

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, 1984 - JUNE 30, 1985
VOLUME VI



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

Carol A. Amato, Commissioner

PREFACE

This publication contains the orders of the Virginia General District and Circuit Courts in contested cases from July 1, 1984, through June 30, 1985, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of Section 40.1-49-7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, c.354)."

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

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

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OCCUPATIONAL HEALTH

PART I

COMMONWEALTH

v.

C & R BATTERY COMPANY, INC.

Docket NO. C-83-7507

June 11, 1984

GENERAL DISTRICT COURT OF CHESTERFIELD COUNTY

Frederick G. Rockwell, III, Assistant Commonwealth Attorney
for the

Plaintiff

Lee R. Gordon and Clarence B. Neblette, for the Defendant
Before the Honorable William R. Shelton, Judge

Disposition: Final, by trial and consent agreement

Nature of the Case: Citations were issued for the
inspection of the premises. The validity of the citations was
stipulated to by both parties; the proposed consent order was
contested.

CONSENT ORDER

Plaintiff, Commonwealth of Virginia, at the Department of Labor and Industry, by counsel C & R Battery Company, Inc., hereby agrees to the following:

1. Plaintiff agrees that the cited citations, as stated, were duly and sufficiently abated by June 31, 1984.

2. Defendant agrees to the validity of the citations set forth below and as shown on the modified citations. Defendant reserves the right to contest the proposed consent order.

3. Defendant agrees that the cited citations, as stated, were not abated by defendant as of May 31, 1984.

CITATION NO. 1:

Type of violations: Serious

VIOLATIONS

DEMAND PENALTY

1910.23(a) (8)	\$240.00
1910.219(d) (1)	\$240.00
1910.219(e) (1) (i)	
1910.219(f) (3)	\$240.00

*Violation was partially abated.

CITATION NO. 2:

Type of violations: Serious

<u>VIOLATION</u>	<u>DEMAND PENALTY</u>	<u>ABATED</u>
1910.1025(c) (1)	\$600.00	No
1910.1025(f) (1)		Yes
1910.1025(d) (2)	\$600.00	No
1910.1025(d) (4)		No
1910.1025(d) (6) (iii)		No
1910.1025(d) (7)		No
1910.1025(n) (1) (i)		No
1910.1025(g) (1)	\$600.00	Yes
1910.1025(i) (1)	\$600.00	No
1910.1025(i) (4) (iii)		No
1910.1025(j) (1) (i)	\$600.00	Yes
1910.1025(j) (2) (i)		Yes
1910.1025(j) (2) (ii)		No
1910.1025(j) (2) (iv)		No
1910.1025(j) (3) (i) (A) & (B)		No
1910.1025(j) (3) (iv) (A) (1), (2), (3), (4) & (5)		Yes
1910.1025(j) (3) (v) (A)		No
1910.1025(n) (2) (i)		No
1910.1025(k) (1) (i) (D)	\$600.00	Yes
1910.1025(k) (2) (i)		Yes
1910.1025(n) (3) (i)		No
1910.1025(l) (1) (ii)	\$600.00	No
1910.1025(l) (1) (v) (A), (B), (C), (D), (E), (F) & (G)		No

CITATION NO. 3:

Type of violations: Willful

<u>VIOLATION</u>	<u>DEMAND PENALTY</u>	<u>ABATED</u>
1910.132(a)	\$10,000.00	Yes
1910.133(a) (1)		No
1910.151(c)		No
1910.141(b) (1) (i)	\$10,000.00	No
1910.141(b) (1) (iii)		Yes
1910.141(c) (1) (i)		Yes
1910.141(d) (2) (i)		No
1910.141(d) (2) (ii)		No
1910.141(d) (2) (iii)		No
1910.141(d) (2) (iv)		No
1910.141(d) (3) (i)		No
1910.141(e)		No

CITATION NO. 4:

Type of violations: Other

<u>VIOLATION</u>	<u>DEMAND PENALTY</u>	<u>ABATED</u>
1900.37(1)	None	Yes
1910.22(a)(1)	None	Yes
1910.23(c)(1)	None	Yes
1910.23(c)(3)	None	Yes
1910.24(b)	None	Yes
1910.24(f)	None	Yes
1910.24(h)	None	Yes
1910.157(c)(1)	None	No
1910.219(i)(2)	None	Yes
1910.242(a)	None	Yes
1910.252(a)(1)(iii)	None	Yes
1910.252(a)(2)(ii)(b)	None	Yes
1910.252(a)(2)(ii)(d)	None	Yes
1910.252(a)(2)(iii)(b)	None	Yes
1910.252(a)(2)(iv)(c)	None	Yes
1910.252(a)(2)(v)(c)(1)	None	Yes
1910.303(f)	None	Yes*
1910.304(f)(4)	None	Yes
1910.305(a)(2)(iii)(b)	None	Yes*
1910.305(b)(2)	None	Yes*
1910.305(b)(2)	None	Yes
1910.305(e)(1)	None	Yes
1910.305(g)(1)(i)	None	Yes*
1910.305(g)(1)(iii)	None	Yes*
1910.305(g)(2)(ii)	None	Yes
1910.305(g)(2)(iii)	None	Yes

*Violation was partially abated.

4. Defendant agrees to permit designated representatives of the Department of Labor and Industry and/or the Bureau of Occupational Health to periodically enter the defendant's premises, without notice, for the purpose of conducting workplace inspections in accordance with Virginia Occupational Safety and Health Regulations and Virginia Code Ann. Section 40.1-49.8 (Repl. Vol. 1981).

FINAL ORDER

CONCLUSIONS OF LAW

Upon consideration of the evidence offered by both parties, the arguments of counsel, and the applicable law, the Court hereby ADJUDGES, ORDERS AND DECREES as follows:

CITATION NO. 1:

1910.23(a)(8): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.219(d) (1), 1910.219(e) (1) (i): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.219(f) (3): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

CITATION NO. 2:

1910.1025(c) (1) & (f) (1): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.1025 (d) (2), (d) (4), (d) (6) (iii), (d) (7) & (n) (1) (i): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.1025(g) (1): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.1025(i) (1) & (i) (4) (iii): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.1025(j) (1) (i), (j) (2) (i), (j) (2) (ii), (j) (2) (iv), (j) (3) (i) (A) & (B), (j) (3) (iv) (A) (1)-(5), (j) (3) (v) (A) & (n) (2) (i): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.1025(k) (1) (i) (D), (k) (2) (i), (n) (3) (i): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

1910.1025(l) (1) (ii), (1) (1) (v) (a)-(G): The proposed penalty is denied and a modified penalty of \$100.00 is imposed.

CITATION NO. 3:

In 1910.132(a), .133(a) (1), .151(c): The proposed penalty is denied and a modified penalty of \$2,500.00 is imposed.

1910.141(b) (1) (i), (b) (1) (iii), (c) (1) (i), (d) (2) (i), (d) (2) (ii), (d) (2) (iii), (d) (2) (iv), (d) (3) (i) & (e): The proposed penalty is denied and a modified penalty of \$2,500.00 is imposed.

CITATION NO. 4:

No penalties were demanded.

And let the Clerk forthwith mail certified copies of the Consent Order and the Final Order to each of the parties.

The defendant shall forthwith post a copy of this Order at the site of each of the alleged violations, the copy shall remain posted for three working days or until the violation is abated, whichever is longer.

COMMONWEALTH

v.

ROANOKE IRON AND BRIDGE WORKS, INC.

Docket No. _____

January 25, 1985

GENERAL DISTRICT COURT FOR THE COUNTY OF BOTETOURT

Robert C. Hagen, Jr., Assistant Commonwealth Attorney, for the
Plaintiff

Charles D. Fox, III, for Defendant
Before the Honorable E. C. Westerman, Jr., Judge

Disposition: Final, by trial and settlement order

Nature of the Case: citations were issued for violations of VOSH
Standards 1910.95(c)(1), 1910.151(c), and 1910.242(b).

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney for the County of Botetourt, and the defendant, Roanoke Iron and Bridge Works, Inc., by counsel, in order to conclude this matter without the necessity for further litigation, hereby agree and stipulate as follows:

The defendant is before this court pursuant to Virginia Code Section 40.1-49.4(E) (1984) contesting a citation VOSH No. 537779 issued to it by the plaintiff. A copy of citation, the summons in this matter, and the draft of this order were each posted at the defendant's workplace for three working days or longer.

No employee or employee representative has appeared in this matter.

Defendant hereby states that items 537779-2 and 537779-3 as set forth in the amended citation have been abated.

By entering into this agreement, the defendant does not admit to any violation or to any civil liability arising from said violations alleged in this matter.

WHEREFORE, upon agreement of the parties and for good cause shown, and pursuant to Virginia Code Section 46.1-49.4 (1984), it is: ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited as items 537779-2 and 537779-3 in this matter within the time shown in the amended citation attached hereto as Exhibit A, and said citation is hereby affirmed.

Let the clerk forthwith mail certified copies of this order to each of the parties. The defendant shall post a copy of this Order at the site of each of the alleged violations; the copy shall remain posted for three working days or until the violation is abated, whichever is longer.

COMMONWEALTH

v.

HYDRATE BATTERY CORPORATION

Docket No.-----

May 22, 1985

GENERAL DISTRICT COURT FOR THE CITY OF LYNCHBURG

David B. Bice, Assistant Commonwealth's Attorney, for the
Plaintiff.

Robert D. Richards, for Defendant
Before the Honorable Paul Whitehead, Jr., Judge

Disposition: Final, by trial and consent agreement

Nature of the Case: Failure to Abate, Serious and Other than
Serious Citations were issued following an inspection of the
premises. The validity of the citations was stipulated to by
both parties; the proposed penalties were contested.

CONSENT ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the
Commissioner of the Department of Labor and Industry, by counsel,
and the defendant, Hydrate Battery Corporation, hereby agree and
stipulate as follows:

1. Plaintiff agrees that the cited violations, where so
stated, were abated by defendant as of February 26, 1985.

2. Defendant agrees that the cited violations, where so
stated, were not abated by defendant as of February 26, 1985.

3. Defendant agrees to abate those conditions and practices
that are still in violation of the citations, attached as Appen-
dix A. Defendant agrees that the cited conditions and practices,
unless stated otherwise in this order or in the citations them-
selves, will be abated within thirty days from the date of entry
of the Consent Order.

4. Defendant agrees to the validity of the citations as set
forth below and as shown on the citations.

CITATION NO. 1: Failure to Abate

<u>VIOLATION</u>	<u>DEMAND PENALTY</u>	<u>ABATED</u>
1910.1025(c) (1)	\$7,000.00	Yes
1910.1025(f) (1)		Yes
1910.1025(f) (4) (i)		No
1910.134(b) (1)		No
1910.134(b) (5)		No
1910.134(b) (6)		Yes
1910.134(b) (9)		No
1910.134(e) (5) (i)		Yes
1910.134(f) (5) (i)		Yes
1910.1025(d) (6) (iii)	\$7,000.00	No
1910.1025(j) (3) (i) (B)	\$7,000.00	Yes
1910.1025(i) (3) (i)		Yes

CITATION NO. 2: Serious

<u>VIOLATION</u>	<u>DEMAND PENALTY</u>	<u>ABATED</u>
1910.1025(f) (3) (ii)	No penalty	Yes
1910.1025(k) (1) (i) (D)	\$700.00	No

CITATION NO. 3: Other

<u>VIOLATION</u>	<u>DEMAND PENALTY</u>	<u>ABATED</u>
1910.1025(l) (1) (iii)	No penalty	Yes
1910.1025(m) (2) (i)	No penalty	Yes

5. Defendant agrees to require the use of industrial supplied air respirators (Type: 3M Whitecap) in all plant areas where exposure to lead exceeds the Permissible Exposure Level. Defendant agrees that the supplied air respirators will be kept in proper working order and stored in a clean, sanitary and convenient location. (1910.134(b) (5); 1910.134(b) (6) 1910.134(f) (5) (i).

6. Defendant agrees, to fully comply with all the requirements of section 1910.1025(k) of the Lead Standard concerning Medical Removal Protection. Abatement period is 30 days from the date of entry of the Consent Order.

7. Defendant agrees, for a period of six months from the date of entry of the Consent Order, to comply with the following protocol for any employee whose blood lead level exceeds 50 ug/100 gm of whole blood:

- a. obtain a complete medical examination for the employee covering all criteria listed in Section 1910.1025(j) (3) (ii) and any additional medical tests deemed necessary by a licensed physician experienced in the area of lead toxicosis.
- b. conduct monthly blood level and Zinc Protoporphyrin (ZPP) or Free Erythrocyte Protoporphyrin (FEP) tests on the employee.
- c. provide the employee with a personal consultation with the treating physician every two months to evaluate the employees' medical condition.
- d. immediately remove from work any employee deemed by the treating physician to have developed a medical condition which places that employee at an increased risk of material impairment of health due to exposure to lead.
- e. obtain written results of all medical examinations and tests from the treating physician and immediately provide the Bureau of Occupational Health with copies of all results.

8. Defendant agrees, to fully comply with all the requirements of Section 1910.1025(1) of the Lead Standard concerning employee training. The training shall include but not limited to the following :

- a. immediately implement and enforce a written company policy on work practices including but not limited to policies on smoking, eating and personal hygiene when working in lead contaminated areas.
- b. immediately conduct formal retraining for all personnel on proper work practices and the health hazards of lead as set forth in Appendices A and B of the Lead Standard (19 CFR 1910.1025). This formal retraining shall be conducted in the presence and monitored by a designated representative of the Bureau of Occupational Health.
- c. conduct a reinforcement training session and safety meeting once a month for all personnel (i.e. a review of proper work practices and the health hazards of lead)

9. Defendant agrees to permit designated representatives of the Department of Labor and Industry and/or the Bureau of Occupational Health to periodically enter the defendant's premises for the purpose of conducting workplace inspections in accordance with Virginia Occupational Safety and Health Regulations and Virginia Code Ann. Section 40.1-49.8 (Repl. Vol. 1981) to ensure compliance with this order.

10. Defendant agrees to pay reduced penalty of \$5,000 with the balance of \$16,500 due if this order is not substantially complied with.

OCCUPATIONAL SAFETY

PART II

COMMONWEALTH

v.

N. W. MARTIN AND BROTHERS, INC.

Docket No. A-18-8

August 10, 1985

CIRCUIT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronholt, Assistant Commonwealth's Attorney, for the
Plaintiff

J. Hatcher Johnson, for Defendant
Before the Honorable Robert M. Wallace, Judge

Disposition: Final, by trial.

Nature of the Case: Citations were issued for serious violations of VOSH 1926 Standards.

ORDERS

On August 10, 1984, came the plaintiff, by counsel, the Commonwealth's Attorney for this jurisdiction, and the defendant, by counsel, for a trial de novo pursuant to Section 40.1-49.5, on proceedings initiated by plaintiff's summons issued pursuant to Section 40.1-49.4E.

Upon consideration of the evidence, and argument of the parties, the Court finds as follows:

1. On September 19, 1983, a representative of the plaintiff inspected the roof work being done by defendant at the Byrd Field Flight and Operations Center in Henrico County.

2. Based upon the plaintiff's representative's inspection of the worksite, a citation for violations of the Virginia Occupational Safety and Health 1926 Standards for Construction was issued.

3. The plaintiff's representative found three serious infractions of the 1926 Standards:

1. 1926.500(g)(1) Employees engaged in built-up roofing work on low-pitched roofs with a ground to eave height greater than sixteen feet were not protected from falling by using one of the methods described in 29 CFR 1926.500(g)(1)(i) through (iii) at all unprotected sides and edges of the roof:

- (a) Workmen were engaged in placing built-up roofing materials (Bitumen and mineral aggregate) with fall hazard of 38'-0" at north and south roof edges without fall protection.
2. 1926.500(g)(5) Employees working in a roof edged materials handling or a material storage area on a low-pitch roof with a ground to eave height greater than sixteen feet were not protected from falling by the use of motion-stopping-safety system (MSS system) along all unprotected roof sides and edges:
- (a) Workmen were engaged in hoisting materials from ground level to roof at buildings south roof edge without the use of fall protection system. Fall hazard of 38'-0".
3. 1926.500(g)(6) (ii) The employer did not assure that employees engaged in built-up roofing work on low-pitched roofs with a ground to eave height greater than sixteen feet had been trained and instructed in the areas specified in 29 CFR 1926.500(g)(5)(ii)(a) through (f):
- (a) All workmen engaged in roof work on building with a roof surface of 120 feet x 152 feet with fall hazard of 38'-0" and two areas 30 feet x 130 feet with fall hazard of 13'-0" were not trained to the extent that they understood fall protection requirements.

4. The violations were deemed to be "serious" in nature pursuant to Section 40.1-49.3.5 of the Code, were grouped due to their similarity and a \$350.00 penalty was assessed.

5. The Court finds that the Commonwealth did not prove there was a violation of 1926.500(g)(6)(ii); accordingly, that portion of the citation is VACATED.

6. The Court finds in favor of the plaintiff and ORDERS the serious violations of 1926.500(g)(1) and 1926.500(g)(5) be affirmed.

7. The Court ORDERS the proposed penalty in this matter be reduced by 1/3 and that the penalty imposed for the affirmed violations be set at \$233.00.

8. The Court further orders this order be posted for three working days at a conspicuous place where notices to employees are normally posted in accordance with Section 40.1-51.1(g) and Section 10 of the Virginia Occupational Safety and Health Administrative Regulations Manual.

9. The clerk shall forthwith mail a certified copy of this order to counsel for defendant, J. Hatcher Johnson, Esquire, White & Blackburn, 300 West Main Street, Richmond, Virginia 23220, and Virginia Department of Labor and Industry, Virginia Occupational Safety and Health Program, Post Office Box 12064, Richmond, Virginia 23241.

ENTER this 6th day of September, 1984, nunc pro tunc for August 10, 1984.

COMMONWEALTH

v.

SC CONSTRUCTION, INC.

Docket No. F11-84-16593

October 29, 1984

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Melinda S. Norton, Assistant Commonwealth's Attorney, for
the

Plaintiff.

Raymond G. Curry, Jr., President, SC Construction, Inc., for
Defendant

Before the Honorable Robert M. Hurst, Judge

Disposition: Final, by trial

Nature of the Case: Serious violation issued for violation
of Personnel Protective Equipment Standard 1926.28(a).

ORDER

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

1. Plaintiff agrees to the dismissal of the other than
serious violations of 1926.500(e)(1)(ii) and 1926.302(b)(7)
for which no penalty was assessed.

2. The serious violation of 1926.28(a) is affirmed,
but the assessed penalty of \$240.00 is modified to \$50.00.

3. The Defendant agrees to:

a. withdraw its Notice of Contest;

b. pay the penalty in full pursuant to this
Agreement;

c. post a copy of this Order for three working
days or until abatement of the violation
whichever period is longest.

WHEREFORE, in accordance with the terms of this Order
and pursuant to Section 40.1-49.4 of the Code of Virginia,
it is

ADJUDGED ORDERED AND DECREED that the Defendant pay unto the Clerk of this Court the penalty assessed at \$50.00 and the Clerk transmit within 10 days of entry of the Order a copy thereof to the VOSH Program c/o Commissioner of Labor & Industry, 205 North 4th Street, Richmond, Virginia 23219.

The funds collected as a civil penalty pursuant to this Order shall be forwarded to the Commissioner of Labor & Industry for deposit as provided by statute.

Enter nunc pro tunc October 25, 1984.

COMMONWEALTH

v.

A. A. BEIRO CONCRETE COMPANY, INC.

Docket #84-16439

December 4, 1984

GENERAL DISTRICT COURT OF FAIRFAX COUNTY

Raymond Morrongh, Assistant Commonwealth's Attorney, for the
Plaintiff

John F. Anderson, for Defendant
Before the Honorable Richard T. Horan, Judge

Disposition: Final, by trial.

Nature of the Case: Citations were issued for violations of
VOSH Standards 1926.651(c) and 1926.100(a).

ORDER

Finding of Facts

On May 1, 1984, at 7201 Lochport Place, in the County of Fairfax, the defendant's foreman and three employees were observed working without hard hats in an excavation running east to west with a 12" interior wall form set up to pour concrete; 2½' clearance on the north side, 4' on the south side, 7' deep on north side, 7½' on south side, 32' long.

The defendant was issued a serious citation for an alleged violation of 1926.651(c) with a penalty of \$350.00 and an other-than-serious citation for an alleged violation 1926.100(a).

Conclusion of Law

Citation 1: 1926.651(c) requires the walls or faces of excavations in which employees are exposed to danger of moving ground be guarded by a shoring system, sloping of the ground or some other equivalent means.

As determined by the facts and applicable definitions found at 1926.653, this court finds the trenching standards at 1926.652 should have been cited for the conditions in question and thus vacates the serious violation of 1926.651(c) and the assessed penalty.

Citation 2: 1926.100(a) requires that employees working where there is a danger of head injury to be protected by protective helmets. Three employees were working in the above referenced trench with no hard hats and there was a danger of falling dirt, rock, etc. This court affirms the other-than-serious citation of 1926.100(a) as issued. No penalty is assessed.

FINAL ORDER

THIS CAUSE came on for trial on the 4th day of December 1984, and following the presentation of the Commonwealth's evidence the defendant made a Motion to Strike the evidence as to Citation Number 1 alleging a violation of 29 C.F.R. Section 1926.651(c) and said Motion was argued by counsel. It appearing to the Court that Defendant's Motion to Strike as to Citation Number 1 should be granted and that defendant thereafter withdrew its objection to Citation Number 2 alleging a violation of 29 C.F.R. Section 1926.100(a) it is hereby

ADJUDGED, ORDERED AND DECREED:

1. That Citation Number 1 alleging a violation of 29 C.F.R. Section 1926.651(c) shall be, and it hereby is, VACATED.
2. That Citation Number 2 alleging a violation of 29 C.F.R. Section 1926.100(a) shall be, and it hereby is, AFFIRMED.

ENTERED this 4th day of December 1984.

COMMONWEALTH

v.

EARL A. WATTS, T/A WATTS BUILDING SUPPLY

Docket No. _____

February 4, 1985

GENERAL DISTRICT COURT FOR THE COUNTY OF HALIFAX

Carol Gravitt, Assistant Commonwealth's Attorney, for the
Plaintiff

Earl A. Watts, for the Defendant
Before the Honorable I. D. Sugg, Judge

Disposition: Final, by trial

Nature of the Case: Citation issued for willful violation
of Excavation Standard 1926.651(c)

ORDER

This matter is before the Court upon application of the Department of Labor and Industry filed November 19, 1984, pursuant to Virginia Code Section 40.1-49.4, for affirmation of a contested Occupational Safety and Health Citation, upon proper notice to the defendant, and upon agreement of the parties to resolve this matter by the terms set forth in this Order.

Upon agreed representations of the parties, the Court makes the following findings:

1. The plaintiff, after inspection, issued a timely citation (VOSH No. L7544-042-84) on October 26, 1984, alleging violation of the Virginia Occupational Safety and Health laws, standards or regulations; specifically that defendant failed to adequately shore or protect an excavation site adjacent to Highway 501 North of the Town of Halifax, Virginia, exposing employees to serious danger and risk;

2. The defendant was an independent contractor working for Southern Electro Mechanical, and accepts responsibility for the health and safety of the employees on the excavation site.

3. The violation involved is properly categorized as serious, rather than willful, as alleged in the attached citation; and

4. That, by entering into this agreement, the defendant does not admit to any other civil liability arising from such violation.

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

ADJUDGED, ORDERED AND DECREED

1. That the violation cited in the citation attached hereto is hereby affirmed;

2. That the defendant is hereby ordered to abate the violation immediately if it still exists and to refrain from any similar violation in the future;

3. That judgment is hereby granted in favor of the plaintiff against the defendant for \$400.00 as civil penalty for this violation.

The Clerk is hereby directed to furnish certified copies of this Order to the Commissioner of Labor and Industry, to the Commonwealth's Attorney for Halifax County and to the defendant.

COMMONWEALTH

v.

DAVIS ELECTRICAL CONSTRUCTORS, INC.

Docket Np/ C-84-62

March 13, 1985

GENERAL DISTRICT COURT FOR THE COUNTY OF BATH

Greg Mooney, Special Prosecutor, for the Plaintiff
Carl Corruth and Boyard Harris, for the Defendant
Before the Honorable William W. Carson, Sr., Judge

Disposition: Final, by trial

Nature of the Case: Citation issued for violation of the Virginia General Duty Clause, Virginia Code Section 40.1-51.1(a).

ORDER

A hearing was held in the Bath County General District Court on March 13, 1985, to determine whether or not the defendant had violated Title 40.1-51.1(a) CODE OF VIRGINIA, in that the defendant failed to install a feeder cable six inches or more below the surface of the roadway.

The evidence established the following facts:

Davis Electrical Constructors, Inc., was a subcontractor for Daniels Construction Company and worked on the Bath County Pumped Storage Project.

Davis installed a feeder cable under a service roadway at some stage during the progress of the project but the exact date was not proven.

The feeder cable was enclosed inside a four-inch conduit which was inserted into a six-inch conduit but was not fastened. It was established that the four-inch conduit separated from the six-inch conduit at a point where the feeder cable came out from under the road. The conduit was broken, and a sharp piece of the pipe penetrated the core of the feeder cable causing the ground to become charged with electricity. This resulted in the death of an employee who was walking in the area in water or on wet soil. There was no formal proof presented as to the death of the employee or causes of death except for surmises by another employee, who testified that he felt the electrical shock or current himself.

The Commonwealth called three witnesses who testified as follows:

David A. Miller, employed by OSHA as an inspector with wide experience in inspecting work sites, inspected the site in Bath County after being notified of the accident. He arrived on site for inspection on March 22, 1984, following the accident date of March 19, 1984. He found one area of exposed feeder cable with a broken conduit reflected in photographs introduced as exhibits. He could not testify as to the condition of the site prior to his inspection, and apparently sand had been removed from the area before his arrival.

After a thorough inspection of the site, interviews, and discussions, he returned to his office and concluded that there had been no violations that he could prove against the defendant. Mr. Miller so notified the parties.

Subsequent to these events, a civil suit was instituted or planned, and the father of the decedent produced a witness named John Earl Bransford of Lewisburg, West Virginia. Following statements made by Mr. Bransford, a citation was issued against the defendant as previously detailed as the issue in this hearing.

John Earl Bransford stated that he had been a former employee of Davis Electrical Company; at present an unemployed resident of Lewisburg, West Virginia. He had helped install the feeder line. He did not think it was installed properly, due mainly to the use of the unsecured four-inch conduit being inserted into the six-inch conduit. He further stated that the area where the feeder line came out from under the road, the cable was not covered properly, and he advised the foreman that concrete should be put over this area. He was told by the foreman that such action was not necessary.

Carl Wilcher testified that he lived in Craigsville, Virginia, and was employed at the Bath County project by Daniels Construction Company from 1979 to 1983. He was quite familiar with the area which is the subject of this inquiry. He described the road as a service road, heavily used by trucks, Euclids, and other heavy equipment. He stated that the road had been graded down on occasions to remove pot holes. His testimony established that the area was close to a gate used by employees, and that he had witnessed the accident of the decedent. He stated that the decedent, a Mr. Lewis, said that he was shocked. Mr. Wilcher testified that he felt the electrical shock himself while assisting the decedent.

The only issue before the court is whether or not the feeder cable was buried the proper depth under the road, and whether or not the defendant knew or should have known that it had become illegally exposed.

The case is void of any evidence as to the depth of the feeder cable under the roadbed itself. Where the cable emerged from beneath the road there is some evidence that it became exposed. Most of the evidence showed the problem to be a separation of the four-inch and six-inch conduits. The defendant is not charged with that particular violation.

It is the decision of the Court that there was insufficient credible evidence to establish a violation as charged in the citation issued by the Virginia Department of Labor and Industry. The Court finds in favor of the defendant and dismisses said citation.

COMMONWEALTH

v.

INTERSTATE PROPERTIES, INC.

Docket No. _____

March 21, 1985

GENERAL DISTRICT COURT FOR THE CITY OF WINCHESTER

David S. Whitacre, Assistant Commonwealth's Attorney, for
the Plaintiff
Before the Honorable David G. Simpson, Judge

Disposition: Dismissal.

Nature of the Case: Citation issued for violation of the
Virginia General Duty Clause, Virginia Code Section
40.1-51.1.(a).

The citation was issued for aluminum scaffolding being mounted on a manlift device. A subsequent engineering evaluation determined that the structure had provided adequate safety for using employees. Based on this evaluation, VOSH withdrew the citation and requested dismissal of the case.

ORDER

On Motion of the Plaintiff by counsel, David S. Whitacre, Assistant Attorney for the Commonwealth for the City of Winchester, Virginia, and for good cause shown, the action in the above styled cause, pursuant to Section 40.1-49.4.e. this cause is hereby dismissed as to the said Defendant.

Enter this 21st day of March, 1985.

COMMONWEALTH

v.

MILLER'S PAINTING

Docket No. _____

May 29, 1985

GENERAL DISTRICT COURT OF NORFOLK

John R. Doyle, III, Assistant Commonwealth's Attorney, for
the Plaintiff

Allen E. Miller, for Defendant

Before the Honorable Fred E. Martin, Jr., Judge

Disposition: Final, by trial.

Nature of the Case: Serious Citations issued for violations
of VOSH Standards 1926.450(a) and 1926.556(b)(2)(i).

ORDER

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

1a) At the job site, 110 E. 22nd Street, Norfolk,
Virginia, an employee used an aluminum ladder in the bucket
of an aerial lift truck on the south side of the building in
proximity to, and contracted, high voltage lines (35,000
volts) in violation of Virginia Code Section
1926.450(a)(11).

1b) At the job site, 110 E. 22nd Street, Norfolk,
Virginia, an aerial lift, mounted on a C-50 Chevrolet truck
(license No. TG 80-722), was not inspected and tested to
determine if it was in safe operating condition in violation
of Virginia Code Section 1926.556(b)(2)(i).

2) 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>
1) Sec.1926.450 (a)(11)	Serious	\$350.00	\$100.00
2) Sec.1926.556 (b)(2)(i)	Serious	\$350.00	\$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.

3) Defendant agrees and stipulates to the following:

(a) That the recommended penalties amounting to two hundred (\$200.00) will be paid in full pursuant to this Order:

(b) That complete abatement of the violation 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.

4) 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 Notices 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 two hundred dollars (\$200.00).

It is further ORDERED that pursuant to the provision of Section 40.1-49.4 of the Code of Virginia (1950), as amended, the Clerk of this Court shall 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 two hundred dollars (\$200.00) to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

W. T. CURD, JR., CONTRACTORS, INC.

Docket #V-85 2507

June 18, 1985

GENERAL DISTRICT COURT OF CHESTERFIELD COUNTY

Frederick G. Rockwell, III, Assistant Commonwealth's
Attorney, for the Plaintiff
Christopher J. Habenicht, for the Defendant
Before the Honorable Robert D. Loney, Judge

Disposition: Final, by trial.

Nature of the Case: Citations issued for Violations of VOSH
Standards 1910.219 (b) (2), (d) (1), (e) (1) (i), (e) (3) (i);
1910.157 (c) (4); 1910.252 (a) (2) (ii) (b), (a) (2) (iv) (c)

FINDINGS OF FACT

Came this day the Commonwealth of Virginia, by counsel,
and the defendant, by counsel, and upon consideration of the
evidence offered by both parties and the arguments of
counsel, the Court finds:

- (1) That the violations listed in citation #1 were vio-
lations of the applicable VOSHA Regulations;
- (2) That the violations cited in citation #1 have been
abated; and
- (3) That the defendant does not contest citation #2.

CONCLUSIONS OF LAW

Upon consideration of the evidence, the arguments of
counsel and the applicable law, the Court hereby ADJUDGES,
ORDERS and DECREES as follows:

- (1) That the violations listed in citation #1 are
classified as "other" and are not "serious" violations as
defined by the Virginia Occupational Safety & Health Admini-
strative Regulations Manual.
- (2) That the penalty of \$200 originally imposed for
citation #1 is affirmed.

The Court further ORDERS that the Clerk forthwith mail certified copies of this Findings of Fact and Final Order to each of the parties and that the defendant shall forthwith post a copy of this Order at the site of alleged violations for three (3) working days.

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