

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, 1987 - JUNE 30, 1988
VOLUME IX



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The Virginia Department of Labor and Industry
P.O. Box 12064
Richmond, Virginia 23241-0064

Carol A. Amato, Commissioner

PREFACE

This publication contains the orders of the Virginia General District and Circuit Courts in contested cases from July 1, 1987, through June 30, 1988, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of Section 40.1-49-7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, c. 354)."

The Table of Contents provides an alphabetical listing of the reported cases for the fiscal year. The full texts of decisions are categorized as Health or Safety and are arranged and indexed in chronological order.

Reference is made to Title 29 of the Code of Federal Regulations, Parts 1910 and 1926. These regulations were adopted by the Virginia Safety and Health Codes Commission pursuant to Section 40.1-22 of the Code of Virginia, as amended. The standard's Index provides a reference to cases which involved these regulations. The Subject Index provides an alphabetical listing of the matters involved.

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OCCUPATIONAL HEALTH

PART I

COMMONWEALTH

v.

POWERBOSS BATTERIES, INC.

Docket NO.

May 9, 1988

GENERAL DISTRICT COURT OF THE COUNTY OF SMYTH

Danny R. Lowe, Commonwealth Attorney, for Plaintiff
Michael E. Untiedt, Attorney for Defendant

Disposition:

AGREED ORDER

This day came the Commonwealth, by counsel, and the defendant, by counsel, and in order to provide for the safety, health, and welfare of defendant's employees and to conclude this matter without the necessity for future litigation, it is stipulated and agreed:

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting citations issued by plaintiff of March 19, 1987, for violations of health standards and on March 26, 1987, for violations of safety standards. No employee or representative has appeared in this matter or has filed a notice of contest of the abatement time.

Citations issued following plaintiff's safety inspection alleged a serious violation of VOSH Standards for General Industry §1910.219(f)(3) (unguarded sprocket wheels and chains) for which a penalty of \$350.00 has been proposed. The citation also alleges the following other-than-serious violations for which no penalty is proposed:

§1910.22(b)(1)(tripping and fire hazards/housekeeping)
§1910.37(q)(1)(no exit sign)
§1910.106(e)(6)(1)(smoking not prohibited around gasoline)
§1910.106(g)(3)(iv)(d)(gas pumps not protected from collision)
§1910.132(a)(protective apron needed to prevent burns)
§1910.178(p)(1)(powered industrial truck lacked horn)
§1910.215(a)(2)(abrasive wheel lacked guard)
§1910.215(b)(9)(abrasive grinding not guarded)
§1910.252(a)(2)(iv)(c)(oxygen cylinders stored close to fuel-gas cylinders)
§1910.305(g)(1)(iii)(flexible electrical cord used as substitute for fixed wiring)

Citations issued pursuant to the health inspection allege the following serious violations of VOSH Standards for General Industry, for which a penalty of \$2,430.00 is proposed:

§1910.1025(c)(1)(exposure to lead at concentrations over 50 micrograms per cubic meter of air)
§1910.1025(e)(engineering and work practices not implemented to reduce employee exposure to lead)
§1910.1025(e)(3)(i)(written compliance program to reduce exposure to lead not established/implemented)
§1910.1025(f)(2)(i)(proper respirators not selected)
§1910.1025(f)(2)(iii)(proper respirators for lead fume not used)
§1910.1025(f)(3)(ii)(respirators not fit-tested)
§1910.1025(f)(4)(i)(respiratory protection program not instituted)
§1910.1025(j)(1)(i)(medical surveillance program not instituted)
§1910.1025(j)(2)(ii)(follow-up blood-lead testing not provided)
§1910.1025(j)(2)(iv)(employees not notified of results of bloodlead testing and of medical removal protection)
§1910.1025(j)(3)(i)(A)(medical examinations not provided)
§1910.1025(j)(3)(i)(B)(medical examinations not provided)
§1910.1025(k)(1)(i)(C)(employees with blood-lead measurements over 60 ug per 100 g not medically removed)
§1910.1025(k)(1)(i)(D)(employees with average blood-leads over 50 ug not medically removed)

Health citations also included the following other-than-serious violations, for which no penalty is proposed:

§1910.1025(d)(2)(initial air monitoring for lead not performed)
§1910.1025(d)(6)(iii)(quarterly air monitoring not performed)
§1910.1025(g)(2)(v)(contaminated clothing not in closed container)
§1910.1025(g)(2)(vi)(laundry not informed of hazards of clothing)
§1910.1025(g)(2)(vii)(containers of clothing not labeled)
§1910.1025(h)(1)(surfaces not cleared of lead accumulations)
§1910.1025(i)(4)(iv)(employees entering lunch room without removing surface lead from clothing)
§1910.1025(l)(1)(ii)(training program not implemented)
§1910.1025(l)(1)(iv)(training not repeated annually)
§1910.1025(n)(1)(i)(records of lead monitoring not maintained)
§1910.1025(n)(2)(i)(records of medical surveillance not maintained)
§1910.1025(n)(3)(i)(records for medical removal not maintained)
§1910.101(b)(compressed gas cylinders not properly supported)
§1910.151(b)(no person trained to render first aid)
§1910.151(c)(eye wash not provided)
§1910.252(a)(2)(ii)(d)(valve protected caps not in place)
§1910.1200(e)(1)(no written hazard communication plan)
§1910.1200(h)(no hazard communication training program implemented)

Defendant has agreed to withdraw its contest of these citations, in consideration whereof, plaintiff has agreed to reduce the total penalty owed to \$1,390.00, to be paid within 15 days of the entry of this order.

Defendant has abated all of the alleged safety violations, and has entered into a schedule of abatement of all health violations under which defendant has produced a written abatement plan, has medically-removed all affected employees, has instituted proper air monitoring and medical surveillance of employees, and has

conducted proper blood lead measurements. Defendant agrees to allow periodic monitoring inspections by plaintiff until abatement of all health violations is complete.

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

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

ADJUDGED, ORDERED, & DECREED that the above-cited VOSH citations be affirmed. Judgment is hereby granted for the plaintiff against the defendant in the amount of \$1,390.00.

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

Entered this 9th day of May, 1988.

INDUSTRIAL SAFETY

PART 11

COMMONWEALTH

v.

CAMPBELL LUMBER COMPANY

Docket NO.

March 8, 1988

GENERAL DISTRICT COURT FOR THE COUNTY OF ALBEMARLE

Lester Wilson, Assistant Commonwealth's Attorney, for Plaintiff
Harry D. Campbell, Campbell Lumber Co., for Defendant

Disposition:

ORDER

This case is before the Court on the defendant's contest of penalties issued against it by the plaintiff for violation of the Virginia Occupational Safety and Health Standards for General Industry.

The plaintiff, by its compliance officer David Miller, conducted a safety inspection of defendant's Lumber Company on February 2, 1987. As a result of this inspection, defendant was cited for serious violations of VOSH Standards for General Industry §§1910.219(d)(1) (unguarded pulleys), 1910.219(e)(3)(i) (unguarded belts), 1910.305(a)(1)(i) (failure to provide continuous electrical conductors), and 1910.305(b)(1) (failure to protect conductor from abrasions). A fine of \$1,140 was proposed.

The defendant was also cited for two "other-than-serious" violations of VOSH standards: Administrative Regulations Manual §35(f) (failure to post OSHA 200 log) and §1910.265(d)(4)(i) (unguarded rotary barking device). No penalty was proposed for these violations.

The citations were received by the defendant on March 3, 1987, and defendant filed a timely contest of the penalties issued against it. Defendant did not contest the citations, which became a final order of the Commissioner on March 24, 1987.

Defendant's contest of the penalties was heard by this Court on November 5, 1987. After hearing the evidence in the case, the matter was reset for trial on December 10, 1987, by which time Defendant was to abate the hazards cited by plaintiff.

At trial on December 10, 1987, defendant had abated all but one of the violations. The case was reset for January 28, 1988, to allow defendant the opportunity to complete abatement. On January 28, 1988, abatement of the hazards was completed, and plaintiff moved to vacate the penalties assessed against defendant.

WHEREFORE, it is ADJUDGED, ORDERED, & DECREED that the penalties of \$1,140 assessed by plaintiff against defendant be VACATED.

The clerk is hereby directed to furnish certified copies of this Order to all parties and to the Commissioner of Labor and Industry.

Entered this 8th day of March, 1988.

COMMONWEALTH

v.

MERILLAT INDUSTRIES, INC.

Docket NO. V87-1256

February 26, 1988

GENERAL DISTRICT COURT OF SHENANDOAH COUNTY

Susan F. Frye, Assistant Commonwealth Attorney, for Plaintiff
James P. Weissenborn, Attorney for Defendant
Before the Honorable Dev Morrison, Judge

Disposition: Consent Order

ORDER

THIS CAUSE CAME ON to be heard on the 12th day of January, 1988, upon the testimony of the witnesses and parties hereto, upon the evidence submitted and introduced and it was argued by counsel.

Pursuant to agreement, the Defendant, Merillat Industries, Inc., admitted a violation with respect to 1(a)(\$1910.213(h)(1)), 1(b)(\$1910.213(h)(3)) and 1(c)(\$1910.213(h)(4)) and by agreement, a penalty of TWO HUNDRED EIGHTY DOLLARS (\$280) is imposed.

Thereafter, the Court heard evidence on violations 2(a) 2(b) and 2(c). The court finds that the VOSH standards for general industry set forth in 1910.213(r)(4) apply. The Court also finds that there was a violation of the standard, that there were employees present and that the violations should be characterized as serious because of the probability of death or serious injury. The Court notes that where improper employee misconduct is alleged it must be proved as an affirmative defense but the Court finds here that no written policies were produced by the Defendant, that there was no evidence introduced by Defendant that the policies and rules were communicated to the employees or that disciplinary action was taken by the Defendant, if, in fact, there were violations of company policy. The standards introduced by the Commonwealth suggest that there should have been no more than a one-half inch (1/2") clearance from the stock to the blade guard, but no such safety rule was introduced. Furthermore, there was no evidence introduced showing the height of the blade guard at the time the alleged violations occurred.

The Court considers the inherent danger in operating saws of the kind and nature herein described and the efforts of Merillat Industries, Inc. to operate its plant in a clean, safe and efficient manner. The Court is impressed by the Defendant's efforts and by its efforts at voluntary compliance as well as the efforts of the Commonwealth to accommodate the needs of Defendant as well as protect the employees therein.

Accordingly, it is the ruling of the Court that there was no violation of Section 1910.213(r)(4) with respect to the use of that certain chop saw made by Precision Products Company, Model 14ALH, Serial #466, and accordingly, dismisses such charge. The Court finds that there is a serious violation of charge 2(b) with respect to a certain Copco, Inc., Model 47A-20, Serial #85-0028, in that the safety guard was improperly adjusted and the Court imposes a civil penalty of TWO HUNDRED DOLLARS (\$200). With respect to the violation charged in 2(c) pertaining to a Copco, Inc. cutoff saw, Model 47A-20, Serial #85-0029, the Court finds that there is no serious violation and dismisses the charge.

The Court hereby, in accordance with the law gives both parties a right to appeal said ruling within ten (10) days of date and the Court sets an appeal bond of TWO HUNDRED DOLLARS (\$200) in the event a timely appeal is noted by Merillat Industries, Inc.

Enter this 26th day of February, 1988.

COMMONWEALTH

v.

POWERBOSS BATTERIES, INC.

Docket NO.

May 9, 1988

GENERAL DISTRICT COURT OF THE COUNTY OF SMYTH

Danny R. Lowe, Commonwealth Attorney, for Defendant
Michael E. Untiedt, for Defendant
Before the Honorable Dev Morrison, Judge

Disposition: Consent Order

AGREED ORDER

This day came the Commonwealth, by counsel, and the defendant, by counsel, and in order to provide for the safety, health, and welfare of defendant's employees and to conclude this matter without the necessity for future litigation, it is stipulated and agreed:

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting citations issued by plaintiff of March 19, 1987, for violations of health standards and on March 26, 1987, for violations of safety standards. No employee or representative has appeared in this matter or has filed a notice of contest of the abatement time.

Citations issued following plaintiff's safety inspection alleged a serious violation of VOSH Standards for General Industry §1910.219(f)(3)(unguarded sprocket wheels and chains) for which a penalty of \$350.00 has been proposed. The citation also alleges the following other-than-serious violations for which no penalty is proposed:

§1910.22(b)(1)(tripping and fire hazards/housekeeping)
§1910.37(g)(1)(no exit sign)
§1910.106(e)(6)(i)(smoking not prohibited around gasoline)
§1910.106(g)(3)(iv)(d)(gas pumps not protected from collision)
§1910.132(a)(protective apron needed to prevent burns)
§1910.178(p)(1)(powered industrial truck lacked horn)
§1910.215(a)(2)(abrasive wheel lacked guard)
§1910.215(b)(9)(abrasive grinding not guarded)
§1910.252(a)(2)(iv)(c)(oxygen cylinders stored close to fuel-gas cylinders)
§1910.305(g)(1)(iii)(flexible electrical cord used as substitute for fixed wiring)

Citations issued pursuant to the health inspection allege the following serious violations of VOSH Standards for General Industry, for which a penalty of \$2,430.00 is proposed:

§1910.1025(c)(1)(exposure to lead at concentrations over 50 micrograms per cubic meter of air)
 §1910.1025(e)(engineering and work practices not implemented to reduce employee exposure to lead)
 §1910.1025(e)(3)(i)(written compliance program to reduce exposure to lead not established/implemented)
 §1910.1025(f)(2)(i)(proper respirators not selected)
 §1910.1025(f)(2)(iii)(proper respirators for lead fume not used)
 §1910.1025(f)(3)(ii)(respirators not fit-tested)
 §1910.1025(f)(4)(i)(respiratory protection program not instituted)
 §1910.1025(j)(1)(i)(medical surveillance program not instituted)
 §1910.1025(j)(2)(ii)(follow-up blood-lead testing not provided)
 §1910.1025(j)(2)(iv)(employees not notified of results of blood-lead testing and of medical removal protection)
 §1910.1025(j)(3)(i)(A)(medical examinations not provided)
 §1910.1025(j)(3)(i)(B)(medical examinations not provided)
 §1910.1025(k)(1)(i)(C)(employees with blood-lead measurements over 60 ug per 100 g not medically removed)
 §1910.1025(k)(1)(i)(D)(employees with average blood-leads over 50 ug not medically removed)

Health citations also included the following other-than-serious violations, for which no penalty is proposed:

§1910.1025(d)(2)(initial air monitoring for lead not performed)
 §1910.1025(d)(6)(iii)(quarterly air monitoring not performed)
 §1910.1025(g)(2)(v)(contaminated clothing not in closed container)
 §1910.1025(g)(2)(vi)(laundry not informed of hazards of clothing)
 §1910.1025(g)(2)(vii)(containers of clothing not labeled)
 §1910.1025(h)(1)(surfaces not cleared of lead accumulations)
 §1910.1025(i)(4)(iv)(employees entering lunchroom without removing surface lead from clothing)
 §1910.1025(l)(1)(ii)(training program not implemented)
 §1910.1025(l)(1)(iv)(training not repeated annually)
 §1910.1025(n)(1)(i)(records of lead monitoring not maintained)
 §1910.1025(n)(2)(i)(records of lead monitoring not maintained)
 §1910.1025(n)(2)(i)(records of medical surveillance not maintained)
 §1910.1025(n)(3)(i)(records for medical removal not maintained)
 §1910.101(b)(compressed gas cylinders not properly supported)
 §1910.151(b)(no person trained to render first aid)
 §1910.151(c)(eye wash not provided)
 §1910.252(a)(2)(ii)(d)(valve protected caps not in place)
 §1910.1200(e)(1)(no written hazard communication plan)
 §1910.1200(h)(no hazard communication training program implemented)

Defendant has agreed to withdraw its contest of these citations, in consideration whereof, plaintiff has agreed to reduce the total penalty owed to \$1,390.00, to be paid within 15 days of the entry of this order.

Defendant has abated all of the alleged safety violations, and has entered into a schedule of abatement of all health violations under which defendant has produced a written abatement plan, has medically-removed all affected employees, has instituted proper air monitoring and medical surveillance of employees, and has

conducted proper blood lead measurements. Defendant agrees to allow periodic monitoring inspections by plaintiff until abatement of all health violations is complete.

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

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

ADJUDGED, ORDERED, & DECREED that the above-cited VOSH citations be affirmed. Judgment is hereby granted for the plaintiff against the defendant in the amount of \$1,390.00.

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

Entered this 9th day of May, 1988.

CONSTRUCTION SAFETY

PART III

COMMONWEALTH

v.

J. CARRINGTON BURGESS MASONRY CONTRACTORS, INC.

Docket NO. V87-9169

February 2, 1988

GENERAL DISTRICT COURT OF THE COUNTY OF CHESTERFIELD

Jeanne Colby, Assistant Commonwealth's Attorney, for Plaintiff
J. Carrington Burgess, President for J. Carrington Burgess Masonry
Contractor, Inc., for Defendant
Disposition:

AGREED ORDER

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

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by the plaintiff on September 25, 1987. The Defendant, while not admitting any liability from these alleged violations other than for future enforcement purposes pursuant to Title 40.1 of the Virginia Code, has agreed to an offer of settlement whereby the defendant shall tender the sum of Four Hundred and Eighty Dollars (\$480.00) for the following:

- A repeat violation of §1926.451(d)(10) of the VOSH Standards for the Construction Industry; standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than ten (10) feet above the ground or floor.

Defendant hereby states that the above mentioned violations have been abated.

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

ADJUDGED, ORDERED, and DECREED that each violation cited is affirmed and judgment is granted for the plaintiff in the amount of \$480 said penalty was paid to the Department of Labor and Industry on January 25, 1988.

The Clerk shall transmit certified copies of this Order to both parties and to the Commissioner of Labor and Industry, P. O. Box 12064, Richmond, Virginia 23214.

Entered this 2nd day of February, 1988.

COMMONWEALTH

v.

BURKHOLDER AND KRIEG, INC.

Docket NO. 87-12945

April 13, 1988

GENERAL DISTRICT COURT FOR THE COUNTY OF PRINCE WILLIAM

William M. Ryland, Assistant Commonwealth Attorney, for the Plaintiff
Robert K. Thompson, Attorney, for Defendant

Disposition: Citation affirmed after trial.

AGREED ORDER

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

Defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting a citation issued by plaintiff on August 10, 1987, following a fatality that occurred on April 2, 1987. The citation alleges a willful violation of Section 40.1-51.1(a) (General Duty Clause) of the Code of Virginia which states that an employer shall furnish employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. A penalty of \$6,400 was proposed.

Plaintiff and defendant have agreed that the citation will be affirmed as a willful violation and that the penalty will be reduced to \$1,500.

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

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

Furthermore, counsel involved in the litigation of this matter; Diane L. Duell, William M. Ryland, Elizabeth V. Scott, and Robert K. Thompson, shall not discuss this case with any member of the news media.

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

ADJUDGED, ORDERED, AND DECREED that the VOSH citation for violations of §40.1-51.1(a) (General Duty Clause) is affirmed as a willful violation. This violation having been abated, judgment is granted for the plaintiff against the defendant in the amount of \$1,500.

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

Entered this 13th day of April, 1988.

COMMONWEALTH

v.

CAPITAL MASONRY CORPORATION

Docket NO. 86-69512

July 21, 1987

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William Bray, Assistant Commonwealth Attorney, for Plaintiff

Richard Schneider, Attorney for Defendant

Before the Honorable J. R. Davilla, Jr., Judge

Disposition: Citation 1 affirmed and Citation 2 vacated after trial.

Nature of the case: Pursuant to a scheduled inspection of a construction site the plaintiff, Virginia Occupational Safety and Health (VOSH), issued several citations to the defendant for its alleged violation of the following VOSH regulations:

Citation 1:

Item 1 a - 1926.28(a) & 1926.105(a): Employees were not protected against falls of more than 25 feet by the use of safety nets, ladders, scaffolds, catch platforms, temporary floors, safety lines, safety belts or other appropriate personal protective equipment.

Item 1 b - 1926.451(a)(4): Standard guardrails and toeboards were not installed on all open sides and ends of scaffold platforms located more than 10 feet above the ground or floor.

Citation 2:

1926.451(a)(2): The footing or anchorage for scaffolds was not sound, rigid and capable of carrying the maximum intended load without settling or displacement.

Items 1 a and 1 b of Citation 1 were grouped together, because they involved similar or related hazards and were classified as "Serious" violations while the item listed in Citation 2 was classified as "Other-than-serious". A total penalty of \$480.00 was recommended.

FINDINGS OF FACT

Upon the evidence adduced by the Commonwealth, the Court finds that the defendant allowed its employees to work from two scaffold systems, more than twenty five feet above the ground below, without providing guardrails and toeboards on all open sides and ends and without providing any safety nets, safety lines or any other safety apparatus to protect those employees from falling through a large opening between these two scaffold systems.

Specifically, the defendant, on or about June 19, 1986, was engaged in the construction of a multi-story building at 10 East Franklin Street, Richmond, Virginia. At the time of the violation, the defendant had approximately thirty feet above the ground below. At hit level, there was a gap between the platforms of these two systems, approximately forty one inches wide and twenty inches deep. At least one of the defendant's employees crossed over this gap a number of times without any means of protecting him from falling through to the ground below. This hazard constitutes a violation of VOSH Regulations 1925.28(a) and 1926.105(a).

Second, at several points of these scaffolding systems, again at the thirty foot level, there were not standard guardrails and toeboards. This hazard constitutes a violation of VOSH Regulation 1926.451(a)(2).

Finally, one base plate of the western-most scaffold system was not resting fully upon its mud sill support. However, the evidence adduced by the Commonwealth does not demonstrate that a violation of VOSH Regulation 1926.451(a)(2) has occurred.

The defendant has attempted to demonstrate that the hazards which existed were caused by employee misconduct. Indeed, the defendant adduced evidence that it maintains an excellent safety program, including job site safety meetings. The written safety program includes a provision that any employee who willfully disregards the worker safety rules shall be discharged. However, there is no evidence that the employees exposed to the hazardous conditions cited herein were discharged or even confronted for being exposed to these hazards. Further, the defendant's foreman and safety consultant personally observed the employees so exposed.

The Court finds admirable the efforts made by Mr. Jim Ellen, president and owner of Capital Masonry, to measure up to OSHA standards. It is unfortunate that he can't be in a hundred places at once, so he has to delegate responsibility to other people. His personal standards, if adhered to by his employees, would prevent any OSHA violations. Unfortunately, however, we are dealing with people, and people don't always measure up to the standards that we would like for them to.

ORDER

IT IS HEREBY ORDERED that Citation 1, Items 1a and 1b, be affirmed, that Citation 2 be vacated, and that a total penalty of four hundred eighty dollars (\$480.00) be imposed. The defendant is hereby ORDERED to pay this amount 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, Division of Occupational Safety and Health, P.O. Box 12064, Richmond, Va. 23241.

Enter this 21st day of July, 1987, nunc pro tunc for March 25, 1987.

COMMONWEALTH

v.

CONTINENTAL ELECTRICAL CONTRACTORS, INC.

Docket NO. V87-12155

December 30, 1987

GENERAL DISTRICT COURT FOR THE CITY OF ARLINGTON

Richard Trodden, Assistant Commonwealth's Attorney, Arlington, Virginia, for the
Plaintiff

Before the Honorable Francis E. Thomas, General District Court Judge

Disposition: Default Judgment.

Nature of case: Citations were issued as a result of a November 1986 safety inspection by the Virginia Occupational Safety and Health Program. Defendant chose to contest all the violations; citation 1 §1926.400(a), a serious violation, citation 1, §1926.25(a), an other-than-serious violation, citation 2 §1926.400(a), an other-than-serious violation, citation 3 §1926.400(a), an other-than-serious violation, citation 4 §1926.400(a), an other-than-serious violation, citation 5 §1926.400(h)(2), an other-than-serious violation, citation 6 §1926.402(a)(5), an other-than-serious violation and citation 7 §1926.402(c)(1), an other-than-serious violation. The total penalty of \$480.00 was also contested.

ORDER

On December 4, 1987 came the plaintiff, by counsel, the Assistant Commonwealth's Attorney of this jurisdiction. Defendant, after proper service of summons did not appear to be heard on it's contest of a Virginia Occupational Safety and Health citation issued by plaintiff. Plaintiff made a motion for a default Judgment to be entered against the defendant.

The Court finds for the plaintiff and Orders that the citations be affirmed. The citations are affirmed that they consist of one serious and seven other-than-serious violations within the regulations and standards of the Virginia Occupational Safety and Health Standards. Judgment is hereby granted to the plaintiff against the defendant for Four hundred and eighty dollars (\$480.00) as a civil penalty for violation of §1926.400(a) of the Virginia Occupational Safety and Health Standards.

The clerk shall forthwith mail certified copies of this order to each of the parties and to the Commissioner of Labor and Industry within ten (10) working days after the entry of the order.

Entered this 30th day of December, 1987.

COMMONWEALTH

v.

EASTMAN CORPORATION, INC.

Docket NO. V86-29547

July 7, 1987

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

Kathleen Edge, Assistant Commonwealth Attorney, for Plaintiff
George Christie, Attorney for Defendant

ORDER

It appearing that an inspection and subsequent allegations by the Commonwealth of Virginia, ex rel. Commissioner of Labor and Industry, having resulted in the issuance of a citation and summons to Eastman Corporation for the alleged violation at 3960 Virginia Beach Boulevard, Virginia Beach, on or about July 24, 1986, of certain Virginia Occupational Safety and Health (VOSH) standards set forth specifically below; and

It appearing that the defendant, Eastman Corporation, while not admitting any civil liability arising from the aforesaid alleged violations other than liability under Title 40.1, Code of Virginia, has agreed to an offer of settlement made by the plaintiff whereby the defendant shall tender to the plaintiff the sum of four hundred and eighty dollars (\$480.) and has consented to abatement of the violations which were alleged as follows:

<u>VOSH Regulation Alleged to Have Been Violated</u>	<u>Proposed Penalty</u>	<u>Agreed Penalty</u>
1. 1926.100(a); Repeat Violation: Employee(s) working where there was a possible danger of head injuries were not protected by protective helmets.	\$320.00	Vacate Citation
2. 1926.152(g)(9); Repeat Violation: Conspicuous and legible signs prohibiting smoking were not posted in service and refueling areas.	\$160.00	\$ 40.00
3. 1926.152(g)(11); Repeat Violation; Each service or refueling area was not provided with at least one fire extinguisher having a rating of not less than 20-B:C located so that an extinguisher would be within 75 feet of each pump, dispenser, underground fill	\$160.00	\$ 40.00

pipe opening or lubrication or service area.

4. 1926.451(d)(7); Repeat Violation: Tubular welded frame scaffold(s) were not secured to the building or structure at least every 30 feet horizontally.	\$800.00	Vacate Citation
5. 1926.451(d)(10); Repeat Violation: 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 or floor.	\$1600.00	\$400.00
6. 1926.450(a)(9): Serious Violation: The side rails or ladder(s) did not extend more than 36 inches above landings nor were grab rails installed to provide a secure grip for employee(s) moving to or from the point of access.	\$0	\$0
Total Penalty	\$3040.00	\$480.00

This Court having now determined that the aforesaid proposed settlement constitutes a lawful and reasonable settlement and serves the public interest in resolving such disputes expeditiously while at the same time promoting safety in the workplace; and pursuant to Va. Code Section 40.1-49.4D,

IT IS HEREBY ORDERED AND DECREED:

1. That the alleged violation described in items 1 and 4 above shall be and are hereby vacated.
2. That Eastman Corporation committed the violations described in items 2, 3, 5 and 6 above; however, this Order does not constitute a determination of liability under any statute or principle of law other than Title 40.1, Code of Virginia; and
3. That Eastman Corporation shall this day pay the sum of four hundred and eighty dollars (\$480.00) to the Commonwealth of Virginia as an agreed penalty for its violations of items 2, 3, 5 and 6 as described above; and
4. That Eastman Corporation shall abate its violations of items 2, 3, 5 and 6 as are described above; and
5. That the aforesaid settlement is approved, confirmed and entered as of this date; and
6. That the Clerk shall send attested copies of this Order to all counsel of record.

Entered this 7th day of July, 1987

COMMONWEALTH

v.

FRU-CON CONSTRUCTION CORPORATION

Docket NO. 87-4445

December 15, 1987

CIRCUIT COURT FOR THE COUNTY OF CHESTERFIELD

Gregory Fleming, Assistant Commonwealth Attorney, for Plaintiff
Leonard R. Ruzicka Jr., Attorney for Defendant

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

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting citations issued to it by the plaintiff on December 30, 1986. These citations alleged serious violations of VOSH Standards for the Construction Industry Sections 1926.651(c), 1926.651(i)(1), and 1926.652(b) (involving trenches and excavations), and proposed a penalty of \$640.00. The citations also alleged other-than-serious violations of Sections 1926.152(a)(1) (storage of flammable liquids), 1926.350(a)(1) (valve protection caps), 1926.450(a)(9) (side rails on ladders), and 1926.500(e)(1)(iv) (stair rails). No penalty was proposed for these violations.

Defendant has agreed to withdraw its contest of these citations, in consideration whereof, plaintiff has agreed to reduce the citation for the violation of §1926.651(i)(1) (storage of excavated material) from a "serious" to an "other-than-serious" violation, and has agreed to pay the penalty within 15 days of the entry of this Order.

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

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

ADJUDGED, ORDERED, AND DECREED that the VOSH citation for violations of §§1926.651(c) and 1926.652(b) are affirmed as serious violations. The VOSH citation for violations of §§1926.651(i)(1), 1926.152(a)(1), 1926.350(a)(1), 1926.450(a)(9), and 1926.500(e)(1)(iv) are affirmed as other-than-serious violations. These violations having been abated judgment is granted for the plaintiff against the defendant in the amount of \$320.00.

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

Entered this 15th day of December, 1987.

COMMONWEALTH

v.

GLEN CONSTRUCTION COMPANY, INCORPORATED

Docket NO. 87-29506

April 26, 1988

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

William D. Pickett, Assistant Commonwealth Attorney, for Plaintiff
Angus E. Finney, Attorney for Defendant
Before the Honorable Marcus D. Williams, Judge

Disposition: Final, by trial on the merits.

Nature of the case: Pursuant to an inspection conducted of a construction site at which an employee of the defendant died from the injuries he sustained in a fall, the plaintiff, Virginia Occupational Safety and Health (VOSH), issued a citation to the defendant for its alleged willful violation of the following VOSH regulation:

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

A penalty of \$8000.00 was recommended.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon the testimony of Virginia Safety and Health (VOSH) Compliance Officer (CSHO) William J. Summers, the Court finds that the defendant allowed its employees to work on open-sided floors more than 6 feet above an adjacent floor or ground level without the protection of guardrails or its equivalent in violation of the aforementioned VOSH regulation.

The Defendant's employees were engaged in construction work at a site located at 13600 EDS Drive, Chantilly, Fairfax County, Virginia in July of 1987 (construction for this project had started in the fall of 1986, and was 60% completed at the time of the inspection). On July 28, 1987, two of the defendant's employees were instructed to work at the sixth floor level, SW corner of the incomplete structure. These employees were exposed to a fall hazard of seventy-four (74) feet as no guardrails or perimeter protection had been erected in that area. One of the employees lost his balance and fell to the ground below. He died three weeks later from the injuries he had sustained.

The evidence introduced at trial through CSHO Summers and the personal interview statements taken at the time of the inspection indicated that there were no guardrails in place at least two days prior to the accident and that guardrails were never erected in that particular area. The guardrails that were in place at other areas of the jobsite were inadequate. Testimony also showed that a number of complaints had been made to the defendant, about the lack or inadequacy of the

perimeter guarding of these open-sided floors. Furthermore, the defendant had two prior VOSH citations, issued in March of 1985 and June of 1986 for the same violation.

In response to the plaintiff's allegations, the defendant presented the testimony of its safety officer. The officer testified that he had conducted informal visual inspections on the jobsite at least once a month. He conducted one formal inspection on July 21, 1987 and issued his findings to the defendant on July 24, 1987. He noted that perimeter protection must be checked on a continuous basis to make sure that guardrails are in place, particularly whenever men are working in the immediate vicinity. He stated that on the date of the inspection he did not mention the lack of guardrails at the sixth floor level because the defendant had erected a wire cable from column to column denying employees access to the open-sided floor. He testified that he was familiar with VOSH regulations and his company's safety manual, which he had written, which required perimeter protection.

The Court, after hearing evidence and argument on behalf of both plaintiff and defendant, finds for the plaintiff.

ORDER

It is therefore, ORDERED that the willful 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 \$8000.00 be and is hereby affirmed and that the defendant is hereby ordered to pay this amount of 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 the Department of Labor and Industry, Virginia Occupational Safety and Health Program, P.O. Box 12064, Richmond, Virginia.

Entered this 26th day of April, 1988.

COMMONWEALTH

v.

L.F. JENNINGS, INC.

Docket NO. 87-7406

February 11, 1988

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Raymond F. Morrogh, Assistant Commonwealth Attorney, for Plaintiff
Gerald I. Katz, Attorney for Defendant

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

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting citations issued to it by the plaintiff on December 12, 1986. These citations alleged serious violations of VOSH Standards for the Construction Industry Sections 1926.450(a)(9) and 1926.500(b)(4) (a skylight/vent opening did not have grab rails or a ladder which extended 36" above the landing, nor was the skylight opening guarded by a fixed railing or adequate cover), and a proposed penalty of \$480. The citations also allege an other-than-serious violation of Section 1926.500(d)(1) (open-sided floor or platform was not guarded by a standard railing). No penalty was proposed for this violation.

Plaintiff has agreed to reduce the citations for the violations of §1926.450(a)(9) and §1926.500(b)(4) from a "serious" to an "other-than-serious" violation. The penalty of \$480 will not be reduced.

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

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

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

ADJUDGED, ORDERED, AND DECREED that the VOSH citation for violations of §1926.450(a)(9), §1926.500(b)(4) and §1926.500(d)(1) are affirmed as other-than-serious violations. These violations having been abated, judgment is granted for the plaintiff against the defendant in the amount of \$480.

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

Entered this 11th day of February, 1988.

COMMONWEALTH

v.

KENBRIDGE CONSTRUCTION COMPANY, INC.

Docket No.

May 5, 1988

GENERAL DISTRICT COURT FOR MECKLENBURG COUNTY

Frank D. Harris, Assistant Commonwealth Attorney, for Plaintiff
William J. Callis, Vice President, Kenbridge Construction Co., for Defendant

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

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting VOSH Citation No. W8119-068-87 issued to it by plaintiff. No employer or employer representative has appeared in this matter or filed a notice of contest of the abatement time.

Plaintiff and defendant have agreed that the Citation No. 1, a serious violation of §1926.500(e)(1)(iii) of VOSH Standards for the Construction Industry, be reduced to an "other-than-serious" violation, with the proposed penalty of \$240.00 to remain unchanged. The penalty shall be due within 15 days of the entry of this order.

The violation, for failure to provide a hand-rail on a stairway leading to a storage trailer, was abated by defendant during plaintiff's inspection.

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

WHEREFORE, upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that the VOSH citation for violations of §1926.500(e)(iii) be affirmed as an other-than-serious violation, and judgment is granted for the plaintiff in the amount of \$240.00.

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

Entered this 5th day of May, 1988.

COMMONWEALTH

v.

LANMOR CORPORATION

Docket NO. 87-1553

January 27, 1988

GENERAL DISTRICT COURT FOR THE COUNTY OF FAUQUIER

Jonathan S. Lynn, Commonwealth Attorney, for Plaintiff
Margaret Bacigal, for Defendant

AGREED ORDER

This day came the parties, by counsel, and represented to the Court that all matters between the parties have been compromised and settled. In accordance therewith, it is stipulated and agreed as follows:

Defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting two citations issued by plaintiff on July 29, 1987, following an accident on June 22, 1987. The citations allege serious violations of §1926.20(b)(1) (adequate programs were not initiated and/or maintained to comply with employer's responsibility for accidents prevention) and §1926.601(b)(4) (no employer shall use any motor vehicle equipment having an obstructed view to the rear unless the vehicle has a reverse signal alarm or the vehicle is backed up only when an observer signals that it is safe to do so).

Defendant represents that the alleged violations have been abated and in order to conclude this matter without the necessity of further litigation, defendant has agreed to a settlement offer whereby defendant acknowledges the violations as serious for future enforcement purposes pursuant to Title 40.1 of the Code of Virginia and agrees to tender the sum of Three Hundred Dollars (\$300.00) to the Department of Labor and Industry to be deposited into the treasury of Virginia. Defendant's acceptance of this offer and its payment of the Three Hundred Dollars is not an admission of any liability for the violations alleged.

WHEREFORE, upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED and DECREED that each violation cited is affirmed as serious for future enforcement purposes pursuant to Title 40.1 of the Code of Virginia and defendant is ORDERED to pay plaintiff the sum of Three Hundred Dollars (\$300.00) to be remitted to the Department of Labor and Industry within 15 days of the entry of this Order, for deposit into the treasury of Virginia.

The Clerk shall transmit certified copies of this Order to both parties and to the Commission of Labor and Industry, P. O. Box 12064, Richmond, Virginia 23214.

Entered this 27th day of January, 1988.

COMMONWEALTH

v.

LANE CONSTRUCTION CORPORATION

No. 87-19057

December 21, 1987

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

William D. Pickett, Assistant Commonwealth Attorney, for Plaintiff
Joseph H. Kasiner, Attorney for Defendant

ORDER

This cause came to be heard upon the Motion to Strike of Defendant at the conclusion of the Plaintiff's case at trial on November 23, 1987. It appears to the Court that the four citations which are the subject-matter of this case (§1926.651(i)(1), §1926.652(b), §1926.652(e) and §1926.652(h)) were not properly offered into evidence by the Plaintiff, and that the submission of such citations into evidence was a necessary element of Plaintiff's case. For the reasons stated in the Court's letter opinion of December 15, 1987, it is accordingly

ORDERED, ADJUDGED AND DECREED, that the Defendant's Motion to Strike is granted and judgment is hereby entered in favor of the Defendant. This Order is final.

Entered as of this 21st day of December, 1987.

COMMONWEALTH

v.

LOUDOUN TUNNELING COMPANY, INC.

Docket NO.

March 1, 1988

GENERAL DISTRICT COURT OF MADISON COUNTY

Caroline Watts, Commonwealth Attorney, for the Plaintiff
John T. Aylestock, Loudoun Tunneling Company, Inc., for Defendant

ORDER

This day came the plaintiff by counsel, Caroline Watts, Commonwealth's Attorney for Madison County, Virginia, and defendant pursuant to a summons, to be heard upon the defendant's contest of Virginia Occupational Safety and Health citations issued by the plaintiff. Upon consideration of the evidence and argument of counsel, the Court accordingly makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Subsequent to an inspection by the plaintiff of the defendant's workplace at the intersection of Route 29 and Route 621 in Madison County, Virginia, the plaintiff issued timely citations VOSH No. PB378-019-87 1 and 2 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. No employee or representative of employee of the defendant has appeared to seek party status in this matter.
4. On March 5, 1987, VOSH Compliance Safety and Health Officer Charles E. Franklin, while traveling on Route 29 in Madison County, Virginia, observed men working in a trench on Route 29 just south of the intersection with Route 621, and stopped to inspect the site, in accordance with VOSH Program Directive #02-203, State Emphasis Program on Trenching and Excavations.
5. On that date, at that site, employees of defendant were in a trench measuring 10 feet wide by 34 feet long by 6 feet deep on the north side and 7 feet deep on the south side. The trench was not shored, sheeted, braced, sloped or otherwise supported by means of sufficient strength to protect the employees working within it from "cave-ins" of the winds of said trench. There were no additional precautions by way of shoring or bracing. The trench was in unstable or soft material and subject to vibrations from highway traffic on Route 621 and Route 29. There was no ladder or steps or alternative means of exit to avoid no more than 25 feet of lateral travel.

6. On that date, at that site employees of defendant were in the trench without wearing protective helmets, thus being exposed to possible head injury.

7. On that date, at that site, employees of defendant were in the trench exposed to the hazards of moving parts of an American Auger Boring Machine # 30-1706 which had unguarded belts and pulleys at the operator's station.

8. On that date, at that site, excavated or other material was not stored or retained at least two feet from the edge of the east and west walls of the trench.

9. On that date, at that site, employees of defendant were using an unapproved five gallon metal can which contained gasoline.

CONCLUSIONS OF LAW

1. The Court finds for the plaintiff and ORDERS that the citations be affirmed and/or modified as follows:

<u>Alleged Violation</u>	<u>Type</u>	<u>Penalty Recommended</u>	<u>Penalty Imposed</u>
1/1 - exposure to unguarded moving parts of equipment, §1926.300(b)(2)	Serious	\$150.00	
1/2a - no protective equipment, §1926.650(e)	Serious	210.00	
1/2b - excavated matter too close, §1926.651(i)(1)			
1/2c - trench sides not shored, §1926.652(b)			
1/2d - no additional precautions, §1926.652(e)			
1/2e - no ladder or exit, §1926.652(h)			
2 - unapproved gas can, §1926.152(a)	Other	0	

1. Judgment is hereby granted to the plaintiff against the defendant for \$360 as civil penalties for these violations.

2. The Clerk shall forthwith mail certified copies of this order to each of the parties and the Commissioner of Labor and Industry.

3. The defendant shall forthwith post a copy of this Order at a conspicuous place at its work site, the copy shall remain posted for three working days.

4. The penalty assessed is ordered to be mailed to the Treasurer of Virginia within fifteen days.

Entered this 1st day of March, 1988.

COMMONWEALTH

v.

LOUDOUN TUNNELING COMPANY, INC.

Docket NO. 87-19058

October 26, 1987

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Raymond F. Morrogh, Assistant Commonwealth Attorney, for Plaintiff
Gerald I. Katz, Attorney, for Defendant
Before the Honorable J. Conrad Waters, Jr., General District Court Judge

Disposition: Final, by trial.

Nature of the case: Alleged violations of VOSH statutes. Specifically, plaintiff alleges violation of Section 1926.21(b)(6)(i), Section 1926.800-(b)(3), Section 1936.800(b)(4), Section 1926.800(c)(1)(i), Section 1926.800(c)(1)(ii), Section 1926.800(c)(2)(i), and Section 1926.28(a).

In this case, defendant was constructing a tunnel and had not tested for air quality, although employees were in tunnel at approximately 85 feet. Further violations were noted, including failure of employees to wear personal protective equipment, no self rescuers were on site, nor was ventilation provided at the time of the inspection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE came to be heard on October 26, 1987, upon the civil summons, the evidence adduced in open court and was argued by counsel.

IT APPEARING TO THE COURT that on the 2nd day of April, 1987, the safety inspector inspecting the work site known as I-66 at end of Heron Drive and Mt. Gilead Road, Centreville, Fairfax County, Virginia, 22020, observed a backhoe in operation at this site. The inspection was conducted by directive of the NEP (National Emphasis Program) on Trenching and Excavations. The safety inspector noted a number of violations.

The evidence adduced by the Commonwealth through her witnesses (CSHO and expert in the field of confined spaces) indicated that the employees were working in a tunnel that measured 48" in diameter, 8'-10' deep and 85' in length at the time of the inspection. These employees had not been instructed as to the nature and hazards involved in working in confined space, nor in the use of protective and emergency equipment required [Section 1926.21(b)(6)(i)]. The inspector asked if any self rescuers were on site, and was told they were not. [Section 1926.800(b)(3)]. The inspector noted that there was no communication line in use while the employees were in the tunnel, except by conversation back and forth [Section 1926.800(b)(4)]. The inspector also spoke with the foreman of defendant, and was told that defendant did not test the air quality in the tunnel until they were at 150' in. [Section 1926.800(c)(1)(i) and (c)(1)(ii)]. The inspector noted that

150' in. [Section 1926.800(c)(1)(i) and (c)(1)(ii)]. The inspector noted that some form of testing should have been done and that defendant had done no testing as of the date of the inspection. The defendant did not provide any type of ventilation for the tunnel, inspector saw no fans on the worksite. [Section for the tunnel, inspector saw no fans on the worksite. [Section 1926.800(c)(2)(i)]. Finally, the inspector observed an employee working on the jobsite who did not have on any personal protective equipment (i.e. hard hat). This employee was working in the tunnel opening without a hard hat, while a backhoe worked overhead and a wagon of material passed overhead [Section 1926.28(a)].

The defendant, through its attorney and the president of the company, introduced evidence by way of defense that the defendant had an adequate safety program. It was noted by way of plaintiff's narrative (Form OSHA-1A) that safety meetings were held to instruct employees of hazards in confined spaces/tunneling. The judge allowed defendant's motion to strike citation 1)c), Section 1926.800(b)(4), and presented a case on point to show that communication was adequate. The judge allowed the defendant's motion.

The defendant then proceeded with its case, and testimony was taken from the president of the company. He stated that the company did have testing equipment, but that company policy was not to test the air quality until the men were at least 150' in. Furthermore, safety meetings were held, the company had a good safety record, and employees were instructed as to use of hard hats. The company also had fans that were used for ventilation, but none were onsite because the men complained when they were used.

The Court, after hearing evidence and argument on behalf of both the plaintiff and defendant, finds for the plaintiff: and orders that the citations be affirmed and that judgment is hereby granted to the plaintiff against the defendant for Three hundred and sixty dollars (\$360.00) as civil penalty for violations of Section 1926.800(b)(3), Section 1926.800(c)(1)(i) - frequency of testing, Section 1926.800(c)(2)(i), and Section 1926.28(a). The citations are affirmed as serious violations within the regulations and standards of the Virginia Occupational Safety and Health Standards, except for violation of Section 1926.28(a) which is classified as an other-than-serious violation, no penalty attached.

The Court further finds that the defendant did not violate Section 1926.800(c)(1)(i) - atmospheric testing, Section 1926.800(c)(1)(ii). The Court granted defendant's motion to strike violations of Section 1926.21(b)(6)(i) and Section 1926.800(b)(4).

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

Entered this 20th day of May, 1988.

COMMONWEALTH

v.

LYTTLE UTILITIES, INC.

Docket NO. 1683-86

August 14, 1987

CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

Gregory C. Fleming, Assistant Commonwealth Attorney, for Plaintiff
Sandy T. Tucker, Attorney for Defendant

ORDER

This day came the Commonwealth of Virginia by its Assistant Commonwealth's Attorney, Gregory Fleming, and Lyttle Utilities, Inc., by its counsel, Sandy T. Tucker, and represented to this Court that a settlement of the matter pending before the Court has been reached.

Therefore the Court does make the following findings of fact in accordance with the settlement:

1. Lyttle Utilities is engaged in the construction industry and on February 27, 1986, was engaged in trench work along Old Hundred Road at the intersection of Genito Road.
2. Charles Harrigan, then Acting VOSH Assistant Commissioner for the Department of Labor and Industry, observed workers in the trench in the morning of February 27, 1986, and saw that no cave-in protection had been provided. He referred the case to a compliance officer for inspection.
3. Harold D. Williams, an inspector with the Department of Labor and Industry, conducted an on-site investigation of the trenching operation later that morning, and observed that the trench was 27 feet long and 7 to 9 feet deep, and varied in width from 3 feet to 12 feet. The soil was soft and unstable.
4. Mr. Williams further observed that the west side of the trench was perpendicular and was not shored, sheeted, braced, sloped, or otherwise supported, in accordance with Tables P-1 and P-2 of Section 1926.652 of the Virginia Occupational Safety and Health Standards.
5. Mr. Williams noted that the east side of the trench was sloped in the bore pit section, but the narrow section was inadequately sloped.
6. Lyttle Utilities, denied any violation of Section 1926.652(b), claiming that the site in question was not a "trench" but an excavation, making this section inapplicable, and even if it were a trench, the sides were not in unstable or soft material.

7. Lyttle Utilities has abated the condition cited by the Department of Labor and Industry.

In accordance with the settlement entered into between the parties, the Court finds that Lyttle Utilities has violated Section 1926.652(b) of the Virginia Occupational Safety and Health Standards for the Construction Industry:

Sides of trenches in unstable or soft material, 5 feet or more in depth, shall be shored, sheeted, braced, sloped or otherwise supported by means of sufficient strength to protect the employees working within them.

and that this is a serious violation.

The Court therefore ORDERS that Lyttle Utilities, Inc., pay, in accordance with the settlement, a civil fine of two hundred dollars (\$200.00) to the Commissioner of Labor and Industry.

It is further ORDERED that certified copies of this Order be mailed to Sandy T. Tucker, Williams, Mullen & Christian, P.O. Box 1320, Richmond, Virginia 23210; to Elizabeth V. Scott, Department of Labor & Industry, P.O. Box 12064, Richmond, Virginia 23241; and to a Gregory Fleming, Assistant Commonwealth's Attorney for the County of Chesterfield.

Entered this 14th day of August, 1987.

COMMONWEALTH

v.

MCDOWELL & WOOD, INC.

Docket NO. V86-21257

July 30, 1987

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

Kathleen M. Edge, Assistant Commonwealth Attorney, for Plaintiff
Richard D. Rogers, Jr., Attorney for Defendant

CONSENT ORDER

THIS DAY came the Commonwealth of Virginia, by Counsel, and represents that in order to provide for the safety, health and welfare of the Defendant's employees and to conclude this matter without the necessity of litigation, the parties have reached the following agreement:

This case was pending in this Court pursuant to Section 40.1-49.4E of the Code of Virginia, as a contest of a citation, issued following VOSH Inspection Number 3302528 conducted on October 23rd and 24th of 1985 of the worksite located on Shore Drive at Ferry Road in Virginia Beach, Virginia.

A copy of the amended citation, and, this order shall be posted at the defendant's workplace for three 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.

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

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to §40.1-49.4, it is ADJUDGED, ORDERED and DECREED that the defendant abate the violation cited in this matter (§1926.550(b)(2)) within the time stated in the amended citation attached hereto as Exhibit A. Each such violation cited in Exhibit A is hereby affirmed. Judgment is hereby granted for the plaintiff against the defendant for \$150.00 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 and the amended citation in a conspicuous place where notices to employees are usually posted for three working days.

Entered this 30th day of July, 1987.

COMMONWEALTH

v.

OLD DOMINION MASONRY, INC.

Docket NO. V87-5953

December 14, 1987

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Assistant Commonwealth Attorney, for Plaintiff
Leslie Campbell, Attorney for Defendant

ORDER

On this day came the plaintiff, by counsel, and the defendant, by counsel, and in order to provide for the safety of defendant's employees and to conclude this matter without the necessity for future litigation, stipulated and agreed as follows:

The defendant is before this Court pursuant to Virginia Code §40.1-49.4(E) contesting a citation issued to it by the plaintiff on December 15, 1986.

Plaintiff has agreed to vacate citation 1, item 1. This item, and alleged serious violation of §1926.300(b)(2) of the VOSH Standards for the Construction Industry, involved an unguarded mortar mixer. Plaintiff thus moves this Court to dismiss this item.

Defendant has agreed to withdraw its contest of citation 1, item 2a-d, an alleged serious violation of the scaffolding regulations in §1926.451 of the VOSH Standards for the Construction Industry (§1926.451(a)(2), §1926.451(a)(14), §1926.451(d)(7) and §1926.451(d)(10)). Plaintiff agrees to reduce the penalty for this violation to \$150.00, which shall be payable within 15 days of the entry of this order.

The above-stated violations have all been abated.

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

ADJUDGED, ORDERED, & DECREED that Citation Number 1, item 1, be dismissed. Citation Number 1, item 2a-d is affirmed, and judgment is granted for the plaintiff in the amount of \$150.00. The Clerk of Court is hereby Ordered to remove this case from the docket and shall transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry.

Entered this 14th day of December, 1987.

COMMONWEALTH

v.

W. M. PARIS & ASSOCIATES, INC.

Docket NO. V87-5954

August 21, 1987

GENERAL DISTRICT COURT FOR HENRICO COUNTY

Gary K. Aronhalt, Assistant Commonwealth Attorney, for Plaintiff
William M. Paris, Jr., President, W.M. Paris & Associates, Inc., Attorney for
Defendant

ORDER

It appearing that an inspection and subsequent allegations by the Commonwealth of Virginia, ex rel. Commissioner of Labor and Industry, having resulted in the issuance of a citation and summons to W. M. Paris & Associates, Inc. (Paris), for the alleged violation at New Market Road, $\frac{1}{2}$ mile east of Wilson Road, Richmond, Virginia, on or about November 19, 1986, of certain Virginia Occupational Safety and Health (VOSH) standards set forth specifically below; and

It appearing that the defendant, Paris, while not admitting any civil liability arising from the aforesaid alleged violations other than for future enforcement purposes pursuant to Title 40.1, Code of Virginia, has agreed to an offer of settlement made by the plaintiff whereby the defendant shall tender to the plaintiff the sum of two hundred and twenty-five dollars (\$225.00) and has consented to abatement of the violations which were alleged as follows:

<u>VOSH Regulation Alleged to Have Been Violated</u>	<u>Proposed Penalty</u>	<u>Agreed Penalty</u>
1. 1926.652(b); Serious Violation: Employees were working in a trench greater than five feet in depth, the sides of which were not properly shored, sheeted, braced, sloped or otherwise supported in accordance with Tables P-1 and P-2.	\$300.00	\$225.00

This Court having now determined that the aforesaid proposed settlement constitutes a lawful and reasonable settlement and serves the public interest in resolving such disputes expeditiously while at the same time promoting safety in the workplace; and pursuant to Va. Code Section 40.1-49.4D,

IT IS HEREBY ORDERED AND DECREED:

1. That Paris committed the violation described above; however, this Order does not constitute a determination of liability under any statute or principle of law other than Title 40.1, Code of Virginia; and

2. That Paris shall this day pay the sum of two hundred and twenty-five dollars (\$225.00) to the Commonwealth of Virginia as an agreed penalty for the violation described above; and
3. That Paris shall abate the violation as described above if such abatement has not yet occurred; and
4. That the aforesaid settlement is approved, confirmed and entered as of this date; and
5. That the Clerk shall send attested copies of this Order to all counsel of record and to Thomas A. Cooper, Department of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23228.

Entered this 21st day of August, 1987.

COMMONWEALTH

v.

PHOENIX DEVELOPMENT CORPORATION

Docket NO. V87-19056

October 5, 1987

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Raymond F. Morrrough, Assistant Commonwealth Attorney, for Plaintiff
Gerald I. Katz, Attorney for Defendant

ORDER

THIS MATTER came on for trial on October 5, 1987 on the Citation and Notification of Penalty ("Citation") served upon the Defendant, Phoenix Development Corporation, by the Commonwealth of Virginia, Department of Labor and Industry, alleging certain "serious" and "other" violations of the Virginia Industry (29 C.F.R. part 1926) as set forth in the aforesaid Citation; and

UPON PRESENTING its evidence, the Commonwealth having withdrawn Citation No. 2, items 1 and 2, and Defendant having made a motion to strike Citation No. 1, item 1 and Citation No. 2, items 3 and 4, and the Court being fully advised, the Court having GRANTED Defendant's motion as to Citation No. 1, item 1, and as to Citation No. 2, item 4; and the Court having DENIED Defendant's motion as to Citation No. 2, item 3, the Defendant thereupon presenting evidence on said Citation; and

UPON ARGUMENT OF COUNSEL, following the presentation of Defendant's evidence, the Court being fully advised, the Court made the following findings of fact and conclusions of law:

1. The Court finds that there were no "water conditions" present at the Defendant's jobsite as contemplated by Section 1926.651(h) of the Virginia Occupational Safety and Health Standards for the Construction Industry.

2. The Court finds that the work being performed at the Defendant's jobsite involved an "excavation" as that term is defined in Section 1926.653 of the Virginia Occupational Safety and Health Standards for the Construction Industry.

3. The Court finds that the means of egress from Defendant's excavation was adequate (§1926.652(h)).

4. The Court finds that the Defendant did not place traffic signs at the point of hazard (§1926.200(g)(1)).

CONCLUSIONS OF LAW

1. The Commonwealth's motion to withdraw Citation No. 2, items 1 and 2 is GRANTED.

2. The Defendant's motion to strike Citation No. 1, item 1 and Citation No. 2, item 4 is GRANTED.

3. The Court affirms a violation of other Citation No. 2, item 3 with a penalty of \$0 provided.

Entered this 5th day of October, 1987.

COMMONWEALTH

v.

SHIRLEY CONTRACTING CORPORATION

Docket NO. V88-7775

June 13, 1988

GENERAL DISTRICT COURT OF FAIRFAX COUNTY

William Pickett, Assistant Commonwealth Attorney, for Plaintiff
Joseph H. Kasimer, Attorney for Defendant

ORDER

This cause came to be heard upon the issuance of a summons by the Plaintiff concerning three Occupational Safety & Health Act citations, denominated citations 1(A), 1(B) and 1(C), all of which were classified as "repeat-serious" violations, and upon the presentation of oral and documentary evidence in open court, the briefs of the parties and argument of counsel. Upon due consideration of the foregoing, and for the reasons stated in open court, it is accordingly

ORDERED, ADJUDGED AND DECREED, that violation 1(C) §1926.652(e) and hereby is vacated; and

ORDERED, ADJUDGED AND DECREED, that citations 1(A) §1926.651(i)(1) and 1(B) §1926.652(b) are hereby modified to "other than serious" rather than "repeat-serious"; and

ORDERED, ADJUDGED AND DECREED, that the proposed penalty be and hereby is reduced to \$100.00;

THIS CAUSE IS FINAL.

Entered this 13 day of June, 1988.

COMMONWEALTH

v. .

SOUTHERN BRICK CONTRACTORS, INC.

Docket NO. A-2346

October 13, 1987

CIRCUIT COURT OF HENRICO COUNTY

Gary K. Aronhalt, Assistant Commonwealth Attorney, for Plaintiff
James W. Morris, III, and Ann Adams Webster, Attorney for Defendant

ORDER

On this day came the plaintiff, by counsel, and the defendant, by counsel, and in order to provide for the safety of defendant's employees and to conclude this matter without the necessity for future litigation, stipulated and agreed as follows:

The defendant is before this Court pursuant to Virginia Code §40.1-49(E) contesting two citations issued to it by the plaintiff on October 27, 1986.

Plaintiff has agreed to vacate both citations. Citation number 1, an alleged serious violation of §1926.300(b)(2) of the VOSH Standards for the Construction Industry, involved an unguarded mortar mixer and citation number 2, an other-than-serious violation of §1926.451(a)(7) of the VOSH Standards for the Construction Industry involved deflection of scaffolding caused by a hack of bricks. Plaintiff thus moves this Court to dismiss these citations.

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

ADJUDGED, ORDERED & DECREED that Citations Number 1 and 2 be and hereby are dismissed. The Clerk of Court is hereby Ordered to remove this case from the docket and shall transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry.

Enter this 16th day of November, 1987.

COMMONWEALTH

v.

SOUTHERN BRICK CONTRACTORS, INC.

Docket NO. V87-01195

November 16, 1987

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary Aronhalt, Assistant Commonwealth Attorney, for Plaintiff
Ann Adams Webster, Attorney for Defendant

ORDER

On this day came the plaintiff, by counsel, and the defendant, by counsel, and in order to provide for the safety of defendant's employees and to conclude this matter without the necessity for future litigation, stipulated and agreed as follows:

The defendant is before this Court pursuant to Virginia Code §40.1-49(E) contesting two citations issued to it by the plaintiff on October 27, 1986.

Plaintiff has agreed to vacate both citations. Citation number 1, and alleged serious violation of §1926.300(b)(2) of the VOSH Standards for the Construction Industry, involved an unguarded mortar mixer citation number 2, an other-than-serious violation of §1926.451(a)(7) of the VOSH Standards for the Construction Industry involved deflection of scaffolding caused by a hack of bricks. Plaintiff thus moves this Court to dismiss these citations.

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

ADJUDGED, ORDERED, & DECREED that Citations Number 1 and 2 be and hereby are dismissed. The Clerk of Court is hereby Ordered to remove this case from the docket and shall transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry.

Enter this 16th day of November, 1987.

COMMONWEALTH

v.

SOUTHERN BRICK CONTRACTORS, INC.

Docket NO. LL-427-3

December 3, 1987

CIRCUIT COURT OF THE CITY OF RICHMOND

William B. Bray, Assistant Commonwealth Attorney, for Plaintiff
Ann Adams Webster, Attorney for Defendant

ORDER

On motion of the parties, by counsel, it is ORDERED that this appeal be dismissed agreed and ORDERED that the citation issued by the plaintiff against defendant for alleged violation of Standard §1926.300(b)(2) is vacated and dismissed.

Let the Clerk send attested copies of this Order to counsel of record.

Entered this 3rd day of December, 1987.

COMMONWEALTH

v.

JOSEPH S. TERRELL, INC.

Docket NO. 87-1972

January 13, 1988

GENERAL DISTRICT COURT FOR THE CITY OF WILLIAMSBURG
AND JAMES CITY COUNTY

George C. Fairbanks, Assistant Commonwealth Attorney, for Plaintiff
John C. Stephens, Jr., Attorney for Defendant

ORDER

THIS DAY came the Commonwealth of Virginia, by counsel, and the 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:

FINDINGS OF FACT

1. On January 12, 1987, Compliance Safety and Health Officer Ned W. Walker of the Department of Labor and Industry conducted an inspection of defendant's worksite at 3721 Strawberry Plains Road, Williamsburg, Virginia, following a formal complaint.
2. While on the worksite CSHO Walker observed a material lift tractor being operated without a horn and without brakes capable of stopping the machine. The machine operator, Cheryl Brown, the supervisor, Mr. Lowery, and Mr. Terrell all were unable to stop the machine by use of the brakes.
3. The Department of Labor and Industry issued a citation to defendant on March 10, 1987, alleging a serious violation of VOSH Standards for the Construction Industry §1926.602(c)(1)(vi) for failure to maintain the horn and brakes on material handling equipment in a safe, operable condition. A penalty of \$700 was proposed.

CONCLUSIONS OF LAW

1. The Court, after hearing evidence and argument on behalf of both the plaintiff and defendant, finds for the plaintiff and orders that the citation be affirmed. Judgment is hereby granted to the plaintiff against the defendant for Two Hundred Fifty Dollars (\$250.00) as a civil penalty for a serious violation of §1926.602(c)(1)(vi). This sum shall be remitted to the Department of Labor and Industry within 15 days of the entry of this order, along with a letter of abatement.

2. The clerk shall mail certified copies of this order to all counsel of record and to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, VA 23241.

Entered this 13th day of January, 1988.

COMMONWEALTH

v.

VIRGINIA HOMES MANUFACTURING CORPORATION

Docket NO.

June 7, 1988

GENERAL DISTRICT COURT FOR MECKLENBURG COUNTY

Frank D. Harris, Commonwealth Attorney, for Plaintiff
Harry S. Montgomery, Attorney for Defendant

AGREED ORDER

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

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting VOSH Citation No. W8119-068-86 issued to it by plaintiff. Defendant is represented in this proceeding by H. S. Montgomery, Attorney, who appeared at the Court hearing on this proceeding.

Plaintiff and defendant have agreed that the Citation No. 1, a serious violation of Section 1926.500(e)(1)(iii) of VOSH Standards for the Construction Industry, be reduced to an "other-than-serious" violation, with the proposed penalty of \$700.00 to remain unchanged. The penalty shall be due within 15 days of the entry of this order.

The violation by defendant was in allowing its employees to be exposed to a latch type load hook (electric chain hoist) while the latch was missing. The hoist was being used to lift 48 foot long wall, suspended from a 40 foot boom. During the lift the boom went out of the load hook and struck 3 employees. This violation and contention were duly abated by defendant during plaintiff's inspection.

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

WHEREFORE, upon agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED and DECREED that the VOSH citation for violations of Section 1926.500(e)(1)(iii) be affirmed as an other-than-serious violation, and judgment is granted for the plaintiff in the amount of \$700.00.

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

Entered this 7th day of June, 1988.

Note: Due to a typographical error, the wrong standard is listed. The correct standard should be §40.1-51.1(a).

COMMONWEALTH

v.

YATES CONSTRUCTION COMPANY

Docket NO. V86-5463

February 16, 1988

GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

Jeanne Colby, Assistant Commonwealth Attorney, for Plaintiff
Fred S. Hunt, III, Attorney for Defendant

AGREED ORDER

This Day came the parties, by counsel, and, in order to settle this matter without the necessity for further litigation, agree and stipulate as follows:

1. Between March 25, 1986 and March 27, 1986, Compliance Safety and Health Officer Harold Williams conducted a safety inspection of a trench in Chesterfield County at the intersection of Route 10 and Courthouse Road where employees of Yates Construction were laying a water line.
2. As a result of this inspection, Yates Construction was cited for a serious violation of VOSH Standards for the Construction Industry §1926.651(i)(1) [failure to store excavated material at least 2 feet from the edge of the excavation] and §1926.652(b) [failure to protect the sides of the trench from cave-in by shoring, sheeting, bracing, or sloping the sides]. A penalty of \$350.00 was proposed.
3. Yates Construction Company contested this citation and penalty.
4. Yates Construction Company now agrees to withdraw its contest of this citation and agrees to pay the penalty of \$350.00 within 15 days of the entry of this order.
5. The violations cited by CSHO Williams have been abated.
6. By entering into this agreement, the defendant does not admit to any violation other than for the purposes of Title 40.1 of the Code of Virginia.

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

AGREED that the citation for a serious violation of §§1926.651(i)(1) and 1926.652(b) is hereby affirmed. A civil penalty of \$350.00 is assessed.

A certified copy of this Order shall be sent to all parties and to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241.

Entered this 16th day of February, 1988.

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