

FINAL ORDERS OF THE VIRGINIA  
GENERAL DISTRICT COURTS  
AND  
CIRCUIT COURTS  
IN  
CONTESTED CASES ARISING UNDER THE  
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT  
JULY 1, 1982 - JUNE 30, 1983  
VOLUME IV

ISSUED BY THE VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

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VOLUME IV

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PART I  
OCCUPATIONAL HEALTH

COMMONWEALTH

v.

ENVIRONMENTAL LABORATORIES, INC.

Docket No. --

May 23, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF HANOVER

Eddie R. Vaughn, Jr., Commonwealth's Attorney, for Plaintiff  
Stephen E. Baril, Esquire, for Defendant  
Before the Honorable R. R. Gwathmey, III, General District Court Judge

DISPOSITION: Final, by consent agreement

NATURE OF THE CASE: Environmental Laboratories was cited for violation of Virginia Code §40.1-51.1 which requires that the employer furnish employment and a place of employment free from recognized hazards likely to cause death or serious physical harm. Specifically, Environmental Laboratories allowed the chemical neutralization of gas cylinders of known and unknown composition to be done in such close proximity to the workshop that on February 25, 1981, an employee was overcome by toxic vapors of pentaborane and suffered serious physical harm.

Neutralization of hazardous materials such as pentaborane should be done only in isolated, controlled access areas with all involved personnel adequately protected with proper personal protection equipment.

ORDER

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

That the Defendant is before this court pursuant to §40.1-49.4E contesting a citation, VOSH No. D3000-003-82, issued to it by the Plaintiff.

That the working condition for which the citation was issued has been abated and that the reduction of the assessed penalty as set forth in the amended citation, attached hereto as Exhibit A, represents an adjustment based on the size of the Defendant's establishment and is acceptable to both parties.

That no employee or employee representative has appeared in this matter and that, since there is no abatement schedule at issue, no employee or employee representative has standing to contest the terms of this proposed settlement.

That, by entering into this agreement, the Defendant does not admit to any violation of law or regulation or to any civil liability arising from any violations alleged in this matter.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to §40.1-49.4, it is further ORDERED the Defendant pay the Plaintiff \$600 as a civil penalty for this violation.

Let the clerk forthwith transmit certified copies of this order to the Defendant and to the State Health Commissioner and Commissioner of Labor and Industry. The Defendant shall post a copy of this Order and attachments thereto at the site of the workplace for three working days.





**PART II**  
**INDUSTRIAL SAFETY**

COMMONWEALTH

v.

SUNLOCK CORPORATION

No. C82-07263

July 22, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Donald R. Howren, District Court Judge

Disposition: Final, by Trial

Nature of the case: A citation was issued for the following violations of the VOSH standards for general industry:

Other Than Serious Violations:

1. 1900.37(1) The Job Safety and Health notice was not posted to inform employees of the protections and obligations provided in the Labor Laws of Virginia:
  - (a) The Job Safety and Health Poster was not posted in the premises occupied by Sunlock Corporation.
2. 1910.22(a)(1) Place(s) of employment were not kept clean and orderly, or in a sanitary condition:
  - (a) Maintenance area west end of warehouse, poor housekeeping as evidenced by spare parts, tools and equipment lying about in a disorderly manner.
3. 1910.157(e)(3) Portable fire extinguishers were not subjected to an annual maintenance check:
  - (a) Throughout the warehouse, five sentry 10 lb. ABC Portable Fire Extinguishers have not been checked within the past year. Last inspection January 1981.
4. 1910.176(a) Permanent aisle(s) or passageway(s) were not appropriately marked:
  - (a) Warehouse area, concrete floor, aisles and passageways were not indicated which allowed haphazard storage.

- 5. 1910.176(c) Storage area(s) were not kept free from accumulation of materials that constituted hazards from tripping, fire, explosion or pest harborage:
  - (a) Warehouse area, wood pallets boxes and broken boards were piled and or lying about.
- 6. 1910.178(p)(1) Powered industrial truck(s) with defect(s) or in any way unsafe had not been withdrawn from service until restored to safe operating condition(s):
  - (a) Warehouse west end, Clark Fork Lift, Serial No. 101-58701963 was being operated with inoperable horn.
- 7. 1910.305(b)(2) Pull boxes, junction boxes and fittings were not provided with covers approved for the purpose:
  - (a) South wall in warehouse next to Air Compressor, cover for the auxiliary gutter was missing.
- 8. 1910.305(g)(2) Flexible cords were not used in continuous lengths without splice or tap:
  - (ii)
    - (a) Machine room, electrical flexible cord plugged into the convenience outlets, on the back of the control stand for the paper shredder, is spliced together.

Serious Violations:

- 1. 1910.212(a)(5) Fan blade guard(s) were not provided where the periphery of the blades was less than seven feet from the floor or working level:
  - (a) Under platform near chemical hoppers in machine room, Leland Faraday Fan, the guard over the inlet has been removed.
- 2. 1910.219(d)(1) Pulley(s) with part(s) seven feet or less from the floor or work platform were not guarded in accordance with the requirements specified in 29 CFR 1910.219(m) and (o):
  - (a) Maintenance area west end of warehouse, Rong Fu Metal Cutting Band Saw, Serial No. 918809, pulleys are unguarded.

- 2a. 1910.219(e)(1)  
(i) Horizontal belts which had both runs 42 inches or less from the floor level were not fully enclosed by guards conforming to requirements specified in 29 CFR 1910.219(m) and (o):
- (a) Maintenance area west end of warehouse, Rong Fu Metal Cutting Band Saw, Serial No. 918809, V-Belt is unguarded.

ORDER

On July 22, 1982, after proper substitute service on the defendant through the State Corporation Commission under the authority of Section 13.1-11, Code of Virginia (1950) as amended, came the Commonwealth of Virginia at the relation of the Department of Labor and Industry and the Defendant who did not appear by counsel, but Mr. Ernest T. Brown, President of Sunlock Corporation, did appear to be heard on the attached three (3) citations.

After hearing of and review of the exhibits, it is ADJUDGED, ORDERED and DECREED as follows:

1. Citation 1, judgment is entered for the defendant and the issue is dismissed;
2. Citation 2, judgment is entered for the defendant and the issue is dismissed;
3. Citation 3(1) and 3(1a), judgment is entered for the plaintiff and the defendant, Sunlock Corporation, is to pay thirty (\$30.00) dollars civil penalty and the cost of court.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.2, Code of Virginia (1950) as amended, the Clerk shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry; to the Sunlock Corporation, c/o Ernest T. Brown, President, 4217 Carolina Avenue, Richmond, Virginia and to the Attorney for the Commonwealth.

COMMONWEALTH

v.

MARVAL POULTRY COMPANY, INC.

No. C82-4358

January 12, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF ROCKINGHAM

David I. Walsh, Commonwealth's Attorney, for Plaintiff  
Douglas L. Guynn, Esquire, for Defendant  
Before the Honorable John A. Paul, Judge

Disposition: Final, by Settlement and Order Granting Settlement.

Nature of the case: Marval was cited for two violations of the VOSH standards for general industry. Specifically:

Serious Violation:

1. 1910.212(a)(3)  
(ii) Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their bodies in the danger zone(s) during operating cycle(s):
  - (a) Department #54, Grinding and Mixing - 8" Weiler Grinder was not guarded to prevent operator from getting fingers in danger zone during operating cycle.

Other Than Serious Violation:

1. 1900.35(2) The log of occupational injuries and illnesses (OSHA Form No. 200 or equivalent) was not completed in the detail provided in the form and the instructions contained therein:
  - (a) The 1980 OSHA 200 Log or its equivalent was not completed in detail.

ORDER

A. STIPULATION OF SETTLEMENT

The Complainant, the Department of Labor and Industry of the Commonwealth of Virginia, by the Commonwealth Attorney, and the Respondent, Marvel Poultry Company, Inc., by its attorney, Douglas L. Guynn, in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate the following compromise:

1. The Complainant hereby moves to amend its Citation and Notification of Proposed Penalty issued on July 26, 1982, to withdraw with prejudice

Citation No. 1, alleging failure to guard points of operation of a Weiler grinder.

2. The Respondent hereby moves the Court for an Order to allow it to withdraw its Notice of Contest to the Citation and Notification of Proposed Penalty and, in support of this motion and the Stipulation of Settlement, the Respondent represents:

a. That it will utilize on the Weiler grinder, described in Citation No. 1, a squirt shield at all feasible times when the grinder is operating;

b. That complete abatement of the alleged violative condition noted in Citation No. 1 has been accomplished to the extent permitted by feasible engineering and/or administrative controls;

c. That Respondent has posted its Notice of Contest;

d. That a copy of this Stipulation of Settlement will be posted on the employee bulletin board at Dayton, Virginia on January 15, 1983, to serve all affected employees;

e. That Respondent enters no contest to Citation No. 2 issued on July 26, 1982, alleging that the Log of Occupational Injuries and Illnesses was not completed in the prescribed detail.

f. That Respondent agrees to continue to comply with the applicable, lawful provisions of the Occupational Safety and Health Act of 1970 and the applicable, lawful safety standards promulgated pursuant to the Act.

3. Complainant agrees that this Stipulation shall not be used in any manner in any enforcement proceedings under the Occupational Safety and Health Act of 1970 resulting from any alleged future violations of the regulations set forth in the Citations in this matter.

4. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

5. The Citation and Notification of Proposed Penalty as amended by this Stipulation of Settlement shall become a final order of the General District Court of Rockingham County.

#### B. ORDER GRANTING STIPULATED SETTLEMENT

This 12th day of January, 1983, came the Complainant by its attorney, David I. Walsh, Esquire, and came the Respondent by its attorney, Douglas L. Guynn, Esquire, for consideration of the Stipulation of Settlement heretofore entered into between the parties.

NOW, THEREFORE, after careful consideration of the Stipulation of Settlement, it is ORDERED:

1. That the Settlement Agreement entered into by the Complainant and Respondent is hereby expressly incorporated by reference into and made a part of this Order and, based upon the representations set forth therein, is APPROVED.

2. That Complainant's Motion to Amend the Citation and Notification of Proposed Penalty as set forth in the Settlement Agreement is hereby GRANTED.

3. That the Respondent's Motion to Withdraw its Notice of Contest, as set forth in the Settlement Agreement, is hereby GRANTED.

4. That the Citation No. 2 issued on July 26, 1982, by the Complainant, alleging that the Log of Occupational Injuries and Illnesses was not completed by the Respondent in the prescribed detail, is AFFIRMED.

Nothing more remaining to be done in this matter, the Clerk is hereby directed to dismiss this matter from the Court's docket.



COMMONWEALTH

v.

ESTEP LUMBER YARD, INC.

Docket No. C-82-1078

November 5, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF SHENANDOAH

Arthur G. Lambiotte, Commonwealth's Attorney, for Plaintiff  
Kermit L. Racey, for Defendant  
Before the Honorable Perry W. Sarver, Substitute Judge

Disposition: Final, by trial

NATURE OF THE CASE: One "serious" citation was issued following an accident investigation. The Standard allegedly violated:

Standard

1910.145(f) (3) (iii) "Do Not Start" tags shall be placed in a conspicuous location or shall be placed in such a manner that they effectively block the starting mechanism which would cause hazardous conditions should the equipment be energized. Specifically, the employer did not stop the circular head saw and lock out the switch located in the main saw mill building. When an employee was instructed to crawl under the carriage platform to remove scrap from under the sawdust chain, his right hand hit against the rotating head saw, amputating his index finger and causing extensive damage to the middle finger.

ORDER

This matter came on to be heard this 5th day of October, 1982, with Arthur G. Lambiotte, Esquire, appearing on behalf of the Commonwealth, and Kermit L. Racey, Esquire, appearing on behalf of the Defendant.

This is a proceeding pursuant to Section 40.1-49.4 of the Code of Virginia of 1950, as amended, and the alleged violation is as set forth on that Citation issued by the Plaintiff against the Defendant and filed with the papers in this cause.

The greater portion of the evidence introduced in the trial of this case related to an accident occurring on April 4, 1981, in which Gerald Rickard was involved wherein he suffered serious damage to his right hand, all as alleged in the aforesaid Citation. The evidence introduced was in the nature of negligence on the part of the Defendant and contributory negligence on the part of Mr. Rickard.

It is the opinion of the Court that the sole issue in this cause was whether or not the Defendant posted "Do Not Start" tags or notices of like import in close proximity with the starting mechanism of the saw which caused the injury to Mr. Rickard and thus complied with the regulations of the Department set forth in Section 1910.145(f) (3) (iii). Mr. Samuel Estep, the principal in the Defendant corporation, who is in charge of the operation of the lumber mill admitted under oath that the required notices or posters or tags of like import were not in place on the date of the accident in which Mr. Rickard was involved. Therefore, by his own admission, it is the opinion of the Court that the Defendant corporation is in violation of the aforesaid regulation.

It is the further opinion of the Court, however, that the failure to post the aforesaid signs, notices or tags, were not a contributing factor to the accident in which Mr. Richard was involved since it appears from the evidence that the injury was caused not by the starting of the machinery, but by the failure to stop the machinery. It would appear that the accident itself was caused by other causes not related to the charge at hand.

In view of the fact, and by Mr. Estep's own admission, that such signs, notices or tags were not posted, and that the failure to post this sign or signs creates a serious breach of safety for workers in the plant caused by inexperienced or unqualified person starting up the machinery, not realizing the consequences that could flow therefrom and it further appearing that the civil penalty assessed for this type of violation is based upon experience and potential exposure to danger, it is therefore ORDERED that the Defendant be assessed a civil penalty of \$200.00

This Order is prepared in written form pursuant to Section 40.1-49.4 E of the Code of Virginia.

Defendant noted its appeal to this Order of the Court and it is further provided that Defendant shall post a bond in the amount of \$200.00 plus the costs of this proceeding pursuant to Section 16.1-107, of the Code of Virginia of 1950.

And this cause is ended.



PART III  
CONSTRUCTION SAFETY

COMMONWEALTH

v.

REPUBLIC LUMBER COMPANY

Docket No. E007

August 1, 1982

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William B. Bray, Commonwealth's Attorney, for Plaintiff  
Before the Honorable E. L. Turlington, Jr., General District Court Judge

DISPOSITION: Final, by nonsuit

NATURE OF THE CASE: Although several citations were issued for violations of Industrial Safety Standards, the company, prior to trial, had ceased operation and filed for bankruptcy. Therefore, the case was nonsuited.

COMMONWEALTH

v.

PHOENIX DEVELOPMENT CORPORATION

Docket No. \_\_\_\_\_

August 16, 1982

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

Tom Carter, Commonwealth's Attorney, for Plaintiff

Before the Honorable D. F. O'Flaherty, General District Court Judge

Disposition: Final, by Consent Agreement

Nature of the case: Citations were issued following a General Schedule Safety Inspection. Alleged violations:

Citation	Item Nos.	Standard	Proposed Penalty	Imposed Penalty
1		1926.102(a)(1)	\$0	\$0
2	1	1926.651(i)(1)	\$350	\$175
2	1a	1926.652(a)	included	included

Specifically, the violations observed were: 1) Personal protective equipment for the eye and face was not used by an employee while using a hammer to break up concrete sewer pipe. 2) Spoil was stored at the edge of the trench, and 3) the trench was not properly shored or sloped, exposing employees to moving ground or cave-ins.

ORDER

THIS CASE came to be heard upon application of the parties; and IT APPEARING to the Court that both parties hereto agree to entry of this Order as evidenced by their signatures affixed below; it is

ADJUDGED, ORDERED and DECREED the Phoenix Development Corporation is guilty of the Citation issued pursuant to Case ID#F319608881 of the Department of Labor and Industry and Judgement is for the Commonwealth in the amount of one hundred and seventy-five dollars (\$175.00).

COMMONWEALTH

v.

INNER-VIEW, LTD.

Docket No. C82-30-272(3), Single hearing

August 19, 1982

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld Jones, Assistant Commonwealth Attorney, for Plaintiff  
Allen J. Gordon, for Defendant  
Before the Honorable Fred E. Martin, General District Court Judge

DISPOSITION: Final, by trial

NATURE OF THE CASE: Initial citations were issued following a general schedule safety inspection. A "Serious Willful" violation was issued on a follow-up inspection. The Standards allegedly violated are:

Standard

- |             |  |
|-------------|--|
| 1926.652(b) | The sides of a trench in unstable soil which were more than 5' in depth, were not shored or braced to protect employees who were working adjacent to the vertical sides from possible movement of the earth.                                 |
| 1926.652(e) | Additional precautions by way of shoring or bracing were not taken to prevent slides or cave-ins where the tunnel was made adjacent to backfilled excavations or where excavations were subjected to vibrations from operation of machinery. |
| 1916.652(h) | Employees were required to be in the trench which was more than 4' deep, and an adequate means of exit, such as a ladder or steps, was not provided, or located so as to require no more than 25' of lateral travel.                         |

ORDER

Finding of Facts

On February 16-17, 1982, at the 8500 block of Tidewater Drive, in Norfolk, Virginia, the defendant was installing a sewer pipe underground. Defendant had opened a 7 foot, 6 inch deep trench, 28 feet long, running from west to east adjacent to Tidewater Drive. The trench was to be used as a jacking pit to push pipe underneath the roadway. The lower strata of the pit, approximately 3½ inches deep, consisted of layers of peat interlaced with roots. The upper portion was a sandy soil. The lower portion had relatively straight sides and the upper portion had sloping sides to not more than 30 degrees. There were men working in the trench and there was no shoring or sheathing to prevent cave-ins.

There was no ladder in the trench. There was a backhoe, front end loader that was being operated on the north bank of the trench and there

was a normal flow of vehicular traffic on Tidewater Drive adjacent to the east end of the trench. The area at the east end of the trench where there was a manhole, had previously been excavated and backfilled.

The second inspection was conducted on February 25, 1982 at the same location. The inspector found a trench running west to east cutting through the concrete surface of Tidewater Drive in which employees were working. There was no shoring or sheathing or bracing to support the sides to preclude a collapse. The trench was 7 feet, 4 inches in depth and 4 feet wide with vertical sides. The sheeting material was at the side of the trench, and defendant contended he was ready to install it and that one employee was in the bottom of the trench for the sole purpose of measuring the bottom in order to install the sheeting. The siding was composed of sandy good soil. The top edges of the trench were composed on the highway surface of concrete. The Commonwealth contends that defendant was getting ready to lay the pipe rather than install the sheathing. In any event, there was no sheathing installed and two employees were in the trench. There was no ladder in the trench.

Additional precautions were not taken to prevent cave-ins where the trench was made adjacent to previously backfilled areas and vibrations from highway traffic crossing the previously backfilled trench covered with a heavy metal plate which sat on the existing concrete roadway immediately adjacent to the trench in which the employees were working. The sides of the trench were cracked on the north and south sides and the west side having backfilled the day before.

The first inspection resulted in a citation for serious violations. The second inspection resulted in a willful and serious violation. I imposed penalties in both cases which were combined into one after one hearing. The defendant has noted his appeal to both and posted a single bond for that appeal. The defendant considers all his actions safe and defendant's position was fully argued by counsel.

I find as a fact, that the defendant did not intend to use the sheathing and in fact, intended to lay the pipe without use of sheathing or other bracing.

#### Conclusions of Law

CITATION #2 - Inspection date, February 16-17.

#### Item #1:

The sides of the trench were of unstable or soft material, were more than 5 feet in depth, were not shored, sheeted, braced, sloped or otherwise supported in accordance with Tables P-1 and P-2:

The 7 foot, 6 inch vertical sides of the 5 foot, 6 inch wide trench that ran 28 feet from west to east, adjacent to Tidewater Drive, was not equipped with shoring, sheeting, bracing nor were there any other means provided to protect employees who were working adjacent to the vertical sides from possible movement of the earth.

The Standard violated was 1926.652(b).



Item #a:

Additional precautions by way of shoring or bracing were not taken to prevent slides or cave-ins where trench was adjacent to backfilled excavations or where excavations were subjected to vibrations from railroads or highway traffic, operation of machinery, or from any other source.

The 7 foot, 6 inch vertical sides of the trench that employees were working in were subject to vibrations caused by a backhoe, front end loader, that was being operated on the north bank of the trench, and from vehicular traffic on Tidewater Drive adjacent to the east end of the trench where there was a manhole, which had previously been excavated and backfilled.

The Standard violated was 1926.652(e).

Item #b:

Employees were required to be in the trench which was more than 4 feet deep, and an adequate means of exit, such as a ladder or steps, was not provided.

The 7 foot, 6 inch deep trench that employees were working in was not equipped with steps or a ladder for safe exit. Employees observed climbing the vertical walls of the trench to gain access in and out of the trench.

The Standard violated was 1926.652(h).

CITATION #1 - Inspection date, February 25.

Item #1:

The sides of the trench were of unstable or soft material, were more than 5 feet in depth, were not shored, sheeted, braced, sloped or otherwise supported in accordance with Tables P-1 and P-2.

The trench running west to east on Tidewater Drive in which employees were working was not shored, sheeted, braced or otherwise supported to preclude collapse. Trench was 7 feet, 4 inches in depth and 4 feet wide with vertical sides.

Item #1a:

Additional precautions by way of shoring or bracing were not taken to prevent slides or cave-ins where trench was made adjacent to backfilled excavations, or where excavations were subjected to vibrations from railroads or highway traffic, operation of machinery, or any other sources.

Additional precautions were not taken to prevent cave-ins where the trench was made adjacent to previously backfilled areas and was subjected to vibrations from highway traffic crossing the previously backfilled trench covered with a heavy metal plate which sat on the existing concrete roadway immediately adjacent to the trench in which employees were working. The trench was 7 feet, 4 inches deep, 4 feet wide and 25 feet long west to east.

The Standard violated was 1926.562(b).

Item #1b.

Employees were required to be in the trench which was more than 4 feet deep. An adequate means of exit, such as a ladder or steps, was not provided.

A ladder for a safe means of exit was not provided in the trench where employees were working. The trench ran west to east, was 7 feet, 4 inches in depth, 4 feet in width and 25 feet in length. The vertical sides were not sloped to provide a safe means of exit.

The Standard violated was 1926.652(h).

I impose the following penalties:

For Citation #2, resulting from inspection conducted on February 16-17, \$300.00.

For Citation #1, resulting from inspection conducted on February 25, \$2,500.00.

The total penalties imposed are \$2,800.00.

COMMONWEALTH

v.

LOUDOUN TUNNELING, INC.

Docket No. C82-11913

August 19, 1982

GENERAL DISTRICT COURT FOR THE CITY OF FAIRFAX

Steve Moriarty, Commonwealth's Attorney, for Plaintiff  
John T. Aylestock, for Defendant  
Before the Honorable George A. Ragland, General District Court Judge

Disposition: Final, by consent agreement

Nature of the case: Citations were issued following a general schedule safety inspection. Specifically alleged violations included:

1. 1926.652(a) Soil bank(s) which were more than 5 feet high, and where employee(s) may be exposed to moving ground or cave-ins, were not shored, laid back to a stable slope, or protected by some other equivalent means:
  - (a) Trench at this site was not properly shored or sloped to prevent a cave in. Trench measured 9' - 15' deep with vertical sides, 10' wide and 15' long.
- 1a. 1926.651(i)(1) Excavated or other material was not effectively stored or retained at least 2 feet or more from the edge of the excavation(s) which employee(s) were required to enter:
  - (a) Overburden was stored at the edge of this trench to a height of 9'. Trench measured 9' - 15' deep with vertical sides, 10' wide and 15' long.
- 1b. 1926.652(h) Employee(s) were required to be in the trench(es) which were more than 4 feet deep, and an adequate means of exit, such as a ladder or steps, was not provided, or located so as to require no more than 25 feet of lateral travel:
  - (a) No ladder or other equivalent means of exit was provided in this trench. Trench measured 9' - 15' deep, 10' wide, and 15' long.

ORDER

STIPULATION OF FACTS

1. On March 1, 1982, a crew of Loudoun Tunneling, Inc., was engaged in a project on Route 50, in Fairfax County, Virginia.

2. On that date, and at that location, Donn M. Falls appeared and identified himself as an inspector for the Virginia Department of Labor and Industry to the management official on the site, Robert Cheatham. At that time, a routine general inspection was performed.

3. During the inspection it was noted that there existed a trench with vertical sides, measuring 9' to 15' in depth, 10' wide, and 15' long. The walls of the trench were unshored, and an employee, Joe Baker, was in the trench.

4. In addition, it was noted that the overburden ("spoil") was stored adjacent to the trench at a height of 9', within 2' of the edge of that trench.

5. Finally, no ladder or other means of exit was provided in the trench.

6. All three points noted during the inspection were immediately abated.

CONCLUSIONS OF LAW

A. The citation issued to Loudoun Tunneling, Inc., was prepared in accordance with the rules and procedures of the Department of Labor and Industry for the Commonwealth of Virginia. A notice of contest was timely filed by Loudoun Tunneling.

B. This Court has jurisdiction over the matter pursuant to Section 40.1-49.4 of the Code of Virginia as amended.

C. It is agreed by both parties to this action that the unshored walls in the trench were in violation of Va. O.S.H.A. Standard 1926.652 (a). It is agreed that the retained spoil was in violation of Va. O.S.H.A. Standard 1926.651(i)(1). Finally, it is agreed that the absence of means of exit from the trench was in violation of Va. O.S.H.A. Standard 1926.652 (1).

D. It is agreed that the violations were "serious" in nature.

E. It is agreed that the penalty to be assessed, as computed by the Department of Labor and Industry, shall be \$100.00.

COMMONWEALTH

v.

A & W CONTRACTORS, INC.

Docket No. --

August 28, 1982

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld Jones, Assistant, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Fred E. Martin, Jr., General District Court Judge

Disposition: Final, by trial

Nature of the case: Citation was issued following a general schedule safety inspection. Standard 1926.652(b) is alleged to have been violated. Specifically, "the sides of a 50 foot long, 8 foot wide trench, dug in unstable or soft material had 10-foot vertical walls that had not been shored, sheered, braced or sloped. Nor had any other means been taken to protect employees who were working adjacent to the 10-foot walls from possible cave-ins.

ORDER

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

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

Alleged Violation	Type	Demand Penalty	Recommended Penalty
1926.652(b) VOSH Standards for Construction Industry	Serious		\$150.00

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

- 2. Defendant agrees and stipulates to the following:
  - a. That the recommended penalties amounting to \$150.00 will be paid in full pursuant to this Order:
  - b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.

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

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$150.00.

It is further ORDERED that pursuant to the provisions of §40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$150.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

L. H. PERRY CORPORATION

Docket No. C81-18753

August 27, 1982

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

Robert G. Morecock, Commonwealth's Attorney, for Plaintiff  
B. L. Saunders, Esquire, for Defendant  
Before the Honorable Robert L. Simpson, General District Court Judge

Disposition: By Trial

Nature of the case: Citations were issued as a result of a general schedule safety inspection. Alleged violations involved Standards dealing with scaffolding frame, planks, and access requirements. A serious - willful citation was issued for a violation of Standards dealing with guardrails and toeboards which were not installed on scaffolding. A \$500 penalty was proposed for this violation.

ORDER

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

1. There is pending before this Court a summons filed by the plaintiff on 12-10-81 directing defendant to show cause why he should not be held in violation of Title 40.1, Code of Virginia, as amended, and the Virginia Occupational Safety and Health Standards as specified in the summons and in two (2) citations issued by the Virginia Department of Labor and Industry to defendant on August 21, 1981. Copies of this summons and the citations were posted at the defendant's workplace for three or more days.

2. Defendant is and has been engaged in the business of Mason Contractor from its office located at 10758-B Jefferson Avenue, Newport News, Virginia.

3. On August 21, 1981 thru September 18, 1981, the Virginia Department of Labor and Industry and/or the Bureau of Occupational Health conducted an inspection and investigation of defendant's workplace at 3386 Holland Road, Virginia Beach, Virginia, as authorized by Sections 40.1-51.3 and 40.1-40 of the Code of Virginia for compliance with Occupational Safety and Health Standards.

4. As a result of the inspection, plaintiff issued the citations referred to above as authorized by Sections 40.1-6(2) and 40.1-49.4, alleging one serious and willful violation and one non-serious violation of said standards.

5. After a proper hearing of the evidence in this case, I, Robert L. Simpson, Judge of the General District Court of the City of Virginia Beach do hereby find for the Plaintiff based on the following findings of fact and conclusions of law:

The Defendant did not contest the citations. The only evidence presented was to the amount of penalties to be assessed.

6. Defendant will post a copy of this order at the site of the violations for three working days or until abatement of the violations whichever period is longer.

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

ADJUDGED, ORDERED and DECREED, that this case be dismissed OR ADJUDGED, ORDERED and DECREED, that defendant abate the violations cited in the citations below and be assessed a civil penalty for said violations as follows:

<u>Citation</u>	<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
No. 1	1	1900.37(1)	8-21-81	None
No. 1	2	1926.152(a)(1)	8-24-81	None
No. 1	3	1926.451(a)(2)	8-24-81	None
No. 1	4	1926.451(a)(13)	8-23-81	None
No. 1	5	1926.451(a)(14)	8-23-81	None
No. 1	6	1926.451(d)(3)	8-23-81	None
No. 1	7	1926.602(c)(1)(iv)	8-23-81	None
No. 2	1	1926.451(d)(10)	8-23-81	\$500.00

The abatement dates in this order may be extended by the Procedures enumerated in Section 1909.28 of the Administrative Procedures Rules and Regulations for Enforcement of Occupational Safety and Health Standards adopted by the Virginia Safety and Health Codes Commission on July 28, 1978.

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

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



COMMONWEALTH

v.

R. L. RIDER AND COMPANY

Docket No. C82-18535

September 16, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Steve Moriarty, Commonwealth's Attorney, for Plaintiff  
Gerald Katz, for Defendant  
Before the Honorable G. W. Hammer, General District Court Judge

Disposition: By trial; appealed to Circuit Court pending.

Nature of the case: Citations were issued following a general schedule safety inspection. Standards alleged to have been violated and contested are:

Standards

- 1926.650(e) Employees were not protected with appropriate personal protective equipment. Specifically, employee working in trench using a jumping jack plate was not using personal protective equipment.
- 1926.652(a) Soil banks more than 5 feet high, and where employees might be exposed to moving ground or cave-ins, were not shored, laid back to a stable slope, or protected by some other equivalent means. Specifically, a trench was not properly shored or sloped. Trench measured 30' long, 8' deep, 5' wide at the bottom with vertical sides for the first 5' then sloped to a width of 10'.
- 1926.651(i)(1) Excavated or other material was not effectively stored or retained at least 2' or more from the edge of the excavation which employees were required to enter. Specifically, overburden was stored at the edge of the trench to a height of 7'. The trench measured 30' long, 8' deep, 5' wide at the bottom with vertical sides for the first 5' then sloped to a width of 10'.

Forest Dale Road, in Fairfax County, Virginia.

2. The foreman in charge of the job, on behalf of R. L. Rider, was Lester Rider.

3. Mr. Lester Rider was the person responsible for complying with the safety standards set forth by the Safety and Health Codes Commission of the Commonwealth of Virginia.

4. On March 23, 1982, at approximately 10:45 a.m., an open trench existed at the site. The steel water main was at the bottom of the trench being installed. Four men were working in the trench between the main and the wall. The trench was thirty feet in length, eight feet in depth, and five feet in width. The walls bore no shoring or supports.

5. The soil which had been removed from the trench ("spoil") was piled adjacent to the trench, with no distinguishable separation between the edge of the trench and the pile.

6. R. L. Rider was cited by Donn M. Falls, of the Virginia Department of Labor and Industry, with serious violations of Virginia O.S.H.A. Standards 1926.652(a) and 1926.651(i)(1), and assessed a penalty of \$480.00.

#### CONCLUSIONS OF LAW

A. The citation issued to R. L. Rider was proposed in accordance with the rules and procedures of the Department of Labor and Industry for the Commonwealth of Virginia. A notice of contest of the violation was timely filed by R. L. Rider.

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

C. Upon the issue of the unshored banks of the trench, the court granted a Motion to Strike the Commonwealth's evidence. Upon the issue of the spoil, stored adjacent to the trench, the court held that said spoil was retained within two feet of the edge of the excavation, in violation of Va. O.S.H.A. Standard 1926.651.(i)(1).

D. It was adjudged that the violation was "serious" in that there was substantial probability that death or serious physical harm could result.

E. The fine was assessed at \$250.00.

COMMONWEALTH

v.

WILLIAM B. HOPKE COMPANY, INC.

Docket No. C82-515

September 20, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF PAGE

John T. Hennessy, Commonwealth's Attorney, for Plaintiff  
Gerald I. Katz, for Defendant  
Before the Honorable Robert E. Hayes, General District Court Judge

Disposition: Final, by trial

Nature of the case: A citation was issued following a general schedule safety inspection. Allegedly violated was Standard 1926.600(a)(6) which requires that where equipment is operated within 10 feet of electrical distribution or transmission lines rated 50 kv or below, that the line be de-energized and grounded or equipment be erected to prevent physical contact with the lines. Specifically, an employee was exposed to the above hazard while operating a 5800 Link Belt backhoe under a 240 volt electric line. The arm of the backhoe was approximately 2 to 3 feet from the electric line.

ORDER

On the 20th day of September, 1982, came again the Attorney for the Commonwealth, and the William B. Hopke, Co., Inc., who stands charged with violating 29CFR 1926.600(a)(6), as adopted by the Safety and Health Codes Commission of Virginia, appeared by its retained counsel, Gerald I. Katz, Esquire.

Thereupon, the Court proceeded to hear and determine the evidence in this case, after hearing the opening arguments of counsel, and at the conclusion of the evidence presented by the Attorney for the Commonwealth, counsel for the defendant moved to strike the evidence, which said motion was sustained, and the evidence of the Commonwealth having been struck, the violation pending against the defendant was dismissed and the defendant was allowed to depart.

COMMONWEALTH

v.

BCC MECHANICAL, INC.

Docket No. --

October 7, 1982

GENERAL DISTRICT COURT FOR THE CITY OF PORTSMOUTH

Roberta P. Boyle, Assistant Commonwealth's Attorney, for Plaintiff  
Samuel P. Peterson, for Defendant

Disposition: Final, by trial

Nature of the case: Citations were issued following a general schedule safety inspection. All were contested.

ORDER

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

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

Alleged Violation	Type	Demand Penalty	Recommended Penalty
1926.150(c)(1)(ii)	Other	None	None
1926.352(d)	Other	None	None
1926.400(c)(1)	Other	None	None
1926.401(j)(1)	Other	None	None
1926.401(j)(2)	Other	None	None
1926.401(j)(3)	Other	None	None
1926.500(b)(8)	Other	None	None
1926.500(e)(1)(i)	Other	None	None

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

2. Defendant agrees and stipulates to the following:
- That the recommended penalties amounting to \$0. will be paid in full pursuant to this Order.
  - That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation

unless such dates are extended by the Commissioner of the Department of Labor and Industry.

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

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$0., together with the costs of this proceeding.

It is further ORDERED that pursuant to the provisions of §40.1-40.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$0. to the Treasury of the Commonwealth, as provided for by the Statute.

COMMONWEALTH

v.

BLAKE CONSTRUCTION COMPANY

Docket No. --

October 7, 1982

GENERAL DISTRICT COURT FOR THE CITY OF PORTSMOUTH

Roberta Boyle, Assistant Commonwealth's Attorney, for Plaintiff  
Samuel C. Peterson, for Defendant

Disposition: Final, by trial

Nature of the case: Citations were issued following a general schedule safety inspection. All were contested

ORDER

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

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

Alleged Violation	Type	Demand Penalty	Recommended Penalty
1900.37(2)	Other	None	None
1926.102(a)(1)	Other	None	None
1926.150(c)(1)(ii)	Other	None	None
1926.250(b)(7)	Other	None	None
1926.350(d)(2)	Other	None	None
1926.350(g)(3)	Other	None	None
1926.400(a)	Other	None	None
1926.400(c)(1)	Other	None	None
1926.401(j)(1)	Other	None	None
1926.401(j)(2)	Other	None	None
1926.401(j)(3)	Other	None	None
1926.402(c)(3)	Other	None	None
1926.451(d)(3)	Other	None	None
1926.500(b)(8)	Other	None	None
1926.500(e)(1)(i)	Other	None	None

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

2. Defendant agrees and stipulates to the following:
  - a. That the recommended penalties amounting to \$0. will be paid in full pursuant to this Order.
  - b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.
  - c. That a copy of this order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is longer.
  
3. If a Notice of Contest was filed, defendant stipulates:
  - d. That defendant has posted its Notice of Contest; and
  - e. That the defendant hereby withdraws its Notice of Contest.

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$0., together with the costs of this proceeding.

It is further ORDERED that pursuant to the provisions of §40.1-40.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$0. to the Treasury of the Commonwealth, as provided for by the Statute.

COMMONWEALTH

v.

WRECKING CORPORATION OF AMERICA, ST. LOUIS, INC.

Docket No. C82-7953

October 20, 1982

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

David W. Dunlap, Assistant Commonwealth's Attorney, for Plaintiff  
Michael P. Amann, President, Wrecking Corporation, representing the Defendant  
Before the Honorable James Wooll, General District Court Judge

Disposition: Final, by court order

Nature of the case: Citation was issued following a general schedule safety inspection. The alleged serious violation contested involves the following Standards:

1926.28(a) and 1926.105(a)

Employees were not protected against falls of more than 25 feet by the use of safety nets, ladders, scaffolds, catch platforms, temporary floors, safety lines, safety belts, or other appropriate personal protective equipment. Specifically, no fall protection was provided where employee was allowed to walk the parapet wall on the roof of cited structure with a fall distance of 42 feet. A \$280 penalty was proposed.

ORDER

THIS CAUSE came to be heard upon application of both parties hereto;  
and  
IT APPEARING to the Court that entry of this Order is appropriate; it  
is  
ADJUDGED, ORDERED, AND DECREED that the defendant herein is  
guilty of Citation #1 in Virginia Department of Labor and Industry Case No.  
E8628-123-82 and judgement is in the amount of \$140.  
ENTERED this 20th day of October, 1982.



COMMONWEALTH

v.

HUNT CONTRACTING COMPANY

Docket No. 82-16099

October 26, 1982

GENERAL DISTRICT COURT FOR THE CITY OF PORTSMOUTH

Robin Boyle, Commonwealth's Attorney, for Plaintiff  
Allen Gordon, for Defendant  
Before the Honorable S. Lee Morris, General District Court Judge

Disposition: Final, by trial

Nature of the case: Citations were issued following an inspection of the premises. The contested citation involved Standard:

1926.500(b)(1) Floor opening(s) were not guarded by standard railings and toeboards or covers:

- (a) Employees working adjacent to an unguarded floor opening in the upper floor of the sewage pump station were exposed to a fall of approximately 19½ feet to the concrete floor below. Opening measured 42 inches wide by 54 inches long.

ORDER

This case was heard October 26, 1982, on the citation issued by the Commonwealth of Virginia, Department of Labor and Industry, alleging that Hunt Contracting Corporation did violate on or about January 28, 1982, Section 1926.500(b)(1) of the regulations promulgated under the Federal Occupational Safety and Health Act of 1970, administered and enforced under Title 40.1 of the Code of Virginia 1950 as amended, the defendant having requested the hearing in order to contest the citation and proposed penalty. The violations arise out of certain repair procedures on sewage pump station #9 on Rodman Avenue in Portsmouth, Virginia.

Upon mature consideration of the evidence offered by both parties, the arguments and the applicable law, the Court finds in favor of Hunt Contracting Corporation. Therefore, it is Adjudged, Ordered and Decreed under Section 40.1-49.4(e) of the Code of Virginia, 1950, as amended, that the citation issued by the Commonwealth of Virginia, Department of Labor and Industry and the penalty proposed therein be and they hereby are vacated.

COMMONWEALTH

v.

MILLER AND LONG COMPANY, INC.

Docket No. 23229

October 28, 1982

CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

Barbara L. Walker, Commonwealth's Attorney, for Plaintiff  
Lynn E. Berry, for Defendant  
Before the Honorable Paul D. Brown, Circuit Court Judge

Disposition: Final, by trail

Nature of the case: Violations of standards 1926.400(c)(1) and 1926.400(c)(2) have been alleged.

At the district court level, defendant's motion to dismiss was granted on the ground that VOSH standards allegedly violated did not apply to the facts of the case.

The case was appealed by the Department of Labor and Industry to circuit court.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

THIS MATTER comes upon the motion of respondent Miller and Long Company, Inc. for a summary dismissal of the Summons and Citation in this appeal from the General District Court, which appeal is here de novo.

The case appears to have followed the routine of a citation to Miller and Long Company, Inc. by the Commissioner, with the establishment of a penalty, which citation had been earlier appealed to the General District Court. The notice of summons to the General District Court was "... for a hearing on contest of citation and proposed penalty of \$350..." with reference to a case number. The citation was under two regulatory sections and read as follows:

Item Number	Standard, regulation or section of the law allegedly violated	Description of alleged violation	Date by which alleged violation must be corrected
1	1926.400(c)(1)	Employee(s) were permitted to work in proximity to electrical power circuits that were not guarded by effective insulation or de-energized and grounded, or protected by other means: (a) Placing 30'6" length of rebar in column on 3rd level within 12' of 19.5 KV lines. Rebar was brought out too far and made contact with high voltage lines causing injuries to two employees.	Immediately abated
1a	1926.400(c)(2)	The employer did not post and maintain proper warning signs where electrical power circuits were so located that the performance of the work might bring any person, tool, or machine into physical or electrical contact therewith: (a) Placement of rebar being accomplished within 12' of high voltage lines. No warning signs were posted for this condition.	Immediately abated

The regulations were adopted by Virginia's Safety and Health Codes Commission established by Code Section 40.1-22. The Commission is, by that Section, authorized to adopt, alter, amend or repeal rules and regulations to further protect and promote the safety and health of employees in places of employment which it has jurisdiction, and to effect compliance with the Federal Occupational Safety and Health Act of 1970. The statute requires that such rules and regulations shall be designed to protect and promote the safety and health of such employees, and the standards are required to be at least as stringent as the federal ones. At a time not known to this Court, the Commission adopted Virginia Occupational Safety and Health Standards for the construction industry. Counsel agree it literally copies the federal standards. A copy of it is before the Court with amendments as of April 1, 1981. The subject complaints were made after inspections in the period March 13 to April 3, 1981.

Code Section 40.1-49.4 requires that any violation of any safety or health provision of Title 40.1, or any standard rule or regulation adopted pursuant to it, shall result in a citation to the employer in writing which "...shall describe with particularity the nature of the violation or violations, including a reference to the provision of this Title or the appropriate standards, rules or regulations..."

The duty of employers is spelled out in Code Section 40.1-51.1(a) which provides: "it shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this Title." [FOOTNOTE 1: Conceivably a charge might have been brought under the first half of this Code Section upon a theory of failure to furnish a place of safe employment. The record indicates that Virginia Electric and Power Company had received a request from the respondent company to insulate or otherwise shield the subject power line and that the company refused to do so. However, there is no evidence that the concrete company, through a foreman or by some other means, warned the subject apprentice rodman to be careful of a high-voltage power line 12-13' from the edge of the building under construction. While a safe work place is not necessarily risk free, an employer must do all it feasibly can to prevent foreseeable hazards. Pike v. Department of Labor and Industry, 222 Va 317 (1981).

#### FACT SITUATION

While no evidence has been heard, the parties informally accept every statement of fact made in each others briefs or exhibits.

Accordingly, I find that the respondent Miller and Long Company, Inc. is a concrete and masonry company which does no electrical work including the subject site. The job site was the construction of a new building. An apprentice rodman, with other employees of the respondent company, was lifting a 30'6" rebar (reinforcing bar) from floor to floor from ground level to a third floor point of installation.

In the air parallel to the building was a Virginia Electric and Power Company 16,500 volt power line which ran past the building. At some point it sent power to a substation, from which substation power apparently came back to the job site. This power line was on an easement given to the County Board of Arlington County for public street and utility purposes. The grantors reserved the right to use the area underneath the easement and the area 16 feet above the easement as well as to use the actual easement area for purposes not inconsistent with the easement. Sometime after the subject occurrence, the power line was removed and placed underground. The stipulated facts indicate that the power line was not located on the job site. Its only connection with the site was to provide power which must have been reduced at the substation. The power line was 12-13' from the building.

#### GROUND I OF MOTION TO DISMISS

VAOSH Section 1926.400, allegedly violated by the respondent, was improperly promulgated and is therefore invalid and unenforceable.

At a point unknown, Virginia adopted the Federal OSHA Standards and through them the pertinent provisions of the National Electrical Code of 1971. The respondent argues that a 1981 electrical code was promulgated and ought to have been adopted by Virginia under a legal duty to keep the safety standards current. Federal authorities are cited for this position. I accept the fact that when Virginia adopts a statute (here a standard) of another jurisdiction which has been interpreted by the original jurisdiction, the statute arrives clothed with those interpretations. After adoption within Virginia, subsequent foreign interpretations may not be binding but would be persuasive.

Primarily for lack of factual knowledge of adoption dates by Virginia and of adoption of amendments by Virginia, and of the adoption dates and publication of the 1981 National Electrical Code, the Court is without sufficient facts to support the arguments. Accordingly, the motion to dismiss on this ground is denied.

#### GROUND II OF MOTION TO DISMISS

VAOSH Section 1926.400 is not applicable to employers and employees who do not do electrical work.

It is immediately seen from subdivision (a) that it relates to electrical work, installation and wire capacities. It is further limited to electrical installations used on the job site.

It is patent that Subpart K, from which the citations rise, does not apply to a masonry subcontractor doing no electrical work. If it did the following odd result would be reached; a masonry contractor working on a building adjacent to a high-power Vepco emission line would have to de-energize the line and ground it or guard it by effective insulation. These steps could have the effect of cutting off all power distribution to a substation. A reading of the entire subpart makes it quite clear that it is intended to apply to electrical installers. It is true that the installers must observe and inquire whether there is an exposed electric power circuit endangering employees with a concurrent duty to post and maintain signs about the existence of the circuit. In our construction code no definition of "circuit" has been supplied. A reading of this subpart and of subpart V dealing with power transmission and distribution leads to the conclusion the subject line was not a circuit.

On this ground the motion to dismiss should be granted.

#### GROUND III OF MOTION TO DISMISS

VAOSH Section 1926.400 ["Subpart K" does not apply to power or transmission lines (which were involved in the facts herein)].

The Virginia Code requires that the citation include a reference to the appropriate standard. It does so and the standard is found in subpart K concerning electrical. The Commonwealth argues the applicability of subpart V concerning power transmission and distribution which begins with Section 1926.950 saying that subpart V "...shall apply to the construction of electric transmission and distribution lines and equipment..."

The citation does not refer to subpart V and is not phrased in language which rises from subpart V. I cannot accept the argument on behalf of the Commonwealth that Miller and Long Company, Inc., by using power from a substation served by the transmission lines, thereby made subpart V applicable.

Accordingly, the motion to dismiss should be granted on ground III.

Prevailing counsel should prepare a brief order which refers to this opinion.

DATED this 28th date of October, 1982.

ORDER

Upon consideration of respondent's Motion to Dismiss, and complainant's response and opposition thereto, and oral argument on said motion, it is hereby ORDERED that the respondent's Motion to Dismiss be, and hereby is granted in accordance with the reasons set forth in the written Opinion of the Honorable Paul D. Brown, dated October 28, 1982, which is attached hereto and incorporated herein.

It is further ORDERED that this cause be and hereby is dismissed.

COMMONWEALTH

v.

DANIEL CONSTRUCTION COMPANY

Docket No. --

November 13, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF BATH

John R. Butcher, Assistant Attorney General, for Plaintiff  
Carl B. Carruth, for Defendant  
Before the Honorable William B. Gorson, Sr, General District Court Judge

Disposition: Final, by order of dismissal

Nature of the case: Citations were issued following an investigation into a crane accident. "Serious" alleged and contested "serious" violations were stipulated as follows:

Standard

1926.550(a) No modifications or additions which affect the capacity or safe operation of equipment shall be made by an employer without the manufacturers written approval and if such changes are made, the capacity, operation and maintenance instruction plates, tags, etc., shall be changed accordingly. In no case shall the original safety factor be reduced. Specifically, in this case, an addition of 14,000 pound front bumper weight was made to a truck crane without the manufacturer's written approval and load rating charts will not change to re-rate capacity and restrict work area when the 14,000 pound front bumper counterweight was added.

1926.550(a)(1) The employer did not comply with the manufacturer's specifications and limitations applicable to the operation of crane(s). Specifically, the truck crane equipped with 62,000 pound counter weight and 14,000 pound front bumper counterweight exceeded the manufacturers limitations by lifting out of "over rear work areas."

Synopsis of case: The defendant asserts that no written approval is required for the installation of a 14,000 pound front bumper weight and sales literature contemplates operation of the crane with such an addition. Further, the defendant asserts that the crane with the 14,000 pound weight in place could be operated pursuant to load charts in all areas, and even if the load/angle

capacity was excessive, it was only marginally so. Pursuant to these facts, plaintiff moved to withdraw the citations.

ORDER OF DISMISSAL

This matter is before this court pursuant to Va. Code §40.1-49.4 as a result of a timely notice of contest dated July 7, 1981 by the Defendant to a citation and proposed penalty issued on June 29, 1981 by the Plaintiff alleging certain violations of the rules and regulations of the Virginia Department of Labor and Industry.

Upon further consideration and upon agreement by the parties, Plaintiff states that it wishes to withdraw said citation and penalty in their entirety.

Defendant represents that affected employees have been notified of said withdrawal by notice posted on October 18, 1982. A copy of said notice to employees is attached hereto as Exhibit "A". No affected employees have objected or stated that they wished to be heard regarding said withdrawal.

WHEREFORE, it is hereby ordered that said citation and penalty be dismissed in their entirety with prejudice.



COMMONWEALTH

v.

COMMONWEALTH MASONRY, INC.

No. C82-45-761

November 22, 1982

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld Jones, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Leonard B. Sachs, District Court Judge

Disposition: Final, by Settlement Agreement

Nature of the case: Citation was issued following a general schedule safety inspection. Specifically:

1. 1926.451(a)(3) . Scaffold(s), including accessories such as braces, brackets, trusses, screw legs, ladders, etc. damaged or weakened from any cause were not immediately repaired or replaced:
  - (a) Located under the bleachers on the west side of Foreman Field one of the frames for the tubular welded frame scaffold had a brace lock broken off and the cross-bracing was wired to the frame; thus exposing the employees to the possibility of the one frame high scaffold (54 inches) collapsing.  
  
A \$160.00 penalty is proposed.
2. 1926.100(a) Employee(s) working where there was a possible danger of head injuries were not protected by protective helmets:
  - (a) Under the bleachers on the west side of Foreman Field an employee removing cement blocks from the overhead scaffold, without the protection of a hard hat, was exposed to a possible head injury.

ORDER

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

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

<u>Alleged Violation</u>	<u>Type</u>	<u>Demand Penalty</u>	<u>Recommended Penalty</u>
1926.100(a)	Repeat	-----	\$80.00
1926.451(a)	Repeat	-----	80.00

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

2. Defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$160.00 will be paid in full pursuant to this Order;
- b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.
- c. That a copy of this order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is the longer.

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

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

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

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

It is further ORDERED that pursuant to the provisions of Section 40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \_\_\_\_\_ to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

HOOSIER ENGINEERING, INC.

Docket No. C81-707

November 29, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF LEE

Cynthia D. Kinser, Commonwealth's Attorney, for Plaintiff  
Before the Honorable William C. Fugate, General District Court Judge

Disposition: Final, by consent agreement

Nature of the case: Citation was issued following an accident investigation.  
Contested violation of the VOSH standards is:

Code of Virginia  
40.1-51.1(a)

It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees and to comply with all applicable occupational safety and health rules and regulations promulgated under this chapter.

- (a) Appropriate means of transportation was not provided to employees engaged in power transmission line construction. Employees riding on Ford Industrial Power products track Wood Tiger, Hoosier #22932

ORDER

It being represented to the court that the Commonwealth of Virginia, Department of Labor and Industry, moved to non-suit this case on November 29, 1982, pursuant to defendant's withdrawal of his contest of the citations issued by the plaintiff for violations of the Virginia Occupational Safety and Health Standards, it is ADJUDGED, ORDERED and DECREED that this Final Order act to formalize the non-suite of this case.

COMMONWEALTH

v.

E.A. CLORE SONS, INC.

Docket No. \_\_\_\_\_

December 10, 1982

IN THE CIRCUIT OF MADISON COUNTY

Martin J. McGetrick, Commonwealth's Attorney, for Plaintiff  
J. Thomas Province, for Defendant  
Before the Honorable E. Gerald Tremblay, Circuit Court Judge

ORDER

This day the parties appeared by counsel and represented to the Court that in order to avoid the expense and uncertainty of further litigation and in order to assure expeditious compliance with the occupational safety provisions of State law, they have agreed to a settlement of this matter on the terms set out below. The parties have represented to the Court that a notice of the settlement has been posted in the defendant's work place for five working days, and no employee of the Defendant has come forward to object to the settlement. Accordingly, for a good cause shown, it is ADJUDGED, ORDERED and DECREED:

1. The defendant shall, by March 10, 1983, abate every alleged violation set out in the citation issued to the defendant in this matter.

2. The Commissioner of Labor and Industry has withdrawn her proposed civil penalty. The defendant shall pay no civil penalty in this matter.

3. Upon request of the defendant, the plaintiff shall promptly provide technical advice to the defendant in complying with the requirements of paragraph 1 of this Order.

4. The defendant shall permit the plaintiff to inspect its plant for compliance with the requirements of paragraph 1 of this Order at any reasonable time after March 10, 1983.

5. This Order shall not be construed as an admission of any violation of law, standard, or regulation by the defendant.

6. This matter shall stand dismissed, settled.

Let the Clerk remove this matter from the docket and send a certified copy of this Order to counsel of record.

COMMONWEALTH

v.

DOREY ELECTRIC COMPANY

Docket No. --

December 12, 1982

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld Jones, Assistant Commonwealth's Attorney, for Plaintiff  
Before the Honorable Fred E. Martin, Jr., General District Court Judge

Disposition: Final, by consent agreement

Nature of the case: Citations were issued following a general schedule safety inspection. Alleged Standard violations that were contested are:

Standard

1926.500(d)(1) Open-sided floors or platforms, 6 feet or more above adjacent floor or ground level, were not guarded by a standard railing or the equivalent on all open sides. Specifically, no guard rails were provided at stairwell openings on the second, third and fourth floors where temporary ladders were in use to provide the only access to the upper floors and no guardrails were provided around the fourth floor where employees were working at the perimeter of the floor without fall protection. Fall distance was approximately 27 feet to the ground. A \$240 penalty was imposed.

ORDER

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

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

Alleged Violation	Type	Demand Penalty	Recommended Penalty
1926.500(d)(1)	Serious	\$240	\$75

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

2. Defendant agrees and stipulates to the following:
  - a. That the recommended penalties amounting to \$75 will be paid in full pursuant to this Order:
  - b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.
  - c. That a copy of this order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is the longer.
3. If a Notice of Contest was filed, defendant stipulates:
  - d. That defendant has posted its Notice of Contest; and
  - e. That the defendant hereby withdraw its Notice of Contest.

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$75.

It is further ORDERED that pursuant to the provisions of §40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$75 to the Treasury of the Commonwealth, as provided for the statute.

COMMONWEALTH

v.

S.M.C. CONCRETE CONSTRUCTION, INC.

Docket No. C82-15488

December 17, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Steve Moriarty, Assistant Commonwealth's Attorney, for Plaintiff  
Robert C. Gombar, for Defendant

Disposition: Final, by settlement agreement

Nature of the case: Citations were issued following a general schedule safety inspection. All citations were contested. Alleged violations of the Standards are:

Non-Serious Violations

- 1926.25(a) Debris was not kept clear from a work area
- 1926.400(a) Section 110-17(a) Nat. Electrical Code; NFPA 70-1971, as adopted by 29 CFR 1926.400(a): live parts of electrical equipment operating at 50 volts or more were not guarded against accidental contact by approved enclosures. Specifically, a multiplug in a portable gang box was not protect against accidental contact.
- 1926.401(c) The path from equipment to ground was not permanent and continuous. Specifically, an extension cord in use with a drill had the ground pin missing.

Serious Violations

- 1926.500(d)(1) Open sided floors or platforms, 6 feet or more above adjacent floor or ground level, were not guarded by a standard railing or the equivalent on all open sides. Specifically, an employee placing a steel cross brace on a leading platform located at the edge of the building was exposed to a fall hazard of 54'5". A \$420 penalty was proposed.

## SETTLEMENT AGREEMENT

SMC Concrete Construction, Inc. ("SMC"), by its undersigned counsel, and the Commonwealth of Virginia, Department of Labor and Industry ("VOSH"), by its undersigned counsel, hereby agree to settle the case designated as MP/ E8638-106-82-059, and in support of that agreement state as follows:

1. On May 5, 1982, an inspection by an authorized representative of VOSH was made of a worksite located at 3800 Powell Street, Bailey's Cross Roads, Virginia. SMC was one of the employers at that worksite.
2. On June 16, 1982, as a result of the May 5 inspection, VOSH issued to SMC two citations containing three items alleging other than serious violations of the Virginia Occupational Safety and Health Law as set forth in the Code of Virginia at Title 40.1 ("Virginia Code") and one item alleging a serious violation of the Virginia Code.
3. SMC received the VOSH citation on June 21, 1982, and on June 30, 1982, SMC filed a timely notice contesting all items in the two citations as well as the proposed penalty and abatement dates. A copy of SMC's notice of contest was posted for th appropriate period of time at the same location the contested citation had been posted.
4. At this time, no action arising out of SMC's notice of contest is pending in the Fairfax General District Court, and the Commonwealth of Virginia has no plans to institute such an action.
5. On October 12, 1982, the parties met in the Office of the Commonwealth's Attorney located in Fairfax City, Virginia. As a result of that meeting, the parties agree as follows:
  - (a) VOSH will withdraw, in its entirety, all of Citation No. 1 which contains the three items alleging other than serious violations of the Virginia Code;
  - (b) SMC will withdraw its notice of contest to Citation No. 2 which contains one item alleging a serious violation of the Virginia Code;
  - (c) VOSH will reduce the proposed penalty for Citation No. 2 to \$210.00; and
  - (d) SMC will pay the penalty of \$210.00 by a check made payable to the order of the Virginia Department of Labor and Industry.
6. The parties agree that the alleged hazard at issue in Citation No. 2 has been abated.
7. The parties agree that SMC need not submit its check for \$210.00 to the Virginia Department of Labor and Industry until this settlement agreement has been executed by both parties.
8. The parties agree that they are entering into this settlement agreement in order to avoid the time and expense of litigation. Neither this settlement agreement, SMC's abatement of the alleged violations, nor SMC's payment of any penalty in this case shall be construed as evidence against or an admission of violation by SMC in any proceeding or litigation in any court,



agency or other forum, except in proceedings brought directly under the Virginia Occupational Safety and Health Law.

9. A copy of this settlement agreement will be posted for at least three days at the same location the contested citation was posted, if possible, or at some other location containing general employee notices.

10. After it is fully executed, the original of this settlement agreement will be submitted to the Virginia Department of Labor and Industry. One copy of the fully executed settlement agreement will be provided to each counsel.

COMMONWEALTH

v.

A. BERTOZZI, INCORPORATED

Docket No. --

December 20, 1982

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William B. Bray, Assistant Commonwealth's Attorney, for Plaintiff

Disposition: Final, by consent agreement

Nature of the case: Citations were issued following a general schedule safety inspection. The alleged violations were "nonserious"; repeat violations. Those "non-serious" repeat violations with penalties assessed are:

Standard

- 1926.100(a) Employees working where there was a possible danger of head injuries were not protected by protective helmets. Specifically, employees working under and around tubular welded scaffolds were not wearing head protection.
- 1926.451(a)(13) An access ladder or equivalent safe access to scaffold(s) was not provided. Specifically, employees were climbing a tubular welded frame scaffold which was not provided with a ladder with a 15-foot fall hazard.
- 1926.451(d)(3) Tubular welded frame scaffold(s) were not properly braced to secure vertical members laterally and to align them so that the erected scaffold was plumb square and rigid. Specifically, employees were working on a tubular welded frame scaffold which lacked diagonal bracing with a 15-foot fall hazard.

One serious alleged violation is cited:

- 1926.451(d)(10) Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than 10 feet above the ground floor. Specifically, employees were working on a tubular welded frame scaffold which was not protected by guardrails with a 15-foot fall hazard.

CONSENT ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, and the defendant, A. Bertozzi, Incorporated, in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

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

<u>Alleged Violation</u>	<u>Penalty Recommended</u>
1900.37(1)	NONE
1926.100(a)	\$ 80.00
1926.451(a)(13)	\$ 80.00
1926.451(d)(3)	\$ 80.00
1926.451(d)(10)	\$280.00
TOTAL PENALTY	\$520.00

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

2. Defendant agrees and stipulates to the following:
  - a. That the recommended penalty in the amount of five hundred and twenty dollars (\$520.00) will be paid in full to the Commissioner, Department of Labor and Industry for deposit to the general fund of the Treasurer of the Commonwealth.
  - b. That complete abatement and correction of the violative conditions noted in the citations accompanying the summons, incorporated herein by reference, will be or have been accomplished by the dates specified in the citation, unless such dates are extended by the Commissioner of the Department of Labor and Industry.
  - c. That a copy of this order will be posted at the site of the violation for three days or until abatement of the violation, whichever period is longer.
  - d. Defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties, and upon their motion, it is ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith to the Commissioner of the Department of Labor and Industry the sum of Five hundred and Twenty Dollars.

COMMONWEALTH

v.

C. E. THURSTON AND SON, INC.

Docket No. C82-7320

December 28, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

Donald E. Hines, Commonwealth's Attorney, for Plaintiff  
Before the Honorable John G. Dodson, General District Court Judge

Disposition: Dismissed

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Citations were issued following a general schedule safety inspection. Contested alleged violations included 1926.450(a)(7), (a)(3) and 1926.104(a). Judge Dodson suggested to the company that they devise a safer method to accomplish their work and to contact the Division of Voluntary Compliance for assistance. He reserved judgement on the case until 4/5/83 to give the company time to do this. Given the company's effort, Judge Dodson dismissed the case.

COMMONWEALTH

v.

WOODINGTON ELECTRIC, INC.

Docket No. L-82-463

December 28, 1982

GENERAL DISTRICT COURT FOR THE CITY OF PORTSMOUTH

Roberta Boyle, Assistant Commonwealth's Attorney, for Plaintiff  
Before the Honorable William H. Oast, Jr., General District Court Judge

Disposition: Final, by dismissal with prejudice

Nature of the case: The case was not heard on the merits; a judgment in favor of the defendant was entered.

ORDER

THIS CAUSE came on this day to be heard upon Defendant's motion for the entry of an Order sustaining its Plea of Res Judicata and dismissing the Summons heretofore issued by Plaintiff to Defendant.

UPON CONSIDERATION WHEREOF, and for good cause shown, it is ADJUDGED and ORDERED that the Plea of Res Judicata filed by Defendant be, and hereby is, sustained and that the Summons heretofore issued by Plaintiff to Defendant be, and hereby is, dismissed with prejudice.

COMMONWEALTH

v.

DOMINION APPLICATORS, INC.

Docket No. 81-23151

January 6, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Steve Moriarty, Commonwealth's Attorney, for Plaintiff  
Mathew P. Bangs, for Defendant  
Before the Honorable G. William Hammer, Court Judge

Disposition: Final, dismissed

Nature of the case: Alleged violations include:

- 1926.451(d)(10) lack of guardrails and toeboards on a scaffold 19' above the ground.
- 1926.451(a)(2) unstable objects were used to support the scaffold.

FINDING OF FACT AND CONCLUSION OF LAW

THIS CAUSE came on to be heard on the 6th day of January, 1983, upon the summons and citation of the Commissioner, and evidence adduced in open court, and was argued by counsel.

The Commonwealth appeared by her attorney, Assistant Commonwealth's Attorney Kelly R. Dennis, and the Defendant appeared by its representation and by counsel, Matthew Bangs, Esquire; and it appearing that venue in the case was within the City of Falls Church, the address of the Defendant and the situs of the alleged violation being at 115 Hillwood Avenue, and venue being waived by the Defendant.

The Commonwealth's evidence indicated that on the 22nd day of September, 1982, the safety inspector, driving past the premises where the restoration of an office building was in progress, noted that there was a workman on a scaffolding approximately nineteen (19) feet above ground, that there were no guard rails on the scaffold and the workman was not wearing a safety belt. The safety inspector observed this from the street and took two photographs, which were entered into evidence. He further noticed that one end of the platform was sitting on a proper screwjack, that the other end of the platform was sitting on three pieces of wood, because the screwjack would not extend a sufficient length to make up the one foot difference; that the blocks were not uniform, that the same were irregular, and were just stacked up without being fastened together.

That from his observation the inspector determined that the employee on the scaffold was in a position where possible death or injury was imminent. He then entered upon the premises, spoke to the employee on the platform, and ascertained that his superintendent was one Charles Henderson, an employee of C. J. Copley.

He then located Mr. Henderson, who immediately took the employee off the scaffold, and advised that he would not be allowed to go back until a guardrail was installed or the employee was equipped with a safety belt. The evidence further indicated that there was no guardrail on the site, nor was there a safety belt.

After notice of the observation by the safety inspector, a citation was issued alleging a violation of 1926.451(d)(10), and 1926.451(a)(2) which alleged violations were abated immediately. Thereafter, a penalty was assessed in the sum of \$280.00.

At the conclusion of the Commonwealth's evidence, the Defendant made a motion to make the evidence of the Commonwealth, on the grounds that the employee involved was not the employee of the Defendant, and therefore, would not be under the supervision and control of the Defendant, Dominion Applicators, Inc.; and the court, being of the opinion that the motion was well taken, granted same. It is, by the court,

ADJUDGED, ORDERED AND DECREED that the motion to strike be, and the same hereby is, granted, and the citation be, and the same hereby is vacated.

AND THIS CAUSE IS DISMISSED.

COMMONWEALTH

v.

WHITING-TURNER CONTRACTING COMPANY, INC.

Docket No. C82-5047

January 12, 1983

GENERAL DISTRICT COURT FOR THE CITY OF HARRISONBURG

David Walsh, Commonwealth's Attorney, for Plaintiff  
L. E. Thorpe, Safety Director, for Defendant  
Before the Honorable John Paul, General District Court Judge

Disposition: Final, by trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Citations were issued following a general schedule safety inspection. All alleged violations were contested. Specifically the violations are:

Serious

1. 1926.28(a) Appropriate personal protective equipment was not worn by employee(s) in all operations where there was exposure to hazardous conditions:
  - (a) Employees were not protected from falling inward while working from a three-tier work platform, suspended from a crane hook, 45 feet above ground. Installing siding on north side of building with no guardrail or safety belts.
  - (b) Employees were not protected from falling while standing on the roof edge holding to suspended work platform, 50 feet above ground. Located on north side of roof.

Nonserious

1. 1926.450(b)(12) Cleats on job-made ladder(s) were not inset into the edges of the side rails one-half inch, or filler blocks were not used on the rails between the cleats:
  - (a) 8 Foot wooden job-made ladder providing access onto the boiler, first floor, south side.



2. 1926.550(a)(14)(i) An accessible fire extinguisher of SEC rating, or higher, was not available at the operator(s) stations or cabs of equipment:

(a) Fire extinguisher was discharged. Located at the operators station of the L790, 100 ton Lorain Crane operating on east side of building.

Judgement was in favor of the Commonwealth of Virginia, Department of Labor and Industry. The penalty was fixed at \$400.

COMMONWEALTH

v.

JONES/SCHIAVONE, INC.

Docket No. --

January 20, 1983

GENERAL DISTRICT COURT FOR THE CITY OF PORTSMOUTH

Before the Honorable S. Lee Morris, Chief Judge, General District Court

Disposition: Final by trial

ORDER

This case was heard on January 20, 1983 upon the citations issued by the Commonwealth of Virginia, Department of Labor and Industry, alleging that Jones/Schiavone did violate on or about September 14, 1982 several specified sections of the regulations promulgated under the Federal Occupational Safety and Health Act of 1970, administered and enforced under Title 40.1 of the Code of Virginia, 1950, as amended, the defendant having requested the hearing in order to contest the citations and proposed penalty. The violations arise out of certain procedures followed in connection with the construction of the second Norfolk-Portsmouth Downtown Tunnel, said site being situated in the cities of Norfolk and Portsmouth, Virginia.

Upon consideration of the evidence offered by both parties, the argument of counsel, and the applicable law the Court doth find, Adjudge, Order and Decree as follows:

Citation No. 1 (1926.500(d)(1): The citation of the Commissioner is affirmed and a modified penalty of \$150.00 is imposed.

Citation No. 2 (1926.500(d)(2):

1a. The citation of the Commissioner is affirmed and a modified penalty of \$120.00 is imposed.

1b. The evidence is insufficient to support the citation of the commissioner and it is accordingly vacated.

Citation No. 3 (1926.700(b)(2): The citation of the Commissioner is affirmed and the penalty of \$300.00 is imposed.

Citation No. 4:

1. (1926.102(a)(1). The citation of the Commissioner is vacated.
2. (1926.106(a). The citation of the Commissioner is vacated.
3. (1926.152(a)(1). The citation of the Commissioner is affirmed.
4. (1926.152(c)(5). The citation of the Commissioner is vacated.
5. (1926.152(g)(9). The citation of the Commissioner is affirmed.
6. (1926.251(a)(1). The citation of the Commissioner is affirmed.
7. (1926.303(b). The citation of the Commissioner is affirmed.
8. (1926.304(f). The citation of the Commissioner is affirmed.
9. (1926.302(b)(7). The citation of the Commissioner is affirmed.

10. (1926.350(a)(9). The citation of the Commissioner is affirmed.
11. (1926.350(h). The citation of the Commissioner is affirmed.
12. (1926.351(b)(1). The citation of the Commissioner is vacated.
13. (1926.400(h)(1). The citation of the Commissioner is vacated.
14. (1926.500(b)(8). The citation of the Commissioner is affirmed.
15. (1926.500(a)(1)(iii). The citation of the Commissioner is affirmed.
16. (1926.602(a)(9)(ii). The citation of the Commissioner is vacated.

And let the Clerk of this Court mail a certified copy of this order to the Commissioner of Labor and Industry within 10 working days after the entry of this Order.

COMMONWEALTH

v.

KOCH ELECTRICAL COMPANY, INC.

No. E43495

February 7, 1983

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William Bray, Commonwealth's Attorney, for Plaintiff  
Before the Honorable H.J. Schrieberg, Judge

Disposition: Final, Dismissed

Nature of the case: An inspection was initiated by a complaint. A violation of 1926.500(d)(1) was observed and a \$160.00 penalty assessed. Subsequently, both the violation and the penalty were deleted.

ORDER

Dismissed, without prejudice.

COMMONWEALTH

v.

WOODINGTON ELECTRIC, INC.

Docket No. C82-45762

January 20, 1983

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld Jones, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Fred E. Martin, Jr., General District Court Judge

Disposition: Final, by consent agreement

Nature of the case: Citations were issued following a general schedule safety inspection. The contested violation involved:

Standard

1926.556(b)(2)(v) which requires that a body belt or lanyard attached to the boom or basket be worn by employees working in aerial lifts. Specifically, an employee working from a skyworker aerial lift at approximately 65 feet above the ground without the fall protection of a safety belt and lanyard. The employee was installing lights for the athletic field of Norview High School, Norfolk.

ORDER

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

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

Alleged Violation	Type	Demand Penalty	Recommended Penalty
1926.400(a)	Serious		\$400.00

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

2. Defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$400.00 will be paid in full pursuant to this Order:
  - b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.
  - c. That a copy of this order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is the longer.
3. If a Notice of Contest was filed, defendant stipulates:
- d. That defendant has posted its Notice of Contest; and
  - e. That the defendant hereby withdraws its Notice of Contest.

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$400.00.

It is further ORDERED that pursuant to the provisions of §40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$400.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

INDUSTROTECH CONSTRUCTORS, INC.

Docket No. C82-2512

February 25, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF ALBEMARLE

Lester Wilson, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Steven Helvin, General District Court Judge

Disposition: Final, by consent agreement

Nature of the case: Citations were issued following an investigation initiated by a complaint. Specifically the contested violation is:

Standard

1. 1926.451(a)(14) Scaffold planks were not extended over their end supports between 6 and 12 inches:
  - (a) East end of the sludge de-watering building. Two layers of 2 by 8 inch planks, extending over by 34 inches. Employee was standing on an 8 by 34 inch platform, 24 feet above ground with no fall protection.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, the Commonwealth's Attorney for Albemarle County, Virginia, and the defendant, Industrotech Constructors, Inc., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

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

Alleged Violation	Demand Penalty	Recommended Penalty
1926.451(a)(14)	\$400.00	\$320

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

2. The defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$320.00 will be paid in full pursuant to this Order.
- b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.
- c. A copy of this Order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is the longer.

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$320.00

It is further ORDERED that pursuant to the provisions of Section 40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of the entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ORDERED that the Clerk shall forward the sum of \$320.00 to the Treasury of the Commonwealth, as provided by statute.



COMMONWEALTH

v.

PITTMAN MECHANICAL CONTRACTORS, INC.

Docket No.

March 14, 1983

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld Jones, Commonwealth's Attorney, for Plaintiff  
Ronald C. Pittman, for Defendant.

Before the Honorable Fred E. Martin, Jr., General District Court Judge

Disposition: Final, by consent agreement

Nature of the case: A citation was issued following a general schedule safety inspection. The contested alleged violation is as follows:

Standard

1. 1926.500(d)(1) Open-sided floors or platforms, 6 feet or more above adjacent floor or ground level, were not guarded by a standard railing or the equivalent on all open sides:
  - (a) No guardrails provided at the stairwell opening on the second, third, and fourth floors where temporary ladders were in use to provide the only access to the upper floors of the N/E wing.
  - (b) No guardrails provided around the fourth floor of the N/E wing where employees were at the floor's edge pulling up material with a rope and bucket from the ground. Fall distance approximately 27 feet to the ground.

ORDER

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

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

Alleged Violation	Type	Demand Penalty	Recommended Penalty
1926.500(d)(1)	Serious	\$100.00	\$100.00

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

2. Defendant agrees and stipulates to the following:
  - a. That the recommended penalties amounting to \$100.00 will be paid in full pursuant to this Order:
  - b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.
  - c. That a copy of this order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is the longer.
3. If a Notice of Contest was filed, defendant stipulates:
  - d. That defendant has posted its Notice of Contest; and
  - e. That the defendant hereby withdraws its Notice of Contest.

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$100.00.

It is further ORDERED that pursuant to the provisions of §40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$100.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

L. F. JENNINGS, INC.

Docket NO. 82-22153

March 17, 1983

GENERAL DISTRICT COURT FOR THE CITY OF FAIRFAX

Steve Moriarty, Commonwealth's Attorney, for Plaintiff

Gerald Katz, for Defendant

Before the Honorable George Ragland, General District Court Judge

Disposition: Final, by consent agreement

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: As the building in question was so completely destroyed by the accident it was difficult to determine the exact cause of the failure the following was agreed to: The defendant agreed to plead guilty to the citation of 1926.451(d)(4) for violation as written, in return for the Commonwealth reducing the penalty and the citation to other-than-serious. This agreement was accepted by the court.

COMMONWEALTH

v.

HARKINS CARPENTRY

Docket No. C83-12972

April 5, 1983

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld Jones, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Fred E. Martin, Jr., District Court Judge

Disposition: Final, by consent agreement

Nature of the case: A citation was issued following a general schedule safety inspection. The alleged violation involved Standard 1926.500(d)(1) which requires open-sided floors or platforms, 6 feet or more above the adjacent floor or ground level be guarded by a standard railing or its equivalent on all open sides. Specifically, an employee working from a balcony on the 10th floor of the building at 100 W. Ocean View Avenue, Norfolk, was not wearing a safety belt or lanyard nor were proper guardrails present. The employee was exposed to a possible fall on the North side of the building.

ORDER

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

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

Alleged Violation	Type	Recommended Penalty
VOSH 1926.500(d)(1)	Serious	\$75.00

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

2. Defendant agrees and stipulates to the following:
  - a. That the recommendation penalties amounting to \$75.00 will be paid in full pursuant to this Order:
  - b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation

unless such dates are extended by the Commissioner of the Department of Labor and Industry.

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

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$75.00.

It is further ORDERED that pursuant to the provision of §40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$75.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

COMMERCIAL TRANSFER SYSTEMS, INC.

Docket No. C83-1950

April 3, 1983

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

Joseph J. McCarthy, Commonwealth's Attorney, for Plaintiff  
Chris Beatley, for Defendant  
Before the Honorable Robert S. Colby, General District Court Judge

Disposition: Final, by consent agreement

Nature of the case: A Citation was issued following an accident investigation. Specifically, Standard 1926.550(a)(15)(i) prohibiting the operation of a crane within 10 feet of energized power lines is allegedly violated.

ORDERED

THIS CAUSE came on to be heard upon two citations properly issued to the defendant, and upon proper service on the defendant of the plaintiff's summons.

IT APPEARING to the Court that the parties have reached agreement concerning the disposition of this matter and that the parties have stipulated to the facts of this matter, and accordingly, further.

IT APPEARING to the Court that equipment was operated where part of the equipment was within 10 feet of electrical distribution or transmission lines rated 50kv or below that had not been energized and visibly grounded, nor had insulating barriers not a part of, or an attachment to, the equipment been erected to prevent physical contact with lines and that employees were operating a crane relocating equipment within 10 feet of energized power lines in violation of 29 C.F.R. §1926.550(a)(15)(i), and that such constitutes an offense not of a serious nature as provided for at §40.1-49.4G, Code of Virginia.

IT FURTHER APPEARING to the Court that accessible area(s) within the swing radius of the rear of the rotating superstructure of crane(s) were not barricaded in such a manner as to prevent employees from being struck or crushed by the crane, and that swing radius protection was not installed to protect employees from being struck by the rotating superstructure of the crane in violation of 29 C.F.R. §1926.550(a)(9) and that such constitutes an offense not of a serious nature as provided for at §40.1-49.4(G), and

IT FURTHER APPEARING to the Court that the Department of Labor properly responded to a request for a safety inspection of the construction site on federal property, and gained entry onto the site for the purpose of conducting said inspection and that the Commonwealth of Virginia is authorized to enforce the Occupational Safety and Health Act pursuant to 29 C.F.R. §1926, Subpart EE, and that no reservation of the exclusive power of

enforcement by the federal government exists pursuant to 29 C.F.R. §1952.8, it is

ORDERED that the defendant be fined One Thousand Dollars (\$1,000.00) for its violation of 29 C.F.R. §1926.550(a)(15)(i), and that no fine be imposed for the defendant's violation of 29 C.F.R. §1926.550(a)(9).

COMMONWEALTH

v.

R. L. RIDER AND COMPANY

No. 83-1003

April 7, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Stephen H. Moriarty, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Frank B. Perry, III, Judge

Disposition: Final, by Withdrawal of Contest

Nature of the case: Citations were issued following a general schedule inspection. The violations alleged are:

- 1a. 1926.652(b)            The side(s) of the trench(es) in unstable or soft material which were more than 5' in depth, were not shored, sheeted, braced, sloped or otherwise supported in accordance with Tables P-1 and P-2:
- (a) Trench on the NE corner of West Ox Road and Pendercrest Street was 6'10" to 8' deep with vertical sides 5' from the bottom. From this point to the top there was a small amount of spread. This difference was not sloped but was due to digging to locate the leaking water line. This trench was 40" wide and 60" long at the bottom and 39" to 7' wide and 12' long at the top.
- 1b. 1926.652(e)            Additional precautions by way of shoring or bracing were not taken to prevent slides or cave-ins where trench(es) were made adjacent to backfilled excavations, or where excavations were subjected to vibrations from railroads or highway traffic, operation of machinery, or any other sources.
- (a) Trench was dug in a previous excavation which had been excavated to install the two water lines in this location. Trench was 6'10" to 8' deep with vertical sides 5' from the bottom, 40" wide and 60" wide at the bottom, and 39" to 7' wide and 12' long at the top. Located on the northeast corner of West Ox Road and Pendercrest Street.
- 1c. 1926.652(h)            Employee(s) were required to be in the trench(es) which were more than 4' deep, and an adequate means of exit, such as ladder or steps, was not



provided, or located so as to require no more than 25' of lateral travel:

- (a) Trench located at the northeast corner of West Ox Road and Pendercrest Street was not provided with any means of exit. Trench was 6'10" to 8' deep with vertical sides 5' from the bottom, 40" wide and 60" long at the bottom and 39" to 7' wide and 12" long at the top.

#### ORDER

1. On November 2, 1982, at 11:00 a.m., at the northeast corner of West Ox Road and Pendercrest Street, in Fairfax County, the employees of R.L. Rider and Company were engaged in a trenching operation.

2. At that time, Don Falls of the Department of Labor and Industry performed a routine inspection at the site.

3. Following the inspection, Inspector Falls cited R.L. Rider for violations of Virginia O.S.H.A. Standard, Sections 1926.652(b), 1926.652(e) and 1926.652(h).

4. In accordance with the standard procedures, R.L. Rider notified the Department of Labor and Industry of its intention to contest the citations; notice was received on December 27, 1982.

5. Prior to the trial on the merits of the case, R.L. Rider withdrew its notice of contest and submitted payment of the fines (\$420.00) to the Department of Labor and Industry, obviating the need for a court proceeding in this matter.

COMMONWEALTH

v.

SKYLINE CRANE SERVICE, INC.

No. 82-3956

May 4, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF ARLINGTON

Barbara L. Walker, Assistant Commonwealth's Attorney, for Plaintiff  
David R. Clarke, Esquire, for Defendant  
Before the Honorable Francis E. Thomas, Jr., Judge

Disposition: Final, by Trial

Nature of the case: Citations were issued following a general schedule inspection. The following are the alleged violations:

Serious Violation:

1. 1926.28(a) Appropriate personal protective equipment was not worn by employee(s) in all operations where there was exposure to hazardous conditions:
  - (a) Employees were exposed to a fall of 15' while working at the unguarded edge of a floor slab on the first level of the south side of this building. No fall protection was being utilized to prevent a fall.

Other Than Serious Violation:

1. 1926.550(a)(9) Accessible area(s) within the swing radius of the rear of the rotating superstructure of the crane(s) were not barricaded in such a manner as to prevent employees from being struck or crushed by the crane:
  - (a) P&H Crane, Model 565 located on the south side of this building at ground level was not barricaded.

ORDER

IT APPEARING TO THE COURT that the Defendant, through Counsel, admitted that the conditions existed at his job site as stated in the citation issued by the Complainant; and

IT FURTHER APPEARING TO THE COURT that by agreement of both parties the recommended penalty for the violation of \$210.00 be reduced to \$110.00, it is hereby

ADJUDGED and ORDERED that the Defendant was in violation of the standards stated in the citation and that the Defendant shall pay the amount of \$110.00 to the Department of Labor and Industry.

ENTERED this 4th day of May, 1983.

COMMONWEALTH

v.

DAVIS ELECTRICAL CONSTRUCTORS, INC.

Docket No. 9-1755

May 5, 1983

GENERAL DISTRICT COURT FOR THE COUNTY OF AUGUSTA

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

Disposition: By trial; appealed.

Nature of the case: Alleged violations of fire protection and prevention standards, storage of materials welding and cutting standards dealing with fire prevention, improper use of ladders and scaffolding, stairway requirements, and electrical equipment and maintenance standards.

Specifically, the contested citations list the following standards:

Citation	Item No.	Standard
1	1	1926.152(c)(4)(i)
1	2	1926.152(g)(9)
1	3	1926.250(a)(3)
1	4	1926.352(a)
1	5	1926.352(d)
1	6	1926.450(a)(2)
1	7	1926.450(a)(7)
1	8	1926.450(a)(10)
1	9	1926.451(e)(4)
1	10	1926.501(k)
2	1	1926.402(a)(11)
3	1	1926.450(a)(1)
3	1a	1926.451(e)(5)
3	1b	1926.451(e)(2)
3	1c	1926.451(e)(4)

ORDER

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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

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

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

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

CITATION 2:

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

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

CITATION 1:

Items 1,2:

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

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

Item 3:

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

Items 4,5:

Defendant's employees were observed using a torch to cut a steel "re-bar" on a wooden bench in a shed. Large spools of wire were stored under the bench. There was no fire extinguisher present in or around the shed. The wooden bench showed some evidence of charring, but the evidence does

not disclose the presence of any material subject to explosive or rapid combustion. Any danger of fire would have been removed by the presence of a suitable fire extinguisher.

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

Item 6:

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

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

Items 7,8:

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

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

Item 9:

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

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

Item 10:

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

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

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

APPEALED

COMMONWEALTH

v.

ASPLUNDH TREE EXPERT COMPANY

No. C83 18-371

June 2, 1983

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

John R. Doyle, III, Commonwealth's Attorney, for Plaintiff  
Before the Honorable Fred E. Martin, Jr., General District Court Judge

Disposition: By Trial; Appeal

Nature of the case: Citations were issued after employees were observed violating the VOSH standards for general industry.

ORDER

The Commonwealth of Virginia through its Department of Labor and Industry issued a summons against the defendant on March 28, 1983, returnable May 24, 1983, for the following:

Violation of Standards 1910.132(a): Protective equipment was not used when necessary whenever hazards capable of causing injury and impairment were encountered:

(a) Located in the 700 Block of North Military Highway, an employee worked from the bucket of an aerial life (Tr. Lic. No. TE 58-313) approximately 15 feet above the ground and was not wearing a safety belt and lanyard for fall protection.

Proposed penalty \$300.00, date of violation, January 28, 1983. Defendant was represented by its safety officer requested that the citation be dismissed due to a good safety program. The facts are nearly agreed upon by the parties.

The defendant's employee was operating from a bucket, trimming trees near Military Highway on January 28, 1983, in the morning. The weather was cold and the wind was blowing. After 2 hours of work, the defendant's employee came down to the ground and put on a heavy coat. When he again raised up in the bucket, he failed to attach his safety harness. He states that he forgot and that this is the only time in 20 years that he has ever operated without the safety harness. The Commonwealth's inspector observed defendant's employee and photographed him in operation without the harness. There is no dispute that defendant operated without the harness at that time and place. As soon as defendant's employee was notified of his failure to attach the harness, he attached it, then continued working.

## CONCLUSIONS

- (1) The court concludes the facts as stated above.
  
- (2) There was a violation of the Standard 1910.132(a) and the defendant is responsible despite its good safety record and its good safety program.

Judgment has been entered against the defendant in the sum of \$100.00, thus reducing the proposed penalty from \$300.00 to \$100.00.

\*1 Defendant's major activity is utility line clearance for public utilities. There are 35 Division Managers who have full operating responsibility for the 35 geographical areas in which the company operates.



COMMONWEALTH

v.

A.A. BEIRO CONSTRUCTION COMPANY, INC.

No. C83-9651

June 17, 1983

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

John R. Doyle, Commonwealth's Attorney, for Plaintiff  
Welca Braswell, representing A.A. Beiro  
Before the Honorable Fred E. Martin, Jr., Judge

Disposition: By Trial; Appealed

Nature of the case: Citations were issued after employees were observed violating VOSH standards for construction.

OPINION

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

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

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

The recommended penalty was \$540.00 for violation No. 1 and 2. I have affirmed the penalty of \$540.00 for violation No. 1 and 2 and I have dismissed violation No. 3 as an inappropriate section of the quoted standard.

On November 30, 1982, the defendant was engaged in the renovation of a building on lower Granby Street in the City of Norfolk. The work in progress included cleaning the front of the building and alterations to the interior of the building which involved removal of the inside stairway. Other workers involved with other contractors were on the building next door which was also being renovated. The compliance officer was in town on other business and noticed that the defendant's workers were on the scaffold. One of the workers was on the scaffold working and the other man was climbing down the scaffold. The compliance officer took several photographs. One of the pictures indicates that no safety connection existed between the men on the scaffold and the building. The man on the scaffold was spraying liquid from a hose on the front of the building. The man climbing down the building had no safety connection either. After taking several photographs, the compliance officer entered the building and requested permission to inspect. This was denied by a representative of the defendant. There is some question as to whether he was a managing employee or whether he was the customer for whom the work was being done. In either event the compliance officer was not allowed to inspect. Both workers were more than 10 feet above ground.

Defendant's witness testified that there was a ladder between the third and fourth floors which was to be used for access to the fourth floor. This same witness further testified that he had just completed removal of the stairway to the fourth floor.

I concluded that no safety harness was used by either worker while he was being photographed, that both workers were employees of the defendant, that there was no connection between the roofs of the building and these employees, that there was no outside safety ladder, and that the corner braces on the scaffolding are not ladder substitutes.

I further concluded the Commonwealth has proved violation No. 1 and 2 and that the penalty of \$540.00 is correct. Judgment has been entered against the defendant in accordance with Virginia's conclusion.

Defendant's position was ably represented by its vice president and safety officer. He made the following points:

1. The inspection was not ordered by the administrator.
2. There was no search warrant.
3. This was an isolated incident.

4. The defendant has an excellent safety program and has had one for a number of years.
5. As a result of the outstanding safety program the defendant has obtained certain insurance rebates and has received citations for its outstanding record in safety.
6. The ladder-like corner braces of the scaffolding are a ladder substitute.

I have concluded that the search without warrant was proper in that the safety officer accomplished the entire investigation from outside of the structure as seen in the pictures and that this was not an isolated incident.

Although the defendant has had an outstanding safety program, it proved ineffective in this case. The insurance rebates and safety records are commendable and a credit to the defendant but has no bearing on the result of this case. If defendant had had four well placed ladders in the structure, no outside ladder would have been required.

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