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, 1981 - JUNE 30, 1982

VOLUME III

ISSUED BY THE VIRGINIA DEPARMENT OF LABOR AND INDUSTRY

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VOLUME III

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PART I

INDUSTRIAL SAFETY

COMMONWEALTH

V.

E. A. CLORE SONS, INC.

Record No. 800688

September 11, 1981

IN THE SUPREME COURT OF VIRGINIA

Opinion by Justice W. Carrington Thompson

From the Circuit Court of MADISON COUNTY, David F. Berry, Judge

ORDER

In this appeal, we consider whether the trial court erred in holding that consent to an administrative search is always invalid unless the one consenting to the search is informed that, as a result of the search, his company might be cited for violations of administrative regulations.

On February 28, 1979, Alexander Mayes, an employee of the Department of Labor and Industry, arrived at a factory operated by E. A. Clore Sons, Inc. (hereafter, "E.A. Clore"), to conduct an inspection for violations of worker safety regulations. According to testimony produced by E. A. Clore, Mayes introduced himself to Lucian Walter Clore, president of E. A. Clore, showed his credentials, "said he was from OSHA (Occupational Safety and Health Administration) or whatever it is, and ... said, 'I'd like to look around a little bit today...'" Deciding to "be nice to him," Lucian Clore consented. After getting his camera, Mayes, accompanied by Lucian Clore and John William Clore (vice-president of E. A. Clore), began his inspection. At the end of the inspection, he informed Lucian Clore that E. A. Clore would be cited for violations of safety regulations. Lucian Clore testified that he thought Mayes merely intended to warn him of violations and that he would not have consented to the inspection if he had known E. A. Clore might be cited for violations.

On the other hand, Mayes testified that when he arrived at the factory he informed Lucian Clore of "the nature and purpose of (his) visit" and told Clore the inspection was an "enforcement type of visit." According to Mayes, Lucian Clore told him that his company had been inspected previously by federal OSHA officials, that he was "familiar with this type of inspection," and that the federal inspection had resulted in citations and fines. Mayes acknowledged failing to inform the Clores during the initial conference that E. A. Clore would be cited for any violations of safety regulations. He did, however, point out violations to the Clores during the inspection itself.

On appeal from the district court's dismissal of the Department's complaint against E. A. Clore for violations uncovered by the inspection, E. A. Clore filed a motion to dismiss in the circuit court on the ground that the inspection was conducted without a warrant and without the consent of E. A. Clore's agents. The circuit court crystallized the issue as being "whether or not (Lucian Clore) had given (Mayes) informed consent." Although not

concluding Mayes had intentionally deceived the Clores concerning the nature of his visit, the circuit court held that Mayes was obliged to inform the Clores before the inspection that E. A. Clore would be cited for any violations uncovered by the inspection. The court concluded that, because Mayes had not given the Clores this information, Lucian Clore's consent was not "informed" and hence was invalid. On appeal, the Department contends that the consent to the inspection was voluntary even though Mayes did not inform the Clores that E. A. Clore would be cited for any violations.

E. A. Clore does not contend that any Virginia statute or regulation in effect at the time of the inspection required Mayes to inform Lucian Clore the Department might issue citations. [FOOTNOTE: The statutes in effect at the time of the search did not impose a warrant requirement. 1972 Acts, c. 602, at 746; 1970 Acts, c. 321, at 441. See also 29 U.S.C. § 657(a). Following Marshall v. Barlow's, Inc., 436 U.S. 307 (1978), which forbade nonconsensual warrantless searches conducted pursuant to 29 U.S.C. § 657, the General Assembly enacted Code § 40.1-49.8, which authorizes searches "with the consent of the owner, operator, or agent in charge of such workplace" or pursuant to a warrant. 29 C.F.R.§ 1903.7(a) requires federal OSHA inspectors to "explain the nature and purpose of the inspection" but does not explicitly require federal inspectors to inform an employer that citations will be issued if the inspectors discover violations of the regulations. Hence, the only issue before us is whether the state or federal constitutions required Mayes to inform Lucian Clore of the potential consequences of an inspection before obtaining his consent.

In Schneckloth v. Bustamonte, 412 U.S. 218 (1973), the Supreme Court rejected an "informed consent" argument similar to the one adopted by the circuit court. In Schneckloth, a police officer stopped a motor vehicle after observing one of the car's headlights had burned out. When some of the vehicle's occupants were unable to produce identification, the officer asked if he could search the car, to which an occupant replied, "Sure, go ahead". Id. at 220. At the time the consent was given, the atmosphere was "congenial" and "there had been no discussion of any crime." Id. at 221. Opening the car's trunk with the assistance of another occupant, the police officer discovered stolen checks. The defendant argued the consent to the search was invalid because it was not a "knowing and intelligent" waiver of a constitutional right. Id. at 235-36. See Johnson v. Zerbst, 304 U.S. 458,464 (1938). Specifically, the defendant contended that the government, in showing the search was consensual, must demonstrate that those consenting knew they had a constitutional right not to consent.

Rejecting the defendant's argument, the Court held that "[w hile knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of an effective consent." 412 U.S. at 227. "Nothing, either in the purposes behind requiring a 'knowing' and 'intelligent' waiver of trial rights, or in the practical application of such a requirement suggests that it ought to be extended to the constitutional guarantee against unreasonable searches and seizures." Id. at 241. The Court noted that state and federal courts had "almost universally repudiated" the argument that government agents should be required to advise individuals of their right to withhold consent, id. at 231, and held that considerations underlying the Court's decision in Miranda v. Arizona, 384 U.S. 436 (1966)[2], were "simply inapplicable in the present case." [FOOTNOTE: Miranda required that specific warnings be given to

individuals prior to custodial interrogation. One of the Miranda warnings, that information provided in the interrogation can be used against the individual being interrogated, is somewhat akin to the trial court's requirement that inspectors inform employers that they might be cited for violations of administrative regulations as a result of the inspection. Lower federal courts have uniformly held that a consent to a search may be voluntary even though the one consenting to the search was not informed that anything found could be used against him. See, e.g., United States v. Lemon, 550 F.2d 467,472 n.5 (9th Cir. 1977). Accord, United States v. Tobin, 576 F.2d 687, 695 (5th Cir.), cert. denied, 439 U.S. 1051 (1978).] Id. at 246. In summary, the Court held that the fruits of a search are admissible where the consent to the search is voluntary, that voluntariness is determined by examining the totality of the circumstances, and that knowledge possessed by one consenting to a search is merely one factor a court should consider in determining the voluntariness of the consent.[3] [FOOTNOTE: Our own decisions subsequent to Schneckloth have relied repeatedly upon the Schneckloth test for voluntariness. See, e.g., Lowe v. Commonwealth, 218 Va. 670,678,239 S. E. 2d 112, 117 (1977), cert. denied, 435 U.S. 930 (1978); Hairston v. Commonwealth, 216 Va. 387, 388, 219 S.E. 2d 668,669 (1975), cert. denied, 425 U.S. 937 (1976). In Hairston, the defendant, asked for identification by a police officer, told the officer to find it for himself. While looking in her wallet, he found illicit drugs as well. Citing Schneckloth, we upheld the search as consensual without commenting upon whether the defendant had a right to know she would be charged with an offense if the search revealed incriminating evidence.] See also United States v. Mendenhall, 446 U.S. 544, 557-59 (1980) (search by non-uniformed agents of the Drug Enforcement Administration); United States v. Watson, 423 U.S. 411, 424-25 (1976) (search by postal inspectors), both of which employed the Schneckloth standard.

The Schneckloth "totality of the circumstances" test for judging the voluntariness of consent to a search, formulated in the context of a criminal case, is applicable to cases involving the imposition of civil penalties. Stephenson Enterprises, Inc. v. Marshall, 578 F.2d 1021, 1024 (5th Cir. 1978) (OSHA inspection) Accord, United States v. Thriftimart, Inc., 429 F.2d 1006, 1010 & n. 6 (9th Cir.), cert. denied, 400 U.S. 926 (1970) (FDA inspection failure to give Miranda warnings does not vitiate consent). In its brief, E. A. Clore readily acknowledges this fact. Likewise, the circuit court recognized that the requirements for a valid consent to a search were "the same, whether (the case is) civil or criminal."[4] [FOOTNOTE: The circuit court and the parties have assumed that the exclusionary rule is applicable to cases involving the imposition of civil penalties. While the Supreme Court has applied the exclusionary rule to "quasi-criminal" forfeiture proceedings based upon violations of criminal law, One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965), it also has refused to apply it in a civil tax case where an illegal search by one sovereign prompted a civil suit filed by another. United States v. Janis, 428 U.S. 433 (1976). The penalty involved in this case is civil, not quasi-criminal. See Code §40.1-49.4(A)(4)(a) and United States v. Ward, 448 U. S. 242, 251-54 (1980). While the Supreme Court has never applied the Fourth Amendment exclusionary rule a civil proceeding, Todd Shipyards Corp. v. Secretary of Labor, 586 F.2d 683 689 (9th Cir. 1978), several lower courts have concluded the exclusionary rule is applicable. See, e.g. , Savina Home Industries v. Secretary of Labor, 594 F.2d 1358, 1362-63 (10th Cir. 1979), and cases cited therein. See also Marshall v. Milwaukee Boiler Manufacturing Co., 626 F.2d 1339, 1347 (7th

Cir. 1980)(reserving the issue), and Babcock and Wilcox Co. v. Marshall, 610 F.2d 1128, 1139 n. 41 (3d Cir. 1979) (reserving the issue). Since the parties have not briefed or argued this issue, we express no opinion on the dispute and have assumed, for purposes of this opinion only, that the exclusionary rule is applicable here.

Of course, where the consent to a search is induced by fraud, trickery, or misrepresentation, the fruits of the search must be suppressed. Gouled v. United States, 255 U.S. 298. 305-06 (1921). Silence, however, cannot constitute fraud or misrepresentation unless "there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading." United States v. Robson, 477 F.2d 13, 18 (9th Cir. 1973). In cases somewhat analogous to the one before us, federal courts have held that the Fourth Amendment does not bar the introduction of evidence derived by an Internal Revenue Service audit in a criminal proceeding even though the IRS agent failed to warn the one audited that the audit might result in the imposition of criminal sanctions. United States v. Robson, 477 F.2d at 17-18; United States v. Stamp, 458 F.2d 759, 775-80 (D.C. Cir. 1971), cert. denied, 409 U.S. 842 (1972); United States v. Prudden, 424 F.2d 1021, 1031-35 (5th Cir.), cert. denied, 400 U.S. 831 (1970); United States v. Sclafani, 265 F.2d 408, 415 (2d Cir.), cert. denied, 360 U.S. 918 (1959). Where, however, an IRS agent knowingly misleads an individual to believe he is conducting only a civil audit, when, in fact, the agent knows the audit is a part of a criminal investigation, the deception invalidates the consent obtained. United States v. Tweel, 550 F.2d 297 (5th Cir. 1977).

The foregoing analysis of case law leads us to conclude that the circuit court applied the wrong standard in determining the voluntariness of Clore's consent. The circuit court made no finding that Mayes had intentionally deceived or had misrepresented his purpose in conducting the investigation.[5] [FOOTNOTE: Indeed, the trial judge on one occasion expressly stated that he was not making such a finding and on another said he "didn't believe" the case involved "clear deception on the part of the Department."] Instead, contrary to Schneckloth, the court held that the consent could not be effective unless "informed", viz., unless Mayes told Lucian Clore of the potential consequences of consent. While Clore's knowledge of his right to refuse consent and of the potential consequences of his consent are relevant factors to a determination of whether his consent was voluntary, the Department was not required to show Clore's knowledge of these facts as a prerequisite to showing voluntary consent. Rather than undertaking an analysis of the voluntariness of the consent under the appropriate standard, we will reverse the judgement and remand the case to the circuit court so that it can pass upon the issue and determine whether in light of the totality of circumstances Clore's consent was voluntary.

Reversed and remanded.

COMMONWEALTH

V.

HARRY CAMPBELL

No. 81-1128

September 29, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF ALBEMARLE

L. Wilson,III, Assistant Commonwealth's Attorney, for Plaintiff
H. Campell, Defendant
Before the Honorable Steven Helvin, District Court Judge

Disposition: Final, by trial.

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of Code of Virginia, Section 19.2-397, when the defendant allegedly refused to grant entry to an inspector with a warrant.

Synopsis: Because no one was present to refute Mr. Campbell's request for a voluntary compliance inspection, Judge Helvin dismissed the charges, telling Mr. Campbell to cooperate with the Department of Labor and Industry in the future.

COMMONWEALTH

V.

CAMPBELL LUMBER COMPANY

No. C81-2925

December 5, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF ALBEMARLE

L. Wilson, III, Assistant Commonwealth's Attorney, for Plaintiff
H. Campbell, owner, Campbell Lumber Company, for Defendant
Before the Honorable Steven Helvin, District Court Judge

Disposition: By trial.

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of guarding pulleys, belts, sprocket wheels and chains, guarding of live electrical parts. Specifically, violations of Standards 1910.219(d)(1), (e)(1)(i), (f)(3), (g)(2)(i).

Synopsis: The citations were issued as a result of a general schedule safety inspection. Three citations were contested. Judge Helvin upheld the citations, but dismissed the proposed $650 penalty.

COMMONWEALTH

V.

GLORIA MANUFACTURING, INC.

No. 81-19372

January 27, 1982

GENERAL DISTRICT COURT FOR THE CITY OF NEWPORT NEWS

R. Condon, Assistant Commonwealth's Attorney, for Plaintiff
R. Hudgins, Esq., for Defendant
Before the Honorable Randolph West, District Court Judge

DISPOSITION: Final, by Trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Contested alleged violation of eye and face requirements, specifically, that sewing machines did not have eye and face shields affixed, or the shields had been moved away.

Synopsis: The citations were issued as a result of a safety inspection conducted because of a complaint. Judge West dismissed the penalties and ordered Mr. Goodman, President, Gloria Manufacturing, to post a sign informing employees that anyone caught not using safety guards would be terminated.

COMMONWEALTH

V.

FRANCIS BROTHERS LUMBER COMPANY

Docket No. C81-1081

March 16, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF SOUTHAMPTON

Richard C. Grizzard, Commonwealth's Attorney, for Plaintiff
William J. Rhodes, Jr., for Defendant
Before the Honorable Robert B. Edwards, General District Court Judge

Disposition: Final, by trial

Nature of the case: Citations were issued following a general schedule safety inspection. Contested violations of the VOSH standards are:

Citation No. 1:

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) No VOSH/OSHA Job Safety poster was posted in the mill area.
2.	1910.24(f)	Fixed stairs did not have uniform rise height and tread width throughout the flight of stairs: (a) Fixed stairs leading to debarker's platform had the third from top tread missing.
3.	1910.219(c)(4)(i)	Unguarded projecting shaft end(s) did not present a smooth edge and end and projected more than one-half the diameter of the shaft: (a) Shaft end on electric motor drive for chipper was not guarded from contact by employees passing by rear of chipper. (b) Shaft end on pulley drive for hydraulic pump to log turner carriage head, vicinity of sawyer's house, was not guarded.

4.	1910.265(c)(5)(ii)	Stairway leading to debarker's platform was not provided with a standard handrail on at least one side or on any open side. (a) Stairway open on both sides leading to debarker's station was not provided with a handrail on each open side.
5.	1910.265(d)(4)(iv)	The operator of the hydraulic debarker was not protected by adequate safety glass or equivalent: (a) The safety glass window(s) had been removed from the debarker's room facing the debarker head.
6.	1910.265(e)(1)(v)	Barriers were not provided to prevent employees from entering the space necessary for travel of log carriage(s) and warning signs were not posted at possible entry points to log carriage areas: (a) No barriers or warning signs were provided in the space necessary for travel of log carriage, circular head saw area.

Citation No. 2

1.	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 at 1910.219(m) & (o): (a) Pulley(s) on the air compressor located vicinity of debark house were unguarded (ser. No. N720957). (b) Pulley(s) on the portable air compressor located east of debark house were unguarded (Ser. No. 15A976). (c) Spoked pulley on main drive from head saw to hydraulic pump, vicinity of sawyer's house entryway, was not guarded. (d) Both pulley(s) on drive shafts for Fulghum chipper were not guarded. (e) Spoked pulley, vicinity of off rollers on the Miner edger, was not guarded.

1a	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 1910.219(m) and (o): (a) V-belts on air compressor drive vicinity of debark area, Ser. No. N720957, were not enclosed. (b) V-belts on air compressor drive east of debark area, Ser. No. 15A976, were not enclosed. (c) V-belts on hydraulic pump, vicinity of sawyer's house, were not enclosed. (d) V-belts on Fulghum chipper were not enclosed. (e) Flat belt on 16-inch pulley, vicinity edger outfeed rollers, was not enclosed.

Citation No. 3

1.	1910.219(f)(3)	Sprocket wheels and chains which were seven feet or less above floors or platforms were not enclosed: (a) Sprocket and chain drive for debark winch were not enclosed, east side of debark house. (b) Sprocket and chain drive vicinity of off rollers to edger were not enclosed, north side of edger.

Citation No. 4

1.	1910.265(a)(2)(iii)(b)	Single circular head saw was not equipped with safety guides which could be readily adjusted without use of hand tools: (a) Hand tool was required to make the final adjustment at the saw guide on the circular head saw.

ORDER

This cause came to be heard before this court on 16 March, 1982, the Commonwealth being represented by the Commonwealth's Attorney Richard Crawford Grizzard, and the defendants appearing by counsel, William J. Rhodes, Jr., and the matter was argued by counsel.

It appearing to the Court that all citations listed by the Virginia Department of Labor and Industry on its review dated 2 September, 1981, have now been corrected and upon representation by counsel of other mitigating circumstances, it being further agreed between counsel that the following order will be a fair and proper disposition of this case, it is

Ordered, that the citation issued by Virginia Department of Labor and Industry against defendant company dated 2 September, 1981, be modified to reduce the total proposed penalty for citations 2,3 and 4 from $260.00 to $25.00, which is suspended upon payment of court costs.

COMMONWEALTH

V.

BASIC TOOL COMPANY

No. C82-3705

June 10, 1982

GENERAL DISTRICT COURT FOR THE CITY OF HAMPTON

James P. Bonaker, Commonwealth's Attorney, for Plaintiff
Ashton Wray, Esq., for Defendant
Before the Honorable Henry Kashonty, District Court Judge

Disposition: By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violations of pulley guard standards and belt guard standards for both horizontal and vertical or inclined belts.

Synopsis: The citations were issued as a result of a general schedule safety inspection based on first report of an injury to ensure compliance with Title 40.1 of the Labor Laws of Virginia.

The serious citations issued were:

Standard	Description of Alleged Violation
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 at 29 CFR 1910.219(m) and (o): (a) Pulleys were not guarded on the Van Norman 101 Piston Turning and Grinding Machine, serial number 1035, located in Section A of the Machine Shop. (b) Pulleys were not guarded on the Van Norton Automatic Piston Grinding Machine located in Section A of the Machine Shop.
1910.219(e)(1)(i)	Horizontal belts which had both runs seven feet or less from the floor level were not guarded with a guard that extended to at least fifteen inches above the belt or conforming to requirements specified in 29 CFR 1910.219(m) and (o): (a) Belts were not guarded on the Van Norman 101 Piston Turning and Grinding Machine, serial number 1035, located in Section A of the Machine Shop. (b) Belts were not guarded on the Van Norton Automatic Piston Grinding Machine located in Section A of the Machine Shop.

1910.219(e)(3)(i)	Vertical or inclined belt(s) were not enclosed by guard(s) conforming to the requirements specified at 29 CFR 1910.219(m) and (o): (a) Vertical belts were not guarded on the Van Norman 101 Piston Turning and Grinding Machine, serial number 1035, located in Section A of the Machine Shop. (b) Vertical belts were not guarded on the Van Norton Automatic Piston Grinding Machine located in Section A of the Machine Shop.

After examination and cross examination of the witness for the Commonwealth, Judge Kashonty ruled that the Commonwealth had not presented sufficient proof that the equipment was being operated (there was no exposure of employees to the danger) and dismissed the violations.

PART II

CONSTRUCTION SAFETY

COMMONWEALTH

V.

CHANTILLY CONSTRUCTION CORPORATION

No. C81-790

July 13, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF BEDFORD

J. Updike, Jr., Assistant Commonwealth's Attorney, for Plaintiff
G. C. Boggess, Esq., for Defendant
Before the Honorable Richard S. Miller, District Court Judge

Disposition: Final, by consent agreement

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of personal protective equipment requirements of the general safety and health provisions; specifically, no safety belt and lanyard while working on a bridge with approximately a 40' drop.

Synopsis:

The citations were issued as a result of a general schedule safety inspection. The company attorney and commonwealth agreed to reduce the proposed $300 penalty to $125. The judge accepted the agreement.

COMMONWEALTH

V.

AMERICAN EASTERN

No. C81-0765

August 5, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF YORK

M. Rennie, Assistant Commonwealth's Attorney, for Plaintiff
D. Ash, President of American Eastern
Before the Honorable J. R. Zepkin, District Court Judge

Disposition: By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of fire extinguisher requirements, seat belt requirements, horn requirement, reverse signal alarm, and trenching requirements.

Synopsis:

The citations were issued as a result of safety inspection following a complaint. Two citations were issued. Defendant was found guilty of violation of trenching standards. Specifically, a trench nine feet deep and five feet wide at the top, dug to install underground piping, was without protection against cave-in for employees working in the trench. The proposed $280 fine was reduced to $200 and assessed.

COMMONWEALTH

V.

OCEAN ELECTRIC CORPORATION

No. C81 32 447

August 14, 1981

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

J. Jones, Assistant Commonwealth's Attorney, for Plaintiff
R. Geary, President of Ocean Electric Corporation
Before the Honorable Fred E. Martin, Jr., District Court Judge

Disposition: By Trial, appealed

OPINION

The Code of Virginia Title 40.1, Section 40.1-1, provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities and for enforcing occupational health violations as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) in accordance with the State Plan for enforcement of that Act.

Plaintiff was represented by the Commonwealth Attorney and defendant was represented by an employee, Robert Geary. No employees were present.

This action was initiated by the Commissioner of the Virginia Department of Labor and Industry on a summons returnable to this Court on August 14, 1981, after inspection made on June 30, 1981, at Tidewater Drive at its intersection with Widgeon Road in Norfolk, Virginia, where the task involved was installation of new signal lights at the intersection of Tidewater Drive and wearing a body belt with lanyard attached to the boom or basket while working from an aerial lift while installing a signal light eighteen feet above the ground from bucket truck #8, a Ford F-600 with Hi-Ranger lift, thus exposing himself to a possible fall from the lift bucket at the intersection of Tidewater Drive and Widgeon Road. This fall would have been into the lanes of moving traffic at the intersection.

The parties disagree as to the seriousness of the violation. Defendant also urges that the proper safety equipment was present on the job but that defendant's employee who is in charge on the job simply failed to use the equipment when it was available. Defendant also stated that the bucket was three feet six inches deep and that it would be impossible for the operator to fall out.

Defendant further urges that his business is in fact a "small" business by the standards of the Small Business Administration since its annual dollar volume is just under Twelve Million Dollars. Defendant has asked that the term shall be applied in considering the amount of penalty. The Commonwealth exhibited the worksheet showing that no credit was granted for "small" since the defendants number of employees exceeds 100. The

Commonwealth argues that the Commissioner's limit of 100 employees is reasonable and that the SBA standard has no application in these cases.

FACTS

On August 14, 1981, at the intersection of Widgeon Road and Tidewater Drive in Norfolk, Virginia, defendant was engaged in the task of installing new traffic lights. Defendant's employee was not wearing the required harness with lanyard attached. Thus exposing himself and others to serious injury as a result of a possible fall from the lift basket of defendant's truck into the traffic lanes below. Defendant is a "small" business as defined by the Small Business Administration.

CONCLUSIONS OF LAW

The failure of defendant's employee to wear the required harness was a serious violation of the standard as expressed in 1926.556(b)(2)(v).

PENALTY

I find that the defendants argument of "small" is the more reasonable and I will apply the Commissioner's usual 10% credit to this case by extending it to the defendant even though defendant's number of employees exceeds the 100 employees usually applied by the Commissioner.

Multiplying 10% times the original $400.00 base penalty (a starting point is $1000.00), I find that the defendant is entitled to an additional $40.00 credit thus reducing the penalty from $240.00 to $200.00.

Judgement was entered accordingly. Defendant noted his appeal and defendant's bond was fixed at $250.00.

COMMONWEALTH

V.

J. B. DENNY COMPANY

No. Page 2, Line 4

August 19, 1981

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

R. Morecock, Assistant Commonwealth's Attorney, for Plaintiff
J. B. Denny, owner, J. B. Denny Company
Before the Honorable Robert L. Simpson, Sr., District Court Judge

Disposition: Final, By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of Job Safety and Health notice posting; debris in jobsite area; head protection requirements; fire extinguisher requirements, split tool handles; valve protection caps not in place; compressed gas cylinders were not secured or separated; electrical requirements, guard rail, handrail, and cover requirements; cranes and derricks requirements; general requirements for concrete, concrete forms, and shoring; and specific excavation requirements in the construction of a reinforced concrete sewage pumping station.

Synopsis:

The citations were issued as a result of a general schedule safety investigation. Three citations were issued. Judge Simpson took into consideration that the company had no previous contact with the Department of Labor and Industry, the size of their company, the immediate abatement and general attitude toward job safety and reduced the two "serious" citations to "other than serious" and no fine was assessed.

COMMONWEALTH

V.

WORLEY AND COMPANY

No. D31084

August 20, 1981

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

W. B. Bray, Commonwealth's Attorney, for Plaintiff
None, for Defendant
Before the Honorable W. Jerry Roberts, District Court Judge

Disposition: Final, by Confession

Nature of the case: Alleged construction violations

Citation No.	Item No.	Statute	
1	1	1900.35(7)(a)	
1	2	1926.25(c)	
1	3	1926.56(a)	
1	4	1926.250(b)(7)	
1	5	1926.450(a)(9)	
1	6	1926.451(d)(3)	
1	7	1926.500(d)(1)	
2	1	1926.25(b)	
3	1	1926.150(a)(1)	
4	1	1926.500(b)(1)	(vacated)
5	1	1926.451	(vacated)

ORDER

This day came the plaintiff, by the Attorney for the Commonwealth, and the defendant, Worley and Company, Incorporated, upon the plaintiff's citations against the defendant, issued in accordance with Section 40.1-49.4(4)(b) of the Code of Virginia to which the defendant offered no contest or denial.

Wherefore, it is considered by the Court that judgment be entered in favor of the Department of Labor and Industry of the Commonwealth of Virginia against the defendant, Worley and Company, Incorporated, in the amount of two hundred and twenty dollars. ($220.00). Said judgment and penalty shall be paid to the Clerk of this Court, to be remitted to the Commissioner of Labor and Industry for deposit into the general fund of the Treasurer of the Commonwealth, as provided in Section 40.1-49.4(D) Code of Virginia.

COMMONWEALTH

V.

PROGRESSIVE PRODUCTS CORPORATION

No. C81-5815

August 31, 1981

GENERAL DISTRICT COURT FOR THE CITY OF LYNCHBURG

T. L. Eckert, Assistant Commonwealth's Attorney, Lynchburg, Virginia, for Plaintiff
W. L. Hazelgrove, Esq., for Defendant
Before the Honorable LeRoy E. Glass, District Court Judge

Nature of the case: Alleged violation of trenching and excavation code

Disposition: Final, by consent agreement

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 Lynchburg and the defendant, Progressive Products Corporation, 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)	Serious/ Willful	$4480	$500
	TOTAL	$4480	$500

That the defendant does hereby agree that it was in violation of 40.1-49.4.J.; that the defendant having shown good faith in discussing this violation with the Virginia Department of Labor and Industry: and that all parties concerned have agreed that the penalty should be set at $500, said penalty to be paid by certified or cashier's check in the appropriate amount payable to the Commonwealth of Virginia, Department of Labor and Industry; that the defendant agrees to pay $5.50 court costs to the General District Court.

2. Defendant agrees and stipulates to the following:

a. That the recommended penalty amounting to Five Hundred Dollars ($500) 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 Commonwealth of Virginia, Department of Labor and Industry, the sum of Five Hundred Dollars ($500), together with the costs of this proceeding to the Clerk of this Court.

COMMONWEALTH

V.

ABLE SYSTEMS, INC.

NO. H4793-047-81

September 10, 1981

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld C. Jones, Assistant Commonwealth's Attorney, for Plaintiff
Robert D. Johnson, Able Systems, Inc.
Before the Honorable Fred E. Martin, District Court Judge.

Disposition: Final, by consent agreement

Nature of the case: Alleged violations of guardrail standards on walkways and stairways.

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, Able Systems,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	Proposed Penalty	Recommended Penalt
1926.500(e)(1)(10)(iv)	nonserious	$0	$0
1926.500(d)(1)	serious	$120	$120
1926.500(e)(1)(iv)	serious	$0	$0

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 $120 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 $120 together with the costs of this proceeding.

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 $120 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

V.

McLEAN CONTRACTING COMPANY

No. B0411-044-81

September 15, 1981

GENERAL DISTRICT COURT FOR THE CITY OF SUFFOLK

H. Benn, Assistant Commonwealth's Attorney, Suffolk, Virginia, for Plaintiff
E. Hemmendinger, Esq. for Defendant
Before the Honorable William W. Jones, District Court Judge

Nature of the case: Alleged violations while engaged in construction and demolition work on a bridge

Disposition: Final, by trial

Citation	Item No	Statute	
1	1	1926.350(a)	
1	2	1926.350(a)(7)	
1	3	1926.352(d)	
1	4	1926.350(d)(2)	
1	5	1926.601(b)(5)	
2	1	1926.350(a)(9)	[unsecured compressed gas cylinders used for connecting members in preparation for deck removal]

ORDER

This matter was heard on September 15, 1981, upon the petition of the Plaintiff. The Commonwealth of Virginia, more specifically, the Virginia Department of Labor and Industry, and upon the appearance and response of the Defendant, McLean Contracting Company, by Eric Hemmendinger, Esquire, its attorney, and Frank M. Rawls, its attorney.

Upon consideration of the evidence presented and the applicable law, the Court makes the following findings of fact, conclusions of law and Order:

1. The Defendant, McLean Contracting Company, was doing business in the City of Suffolk, Virginia, on May 20th and 21st, 1981, engaged in construction and demolishing work on bridges over the Nansemond River, and was also at that time an employer.

2. Pursuant to Section 40.1-493 of the 1950 Code of Virginia, as amended, and subsequent sections, inspections were made at the site

of the said work being done on the above stated dates by the Plaintiff.

3. As a result of the said inspection, the Defendant was cited for five non-serious violations, and one repeat non-serious violation.

4. The proposed disposition of the citations by the Plaintiff were as follows:

   Citation Number one, items 1,2,3,4,and 5; no civil penalty assessed. Citation Number two, item 1 being a non-serious repeat violation, carried a proposed civil penalty of one hundred eighty ($180.00) dollars.

5. The Court is of the opinion that the following dispositions are supported by the law and evidence:

Citation Number One

Items Nos. 1 and 2, proposed disposition affirmed
Items Nos. 3,4, and 5, dismissed

Citation Number Two

Item 1 civil penalty of $100.00 assessed.

IT IS THEREFORE ADJUDGED, ORDERED and DECREED that Items No. 3,4,and 5, of citation number one be and the same are hereby dismissed; that items 1 and 2 of citation one and Item 1 of citation two are supported by the evidence and are hereby sustained. A civil penalty of $100.00 is assessed with respect to item 1 of citation two.

IT IS FURTHER ORDERED that Defendant, McLean Contracting Company, deliver, forthwith to the Clerk of this Court, the sum of One hundred ($100.00) dollars, together with the costs of this proceeding in the sum of Six ($6.00) dollars.

IT IS FURTHER ORDERED that pursuant to the provisions of Section 40.1-49.2H of the 1950 Code of Virginia, as amended, the Clerk of this Court shall, within ten days from the entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241. IT IS FURTHER ORDERED that the Clerk shall forward the said penalty sum of One hundred ($100.00) dollars to the Treasury of the Commonwealth, as provided by statute.

COMMONWEALTH

V.

WILLIAMS ENTERPRISES, INC.

No: N/A - Alphabetical

September 15, 1981

CIRCUIT COURT FOR COUNTY OF SPOTSYLVANIA

M. S. Gardner, Assistant Commonwealth's Attorney, for Plaintiff
D. R. Clarke, Esq., for Defendant
Before the Honorable John A. Jamison, Circuit Court Judge

Nature of the case: Construction safety

Disposition: Final, by trial

Citation No.	Item No.	Statute
1	1	1926.550(b)(2)
1	1a	1926.550(b)(2)
1	1b	1926.20(b)(3)
1	1c	1926.550(b)(2)
1	1	N-1926.100(a)
1	2	N-1910.184(1)(9)(iii)
2	1	S-1926.550(b)(2)
2	1a	S-1926.550(b)(2)
2	1b	S-1926.550(b)(1)
2	1c	S-1926.550(a)(12)
2	1d	S-1926.550(a)(9)
2	1e	S-1926.550(a)(6)

ORDER

These consolidated causes consist of two separate groups of citations, referred to as the "December Citations" and the "January Citations". Citation One of the December group showed two items, neither of which were classified as serious violations and no civil penalty was fixed by the Department of Labor.

Citation Two of the same group listed six items but were grouped and classified as one serious violation and is prohibited by Code Section 40.1-49.3(5) in which a civil penalty of $300.00 was fixed. The Department of Labor then issued another citation which arose from the inspection in January of 1980 having four items also grouped and made one serious violation and the penalty of $900.00 was fixed.

The first item in Citation One was the hard hat violation which was admitted by the employee, Donald Pitts, but was not charged as a serious violation and no penalty was fixed. Item Two of the Citation One stemmed from a badly worn synthetic sling which obviously was being used in erecting steel. Mr. Walters, who testified for the Defendant, indicated by his

statement that such sling was available and that apparently no other sling which was not worn was available. The Court feels that if this sling had been used and the strong inference is that it could have been, then this would have been a serious violation. However, I find no testimony that the sling was seen by anyone to be in actual use. Only a preponderance of the evidence is required but since there is no proof of actual use, the Court will not consider Item Two of Citation One and the same is dismissed.

Regarding Item One of Citation Two, the lack of a cotter pin for which were substituted two light pieces of wire, unquestionably this offered a potential danger. The use of this crane for lifting heavy steel, and there is no question but that the crane was being used without the cotter pin and the strong possibility that this nut could have come off and the load could have fallen, appears to me to be a serious violation.

With respect to Item One-A under Citation Two, there is conflicting evidence regarding the potential danger which may or may not have resulted because of the bent lattice braces in the jib section of the crane. There was evidence that this bent condition caused the jib section to be unsafe. Yet there is no positive evidence bearing directly on the danger in this specific case. Accordingly, this item will be dismissed.

Regarding Item One-B of Citation Two, Messrs. Willis and Walters testified that there were no positive stops to the belly-type slings and that the danger from failure of the slings would be that the jib section would flip over into the cab section of the crane and injure the operator. It would seem that with a frayed and worn belly sling and with no positive stops on the jib section of the crane, though the latter were not required to be on a crane of its age, that the Defendant was in effect being forced to use a crane which was unsafe for the operator, if no one else. Accordingly, it seems to me that this would be a serious violation.

Item One-C of Citation Two is related to the foregoing violation. A badly cracked windshield which was even taken off in the Summertime could represent a potential danger to the operator since Mr. Evans testified that the cracks actually blurred or interfered with his vision during some part of the operation. Accordingly, it is found that this too was a serious violation.

There was ample testimony that the swing area of the crane was not barricaded. Anyone walking along the site could have walked into this swing area while the crane was in operation and would have been a potential victim. This swing area should certainly have been barricaded.

Concerning Item One-E of Citation Two, the lack of annual inspection records on the crane would seem to the Court to have been largely preventive of the problems which brought about all of the citations, and cannot be condoned. Accordingly, the Court finds that failure to have proof of annual inspection records was a serious violation. It is shown from the evidence that William Enterprises either had knowledge of these conditions or could by the use of reasonable care have had such knowledge if the regular maintenance inspections had been performed.

The citations issued from the inspections which occurred on January 22nd, 23rd, 25th and 29th of 1980 and which led to the four-part citations, grouped together to form one serious violation, appear to the Court upon

analysis of each of the complaints to justify a finding that Items 1-A, 1-B and 1-C should be classified as serious violations, and the Court so finds. Only a preponderance of the evidence is necessary for the Commonwealth to carry the burden of proof in this civil matter. Code Section 40.1-49.4(G)(H) allows for a penalty for violations considered not serious, of up to $1,000.00. Notwithstanding the elimination by this Court of two violations, the Court is of opinion that a penalty of $200.00 should be imposed and it will be so ORDERED.

Concerning the violations found herein by this Court with respect to the citations following the inspection in January of 1980, consisting of Item 1,1-A and 1-B and 1-C, the Court finds that a penalty of $400.00 would be proper, and such penalty will be imposed, it being so ORDERED.

COMMONWEALTH

V.

MILLER AND LONG COMPANY, INC.

DOCKET NO. 81-514

September 21, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Kelly Dennis, Commonwealth's Attorney, for Plaintiff
Before the Honorable J. Conrad Waters, Jr., General District Court Judge

Disposition: Final, by trial

Nature of the case: Alleged violations of VOSH statute. Specifically, plaintiff alleges a violation of 40.1-51.1(a) of the Code of Virginia which says, "it shall be the duty of every employer to furnish each of his employees safe employment and a place of employment free from recognized hazards likely to cause death or serious physical harm".

In this case, employee fell 35 feet from a crane hoisted Camlever material handler while in the process of removing cones from the outside wall of a building.

FINDING OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE came on to be heard on the 23rd day of April, 1981, upon the civil warrant, the evidence adduced in open court, and was argued by counsel.

IT APPEARING TO THE COURT that on the 8th day of September, 1980, the safety representative inspecting the work site known as 8088 West Park Drive, McLean, Virginia, 22101, observed a "Camlever" Model No. R-2785031, trash hauler. This receptacle was attached by cable to a large standard boom crane and was being used to hoist a laborer about the sides of the unfinished structure to remove "snap-tie" cones. The worker was suspended at any given time between thirty and sixty feet above the ground.

The evidence adduced by the Commonwealth through her witnesses (two O.S.H.A. inspectors whose "expertise" was stipulated to by defense counsel), indicated that the worker was riding in the trash-hauler at approximately 2:30 P.M. the day of the job-site inspection when the locking device on the trash receptacle gave way. The worker fell and as a result of his injuries died later at the Fairfax County Hospital.

The job-site conference was held and the company, through it's employees, admitted that the device was not intended for use as a man-lift but felt that they had taken necessary precautions to avoid latch-failure. (Photographs of the device, the Virginia O.S.H.A. citation, and the manufacturer's brochure were received as evidence by the court.)

The defendant, through its attorneys, introduced by way of defense that the device was made safe and therefore in compliance with the cited code provision. (The "General" safety provision, Virginia Code Section 40.1-51.1 (a).) In the alternative, the defendant attempted to show that the accident was due to employee misconduct and as such uncontrollable. They further introduced evidence to show what safety precautions were used to secure the device.

There were no safety nets in place nor was the employee using a safety belt.

THE COURT makes the following finds of fact: that the defendant was cooperative; that abatement was immediate; that the defendant has an on-going safety program, including safety lectures with annual re-execution of safety oaths by employees; that the device in question while not intended for human hauling was made safe through the use of "number 9" strength wire; and that the employee was instructed not to use the device unless he was wearing a safety belt. The court thus finds that reasonable steps were taken to secure the device, that use of such a device is not per se unreasonable, and that the absence of a safety belt was due to isolated employee misconduct. Therefore, the court holds that the defendant did provide a "safe work place" and one that is "free from recognized hazards" pursuant to Virginia Code Section 40.1-51.1(a).

IT IS ADJUDGED, ORDERED and DECREED that the Commonwealth's citation be, and the same hereby is, vacated.

AND THIS CAUSE IS DISMISSED.

ENTERED this 21st day of September, 1981.

COMMONWEALTH

V.

GOOD CONCRETE CONSTRUCTION COMPANY, INC.

No. C81-6713

September 25, 1981

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

T. Carter, Assistant Commonwealth's Attorney, for Plaintiff
Before the Honorable D. F. O'Flaharty, District Court Judge

Disposition: Final, by consent agreement

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of trenching and excavation requirements.

Citation No.	Item No.	Standard
1	1	1926.650(e)
2	1	1926.651(c)

Specifically, no shoring or sloping was provided in the excavation for the basement of building #2. The walls were vertical and 12' in height. The west wall was undercut 2' down from the top. Base area measured 20' in width and 55' in length.

Synopsis: The citations were issued as a result of a general schedule safety inspection. A consent agreement was agreed upon and Judge O'Flaharty accepted the agreement for $200 based on the corrective action of this firm.

COMMONWEALTH

V.

J. H. MARTIN & SONS CONTRACTORS, INC.

No. C81-12882

November 5, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

R. Alderman, Assistant Commonwealth's Attorney, for Plaintiff
T. Winston, III, Esq., for Defendant
Before the Honorable Donald Howren, District Court Judge

Disposition: Final, by consent agreement

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of rollover protective structure requirements of material handling equipment.

Synopsis: The citations were issued as a result of a general schedule safety inspection. The citation challenged was 1926.1000(c)(1). No arguments were given to refute the citation or penalty. The consent agreement had already been signed and the agreed upon penalty paid. The court accepted the consent order as written.

COMMONWEALTH

V.

STEEL ENTERPRISE, INC.

No. C81-7321

November 16, 1981

GENERAL DISTRICT COURT FOR THE CITY OF LYNCHBURG

T. Eckert, Assistant Commonwealth's Attorney, for Plaintiff
R. Cranwell, President, Steel Enterprise, Inc., for Defendant
Before the Honorable LeRoy C. Glass, District Court Judge

Disposition: By trial, appealed

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of guardrail and toeboards requirements for ladderway floor openings.

Synopsis: The citation was issued as a result of a general schedule safety inspection. 1926.500(b)(2) was the contested citation. Judge Glass dismissed the abatement and penalty stating that the state had failed to prove that the newly purchased crane had been used on the worksite. Appealed.

COMMONWEALTH

V.

BLAKE CONSTRUCTION COMPANY

No. 6825

November 30, 1981

CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

Noel D. Butler, Commonwealth's Attorney, for Plaintiff
John Schell, for Defendant
Before the Honorable Albert H. Grenadier, Circuit Court Judge.

Disposition: By Trial

Nature of the case: Alleged violations of guardrail and toeboard standards; Improper cross-bracing and/or diagonal bracing of scaffolding.

Citation No.	Item No.	Standard	Type	Penalty Proposed	Penalty Imposed
1	1-4		Other		
2	1	1926.450(a)(1)	Serious		
	1a	1926.451(a)(4)	Serious		
	1b	1926.451(a)(3)	Serious		
3	1	1926.28(a) & 105(a)	Serious		
	1a	1926.500(b)(4)	Serious	$780	$500

ORDER

THIS CAUSE COMES on this the 12th day of November, 1981, for trial. The parties having come to an agreement as to the matters in controversy, such agreement reflected in Schedule A attached hereto and incorporated herein by reference, the parties respectfully request this Court to dispose of the above-styled case in accordance with the terms of the agreement of the parties as set forth in Schedule A, and

IT APPEARING to the Court that Schedule A reflects the true agreement of the parties, it is

ORDERED that the defendant, BLAKE CONSTRUCTION COMPANY, INC., be, and hereby is, found guilty of the violations of the Virginia Occupational Safety and Health Act alleged in the amended citations, and pay to the Virginia Department of Labor and Industry the sum of five hundred dollars ($500.00).

SCHEDULE A

1. The Commonwealth shall move to dismiss citation number 2, item number 1.

2. The Commonwealth shall move to amend citation number 3, item 1 and 1a to a type OTHER violation.

3. The Commonwealth shall move to reduce the amount sought from the defandant in penalty payments from seven hundred eighty dollars ($780.00) to five hundred dollars ($500.00).

4. The defendant, Blake Construction Company, Inc., shall plead guilty to the citations numbered one (1), two (2) and three (3), as amended.

This is the entire agreement of the parties.

COMMONWEALTH

V.

UNITED, INCORPORATED

No. _____

December 2, 1981

GENERAL DISTRICT COURT FOR THE CITY OF NEWPORT NEWS

R. Condon, Assistant Commonwealth's Attorney, for Plaintiff
No appearance on behalf of defendant
Before the Honorable R. D. West, District Court Judge

Disposition: Final, by trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of debris clearing requirements; head protection, equipment support requirements, violation of National Electric Code, scaffolding requirements, and material handling equipment violations.

Specific Violations

CITATION NUMBER	ITEM NUMBER	STANDARD
1	1	1926.25(a)
1	2	1926.100(a)
1	3	1926.700(a)§12.2.1 ANSI A10.9-1970
2	1	1926.400(a)§ 400-10 NEC 70-1971
2	1a	1926.400(a)§ 110-14(b) NEC 70-1971
2	1b	1926.402(a)(8)
3	1	1926.451(d)(10)
3	1a	1926.451(a)(13)
3	1b	1926.451(a)(14)
3	1c	1926.451(d)(4)
3	1d	1926.451(d)(7)

Synopsis: The citations were issued as a result of a general schedule safety investigation. Mr. Robert B. Condon, Assistant Commonwealth's Attorney, asked Judge West to rule no contest as no one appeared to represent the defendant. It was previously agreed to reduce the proposed penalty by one-half, from $1200 to $600. This was assessed.

COMMONWEALTH

V.

CHESAPEAKE STEEL CORPORATION

No. C81 - 18752

December 10, 1981

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

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

Disposition: By Trial

Nature of the case: Alleged violations of personal protective equipment standards such as lack of guardrails, safety nets, etc., to protect employees from possible falls. Also a skylight opening was not provided with standard railing or a cover to protect employees working at the edge of the opening.

ORDER

This day came the plaintiff, by counsel, the Assistant Commonwealth's Attorney of Virginia Beach and the defendant: 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 three (3) citations issued by the Virginia Department of Labor and Industry to defendant on August 4, 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 fabrication and erection of structural steel at its office located at 3468 Westminister Avenue, Virginia Beach, Virginia.

3. On July 1, 1981 through July 31, 1981, the Virginia Department of Labor and Industry and/or the Bureau of Occupational Health conducted an inspection and investigation of defendant's workplace in Virginia Beach at 350 Malibu Drive 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 two (2) serious violations and one (1) 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 defendant abate the violations cited in the citations below and be assessed a civil penalty for said violations as follows:

Citation	Item	Standard	Abatement Date	Penalty
No. 1	1	1926.50(d)(1)	8-5-81	None
No. 1	2	1926.150(a)(1)	8-5-81	None
No. 1	3	1926.450(a)(9)	8-5-81	None
No. 1	4	1926.501(f)	8-5-81	None
No. 2	1	1926.28(a) and 1926.105(a)	8-4-81	$30.00
No. 3	1	1926.500(b)(4)	8-4-81	$45.00

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 transmitted to the Treasure of the Commonwealth to the credit of the general fund.

COMMONWEALTH

V.

LIN MAR ELECTRIC

No. C81 - 19501

January 17, 1982

GENERAL DISTRICT COURT FOR THE CITY OF HAMPTON

Christopher W. Hutton, Commonwealth's Attorney, for Plaintiff
Before the Honorable Henry D. Kashouty, General District Court Judge.

Disposition: By Trial

Nature of the case: Alleged violation of Standard 1926.401(c): The path from circuits, equipment, structures, conduit or enclosures to ground was not permanent and continuous. Particularly: a) a Milwaukee Hole Hawg and Rip Saw were used over standing water without the required grounding terminals in place.

ORDER

The above matter came before this Court on December 10, 1981, as a result of a contested penalty imposed by the Commissioner of Labor and Industry against the defendant, Lin Mar Electric.

After hearing the evidence, the Court doth find that the defendant, Lin Mar Electric, on June 5, 1981, did maintain electric hand power tools in an unsafe manner, to-wit: no grounding terminals and operation over standing water. This operation of which was in such a manner as to endanger health and safety in violation of Virginia Code Section 40.1-51.1.

Therefore, the Court orders, adjudges and decrees that the defendant, Lin Mar Electric, pay a penalty of One Hundred Forty and 00/100 Dollars ($140.00) to the Commissioner of Labor and Industry pursuant to Virginia Code Section 40.1-49.4D.

COMMONWEALTH

V.

D. A. FOSTER TRENCHING COMPANY, INC.

Docket No. 81-20260

February 10, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Steve Moriarty, Commonwealth's Attorney, for Plaintiff
Earl Schaffer, for Defendant
Before the Honorable Frank B. Perry, III, General District Court Judge

Disposition: Final, by Trial

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

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 located at the NW corner of this site was not properly shored or sloped. Trench measured 50' long, 4'-5' wide with vertical sides 5½' -7½' high.

2. 1926.451(i)(1) — Excavated or other material was not effectively stored or retained at least 2 feet or more from the edge of excavation(s) which employee(s) were required to enter: (a) Trench located at the NW corner of this site had the overburden stored at the edge 2' - 4' high. Trench measured 50' long, 4' - 5' wide with vertical sides 5½' - 7½' high.

3. 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 means of exit was provided in the trench located at the NW corner of this site. Trench measured 50' long, 4' - 5' wide with vertical sides 5½' to 7½' high.

FINDINGS OF FACT

1. On July 1, 1981, a crew of the D.A. Foster Trenching Company, Inc., ("D.A. Foster"), was installing a twelve-inch cast iron gas main at Braddock Road and Roanoke Lane, in Fairfax County, Virginia.

2. The foreman in charge of the job, on behalf of D.A. Foster, was Roscoe Frye. Frye has over thirty years of experience in the industry.

3. Mr. Frye 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 July 1, 1981, at approximately 1:00 p.m., an open trench existed at the site. The trench was fifty feet in length, ranging in depth from four feet to seven feet. The walls of the trench were vertical. No shoring or supports for the walls were in place, and a laborer was working at a point where the depth was in excess of seven feet. The laborer was John D. Carey.

5. The soil which had been removed from the trench ("spoil") was piled adjacent to the excavation, within two feet of the edge of the trench.

6. There were no ladders, steps, or any other methods available for employees' use to exit the trench.

7. On or about July 1, 1981, D.A. Foster was cited by Donn M. Falls, of the Virginia Department of Labor and Industry, with serious violations of 1926.652(a), 1926.651(i)(1), and 1926.652(h), and assessed a penalty of $420.00.

CONCLUSIONS OF LAW

A. The citation issued to the D.A. Foster Trenching Company, 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 of the violation was timely filed by D.A. Foster.

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

C. The Court found that the unshored walls, where the laborer was working, were not in compliance with Va. O.S.H.A. Standard 1926.652(a). It was also found that the spoil was retained too close to the edge of the

trench, in violation of Va. O.S.H.A. 1926.651(i)(1). Further, it was held that in the trench, which was deeper than four feet, no adequate means of exit was available which would require less than twenty-five feet of lateral travel.

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

E. The fine was assessed at $420.00.

COMMONWEALTH

V.

S. A. RICHARDSON COMPANY

Docket No. C82-8-493

February 25, 1982

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Jerrauld C. Jones, Assistant Commonwealth's Attorney, for Plaintiff
Before the Honorable Frederick Marton, General District Court Judge

Disposition: Final, by consent agreement.

Nature of the case: Citations were issued following an inspection initiated by a complaint filed with the Department of Labor and Industry. Specifically: Alleged violations of Standards covered guardrails, life lines, and guardrail supports.

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, S. A. Richardson 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
1926.402(a)(5)	Other	0	0
1926.451(i)(11)	Serious	$ 240	$ 120
1926.104(c)	Serious	Included	Included

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 $120. 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 $120 together with the costs of this proceeding.

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 $120. to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

V.

OCEAN ELECTRIC CORPORATION

No. 81-1762

March 11, 1982

CIRCUIT COURT FOR THE CITY OF NORFOLK

J. Jones, Assistant Commonwealth's Attorney, for Plaintiff
B. Hubbard, Esq., for Defendant
Before the Honorable William Moultrie Guerry, Circuit Court Judge

Disposition: Final, by consent agreement

Nature of the case: Contested the lower court's finding of guilt regarding violation of ariel lift requirements.

ORDER

This day came the parties by counsel, and represented unto the Court that this matter has been settled and dismissed agreed with prejudice by order previously entered by this Court; and further that payment of $200.00 penalty has been made by the defendant to the Clerk of this Court.

It is therefore ADJUDGED, ORDERED, and DECREED that, pursuant to the provisions of Section 40.1-49.4 (D) of the Code of Virginia (1950), the Clerk shall forward the sum of $200.00 to the Commissioner of Labor and Industry for deposit into the general fund of the Treasurer of the Commonwealth together with a certified copy of this Order.

COMMONWEALTH

V.

McDANIELS ROOFING CORPORATION

Docket No. CA 2-2167

March 16, 1982

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

Robert G. Morecock, Commonwealth's Attorney, for Plaintiff
Before the Honorable Robert Simpson, General District Court Judge

Disposition: Final, by trial

Nature of the case: Citation was issued following a general schedule safety inspection. The contested VOSH standard violations are:

Nonserious

1.	1926.50(d)(1)	First-aid supplies approved by the consulting physician were not easily accessible when required: (a) At the jobsite there was not a first-aid kit provided in the event of any emergency, for the employees' use.
2.	1926.51(a)(3)	Containers used to distribute drinking water were not clearly marked as to the nature of contents or were used for another purpose: (a) At the jobsite, an Igloo water cooler provided for drinking for employees was not labeled "For Drinking Water Only".
3.	1926.51(a)(4)	The common drinking cup was not prohibited: (a) At the jobsite, individual paper cups were not provided for employees to use for drinking water.
4.	1926.100(a)	Employee(s) working where there was a possible danger of head injuries were not protected by protective helmets: (a) Hard hats were not provided for the protection of employees while overhead work was being performed on the roof at the jobsite, Lot #91, Salem Woods.

5. 1926.150(c)(1)(i) A fire extinguisher, rated not less than 2A, was not provided for each 3,000 square feet of the protected building area, or major fraction thereof: (a) At the jobsite, Lot #91, Salem Woods, employees were exposed to possible fire hazards while working on a two-story house and no fire extinguisher was available.

Serious

1. 1926.601(b)(8) Motor vehicles used to transport employees did not have adequate seating for the number of employees: (a) Employees were riding on the top of asphalt shingles at the back of the Ford truck #9, while it traveled from their shop at 1301 Victory Blvd., Portsmouth, to the jobsite in Virginia Beach. As the employees riding in the back of the truck were not in a seat or did not have on safety belts, they were exposed to the possibility of falling off shingles and onto the pavement and being run over by other vehicles.

ORDER

This day came the plaintiff, by counsel, the Assistant Commonwealth's Attorney of Virginia Beach and 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 February 9, 1982 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 two citations on July 22, 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 roofing from its main office located at 1301 Victory Boulevard in the city of Portsmouth, Virginia.

3. On July 22, 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 Lot #91, Salem Woods in the City of 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 violation *) and five non-serious violations of said standards.

5. After a proper hearing of the evidence in this case, I, Robert Simpson, Judge of the General District Court, Civil Division of the City of Virginia Beach, Virginia do hereby find for the plaintiff based on the

following findings of fact and conclusions of law: (a) that employees were not protected by protective helmets as required by state law, and (b) that no fire extinguisher was provided as required by state law. I do hereby find for the defendant as to all other citations.

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 defendant abate the violations cited in the citations of 1 (4) and 1 (5) and be assessed a civil penalty for said violations as follows:

Citations	Item	Standard	Abatement Date	Penalty
One	4	1926.100(a)	7-23-81	None
One	5	1926.150(c)(1)(i)	7-23-81	None

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 transmitted to the Treasurer of the Commonwealth to the credit of the general fund.

* The serious citation was never reviewed due to a procedural technicality.

COMMONWEALTH

V.

MELS ROOFING SERVICE, INC.

No. C81-50-515

March 24, 1982

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

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

Disposition: By Trial

Nature of the case: Citations were issued following an inspection initiated by a complaint filed with the Department of Labor and Industry. Alleged violations were as follows:

Citation	Item Nos.	Standard	Penalty Proposed	Penalty Imposed
1	1	1900.37(1)	$0	$0
1	2	1926.50(d)(1)	$0	$0
1	3	1926.152(a)(1)	$0	$0
1	4	1926.401(c)	$0	$0
2	1	40.1-51.1(a) - Code of Virginia	$140	$140

ORDER

The Code of Virginia Title 40, Section 40.1-1, provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities and for enforcing occupational health violations as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) in accordance with the State Plan for enforcement of that Act.

This action was initiated by the Commissioner of the Virginia Department of Labor and Industry on a summons returnable to this court on December 18, 1981, at 10:00 A.M. The action was continued until March 23, 1982. The Commissioner was represented by the Commonwealth's Attorney who stated that Citation #2 was the principal issue to be decided.

The defendant was not represented by counsel. Three witnesses appeared on behalf of the defendant.

The standard, regulation or section of the law alleged violated was Title 40.1-51.1(a) Code of Virginia. The alleged violation is described as follows:

> 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:

(a) Employees rode in the back bed of a 1972, C-30 Chevrolet truck (Lic. No. ZBJ-481) from the shop to jobsites. As the employees were not provided with a seat with seat belt in the bed of the truck, they were exposed to the possibility of falling out onto the pavement and being run over by other vehicles.

The question to be decided was, "did a certain employee ride in the back bed of a truck as described?"

A former employee testified that he had become dissatisfied at having to ride in the back of the truck each time the crew went to a job during the three or four weeks he was employed by the defendant. He was forced to ride in back from eight to ten times. He was discharged by defendant at a time when he complained of having to ride in the back of the truck.

No witness of the defendant was able to refute these statements. The total defense seemed to be that no one was ever instructed to ride in the back of trucks, but that defendant was unable to prevent this practice sometimes when the employee wanted to ride in the back of the truck in spite of warnings to the contrary.

I find as a fact that at least one employee did ride in the back bed of a company truck as described, as many as eight or ten times.

I conclude that this was a violation of 40.1-51.1 (a) of the Code of Virginia. Before the court assessed the penalty, the defendant offered evidence of complete rapid efficient correction in connection with the citation. Before proposing a penalty the Commissioner stated that he had given credit in each category of credit claimed by the defendant.

I assess the penalty at $100.00. Judgment has been entered accordingly.

COMMONWEALTH

V.

UTILITY BUILDERS, INC.

Docket No. C82-2316

March 25, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF CHESAPEAKE

Robert Haley, Commonwealth's Attorney, for Plaintiff
Before the Honorable Charles B. Cross, General District Court Judge

Disposition: Final; by Consent Agreement.

Nature of the case: Citations were issued following a General Schedule safety inspection. Alleged violations of Standard 1926.652(c) covering shoring and support of trenches exposing employees to 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 Chesapeake and the defendant, Utility Builders, 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
Title 40.1 of the Code of Virginia	Serious	$1000.00	$280.00

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 $280.00, plus court costs of $9.00 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 $280.00, together with the costs of this proceeding.

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 $280.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

V.

R. D. LAMBERT & SONS, INC.

No. 25

April 8, 1982

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

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

Disposition: Final, By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of Case: Alleged violation of Standard 1926.600(a)(3)(i): the front bucket and hydraulic arms of a Case - 58C front end loader backhoe was not properly blocked or cribbed to prevent it from falling on employees who were working under the bucket and in between the arms. The defendant was found to be in violation of the aforementioned standard by Judge Simpson and after statements by Charles Lambert, President of R. D. Lambert & Sons, Inc., Judge Simpson reduced the proposed penalty from $200 to $100.

COMMONWEALTH

V.

R. L. RYDER COMPANY

Docket No. C82-380

April 14, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF FAUQUIER

Charles B. Foley, Commonwealth's Attorney, for Plaintiff
Caroll J. Martin, Jr., Esq., for Defendant
Before the Honorable John Alexandria, General District Court Judge

Disposition: By Trial; dismissed.

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

Citation	Item Nos.	Standard
2	1	1926.652(a)
	1a	1926.652(e)
	1b	1926.652(h)

All citations dealt with trenching requirements. A $420 penalty was proposed.

ORDER

This matter came on the 14th day of April, 1982, to be heard pursuant to Section 40.1-49.4E, Code of Virginia, upon the citation heretofore issued by Plaintiff against Defendant (Identification #F837805781).

Whereupon, the Plaintiff presented its evidence and upon conclusion thereof, Defendant presented it's evidence and the matter was argued by counsel:

UPON CONSIDERATION WHEREOF, the Court, being of the opinion that Plaintiff failed to prove the alleged violations by a clear preponderance of the evidence, the said complaint was dismissed and judgment entered for the Defendant.

The Court determined that the real issue herein was whether the excavation complained of was dug in such a manner as to constitute a danger to the health and safety of the employee employed therein.

The Plaintiff's evidence in this regard was in conflict. One witness testified that the excavation was so made that the employee therein was clearly visible from the opposite side of the highway, some 15 to 20 feet distant; another testified that the excavation was of such a depth with such

vertical sides that, in the opinion of the Court, it would be nigh impossible for such an observation of said employee.

The citation alleged violations of Regulation 1926.652(a), (e) and (h). The Court determined that (c) of that section was applicable due to the evidence as to soil conditions, and the excavation was dug and sloped in compliance therewith. The evidence was conclusive that there was not any appreciable amount of backfill or traffic vibration to amount to a violation of subsection (c) and that the evidence clearly demonstrated that there was no violatin of subsection (b), but, to the contrary, there was adequate means of exit by virtue of the exposed water main some 3½ feet from the grade line within some 6 feet of the spot where the employee was working.

Accordingly, the Complaint is dismissed.

COMMONWEALTH

V.

S. J. GROVES AND SONS COMPANY CONTRACTORS

NO. C82-1166

June 17, 1982

GENERAL DISTRICT COURT FOR THE COUNTY OF BUCHANAN

Michael McGlothlin, Commonwealth's Attorney, for Plaintiff
Before the Honorable Pat B. Hale, General District Court Judge.

Disposition: By Trial

Nature of the case: Alleged violation of Standard 1926.652(a) dealing with improper shoring of soil banks in an excavation 9 feet 4 inches deep by 12 feet wide by 30 feet long where employees were exposed to possible cave-ins.

ORDER

This matter came to be heard on June 17, 1982, and the Court affirmed the Commissioner's citation and proposed penalty. Judgment was entered that plaintiff recover of defendants Three Hundred Twenty and No/100 ($320.00), plus $6.00 cost.

COMMONWEALTH

V.

STEEL ENTERPRISE, INC.

No. 7967

June 22, 1982

CIRCUIT COURT FOR THE CITY OF LYNCHBURG

William G. Petty, Commonwealth's Attorney, for Plaintiff
C. Richard Cranwell, Esq., for Defendant
Before the Honorable Norman K. Moon, Circuit Court Judge

Disposition: Final, by consent agreement

Nature of the case: Alleged violation of Standard 1926.550(b)(2) whereby a locomotive crane did not meet the applicable requirements for operation as prescribed by ANSI-B-30.5-1968 Safety Code for crawlers, locomotive and truck cranes. Critical parts of the crane structure's boom were bent, broken or missing. Lattice braces were bent, broken or missing. There was a $360 penalty proposed.

ORDER

This matter is an appeal by the Commonwealth of the dismissal of an occupational safety citation issued by the Department of Labor and Industry to Steel Enterprise, Inc., for one serious violation of the Virginia Occupational Safety and Health Standards for General Industry, §1926.550(b)(2). A copy of the citation is attached hereto as Exhibit A. The parties have represented to the Court that the violation has been abated. It appearing to the Court that the parties have agreed to a settlement of this matter, and that that settlement has been approved, pursuant to § 2.1-127, by the Commissioner of Labor and Industry and by an Assistant Attorney General assigned to the Department of Labor and Industry, it is ADJUDGED, ORDERED AND DECREED that the citation attached hereto as Exhibit A be modified to provide a civil penalty of $100.00 and that the citation as modified be affirmed and take effect as a final order.

Steel Enterprise, Inc. shall post a copy of this order at the site of the cited violation for three working days.

Let the Clerk send a certified copy of this Order to counsel of record for each party.

COMMONWEALTH

V.

BROTHERS SIGNAL CO., INC.

No. 82-4342

June 22, 1982

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

Tom Carter, Commonwealth's Attorney, for Plaintiff
Earl Shaffer, for Defendant.
Before the Honorable Robert T. Colby, General District Court Judge.

Disposition: By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the Case: Alleged violations of trenching standards.
Specifically: Standard 1926.652(a): soil banks more than 5 feet high, and where employees 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.

Synopsis: Judge Colby determined this to be an isolated incident in that the employees had received specific orders and disobeyed them, placing themselves in the hazardous situation. Based on the fact that the employer was safety conscious the judge reduced the citation from Serious to Other, but assessed the proposed penalty of $140.

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