

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

**VOLUME XVII**  
**JULY 1, 1995 - JUNE 30, 1996**



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

## **PREFACE**

This publication contains the orders of the Virginia Circuit Courts in contested cases from July 1, 1995, through June 30, 1996, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of §40.1-49.7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, C. 354)."

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

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

THERON J. BELL, Commissioner of	)	
Labor and Industry,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CHANCERY NO. 137879
	)	
BEACON MASONRY CORPORATION	)	
	)	
Defendant.	)	

DECREE

WHEREAS, all parties, by counsel, having appeared before the Court this date and adduced pertinent evidence and presented arguments, and

WHEREAS, it appearing that Plaintiff herein having unreasonably and inexcusably delayed bringing this action, to the prejudice of Defendant who has lost documents and material witnesses due to said delay, to the end that such delay constitutes laches and, further, is barred by the statute of limitations, Code section 8.01-248, and further is in violation of Code section 40.1-49.4 which requires the bringing of such actions immediately; now, therefore, it is

DECREED, that the Bill of Complaint is dismissed with prejudice.

ENTERED: 6 October, 1995

Judge Brown  
Judge

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

THERON J. BELL, Commissioner of	)	
Labor and Industry,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CHANCERY NO. 94-205
	)	
B.N.E., Inc.	)	
	)	
Defendant	)	

ORDER

On the 27<sup>th</sup> day of April, 1995 came Commissioner Bell and B.N.E., Inc., by counsel, to be heard upon defendant's contest of the Virginia Occupational Safety and Health citation issued by the Commissioner to B.N.E., Inc.

The evidence presented to the court was insufficient to establish that B.N.E., Inc. violated the standards cited in the citation.

UPON CONSIDERATION WHEREOF, the court ORDERS that the citation issued by the Commissioner against B.N.E., Inc. be and hereby is vacated.

The Clerk shall send a certified copy of this Order to counsel for both parties and to the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia 23219.

Enter 9/20/95

V. Thomas Forehand Jr.  
Judge

I ASK FOR THIS:

Archer L. Jones, II  
Archer L. Jones, II  
1600 South Church Street

Smithfield, Virginia 23430

SEEN AND OBJECTED TO:

*Douglas B. Ottinger*

Douglas B. Ottinger

Assistant Commonwealth's Attorney

Counsel for the Commissioner

of Labor and Industry

Post Office Box 15225

Chesapeake, Virginia 23328

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

THERON J. BELL, Commissioner of	)	
Labor and Industry,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CHANCERY NO. 94-206
	)	
	)	
B.N.E., Inc.	)	
	)	
Defendant.	)	

ORDER

On the 27<sup>th</sup> day of April, 1995 came Commissioner Bell and B.N.E., Inc., by counsel, to be heard upon defendant's contest of the Virginia Occupational Safety and Health citations issued by the Commissioner to B.N.E., Inc.

The evidence presented to the court was insufficient to establish that B.N.E., Inc. violated the standards cited in the citation.

UPON CONSIDERATION WHEREOF, the court ORDERS that the citations issued by the Commissioner against B.N.E., Inc. be and hereby are vacated.

The Clerk shall send a certified copy of this Order to counsel for both parties and to the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia 23219.

Enter 9/20/95

V. Thomas Forehand Jr.  
Judge

I ASK FOR THIS:

*Archer L. Jones, II*

Archer L. Jones, II  
1600 South Church Street  
Smithfield, Virginia 23430

SEEN AND OBJECTED TO:

*Douglas B. Ottinger*

Douglas B. Ottinger  
Assistant Commonwealth's Attorney  
Counsel for the Commissioner  
of Labor and Industry  
Post Office Box 15225  
Chesapeake, Virginia 23328



VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

THERON J. BELL, Commissioner of )  
 Labor and Industry, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 )  
 LAWRENCE LEE LOWE, JR., a/k/a )  
 LEE LOWE, d/b/a DIXIE PLUMBING, )  
 INC., )  
 )  
 Defendant. )

CHANCERY NO. 95-216

**DECREE PRO CONFESSO**

This cause came to be heard upon Commissioner Theron J. Bell’s Motion for Decree Pro Confesso against Lawrence Lee Lowe, Jr., a/k/a Lee Lowe, d/b/a Dixie Plumbing, Inc., declaring that the contested Virginia Occupational Safety and Health (VOSH) citations (less item 1(a)) and penalties totaling \$3,000.00, identified by VOSH Inspection Number 123663312 and as attached to the Commissioner’s Bill of Complaint be upheld; and declaring Defendant personally liable for the \$3,000.00 in penalties pursuant to Code § 13.1-622, since Defendant purported to act as or on behalf of a corporation, knowing that Dixie Plumbing, Inc. was not incorporated in Virginia.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process on the Defendant and that no responsive pleadings have been filed by the Defendant, nor has an appearance been made in this action on his behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause against Dixie Plumbing, Inc. and Lawrence Lee Lowe, Jr., personally, affirming the VOSH citations (less item 1(a)) and penalties of \$3,000.00. It is also ADJUDGED, ORDERED, and DECREED

that the Clerk of this Court shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies of this order to the Commonwealth's Attorney.

Pursuant to Rule 1:13, endorsement by defense counsel shall be dispensed with.

ENTER: 8/4/95

JUDGE: James E. Kulp

I ASK FOR THIS:

Theron J. Bell  
Commissioner of Labor and Industry

By: Susan F. Dobbs  
Counsel

Susan F. Dobbs  
Assistant Commonwealth's Attorney  
County of Henrico  
Post Office Box 27032  
Richmond, Virginia 23273  
(804) 672-4218

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF NORFOLK**

**THERON J. BELL**, Commissioner of )  
Labor and Industry )  
 )  
v. ) Chancery Nos. C94-1737  
 ) and C94-1766  
 )  
**DOREY ELECTRIC COMPANY** )

**FINAL ORDER**

Dorey Electric Company ("Dorey"), is before the court pursuant to its notices of contest of citations issued to it by the Commissioner on August 27, 1990 and August 10, 1992. This day the parties appeared by counsel and represented to the court that they have agreed to settle these cases, without any admission of liability by Dorey, in order to avoid the cost and uncertainty of further litigation, and to enhance the protection of the safety and health of Dorey's employees.

Upon agreement of the parties, the court FINDS and ORDERS:

- i. Dorey specifically denies all averments in the citations.
- ii. Citation 1 in Case No. C94-1737, Item No. 6 is reduced from "willful" to "serious." With that modification, the citations are affirmed.
- iii. The total penalty proposed is \$89,300. Dorey has made and shall make payments in lieu of civil penalties, pursuant to Code § 40.1-49.4.D and without any admission of liability, as follows:
  - Dorey has paid \$25,000, receipt of which is hereby acknowledged.
  - On October 31, 1998, Dorey shall pay a further \$25,000, except that the payment shall be reduced by any amount up to \$25,000 that Dorey earlier has paid to support safety training generally available to small contractors in the Tidewater Area including,

particularly, any funds Dorey may have expended to support the Tidewater Safety Network.

- The balance of the proposed penalty, \$39,300, shall be paid in installments of \$13,100 each on October 31, 1996, October 31, 1997, and October 31, 1998, unless the Commissioner has not cited Dorey for any violation during the previous year arising from the statute or standards cited in the three citations at issue in the present case. In any such year where the Commissioner has not so cited Dorey, no payment shall be due and the obligation shall be forgiven. If the Commissioner has cited Dorey for any violation committed during any of these three years of the statute or standards cited in the two citations at issue in the present case, and if that citation becomes a final order of the Commissioner or is affirmed by a final order of a circuit court, Dorey shall pay the entire \$39,300, less any reduction for prior year(s) for which no such violation has been cited. The payments provided for in this Paragraph 3 shall be in addition to and separate from any penalties or payments in lieu of penalties for any violations that may be cited after October 31, 1995.
- iv. Any failure by Dorey to make any payment required under this order shall constitute a breach of the settlement agreement. Upon any such breach, or any other material breach of its obligations under this order, Dorey shall pay within fifteen days the entire unpaid balance of the \$89,300 proposed penalty. This payment shall not limit the Commissioner's other remedies for the breach.
- v. Dorey hereby affirms that protection of the safety and health of its employees is and shall be a paramount corporate priority. In the service of this priority, Dorey promptly shall institute, conduct, and enforce the corporate occupational safety and health program that is outlined and agreed to in a letter from Assistant Attorney General Butcher to Guilford D. Ware of March 24,

1995 and letters from Mr. Ware to Mr. Butcher dated May 12, 1995, July 13, 1995 and August 3, 1995 (copies attached).

- vi. By February 15, 1996, Dorey shall retain an independent, certified safety consultant who is experienced in the electrical contracting field, to audit Dorey's safety and health program for conformance with this order, with OSHA Instruction STD 3-1.1, and with Virginia's occupational safety and health statutes, regulations, and standards. The consultant shall prepare and submit a report to Dorey's President and to the Commissioner by June 15, 1996; Dorey shall promptly implement any recommendations the consultant may make in his report. If the audit identifies significant deficiencies in Dorey's safety and health program, the Commissioner may direct Dorey to retain the consultant to conduct a repeat audit. The consultant shall prepare and submit a report of any repeat audit to Dorey's President and the Commissioner by December 15, 1996; Dorey shall promptly implement any recommendations the consultant may make in this report.
- vii. Beginning October 1, 1995, Dorey shall provide the Commissioner quarterly a list of its projects.
- viii. During the period from November 1, 1995 to October 31, 1996, the Commissioner may conduct up to four monitoring inspections to verify Dorey's implementation of its safety and health program; during the period from November 1, 1996 to October 31, 1997, the Commissioner may conduct up to two such inspections. No citations shall issue as a result of these inspections except for any violation that Dorey fails promptly to abate. If the Commissioner does not find violation as a result of these or any other inspections of Dorey before, October 31, 1997, Dorey then may cease submitting the list of job sites and the monitoring inspections shall cease. If no violations are found, the submission of the project list and the monitoring inspections (up to two per year) shall continue for another year. Dorey waives its right to demand that the Commissioner obtain warrants to perform these inspections.
- ix. The parties agree that all violative conditions averred in the citations have been abated.

- x. Dorey shall post a copy of this Order for thirty days at a conspicuous location where notices to its employees generally are posted.
- xi. Nothing in this Order shall be deemed an admission by Dorey of any violation of law or regulation. Pursuant to Code § 40.1-51.3:2, in the trial of any action to recover for personal injury or property damage sustained by any party, in which action it is alleged that an employer acted in violation of or failed to act in accordance with any provision of Chapter 3 of Title 40.1 or any state or federal occupational health and safety standards act, the fact of the issuance of the citations, the voluntary payment of a civil penalty by a party charged with a violation, or the judicial assessment of a civil penalty under such law shall not be admissible in evidence.

ENTER this 12th day of March, 1996.

J. C. Morrison  
Judge

WE ASK FOR THIS:

Donald Dorey  
Donald Dorey, President  
Dorey Electric Company  
894 Widgeon Road  
Norfolk, Virginia 23518

Charles E. Lahey, III  
Theron J. Bell  
Commissioner of Labor and Industry  
by: Charles E. Lahey, III  
Deputy Commissioner  
Thirteen South Thirteenth Street  
Richmond, Virginia 23219

SEEN:

*Guilford D. Ware*

---

Guilford D. Ware  
Crenshaw, Ware & Martin, P.L.C.  
1200 NationsBank Center  
One Commercial Place  
Norfolk, Virginia 23510-2111  
(804) 623-3000  
Counsel for Dorey Electric Company

*John R. Butcher*

---

James S. Gilmore, III  
Attorney General of Virginia

John R. Butcher  
Assistant Attorney General  
900 East Main Street  
Richmond, Virginia 23219  
(804) 786-4073 (Voice)  
(804) 786-0034 (Facsimile)  
Counsel for Commissioner Bell

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG

Theron J, Bell, Commissioner of	)	
Labor and Industry,	)	
Plaintiff,	)	
	)	
v	)	Chancery No. 95-000818
	)	
HAZARDOUS ABATEMENT,	)	
INCORPORATED,	)	
Defendant.	)	

**CORRECTED DECREE PRO CONFESSO**

This cause came to be heard upon Commissioner Theron J, Bell's Motion for Decree Pro Confesso against Hazardous Abatement, Inc., declaring that the contested Virginia Occupational Safety and Health (VOSH) citations, identified by VOSH Inspection Number 123662363 and as attached to the Commissioner's Bill of Complaint, be upheld. Defendant's representative appeared at the hearing and was heard on the motion.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one days have elapsed since service of process on the Defendant and that no responsive pleading has been filed by the Defendant, it is therefor,

ADJUDGED, ORDERED, and DECRIED that Plaintiff be awarded judgment by default in this cause affirming the following VOSH citations;

- Citation 1, Item 1 - failure to establish a regulated area: \$ 200;
- Citation 1, Item 4 - failure to perform monitoring to determine exposure to asbestos: \$200;
- Citation 1, Item 7 - failure to collect and dispose of asbestos waste in sealed, labeled, impermeable containers: \$1,000.

Judgment is entered for the Commissioner against Hazardous Abatement, Inc. in the amount of



\$1,400.00. The Clerk of this Court shall send a copy of this Decree to the Registered Agent at his home address (the office address having been abandoned).

ENTERED: 3/18/96 Oliver A. Pollard, Jr.  
Oliver A. Pollard, Jr.

I ASK FOR THIS:

Theron J. Bell  
Commissioner of Labor and Industry

By: William B. Bray  
Counsel

William B. Bray  
Deputy Commonwealth's Attorney  
City of Petersburg  
39 Bollingbrook Street  
Hopewell, Virginia 23803-4588  
(804) 861-8899

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

THERON J. BELL, Commissioner of )  
 Labor and Industry, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Henkels & McCoy, Inc. )  
 )  
 Defendant )

CHANCERY NO. 760CH93D00967-00  
 95H-792

**AGREED ORDER**

Upon this agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The citations set forth in and attached to the Bill of Complaint in this matter are amended as follows:
  - a. Serious citation 1, item 1 is affirmed. Henkels & McCoy shall pay \$360.00 in lieu of the proposed penalty.
  - b. Willful citation 2, item 1 is reduced to a repeat citation and affirmed. Henkels & McCoy shall pay \$4,500.00 in lieu of the proposed penalty.
  - c. Willful citation 2, item 1 is reduced to a repeat citation and affirmed. Henkels & McCoy shall pay \$4,500.00 in lieu of the proposed penalty.
  - d. Willful citation 2, item 3 is vacated.
  - e. Willful citation 2, item 4 is vacated.
2. Commissioner Bell acknowledges receipt of \$9,360.00 as the total agreed payment in lieu of penalties.
3. Henkels & McCoy shall post a copy of this order for thirty consecutive days at its workplaces

in Virginia in a conspicuous location where notices to its employees generally are posted.

4. Pursuant to Code § 40.1-49.D, the defendant's agreement to this settlement does not admit to any civil liability for the alleged violations. This agreement does not purport to limit the effect of Code § 40.1-51.3:2. The defendant's agreement to the entry of this order shall not limit the Commissioner's use of this order in future proceedings under Code § 40.1-3

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

The clerk shall strike this matter from the docket and place it among the ended chancery cases. The clerk shall certify copies of this order to counsel.

Enter this 5<sup>th</sup> day of September, 1995

Randall G. Johnson  
Judge

We ask for this:

THERON J. BELL, Commissioner  
of Labor and Industry

by: James L. Banks, Jr.  
James L. Banks, Jr.  
Assistant Commonwealth's Attorney  
John Marshall Courts Building  
800 East Marshall Street  
Room 211  
Richmond, Virginia 23219-1998  
(804) 780-8045

Seen and Agreed:  
HENKELS & McCOY, Inc.

By: Victoria E. Houck  
Victoria E. Houck, Esq.  
Attorney for Henkels & McCoy, Inc.  
Morgan, Lewis & Bockius  
1800 M Street, N. W.  
Washington, D C 20036  
Phone: (202) 467-7083

By: Steven T. Theis  
Steven T. Theis  
Corporate Safety Director  
HENKELS & McCOY, INC.  
985 Jolly Road  
Blue Bell, PA 19422

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THERON J. BELL, Commissioner of	)	
Labor and Industry,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CHANCERY NO. 95-138438
	)	
MANN PAPER DISTRIBUTORS, INC.	)	
d/b/a Mann Paper Company,	)	
	)	
Defendant.	)	

ORDER AND DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell’s Motion to Substitute Party and Request for Decree Pro Confesso against Mann Paper Distributors, Inc., d/b/a Mann Paper Company, requesting that the contested Virginia Occupational Safety and Health (VOSH) citations and penalties totaling \$1,120.00, identified by VOSH Inspection Number 112385935 and as attached to the Commissioner’s Bill of Complaint, be upheld and declaring Defendant liable for the \$1,120.00 in penalties.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process on the Defendant and that no responsive pleadings have been filed by the Defendant, nor has an appearance been made in this action on his behalf, it is therefore

ADJUDGED, ORDERED and DECREED that Commissioner Bell be substituted as plaintiff for the previous Commissioner of Labor and Industry, Ms. Carol A. Amato, AND that Commissioner Bell be awarded judgment by default in this cause against Mann Paper Distributors, Inc., d/b/a/ Mann Paper Company, affirming the VOSH citations and penalties of \$1,120.00 The Clerk of this Court shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies

of this order to the Commonwealth's Attorney.

Pursuant to Rule 1:13, endorsement by defense counsel shall be dispensed with.

ENTER: April 8, 1996                      JUDGE: T.S.K.

I ASK FOR THIS:

THERON J. BELL,  
COMMISSIONER OF LABOR AND INDUSTRY

BY: John R. Murphy

John R. Murphy  
Assistant Commonwealth's Attorney  
4110 Chain Bridge Road  
Fairfax, Virginia 22030  
(703) 246-2776

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX**

THERON J. BELL, Commissioner of )  
Labor and Industry, )  
 )  
Plaintiff, )  
 )  
v. ) Chancery No. 138580  
 )  
JAMES E. TURNER, SR., )  
d/b/a J.T. Masonry Company, Inc. and )  
JEFFREY TURNER, )  
d/b/a J.T. Masonry Company, Inc., )  
 )  
Defendants. )

**DECREE PRO CONFESSO**

This cause came to be heard upon Commissioner Theron J. Bell's Motion for Decree Pro Confesso against James E. Turner, Sr. and Jeffrey Turner, declaring that the contested Virginia Occupational Safety and Health (VOSH) citations and penalties totalling \$7,600.00, identified by VOSH Inspection Number 123681082 and as attached to the Commissioner's Bill of Complaint, be upheld; and declaring Defendants personally liable for the \$7,600 penalty as well as a penalty of between \$500.00 and \$5,000.00 each, pursuant to Code § 13.1-758(D), for serving as officers of a foreign corporation that transacted business in Virginia without a certificate of authority.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process on the Secretary of the Commonwealth as Defendants' statutory agent, and that no responsive pleadings have been filed by the Defendants, nor has an appearance been made in this action on their behalf, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause against the Defendants jointly and severally in the amount of \$7,600 in civil penalties for violation

of the Virginia Occupational Safety and Health standards and that the citations set forth as Exhibit A in the Bill of Complaint be affirmed. It is also ADJUDGED, ORDERED, AND DECREED that Plaintiff be awarded judgment by default against each Defendant for a penalty of \$5,000.00, pursuant to Code § 13.1-758(D).

The Clerk of this Court shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify a copy of this order to the Commonwealth's Attorney.

Pursuant to Rule 1:13, endorsement by defense counsel shall be dispensed with.

ENTER: 4/12/96

JUDGE: M. Langhorn Keith

I ASK FOR THIS:

Theron J. Bell  
Commissioner of Labor and Industry

By: John Murphy  
Counsel

John Murphy  
Commonwealth's Attorney  
County of Fairfax  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4047  
(703) 246-2776



**VIRGINIA:**

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY**

<b>Theron J. Bell</b> , Commissioner of	)	
Labor and Industry,	)	
	)	
Plaintiff,	)	
v.	)	Chancery Number: N0. V-10676
	)	
<b>Montgomery Park, Inc.</b> , d/b/a Vista	)	
Via Development Company	)	
	)	
Defendant.	)	

**AGREED ORDER**

Comes now, the Plaintiff, Theron J. Bell, Commissioner, Department of Labor and Industry, Commonwealth of Virginia, and the Defendant, by counsel, and in order to provide for the safety, health and welfare of the defendant's employees and to conclude this matter without the necessity of further litigation, it is hereby stipulated and agreed:

The defendant is before this court pursuant to Va. Code § 40.1-49.4.E contesting citations issued to it by the plaintiff on November 21, 1990. The citations were issued as a result of a Virginia Occupational Safety and Health (VOSH) inspection of a construction site located at Vista Via Development, off of Route 460, Christiansburg, Montgomery County, Virginia, where the defendant was a developer. An inspection was initiated pursuant to a fatality which occurred at the site on June 6, 1990, involving one of the defendant's employees. Commissioner Bell agrees to modify the Citation and Notifications of Penalty with respect to the above captioned inspection as follows:

**Citation 1, item 1--§ 1926.21(b)(2):** The employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury. The employer failed to instruct each employee on the hazards of working in or around trenches. This violation is reduced from willful to serious. The assessed penalty of \$10,000 is reduced to \$1,000;

**Citation 1, item 2--§ 1926.100(a):** Employees working where there was a possible danger of head injuries were not protected by protective helmets. No head protection was worn by employees to prevent possible head injuries while they were working in a trench over 12 feet deep. This violation is reduced from willful to serious. The assessed penalty of \$5000 is reduced to \$1000;

**Citation 1, item 3--§ 1926.651(c)(2):** A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet or more in depth so as to require no more than 25 feet of lateral travel for employees. An adequate means of exit from the trenches was not provided where lateral travel of approximately 40 feet was required to exit the trench. This willful violation is vacated, along with the assessed penalty of \$10,000;

**Citation 1, item 4-§ 1926.6516(2):** Employees were not protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Excavated material was not effectively stored at least two feet from the side of a trench. This violation is reduced from willful to serious. The assessed penalty of \$5000 is reduced to \$1000;

**Citation-1, item 5--§ 1926.651(k)(1):** Daily inspections of excavations, the adjacent areas and protective systems were not made by a competent person for evidence of a situation that could have resulted in possible cave-ins, indications of failure of protective systems, hazardous atmospheres or other hazardous conditions. Daily inspections of the excavations and adjacent areas were not performed in accordance with the excavation standards. This violation is reduced from willful to serious. The assessed penalty of \$10,000 is reduced to \$1000; and

**Citation 1, item 6--§ 1926.652(b)(1):** The sides of trenches were not sloped in accordance with the excavation standard to prevent possible cave-in(s). Employees were working in a trench line more than 5 feet in depth without proper sloping or shoring to prevent a possible cave-in. This violation is reduced from willful to serious. The assessed penalty of \$10,000 is reduced to \$1000.

## **TERMS AND CONDITIONS**

1. In accordance with title 40.1 of the Code of Virginia, and in consideration of the actions of the Commonwealth regarding the instant citations, judgment is hereby awarded to the Plaintiff against the defendant, Montgomery Park, Inc., in the amount of \$5,000. Said judgment is in lieu of the penalties originally proposed in the citation.

2. In the event that G. Edward Via of Christiansburg, Virginia, should engage in excavation work, he shall comply with the following provisions:

a. G. Edward Via shall not supervise any commercial trench excavations over which the Virginia Department of Labor and Industry has jurisdiction prior to June 1, 1999. Mr. Via shall retain the

services of an independent contractor duly licensed in the Commonwealth of Virginia, maintaining at least a Class A or Class B contractor's license to perform such excavations. In the event that such a duly licensed contractor is retained by Mr. Via, he shall notify the Commissioner, in writing, of any and all such projects within twenty (20) days prior to the commencement of such a project. The notification shall include the *address of* the job site, the names of the licensed contractor, the date the work is scheduled to be performed, and the supervisor in charge of the job site. The notice shall be sent to the attention of William R. Crawford, Director, Occupational Safety Compliance. The notice may be sent by facsimile to the plaintiff's Richmond office at (804) 371-6524.

b. Mr. Via shall institute a program where under new employees receive a basic safety briefing prior to being employed at a job site. In addition, a system of training on basic job site safety for all new employees within thirty (30) days of the employee's initial employment shall be established to complete the employee's initial safety indoctrination. Mr. Via shall also institute weekly, site specific tool box discussions of hazards and corresponding safety practices for all employees employed at each individual job.

c. Mr. Via will also conduct periodic monitoring of his job sites to determine that his employees, including its supervisors, are in compliance with VOSH regulations, especially those requiring adequate protection for all employees exposed to hazards while working in trenches and excavations.

d. The requirements contained in paragraphs 2(b) and 2© become effective from the date in which Mr. Via begins supervision of trenching operations, June 1, 1999, and shall remain in effect for a period of three years thereafter.

3. The parties agree that all violations set forth above have been abated.

4. In consideration of the actions of the Commissioner, the Defendant waives its right to contest the terms of this Agreed Order.

## SETTLEMENT OF CLAIMS

THIS AGREED ORDER is meant to compromise and settle the above contested claim. 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 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 agreed order may be used for future proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

WHEREFORE, for the reasons stated above, it is hereby ADJUDGED, ORDERED AND DECREED that the above violations and penalties are AFFIRMED as modified.

Enter: 29 May 1996

Ray W. Grubbs  
Judge

I ASK FOR THIS ORDER:

Philip E. Keith  
Philip E. Keith  
Commonwealth's Attorney  
Post Office Box 38  
Christiansburg, Virginia 24073  
(703) 382-5705

SEEN AND AGREED TO:

John S. Huntington  
John S. Huntington  
Counsel for the Defendant  
7 Radford Street  
Christiansburg, Virginia 24073  
(703) 3 82-6633

I HAVE SEEN THIS ORDER AND ENDORSE  
IT FOR THE SOLE AND LIMITED PURPOSE  
OF REFLECTING MY AGREEMENT WITH  
THE PROVISIONS OF THAT PARAGRAPH  
THIS ORDER IN WHICH I AM NAMED AND  
MY ACKNOWLEDGMENT OF THE FACT THAT  
I AM BOUND BY THE TERMS SET FORTH  
IN THAT PARAGRAPH:

*G. Edward Via*

---

G. Edward Via

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ORANGE

THERON J. BELL, Commissioner of )  
 Labor and Industry, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FLOYD S. PIKE ELECTRICAL )  
 CONTRACTORS, INC. )  
 )  
 Defendant. )

CHANCERY NO. 93-000044

**FINAL ORDER**

Upon this agreement of the parties and for good cause shown, the court finds and ORDERS as follows:

1. The parties are before this court pursuant to Code § 40.1-49.4.E upon the defendant’s contest of the Virginia Occupational Safety and Health (VOSH) Citation and proposed penalty, arising from inspection number 112386263, and issued by the previous Commissioner Amato to Floyd S. Pike Electrical Contractors, Inc. (Pike) on February 13, 1992. A copy of the citation is attached as Exhibit A.
2. Pike filed a timely notice of contest of the citation and proposed penalties. Thereafter, the Commissioner filed a bill of complaint pursuant to Code § 40.1-49.E to initiate the present litigation.
3. Violation 1-1 is amended to Other than Serious (nonserious)
4. Subparagraph (b) of Exhibit A’s Violation 1-1 is vacated.
5. By the endorsement of its counsel below, Pike certifies that the violation alleged in the original citation, attached has been abated.
6. Pike shall owe a payment of \$10,000.00 in lieu of the proposed penalty, \$5,000.00 of which is due upon receipt of the executed Order, and \$5,000.00 of which shall be suspended and waived, provided that during the three-year period following execution of this Order, the requirements listed

below in Paragraphs 7 through 11 are met, and no citations, arising out of either VOSH Standard §§ 1926.950 or 1910.269, are issued to Pike. Payment of the second \$5,000.00 shall not waive or limit any other remedy the Commissioner may seek for any such breach.

7. Pike's lineman in Virginia shall wear properly rated gloves. Pike will specify to its linemen that they shall avoid any contact with a second phase, neutral or ground wire when working on an energized phase wire. Additionally, Pike shall follow and enforce the provision of § 4.1.12.2 of the ASTM Standards on Electrical Protective Equipment for Workers.

8. When Pike's linemen are working in Virginia on projects for Virginia Power Company, Pike's linemen shall comply with all applicable internal Virginia Power guidelines and procedures relating to Gloving Requirements for Working with Energized Conductors.

9. Pursuant to VOSH Administrative Regulations Manual (VOSH ARM) § 2.3(1), Pike shall post a copy of this Order, upon its execution, for ten consecutive working days at its workplaces in Virginia in conspicuous locations where notices to its employees generally are posted.

10. This settlement does not constitute an admission to any wrongdoing or to any regulatory, civil, or criminal liability for the alleged violation.

11. Nothing in this Order shall be construed as to preclude VOSH from investigating or issuing citations or final determinations on any future violations, nor shall this Order be construed to address any violations except that specifically set forth in the citation in Exhibit A.

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall provide certified copies of this order to counsel.

ENTER: Lloyd C. Sullenberger  
Judge

10/30/95  
Date

WE ASK FOR THIS:

Timothy K. Sanner

Hon. Timothy K. Sanner  
Commonwealth's Attorney  
149 West Main Street  
Orange, Virginia 22960  
(540) 672-4848

SEEN AND AGREED TO:

Eva S. Tashjian-Brown

Eva S. Tashjian-Brown  
Counsel for Defendant  
McGUIRE, WOODS, BATTLE & BOOTHE, L.L.P.  
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