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

2007

Asplundh Tree Expert Co., C. Ray Davenport v.
Chancery No. 06-1487 (Hampton City Circuit Court)

Atlantic Environmental Construction Co., C. Ray Davenport v.
Chancery No. CL 06-248 (Williamsburg City Circuit Court)

Augusta Lumber Co., Inc., C. Ray Davenport v.
Chancery No. CL06-000121 (Waynesboro City Circuit Court)

Carolina Steel, Inc., C. Ray Davenport v.
Chancery No. CH004-259 (Washington County Circuit Court)

Concrete, Inc., C. Ray Davenport v.
Chancery No. CH03-24 (Tazewell County Circuit Court)

Dean Steel Erection Company, Inc., C. Ray Davenport v.
Chancery No. CL06000199 (Waynesboro City Circuit Court)

Flippo Construction Company, Incorporated, C. Ray Davenport v.
Chancery No. 192318 (Fairfax County Circuit Court)

Godsey & Son, Inc., C. Ray Davenport v.
Chancery No. CH03-000132 (Hanover County Circuit Court)

Godsey & Son, Inc., C. Ray Davenport v.
Chancery No. CH05-05 (King William County Circuit Court)

KBS, Inc., C. Ray Davenport v.
Chancery No. CH05001871-00 (Richmond City Circuit Court)

KM Builders, Inc., d/b/a Barr Concrete, Inc., C. R. Davenport v.
Chancery No. 186374 (Fairfax County Circuit Court)

Mesa Industries, Inc., C. Ray Davenport v.
Chancery No. CH05-000332 (Washington County Circuit Court)

PCL Civil Constructors, Inc., C. Ray Davenport v.
Chancery No. 16638 (Montgomery County Circuit Court)

PCL Civil Constructors, Inc., C. R. Davenport v.
Chancery No. 16639 (Montgomery County Circuit Court)

Special Renovations, C. R. Davenport v.
Chancery No. CH04013148-00 (Albemarle County Circuit Court)

Virginia Electric and Power Company d/b/a Dominion Virginia Power, C. Ray Davenport v.
Chancery No. CH05-77 (Chesterfield County Circuit Court)

Virtexco Corporation, C. R. Davenport v.
Chancery No. CL07-1344-3 (Richmond City Circuit Court)

Volvo Trucks of North America, Inc., C. Ray Davenport v.
Chancery No. CH02-358 (Pulaski County Circuit Court)

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

C. RAY DAVENPORT, Commissioner of Labor and Industry Plaintiff, v. **ASPLUNDH TREE EXPERT CO.,** Defendant.	)	Civil No. 06-1487

AGREED FINAL ORDER

WHEREAS, on or about November 28, 2005, Commissioner C. Ray Davenport issued a citation to the defendant, Asplundh Tree Expert Co., alleging serious violations of the Virginia Occupational Safety and Health Standards (VOSH), and proposing a civil penalty of $14,000.00; and

WHEREAS, Asplundh Tree Expert, Co., filed within 15 working days from the date of the receipt of the citation, a written notice contesting the violations and proposed penalties, as provided for in § 40.1-49.4, of the *Code of Virginia;*

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

1. That the citation attached to the Complaint is hereby amended as follows:

   a. Citation 1, item 1, is vacated, along with the $7000.00 penalty; and

   a. Citation 1, Item 2, remains serious, with a $7000.00 penalty. The language in the citation is amended as follows:

      § 1910.269(p)(1)(ii): Located at this inspection site on May 31, 2005, the employer did not assure that vehicular equipment being driven in reverse gear with an obstructed view to the rear was operated on an off-highway job site with either a reverse signal alarm audible above the surrounding noise level, or when a designated employee signaled that it was safe to do so.

An employee was struck and killed by a GMC C7500 #894-7380 Split Dump bucket truck driven by a foreman who was backing the vehicle. During a post accident inspection of the vehicle by the State Police, the reverse signal alarm was found intermittently operational if the reverse gear was not fully engaged. Even though it was alleged that the victim was functioning as a ground guide at the time of the accident and was positioned at the rear of the passenger side of the vehicle, evidence gathered during the course of the investigation indicates that the employee who was working as a spotter did not maintain line-of-sight visual contact with the driver.

2. Asplundh Tree Expert Co., shall pay the total penalty of $7000.00 within thirty (30) 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 309070985 noted on the payment.

3. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), Asplundh Tree Expert Co., shall post a copy of this order for ten (10) consecutive days at its workplaces in Virginia in a conspicuous location where notices to employees generally are posted.

4. Asplundh Tree Expert Co., certifies that the affirmed violation referenced above in this Order has been corrected and abated.

5. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Asplundh Tree Expert Co. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

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

7. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to the Special Assistant Commonwealth's Attorney and the Defendant's counsel.

Entered this 3rd day of ~~September~~, 2007.

Judge

We ask for this:

C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
Virginia Department of Labor & Industry
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

SEEN AND AGREED:

Asplundh Tree Expert Co.

By: _____
Steven R. Semler (Pro Hac Vice)
Ogletree Deakins, Nash, Smoak & Stewart, P.C.
2400 N Street, N.W., 5th Floor
Washington, D.C. 20037
202.887.0855
202.887.0866 (fax)

Counsel for Asplundh Tree Expert Co.

I certify that the document to which this authentication is affixed is a true copy of an original record in the Hampton Circuit Court, that I have custody of the record and I am the custodian of that record.
Linda Batchelor Smith, Clerk
By _____
Dep. Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

C. RAY DAVENPORT, Commissioner of Labor & Industry Plaintiff, v. ATLANTIC ENVIRONMENTAL CONSTRUCTION CO. Defendant.	)	CL 06-248

ORDER

This matter came before the Court for trial on August 2, 2007, based upon Atlantic Environmental Construction Co.'s (AEC's) contest of Virginia Occupational Safety and Health (VOSH) citations and proposed penalties issued to it by the Commissioner of Labor and Industry (Commissioner Davenport). After hearing all of the evidence presented by both parties, the Court rules as follows:

1. Citation 1, item 1, alleging a serious violation of VOSH standard § 1926.100(a), that employees were not protected by protective helmets while working in areas where there were possible dangers of head injury from impact or falling objects is DISMISSED.

2. Citation 1, item 2, alleging a serious violation of VOSH standard § 1926.451(h)(2)(ii), that the employer did not have toeboards installed on scaffolds erected over ten (10) feet high to protect employees working underneath the scaffold is SUSTAINED, with a civil penalty of $225.00, to be paid by the defendant 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, and transmitted to the plaintiff.

3. Citation 2, item 1, alleging an other than serious violation of VOSH standard § 1926.1101(g)(5)(i)(B)(1), that the employer did not smoke test the Negative Pressure Enclosure (NPE) at the beginning of each shift is DISMISSED.

Pursuant to Va. Code § 40.1-51.1 (e) and the VOSH Administrative Regulations Manual, AEC shall post a copy of this order for ten (10) working days at its construction sites in Virginia in conspicuous places where notices to employees are usually posted. The Clerk will strike this matter from the docket of this Court and place it among the ended cases.

The clerk shall send an attested copy of this ORDER to all counsel of record.

Entered this 15th day of August, 2007.

By: [signature]
Samuel T. Powell, III
Circuit Court Judge

Seen and objected to with respect to ¶ 2:

R Leonard Vance

R. Leonard Vance, Attorney at Law
VSB #15305
P. O. Box 1591
Midlothian, VA 23112
(804) 690-0779

[illegible] THE [illegible] IS AFFIXED IS A [illegible] RECORD IN THE CIRCUIT COURT OF THE [illegible] WILLIAMSBURG AND COUNTY OF JAMES CITY, [illegible] I AM CUSTODIAN OF THAT RECORD.
[illegible] B. WOOLRIDGE, CLERK
Natalie C. Cradic

Seen and objected to with respect to ¶ 1 and ¶ 3:

Robert B Feild

Robert Feild, Esq.,
Special Assistant Commonwealth's Attorney
Department of Labor & Industry
13 South 13th Street
Richmond, Va. 23219

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WAYNESBORO

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Civil Action No.: CL06- 000121
AUGUSTA LUMBER CO., INC.,	)	
Defendant.	)	

AGREED ORDER

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

1. That the citations attached to the Complaint are hereby amended as follows:

a) Serious Citation 1, Items 1, 3 and 4 are grouped into one Serious Item and affirmed as written with a penalty of $1,000.00 for the grouped citation;

b) Serious Citation 1, Item 2 is affirmed as written with a reduced penalty of $2,000; and

c) Serious Citation 1, Item 5 is affirmed as written with a reduced penalty of $2,000;

2. That the Defendant shall pay the total penalty of $5,000.00 within thirty (30) days of the date of receipt of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia, with VOSH inspection number 308584143 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. That the Defendant shall certify within thirty (30) days of the entry date of this Order that all violations affirmed in this Order have been abated;

5. That the Defendant shall post a copy of this Order at its Waynesboro, Virginia facility located at 567 N. Charlotte Avenue, Waynesboro, Virginia 22980 for thirty consecutive days, beginning from the date of receipt of this Order, at its workplace in Virginia in a conspicuous location where notices to its employees are generally posted;

6. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

7. 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, but that the citations affirmed under this order may only be used as the basis for a repeat violation for three years from the date of entry of this Order;

8. That under 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

9. 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 22 day of JUNE 2007.

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

Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Robert B Feild

Robert B. Feild
Special Assistant Commonwealth's Attorney
City of Waynesboro
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

SEEN AND AGREED:

AUGUSTA LUMBER CO., INC.

J. Barrett Lucy

J. Barrett Lucy (VSB No. 48512)
GENTRY LOCKE RAKES & MOORE LLP
800 Suntrust Plaza
P.O. Box 40013
Roanoke, Virginia 24022-0013
Telephone: (540) 983-9300
Facsimile: (540) 983-9400

Counsel for Augusta Lumber Co., Inc.

A TRUE AND CORRECT COPY
TESTE: Monica Morris Deputy CLERK
CIRCUIT COURT
CITY OF WAYNESBORO

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF WASHINGTON

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Chancery No.: CH04-259
CAROLINA STEEL, 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) Willful Citation 1, Item 1 is amended to an unclassified violation of Virginia Code § 40.1-49.4 with an assessed penalty of $20,000.00.

2. That the Defendant shall pay the total penalty of $20,000.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 306301771 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. 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;

5. 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;

6. That the Defendant will include the following language in its revised Equipment Specific Safety Training - Crane Operations document:

> Do not lower the load without verifying that the landing/storage area is clear of debris that could make the load unstable, that the landing/storage surface can safely support the load and that all co-workers are in proper/safe positions.

7. That the violation affirmed in paragraph 1a may only be used as the basis for a repeat citation for one year from the date of the entry of this agreed order.

8. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

9. 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;

10. That under 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;

11. Except for these proceedings, and matters arising out of these proceedings, and any other subsequent VOSH proceedings between the parties, nothing in this agreement nor any foregoing statements, findings or actions taken by the Defendant shall be deemed an admission by the Defendant of the allegations of the citation, said allegations having been specifically denied. Furthermore, the parties agree that the citation, as amended, does not make any charges either, expressed or implied, that the conditions set forth were the cause or proximate cause of any

accident or damages. The agreements, statements, findings and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

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 June 2007.

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

C. Randall Lee
Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Robert B Feild

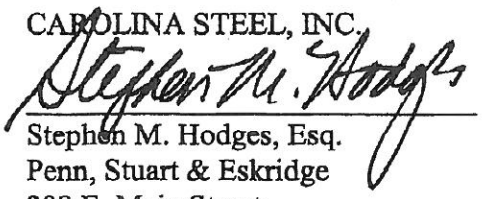
Robert B. Feild
Special Assistant Commonwealth's Attorney
County of Washington
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

A COPY TESTE: Paula B Johnson DEPUTY CLERK

SEEN AND AGREED:

CAROLINA STEEL, INC.



Stephen M. Hodges, Esq.
Penn, Stuart & Eskridge
208 E. Main Street
Abingdon, VA 24210

James M. Powell, Esq.
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300 N. Greene Street, Suite 1900
Greensboro, North Carolina 27401
Telephone: (336) 574-8030
Facsimile: (336) 574-4520

Counsel for Carolina Steel, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF WASHINGTON

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Chancery No.: CH04-259
CAROLINA STEEL, 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) Willful Citation 1, Item 1 is amended to an unclassified violation of Virginia Code § 40.1-49.4 with an assessed penalty of $20,000.00.

2. That the Defendant shall pay the total penalty of $20,000.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 306301771 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. 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;

5. 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;

6. That the Defendant will include the following language in its revised Equipment Specific Safety Training - Crane Operations document:

> Do not lower the load without verifying that the landing/storage area is clear of debris that could make the load unstable, that the landing/storage surface can safely support the load and that all co-workers are in proper/safe positions.

7. That the violation affirmed in paragraph 1a may only be used as the basis for a repeat citation for one year from the date of the entry of this agreed order.

8. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

9. 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;

10. That under 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;

11. Except for these proceedings, and matters arising out of these proceedings, and any other subsequent VOSH proceedings between the parties, nothing in this agreement nor any foregoing statements, findings or actions taken by the Defendant shall be deemed an admission by the Defendant of the allegations of the citation, said allegations having been specifically denied. Furthermore, the parties agree that the citation, as amended, does not make any charges either, expressed or implied, that the conditions set forth were the cause or proximate cause of any

accident or damages. The agreements, statements, findings and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

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 June 2007.

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

C. Randall Lowe
Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Robert B Feild

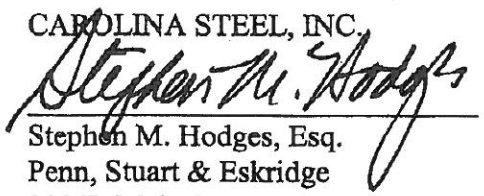
Robert B. Feild
Special Assistant Commonwealth's Attorney
County of Washington
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

A COPY TESTE: Paula B Hall DEPUTY CLERK

SEEN AND AGREED:

CAROLINA STEEL, INC.



Stephen M. Hodges, Esq.
Penn, Stuart & Eskridge
208 E. Main Street
Abingdon, VA 24210

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300 N. Greene Street, Suite 1900
Greensboro, North Carolina 27401
Telephone: (336) 574-8030
Facsimile: (336) 574-4520

Counsel for Carolina Steel, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF TAZEWELL

C. RAY DAVENPORT, Commissioner of Labor & Industry	)	
Plaintiff,	)	
v.	)	Case No. CH03-24
CONCRETE, INC., and its successors,	)	
Defendant.	)	

AGREED ORDER

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

1. In settlement of the matters alleged in this action, the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Items 1a and 1b, remain serious as cited. The $1,500.00 penalty is reduced to $100.00;

   b. Citation 1, Item 2, remains serious as cited. The $750.00 penalty is reduced to $100.00;

   c. Citation 1, Item 3, remains serious as cited. The $600.00 penalty is reduced to $100.00;

   d. Citation 1, Items 4a and 4b, remain serious as cited. The $1,050.00 penalty is reduced to $100.00;

   e. Citation 1, Items 5a and 5b, remain serious as cited. The $1,500.00 penalty is reduced to $100.00;

   f. Citation 1, Item 6, remains serious as cited. The $1,500.00 penalty is reduced to $100.00;

   g. Citation 1, Item 7, remains serious as cited. The $1,500.00 penalty is reduced to $100.00;

h. Citation 1, Item 8, remains serious as cited. The $1,500.00 penalty is reduced to $100.00;

i. Citation 1, Item 9, remains serious as cited. The $1,500.00 penalty is reduced to $100.00;

j. Citation 1, Item 10, remains serious as cited. The $1,500.00 penalty is reduced to $100.00;

k. Citation 1, Item 11, remains serious as cited. The $450.00 penalty is reduced to $100.00;

l. Citation 1, Items 12a, 12b, 12c and 12d, remain serious as cited. The $600.00 penalty is reduced to $100.00;

m. Citation 2, item 1, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $15,000.00 penalty is reduced to $1725.00;

n. Citation 2, item 2, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $15,000.00 penalty is reduced to $1725.00;

o. Citation 2, item 3, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $7,500.00 penalty is reduced to $1725.00;

p. Citation 2, item 4, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $7,500.00 penalty is reduced to $1725.00;

q. Citation 2, item 5, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $10,500.00 penalty is reduced to $1725.00;

r. Citation 2, item 6, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $15,000.00 penalty is reduced to $1725.00;

s. Citation 2, item 7, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $15,000.00 penalty is reduced to $1725.00; and

t. Citation 2, item 8, is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The $15,000.00 penalty is reduced to $1725.00.

2. Concrete, Inc., shall pay the penalty of $15,000.00 within thirty (30) 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 303214738 noted on the payment. The

amount of the penalty to be paid shall not be construed to indicate a particular classification of the amended violations.

3. As part of the settlement of this citation, the parties agree to the following conditions:

a. Concrete, Inc., shall contact the Consultation Division of the Virginia Department of Labor and Industry and arrange for a comprehensive safety and health site survey. This comprehensive survey shall take place when Concrete, Inc., has re-established its business. Concrete, Inc., is required to notify the Consultation Division and make arrangements for the survey within 30 - 60 days prior to the start of its first job. The notification for the consultation survey shall be made to :

Warren E. Rice, Consultation Services Manager
Virginia Department of Labor and Industry
North Run Business Park
1570 Parham Road
Richmond, VA 23228-2360
804.371.3104

b. From the date that the safety and health surveys are completed and closed, Concrete, Inc., shall supply the Department with a list of all of its job sites for a period of one year. Concrete, Inc., agrees to allow for a compliance inspection of its workplace during this one year period. The list of Concrete, Inc., job sites shall be sent to:

James L. Mann, Region Director
Virginia Department of Labor & Industry
Brammer Village
3013 Peters Creek Road
Roanoke, Virginia 24019

c. Any crane used by Concrete, Inc., on a jobsite(s) shall be inspected prior to its use. The inspection shall be conducted by an independent crane company, or by

an employee of Concrete, Inc., who is qualified to conduct a crane inspection. The inspector shall be familiar with the Virginia Occupational Safety and Health (VOSH) and American Society of Mechanical Engineers (ASME) standards for the use of cranes.

4. Concrete, Inc., certifies that the violations alleged in this agreement were abated.

5. As further consideration for the modification of the terms of the original citation, Concrete, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Concrete, Inc. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

For purposes of this action only, a three month repeat period, pursuant to Va. Code § 40.1-49.4.J, will be in effect when the safety and health consultation surveys are completed and closed by the Department. This repeat period will expire at the end of the third month.

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

Entered this 29th day of October, 2007.

Judge Teresa M. Chafin

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

SEEN AND AGREED:

By: _____
James W. Elliott, Jr. (VSB No. 4064)
ELLIOTT, LAWSON & MINOR
P.O. Box 8400
Bristol, VA - TN 24203-8400
276.466.8400
276.466.8161 (fax)

Counsel for Concrete, Inc.

A COPY, TESTE:
JAMES E. BLEVINS, CLERK OF THE
CIRCUIT COURT OF TAZEWELL COUNTY
BY: _____
DEPUTY CLERK

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WAYNESBORO

C. RAY DAVENPORT, Commissioner of Labor & Industry	)	
Plaintiff,	)	
v.	)	Case No. CL06000199
DEAN STEEL ERECTION COMPANY, INC.	)	
Defendant	)	

AGREED ORDER

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

1. In settlement of the matters alleged in this action, the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1, is amended from a willful to a serious violation. The initial penalty of $70,000.00 is reduced to $7,000.00.

2. Dean Steel Erection Company, Inc., shall pay the penalty of $ 7,000.00 within thirty (30) 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 309032522 noted on the payment.

3. Dean Steel Erection Company. Inc., certifies that the violation alleged in this Agreed Order was abated.

4. As further consideration for the modification of the terms of the original citation, Dean Steel Erection Company, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. Dean Steel Erection Company, Inc., shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Dean Steel Erection Company, Inc. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia. However, the affirmed violation may only be used as the basis for a repeat violation for a period of three years from the date of the entry of the order.

7. Each party shall bear its own costs in this matter.

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

Entered this 1 day of ~~April~~ May, 2007.

Judge Humes J. Franklin, Jr.

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
(804) 786-4289
(804) 786-8418 (fax)

By: J. Barrett Lucy

K. Brett Marston (VSB No. 35900)
J. Barrett Lucy (VSB No. 48125)
GENTRY, LOCKE, RAKES & MOORE, LLP
800 Sun Trust Plaza
P. O. Box 40013
Roanoke, Virginia 24022-0013
(540) 983-9300
(540) 983-9400 (fax)

Counsel for Dean Steel Erection Company, Inc.

By: _____

Randi Klein Hyatt
SHAWE ROSENTHAL, LLP
20 S. Charles Street, 11th Floor
Baltimore, Maryland 21201
(410) 752-1040
(410) 752-8861 (fax)

Co-Counsel for Dean Steel Erection Company, Inc.

A TRUE AND CORRECT COPY
TESTE: _____ CLERK
CIRCUIT COURT
CITY OF WAYNESBORO

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

C. RAY DAVENPORT, Commissioner of Labor & Industry Plaintiff, **FLIPPO CONSTRUCTION COMPANY, INCORPORATED** Defendant.	)	Chancery No. 192318

AGREED ORDER

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

1. In settlement of the matters alleged in this action, the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1, is amended from a willful to an unclassified violation of Va. Code ' 40.1-49.4. The assessed penalty of $70,000.00 is reduced to $14,000.00. The standard in the citation is amended as follows:

      Citation 1, item 1, ' 1926.550(a)(19); all employees shall be kept clear of loads about to be lifted and of suspended loads. The alleged violation description (AVD) contained in the citation remains unchanged.

2. Flippo Construction Company, Inc., shall pay the penalty of $14,000.00 within thirty (30) 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 306818352 noted on the payment. The amount of the penalty to be paid shall not be construed to indicate a particular classification of the amended violation.

3. Flippo Construction Company, Inc., certifies that the violation alleged in this

agreement was abated.

4. As further consideration for the modification of the terms of the original citation, Flippo Construction Company, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. Flippo Construction Company, Inc., shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Flippo Construction Company, Inc. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

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

Entered this 5 day of ~~May~~ June, 2007.

Judge

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: John J. Murray
John J. Murray
Assistant Commonwealth=s Attorney
County of Fairfax
4110 Chain Bridge Road, Room 123
Fairfax, Virginia 22030

703.246.2776
703.691.4004 (fax)

SEEN AND AGREED:

By: _____
Joseph H. Kasimer (VSB No. 15171)
Kasimer & Annino, P.C.
Tysons Office Park
7653 Leesburg Pike
Falls Church, Virginia 22043-2521
703.893.3914
703.893.6944

Counsel for Flippo Construction Company, Incorporated

A COPY TESTE:
JOHN T. FREY, CLERK
BY: _____
Deputy Clerk
Date: 7/31/07
Original retained in the office of the Clerk of the Circuit Court of Fairfax County, Virginia

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

RECEIVED and/or FIL
SEP 6 2007
CLERK'S OFFICE
HANOVER CIRCUIT COURT

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	CHANCERY NO. CH 03-000132
GODSEY & SON, INC	)	
Defendant.	)	

AGREED ORDER

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

1. That the citations attached to the Complaint are hereby amended as follows:

   a) Willful Citation 1, Item 1 is vacated;

   b) Repeat Citation 2, Item 1 is vacated;

2. 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 11 day of Sept 2007.

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

Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Robert B. Feild
Special Assistant Commonwealth's Attorney
County of Hanover
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

SEEN AND AGREED:

GODSEY & SON, INC.

Bradley P. Marrs, Esquire
Meyer, Goergen & Marrs
7130 Glen Forest Drive, Suite 305
Richmond, VA 23226
Telephone: (804) 288-3600
Facsimile: (804) 288-1990

Counsel for Godsey & Son, Inc.

A COPY TESTE
FRANK D. HARGROVE, JR. CLERK
HANOVER CIRCUIT COURT
By: Lisa B. Taylor
DEPUTY CLERK

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF KING WILLIAM

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	CHANCERY NO. CH 05-05
GODSEY & SON, INC	)	
Defendant.	)	

AGREED ORDER

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

1. That the citations attached to the Complaint are hereby amended as follows:

a) Serious Citation 1, Item 1 is affirmed with a reduced penalty of $1000.00;

b) Willful Citation 2, Item 1 is reduced to an unclassified violation of Virginia Code § 40.1-51.1.A. with a reduced penalty of $7,000.00;

2. That the Defendant shall pay the total penalty of $8,000.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Commonwealth of Virginia, with VOSH inspection number 304531890 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. 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;

5. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

6. 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, but that the violations affirmed as part of this order may not be used as the basis of a repeat citation after February 24, 2009;

7. That under 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;

8. 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 13th day of Sept. 2007.

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

Thomas B. Hoover
Judge

A Copy Teste:
Patricia L. Norman, Clerk
By: Patricia Norman
Deputy Clerk

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Robert B. Feild
Special Assistant Commonwealth's Attorney
County of King William
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

SEEN AND AGREED:

GODSEY & SON, INC.

Bradley P. Marrs, Esquire
Meyer, Goergen & Marrs
7130 Glen Forest Drive, Suite 305
Richmond, VA 23226
Telephone: (804) 288-3600
Facsimile: (804) 288-1990

Counsel for Godsey & Son, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	CHANCERY NO. CH05001871-00
KBS, INC.	)	
Defendant.	)	

AGREED FINAL ORDER

WHEREAS, on or about June 10, 2004, Commissioner C. Ray Davenport issued citations to the defendant, KBS, Inc., alleging four serious and two other-than-serious violations of the Virginia Occupational Safety and Health Standards (VOSH) for the Construction Industry, and proposing a civil penalty of $3,300.00; and

WHEREAS, KBS, Inc., filed within 15 working days from the date of the receipt of the citation, a written notice contesting the violations and proposed penalties, as provided for in § 40.1-49.4, of the *Code of Virginia;*

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 penalty of $825.00 are vacated.

2. Serious citation 1, item 2 and the accompanying penalty of $825.00 are vacated.

3. Serious citation 1, item 3 is affirmed with a reduced penalty of $500.00.

4. Serious citation 1, item 4 and the accompanying penalty of $825.00 are vacated.

5. Other-than-serious citation 2, items 1 and 2 are vacated. No penalties were proposed with these violations.

6. KBS, Inc., shall pay the sum of $500.00 in the form of a check or money order, payable to the "Treasurer of Virginia," with inspection number 307177899 noted thereon, within 30 days of the date this Order is executed.

7. KBS, Inc., certifies that the violations alleged in this agreement have been abated.

8. As further consideration for the modification of the terms of the original citation, KBS, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

9. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), KBS, Inc., shall post a copy of this order for ten (10) consecutive days at its workplaces in Virginia in a conspicuous location where notices to employees generally are posted.

10. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by KBS, Inc. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

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

12. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to the Special Assistant Commonwealth's Attorney and the Defendant's counsel.

Entered this 5 day of Jan, 2006 7

Judge

A Copy,
Teste: BEVILL M. DEAN, CLERK
BY: D.C.

WE ASK FOR THIS:

C. RAY DAVENPORT,
Commissioner of Labor and Industry

By: _____ 10/19/06
Counsel for Plaintiff Date

Diane L. Duell
Special Assistant Commonwealth's Attorney
13 South Thirteenth Street
Richmond, VA 23219
804.786.4289

SEEN AND AGREED TO:

KBS, INC.,

By: _____ 10/10/06
Counsel for Defendant Date

Devon Williams Cushman
Hirschler Fleischer, P.C.
Federal Reserve Bank Building
701 East Byrd Street
Richmond, VA 23219
804.771.9548

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

C. RAY DAVENPORT, Commissioner of Labor & Industry	)	
Plaintiff,	)	
	)	Chancery No. 186374
KM BUILDERS, INC., d/b/a BARR CONCRETE, INC.	)	
Defendant.	)	

AGREED ORDER

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

1. In settlement of the matters alleged in this action, the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1, is amended from a serious to an unclassified violation of Va. Code § 40.1-49.4. and is grouped with Citation 2, item 2, which is amended from a willful to an unclassified violation of Va. Code § 40.1-49.4. The total assessed penalty for this grouped violation is $35,000.00

   b. Citation 2, Item 1, is vacated, along with the $70,000.00 assessed penalty.

2. KM Builders, Inc., d/b/a/ BARR Concrete, Inc., shall pay the penalty of $35,000.00 within thirty (30) 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 305265571 noted on the payment. The amount of the penalty to be paid shall not be construed to indicate a particular classification of the amended violations.

3. KM Builders, Inc., d/b/a/ BARR Concrete, Inc., certifies that the violations alleged in this agreement were abated.

4. As further consideration for the modification of the terms of the original citation, KM Builders, Inc., d/b/a/ BARR Concrete, Inc., agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. KM Builders, Inc., d/b/a/ BARR Concrete, Inc., shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by KM Builders. Inc., d/b/a/ BARR Concrete, Inc. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

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

Entered this 18 day of May, 2007.

J. Fitzpatrick

Judge

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: John J. Murray
John J. Murray
Assistant Commonwealth's Attorney
County of Fairfax
4110 Chain Bridge Road, Room 123
Fairfax, Virginia 22030
703.246.2776
703.691.4004 (fax)

SEEN AND AGREED:

By: _____

Charles P. Groppe (VSB No. 41504)
MORGAN, LEWIS & BOCKIUS, LLP
1111 East Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202.739.3000
202.739.3001 (fax)

Thomas Benjamin Huggett, Esq.
MORGAN, LEWIS & BOCKIUS, LLP
1701 Market Street
Philadelphia, Pennsylvania 19103-2921
215.963.5191

Counsel for KM Builders, Inc.,
d/b/a BARR Concrete, Inc.

A COPY TESTE:
JOHN T. FREY, CLERK
BY: _____
Deputy Clerk
Date: 4/3/07
Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF WASHINGTON

C. RAY DAVENPORT, Commissioner of Labor and Industry,	)	
Plaintiff,	)	
v.	)	Chancery No.: CH05-000332
MESA INDUSTRIES, INCORPORATED.,	)	
Defendant.	)	

AGREED ORDER

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

1. That the citations attached to the Bill of Complaint are hereby amended as follows:

a) Serious Citation 1, Item 1 is vacated;

b) Serious Citation 1, Item 2 is affirmed with an assessed penalty of $3,500.00 and the Alleged Violation Description amended to the following:

1910.212.(a)(1): Effective machine guarding was not provided to protect employee(s) from Moving (reciprocating) parts of the injection blow molding machine. (Uniloy Johnson brand, model 350R5, serial number 2996R):

a) The "front platen guard" (Uniloy part # 871121) did not effectively protect the area between the fixed "Z step" work platform and the reciprocating "platen" assembly. Additionally, this guard was not properly attached or configured to ensure it would remain in securely in place. Even if this guard was secured as the employer intended by using contact tape, a hazard would remain from the 3.125 inch opening to the area described herein.

b) The "rear platen guard" of the machine described above was not secured or situated in a manner to prevent ready movement of the guard as noted on October 13, 2004. Inadvertent movement of this "rear platen guard" may reduce its effectiveness in guarding against access to the intended area.

Abatement note: If the platen guarding which was fabricated following this incident is permanently used, or if any other guard/platform components are altered/replaced; written approval from the equipment manufacturer should be obtained whenever possible, or by a properly qualified engineer in the event that the opinion of the equipment manufacturer can not be obtained. This process should always be followed with any machine guarding modifications or replacements.

2. That the Defendant shall pay the total penalty of $3,500.00 within fifteen (15) days of the date of entry of this order. Payment shall be made by check or money order, payable to the Treasurer of Virginia, with VOSH inspection number 308114701 noted on the payment;

3. That the Defendant shall withdraw its original notice of contest, and hereby waives its right to contest the remaining terms contained in this Order;

4. 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;

5. 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;

6. That this Order shall be construed to advance the purpose of Virginia Code § 40.1-3;

7. 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;

8. That under 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;

9. 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 2nd day of March 2007.

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

C. Randall Mason

Judge

WE ASK FOR THIS:

C. RAY DAVENPORT, Commissioner of Labor and Industry

Robert B. Feild

Robert B. Feild
Special Assistant Commonwealth's Attorney
County of Washington
13 South Thirteenth Street
Richmond, Virginia 23219
Telephone: (804) 786-4777
Facsimile: (804) 786-8418

Counsel for Commissioner Davenport

SEEN AND AGREED:

~~MESA INDUSTRIES, INCORPORATED.~~

Christopher M. Kite
Frith, Anderson & Peake, P.C.
P.O. Box 1240
Roanoke, Virginia 24006-1240
Telephone: 540-772-4600
Facsimile: 540-772-9167

Counsel for Mesa Industries, Incorporated

A COPY
TESTE: Rhonda N. Rogs DEPUTY CLERK

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY

C. RAY DAVENPORT, Commissioner of Labor and Industry	)	
Plaintiff,	)	
v.	)	Chancery No. 16638
PCL CIVIL CONSTRUCTORS, INC.,	)	
Defendant.	)	

AGREED FINAL ORDER

WHEREAS, on or about April 6, 1999, the Commissioner of Labor and Industry issued a citation to the defendant, PCL Civil Constructors, Inc., alleging serious violations of the Virginia Occupational Safety and Health Standards (VOSH) for General Industry, and proposing civil penalties of $37,125.00; and

WHEREAS, PCL Civil Constructors, Inc., filed within 15 working days from the date of the receipt of the citation, a written notice contesting the violations and proposed penalties, as provided for in § 40.1-49.4, of the *Code of Virginia;*

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

1. That the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1; Citation 1, item 7; and Citation 1, Item 8 are grouped into one serious violation. Each violation will retain its assessed penalty of $1,875.00; $4,500.00 and $7,000.00 respectively.

   b. Citation 1, Item 3, is reduced from serious to other-then serious, with an assessed penalty of $1,875.00.

   c. Citation 1, item 6, is reduced from serious to other-than-serious with an assessed penalty of $7,000.00.

d. Citation 1, item 2; Citation 1, item 4; Citation 1, item 5 and Citation 1, item 9 are vacated, along with their assessed penalties.

2. PCL Civil Constructors, Inc., shall pay the total penalty of $22,250.00 within thirty (30) 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 301804605 noted on the payment.

3. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), PCL Civil Constructors, Inc., shall post a copy of this order for ten (10) consecutive days at a conspicuous place or location where notices to employees generally are posted.

4. PCL Civil Constructors, Inc. certifies that the asserted violations referenced above in this Order were corrected and abated.

5. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by PCL Civil Constructors, Inc. 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. PCL Civil Constructors, Inc. specifically denies it has violated any applicable rule, regulation or statute in connection with this matter. This Order may not be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, except to enforce the terms of this Order. Moreover, the asserted violations may not be used as the basis for a repeat, willful, and/or criminal violation after the date of the entry of the Order.

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

7. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to the Special Assistant

Commonwealth's Attorney and the Defendant's counsel.

Entered this 17 day of May, 2007.

Judge Robert M. D. Turk

We ask for this:

C. Ray Davenport,
Commissioner of Labor and Industry

By:
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
Virginia Department of Labor & Industry
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

SEEN AND AGREED:

By:
Timothy E. Kirtner (VSB No. 36938)
Gilmer, Sadler, Ingram, Sutherland & Hutton, LLP
Post Office Box 878
Pulaski, Virginia 24301
(540) 980-1360
(540) 980-5264 (fax)

Counsel for PCL Civil Contractors, Inc.

By:
for James E. Moye, Esq.
Moye, O'Brien, O'Rourke, Pickert & Martin, LLP
800 South Orlando Avenue, 2nd Floor
Maitland, Florida 32751-5649
(407) 622-5250

Copy - Teste:
ALLAN C. BURKE
Circuit Court Montgomery County, Virginia
By: Diana Vaught, Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF MONTGOMERY

C. RAY DAVENPORT, Commissioner of Labor and Industry	)	
Plaintiff,	)	
v.	)	Chancery No. 16639
PCL CIVIL CONSTRUCTORS, INC.,	)	
Defendant.	)	

AGREED FINAL ORDER

WHEREAS, on or about June 9, 1999, the Commissioner of Labor and Industry issued a citation to the defendant, PCL Civil Constructors, Inc., alleging two serious violations of the Virginia Occupational Safety and Health Standards (VOSH) for the Construction Industry, and proposing civil penalties of $5,250.00; and

WHEREAS, PCL Civil Constructors, Inc., filed within 15 working days from the date of the receipt of the citation, a written notice contesting the violations and proposed penalties, as provided for in § 40.1-49.4, of the *Code of Virginia;*

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

1. That the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1, is reduced from serious to other-than-serious, with an assessed penalty of $2,625.00; and

   b. Citation 1, item 2, is reduced from serious to other-than-serious with an assessed penalty of $2,625.00.

2. PCL Civil Constructors, Inc., shall pay the total penalty of $5,250.00 within thirty (30) 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 300664513 noted on the payment.

3. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), PCL Civil Constructors, Inc., shall post a copy of this order for ten (10) consecutive days at a conspicuous place or location where notices to employees generally are posted.

4. PCL Civil Constructors, Inc. certifies that the asserted violations referenced above in this Order were corrected and abated.

5. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by PCL Civil Constructors, Inc. 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. PCL Civil Constructions, Inc. specifically denies it has violated any applicable rule, regulation or statute in connection with this matter. This Order may not be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia, except to enforce the terms of this Order. Moreover, the asserted violations may not be used as the basis for a repeat, willful, and/or criminal violation after the date of the entry of the Order.

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

7. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to the Special Assistant Commonwealth's Attorney and the Defendant's counsel.

Entered this 17 day of May, 2007.

Judge Robert M. D. Turk

We ask for this:
C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
Virginia Department of Labor & Industry
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

SEEN AND AGREED:

By: _____
Timothy E. Kirtner (VSB No. 36938)
Gilmer, Sadler, Ingram, Sutherland & Hutton, LLP
Post Office Box 878
Pulaski, Virginia 24301
(540) 980-1360
(540) 980-5264 (fax)

Counsel for PCL Civil Contractors, Inc.

for By: _____
James E. Moye, Esq.
Moye, O'Brien, O'Rourke, Pickert & Martin, LLP
800 South Orlando Avenue, 2nd Floor
Maitland, Florida 32751-5649
(407) 622-5250

Copy - Teste:
ILLAN C. BURKE
Circuit Court Montgomery County, Virginia
By: _____, Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

C. RAY DAVENPORT, Commissioner of Labor & Industry	)	
Plaintiff,	)	Chancery No. CH04013148-00
v.	)	
SPECIAL RENOVATIONS, INC.	)	
Defendant.	)	

ORDER

On August 9, 2007, this matter came before the Court to be heard on defendant's Demurrer and Motion to Dismiss. This is a suit brought to enforce Virginia Occupational Safety and Health (VOSH) laws and standards. Plaintiff is the Commissioner of Labor and Industry of the Commonwealth of Virginia. The Defendant is Special Renovations, Inc., a Virginia corporation.

Defendant, arguing the suit was untimely filed and not diligently prosecuted, to the prejudice of defendant and in violation of § 40.1-49.4 of the Code, moved that the Court dismiss the Commissioner's enforcement action. Defendant's motion is GRANTED.

Pursuant to § 40.1-49.4.E of the Code of Virginia, 1950, as amended, the Court sets forth its detailed findings of fact and conclusions of law.

FINDINGS OF FACT

This is an enforcement case brought under § 40.1-49.4 of the Code to enforce Virginia's occupational safety and health laws. The inspection took place on January 11, 2001. The Commissioner issued citations to defendant on January 25, 2001, and subsequently had the citations served on defendant. Defendant timely filed its Notice of Contest on February 19, 2001. The Commissioner served his Bill of Complaint on June 10, 2004. Defendant then timely filed its Demurrer and Motion to Dismiss with the Clerk in June, 2004. This matter came before the Court for a hearing on Defendant's defensive pleadings on August 9, 2007. Forty-one (41) months elapsed between the initial VOSH inspection and filing of the Complaint in Court against the defendant. Another thirty-eight (38) months elapsed between the time of filing of the enforcement case with the Court and the initial hearing on defendant's defensive pleadings.

CONCLUSIONS OF LAW

This case involves a much litigated sentence within § 40.1-49.4 of the Code of Virginia, which states:

> Upon receipt of a notice of contest of a citation, ... the Commissioner shall immediately notify the attorney for the Commonwealth for the jurisdiction wherein the violation is alleged to have occurred and shall file a civil action with the circuit court.

The Court of Appeals considered the question of whether the Commissioner was required to file his Complaint immediately on receipt of a notice of contest. In the case of *Barr, Commissioner of Labor and Industry v. S. W. Rodgers Company, Inc.*, 34 Va. App. 50; 537 S.E.2d 620; (2000),

the court answered that question in the negative. However, the Court of Appeals went on to state:

In holding that the Commissioner was not required to file a bill of complaint immediately upon receipt of a notice of contest, we do not hold that the Commissioner has an unlimited amount of time in which to do so.

Under the circumstances of this case, the Court finds that the cumulative delays of 41 months in filing the complaint and 38 months in bringing the case on to be heard on defendant's Demurrer and Motion to Dismiss to be unreasonable. Defendant's Demurrer and Motion to Dismiss is sustained. The Bill of Complaint is ordered DISMISSED.

Pursuant to Va. Code § 40.1-51.1 (e) and the VOSH Administrative Regulations Manual, Special Renovations shall post a copy of this order for ten (10) working days at its construction sites in Virginia in conspicuous places where notices to employees are usually posted. The Clerk will strike this matter from the docket of this Court and place it among the ended cases.

The clerk shall send an attested copy of this ORDER to all counsel of record.

By: Cheryl V. Higgins
Cheryl V. Higgins, Circuit Judge
Circuit Court Judge
October 29, 2007

I ask for this:

R Leonard Vance

R. Leonard Vance, Attorney at Law
VSB #15305
P. O. Box 1591
Midlothian, VA 23112
(804) 690-0779

a true copy TESTE:
SHELBY J. MARSHALL, CLERK
by: Deputy Clerk

Seen and objected to:

Robert B Feild

Robert Feild, Esq.,
Special Assistant Commonwealth's Attorney
Department of Labor & Industry
13 South 13th Street
Richmond, Va. 23219
(804) 786-4777

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

C. RAY DAVENPORT, Commissioner of Labor & Industry Plaintiff, v. **VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER** Defendant	)	Chancery No. CH05-77

SUBSTITUTION OF DEFENDANT AND AGREED FINAL ORDER

WHEREAS, on or about January 20, 2005, this civil action was initiated against Dominion Resources, Inc.

WHEREAS, the proper name for the Defendant's legal entity is Virginia Electric and Power Company, d/b/a/ Dominion Virginia Power ("Dominion Virginia Power').

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

1. In settlement of the matters alleged in this action, the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1, is vacated along with the proposed penalty.

   b. Citation 1, Item 2a is vacated;

   c. Citation 1, Item 2b remains serious as cited. The $5,000.00 penalty for this grouped violation is reduced to $2,000.00 and;

   d. Citation 1, Item 2c is vacated.

2. Dominion Virginia Power shall pay the penalty of $2,000.00 within thirty (30)

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 306296070 noted on the payment.

3. Dominion Virginia Power certifies that it is currently in compliance with §1910.269(d)(4) of the Virginia Occupational Safety and Health Standard for General Industry; the standard cited in Citation 1, item 2b.

4. As further consideration for the modification of the terms of the original citation, Dominion Virginia Power agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. Dominion Virginia Power shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

6. This Order is meant as a compromise of the above-contested claims. Dominion Virginia Power admits no wrongdoing in connection with this settlement and is settling this matter in the spirit of conciliation and to avoid the time, inconvenience and expense of additional litigation. 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 any administrative or judicial action to recover for personal injury or property damage sustained by any party. This Order may be used solely for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

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

8. This matter is hereby dismissed with prejudice.

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

Entered this 31st day of August, 2007.

Judge Michael C. Allen

A COPY TESTE:
JULY L. WORTHINGTON, CLERK
BY
DEPUTY CLERK

Endorsement(s) of counsel appear on the following page(s).

WE ASK FOR THIS:

C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
(804) 786-4289
(804) 786-8418 (fax)

By: _____
Dana L. Rust (VSB No. 28408)
Jeffrey S. Shapiro (VSB No. 38344)
McGuire Woods, LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219
(804) 775-1000
(804) 775-1061 (fax)

Counsel for Dominion Virginia Power

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

C. RAY DAVENPORT, Commissioner of Labor & Industry	)	
Plaintiff,	)	
	)	Civil No. CL07-1344-3
VIRTEXCO CORPORATION,	)	
Defendant	)	

AGREED ORDER

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

1. In settlement of the matters alleged in this action, the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1a, is amended from a serious to an other than serious violation of §1926.403(b)(2).

   Citation 1, Item 1b, a serious violation of §1926.403(h) is vacated.

   Citation 1, Item 1c, is amended from a serious to an other than serious violation of §1926.404(a)(2).

   Citation 1, Item1d, is amended from a serious to an other than serious violation of §1926.404(b)(1)(ii).

   Citation 1, Item 1e, a serious violation of §1926.405(b)(1) is vacated.

   Citation 1, Item 1f, a serious violation of §1926.405(b)(3)(ii) is vacated.

   The initial penalty of $1,625.00 is reduced to $400.00;

   b. Citation 1, Item 2, is amended from a serious to an other than serious violation of §1926.1052(c)(1). The initial penalty of $975.00 is reduced to $300.00.

2. Virtexco Corporation shall pay the penalty of $700.00 within thirty (30) 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 307210997 noted on the payment. The amount of the penalty to be paid shall not be construed to indicate a particular classification of the amended violation.

3. Virtexco Corporation certifies that the violations alleged in this agreement were abated.

4. As further consideration for the modification of the terms of the original citation, Virtexco Corporation agrees to withdraw its original notice of contest and waives its right to contest the remaining terms contained in this Order.

5. Virtexco Corporation shall post a copy of this Order for a period of thirty (30) days in a conspicuous location where notices to its employees are generally posted.

6. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Virtexco Corporation. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

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

Entered this 10 day of August, 2007.

Judge

WE ASK FOR THIS:

A Copy,
Teste: BEVILL M. DEAN, CLERK
BY: D.C.

C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Patrick S. Bolling (VSB No. 65279)
Special Assistant Commonwealth's Attorney
13 South 13th Street
Richmond, Virginia 23219-4101
(804) 786-6760
(804) 786-8418 (fax)

By: _____
David H. Sump, ESQ.
Crenshaw, Ware & Martin, PLC
1200 Bank of America Center
Norfolk, Virginia 23510

Counsel for Virtexco Corporation

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PULASKI

C. RAY DAVENPORT, Commissioner of Labor and Industry	)	
Plaintiff,	)	
v.	)	Case No. CH02-358
VOLVO TRUCKS OF NORTH NORTH AMERICA, INC.	)	
Defendant.	)	

AGREED FINAL ORDER

WHEREAS, on or about June 11, 2002, Commissioner C. Ray Davenport issued a citation to the defendant, Volvo Trucks of North America, Inc., alleging a serious violation of the Virginia Occupational Safety and Health Standards (VOSH) for General Industry, and proposing a civil penalty of $7,000.00; and

WHEREAS, Volvo Trucks of North America, Inc., filed within 15 working days from the date of the receipt of the citation, a written notice contesting the violation and proposed penalty, as provided for in § 40.1-49.4, of the *Code of Virginia;*

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

1. That the citation attached to the Bill of Complaint is hereby amended as follows:

   a. Citation 1, Item 1, § 1910.176(b) is vacated.

   b. Citation 1, Item 1, Va. Code § 40.1-51.1.A, which was issued in the alternative, is amended from a serious to an unclassified violation of Va. Code § 40.1-49.4. The initial penalty of $7,000.00 remains unchanged. The language in the citation is amended as follows:

Citation 1, item 1, Va. Code § 40.1-51.1.A - The employer did not furnish employment and a place of employment which were free from recognized hazards that are causing or likely to cause death or serious physical harm to employees:

Employees were engaged in loading empty shipping crates (emballage) into a tractor trailer for transportation to another facility. Employees placed empty crates beneath heavier crates when stacking them in the trailer without taking precautions against the crates shifting and collapsing. Employees opening the doors of the trailer after transportation were exposed to struck by and crushing hazards from the collapse of crates near the trailer doors that had shifted during transportation.

One feasible method of abatement is to place the heavier shipping crates on the floor of the trailer and place lighter shipping crates on top of the heavier shipping crates. For stacks of crates abutting the door of the trailer, a "stairstep down" methodology will be utilized which reduces stack height as the stacks approach the trailer door, resulting in one level of shipping crates near the trailer door.

2. Volvo Trucks of North America, Inc., shall pay the total penalty of $7000.00 within thirty (30) 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 303093280 noted on the payment.

3. Pursuant to *Virginia Administrative Code* § 16 VAC 25-60-40(1), Volvo Trucks of North America, Inc., shall post a copy of this order for ten (10) consecutive days at its workplaces in Virginia in a conspicuous location where notices to employees generally are posted.

4. Volvo Trucks of North America, Inc., certifies that the affirmed violation referenced above in this Order has been corrected and abated.

5. This Order is meant to settle the above contested claims, and is not to be considered an admission of liability by Volvo Trucks of North America, Inc. 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. This Order may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia. However, the affirmed general duty violation may only be used as the basis for a repeat and/or willful violation for a period of one year from the date of the entry of the order.

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

7. The Clerk shall strike this matter from the docket and place it among the ended civil cases. The Clerk shall send a certified copy of this order to the Special Assistant Commonwealth's Attorney and the Defendant's counsel.

Entered this 30 day of January, 2007.

Judge Robert M. D. Turk

We ask for this:

C. Ray Davenport,
Commissioner of Labor and Industry

By: _____
Diane L. Duell (VSB No. 27285)
Special Assistant Commonwealth's Attorney
Virginia Department of Labor & Industry
13 South 13th Street
Richmond, Virginia 23219-4101
804.786.4289
804.786.8418 (fax)

SEEN AND AGREED:

Volvo Trucks of North America, Inc.

By: _____
Paul J. Waters (VSB No. 47923)

Reed Smith, LLP
1301 K Street, N.W., Suite 1100 - East Tower
Washington, D.C. 20005-3373
202.414.9200
202.414.9299 (fax)

Counsel for Volvo Trucks of
North America, Inc.