respect to the above-styled case, waives its right to contest the terms contained in this Order, and certifies that all violations alleged in the citations have been abated;
8. That this Order is meant to compromise and settle the above contested claims, and pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party; that this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; furthermore, that this Order will not be construed as an admission of liability by the Employer of civil liability for any violation alleged by the Commissioner;
9. That the Clerk will strike this matter from the docket of this Court, place it among the ended chancery cases, and will send an attested copy of this Order to both parties.

Entered this 5th day of Feb., 2002

John R. Alderman

Judge

We ask for this:

JEFFREY D. BROWN,
Commissioner of Labor and Industry

Carol L. Alston
Carol L. Alston, (VSB# 43415)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
Phone: 804/786-0682
Facsimile: 804/ 786-8418

1/31/02
Date

Seen and Agreed:
S.W. RODGERS CONTRACTING CO., INC.

Joseph H. Kasimer, Esq.
Joseph H. Kasimer Esq..
Kasimer & Annino, P.C.
76 Leesburg Pike
Falls Church, Virginia 22043
Phone: (703) 893-3914
Facsimile: (703) 893-6944

1/25/02
Date

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF APPOMATTOX

JEFFREY D. BROWN, Commissioner of)
Labor and Industry,)
Plaintiff,)
)
) Case No. CH01000044-00
v.)
)
TAYLOR-RAMSEY CORPORATION)
Defendant.)

AGREED ORDER

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

1. *Serious citation 1, grouped items 1 a and 1 b* are affirmed with a reduced penalty of \$637.50;
2. *Serious citation 1, grouped items 2a and 2b* are affirmed with a reduced penalty of \$637.50;
3. *Other citation 2, grouped items 1, 2 and 4* are affirmed with no penalty; and
4. *Other citation 2, item 3* is vacated;
5. Taylor-Ramsey Corporation shall pay \$1275 to the Commonwealth of Virginia.
6. That in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, the Defendant will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at the company's workplace if any exists, in conspicuous locations where notices to the employees are generally posted;
7. Taylor-Ramsey Corporation agrees to provide to the Commissioner within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational Safety and Health (VOSH) Administrative Regulations Manual, which states that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of

purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to: Main Street Station, 1500 East Main Street, Suite 222, Richmond, Virginia 23219.

8. That as consideration for modifying the penalties above, Taylor-Ramsey Corporation agrees to withdraw the original notice of contest filed with respect to the above-styled case, waives its right to contest the terms contained in this Order, and certifies that all violations alleged in the citations have been abated;
9. That this Order is meant to compromise and settle the above contested claims, and pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party; that this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; furthermore, that this Order will not be construed as an admission of liability by the Employer of civil liability for any violation alleged by the Commissioner;
10. That the Clerk will strike this matter from the docket of this Court, place it among the ended chancery cases, and will send an attested copy of this Order to both parties.

Entered this 8th day of March, 2002.

Judge Richard S. Blanton

We ask for this:

JEFFREY D. BROWN,
Commissioner of Labor and Industry

Carol L. Alston
Carol L. Alston, (VSB# 43415)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
Phone: 804/786-0682
Facsimile: 804/ 786-8418

3/11/01
Date

Seen and Agreed:

TAYLOR-RAMSEY CORPORATION

G. P. Ramsey, III
G. P. Ramsey, III, President
Taylor-Ramsey Corporation
Post Office Box 11888
Lynchburg, Virginia 24506
Phone: 434/929-7443
Facsimile: 434/929-6162

March 4, 2002
Date

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

JEFFREY D. BROWN, Commissioner of)
Labor and Industry,)
)
Plaintiff,)
v.) Chancery Number: CH00-1186
)
WARD AND STANCIL, INC.)
)
Defendant.)

AGREED ORDER

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

1. *Serious citation 1, item 1 a* is affirmed and the penalty shall be reduced from \$1,000 to \$500;
2. *Willful citation 1, item 1* is reduced to a Serious citation with a penalty reduction from \$20,000 to \$2,000;
3. Ward and Stancil, Inc. shall pay \$2500 to the Commonwealth of Virginia.
4. That in accordance with the requirements of § 40(1) of the Virginia Occupational Safety and Health Administrative Regulations Manual, the Defendant will post a copy of this Order for ten (10) working days, beginning from the date of entry of this Order, at the company's workplace if any exists, inconspicuous locations where notices to the employees are generally posted;
5. Ward and Stancil, Inc. agrees to provide to the Commissioner within thirty (30) days of the effective date of this agreement documentation verifying abatement of each violation affirmed in this agreement. The documentation shall comply with §307.E.2. of the Virginia Occupational Safety and Health (VOSH) Administrative Regulations Manual, which states that "Documents demonstrating that abatement is complete may include, but are not limited to, evidence of

purchase or repair of equipment, photographic or video evidence of abatement, or other written records." The documentation shall be provided to: Main Street Station, 1500 East Main Street, Suite 222, Richmond, Virginia 23219.

6. That as consideration for modifying the penalties above, Ward and Stancil agrees to withdraw the original notice of contest filed with respect to the above-styled case, waives its right to contest the terms contained in this Order, and certifies that all violations alleged in the citations have been abated;
7. That this Order is meant to compromise and settle the above contested claims, and pursuant to Va. Code §40.1-51.3:2, the fact of an issuance, of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party; that this Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia; furthermore, that this Order will not be construed as an admission of liability by the Employer of civil liability for any violation alleged by the Commissioner;
8. That the Clerk will strike this matter from the docket of this Court, place it among the ended chancery cases, and will send an attested copy of this Order to both parties.

Entered this 15th day of February, 2002.

Catherine C. Hammond

Judge

We ask for this:

JEFFREY D. BROWN, Commissioner of Labor and Industry

Carol L. Alston
Carol L. Alston, (VSB# 43415)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
Phone: 804/786-0682
Facsimile: 804/ 786-8418

2/8/02
Date

Seen and Agreed:
WARD AND STANCIL, INC.

Dana L. Rust
Dana L. Rust (VSB# 28408)
McGuireWoods LLP
One James Center .
901 East Cary Street
Richmond, Virginia 23219
Phone: 804/775-1000
Facsimile: 804/ 775-1061

1/4/02
Date

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF BLAND

C. RAY DAVENPORT, Commissioner of)
 Labor and Industry,)
)
 Plaintiff,)
)
 v.)
)
WEST VIRGINIA PIPELINE, INC.,)
)
 Defendant)

Chancery No. CH02-12

AGREED ORDER

WHEREAS, on or about March 2, 1999, the Commissioner issued a citation to the West Virginia Pipeline, Inc. (Pipeline) alleging two Serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry. The Commissioner proposed total penalties of \$7,875.00. (A copy of the citation is attached);

WHEREAS, Pipeline filed, within 15 working days from the date of the receipt of the citations, a written notice contesting all violations and proposed penalties, as provided for in § 40.1-49.4 of the Code of Virginia; and

WHEREAS, to date, the parties desire to settle this case short of litigation in a manner that will further, protect, and promote the safety and health of the employees of Pipeline, and avoid the time and expense of court proceedings;

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

1. that subject to the conditions described below, the violations and proposed penalties will be amended as follows:

- a. *Serious citation 1, Item 1* and the proposed civil penalty of \$875.00 is vacated.

- b. *Serious citation 1, Item 2* is affirmed as issued. Pipeline owes \$3,500.00 in lieu of the proposed penalty of \$7,000.00.

These amendments will be made, provided Pipeline complies with requirements listed in paragraphs 2 through 5 below;

2. that Pipeline shall pay the initial sum of \$2,000.00 to the Commissioner upon execution of this agreement; due within fifteen days of receipt of this Order, and made by check or money order, payable to the Commonwealth of Virginia, with the VOSH inspection number 301803938 noted on the payment;

3. that the remaining \$1,500.00 penalty amount not yet due and payable, shall be forgiven if, between April 1, 2002 and March 31, 2003, no additional violations are issued to Pipeline arising out of either the Virginia statute or the sections of the VOSH Standards for the Construction Industry which formed the basis for the citation items affirmed by this agreement; should Pipeline violate any of the standards which form the bases for the violations set forth, Pipeline shall pay the remaining \$1,500.00, upon the final determination (final order) of the Commissioner of Labor and Industry or the final determination (final order) of a court of competent jurisdiction that it has violated any sections which formed the basis for the violation items addressed in this Order;

4. that Pipeline will post a copy of this Agreed Order at each of its work sites in Virginia, if any exist, for a period of 30 days, in conspicuous locations where notices to its employees are generally posted;

5. that Pipeline certifies that both violations referenced above in this agreement have been corrected and abated;

6. that Pipeline's failure to comply with the terms of this Settlement Agreement, particularly the terms of paragraphs 2 through 5 above, shall constitute a breach of this agreement; **upon the occurrence of any such breach, the original penalties and violations for this citation will be affirmed and become a final order of the Commissioner;** and any unpaid amount shall become due and payable 15

days following the breach;

7. that Pipeline withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms contained in this Order;

8. that this Order is meant to compromise and settle the above contested claims, and does not purport to limit the effect of Virginia Code § 40.1-51.3:2; and this Order will not be construed as an admission of liability by Pipeline of civil liability for any violation alleged by the Commissioner;

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

Entered this 8th day of April, 2002.

J. Colin Campbell, Sr.
Judge J. Colin Campbell, Sr.

We ask for this:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

Alfred B. Albiston
Alfred B. Albiston (VSB #29851)
Special Assistant Commonwealth's Attorney
Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219
804/ 786-6760, Fax 786-8418

Seen and agreed:

WEST VIRGINIA PIPELINE, INC.

Norman T. Daniels, Jr.
Norman T. Daniels, Jr.
Legal Counsel for West Virginia Pipeline, Inc.
Daniels Law Firm, PLLC
300 Summers Street, Suite 1270
Charleston, West Virginia 25325
304/ 342-6666, Fax 342-6677

