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, 1989 - JUNE 30, 1990

VOLUME XI

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, 1989 through June 30, 1990, 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 of 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 Board 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

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. V88055792

v.

OWEN PATTERN FOUNDRY AND MANUFACTURING COMPANY
Defendant

AGREED ORDER

This day came the plaintiff by counsel, Commonwealth's Attorney for the city of Norfolk, and the defendant by counsel, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on June 14, 1988.

Plaintiff and Defendant now agree that, in consideration for a reduction in penalty, Defendant will withdraw its contest of the following:

1. Citation 1, item 1a, a serious violation of Section 1910.1025(c)(1) of the VOSH Standards for the General Industry (providing for employee protection from over exposure to lead). Defendant was originally assessed a penalty of $490.00, which Plaintiff has reduced to $200;

2. Citation 2, item 1, a willful violation of Section 1910.1025(j)(2)(i)(a) of the VOSH Standards for the General Industry (requiring biological monitoring in the form of blood sampling and analysis for lead to be conducted at least every 6 months for employees who were or could have been exposed to lead above the action level for more than thirty (30) days per year). Plaintiff has reduced the willful violation to a serious violation, and has reduced the originally assessed penalty of $3,000 to $500.

Plaintiff agrees to reduce the total penalty assessed for these violations from $3,640 to $700.

3. Defendant has withdrawn its notice of contest to the above-mentioned citations, admits liability under VOSH Standards mentioned, and certifies that the cited conditions have been abated.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, item 1a, and Citation 2, item 1 be AFFIRMED as serious violations with a total penalty of $700.00. Judgment is hereby granted for the Plaintiff against the Defendant in the amount of $700.00 as civil penalty for the serious violations.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 8/16/89

INDUSTRIAL SAFETY

PART II

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Docket No. V89 10129

v.

GEORGIA-PACIFIC CORPORATION,
Defendant

CONSENT ORDER

Plaintiff Commissioner of Labor and Industry for the Commonwealth of Virginia, hereinafter referred to as the "Commissioner" and Defendant Georgia-Pacific Corporation, hereinafter referred to as the "Defendant" or "Georgia-Pacific," stipulate and agree as follows:

1. (a) Based upon a reevaluation of the evidence, the Commissioner has determined that insufficient evidence exists to sustain a finding of willfulness in this case. Therefore, the Commissioner hereby modifies citation number 2 by withdrawing the classification of "willful," and reclassifies the alleged violation as "serious."

(b) Based on a reconsideration and reevaluation of the statutory factors upon which the proposed penalties are determined, and upon Georgia-Pacific's demonstrated, prompt abatement and compliance with all of these citations, and machine guarding compliance expenditures exceeding $23,000, the Commissioner hereby reduces the penalties for these citations as follows:

Citation No.	Item No.	Amended Penalty
1	1 through 10	$3,942.00
2	1	$ 810.00
[3	1 through 20	The parties agree no penalty is appropriate.]

2. Respondent hereby withdraws its notice of contest to the citations and notification of proposed penalties, as amended herein. In support of its withdrawal, respondent states:

(a) That the plant and equipment have been sold to a third party following this inspection, and that to the best of Defendant's knowledge, research, and maintenance documents, all items of these three citations were abated or complied with prior to said sale and this Consent Order. Defendant reserves its rights to petition for modification of abatement and/or to apply for variances as allowed by the Act, but does not

anticipate any need for same. Defendant shall also have the benefit of any future changes of clarifications in the here cited machine guarding or safety regulations.

(b) That a copy of this Consent Order will be forwarded to the new plantsite and machinery corporate owner for posting on the plantsite bulletin board for a period of 30 days.

(c) Payment of the above stated compromise penalty is to be made at the time of signing of this Agreement or within thirty (30) days thereof, at the option of Defendant.

3. Neither this Consent Order nor compromise nor penalty payment nor the consent to entry of a final order by the General District Court pursuant to this Consent Order constitutes any admission by the Defendant of violation of the Virginia Occupational Safety and Health Act (the "Act") or regulations or standards promulgated thereunder, or of any Federally referenced standard. Pursuant to Virginia Code §40.1-51.3:2 neither this Consent Order nor any order of the General District Court entered pursuant to this agreement shall be offered, used, or admitted in evidence in any proceeding or litigation of nay action to recover for personal injury or property damage, other than proceedings brought by the Commissioner directly under the Act itself. Defendant reserves its right to contest any subsequent enforcement or citations. The parties acknowledge that payment of any compromise amount herein is made without prejudice to Defendant and is not a form of retribution in any manner.

4. Defendant, by entering into this Agreement, does not admit any wrongdoing or violations of the Virginia Occupational Safety and Health Act, or any regulation or standard issued pursuant thereto.

5. In entering into this Agreement, Defendant states that the alleged violations contained in the fully contested Bill of Particulars and Citations were not intentional, knowing, or a voluntary disregard for the requirement of the Virginia Occupational Safety and Health Act, its standards, regulations, or guidelines. Defendant maintains that it has not acted unreasonably nor has it acted in any way other than in good faith with respect to the recording of its injuries and illnesses. Defendant maintains its award-winning safety program continues to be one of the best in the industry and country.

6. The parties have entered into this settlement as a compromise. It is intended to avoid the expense of litigating all of the issues arising from the inspection and issuance of citations. It has been entered into largely without regard to the possible outcome of litigation on many individual issues. In order to secure the compromise and avoid so far as possible further litigation it is agreed that:

(a) Defendant's acceptance of the citation respecting any individual item shall not be relied upon as a basis for subsequent issuance of willful-designated citations. None of the withdrawn items may be utilized as the basis of any future citations of any classification.

Neither this Consent Order, nor any statement, commitment, or position taken by any party hereto shall prejudice future proceedings, if any, initiated under the Act.

7. The Commissioner and Defendant agree that based on the foregoing efforts and representations of Defendant, an order may be entered of record showing that Defendant has withdrawn its Notice of Contest and entering the citations and notification of proposed penalties, as amended herein, as a final order, which order is deemed complied with be Defendant.

8. Further, each party hereby agrees to bear his or its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

ENTERED: 2/23/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF CHESAPEAKE

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Docket No. V89-7615

v.

HIGGERSON-BUCHANAN, INC.
Defendant

AGREED SETTLEMENT ORDER

Comes now the plaintiff, Commonwealth of Virginia, by counsel, and the Defendant by counsel, and in order to provide for the safety, health and welfare of Defendant's employees and to conclude the matter without the necessity for further litigation, it is hereby stipulated and agreed:

The defendant is before this Court pursuant to Section 40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by the plaintiff on January 25, 1989. This citation alleges serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction [sic] Industry, as follows:

> Citation 1, item 1a--Section 1910.177(c)(2): The employer did not assure that each employee demonstrated his ability to safely service rim wheels by effective performance of all tasks listed in 29 CFR 1910.177(c)(2)(i) through (viii); and
>
> Citation 1, item 1b--Section 1910.177(e)(1): Wheel components on multi-piece wheels were not matched in accordance with the Multi-Piece Rim/Wheel Matching Chart or the applicable rime manual.
>
> A penalty of $630.00 was proposed for these violations.

Plaintiff has agreed to vacate the serious violation of Citation 1, item 1a [§1910.177(c)(2)]; the serious violation Citation 1, item 1b [§1910.177(e)(1)] will remain. The proposed penalty of $630.00 will not be reduced.

Defendant has abated the aforesaid violation and agreed to pay the penalty within fifteen (15) days of the entry of this Order.

By entering into this agreement, the defendant does not admit to any civil liability arising from said violation other than for the purposes of future enforcement under Title 40.1 of the Code of Virginia.

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

ADJUDGED, ORDERED AND DECREED that the Virginia Occupational Safety and Health (VOSH) violation of Section 1910.177(c)(2) is vacated and the violation of Section 1910.177(e)(1) is affirmed as a Serious violation. This violation having been abated, judgment is granted for the plaintiff against the defendant in the amount of $630.

Let the Clerk transmit certified copies of this Order to all counsel of record and to the Commissioner of Labor and Industry, 205 North Fourth Street, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 7/13/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. GV89-40782

v.

M & G ELECTRONICS CORPORATION,
Defendant

AGREED ORDER

This day comes the plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Virginia Beach, and the defendant, by its Controller, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on August 8, 1989.

No employee or employee representative appeared in this matter or has filed a notice of contest.

The cited item has been abated.

Plaintiff and Defendant now agree that Defendant will withdraw its contest of Citation 1, item 1, a serious violation of Virginia Occupational Safety and Health Standards for General Industry § 1910.151(c), requiring provision of a suitable eye wash facility. Defendant also withdraws its contest of the $240.00 penalty.

Pursuant to Virginia Code § 40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party or the judicial assessment of a civil penalty under Title 40.1 of the Code shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any person. This agreement may be used for future proceedings and enforcement actions pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, item 1 be AFFIRMED as a serious violation with a penalty of $240.00. Judgement is hereby granted for the Plaintiff against the Defendant in the amount of $240.00 as civil penalty for the serious violation.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 1/10/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-89956

v.

RICHMOND NEWSPAPERS, INC.,
Defendant

ORDER

On March 1, 1990 came the plaintiff by an Assistant Commonwealth's Attorney for the City of Richmond, to be heard on the Virginia Occupation Safety and Health ("VOSH") citation issued on July 20, 1989. After consideration of the evidence, the Court makes the following findings of fact and conclusions of law:

1. Following an inspection by plaintiff's inspector, Cary Letellier, on May 26, 1989, of a construction site at Fourth Street, between Grace and Franklin Streets in the City of Richmond, Virginia, plaintiff issued citations to the defendant, alleging violations of VOSH regulations;

2. The first citation alleged a serious violation of sections 1926.21(b)(2) and 1926.100(a) of the VOSH Standards for the Construction Industry, failure to wear a hard hat and was grouped into a single violation, and proposed a penalty of $540.00;

3. The amended citation added a violation of section 1910.132(a) of the VOSH General Industry standards and again alleged failure to wear a hard hat in the area of overhead crane operations;

4. Plaintiff amended its Bill of Particulars to charge only the violation of the 1910.132(a) standard;

5. Plaintiff's evidence failed to establish that violations of the above standards existed for the reasons set out in the court's opinion, which is attached hereto.

The Court finds for the defendant on said citations and instructs the Clerk to mail certified copies of this order to Thomas Shaia, Esquire, Assistant Commonwealth Attorney, 800 E. Marshall Street, Room 205, Richmond, Virginia 23219 and Alexander Wellford, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219.

ENTER: 4/19/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No. 89-18165

v.

SOUTHERN IRON WORKS, INC.
Defendant

AGREED ORDER

Comes now the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Fairfax, and the Defendant, in order to provide for the health, safety, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, do stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code § 40.1-49.4(E) to be heard on Defendant's contest of a Virginia Occupational Safety and Health (VOSH) Citation, arising from inspection number 105669543, and issued to Defendant by Plaintiff on March 13, 1989, for violation of several VOSH Standards for General Industry regarding machine guarding.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Pursuant to Defendant's agreement to adopt additional safeguards and procedures listed below, Plaintiff and Defendant further agree to the following modifications of the citation at issue:

Citation 1, item 1 -- a serious violation of Section 1910.212(a)(1) of the VOSH Standards for General Industry, requiring machine guards and protective devices on a Webb Plate Roll which did not adequately protect employees from the ingoing nip point. This violation has been reduced to an other than serious and the proposed penalty of $350.00 withdrawn.

Citation 1, item 2a, a serious violation of Section 1910.212(a)(3)(ii), requiring machine guarding on the Peddinghaus Iron Worker and the Cincinnati Hydraulic Press Brake which did not effectively provide protection to employees at the point of operation. This violation has been reduced to an other than serious.

Citation 1, item 2b, a serious violation of Section 1910.219(f)(1), which requires guarding on exposed gears. This violation has been vacated due to lack of employee exposure. The proposed penalty of $420.00 for these grouped violations has been withdrawn.

Citation 1, item 3a, a serious violation of Section 1910.217(c)(1)(i), where the employer failed to provide adequate machine guards or protective devices at the point of operation of two Thomas Punch Presses. This violation has been reduced to an other than serious.

Citation 1, item 3b, a serious violation of Section 1910.217(e)(1)(i), where the employer failed to keep records indicating that required tests and inspections of two Thomas Punch Presses were performed and maintained by the employer. This violation has been reduced to an other than serious.

Citation 1, item 3c, a serious violation of Section 1910.217(e)(1)(ii), where the employer failed to inspect and test two Thomas Punch Presses at least weekly to insure the presses were equipped with an anti-repeat feature. This violation has been reduced to an other than serious and the proposed penalty of $420.00 for these grouped violations has been withdrawn.

Citation 1, item 4, a serious violation of Section 1910.304(a)(3), where the Employer was found to have an improperly wired electrical outlet with an energized ground terminal. This violation remains a serious and the penalty is $490.00.

A total penalty of $490.00 is now proposed for this citation.

Plaintiff and Defendant agree that, in consideration for Plaintiff's agreement to modify several portions of the above VOSH Citation and Notification of Penalty, and upon Defendant's performance of the conditions and requirements listed herein, Defendant withdraws his notice of contest and certifies that all cited conditions have been abated as of thirty days from the date this order is entered.

Plaintiff agrees that the above violation of Section 1910.304(a)(3) in Citation 1, Item 4 shall not form the sole basis, absent a willful disregard by the employer, for issuing a willful citation for the same regulation in any future citation issued against the Defendant.

Defendant agrees by signing this Agreed Order that it is providing written assurance to Plaintiff and to the Court that it will continue to provide the safeguards described herein, Defendant agrees to provide the following safeguards:

1. Regarding Citation 1, Item 1, the Defendant will require that the Webb brand plate roll be operated by at least two employees, with one employee remaining at the controls at all times, and that all employees operating the plate roller be instructed to keep hands clear of the rollers and ingoing nip points, and that highly visible notices shall be posted near the plate roller warning employees that the machine must be operated by at least two employees.

2. Regarding Citation 1, Item 2a, the Defendant will instruct its employees to operate the punch side of all Peddinghaus Iron Workers only with its adjustable stripper and front guard in place and properly adjusted to effectively guard the point of operation; the Defendant also agrees to provide all employees operating the Iron Worker with instruction and training in the proper use and adjustment of the adjustable stripper and front guard.

3. Regarding Citation 1, Item 2a, the Defendant agrees to instruct its employees to operate the Cincinnati Hydraulic Press Brake by foot pedal only when authorized by a foreman or supervisor, and to provide instruction and training on the safe operation of the Cincinnati Hydraulic Press Brake to all employees who are directly or indirectly engaged in its operation or use. Such training shall particularly emphasize minimizing employee exposure to the point of operation, both during the set-up phase of operation and while energized thereafter. Defendant further agrees to maintain appropriate descriptive records of all such instruction and training, including the names of employees so instructed or trained and the date of such training. Defendant agrees to provide documentation of its compliance with this provision to any VOSH Compliance Safety and Health Officer making such demand in the course of any VOSH inspection.

4. Regarding Citation 1, Item 3a, Defendant agrees to operate its Thomas Punch Presses with point of operation guards and/or awareness barriers restricting access to three sides of the punch, and that the punch press machines' initiation of a stroke shall always be operated by foot pedal so as to operate the punch in a single-stroke manner, and that the operator of the press shall maintain a position a safe distance from the sole unguarded side when initiating the stroke of the machine.

5. Regarding Citation 1, Items 3b and 3c, Defendant agrees to periodically inspect and maintain records of maintenance work on power presses, and to inspect and keep records, for every time operated or on a weekly basis, whichever is a longer period, noting especially the condition of the pedal-controlled single stroke mechanism of its Thomas Mechanical Power Presses, and further agrees to provide these records to any VOSH Compliance Safety and Health Officer making such demand in the course of any VOSH inspection.

Plaintiff agrees that if these safeguards are provided and maintained as described herein, that Defendant has complied with current VOSH requirements for guarding the machines listed above, according to regulations in force at the date this order is entered.

Pursuant to Virginia Code § 40.1-51.3:2 in the trial of any action to recover for personal injury or property damage sustained by any party, in which action it is alleged that an employer acted in violation of, or failed to act in accordance with, any provision of this chapter or any state or federal occupational safety and health standards act, the fact of the issuance of a citation, the voluntary payment of a civil penalty by a

party charged with a violation, or the judicial assessment of a civil penalty under this chapter or any state or federal occupational safety and health standards act, shall not be admissible in evidence.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ORDERED that the above mentioned Citation and Notification of Penalty for violations of Virginia Occupational Safety and Health Standards for General Industry be modified as follows:

Citation 1, Item 1 shall be amended to an Other Than Serious violation with no monetary penalty.

Citation 1, Items 2a and 2b shall be amended to an Other Than Serious violation with no monetary penalty.

Citation 1, Items 3a, 3b, and 3c shall be amended to an Other Than Serious violation with no monetary penalty.

Citation 1, Item 4 shall remain as a Serious violation with a monetary penalty of $490.00.

The total monetary penalty shall be $490.00.

The Clerk shall mail certified copies of this order to both parties listed below, and the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

The defendant shall be ordered to post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 4/26/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF FREDERICKSBURG

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-9065

v.

L. WHITE & COMPANY, INC.
Defendant

ORDER

I find the following:

Alleged Serious Violations

Complaint 1 - Section 1926.100(a): Employees working where there was a possible danger of head injuries were not protected by helmets.

Proved.

Workmen for L. White were working overhead of one another, using tools and equipment. Furthermore, they were in the proximity of masons working at heights with tools, equipment and masonry. Defendant, has suggested that the failure to use protective headgear might be employee misconduct. It is found to be the result of improper supervision.

In the brief of the Department of Labor and Industry, several cases are cited which show the standard [1926.100(a)] applies wherever there is a "possible danger". Thus it is reasonable to expect hard hats to be used where, as it has been proved, one worker is installing bars or braces overhead another worker or where workers are in the vicinity of brick masons working on walls.

The violation of the standard is clear; therefore, let us look at the question of seriousness. The commissioner has alleged this to be a serious offense, yet, when one reviews the cases cited by the Commissioner, it appears otherwise.

In Donovan v. Adams Steel Erection, Inc., 766 F2d 804, 12 OSCH [sic] 1393, 1398, 1399, (3rd Cir. 1985), steel beams were being installed at the 40 foot level of a building. The court found a "zone of danger" at the entire second floor and third level, yet the failure to wear hard hats at the lower levels were [sic] adjudged to be a "non-serious offense".

In another case cited, Par Plumbing, Inc., 2 OSHC 3212 (1974), a violation was considered "non-serious" where an employee on the 28th floor was exposed to the "hazard of either material or work personnel falling upon him through an opening" of a 31 story high-rise apartment.

The L. White building was only one story high and the "zones of danger" were limited to the areas where brick masons were working on a side wall and where L. White employees were working on ladders above other employees. Photographs showed the building to be under roof.

These cases provide a far better gauge for the court in making a ruling than the formula prescribed by the commissioner. This is found to be a non-serious violation. Penalty is set at $25.00.

Complaint 2A - Section 1926.404(b)(1)(ii): Where an assured equipment grounding program was not utilized, receptacles were not protected with ground-fault circuit interrupters when on a two-wire, single-phase portable or vehicle-mounted generator rated not more than 5 kw, or where the circuit conductors of the generator were not insulated from the generator frame and all other grounded surfaces:

(a) South side of the stress bay, a Pow'r Gard 3500 portable generator, being used to energize portable powered tools, did not have a ground fault circuit interrupter installed nor were the circuit conductors insulated from the generator frame.

Not proved.

Generator, according to expert was in proper operating order and was properly equipped.

Complaint 2B - Section 1926.404(f)(6): The path to ground from circuits, equipment, or enclosures was not permanent and continuous:

(a) South side of the building, a 100 ft. orange extension cord, being used to energize a red drill, had a missing ground pin.

Proved.

This is found to be a "non-serious" violation. Penalty is set at $25.00.

Complaint 3 - Section 1926.500(b)(1): Floor openings were not guarded by standard railings and toe boards or covers as specified in paragraph (f) of this section:

Not proved.

Neither the facts nor the case law appear to place these depressions into the category of "Floor openings". They are 6" or less in depth and are situated on the ground so that materials and workmen can't fall through them onto a lower level. In National Industrial Contractors, Inc., 10 OSHC 1096, (1981), Review Commission Judge John J. Morris had some difficulty in holding a 24 inch deep unguarded opening as a violation. He nevertheless did so, using a "knee-deep" standard. "Ankle-deep" is not "knee-deep".

OTHER VIOLATIONS

No. 1: ARM Section 11.3.A.: The Job Safety and Health notice was not posted to inform employees of the protection and obligations provided in the Labor Laws of Virginia:

(a) Throughout the job site, the Job Safety and Health notice was not posted.

Not proved.

There is adequate evidence that L. White Employees had ample and frequent opportunity to view other posted notices and were informed of the notice by the employment process.

No. 2: 1926.102(a)(1): Eye and face protective equipment was not used when machines or operations presented potential eye or face injury:

(A) South side of the building, an employee exposed to possible eye injury during burning operations, was wearing clear goggles in lieu of burning goggles.

Not proved.

There was no evidence that the burning operation in progress provided a light bright enough to require tinted lenses.

No. 3: 1926.150(c)(1)(viii): Portable fire extinguishers were not inspected periodically in accordance with maintenance and use of portable fire extinguishers, N.F.P.A., No. 10A-1970:

(a) South side of the building, in the rear of a 1986 Ford pickup truck, Virginia License Number IOV-359, a 4A-60 B:C fire extinguisher, S/N HW 616490, had not received an annual inspection.

Not proved.

Defendant's evidence was that this extinguisher was less than one year old and that tag had recently been lost.

No. 4A: 1926.152(a)(1): Containers and portable tanks used for the storage and handling of flammable and combustible liquids were not approved:

(A) South side of the building, in the rear of a 1986 Ford pickup truck, Virginia License Number IOV-359, a 5 gallon red can, being used to store diesel fuel to refuel a loadall, was not approved.

Proved.

No. 4B: 1926.512[sic](a)(1): Containers other than approved metal safety cans were used for the handling and use of flammable liquids in quantities greater than one gallon:

(a) South side of the stress bay, a 5-gallon metal can, being used to store gasoline to refuel a generator, was not approved.

Proved.

There is evidence that both of these cans were being used. The fact that one or both of them may have been empty at the time the inspection was made, does not relieve the employer because the evidence was unrefuted that these were being used by the employer for the purpose of carrying gasoline and diesel fuel - both flammable substances.

No. 5: 1926.405(a)(2)(ii)(1): Flexible cords and cables used for temporary wiring were not protected from damage:

(a) South side of the building, two 100-ft extension cords, being used to energize portable powered tools, were lying in and around the walkways, exposing the cords to abrasive damage.

Not proved.

The cords appear to be out of the way of vehicular traffic and appear to be temporarily situated. This is necessary on a construction site.

No. 6: 1926.405(g)(2)(iii): Flexible cords were not used only in continuous lengths without splices or taps:

(a) South side of the building, 100-ft orange extension cord being used to energize a red drill, was spliced.

Proved.

No. 7: 1926.416(e)(1): Worn or frayed electric cords or cables were used:

(a) South side of the stress bay, 100 ft orange extension cord being used to energize a portable power tools had damaged insulation at the male plug.

Proved.

(b) South side of building, a 100 ft. orange extension cord, being used to energize a red drill, had damaged insulation.

Not proved.

(c) South side of job site, a 1986 Ford Pickup truck, Virginia License Number 10V-359, a Hilti Quik Tapper 1100 SN641458K3 had damaged insulation at the plug.

Proved.

No. 8: 1926.501(c): All parts of stairways were not free of hazardous projections.

Not proved.

No. 9: 1926.501(k): The rise height of the stairs were not uniform throughout the flight of stairs.

Not proved.

Accordingly, it is:

Ordered that L. White & Company, Inc. pay penalty in the amount of $50.00 as previously set forth and the costs of this proceeding to the Commissioner of Labor in behalf of Commonwealth of Virginia as provided by law and that the company abate the proved violations herein.

ENTER: 11/10/89

CONSTRUCTION SAFETY

PART III

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CAMPBELL

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 6339-B

v.

ARMSTRONG ELECTRIC COMPANY, INC.
Defendant

ORDER

On July 25, 1989, this case came on to be heard upon the testimony of witnesses and upon the evidence submitted regarding two citations issued to the defendant for alleged violations of Virginia Occupational Safety and Health Standards for the Construction Industry ("VOSH") Sections 1926.451(e)(10), 1926.451(d)(3), and 1926.451(e)(5). The plaintiff has grouped the alleged violations of Sections 1926.451(e)(10) and 1926.451(d)(3) as a single serious violation and has proposed a penalty of $420. The plaintiff has issued a separate citation for the alleged violation of §1926.451(e)(5), has alleged this violation is serious and has sought a penalty of $280. After hearing the testimony of the witnesses and the evidence submitted by the parties, the Court finds as follows:

FINDINGS OF FACT

1. Compliance Safety and Health Officer ("CSHO") James C. Dunn conducted an inspection from November 5 - November 30, 1987 at the construction site located at 9603 Timberlake Road, Lynchburg, Campbell County, Virginia, where the defendant, Armstrong Electric Company, Inc., was working as an electrical subcontractor.

2. Subsequent to the inspection by the plaintiff of the defendant's workplace, the plaintiff issued a timely citation, VOSH No. R8654-091-87 to the defendant, alleging violations of the VOSH standards, requiring abatement of those violations, and proposing civil penalties for the violations.

3. The defendant filed a timely notice of contest.

4. Specifically, the defendant was cited for violation of Sections 1926.451(e)(10), 1926.451(d)(3) and 1926.451(e)(5) of the VOSH Standards for the Construction Industry adopted by the Commonwealth of Virginia pursuant to Sections 40.1-22(5) and 40.1-6(2) of the Virginia Code and §40.1-51.1(a) of the Virginia Code.

5. On April 5, 1988, default judgment was entered against the defendant by the General District Court of Campbell County. Defendant filed a successful motion to rehear and on June 2, 1988, after trial on the merits, the General District Court granted judgment to the plaintiff affirming the citation and penalty.

6. The defendant filed a timely Notice of Appeal to this Court on June 2, 1988.

7. On July 25, 1989, this Court heard the witnesses and evidence submitted by the parties.

8. At the time of the inspection by CSHO Dunn, two employees of the defendant were working from a manually propelled mobile scaffold on the north-west interior of the construction project.

9. The scaffold had a work platform at a height in excess of ten feet and was not equipped with standard guardrails or toeboards as required by §1926.451(3)(10)[sic].

10. The defendant should have known that the scaffold was not equipped with standard guardrails or toeboards.

11. The failure to provide standard guardrails or toeboards was a serious violation of §1926.451(e)(10).

12. The scaffold was equipped with cross bracing or diagonal braces as required by §1926.451(d)(3). While the evidence indicated that one pin to which the cross bracing would normally attach was bent, the plaintiff failed to prove that the defendant knew or should have known of the bent condition of this pin, and the condition was not open and obvious.

13. The end rungs of the scaffold served the function of a fixed ladder and provided access to and exit from the scaffold. Any violation of §1926.451(e)(5) was <u>de minimus</u> at most.

CONCLUSIONS OF LAW

1. The Court finds for the defendant on the alleged violations of Section 1926.451(d)(3) and 1926.451(e)(5) and grants Defendant's Motion to Strike this violation. The defendant substantially complied with the requirements of the standard and any violation of §1926.451(e)(5) was <u>de minimus</u> at most, as serious physical harm or death from a fall was not likely.

2. The Court finds for the defendant on the alleged violation of §1926.451(d)(3) because the scaffold was equipped with cross or diagonal braces and because the evidence failed to establish that the defendant knew or should have known of the bent pin.

3. The Court finds for the plaintiff on the violation of Section 1926.451(e)(10) and imposes a civil penalty of One Hundred Dollars ($100.00) for the serious violation.

4. The objections of the parties are noted with respect to all adverse rulings.

5. The Clerk is directed to forward certified copies of this Order to counsel for the parties and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 11/8/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. V8834549

v.

GEORGE E. BOWSER & SONS TRUCKING COMPANY
Defendant

FINAL ORDER

On September 7, 1988 and May 19, 1989, came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Norfolk, and the defendant, by counsel, pursuant to a summons, to be heard on the defendant's contest of Virginia Occupational Safety and Health (VOSH) citations issued by the plaintiff on April 8, 1988. Upon consideration of the evidence and arguments of the parties, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff's inspector, H. C. McDaniel, Jr., conducted an investigation of an accident that occurred on February 2, 1988, at the Virginia Initiative Plant Site, Hampton Roads Sanitation District, 44th Street Water Treatment Plant, Norfolk, Virginia. DJW Construction, Inc., was the prime contractor on the jobsite. The defendant, G. E. Bowser and Sons Trucking Company was a subcontractor hired to haul fill material on the jobsite and carry the spoils away.

2. Plaintiff issued a citation to the defendant, alleging the following serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry:

   §1926.20(b)(1) - The employer did not initiate and maintain an accident prevention program which included regular inspection of job sites, materials and equipment;

   §1926.601(b)(4) - The employer had in use motor vehicle equipment that had an obstructed view to the rear which did not have a reverse signal alarm audible above the surrounding noise level or an observer signaling it was safe to operate the vehicle in reverse; and

   §1926.601(b)(14) - All defects were not corrected before motor vehicles were placed in service.

3. These violations were grouped as one serious citation with a proposed penalty of $490. Defendant filed a timely notice of contest to the citation.

4. Homicide Detective W. R. Kennedy of the Norfolk Police Department testified that the truck involved in the accident, identified as a 1987 Red Ford dump truck, Virginia License # H/A 33-200, did not have backup alarms and the right side truck mirror was missing. The truck was leased from Bill Bruce Ford by Brenda Johnson.

5. Sherry Christian, a dispatcher for DJW Construction Company testified that a few days prior to the accident, the defendant, George Bowser, telephoned her and instructed her to place four (4) more trucks on the site for hauling. One of the trucks that was sent to the site was the one leased by Brenda Johnson. It was this truck that was involved in the accident.

6. The contract between the defendant and DJW Construction was entered into evidence along with the check that was issued to George Bowser and Brenda Johnson from DJW Construction in the amount of $400. The check was payment for the hauling work that was done at the job site.

7. The defendant testified that he did not enter into a contract with Mrs. Brenda Johnson for hauling that was to be done on the project. Mr. Bowser stated that his trucks were routinely inspected and properly maintained. He further testified that he did not speak to the dispatcher, Sherry Christian and that no one from his company was responsible for placing the trucks on the site. The truck involved in the accident was owned and maintained by Brenda Johnson.

8. Mr. Bowser testified that he received a payment of $2.00 per load of dirt that was hauled to the site. The check that was issued jointly to him and Mrs. Johnson was cashed by Mrs. Johnson. He stated that he did not receive any money from Mrs. Johnson for the loads that were hauled by her trucks.

9. After hearing all of the evidence, the Court determined that the case would be continued until both parties were able to present evidence concerning payment for loads that were hauled to the site.

10. Court was re-convened on May 19, 1989. At that time evidence was introduced that Mr. Bowser was paid only $2.00 per load hauled under his subcontract with DJW Construction. Brenda Johnson received the check in the amount of $400 and did not pay any money to Mr. Bowser. Mr. Bowser was paid by separate check from DJW Construction.

CONCLUSIONS OF LAW

1. After hearing all of the evidence submitted, the court finds in favor of the defendant. The court believes that Mrs. Brenda Johnson was an independent contractor and therefore, the defendant was not responsible for her actions on the job site. The citations are hereby dismissed.

2. The Clerk shall mail certified copies of this order to all parties of record and to the Commissioner of Labor and Industry, 205 North Fourth Street. P. O. Box 12064, Richmond, Virginia 23241.

ENTER: 7/14/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. GV89-19104

v.

BRICKCRAFT MASONRY COMPANY
Defendant

AGREED ORDER

Comes now the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Virginia Beach, and the defendant, in order to provide for the health, safety, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, do stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on December 14, 1988.

No employee or employee representative has appeared in this matter or has filed a notice of contest.

Plaintiff and defendant now agree that, in consideration for a reduction in penalty, defendant will withdraw its contest of the following citations and admit liability therefore, furthermore, defendant certifies that all cited conditions have been abated:

1. Citation 1, violation 1: §1926.100(a), regarding failure to provide hard hats, shall be affirmed as a Serious violation of the VOSH Standards for the Construction Industry with a civil penalty in the amount of $100;

2. Citation 2, violation 1: §1926.451(d)(10), regarding failure to provide guard rails on scaffolds, shall be affirmed as a Repeat violation of the VOSH Standards for the Construction Industry with a civil penalty of $600.

3. Citation 3, violations 1 - 7: §1926.28(a), 1926.102(a)(1), 1926.152(a)(1), 1926.451(a)(13), 1926.602(c)(1)(i), and 1926.602(c)(1)(vi) of the VOSH Standards for the Construction Industry, and §11.3.A of the VOSH Administrative Regulations Manual shall be affirmed as Other Than Serious violations with no civil penalty;

4. Upon mutual agreement, plaintiff has agreed to lower the civil penalty from $1,190 to $700;

By entering into this order, defendant does no admit to any civil liability arising from this violation, other than for the purpose of subsequent proceedings pursuant to Section 40.1 of the Code of Virginia.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ORDERED that the above mentioned citations for violations of VOSH Standards for the Construction Industry be affirmed, with an agreed civil penalty in the amount of $700;

The Clerk shall mail certified copies of this order to both parties listed below, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

The defendant shall be ordered to post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 7/14/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-48605

v.

CAPITAL MASONRY CORPORATION
Defendant

AGREED ORDER

Comes now the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Richmond, and the Defendant by counsel, in order to provide for the health, safety, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, do stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code section 40.1-49.4(E) to be heard on Defendant's contest of Virginia Occupational Safety and Health (VOSH) Citations arising from inspection number 105717680, and issued to Defendant by Plaintiff on February 3, 1989. The inspection was conducted at 15 North Fifth Street in Richmond, Virginia on January 23, 1989. The cited violations are:

SERIOUS:

§1926.102(a)(1) Employee was operating power saw without proper eye protection (Penalty $450)

REPEAT:

§1926.451(a)(13) Access ladder was not provided for 2 scaffolds (Penalty $900)

§1926.451(d)(10) Guardrails were not complete on the ends of 2 scaffolds (Penalty $1080)

OTHER-THAN-SERIOUS:

§1926.405(a)(2)(ii)(I) Electrical power cords were not protected

§1926.500(f)(1) Elevator shaft did not have properly constructed guardrail.

Plaintiff and Defendant agree that Plaintiff shall vacate the Serious Citation and the first violation of the Repeat Citation. In consideration, Defendant agrees to withdraw its notice of contest for the remaining three VOSH violations and certifies that the remaining cited conditions have been abated.

Upon mutual agreement, Plaintiff agrees to lower the civil penalty from $1,530 to $1,080.

Pursuant to Virginia Code 40.1-51.3:2 the fact that a Citation under Chapter 3 of Title 40.1 of the Code has issued shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ORDERED, that the above mentioned Citation and Notification of Penalty for violation of Section 1926.451(d)(10), be affirmed as a Repeat violation of the VOSH Standards for the Construction Industry with an agreed civil penalty in the amount of $1,080;

that the Citation for violations of Sections 1926.405(a)(2)(ii)(I) and 1926.500(f)(1) be affirmed as Other-Than-Serious violations of the VOSH Standards for the Construction Industry, with no civil penalty; and

that the Citations and Notifications of Penalty for a Serious violation of Section 1926.102(a)(1) and for a Repeat violation of Section 1926.451(a)(13) be vacated.

Judgement be and is hereby granted to the Plaintiff to the total amount of $1,080.

It is further ORDERED that the Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

The Clerk shall mail certified copies of this order to both parties listed below, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 1/5/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF LABOR & INDUSTRY

Plaintiff,

Docket No. 903857

v.

CONCRETE ERECTORS, INC.
Defendant

ORDER

This matter came before the Court for trial on the merits on June 6, 1990. Defendant Concrete Erectors, Inc. is a concrete erector charged with having violated 29 CFR § 1926.105(a) and 1926.59(f)(5)(i), these standards having been adopted by the Safety and Health Codes Board pursuant to § 40.1-22(5) of the Code of Virginia. Charge 1926.105(a) was characterized as Willful and proposed a $5,600 penalty. Charge 1926.59(f)(5)(i) was characterized as Other and carried no penalty.

Upon consideration of the testimony of the parties, evidence presented and argument by counsel, it appearing that:

1. Plaintiff failed in its burden to prove a violation of 1926.59(f)(5)(i); and

2. Defendant met its burden in proving the affirmative defense of "employee misconduct" in connection with the charge of 1926.105(a); it is

ORDERED that the citations for alleged violations of 1926.105(a) and 1926.59(f)(5)(i) are hereby vacated.

ENTER 7/5/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-9349

v.

FLUOR DANIEL, INC.,
Defendant

AGREED ORDER

This day came the plaintiff by counsel, the Assistant Commonwealth's Attorney for Fairfax County, and the defendant by counsel, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on February 7, 1989.

All cited items have been abated.

Plaintiff and Defendant now agree to the following:

1. Defendant was cited by Plaintiff for the following conditions:

Citation 1, item 1a, a serious violation of Section 1926.552(c)(8) of the VOSH Standards for the Construction Industry (regarding provision for functioning electrical contacts on personnel hoist doors or gates as required by this section);

Citation 1, item 1b, a serious violation of Section 1926.552(c)(1), (regarding provision that personnel hoist towers outside the structure be enclosed for the full height of the side(s) used for entrance and exit to the structure as required by this section); and

Citation 1, item 1c, a serious violation of Sections [sic] 1926.552(c)(4), (regarding provision of mechanical locks on hoistway doors or gates which are only accessible to persons on the car and which could not be operated from the landing side as provided by this section).

The above violations were grouped because they involved similar or related hazards and Defendant was assessed a penalty of $490.00.

2. Upon mutual agreement, Defendant has withdrawn its notice of contest to the above-mentioned citation. Defendant also withdraws its contest of the $490.00 penalty.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, items 1a, 1b, and 1c be AFFIRMED as a serious violation, with a penalty of $490.00. Judgement is hereby granted for the plaintiff against the Defendant in the amount of $490.00 as civil penalty for the serious violation.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 7/7/89

The foregoing agreements, statements, or actions taken by the Defendant shall not be deemed an admission by the Defendant of any allegations contained within the Complaint or any finding of the Virginia Occupational Safety and Health Administration. The agreements, statements and stipulations found herein are made for the purpose of settling this matter economically and amicably, and they shall not be used for any other purpose except for proceedings and matters arising under the Virginia Occupational Safety and Health standards.

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No.

v.

GROVES-KIEWIT EASTERN COMPANY,
Defendant

AGREED ORDER

Comes now the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Chesterfield, and the Defendant, in order to provide for the health, safety, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, do stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code §40.1-49.4(E) to be heard on Defendant's contest of a Virginia Occupational Safety and Health (VOSH) Citation, arising from inspection number 105675540, and issued to Defendant by Plaintiff on June 13, 1989, for violation of Virginia Code §40.1-51.1(a). The inspection was conducted at the Defendant's jobsite at the highway I-295 bridge over the James River in Chesterfield, Virginia.

Plaintiff and Defendant agree that, in consideration for Plaintiff's agreement to vacate the VOSH Citation and Notification of Penalty dated June 13, 1989 upon Defendant's performance of the conditions listed herein, Defendant certifies that all cited conditions have been abated. Defendant further agrees that in signing this Agreed Order it is providing written assurance to Plaintiff and to the Court that for all of Defendant's current and future construction projects within the Commonwealth of Virginia through the end of calendar year 1992:

1. The Defendant will engage a certified engineer to review and approve as safe to use and operate, any segment hauler or other piece of construction equipment similar in design to the segment hauler which forms the basis for the above referenced VOSH Citation and Notification of Penalty, if the equipment has been modified in any manner, by any person(s), from the original specifications prescribed for the piece of equipment by its commercial manufacturer. In the event no such original specifications exist or can be located, Defendant further agrees to have such piece of equipment inspected in the above manner for the above reasons by a certified engineer.

2. Defendant agrees that when a segment hauler, or other piece of construction equipment similar in design to the segment hauler which forms the basis for the above referenced VOSH Citation and Notification of Penalty, is used on a construction site, Defendant will utilize two (2) employees as observers, in addition to the prime mover operator and the segment hauler operator, to walk beside the segment hauler while it is in motion. The employee-observers' functions are to observe the segment hauler's movement and alert both operators in the event that a problem or unsafe condition develops.

3. The Defendant agrees to provide written instructions and training on the safe operation of segment haulers and similar equipment to all employees who are directly or indirectly engaged in their operation or use. Defendant further agrees to maintain appropriate business records of all such instruction and training including the names of employees so instructed or trained, the date and time of such training, and the site on which such equipment was to be used. Defendant agrees to forward documentation of its compliance with this provision to the Director of Safety Enforcement whenever segment haulers or similar equipment is operated or used.

Failure by the Defendant to comply with the requirements specified in this Agreed Order will form the basis for issuance of failure-to-abate Citations.

Pursuant to Virginia Code §40.1-51.3:2 the fact that a Citation under Chapter 3 of Title 40.1 of the Code has issued shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ORDERED that the above mentioned Citation and Notification of Penalty for violation of Virginia Code §40.1-51.1(a) be vacated, upon the defendant's performance of the conditions listed herein.

The Clerk shall mail certified copies of this order to both parties listed below, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

The defendant shall be ordered to post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 12/19/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF LOUDOUN

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No. 89-7286

v.

PAUL A. WAKEFIELD t/a
HILL COUNTRY ASSOCIATES,
Defendant

ORDER

On this day came the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Loudoun, in order to provide for the health, safety, and welfare of Defendant's employees and pursuant to Virginia Code §40.1-49.4(E), to be heard on Defendant's contest of a Virginia Occupational Safety and Health (VOSH) Citation arising from inspection number 105687917, and issued to Defendant by Plaintiff on August 13, 1989, for violation of §1926.21(b)(2) of VOSH Standards for the Construction Industry. Defendant did not appear on the return day and after consideration of the evidence on this day, the Court makes the following findings of fact and conclusions of law:

1. On May 11, 1989, the plaintiff's inspector, William J. Summers inspected one of the Defendant's construction sites on which a fatality had just occurred. The site was a fence erection/building operation on State Route 611, near Philomont, Virginia. As a result of that inspection Plaintiff issued a citation to the Defendant, alleging violation of a VOSH regulation;

2. The citation alleged a serious violation of section 1926.21(b)(2) of the VOSH Standards for the Construction Industry, and proposed a penalty of $350; the Defendant filed a timely notice of contest;

3. Upon a hearing of the matter, at which the Defendant did not appear, Plaintiff's evidence established a violation of section 1926.21(b)(2); Plaintiff further established that Floyd E. Parrish, Jr., was an employee of Defendant, was killed on May 11, 1989, on Defendant's construction site, as a result of having the tractor which he was operating at the time flip over backwards crushing him; that the deceased employee and another employee, the deceased's brother, were instructed by Defendant's foreman to move certain fencing boards; and that the two employees of the Defendant were on a tractor hauling the fencing boards

along a muddy trail from one location to another by means of a logging chain tow strap when the boards dug into the mud causing the tractor to stop abruptly and rear over backwards pinning the driver (the deceased), underneath it. Plaintiff further established by competent evidence that the defendant failed to instruct each employee in the recognition of hazards presented when operating motorized equipment (tractors) while in the process of erecting fencing.

WHEREFORE, upon Plaintiff's evidence and for good cause shown, the Court finds for the Plaintiff on said citation and ORDERS that the citation for violation of section 1926.21(b)(2) of the VOSH Standards for the Construction Industry be affirmed as a Serious violation with a civil penalty in the amount of $350.00. Judgment is hereby granted to the Plaintiff in the amount of $350.00

Failure by the Defendant to comply with this Order will form the basis for issuance of failure-to-abate Citation(s).

The Clerk shall mail certified copies of this order to the party listed below, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

The defendant shall be ordered to post a copy of this order for ten (10) working days at a conspicuous place where notices to employees are usually posted.

ENTER: 1/22/90

VIRGINIA:

ALEXANDRIA GENERAL DISTRICT COURT

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-6187

v.

LOUDOUN TUNNELING COMPANY, INC.
Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL ORDER

This matter came on for trial before this Court on October 3, 1989, pursuant to the plaintiff's summons alleging violations of sections 1926.652(b) and 1926.652(d) of the Virginia Occupational Safety and Health Standards for the Construction Industry, and after careful consideration of all of the evidence and argument of counsel, this Court makes the following findings of fact and conclusions of law:

1. Defendant Loudoun Tunneling Company, Inc. was responsible for an excavation at or near 725 Metro Road, in Alexandria, Virginia.

2. The defendant installed steel trench boxes in the excavation as well as certain shoring, sheeting, bracing, timbers and other materials in order to protect the employees who were working in the excavation.

3. The defendant's excavation was not in unstable or soft material as referred to in section 1926.652(b) and the defendant's shoring, sheeting, bracing, sloping and other supports were sufficient to protect the defendant's employees in accordance with Tables P-1 and P-2 as required by that section.

4. The defendant's materials used for sheeting and sheet piling, bracing, shoring and other supports were in good and serviceable condition and the timbers were sound and free from large or loose knots and were designed and installed so as to be effective to the bottom of the excavation in full compliance with section 1926.652(d) even though said materials did not extend completely to the bottom of the excavation.

5. In accordance with the foregoing, plaintiff has failed to establish any violation of the referenced sections and the citations relating thereto are dismissed with prejudice.

ENTER: 11/30/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff,

File No. 89-14926

v.

J.G. MILLER, INC.,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER came to be heard on January 24, 1990, for trial on the merits, upon the VOSH Application and Summons and Citation and Notification of Penalty issued by Plaintiff against Defendant alleging violations of §§1926.652(b) and 1926.21(b)(2) of the Virginia Occupational Safety and Health Standards for the Construction Industry, and Defendant's Notice of Contest thereto; and

FOLLOWING the testimony of Plaintiff's witnesses and several of Defendant's witnesses, the Defendant having made a motion to strike the alleged violation of §1926.21(b)(2), and upon argument of counsel thereon, the Court being fully advised, granted said motion to strike, and

UPON CONSIDERATION of the evidenced adduced at the hearing on the alleged violation of §1926.652(b), the Court finds that the evidence was insufficient to establish that Defendant was guilty of said violation, and makes the following findings of fact and conclusions of law pursuant to §40.1-49.4E of the Code of Virginia, as amended.

FINDINGS OF FACT

1. This matter is before the Court on Defendant's Notice of Contest of Citation and Notification of Penalty pursuant to §40.1-49.4A4(b) of the Code of Virginia, which Citation and Notification of Penalty alleges violations of Virginia Occupational Safety and Health Standards of the Construction Industry, §§1926.652(b) and 1926.21(b)(2).

2. The Citation and Notification of Penalty was initiated by a referral from an inspector employed by Professional Services Industries, Inc., which was under contract with the Department of Environmental Management of the County of Fairfax, Virginia. The inspection by Plaintiff of Defendant's construction site located between 8639 and 8641 Ivy Mint Court, in the Afton Glen Subdivision in Fairfax County, Virginia, occurred on October 14, 1988 ("Inspection"). At the time of the Inspection, the project of laying sewer pipe was nearly complete.

3. During the course of the Inspection, the Plaintiff's inspector observed that Defendant was using two hydraulic shores that were 8 feet apart in the trenching operation.

4. During the course of the inspection, Plaintiff's inspector observed one of Defendant's employees exiting from the trench.

5. During the course of the inspection, Plaintiff's inspector concluded that Defendant did not have a safety program for its employees.

6. Plaintiff's inspectors did not observe any of Defendant's employees working in the trench with only two hydraulic shores in place.

7. As a result of the aforesaid inspection, Plaintiff issued to Defendant a Citation and Notification of Penalty alleging that Defendant had violated §§1926.652(b) and 1926.21(b)(2) of the Virginia Occupational Safety and Health Standards for the Construction Industry.

8. Defendant promptly and timely filed a Notice of Contest pursuant to §40.1-49.4A4(b) of the Code of Virginia.

9. At trial, Plaintiff's expert, a soils scientist, testified that the auger borings taken, under the direction Plaintiff's inspector, showed the soil condition of the trench was "soft and unstable" as the soil was "fill". Plaintiff's expert did not perform any laboratory or other tests of the soil.

10. At trial, Defendant's foreman, laborer, and safety director, with over a total of twenty years experience, testified that the soil in which the trench was dug was "hard and compact".

11. At trial, Defendant's foreman and safety director testified that Plaintiff's inspector stated, at the inspection, that the soil condition of the trench was "hard and compact".

12. At trial, Defendant's expert, who was experienced in soils engineering and trench shoring systems, testified that he supervised various on- and off-site tests of the soil and carefully reviewed the results of the laboratory tests. Defendant's expert stated that the soil condition of the trench was "hard and compact" according to the test results.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

1. This matter is properly before the Court pursuant to Plaintiff's Citation and Notification of Penalty and Defendant's Notice of Contest thereto.

2. As to the alleged violation of §1926.21(b)(2), the Court does find and, therefore, concludes as a matter of law, that the Plaintiff failed to sustain its burden of proof to establish a violation of the safety health standard inasmuch as Plaintiff did not present any evidence as to the safety program required by the cited standard.

3. As to the alleged violation of §1926.652(b), the Court, upon hearing of the evidence, does find and, therefore, concludes as a matter of law, that said trenching standard requires proof that there was a danger of moving ground and that the trench was in unstable soil in order for a citation alleging a violation of the safety health standard to be sustained. The evidence adduced by Plaintiff was rebutted by Defendant's evidence and failed to substantiate that the trench was in soft and unstable soil within the clear and unambiguous meaning of the cited safety health standard.

WHEREFORE, the Citation and Notification of Penalty issued to Defendant, J.G. Miller, Inc. should be, and the same hereby is, VACATED.

AND THIS MATTER IS FINAL.

ENTER: 5/16/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. V89-8786

v.

NORFOLK DREDGING COMPANY
Defendant

AGREED ORDER

Comes now the plaintiff, the Commonwealth of Virginia, by counsel, and the defendant, by counsel, and in order to provide for the safety, health and welfare of the employees of the defendant and to conclude this matter without the necessity for further litigation, it is hereby stipulated and agreed:

The defendant is before this Court pursuant to §40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by the plaintiff on February 3, 1989, at the site of a dredging project in Chesterfield County. The citation was issued at the conclusion of a Virginia Occupational Safety and Health (VOSH) investigation on November 28, 1988 at a worksite located at the Old Ash Pond at the Virginia Power Dutch Gap Plant in Chesterfield County of the cause of a Norfolk Dredging employee drowning on Saturday, November 26, 1988. The VOSH inspector was informed by defendant that on that day, five (5) employees of Norfolk Dredging were working on or about a dredge which was removing material from the old ash pond and pumping it to an on site disposal area. During the day the employees were wearing the required personal floatation devices (life vest/preservers) provided by defendant. At the end of the day as the employees were leaving the work area a pressure leak was noted in the pipe line. In the rush to stop the leak and prevent environmental damage the employees failed to wear their individual personal floatation device (life vest/preserver) provided by the defendant. In proceeding in a small boat to the leaking pipe a short distance off shore, one of the employees fell overboard and drowned. After receiving the information provided during the course of an investigation the plaintiff issued a citation and proposed a penalty of $640.00 for a serious violation of §926.106(a)[sic], alleging that the defendant failed to ensure that its employees wear life jackets or buoyant work vests while working over or near water where the danger of drowning exists.

Defendant has entered into this stipulation and agreement and to the entry of this ORDER solely for the purpose of reaching an amicable settlement of the alleged claims and with the understanding that in so doing such act will not be considered as an admission of the violation of the alleged statutes and rules or considered to be a finding of any fault.

Plaintiff and defendant agree that, in consideration for plaintiff's agreement to vacate the VOSH citation and Notification of Penalty dated February 3, 1989, upon Defendant's performance of conditions listed and by signing this Agreed Order it is providing written assurance to the Plaintiff and the Court that:

1. Defendant has a safety program that it will continue to maintain which provides an internal system of enforcement by the company of applicable state safety and health rules and regulations. The internal penalties for violation(s) of the rules will continue to be progressive and include the removal of an unsafe employee from his or her employment upon the occurrence of a third repeat violation. This system of enforcement will continue to apply equally to all defendant's employees.

2. Defendant will continue the safety program which calls for new employees to receive a basic safety briefing prior to being employed.

3. The defendant shall continue with the written company policy requiring all employees who work on or about the water to wear personal protective devices which include a life jacket or buoyant work vest.

4. The defendant agrees to continue the mandatory attendance of all field employees at the scheduled safety meetings.

5. Reports of the safety meetings shall be forwarded to the Director of Safety Enforcement, Department of Labor and Industry, on a quarterly basis, beginning on February 1, 1990 and continuing thereafter for a period of one year.

6. Defendant agrees to continue conducting periodic monitoring of its jobsites to determine that its employees, including its supervisors, are conducting an active Safety Program which requires use of company provided protective devices for all employees while working on or about the water.

7. The defendant shall post a copy of this Agreed Order with its Basic Safety Rules for a period of thirty (30) days at a conspicuous location where notices to its employees are generally posted.

8. Failure by the defendant to comply with the requirements specified in this Agreed Order may result in the issuance of a failure-to-abate citation(s).

THIS AGREEMENT constitutes a compromise and settlement of the above contested claims. Pursuant to §40.1-51.3:2, and the fact of the issuance of the citation, this compromise and settlement, the matters set forth in this Order and this Order shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

WHEREFORE, it is ADJUDGED, ORDERED AND DECREED that the citation and penalty be and it is hereby VACATED as modified.

ENTER: 1/10/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF CLARKE COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

v.

PERRY ENGINEERING COMPANY
Defendant

ORDER

Comes now the Plaintiff, by Counsel, and the Defendant, by Counsel, pursuant to an agreement by counsel, as evidenced by the signatures affixed hereto, to transfer venue of the above-styled matters to the Frederick County General District Court for consolidation with matters pending in said Court for trial and disposition. It is therefore,

ADJUDGED, ORDERED AND DECREED that venue of the above-styled matters is transferred and consolidated with pending matters of the same style in the Frederick County General District Court for trial and disposition.

Enter: 12/27/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF FREDERICK

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. V89-00321

v.

PERRY ENGINEERING CO., INC.
Defendant

AGREED ORDER

Comes now the plaintiff, the Commonwealth of Virginia, by counsel, and the defendant, by counsel, and in order to provide for the safety, health and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, it is hereby stipulated and agreed:

The defendant is before this Court pursuant to §40.1-49.4(E) of the Code of Virginia, contesting citations issued to it by the plaintiff on January 13, 1989 at the defendant's construction site in Frederick County, Virginia, and on March 29, 1989 at the defendant's construction site in Clark County, Virginia. The former citations were issued as a result of a Virginia Occupational Safety and Health (VOSH) inspection of the defendant's worksite located on State Route 645 in Frederick County. An inspection was initiated pursuant to the National Emphasis Program (NEP) on trenching. At the time of the inspection, two employees of the defendant were observed working in a trench, which was approximately 11' 9" deep. The trench had been dug in a previously excavated area; the sides of the trench were not shored, sloped or braced as required.

Plaintiff agrees to modify the Citations and Notifications of Penalty in the matter concerning the above noted Frederick County inspection as follows:

Citation 1, Item 1--§1926.450(a)(9): Requires that side rails shall extend not less than 36 inches above the landing. When this is not practical, grab rails, which provide a secure grip for an employee moving to or from the point of access, shall be installed. The side rails of the aluminum extension ladder that had been placed in the trench only extended 15" above the landing on the south side. This violation will remain serious as cited, with a penalty of $700;

Citation 2, item 1--§1926.652(b): Requires that side(s) of trenches in unstable or soft material, 5 feet or more in depth, shall be shored, sheeted, braced, sloped or otherwise supported by means of sufficient strength to protect the employees working within them. See §1926.652(b) Tables P-1 and P-2. In a trench excavated at the Route

645 site, two employees were exposed to the hazard of a trench cave-in while working on a 4" sewer lateral in a 13' long, 9' wide north end, 7' wide south end and 11' 9' deep trench, with no shoring, no angle of repose and no equivalent means of protection provided. This violation was cited as willful and a penalty of $7000 was assessed. This violation is hereby reduced from a willful to a repeat; the penalty of $7000 remains as assessed;

Citation 2, item 2--§1926.652(e): Requires additional precautions by way of shoring and bracing shall be taken to prevent slides or cave-ins when excavations or trenches are made in locations adjacent to backfilled excavations, or where excavations are subjected to vibrations from railroad or highway traffic, the operation of machinery, or any other source. This violation was cited as willful and a penalty of $7000 was assessed. This violation is hereby reduced from a willful to a repeat violation. The penalty of $7000 will remain as assessed; and

Citation 3, item 1--§1926.21(b)(2): Requires the employer to instruct each employee in the recognition and avoidance of unsafe condition(s) and regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury. At the worksite, employees were exposed to the hazard of a trench cave-in while working in and around a 11'9" deep trench without being instructed about the regulations and unsafe conditions applicable to this work environment. This violation was cited as repeat and a penalty of $1400 was assessed. This violation is hereby reduced from willful to serious with a penalty of $1400.

The defendant certifies that the above Frederick County violations have been abated and agrees to pay the penalty amount of $16,100 in the manners specified below.

The defendant is also before this Court pursuant to §40.1-49.4(E) of the Code of Virginia, contesting citations issued to it by the plaintiff on March 29, 1989 as a result of a Virginia Occupational Safety and Health (VOSH) inspection of the defendant's worksite located at Crow Street, east of Route 340 North, Berryville, Clark County, Virginia. An inspection was initiated pursuant to the National Emphasis Program (NEP) on trenching. At the time of the inspection, two employees of the defendant were observed working in a trench which was approximately 7' deep. The trench had been dug in a previously excavated area; the sides of the trench were not shored, sloped or braced as required.

Plaintiff agrees to modify the Citations and Notifications of Penalty in the matter concerning the above noted Clark County inspection as follows:

Citation 1, item 1--§1926.21(b)(2): Requires employer to instruct each employee in the recognition and avoidance of unsafe condition(s) and regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury. Employees at the Crow Street worksite were exposed to the hazard of a trench cave-in while working in and around an unshored 7' 4" deep

trench without being instructed about the regulations and unsafe conditions applicable to this work environment. The employer had not trained its employees in trench safety. This violation was cited as willful and a penalty of $7000 was assessed. This violation is hereby reduced from a willful to a repeat, with a penalty of $7000 as assessed;

Citation 1, item 2--§1926.651(i)(1): Requires that excavations which employees may be required to enter, excavated or other material shall be effectively stored and retained at least 2 feet or more from the edge of the excavation. The excavated material at the site was stored within 2 feet of the edge of the trench wall. This violation remains willful as issued with a penalty of $7000;

Citation 1, item 3--§1926.652(b): Requires that side(s) of trenches in unstable or soft material, 5 feet or more in depth, shall be shored, sheeted, braced, sloped or otherwise supported by means of sufficient strength to protect the employees working within them. See §1926.652(b) Tables P-1 and P-2. In a trench excavated at the Crow Street site, employees were exposed to the hazard of a trench cave-in while laying a 15" pvc pipe in a 25' long, 49' wide at the base, 7' wide at the top and 7'4" deep trench, with no shoring, no angle of repose and no equivalent means of protection provided. This violation remains willful as issued with a penalty of $7000;

Citation 1, item 4--§1926.652(e): Requires additional precautions by way of shoring and bracing shall be taken to prevent slides or cave-ins when excavations or trenches are made in location adjacent to backfilled excavations, or where excavations are subjected to vibrations from railroad or highway traffic, the operation of machinery, or any other source. Employees of the defendant were working in a 5'4" to a 7'4" deep trench, 36' long with no shoring that was dug in previously excavated soil and subject to vibrations from traffic and heavy machinery. This violation remains willful as issued, with a penalty of $7000; and

Citation 1, item 5--§1926.652(h): Requires that when employees must work in trenches 4 feet deep or more, an adequate means of exit, such as a ladder or steps shall be provided and located so as to require no more than 25 feet of lateral travel. While working in the trench at the Crow Street site, no adequate means of exit was provided. This violation was cited as willful and a penalty of $7000 assessed. This violation is hereby reduced from a willful to a repeat violation with the penalty of $7000 as assessed.

The defendant certifies that the above Clark County violations have been abated and agrees to pay the penalty amount of $35,000 as specified below.

Regarding both the Clark and Frederick County inspections and resulting Citations and Notification of Penalty the total penalty sum of $51,100 has been assessed. The parties agree to the following further stipulations:

1. Payment of the $51,100 penalty is hereby agreed by the parties to be made as follows:

a. The defendant, upon execution of this Agreed Order shall pay to the plaintiff the initial sum of $12,775 in partial payment of the penalties assessed for the above citations. $2775 of this payment shall be due to the plaintiff within fifteen (15) days of the effective date of this Order and the remaining $10,000 in five (5) equal payments of $2000 each payable on the first day of each month for the next five (5) successive months.

b. Should the defendant, between January 1, 1990 and January 1, 1993, violate any of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry which formed the bases for the citations herein set forth, the defendant shall pay a second partial payment of the total penalties assessed for the above citations in the amount of $12,775 upon the final determination (Order) of the Commissioner of Labor and Industry or the final determination (Order) of a court of competent jurisdiction that the defendant has violated any of the sections mentioned above.

c. A third partial payment of the total penalties due in the amount of $12,775 shall become due and payable upon the final determination (Order) of the Commissioner of Labor and Industry or the final determination (Order) of a court of competent jurisdiction that, subsequent to the repeat violations referred to in paragraph 1b above, the defendant has again violated any of those sections of VOSH which form the bases of the citations herein before set forth.

d. A fourth partial payment of the total penalties due in the amount of $12,775, shall become due and payable upon the final determination (Order) of the Commissioner of Labor and Industry or the final determination (Order) of a court of competent jurisdiction that, subsequent to the repeat violations referred to in paragraphs 1b and 1c above, the defendant has again violated any of those sections of VOSH which form the bases of the citations herein before set out.

2. It is expressly understood that the penalty payments referred to in paragraph 1a through d, above, are in addition to and separate any penalties which may be assessed for the subsequent repeat violations which trigger the partial payments addressed above. It is further expressly provided that Defendant's obligation to pay the partial payments not yet due and payable shall cease on December 31, 1992. On that date, the remaining amount of the penalty which has not yet become due and payable to plaintiff as a result of subsequent violations shall be waived.

3. Defendant hereby agrees to consider Occupational Safety and Health as one of its corporate top priorities. This consideration shall be manifested by the attendance, through January 1, 1993, of each management employee at a minimum of one safety seminar per year which is satisfactory to plaintiff. To qualify as satisfactory to plaintiff, a safety seminar must, at a minimum, be sponsored by a reputable safety association such as, The Association of General Contractors (AGC), the Association of Builders and Contractors (ABC), or equivalent.

4. Within three months of the effective date of the Agreed Order the defendant shall appoint a full time, qualified safety director to carry out the terms of this Order.

5. The defendant agrees that the safety director shall be authorized to employ a staff of qualified safety officers so as to provide at least one such officer for each 10 crews normally employed by defendant. Further, the safety director and officers must have the authority delegated to them by management to issue internal company citations, or reports, for violations of safety and health rules. Additionally the safety director and staff must have the authority to halt unsafe work which is likely to cause injury or death, when it is observed by them on the jobsite.

6. Defendant agrees to initiate an internal system of enforcement of company and state safety and health rules and regulations which, at a minimum, provides for progressively severe internal penalties culminating in the option of removal of the unsafe employee from his or her employment upon the occurrence of a third repeat violation. This system of enforcement shall apply equally to all defendant's employees, both management and field personnel.

7. Defendant agrees to institute a program whereunder new employees receive a basic safety briefing prior to being employed at a jobsite. In addition, a system of training on basic jobsite safety for all new employees within thirty (30) days of the employee's initial employment shall be established to complete the new employee's initial safety indoctrination. The defendant through its safety director, shall also institute weekly, site specific tool box discussions of hazards and corresponding safety practices for all employees employed at each individual jobsite. Documentation of said meetings and training shall be forwarded to the Director of Safety Enforcement, Department of Labor and Industry, on a monthly basis, beginning on January 1, 1990 and continuing thereafter for a minimum of one year. On January 1, 1991, the Commissioner shall determine whether the defendant shall thereafter be required to continue sending such documentation. If defendant is so required, said documentation and time period will be specified at that time. Defendant will be notified of the decision of the Commissioner in writing.

8. The defendant agrees to require the attendance of all employees, including management employees, at a minimum of one trenching safety seminar during each calendar year.

9. By entering into this agreement, the defendant agrees to conduct periodic monitoring of its jobsites to determine that its employees, including its supervisors, are in compliance with the VOSH regulations and the company's safety program which requires adequate protection for all employees exposed to hazards while working in trenches and excavations.

10. With the execution of this agreement, the defendant expressly waives its right to deny access to any Virginia Compliance Safety and Health Officer, to any of its construction sites, and further understands that compliance inspections of defendant's construction sites will be conducted

by plaintiff's inspectors on a reasonable, but random and unannounced basis. Between the entry of this Order and the December 31, 1990, defendant agrees to send plaintiff bi-monthly notification on the 1st and 15th of each month of all defendant's jobsites, the address and the dates on which work is to be performed and the supervisor in charge of each site. This notice may be faxed to plaintiff's Richmond office, #(804) 371-7634.

11. The defendant shall post a copy of this Agreed Order for a period of thirty (30) days at a conspicuous location where notices to its employees are generally posted.

12. Failure by the defendant to comply with the requirements specified in this Agreed Order may result in the issuance of a failure-to-abate citation(s).

THIS AGREEMENT is meant to compromise and settle the above contested claims. Pursuant to §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party.

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

ENTER: 12/12/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-20309

v.

QUAIL OAK, INC.,
Defendant

ORDER

On this day comes the plaintiff by an Assistant Commonwealth's Attorney for the City of Richmond, to be heard on plaintiff's summons on a contest of certain enumerated items from the Virginia Occupational Safety and health ("VOSH") citation issued on November 15, 1988. After consideration of the evidence, the Court makes the following findings of fact and conclusions of law:

1. Following an inspection by plaintiff's inspector, Danny Burnett, on November 3, 1988, of excavation and construction site at the southeast corner of Langston and Overbrook Streets, Richmond, Virginia, plaintiff issued citations to the defendant, alleging violations of VOSH regulations;

2. The first citation alleged a serious violation of sections 1926.651.i.1 and 1926.652.b of the VOSH Standards for the Construction Industry, excavated material was not effectively retained at least two feet from the edge of the excavation which employees were required to enter, and the sides of the excavation were not appropriately shored or sloped; the citation was grouped into a single violation, and proposed a penalty of $420;

3. The second citation alleged one other-than-serious violation of section 1926.602.a.9.ii, of the VOSH Standards for the Construction Industry; a Koering 6612 Excavator was being used without an operable backup alarm, defendant filed timely notice of contest to these citations;

4. Plaintiff's evidence established that violations of the above standards existed and that citations were properly issued;

The Court finds for the plaintiff on said citations, and for good cause shown it is hereby ADJUDGED, ORDERED, AND DECREED that the citation for violation of sections 1926.651.i.1 and 1926.652. be affirmed as a serious violation of the VOSH Standards for the Construction Industry with civil penalty in the amount of $420.00, and that the said other-than-serious violation is also affirmed as a violation of the VOSH Standards for the Construction Industry, and judgement be and is hereby granted to the plaintiff to the total amount of $420.00.

The Clerk shall mail certified copies of this order to William B. Bray, Assistant Commonwealth's Attorney, Suite 205, 800 East Marshall Street, Richmond, Virginia 23219-1998, to Mr. Curtis G. Harris, President of Quail Oak, Inc., P. O. Box 15145, Richmond, Virginia 23227, and to the Commissioner of Labor and Industry, 205 North Fourth Street, Post Office Box 12064, Richmond, Virginia 23241.

It is further ORDERED that the defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 7/6/89

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

Rockingham Construction Company, Inc.,
Appellant

Record No. 890648

v.

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Appellee

ORDER

From the Circuit Court of Prince William County

The appellant, Rockingham Construction Company, filed a petition for appeal with this Court complaining that the circuit court erred in upholding a Virginia Department of Labor and Industry (VDOLI) citation and $300 fine for Rockingham's failure to slope or shore the sides of a trench. VDOLI based its citation upon Virginia Occupational Safety and Health (VOSH) Regulations for the Construction Industry § 1926.652(c).* Rockingham maintains that the VOSH regulations, with regard to trenching and excavation, are so vague and ambiguous as to be unenforceable.

After consideration of the record, the briefs, and the oral argument of Rockingham's counsel, the Court grants the petition for appeal and reverses the decision of the circuit court.

On April 15, 1987, the United States Department of Labor published a notice of proposed rulemaking in the Federal Register proposing substantial revisions of Occupational Safety and Health Administration (OSHA) trenching and excavation standards. The preamble to the proposed standard discussed the lack of clarity in the current OSHA regulations, especially with regard to whether excavation standards can be applied to trenches. 52 Fed. Reg. 12288, 12289 (1987). The proposed standard is intended to resolve "the language ambiguity of the existing standards by setting forth one set of requirements which are applicable to all excavations, including trenches." Id. OSHA admits that the current standards are ambiguous. For the above reasons, the judgment of the trial court is reversed.

This order shall be certified to the Circuit Court of Prince William County.

ENTER: 9/25/89

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* The VOSH regulations were adopted verbatim from federal Occupational Safety and Health Administration regulations.

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF ROCKINGHAM

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

File No. 896797

v.

H.J. SCHNEIDER CONSTRUCTION, INC.,
Defendant

AGREED ORDER

COMES NOW the Plaintiff, by counsel, the Assistant Commonwealth's Attorney for the County of Rockingham, and the defendant, by counsel, in order to provide for the health, safety, and welfare of Defendant's employees and to conclude this matter without the necessity for the further litigation, do stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code § 40.1-49.4(E) to be heard on Defendant's contest of a Virginia Occupational Safety and Health (VOSH) Citation, arising from inspection number 105672760 and issued to Defendant by Plaintiff on February 27, 1989, for violation of two VOSH Standards of the Construction Industry.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Plaintiff and Defendant agree to the following modifications of the citation at issue:

Citation 1, item 1, a serious violation of Section 1926.21(b)(2) of the VOSH Standards for the Construction Industry. This violation has been vacated and the proposed penalty of $560.00 withdrawn.

Citation 2, item 1, a repeat violation of Section 1926.652(b) of the VOSH Standards for the Construction Industry. This violation has been vacated and the proposed penalty of $1,120.00 withdrawn.

Plaintiff and Defendant have agreed, for settlement purposes, to a serious violation of Section 1926.652(g)(i)[sic], and a monetary penalty of $280.00.

A total penalty of $280.00 is now proposed for this citation.

Plaintiff and Defendant agree that, in consideration for Plaintiff's agreement to modify several portions of the above VOSH Citation and Notification of Penalty, Defendant withdraws its notice of contest.

Pursuant to Virginia Code §40.1-51.3:2 in the trial of any action to recover for personal injury or property damage sustained by any party, in which action it is alleged that an employer acted in violation of or failed to act in accordance with any provision of this chapter or any state or federal occupational safety and health standards act, the fact of the issuance of a citation, the voluntary payment of a civil penalty by a party charged with a violation, or the judicial assessment of a civil penalty under this chapter or any state or federal occupational safety and health standards act, shall not be admissible in evidence.

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

ORDERED that the above mentioned Citation and Notification of Penalty for violations of Virginia Occupational Safety and Health Standards for the Construction Industry be modified as follows:

Citation 1, Item 1 shall be vacated.
Citation 2, Item 1 shall be vacated.
Citation 2, Item 1 shall issue [sic] as a serious violation of Section 1926.652(g)(1), with a monetary penalty of $280.00.

The total monetary penalty shall be $280.00.

The Clerk shall mail certified copies of this order to both parties listed below, and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

The Defendant shall be ordered to post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTERED: 5/15/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF LOUDOUN COUNTY

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

DOCKET NO. V89-5420

v.

CARL E. SMITH, INC.
Defendant

ORDER

Upon consideration of the evidence presented at the hearing held on October 12, 1989, I make the following findings:

1. Excavated or other materal [sic] was not effectively stored or retained by the defendant at least 2 feet or more from the excavation which employees were required to enter, in violation of Sec. 1926.651(i)(1) of the Virginia Occupational Safety and Health Standards for the Construction Industry. This was a "serious" violation within the meaning of Sec. 40.1-49.3(5) of the Code of Virginia Citation 1a is affirmed.

2. The sides of the trenches in unstable or soft material more than 5 feet in depth were not shored, sheeted, braced, sloped, or otherwise supported by the defendant by means of sufficient strength to protect the employees working within them, in violation of Sec. 1926.652(b) of said Standards. There was no compliance with Table P-1. The cave-in occurred immediately adjacent to the shored area. This also was a "serious" violation. Citation 1c is affirmed.

With regard to Citation 1d, alleging a violation of Sec. 1926.652(e), this is substantially a duplication of citation 1c. Furthermore the existence of the telephone cable was not sufficient to put defendant on notice of a separate hazard. This citation is vacated.

With regard to citation 1(e), relating to the surface water the evidence is not sufficient to support this citation and is hereby vacated.

For each of the two "serious" violations found as above stated the Court assesses a penalty of $250.00, for a total of $500.00.

ENTER: 10/18/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE CITY OF NEWPORT NEWS

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Case No. 89-0084

v.

SPRINKLE MASONRY, INC.,
Defendant

AGREED ORDER

This day came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Newport News, and the defendant by counsel and in order to provide for the health, safety, and welfare of Defendant's employees and to conclude this matter without the necessity for the further litigation, do stipulate and agree as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on October 17, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

The cited item has been abated.

Plaintiff and Defendant now agree that Defendant will withdraw its contest of Citation 1, item 1, a serious violation of Section 40.1-51.1(a), the General Duty Clause, relating to Defendant's failure to shore or brace a masonry wall. Defendant also withdraws its contest of the $560.00 penalty.

By entering into this Order, Defendant does not admit to any violation or to any civil liability arising from these violations, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, item 1 be AFFIRMED as a serious violation with a penalty of $560.00. Judgement is hereby granted for the Plaintiff against the Defendant in the amount of $560.00 as civil penalty for the serious violation.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

Defendant shall post a copy of this order for ten working days at a conspicuous place where notices to employees are usually posted.

ENTER: 11/13/89

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF WAYNESBORO

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry
Plaintiff

V.

Stoner Construction
Defendant

ORDER

Nature of the Case: Pursuant to an inspection conducted at a construction site located at Federal and Wayne Streets, Waynesboro, Virginia at which defendant was a contractor, the Plaintiff, Virginia Occupational Safety and Health (VOSH) issued citations to the defendant for its alleged serious violations of the following VOSH regulations:

> Section 1926.416(a)(1): Employees were permitted to work in proximity to electric power circuits and were not protected against electrical shock by de-energizing and grounding the circuits or effectively guarding the circuits by insulation or other means;
>
> Section 1926.451(d)(10): Standard guardrails and toeboards were not installed at all open sides and ends on tubular welded frame scaffolds more than 10 feet above the ground or floor;
>
> Section 1926.451(e)(1): The height of free-standing manually propelled mobile scaffold tower(s) was greater than four (4) times the minimum base dimensions,
>
> Section 0926.451 [sic] (e)(4): Platform(s) on manually propelled mobile scaffold(s) except for the necessary entrance opening, were not tightly planked for the full width of the scaffold.

A penalty of $1350.00 was recommended.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon the testimony of the Commonwealth's witness, the Court finds that the defendant allowed its employees to work in proximity to electric power circuits upon a mobile scaffold in which the height of the scaffold was greater than four times the minimum base dimensions and in which the scaffold was not provided with proper planking and guardrails, in violation of the aforementioned VOSH regulations.

The Defendant's employees were engaged in construction work located at Wayne and Federal Streets in Waynesboro, Virginia. The two employees were working on a tubular welded frame scaffold that was approximately 24 feet above a sidewalk without a standard guardrail at the time that Compliance Safety and Health Officer (CSHO) Al Sprouse stopped to conduct an inspection.

The Compliance Safety and Health Officer (CSHO) testified that on June 8, 1989, he was travelling back to his office in Stuart's Draft when he noticed two men working on a scaffold approximately 24 feet high, without guardrails. The Department of Labor and Industry has a Local Emphasis Program (LEP) on scaffolding, and Compliance Officers are required to stop when they observe scaffolding violations at a worksite. Mr. Sprouse stopped to conduct his inspection. At the time of the inspection, CSHO Sprouse took pictures of the site and scaffolding upon which the two employees were working.

The employees were working within four (4) feet of a high voltage power line. The standard requires a safe distance of at least ten (10) feet. Mr. Sprouse stated that the employer was required to contact the power company to ensure that the power was turned off. The employer also had the option to ground the wire or sleeve the power lines.

The scaffold upon which the employees were working did not have any guardrails or toerails. The Compliance Officer testified that guardrails are required to protect the employees from falling off the scaffold and that toeboards are required to prevent tools and equipment from falling off the scaffold and striking people below.

The base of the scaffold was measured by the Compliance Officer to be 4' x 7'. According to the regulations, a manually propelled mobile scaffold cannot exceed four (4) times the minimum base dimensions. This scaffold should only have been erected to a height of 16 feet. In this instance the scaffold was 24 feet high. This can cause the scaffold to become top heavy and tip or collapse.

CSHO Sprouse also testified that the VOSH regulations required that the scaffold be fully planked for the full width of the scaffold. This scaffold was only planked to 1 and 1/2' instead of the 4' as required. This prevents people from falling through planking.

CSHO Sprouse testified that the violations were cited as serious because there was a substantial probability that death or serious physical harm could result from the conditions as they existed. He also explained how he arrived at the penalty figure of $1350.

Mr. Richard Stoner testified on his own behalf. He stated that he was hired to wash windows at the building site. He claimed that he had completed washing 210 windows and had one window left to wash when the Compliance Officer arrived to do his inspection. He further testified that he was not at the site when the Compliance Officer arrived as he had to leave the site to meet with a plumber concerning another job that he was to begin. He stated that he told the workers that they were not to work on the scaffold, but that they did so to help him complete the job.

Mr. Stoner stated that he was the only person who was working on the scaffold during the entire operation. The other men at the site were not his employees, although he had hired the men. In fact, he had given them a tax form (Form 1099) to complete and file for tax purposes. The men were there to help him move the scaffold by climbing through the windows that were to be washed.

Mr. Stoner also testified that he did not feel that he was in violation because scaffolding was safer to use than a ladder. He also believed that the penalty was too high considering the fact that he is a one man operation. He stated on cross examination that he did not ask for an informal conference to discuss the violations because he wanted the court to hear his case.

The judge questioned the Complianace [sic] Officer concerning the informal conference procedures. The Compliance Officer testified that the conference is used to discuss any information that the employer believes will mitigate the violations and/or penalties that the Department is seeking to impose. With respect to penalty reduction, the Region Supervisor has the authority in certain situations to reduce the penalty, however, the most he can reduce the penalty by is 50%.

The Court, after hearing the evidence and arguments on behalf of both the plaintiff and the defendant, finds for the plaintiff on the serious violations that were issued.

ORDER

It is therefore, ORDERED that the serious citation for violation of Section 1926.416(a)(1), Section 1926.451(d)(10), Section 1926.451(e)(1), and Section 1926.451(e)(4) issued by the plaintiff pursuant to Section 40.1-49.4 of the Code of Virginia be and hereby is affirmed. The penalty in the amount of $1350 is hereby reduced to $200 ($50 per each serious violation) and defendant is hereby ordered to pay the amount of $200 to the Virginia Department of Labor and Industry within fifteen (15) days after the entry of this order.

The clerk is ordered to send a certified copy of this Order to the Virginia Department of Labor and Industry, Technical Support Division, 205 North Fourth Street, Post Office Box 12064, Richmond, Virginia 23241 and the defendant, Richard Stoner 2240 West Main Street, Waynesboro, Virginia 22980.

ENTER: 3/12/90

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

COMMONWEALTH OF VIRGINIA, ex. rel.
Commissioner of Labor and Industry,
Plaintiff

Docket No. 89-6729

v.

VABBCO, INC.
Defendant

AGREED ORDER

This day came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the County of Chesterfield, and the defendant by counsel, and in order to provide for the health, safety and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The parties are before this Court pursuant to Virginia Code Section 40.1-49.4(E) to be heard on defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff on August 16, 1988.

No employee or employee representative appeared in this matter or has filed a notice of contest.

Plaintiff and Defendant now agree to the following modifications of the citations at issue:

1. Citation 1, item 1a, a willful violation of Section 1926.652(b) of the VOSH Standards for the Construction Industry which states sides of trenches in unstable or soft material, 5 feet or more in depth, shall be shored, sheeted, braced, sloped or otherwise supported by means of sufficient strength to protect the employees working within them. This violation was grouped with the violation listed below, Citation 1, item 1b:

2. Citation 1, item 1b, a willful violation of Section 1926.652(e) which requires additional precautions by way of shoring and bracing be taken to prevent slides or cave-ins when excavations or trenches are made in locations adjacent to backfilled excavations, or where excavations are subjected to vibrations from highway traffic, the operation of machinery, or any other source. These violations have been reduced to repeat violations. The proposed penalty of $6000 for these violations has been reduced to $2000.

3. Citation 2, items 1 and 2 will retain their classification as repeat violations with the proposed penalty of $420.

4. Citation 3, item [sic] will remain an other-than-serious violation, with no penalty.

5. Defendant has abated the aforesaid violations and agrees to pay the penalty of $2420. Said penalty is to be paid in four (4) monthly installments of $500 with the final monthly installment due of $420. Payment is to be made by the 15th of each month, with the first payment due on November 15, 1989. If the defendant fails to make a payment, the entire remaining balance becomes due and owing.

6. By entering into this agreement, the defendant will conduct periodic monitoring of its jobsites to determine that its employees are in compliance with the VOSH regulations and the company's safety program which require adequate protection (including the proper use and installation of trench boxes) when employees are exposed to hazards while working in excavations and trenches. Copy of said training program and documentation as to its compliance is to be forwarded to the Acting Director of Safety Enforcement.

7. Defendant agrees that it will conduct bi-weekly safety meetings and will conduct training sessions with its employees concerning trenching and excavation procedures. Documentation of said meetings and training are to be forwarded to the Acting Director of Safety Enforcement.

8. Defendant states that the company will continue to enforce disciplinary action against those employees of VABBCO, Inc., who fail to comply with the company safety rules and policies.

THIS AGREEMENT is meant to compromise and settle the above contested claims. Pursuant to Virginia Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party, or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party. This agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, items 1a and 1b, and Citation 2, items 1 and 2 be AFFIRMED as repeat violations; Citation 3, item 1 will be AFFIRMED as an other-than-serious violation. Judgement is hereby granted for the Plaintiff against the Defendant.

Let the Clerk forthwith transmit certified copies of this Order to all counsel of record and to the Commissioner of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241.

ENTER: 10/30/89

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