

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, 1990 - JUNE 30, 1991
VOLUME XII

ISSUED BY

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

Carol A. Amato, Commissioner

PREFACE

This publication contains the orders of the Virginia General District and Circuit Courts in contested cases from July 1, 1990 through June 30, 1991, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of §40.1-49.7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, C. 354)."

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

Reference is made to Title 29 of the Code of Federal Regulations, Parts 1910 and 1926. These regulations were adopted by the Virginia Safety and Health Codes 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:

THE GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA, <u>ex rel.</u>)	
Commissioner of Labor and Industry)	
Plaintiff,)	
v.)	File # V90-22486
WILLIAM A. HAZEL, INC.)	
Defendant.)	

AGREED ORDER

Comes now the Plaintiff by counsel, the Assistant Commonwealth's Attorney for Fairfax County, 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:

1. The parties are before this Court pursuant to Va. Code § 40.1-49.4(E) (1990), to be heard on Defendant's contest of certain Virginia Occupational Safety and Health (VOSH) Citations and Proposed Penalties, arising from inspection number 105721476, and issued to Defendant by Plaintiff on March 7, 1990. The citations alleged the following violations of VOSH Standards for the Construction Industry:

CITATION 1

VIOLATION 1

SERIOUS, §1926.58(e)(1) The employer did not establish a regulated area where airborne concentrations of asbestos could reasonably be expected to exceed permissible levels. A penalty of \$640.00 was proposed.

VIOLATION 2

SERIOUS, §1926.58(g)(2)(ii) Compressed air was used without an enclosed ventilation system to clean asbestos dust off an employee's clothing. A penalty of \$640.00 was proposed.

VIOLATION 3

SERIOUS, §1926.58(h)(4)(ii) Employer did not perform fit tests for employees wearing negative-pressure respirators. A penalty of \$640.00 was proposed.

VIOLATION 4
SERIOUS, §1926.58(i)(1) Employer did not require the use of protective clothing for employees exposed to excessive levels of airborne asbestos. A penalty of \$640.00 was proposed.

VIOLATION 5
SERIOUS, §1926.58(j)(1)(i) Employer did not provide a clean change area for employees required to wear protective clothing. A penalty of \$640.00 was proposed.

VIOLATION 6
SERIOUS, §1926.58(k)(3)(i) Employer did not provide proper training for employees exposed to concentrations of airborne asbestos at or above the action level. A penalty of \$640.00 was proposed.

VIOLATION 7
SERIOUS, §1926.58(m)(1)(i) Employer did not provide medical examinations for employees required to wear negative-pressure respirators. A penalty of \$640.00 was proposed.

CITATION 2

VIOLATION 1
OTHER THAN SERIOUS, §1926.58(f)(3) Employer did not conduct daily monitoring representative of the exposure of its employees to concentrations of airborne asbestos.

VIOLATION 2
OTHER THAN SERIOUS, §1926.58(f)(6)(ii) Employer did not provide written notification of personal asbestos monitoring results to exposed employees.

VIOLATION 3
OTHER THAN SERIOUS, §1926.58(n)(2)(i) Employer did not keep an accurate record of daily monitoring results, representative of the exposure of its employees to concentrations of airborne asbestos.

VIOLATION 4
OTHER THAN SERIOUS, §1926.59(g)(8) Employer did not maintain on site and make available to its employees a Material Safety Data Sheet (MSDS) for asbestos.

The total proposed penalty was Four Thousand Four Hundred and Eighty Dollars, (\$4,480.00).

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

3. Plaintiff and Defendant hereby agree that, in consideration for Plaintiff's amendment of the above VOSH Citations, Defendant withdraws its notice of contest to the violations and penalty. The Plaintiff and Defendant agree to the following amendments of the citations at issue:

CITATION 1

VIOLATION 1

SERIOUS, §1926.58(e)(1): This violation and the proposed penalty is vacated.

VIOLATION 2

SERIOUS, §1926.58(g)(2)(ii): This violation remains as issued and the civil penalty of \$640.00 is reduced to \$320.00.

VIOLATION 3

SERIOUS, §1926.58(h)(4)(ii): This violation is amended to Other Than Serious and no civil penalty is assessed.

VIOLATION 4

SERIOUS, §1926.58(i)(1): This violation and the proposed penalty is vacated.

VIOLATION 5

SERIOUS, §1926.58(j)(1)(i): This violation and the proposed penalty is vacated.

VIOLATION 6

SERIOUS, §1926.58(k)(3)(i): This violation remains as issued and the civil penalty of \$640.00 is reduced to \$320.00.

VIOLATION 7

SERIOUS, §1926.58(m)(1)(i): This violation remains as issued and a civil penalty of \$640.00 is assessed.

CITATION 2

VIOLATION 1

OTHER THAN SERIOUS, §1926.58(f)(3): This violation is vacated.

VIOLATION 2

OTHER THAN SERIOUS, §1926.58(f)(6)(ii): This violation remains as issued.

VIOLATION 3

OTHER THAN SERIOUS, §1926.58(n)(2)(i): This violation is vacated.

VIOLATION 4

OTHER THAN SERIOUS, §1926.59(g)(8): This violation is vacated.

4. Defendant agrees to remit to the Department of Labor and Industry, at 205 North Fourth Street, Richmond, Virginia 23219, the civil penalty of One Thousand Two Hundred and Eighty Dollars, (\$1,280.00), as assessed in paragraph 3 above, no later than fifteen days after notification of entry of this Agreed Order.

5. This Agreed Order shall be posted by the Defendant with the original citations for ten (10) working days at a conspicuous place, or where notices to employees are normally posted.

6. Pursuant to Va. Code § 40.1-51.3:2 (1990), 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 Virginia Occupational Safety and Health Citations and proposed penalties as amended above, be AFFIRMED and become a final order of this Court in accordance with Va. Code § 40.1-49.4(E), (1990).

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

Enter: June 10, 1991

Richard T. Horan
Judge

Legal counsel:

William D. Pickett
Assistant Commonwealth's Attorney

John J. Sabourin, Jr.
William A. Hazel Inc.

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF PORTSMOUTH

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

v.

Case No. GV89-90014368

SPINAZZOLO CONSTRUCTION, INC.
Defendant

AGREED ORDER

Comes now the plaintiff, the Commonwealth of Virginia, by counsel, and the defendant, and in order to provide for the safety, health and welfare of defendant's employees and to conclude this matter without 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 December 19, 1989. These citations were issued as a result of a Virginia Occupational Safety and Health (VOSH) inspection of the defendant's asbestos removal project located at General Electric Building #9 on State Route 135, Portsmouth, Virginia. The plaintiff issued the following citations alleging violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry:

CITATION 1, VIOLATION 1

SERIOUS, § 1926.58(f)(1)(iii), 8-hour time weighted average of asbestos exposure had not been accurately calculated and was under-reported. A penalty of \$490.00 was assessed.

CITATION 1, VIOLATION 2

SERIOUS, § 1926.58(h)(4)(i), employer did ensure that the respirator fitted properly. A penalty of \$490.00 was assessed.

CITATION 2, VIOLATION 1

WILLFUL, § 1926.58(j)(2)(i), employer did not establish an area decontamination of employees adjacent to the asbestos removal site. A penalty of \$7,000.00 was assessed.

CITATION 3, VIOLATION 1

REPEAT, § 1926.58(f)(1)(i), personal asbestos exposure calculations were not calculated according to specified procedures. A penalty of \$1,960.00 was assessed.

CITATION 3, VIOLATION 2

REPEAT, § 1926.58(m)(2)(i), an employee did not receive a medical examination at least annually. A penalty of \$980.00 was assessed.

CITATION 3, VIOLATION 3

REPEAT, § 1926.58(n)(2)(ii), employee monitoring records did not include a description of the type of protection being used, the employees' operations being monitored, or the name or social security numbers of the employees. A penalty of \$980.00 was assessed.

The total amount of penalties assessed as a result of this inspection was \$11,900.00.

In consideration of guarantees by the defendant included herein, the plaintiff agrees to modify the citations and notifications of penalty as set forth below. The defendant further certifies that the above citations have been abated.

TERMS AND CONDITIONS OF AGREEMENT

1. Plaintiff agrees to reduce the civil penalty for 1 above to \$245.00.
2. Plaintiff agrees to vacate Item 2 above and its corresponding civil penalty.
3. Plaintiff agrees to reduce Item 3 to a Serious violation, with a civil penalty of \$350.00.
4. Plaintiff agrees to reduce the civil penalty for Item 4 to \$980.00.
5. Plaintiff agrees to reduce the civil penalty for Item 5 to \$490.00.
6. Plaintiff agrees to reduce the civil penalty for Item 6 to \$490.00.
7. Defendant, upon execution of this Agreed Order agrees to pay to the plaintiff the total sum of \$2,555.00 in payment of the penalties assessed for the above citations.
8. Defendant agrees to draft, implement, and provide the Department of Labor and Industry with a written copy of a comprehensive safety monitoring program including features and requirements listed in the paragraphs below.
9. Defendant shall implement and enforce written disciplinary procedures assuring employee and supervisory employee compliance with applicable VOSH regulations. Defendant shall keep a written record of all disciplinary decisions made and actions taken, and shall provide this record upon the request of any VOSH inspector making an inspection of the worksite.
10. Defendant shall designate one person among its managerial level as a safety and health compliance person, who will be given the specific task of reviewing, on a daily basis, the safety practices at all ongoing asbestos removal sites, including the performance of its supervisory personnel in achieving compliance with applicable VOSH regulations.

11. Defendant agrees that the managerial level person described in paragraph 10 above shall be responsible for assuring compliance with applicable VOSH regulations, and shall have the authority to stop ongoing work and correct all safety and health violations.

12. Defendant agrees to provide, on a daily basis, on-site employee exposure monitoring, performed by a competent laboratory, at every ongoing worksite where asbestos removal is conducted. The sampling and analyzing of air samples shall be in accordance with procedures described in Appendix A of § 1926.58 of the VOSH Standards for the Construction Industry.

13. Defendant agrees to hold weekly meetings at all ongoing worksites where its employees are engaged in asbestos removal. These meetings shall review VOSH regulations concerning safe practices for the removal of asbestos. The meetings shall be attended by all employees, including supervisors, engaged in any stage of asbestos removal. A written record of attendance and topics discussed shall be kept and provided upon the request of any VOSH inspector making an inspection at any of the employer's worksites.

14. Defendant, within thirty (30) days of the execution of this Agreed Order, agrees to provide all written documentation of its comprehensive safety monitoring program described in the paragraphs above. Defendant will provide additional information consistent with the above requirements, including all changes in procedures, as needed, on a monthly basis for three calendar years from the date of this Agreed Order.

FAILURE TO ABATE

Failure by defendant to comply with the requirements specified in this Agreed Order may result in issuance of a failure-to-abate penalty(s), or other remedy as provided by law.

REQUIREMENTS FOR A WARRANT

Upon the execution of this Agreed Order defendant expressly waives its right to require inspection warrants to be issued in order to allow access by any VOSH inspector, to its worksites and place of business. Defendant further understands that compliance inspections of its worksites will be conducted by the plaintiff's inspectors on a reasonable, but random and unannounced basis.

SETTLEMENT OF CLAIMS

THIS AGREED ORDER is meant to compromise and settle the above contested claims. Pursuant to § 40.1-51.3:2 of the Code of Virginia, the fact of an 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 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. The agreement to settle these

disputed claims is merely for the purpose of expeditious resolution of the matter. It does not constitute admission of liability by the defendant.

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

Enter: December 10, 1990

Stanley L. Morris
Judge

Legal Counsel:

Alotha C. Willis
Assistant Commonwealth's Attorney

Sharen P. Hughes, Esq.
Willcox & Savage, P.C.

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

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

v.

Case No. GV-9037994

SPINAZZOLO CONSTRUCTION, INC.
Defendant

AGREED ORDER

Comes now the plaintiff, the Commonwealth of Virginia, by counsel, and the defendant, and in order to provide for the safety, health and welfare of defendant's employees and to conclude this matter without 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 April 16, 1990. These citations were issued as a result of a Virginia Occupational Safety and Health (VOSH) inspection of the defendant's asbestos removal project located at the Hillhaven Convalescent Center at 1005 Hampton Boulevard, Norfolk, Virginia. The plaintiff issued the following citations alleging violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry:

CITATION 1, VIOLATION 1:

SERIOUS, § 1926.58(f)(1)(iii), 8-hour time weighted average of asbestos exposure had not been accurately calculated and was under-reported. A penalty of \$490.00 was assessed.

CITATION 2, VIOLATION 1:

WILLFUL, § 1926.58(j)(2)(iii), soap and towels for the purpose of decontamination were not provided employees. A monetary penalty of \$7,000.00 was assessed.

CITATION 3, VIOLATION 1:

REPEAT, § 1926.58(f)(5)(i), personal asbestos exposure testing was improperly conducted. The flow rate of 2.9 liters-per-minute was above the acceptable rate of .5-2.5. A monetary penalty of \$1,680.00 was assessed.

CITATION 3, VIOLATION 2:

REPEAT, § 1926.58(n)(2)(ii), the employer's records did not describe the type of protective equipment worn at the worksite. A monetary penalty of \$980.00 was assessed.

The total amount of penalties assessed as a result of this inspection was \$10,150.00.

In consideration of guarantees by defendant included herein, plaintiff agrees to modify the citations and notifications of penalty as set forth below. Defendant further certifies that the above citations have been abated.

TERMS AND CONDITIONS OF AGREEMENT

1. Plaintiff agrees to reduce the civil penalty for Item 1 above to \$340.00.
2. Plaintiff agrees to reduce the civil penalty for Item 2 above to \$1,000.00.
3. Plaintiff agrees to reduce the civil penalty for Item 3 above to \$1,175.00.
4. Plaintiff agrees to reduce the civil penalty for Item 4 to \$685.00.
5. Defendant, upon execution of this Agreed Order agrees to pay to the plaintiff the total sum of \$3,200.00 in payment of the penalties assessed for the above citations.
6. Defendant agrees to draft, implement, and provide the Plaintiff with a written copy of a comprehensive safety monitoring program including features and requirements listed in the paragraphs below.
7. Defendant shall implement and enforce written disciplinary procedures assuring employee and supervisory employee compliance with applicable VOSH regulations. Defendant shall keep a written record of all disciplinary decisions made and actions taken, and shall provide this record upon the request of any VOSH inspector making an inspection of the worksite.
8. Defendant shall designate one person among its managerial level as a safety and health compliance person, who will be given the specific task of reviewing, on a daily basis, the safety practices at all ongoing asbestos removal sites, including the performance of its supervisory personnel in achieving compliance with applicable VOSH regulations.
9. Defendant agrees that the managerial level person described in paragraph 8 above shall be responsible for assuring compliance with applicable VOSH regulations, and has the authority to stop work and correct all safety and health violations.
10. Defendant agrees to provide, on a daily basis, on-site employee exposure monitoring, performed by a competent laboratory, at every ongoing worksite where asbestos removal is conducted. The sampling and analyzing of air samples shall be in accordance with procedures described in Appendix A of § 1926.58 of the VOSH Standards for the Construction Industry.
11. Defendant agrees to hold weekly meetings at all ongoing worksites where its employees are engaged in asbestos removal. These meetings shall review VOSH regulations concerning safe practices for the removal of asbestos. The meetings shall be attended by all employees, including supervisors, engaged in any stage of asbestos removal. A written record of attendance and topics discussed shall be kept and provided upon the request of any VOSH inspector making an inspection at any of the employer's worksites.

12. Defendant, within thirty (30) days of the execution of this Agreed Order, agrees to provide all written documentation of its comprehensive safety monitoring program described in the paragraphs above. Defendant will provide additional information consistent with the above requirements, including all changes in procedures, as needed on a monthly basis for three calendar years from the date of this Agreed Order.

FAILURE TO ABATE

Failure by defendant to comply with the requirements specified in this Agreed Order may result in issuance of a failure-to-abate penalty(s), or other remedy provided by law.

REQUIREMENTS FOR A WARRANT

Upon the execution of this Agreed Order defendant expressly waives its right to require inspection warrants to be issued in order to allow access by any VOSH inspector, to its worksites and place of business. Defendant further understands that compliance inspections of its worksites will be conducted by plaintiff's inspectors on a reasonable, but random and unannounced basis.

SETTLEMENT OF CLAIMS

THIS AGREED ORDER is meant to compromise and settle the above contested claims. Pursuant to § 40.1-51.3:2 of the Code of Virginia, the fact of an 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 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. The agreement to settle these disputed claims is merely for the purpose of expeditious resolution of the matter. It does not constitute admission of liability by the defendant.

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

Enter: December 3, 1990

Luther C. Edmonds
Judge

Legal counsel:

Gregory Underwood
Assistant Commonwealth's Attorney

Sharen P. Hughes, Esq.
Willcox & Savage, P.C.

OCCUPATIONAL SAFETY

PART II

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF ARLINGTON

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

v.

Case No. V89-10322

AAA SERVICES, 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 the 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 a citation issued to it by the plaintiff on or about July 18, 1989. This citation alleged a willful violation of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry as follows:

Citation 1, item 1--Section 1910.132(a): Protective equipment was not used when necessary whenever hazards capable of causing injury and impairment were encountered. At the rear of Tower II, located at 801 North Randolph Street, Arlington, Virginia workers were washing windows at the 10th and 12th floor levels from the 3' wide ledge without any kind of fall protection and were exposed to fall hazards of approximately 120'.

A penalty of \$5600 was proposed for this violation.

The plaintiff has agreed to reduce the violation from willful to serious. The proposed penalty of \$5600 will be reduced to \$200.

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

This agreement is meant to compromise and settle the above contested claim. Pursuant to Virginia Code §40.1-51.3:2 the fact of the issuance of the citation and the voluntary payment of the

civil penalty 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 in future proceedings and enforcement actions brought by the Virginia Department of Labor and Industry pursuant to 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 §1910.132(a) is affirmed as a serious violation. This violation having been abated, judgment is granted for the plaintiff against the defendant in the amount of \$200.

Let the Clerk 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: July 12, 1990

Joseph C. Gwaltney
Judge

Legal counsel:

Barbara L. Walker
Assistant Commonwealth's Attorney

Sheldon I. Cohen, Esquire

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA, *ex rel.*)
Commissioner of Labor and Industry)
Plaintiff,)
v.) File # GV91-003548
COLONIAL METAL WORKS, INC.)
Defendant.)

AGREED ORDER

Comes now the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Norfolk, 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:

1. The parties are before this Court pursuant to Va. Code § 40.1-49.4(E), to be heard on Defendant's contest of two Virginia Occupational Safety and Health (VOSH) Citations and Proposed Penalties, arising from inspection number 112401534, and issued to Defendant by Plaintiff on November 6, 1990. The citations allege the following violations of VOSH Standards for the Construction Industry:

CITATION 1

VIOLATION 1
SERIOUS, §1910.147(c)(1) The employer did not establish a written Lock Out-Tag Out program. A penalty of \$200.00 is proposed.

VIOLATION 2
SERIOUS, §1910.147(c)(7)(i) The employer did not provide employee training in Lock Out-Tag Out requirements. A penalty of \$200.00 is proposed.

VIOLATION 3
SERIOUS, §1910.212(a)(3)(ii) A Peddinghaus Ironworker machine was not provided with adequate guards at the point of operation. A penalty of \$200.00 is proposed.

VIOLATION 4
SERIOUS, §1910.219(d)(1) Exposed pulleys on a blower fan motor and the fan were not properly guarded. A penalty of \$200.00 is proposed.

VIOLATION 5
SERIOUS, §1910.219(e)(3)(i) A vertical fan belt on the blower fan motor was not properly guarded. A penalty of \$200.00 is proposed.

VIOLATION 6
SERIOUS, §1910.304(f)(4) In four instances electrical circuits were not properly grounded. A penalty of \$200.00 is proposed.

CITATION 2

VIOLATION 1
OTHER THAN SERIOUS, §1910.22(a)(1) Debris and scrap was not kept clear from the work place.

VIOLATION 2
OTHER THAN SERIOUS, §1910.141(a)(3)(i) Restrooms were not kept in a clean and sanitary condition.

VIOLATION 3
OTHER THAN SERIOUS, §1910.157(c)(4) Portable fire extinguisher was not maintained in a fully charged and operable condition.

VIOLATION 4
OTHER THAN SERIOUS, §1910.157(e)(3) Portable fire extinguisher was not inspected annually.

VIOLATION 5
OTHER THAN SERIOUS, §1910.215(a)(4) The work rest at the abrasive wheel of a Pedestal Grinder was not properly adjusted.

VIOLATION 6
OTHER THAN SERIOUS, §1910.215(b)(9) The adjustable tongue guard around the abrasive wheel of a Pedestal grinder was not properly adjusted.

VIOLATION 7
OTHER THAN SERIOUS, §1910.303(f) Electrical circuits at their disconnecting means were not clearly marked to indicate their purpose.

VIOLATION 8
OTHER THAN SERIOUS, §1910.304(a)(2) Employees were exposed to a potential electrical shock by outlets with reversed polarity.

VIOLATION 9
OTHER THAN SERIOUS, §1910.305(a)(1)(i) Metal conduit was not properly connected to a junction box to provide electrical continuity.

VIOLATION 10

OTHER THAN SERIOUS, §1910.305(b)(1) An opening at the switch of the Peddinghaus Ironworker was not effectively closed, exposing employees to a potential electrical shock.

VIOLATION 11

OTHER THAN SERIOUS, §1910.305(b)(2) Three pull-boxes were not provided with appropriate covers, exposing employees to a potential electrical shock.

VIOLATION 12

OTHER THAN SERIOUS, §1910.305(g)(2)(ii) Flexible cords were not used in continuous lengths without splices.

VIOLATION 13

OTHER THAN SERIOUS, §1910.1200(e)(1)(i) Employer's written hazard communication program did not include a complete list of hazardous chemicals present in the work place.

The total proposed penalty is One Thousand Two Hundred Dollars, (\$1,200.00).

2. No employee or employee representative appeared in this matter or has filed a notice of contest.
3. Plaintiff and Defendant hereby agree that, in consideration for Plaintiff's amendment of the original total proposed penalty, and provision of an extended payment plan, Defendant withdraws its notice of contest to the violations and penalty. Plaintiff agrees to amend the proposed penalty for each Serious Violation to One Hundred Dollars (\$100) apiece, for a total penalty of Six Hundred Dollars, (\$600). In exchange, Defendant agrees to tender the sum of Six Hundred Dollars (\$600) according to the terms and conditions described in paragraphs 4, 5, and 6 below.
4. Upon the Judge's signing of this Agreed Order the employer shall remit to the Department of Labor and Industry, at 205 North Fourth Street, Richmond, Virginia 23219, an initial payment of One Hundred Dollars (\$100) on or before May 1, 1991. The employer shall thereafter remit payment of One Hundred Dollars (\$100) on or before the first day of each successive month, up to and including October 1, 1991.
5. If any monthly payment is not received at the above address of the Department of Labor and Industry within five days of its due date the entire remaining amount shall immediately become due and payable. Upon any default by the employer, no subsequent payment plan shall be negotiated and the outstanding amount due will be referred to the Attorney General's Office for collection.
6. This Agreed Order shall be posted with the original citations for ten (10) working days at a conspicuous place, or where notices to employees are normally posted.

7. Pursuant to Va. 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 Citations for violations of Virginia Occupational Safety and Health Standards for the Construction Industry become a final order in accordance with Va. Code § 40.1-49.4(E), and the terms of the amended penalty and payment plan described in this Agreed Order.

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

Enter: April 15, 1991

Luther C. Edmonds
Judge

Legal counsel:

Gregory D. Underwood
Assistant Commonwealth's Attorney

Robert G. Winters
Colonial Metal Works, Inc.

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF BOTETOURT

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

v.

FILE NO. V90-000274

GENERAL SHALE PRODUCTS CORPORATION
Defendant,

AGREED ORDER

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

I. JURISDICTION

The parties are before this Court pursuant to §40.1-49.4(E) of the Code of Virginia, to be heard on defendant's contest of citations issued by plaintiff on March 5, 1990. These citations allege serious, repeat, and other-than-serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry.

II. FACTS

The following violations were cited as serious. In consideration for the actions of the defendant set forth below, the plaintiff agrees to take the following actions concerning the serious violations:

1. Citation 1, item 1 -- Code of Virginia, Title 40.1-51.1(a):

The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees.

- (a) Grinding Area - clean-up process employee/operator, while operating Swinger 200 (Ser. No. 200859), was exposed to possible serious injuries due to being struck by falling or flying objects or by having contact with stationary objects.

One feasible and acceptable abatement method, among others, to correct this hazard is to reinstall employee/operator protective frame such as side and rear protective bars or roll over protection (reference standards 1926.1000 SAE-J-394).

This violation, cited as serious with a proposed penalty of \$700, is amended to read as follows:

Citation 1, item 1 -- Code of Virginia, Title 40.1-51.1(a):

The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees.

(a) Grinding Area - clean-up process employee/operator, while operating Swinger 200 (Ser. No. 200859), was exposed to possible serious injuries through contact with stationary objects.

One feasible and acceptable abatement method, among others, to correct this hazard is to reinstall employee/operator protective frame provided by the manufacturer or by installing side and rear protective bars of similar strength and construction.

This violation will remain classified as a serious violation with an assessed penalty of \$700.

2. Citation 1, item 2 -- §1910.212(a)(3)(ii):

Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s).

This violation, cited as serious, and the proposed penalty of \$600 are vacated.

3. The following violation was cited as repeat. In consideration for the actions of the defendant set forth below, the plaintiff agrees to take the following actions concerning this repeat violation:

Citation 2, item 1 -- §1910.212(a)(1):

Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by contact with conveyor belt and in going nip point, respectively.

This violation, cited as repeat, and the proposed penalty of \$1000 are vacated.

4. The following violation was cited as other-than-serious with no penalty. In consideration for the actions of the defendant set forth below, the plaintiff agrees to take the following actions concerning this other-than-serious violation:

Citation 3, item 1 -- ARM - Section 11.1.J:
Records (OSHA Form No. 200 or equivalent) were not retained in the establishment for 5 years following the end of the year to which they relate.

This violation, cited as other-than-serious, is vacated.

III. TERMS AND CONDITIONS OF ORDER

5. In consideration for the actions of the plaintiff set forth above, the defendant agrees to the following:

- A. Defendant has abated the above violation.
- B. Defendant agrees to develop, implement and enforce written safety procedures for employees working in its hacker-setter machine operations. Defendant further agrees to implement and enforce these safety procedures at all of its manufacturing plants in the Commonwealth of Virginia having such operations.
- C. Defendant agrees to develop, implement and enforce written disciplinary procedures assuring employee and supervisory personnel compliance with the written safety procedures developed in paragraph 2. above for employees working in its hacker-setter machine operations. Defendant further agrees to implement and enforce these disciplinary procedures at all of its manufacturing plants in the Commonwealth of Virginia having such operations.
- D. Defendant further agrees to maintain a written record of all disciplinary decisions made and actions taken in regard to the safety procedures for its hacker-setter machine operations. Defendant further agrees to maintain the disciplinary records pertinent to that respective plant.
- E. Defendant agrees to provide the plaintiff, within thirty (30) days of the entry of this Agreed Order, copies of the written procedures developed under paragraphs 5.B. and 5.C. above.
- F. Defendant agrees to pay the amended penalty of \$700 within fifteen (15) days of its authorized signature indicating assent to this Order.

6. 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.

ORDER

WHEREFORE, upon the agreement of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, AND DECREED that Citation 1, item 1, as amended, is AFFIRMED as a serious violation with a penalty of \$700. 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: January 11, 1991

Louis K. Campbell
Judge

Legal counsel:

William L. Heartwell, III
Commonwealth's Attorney

W. Scott Railton, and
John R. Kresse
Reed, Smith, Shaw & McClay

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF HALIFAX

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

v.

Case No. GV89-0005743-00

GEORGIA-PACIFIC, INC.
Defendant

AGREED ORDER

Comes now the plaintiff, the Commonwealth of Virginia, and the defendant, Georgia-Pacific, Inc., 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 and this Court has jurisdiction in this matter, pursuant to § 40.1-49.4(E) of the Code of Virginia, contesting a citation issued to it by the plaintiff on November 28, 1989. This citations was issued as a result of a Virginia Occupational Safety and Health (VOSH) inspection of the defendant's place of business on state route 879 near Halifax, Virginia. The plaintiff issued the following citation relating to the Virginia Occupational Safety and Health (VOSH) Standards for General Industry:

Item 1--§1910.146(3)(D) - The employer failed to provide mechanical ventilation in a confined space or a space with structural barriers that significantly obstructed cross ventilation,

Item 2--§1910.146(4)(A) - Atmospheric testing of the enclosure was not conducted prior to entry on July 1, 1989, thereby assuring absence of a flammable hazard, toxic, or oxygen deficient atmosphere.

Item 3--§1910.146(4)(C) - A continuous monitoring device equipped with an alarm was not provided the employee entering the enclosure,

Item 4--§1910.146(5)(A) - The employer did not have a Qualified Person evaluate the space that the employee was required to enter,

Item 5--§1910.146(6)(A) - A written entry permit was not supplied,

Item 6--§1910.146(7)(A) - Employees did not have specific training on confined space prior to entry on July 1, 1989,

Item 7--\$1910.146(8)(A) - A source of ignition, namely an arc welder, was used in a confined space without prior testing for an explosive atmosphere,

Item 8--\$1910.252(b)(4)(vi) - Employer did not follow printed instructions supplied by the manufacturer covering operation of arc welding equipment. Employee was not protected by dry insulating material where dampness could be an operating factor.

These violations were each cited as Serious and accompanied by individual civil penalties of \$700.00 each. A total penalty of \$5,600.00 was assessed.

In consideration of new information and the actions of the defendant set forth herein, the plaintiff agrees to modify the Citation and notifications of penalty as set forth below. The defendant further certifies that the above citations have been abated.

TERMS AND CONDITIONS OF AGREEMENT

1. Regarding the Citation arising from the Halifax inspection, the plaintiff agrees to vacate Items 1, 2, 3, 4, 5, 6, and 7 and amends the accompanying total penalty to \$700.00.
2. After the effective date of this Agreed Order, a combined total payment of \$700.00 shall be due and owing from the defendant to the plaintiff.
3. The employer agrees to observe the terms and procedures of its written confined space entry program, as amended by the terms of Paragraph 4 below.
4. In addition to implementing its written confined space entry program, the defendant also agrees to amend its program to provide assurance that all employees attempting entry into areas throughout the workplace fitting the criteria below, will, with the direct assistance of a competent person, make an individual determination whether confined space procedures must be observed before making entry. The criteria applies to the following areas:
 - a. Areas not intended for continuous employee occupancy, and,
 - b. having a limited means of egress.
5. In view of the aforesaid, Georgia-Pacific hereby withdraws its Notice of Contest and the parties agree that the Citation and proposed penalty, as amended by this Agreed Order, shall become a final order.

POSTING

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

SETTLEMENT OF CLAIMS

7. This Agreed Order 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 on 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: November 19, 1990

Irvin D. Sugg

Judge

Legal counsel:

John E. Greenbacker, Jr., Esq.
Commonwealth's Attorney

Robert H. Buckler, and
Charles H. Morgan
Alston & Bird

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF HANOVER

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

File No. GV-900163

v.

HANOVER IRON AND STEEL, INC.
Defendant

(Case dismissed on Defendant's motion. Motion joined by
Commonwealth's Attorney. Judgement for Defendant ordered on
April 16, 1990.)

YOSH APPLICATION AND SUMMONS

PART A - SUMMONS

Hanover County

OFFICE OF THE

P.O. Box 176, District Courts Building, U.S. Route 301, Hanover, Virginia

OFFICE OF THE

HERRICK SHAW, CLERK
General District Court

JAN 10 1990

General District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded forthwith to summon Defendant(s) to appear before this Court on

1-9-90

1-9-90

1-9-90

PART B - APPLICATION FOR SUMMONS

Pursuant to §40.1-49.4 of the Code of Virginia, I request the issuance of this summons on a contest of the items enumerated below from the following VIRGINIA OCCUPATIONAL SAFETY AND HEALTH CITATION:

IP 5932-026-89

July 21, 1989

STATE OF VIRGINIA

CITATION CONTESTED ITEMS:

all items listed on citation
 items listed below

CITATION AND ITEM NO.	TYPE	ABATEMENT	PENALTY	CITATION AND ITEM NO.	TYPE	ABATEMENT	PENALTY
1/1	Serious		\$ 150.00	2/1	Other		\$ 50.00
1/2	Serious		200.00				
1/3	Serious		150.00				
1/4a-4b	Serious		200.00				
1/5	Serious		200.00				

October 18, 1989

Director,
Technical Support
Commissioner of Labor & Industry

PURSUANT TO § 40.1-49.4 of the Code of Virginia, the General District Court, after affirming, modifying or vacating the citation, shall issue a written order setting forth written findings of fact and conclusions of law upon which such order is based. A copy of the final order shall be forwarded by the clerk to:

Department of Labor and Industry
Virginia Occupational Safety and Health Program
P.O. Box 17004
Richmond, VA, 23241

RETURN DATE FILE NO.

1-5-90 900163

1-10-90

COMMONWEALTH OF VIRGINIA, EX REL
Commissioner of Labor and Industry

Labor and Industry

205 North Fourth Street

Richmond, Virginia 23241

v.

Hanover Iron and Steel, Inc.
SFRVE OH: Registered Agent
John F. Deal

4510 South Laburnum Avenue
Richmond, Virginia 23231

SUMMONS

TO THE DEFENDANT(S):
You are not required to appear, however, if you fail to appear, the citation will be affirmed as issued.

CONTESTED CASES:

will be set for later date
 will be heard on return date

• • • • •

ATTORNEY FOR PLAINTIFF

Douglas A. Barr, Esq.
Assistant Commonwealth's Attorney
ATTORNEY FOR DEFENDANT(S)

[Signature]

Occupational Safety and Health Program

P. O. Box 12064
Richmond, VA 23241

Citation and Notification of Penalty

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3. Issuance Date	4. Inspection Number
7/21/89	109732911
5. Reporting ID	6. CSNO ID
355111	P5932
7. Optional Report No.	8. Page No.
028-89	1 of 3
10. Inspection Date(s): 6-14-19-89	

9. Severity	11. Citation Number
SERIOUS	01

11. Inspection Site: 101 South Leadbetter Road
Ashland, VA 23005

9 to HANOVER IRON AND STEEL, INC.
and its successors
101 South Leadbetter Road
Ashland, VA 23005

THE LAW REQUIRES that a copy of this citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain posted until all alleged violations cited therein are corrected, or for 3 working days, whichever period is longer.

An inspection of a place of employment has revealed conditions which we believe do not comply with the provisions of the Virginia Occupational Safety and Health Law as set forth in Title 40.1, Code of Virginia. The nature of such alleged violation(s) is described below with references to applicable standards, rules, regulations and provisions of the said law. These conditions must be corrected on or before the date shown to the right of each alleged violation therein.

You are hereby notified that the Department of Labor and Industry has proposed penalty(ies) in the amount set forth below and in accordance with the Virginia Occupational Safety and Health Law as a result of the alleged cited violation(s). You have the right to contest any or all parts of either the citation(s), the abatement period(s) or the proposed penalty(ies) by notifying the Commissioner of Labor and Industry, if you do contest you should submit a letter to the Commissioner at the address shown above within 15 working days after receipt of the certified mail notice. If you fail to contest within the 15 working day period, the citation(s), abatement period(s) and/or penalty(ies) shall be deemed to be a final order of the Commissioner and not subject to review by any court or agency.

12. Item Number	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1	1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by rotating saw blade: (a) Fabrication Shop #3, the Rockwell metal cutting Bandsaw, did not have a guard on the unused portion of the blade.	7/27/89	150.00
2	1910.212(a)(3)(ii): Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s): (a) Fabrication Shop #1, the Scotchman Ironworker, Serial #2832M687, did not have a guard on the punching station. (b) Fabrication Shop #1, the Scotchman Ironworker, Serial #2832M687, did not have a guard on the structural shearing station. (c) Fabrication Shop #1, the Scotchman Ironworker, Serial #2832M687, did not have a guard on the flat shearing station.	7/27/89	200.00

17. Enforcement Director

Richard C. Angell, Region Supervisor

18. Last

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commissioner of Labor and Industry at the Address shown above within 15 working days of the issuance of this citation.

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise aided to exercise rights under the safety and health provisions of this title for themselves or others. Section 40.1-51-21, Code of Virginia.

*The term "Working Day" means Monday through Fridays but does not include Saturdays, Sundays or Legal Holidays.

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet) This Section May Be Detached Before Posting

Total Penalty for This Citation
Make Check or Order Payable to Virginia Department of Labor and Industry
Indicate Inspector's Number on Remittance

Occupational Safety and Health Program

P.O. Box 12064
Richmond, VA 23241

Citation and Notification of Penalty

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3. Issuance Date	7/27/89	4. Inspection Number	108720011
5. Reporting ID	286111	6. CSMC ID	78030
7. Optional Report No.	006-89	8. Page No.	3 of 3
10. Inspection Date(s)		6-14-19-89	

SERIOUS	01
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11. Inspection Site **101 South Leadbetter Road
Ashland, VA 23006**

12. To **HANOVER IRON AND STEEL, INC.
and its successors
101 South Leadbetter Road
Ashland, VA 23006**

THE LAW REQUIRES that a copy of this citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain posted until all alleged violations cited therein are corrected, or for 3 working days*, whichever period is longer.

An inspection of a place of employment has revealed conditions which we believe do not comply with the provisions of the Virginia Occupational Safety and Health Law as set forth in Title 40.1, Code of Virginia. The nature of such alleged violation(s) is described below with references to applicable standards, rules, regulations and provisions of the said law. These conditions must be corrected on or before the date shown to the right of each alleged violation therein.

You are hereby notified that the Department of Labor and Industry has proposed penalty(ies) in the amount set forth below and in accordance with the Virginia Occupational Safety and Health Law as a result of the alleged cited violation(s). You have the right to contest any or all parts of either the citation(s), the abatement period(s) or the proposed penalty(ies) by notifying the Commissioner of Labor and Industry. If you do contest, you should submit a letter to the Commissioner at the address shown above within 15 working days after receipt of the certified mail notice. If you fail to contest within the 15 working day period, the citation(s), abatement period(s) and/or penalty(ies) shall be deemed to be a final order of the Commissioner and not subject to review by any court or agency.

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet) This Section May Be Detached Before Posting

12. Item Number	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
3	1910.213(p)(4): Belt sanding machinery was not provided with a guard at each nip point where the sanding belt ran onto a pulley, to prevent the operator's hands or fingers from coming into contact with nip points: (a) Fabrication Shop #2, the Inco Belt Sander-Grinder, Model #163-4655, did not have a guard on the sanding belt and pulleys.	7/27/89	150.00
4a	The following alleged violations 4a and 4b have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident. 1910.219(d)(1): Pulley(s) with part(s) seven feet or less from the floor or work platform were not guarded in accordance with the requirements specified at 29 CFR 1910.219(m) & (o): (a) Fabrication Shop #1, the pulleys on the air compressor were not guarded.	7/27/89	200.00

17. Enforcement Director

Richard C. Anzell

Richard C. Anzell, Region Supervisor

18. Last By

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commissioner of Labor and Industry at the Address shown above within 15 working days of the issuance of this citation.

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others. Section 40.1-51-2.1 Code of Virginia.

*The term "Working Day" means Monday through Fridays but does not include Saturdays, Sundays or Legal Holidays.

Total Penalty for This Citation
C-2800
Make Check or Money Order Payable to Virginia Department of Labor and Industry
Indicate Inspection Number on Remittance

Virginia Department of Labor and Industry
Occupational Safety and Health Program

P O Box 12064
Richmond VA 23241

Citation and Notification of Penalty

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3 Issuance Date	7/21/89	4 Inspection Number	105730911
5 Reporting ID	355111	6 CSHO ID	P5932
7 Optional Report No	028-89	8 Page No	3 of 3

10 Inspection Date(s) 6-14-19-89

11 Citation Number	01
12 Severity	SERIOUS

11 Inspection Site 101 South Leadbetter Road
Ashland, VA 23005

9. To
HANOVER IRON AND STEEL, INC.
and its successors
101 South Leadbetter Road
Ashland, VA 23005

THE LAW REQUIRES that a copy of this citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain posted until all alleged violations cited therein are corrected or for "1 working days", whichever period is longer.

An inspection of a place of employment has revealed conditions which we believe do not comply with the provisions of the Virginia Occupational Safety and Health Law as set forth in Title 40.1 Code of Virginia. The nature of such alleged violation(s) is described below with references to applicable standards, rules, regulations and provisions of the said law. These conditions must be corrected on or before the date shown to the right of each alleged violation herein.

You are hereby notified that the Department of Labor and Industry has proposed penalty(ies) in the amount set forth below and in accordance with the Virginia Occupational Safety and Health Law as a result of the alleged cited violation(s). You have the right to contest any or all parts of either the citation(s), the abatement period(s) or the proposed penalty(ies) by notifying the Commissioner of Labor and Industry. If you do contest, you should submit a letter to the Commissioner at the address shown above within 15 working days after receipt of the certified mail notice. If you fail to contest within the 15 working day period, the citation(s), abatement period(s), and/or penalty(ies) shall be deemed to be a final order of the Commissioner and not subject to review by any court or agency.

12. Item Number	13. Standard, Regulation or Section of the Law Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
4b	1910.219(e)(1)(i):	Horizontal belts which had both runs 42 inches or less from the floor level were not fully enclosed by guards conforming to requirements specified in 29 CFR 1910.219(m) & (o): (a) Fabrication Shop #1, the two horizontal "V"-belts which were approximately 40 inches from the floor on the air compressor were not guarded.	7/27/89	
5	1910.303(g)(2)(i):	Live parts of electric equipment operating at 50 volts or more were not guarded against accidental contact by approved cabinets or other forms of approved enclosures, or other means listed under this provision: (a) Fabrication Shop #1, the cover was missing from the switch control box for the air compressor, which exposed employees to energized live parts.	7/27/89	200.00

17. Enforcement Director

Richard C. Angell

Richard C. Angell, Region Supervisor

18. Total Penalty for This Citation

200.00

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commissioner of Labor and Industry at the Address shown above within 15 working days of the issuance of this citation.

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others. Section 40.1-51-2.1 Code of Virginia.

*The term "Working Day" means Monday through Fridays but does not include Saturdays, Sundays or Legal Holidays.

Made Check or Money Order Payable to Virginia Department of Labor and Industry
Indicate Inspection Number on Remittance

Virginia Department of Labor and Industry
Occupational Safety and Health Program

P.O. Box 12064
Richmond, VA 23241

Citation and Notification of Penalty

OTHER	02
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The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

2. Issuance Date	Inspection Number
7/31/89	106729011
5. Reporting ID	8. CSHO ID
268111	26022
7. Optional Report No.	9. Page No.
006-89	1 of 6
10. Inspection Date(s)	6-14-18-89

11. Inspection Site **101 South Leadbetter Road
Ashland, VA 23005**

9. To
**MANOVER IRON AND STEEL, INC.
and its successors
101 South Leadbetter Road
Ashland, VA 23005**

THE LAW REQUIRES that a copy of this citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain

posted until all alleged violations cited therein are corrected or for 15 working days, whichever period is longer. An inspection of a place of employment has revealed conditions which we believe do not comply with the provisions of the Virginia Occupational Safety and Health Law as set forth in Title 40.1, Code of Virginia. The nature of such alleged violation(s) is described below with references to applicable standards, rules, regulations and provisions of the said law. These conditions must be corrected on or before the date shown to the right of each alleged violation therein.

You are hereby notified that the Department of Labor and Industry has proposed penalty(ies) in the amount set forth below and in accordance with the Virginia Occupational Safety and Health Law as a result of the alleged cited violation(s). You have the right to contest any or all parts of either the citation(s), the abatement period(s) or the proposed penalty(ies) by notifying the Commissioner of Labor and Industry if you do contest you should submit a letter to the Commissioner at the address shown above within 15 working days after receipt of the certified mail notice. If you fail to contest within the 15 working day period, the citation(s), abatement period(s) and/or penalty(ies) shall be deemed to be a final order of the Commissioner and not subject to review by any court or agency.

12. Item Number	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1	A.R.M. - Section 11.3.A: The Job Safety and Health notice was not posted to inform employees of the protections and obligations provided in the Labor Law of Virginia: (a) The Job Safety and Health Poster was not posted at the work place.	7/27/89	50.00
2	1910.22(d)(1): In every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the Building Official were not marked on plates of approved design and securely affixed in a conspicuous place in each space to which they relate: (a) Fabrication Shop #1, there was no load capacity chart for the storage area.	7/27/89	00.00

17. Enforcement Director

Richard C. Angell

Richard C. Angell, Region Supervisor

18

Last Pn

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commissioner of Labor and Industry at the Address shown above within 15 working days of the issuance of this citation.

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others. Section 40.1-51-2.1, Code of Virginia.

*The term "Working Day" means Monday through Fridays but does not include Saturdays, Sundays or Legal Holidays.

-30-

CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

VAOSH 2 (Rev. 1-84)

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet) This Section May Be Detached Before Posting

Occupational Safety and Health Program
 P.O. Box 12064
 Richmond, VA 23241

Citation and Notification of Penalty

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3 Issuance Date	7/21/89	1 Inspection Number	105732911
5 Reporting ID	35511	6 CSHO ID	05000
7 Optional Report No	026-89	8 Page No	2 of 5

10 Inspection Dates) 6-14-19-89

11 Citation Category	12 Citation Number
OTHER	02

11 Inspection Site 101 South Leadbetter Road
 Ashland, VA 23005

9. To
HANOVER IRON AND STEEL, INC.
 and its successors
 101 South Leadbetter Road
 Ashland, VA 23005

THE LAW REQUIRES that a copy of this Citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain posted until all alleged violations cited therein are corrected or for 3 working days, whichever period is longer.

An inspection of a place of employment has revealed conditions which we believe do not comply with the provisions of the Virginia Occupational Safety and Health Law as set forth in Title 41.1 Code of Virginia. The nature of such alleged violation(s) is described below with references to applicable standards, rules, regulations and provisions of the said law. These conditions must be corrected on or before the date shown to the right of each alleged violation therein.

You are hereby notified that the Department of Labor and Industry has proposed penalty(ies) in the amount set forth below and in accordance with the Virginia Occupational Safety and Health Law as a result of the alleged violation(s) described above. You have the right to contest any or all parts of either the citation(s) or the proposed penalty(ies) by notifying the Commissioner of Labor and Industry. If you do contest, you should submit a letter to the Commissioner at the address shown above within 15 working days after receipt of the certified mail notice. If you fail to contest within the 15 working day period, the citation(s), abatement penalty(ies) and/or penalty(ies) shall be deemed to be a final order of the Commissioner and that subject matter is closed by the Commissioner.

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet) This section May Be Detached Before Posting

12 Item Number	13 Standard, Regulation or Section of the Law Violated	14 Description	15 Date by Which Violation Must Be Abated	16 Penalty
3	1910.157(c)(1)	Portable fire extinguishers were not mounted, located and identified so that they were readily accessible without subjecting the employees to injuries: (a) Fabrication Shop #1, the 3 ABC fire extinguishers were not mounted.	7/27/89	00.00
4	1910.178(l)	Operators were not trained in the safe operation of powered industrial trucks: (a) Fabrication Shop, employees operating forklift trucks were not trained.	9/8/89	00.00
5	1910.215(a)(4)	Work rest(s) on grinding machinery were not adjusted closely to the wheel with a maximum opening of one-eighth inch: (a) Fabrication Shop #2, the workrest on the Enco Belt Sander--Grinder was adjusted 1/2 inch from the wheel.	7/27/89	00.00

17 Enforcement Director *Richard C. Angell* Richard C. Angell, Region Supervisor 18 Last Page

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commissioner of Labor and Industry at the Address shown above within 15 working days of the issuance of this Citation.

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the Safety and Health provisions of this title for themselves or others. (Section 41.1-51.2 Code of Virginia)

*The term "Working Day" means Monday through Fridays but does not include Saturdays, Sundays or Legal Holidays

CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

Total Penalty for This Citation
 Make Check or Money Order Payable to Virginia Department of Labor and Industry
 Indicate Inspection Number on Remittance

Virginia Department of Labor and Industry
Occupational Safety and Health Program

P.O. Box 12064
Richmond, VA 23241

Citation and Notification of Penalty

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3. Issuance Date 7/21/89	4. Inspection Number 105722911
5. Reporting ID 265111	6. CSHO ID DE022
7. Optional Report No. 028-89	8. Page No. 2 of 6
10. Inspection Date(s) 6-14-19-89	

OTHER	02
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11. Inspection Site
**101 South Leadbetter Road
Ashland, VA 23005**

To
**HANOVER IRON AND STEEL, INC.
and its successors
101 South Leadbetter Road
Ashland, VA 23005**

THE LAW REQUIRES that a copy of this citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet) This Section May Be Detached Before Posting

posted until all alleged violations cited therein are corrected, or for 15 working days, whichever period is longer. An inspection of a place of employment has revealed conditions which we believe do not comply with the provisions of the Virginia Occupational Safety and Health Law, as set forth in Title 40.1, Code of Virginia. The nature of such alleged violation(s) is described below with references to applicable standards, rules, regulations and provisions of the said law. These conditions must be corrected on or before the date shown to the right of each alleged violation therein. You are hereby notified that the Department of Labor and Industry has proposed penalty(ies) in the amount set forth below and in accordance with the Virginia Occupational Safety and Health Law as a result of the alleged violation(s). You have the right to contest any or all parts of either the citation(s), the abatement period(s) or the proposed penalty(ies) by notifying the Commissioner of Labor and Industry. If you do contest, you should submit a letter to the Commissioner at the address shown above within 15 working days after receipt of the certified mail notice. If you fail to contest within the 15 working day period, the citation(s), abatement period(s) and/or penalty(ies) shall be deemed to be a final order of the Commissioner and not subject to review by any court or agency.

12. Item Number	13. Standard, Regulation or Section of the Law Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
6	1910.215(b)(9):	The distance between the abrasive wheel periphery(a) and the adjustable tongue or the end of the safety guard peripheral member at the top exceeded one-fourth inch: (a) Fabrication Shop #2, the tongue guard on the Inco Belt Sander-Grinder was adjusted 1/2 inch from the wheel.	7/27/89	00.00
7	1910.303(f):	Each service, feeder and branch circuit, at its disconnecting means or overcurrent device, was not legibly marked to indicate its purpose, nor located and arranged so the purpose was evident: (a) Fabrication Shop #2, the circuit breakers in the circuit panel box were not labeled.	7/27/89	00.00
8	1910.305(g)(2)(iii):	Flexible cords were not connected to devices and fittings so that tension would not be transmitted to joints or terminal screws: (a) Fabrication Shop #1, the flexible cord to the foot pedal on the Scotchman Ironworker, was not provided with strain	7/27/89	00.00

17. Enforcement Director
Richard C. Angell
Richard C. Angell, Region Supervisor

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commissioner of Labor and Industry at the Address shown above within 15 working days of the issuance of this citation.

No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others. Section 40.1-51-2.1, Code of Virginia.

*The term "Working Day" means Monday through Fridays but does not include Saturdays, Sundays or Legal Holidays.

- 32 -
CASE FILE COPY

18. Total Penalty for This Citation

Make Check or the Order Payable to Virginia Department of Labor and Industry.

Indicate Inspection Number on Remittance

P.O. Box 13664
Richmond, VA 23111

Citation and Notification of Penalty

The violation(s) described in this citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

3 Issuance Date	7/21/89	4 Inspection Number	106780011
5 Reporting ID	000000	6 CSRD ID	000000
7 Optional Report No.	000000	8 Page No.	4 of 5
9	000-00	10 Inspection Date(s)	8-14-19-89

1. Type of Violation(s)	2. Citation Number
OTHER	02

11 Inspection Site
101 South Leadbetter Road
Ashland, VA 23005

9 To
**HANOVER IRON AND STEEL, INC.
and its successors
101 South Leadbetter Road
Ashland, VA 23005**

THE LAW REQUIRES that a copy of this citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested. (See enclosed booklet) This notice may be contested before Posing.

posted with an alleged violation(s) and remain posted for 15 working days, whichever period is longer. An inspection of a place of employment has revealed conditions which in my belief do not conform with the provisions of the Virginia Occupational Safety and Health Act, Chapter 9-1 of the Code of Virginia. The nature of the alleged violation(s) is described below with references to applicable standards of law, the provisions of the law, and the date by which these violations must be corrected or before the date shown to the right of each alleged violation(s).

12 Item Number

13 Standard Regulation or Section of the Law Violated

14 Description

15 Date by Which Violation Must Be Abated

16 Penalty

9
1910.1200(e)(1): Employer had not developed or implemented a written hazard communication program which describes how the criteria in 29 CFR 1910.1200(f), (g) and (h) will be met.

(a) Fabrication Shops, employees using chemicals and solvents, some of which were: Pennsol Motor Oil, USG Joint Compound, Xylene and Red Oxide Primers, were not provided with a written Hazard Communication Program.

9/8/89 00.00

10
1910.1200(g)(1): Employer did not have a material safety data sheet for each hazardous chemical used in the workplace:

(a) Fabrication Shops, employees using chemicals and solvents, some of which were: Pennsol Motor Oil, USG Joint Compound, Xylene and Red Oxide Primers, were not provided with Material Safety Data Sheets.

9/8/89 00.00

17 Enforcement Director

Richard C. Angell, Region Supervisor

18 Last P

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commission of Labor and Industry at the address shown above within 15 working days of the issuance of this citation.

The penalty shall be in full, and any way discriminate against an employee because the employee has filed a safety complaint, complaint or has troubled or otherwise acted to exercise the rights under the safety and health provisions of the law for themselves or others. (See Item 15 of Code of Virginia)

The term "Working Day" means Monday through Friday but does not include Saturdays, Sundays or Legal Holidays.

Total Penalty for This Citation
Must be paid to the State Treasurer, Virginia Department of Labor and Industry
Check and cash only
Number on Remittance

CASE FILE COPY

CITATION AND NOTIFICATION OF PENALTY

VAOSH 2086 1-89

Virginia Department of Labor and Industry
Occupational Safety and Health Program

P.O. Box 12064
Richmond, VA 23241

Citation and Notification of Penalty

The violation(s) described in this citation are alleged to have occurred on or about [] day the inspection was made unless otherwise indicated within the description given below.

3. Issuance Date	4. Inspection Number
7/21/89	105772911
5. Reporting ID	6. CSHO ID
255111	05932
7. Optional Report No	8. Page No
006-89	5 of 5
10. Inspection Date(s): 6-14-19-89	

OTHER	02
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11. Inspection Site: **101 South Leadbetter Road
Ashland, VA 23005**

9. To: **HANOVER IRON AND STEEL, INC.
and its successors
101 South Leadbetter Road
Ashland, VA 23005**

THE LAW REQUIRES that a copy of this citation shall be prominently posted in a conspicuous place at or near each place the alleged violation referred to in the citation occurred. The citation must remain

posted until all alleged violations cited therein are corrected or for "working days" whichever period is longer. An inspection of a place of employment has revealed conditions which we believe do not comply with the provisions of the Virginia Occupational Safety and Health Law as set forth in Title 40 of the Code of Virginia. The nature of such alleged violation(s) is described below with references to applicable standards, rules, regulations and provisions of the said law. These conditions must be corrected on or before the date shown to the right of each alleged violation therein. You are hereby notified that the Department of Labor and Industry has proposed penalty(ies) in the amount set forth below and in accordance with the Virginia Occupational Safety and Health Law as a result of the alleged cited violation(s). You have the right to contest any or all parts of either the citation(s), the abatement period(s) or the proposed penalty(ies) by notifying the Commissioner of Labor and Industry. If you do contest, you should submit a letter to the Commissioner at the address shown above within 15 working days after receipt of the certified mail notice. If you fail to contest within the 15 working day period, the citation(s), abatement period(s) and/or penalty(ies) shall be deemed to be a final order of the Commissioner and not subject to review by any court or agency.

12. Item Number	13. Standard, Regulation or Section of the Law Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
11	1910.1200(h):	Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area: (a) Fabrication Shops, employees using chemicals and solvents, some of which were: Pennsol Motor Oil, USG Joint Compound, Xylene and Red Oxide Primers, were not provided with information and training on the chemicals in the workplace.	9/6/89	00.00

17. Enforcement Director: **Richard C. Angell, Region Supervisor**

18. **50.00**

RIGHTS OF EMPLOYEES

Any employee or representative of the employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for the correction by submitting a letter to the Commissioner of Labor and Industry at the Address shown above within 15 working days of the issuance of this citation. No person shall discharge or in any way discriminate against an employee because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others. Section 40.1-51.2-1 Code of Virginia. *The term "Working Day" means Monday through Fridays but does not include Saturdays, Sundays or Legal Holidays.

Total Penalty for This Citation
Make Check or Money Order Payable to Virginia Department of Labor and Industry
Indicate Inspection Number on Remittance

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet) This Section May Be Detached Before Posting

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

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

v.

Case No. GV89-0005743-00

WOOD UNLIMITED, INC.
Defendant

AGREED ORDER

Comes now the plaintiff, the Commonwealth of Virginia, and the defendant, Wood Unlimited, Inc., 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, and this Court has jurisdiction in this matter, pursuant to §40.1-49.4(E) of the Code of Virginia, contesting citations issued to the defendant by the plaintiff on January 25, 1990. These citations were issued as a result of a November 13, 1989 Virginia Occupational Safety and Health (VOSH) inspection of the defendant's place of business located at 8605 Oakview Avenue, Richmond, Henrico County, Virginia.

As a result of the November 13, 1990 inspection, citations were issued to defendant alleging serious, willful and failure-to-abate violations of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry; those citations were accompanied by proposed penalties totaling \$58,450.00. Specifically, the following violations were grouped because of their similarity, and cited as Serious with a proposed penalty of \$350.00:

Citation 1, item 1a--§1910.141(d)(1): Washing facilities were not maintained in a sanitary condition. In the establishment, the washing facilities inside and outside the restroom were not maintained;

Citation 1, item 1b--§1910.141(d)(2)(ii): Lavatories were not provided with hot and cold, or tepid running water. In the restroom, the lavatory did not have hot water available; and

Citation 1, item 1c--§1910.141(d)(2)(iv): Lavatories were not provided with individual hand towels or sections thereof, of cloth or paper, warm air blowers or clean individual sections of continuous cloth toweling.

The following violation was cited as Willful with a proposed

penalty of \$4200:

Citation 2, item 1--\$1910.213(h)(1): The sides of the lower exposed portion of the blade of two radial arm saws were not guarded to the full diameter of the blade by a device that automatically adjusted itself to the thickness of the stock and remained in contact with the material being cut. On the north wall of the rear assembly room, the Delta radial arm saws, Identification Numbers 996 and 764, did not have lower blade guards.

An earlier safety inspection at the defendant's place of business conducted during the period March 10-17, 1989, Inspection #105728810, revealed a number of safety violations. The cited violations from that inspection were required to be abated by the defendant. The inspection in November of 1989 revealed that some of the violations previously cited had not, in fact, been abated. Therefore, on January 25, 1990 failure-to-abate notices were issued, with proposed penalties of \$53,900 for the following violations, (set forth by original citation and item number):

1-1a, §1910.22(a)(1): Places of employment were not kept clean and orderly, or in a sanitary condition;

1-2, §1910.23(c)(1): Open sided floor(s) or platform(s) 4 feet or more above the adjacent floor or ground level were not guarded by standard railings [or the equivalent as specified in §1910.23(e)(3)(i) through (v)] on all open sides;

1-4a, §1910.107(d)(5): Electric motor(s) driving exhaust fan(s) for spray booth(s) were located inside the booth(s);

1-4b, §1910.107(d)(6): Belt(s) and pulley(s) within paint spray booth(s) were not thoroughly enclosed;

1-5, §1910.133(a)(1): Protective eye equipment was not required where there was a reasonable probability of injury that could be prevented by such equipment;

1-6, §1910.212(a)(5): Fan blade guard(s) were not provided where the periphery of the blades was less than seven feet from the floor or working level;

1-7a, §1910.213(c)(1): Circular hand-fed ripsaws were not guarded by an automatically adjusting hood which completely enclosed that portion of the saw above the table and above the material being cut;

1-7b, §1910.213(c)(2): Hand-fed circular ripsaws were not furnished with a spreader to prevent material from squeezing or being thrown back on the operator;

- 1-7c, §1910.213(c)(3): Hand-fed ripsaws did not have nonkickback fingers or dogs so located as to oppose the thrust or tendency of the saw to pick up material or throw it back toward the operator;
- 1-8a, §1910.213(h)(1): The sides of the lower exposed portion of the blade of radial arm saws were not guarded to the full diameter of the blade by a device that automatically adjusted itself to the thickness of the stock and remained in contact with the material being cut;
- 1-8b, §1910.213(h)(3): Radial arm saws were not provided with an adjustable stop to prevent the forward travel of the blade beyond the position necessary to complete the cut in repetitive operations;
- 1-8c, §1910.213(h)(4): Radial saws were not installed in a manner so as to cause the cutting head to return gently to the starting position when released by the operator;
- 1-9, §1910.213(j)(3): Hand-fed jointers with horizontal cutting heads did not have automatic guards which covered all of the head on the working side of the fence or cage and effectively kept the operator's hand from coming in contact with the revolving knives;
- 1-10a, §1910.215(a)(2): Abrasive wheels used on grinding machinery were not provided with safety guards which covered the spindle end, nut and flange projections;
- 1-10b, §1910.215(a)(4): Work rests on grinding machinery were not adjusted closely to the wheel with a maximum opening of one-eighth inch;
- 1-11a, §1910.219(d)(1): Pulley(s) with part(s) seven feet or less from the floor or work platform were not guarded in accordance with the requirements specified at §1910.219(m) and (o);
- 1-11b, §1910.219(e)(1)(i): Horizontal belts which had both runs 42 inches or less from the floor level were not fully enclosed by guards conforming to requirements specified in §1910.219(m) and (o);
- 1-11c, §1910.219(e)(3)(i): Vertical or inclined belts were not enclosed by guards conforming to the requirements specified at 29 CFR 1910.219(m) and (o);
- 1-12, §1910.304(f)(4): The path to ground from circuits, equipment and enclosures was not permanent and continuous;
- 1-13, §1910.305(b)(1): Unused opening in cabinets, boxes and fittings were not effectively closed;

2-1, §1910.24(b): Fixed stairs were not provided for access from one structure level to another where operations necessitated travel regularly, daily or at each shift;

2-2, §1910.36(b)(4): Exit(s) from buildings or structures were not so arranged and maintained as to provide free and unobstructed egress;

2-3, §1910.37(q)(1): Exit(s) or access to exit(s) were not marked by readily visible signs;

2-4, §1910.38(a)(1): The emergency action plan required by §1910.157(a) or (b) when the employer has elected to partially or totally evacuate the workplace in the event of a fire emergency was not in writing;

2-5, §1910.38(b)(1): The fire prevention plan required by §1910.157(a) or (b) when the employer has elected total evacuation of the workplace in the event of a fire emergency was not in writing;

2-6, §1910.38(b)(8): The employer did not control accumulations of flammable and combustible waste materials and residues so that they would not contribute to a fire emergency;

2-7, §1910.106(d)(7)(i)(a): Portable fire extinguisher(s) having a rating of not less than 12-b units, were not located outside of, but with 10 feet from the door opening into room(s) used for the storage of flammable or combustible liquids;

2-8, §1910.107(g)(3): Approved metal waste cans were not provided in spraying area(s) for rags or waste impregnated with finishing materials;

2-9, §1910.107(g)(7): "NO-SMOKING" sign(s) in large letters on contrasting color backgrounds were not conspicuously posted at spraying area(s) and paint storage room(s);

2-11, §1910.303(g)(1)(ii): Working space about electric equipment rated 600 volts, nominal or less was used for storage;

2-12, §1910.305(a)(2)(iii)(g): Flexible cords and cables of temporary circuits were not protected from accidental damage; and

2-13, §1910.305(b)(2): Each outlet box in completed installations did not have a cover, faceplate or fixture canopy.

I. SETTLEMENT

1. In consideration of the actions agreed to herein by the defendant, plaintiff agrees to modify the Citations and Notifications of Penalty in the manner set forth below. The defendant certifies that all of the above violations have been abated, and that a walk-through inspection of the worksite has been made, confirming abatement of all above violations.

2. With respect to the penalty payment of \$63,000, the parties agree as follows:

- a. The plaintiff agrees to reduce the total penalty by one-third, from \$63,000 to \$41,580.
- b. The defendant, upon execution of this Agreed Order shall pay to the plaintiff the initial sum of \$10,395 in partial payment of the penalties assessed for the above citations in the following manner: a certified check, money order, or cash in the amount of \$1000 shall be paid to the plaintiff within fifteen (15) days of the effective date of this Order. The remaining \$9395, in similar form, shall be paid in no more than eleven (11) equal payments of \$783, and one payment of \$782, each payable on the first day of each month for the next twelve (12) successive months.
- c. Should the defendant, during the period November 1, 1990 to October 31, 1991, violate any of the sections of the Virginia Occupational Safety and Health (VOSH) Standards for General Industry which formed the bases for the citations set forth above, it shall pay a second partial payment of the total penalties assessed, in the amount of \$10,395, in the manner and schedule described in paragraph 2b above, 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 again violated any of the sections mentioned above.
- d. A third partial payment of the total penalties in the amount of \$10,395 shall be paid by the defendant 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 2c above, the defendant has again violated any of the sections of VOSH standards which form the bases of the citations set forth above.
- e. A fourth partial payment of the total penalties in the amount of \$10,395, shall be paid by the defendant in the manner and schedule described in paragraph 1b above, 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 2b and 2c above, the

defendant has again violated any of those sections of VOSH standards which form the bases of the citations set forth above.

3. It is expressly understood by the defendant that the penalty payments referred to in paragraphs 2a through 2e, above, are in addition to and separate from any penalties which may be proposed or assessed for the subsequent repeat violations which trigger the partial payments addressed above.

4. It is expressly understood and agreed by the parties that failure to comply with the terms of this Agreed Order or failure by the defendant to make a penalty payment in a timely manner as agreed herein, constitutes a breach of this Order. The responsibilities and duties of defendant under this Agreed Order over and above its responsibilities and duties under applicable law and regulation, shall cease on and after October 31, 1991, so long as all penalty amounts due plaintiff have been paid in full. In the event penalty payments are owed or are being paid to plaintiff on the above date, the responsibilities and duties of defendant under this Agreed Order shall continue until all such amounts have been paid in full and no further penalty amounts are due. At that time, the remaining amount of the penalty which has not yet become due and payable to plaintiff as a result of subsequent violations is waived by the plaintiff.

II. TERMS AND CONDITIONS OF AGREED ORDER

~~5. The parties agree that the abatement terms for the above citations are as set forth in the attached Schedule A. The defendant shall furnish quarterly reports to the plaintiff with respect to abatement as required in Schedule A.~~

6. The defendant agrees to consider Occupational Safety and Health as one of its corporate top priorities.

7. Within three months of the date of this Agreed Order the defendant shall develop and implement a written safety and health program acceptable to the plaintiff, which establishes policies and procedures for recognizing, and protecting employees from safety and health hazards. At a minimum, this program shall address the following subjects:

- (a) management commitment and employee involvement to safety;
- (b) worksite analysis;
- (c) hazard recognition, prevention and control; and,
- (d) safety and health training.

8. The safety and health program referred to above shall list and discuss the respective responsibilities of management, supervisors, and employees with respect to safety on the job. Authority and responsibility must be given to supervisors and lead men for the enforcement of safety and health rules. When unsafe work or hazardous conditions likely to cause serious

injury or death are observed, such work shall be stopped and corrective action immediately taken to abate the condition(s) prior to resuming work.

9. The defendant agrees to initiate within the above written safety and health program, an internal system of employee discipline to enforce defendant's and plaintiff's safety and health rules and regulations. At a minimum, that system must provide for progressively severe penalties culminating in the defendant's option of removal of the offending employee from his or her employment upon the occurrence of a third violation. The system shall apply equally to all defendant's employees, including management employees.

10. The safety and health program shall emphasize hazard recognition, prevention and control. Hazards which are detected shall be corrected in a timely manner.

11. The defendant agrees to institute a policy whereunder new employees will receive a preliminary safety and health indoctrination prior to initiating any duties of employment at the business. In addition, a further system of training on basic jobsite safety and health 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 and health indoctrination. This employee training shall include a discussion of company safety and health rules and the general hazards associated with the defendant's industry. The defendant shall also institute weekly safety and health discussions of hazards and corresponding safety practices for all employees employed at the business. As a part of said meetings, employees shall be encouraged to notify defendant, without reprisal, of any unsafe condition(s) encountered. Defendant shall then address such concerns within a reasonable period of time. Defendant shall identify and discuss accidents and "near miss" accidents, their causes, and means of prevention, with employees at the weekly meetings.

12. The defendant agrees to forward documentation of the weekly safety and health meetings, and the training accomplished to the Director of Safety Enforcement, Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23219, on a quarterly basis, beginning on November 1, 1990 and continuing thereafter for a minimum of one year. On November 1, 1991, upon application of the defendant, the Commissioner shall determine whether the defendant shall thereafter be required to continue sending such documentation. If the defendant is so required, the time period will be specified at that time, and the defendant will be notified of the decision of the Commissioner in writing.

13. The defendant agrees that its principal owner and president will attend a minimum of one safety seminar per year, which stresses the hazards associated with its business.

14. While this Agreed Order is in effect, the defendant agrees to conduct periodic monitoring of its business to determine that its employees and its supervisors are in compliance with VOSH regulations, (especially regulations dealing with machine guarding and electrical hazards), and with the company's safety and health program, which shall require adequate protection for all exposed employees. Employees, management, or others who conduct this monitoring shall assure that hazards to which personnel are exposed are recognized, prevented and controlled.

III. REQUIREMENTS FOR A WARRANT

15. The defendant expressly waives its right to require an inspection warrant to be issued in order for plaintiffs to gain access to defendant's place of business, and further understands that compliance inspections of employer's place of business will be conducted by plaintiff's inspectors on a reasonable, but random and unannounced basis. A minimum of two inspections will be conducted per year, while this Agreed Order remains in effect, to determine defendant's compliance with it.

16. Plaintiff and defendant agree that plaintiff's inspector will wait in the work area for a period of up to one hour in order that a designated company representative can accompany the inspector on the walk-through of the work area. The defendant agrees to have designated in advance, a responsible person, who, in the absence of the principal owner and president, will accompany the inspecting safety and health inspector. Any refusal by company personnel to allow entry to the business premises on the above outlined basis shall be considered a violation of this Agreed Order.

IV. FAILURE TO ABATE

17. Failure by the employer to comply with the requirements specified in this Agreed Order may result in the issuance of additional failure-to-abate penalties, or other action as provided by law.

V. POSTING

18. The employer 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.

VI. SETTLEMENT OF CLAIMS

19. This Agreed Order 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.

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

Enter: December 17, 1990

C. Rodney Chapman
Judge

Legal counsel:

Susan Fruchter Dobbs
Assistant Commonwealth's Attorney

Theo Sakellariou
President, Wood Unlimited, Inc.

Thamer E. Temple III
McSweeney, Burtch, & Crump, PC

CONSTRUCTION SAFETY

PART III

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX, VIRGINIA

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

v.

AMERICAN IRON WORKS, INC.
Defendant.

At Law No. 89928

ORDER

American Iron Works, Inc. timely appealed an Order of the General District Court for the County of Fairfax wherein the General District Court affirmed the serious citation issued by the Virginia Department of Labor and Industry against American Iron Works, Inc. for violation of Section 1926.105(a) and a penalty assessed of \$640.00.

On May 16, 1990 this Court conducted an evidentiary hearing and upon consideration of the matters presented, it is this 21st day of June, 1990 hereby Ordered, that the citation issued (attached to this Order for reference) for serious violation of Section 1926.105(a) and the penalty assessed in the amount of \$640.00 are hereby vacated.

Thomas J. Middleton, Jr.
Judge

Legal counsel:

Tonya Bolden
Assistant Commonwealth's Attorney

Leonard A. Sacks

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

COMMONWEALTH OF VIRGINIA, ex rel.)	
Commissioner of Labor and Industry)	
Plaintiff,)	
)	
v.)	Case No. 89-03180
)	
THE BARTLEY CORPORATION)	
Defendant.)	

FINAL ORDER

On July 21, 1989, came the plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Alexandria, 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 January 9, 1989. Upon consideration of the evidence and arguments of the parties, this Court makes the followings findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Plaintiff, through counsel, testified that plaintiff's inspector, Ernest E. Hill, conducted an investigation of an accident that occurred on August 8, 1988, at an apartment complex under construction, located at 301 South Reynolds Street, Alexandria, Virginia. The defendant, The Bartley Corporation, had been hired as a waterproofing subcontractor on the project.
2. Plaintiff issued a citation to the defendant, alleging the following serious violation of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry:

§1926.152(f)(3) - A flammable liquid was being used within 50' of an open flame. A penalty of \$640 was assessed.
3. Defendant filed a timely notice of contest to the citation.
4. The Plaintiff, through counsel, also testified that employees of the defendant were working, applying a highly flammable primer, in close proximity to a propane torch that was being used to dry a concrete foundation wall. The torch ignited some primer that was flowing in a drainage ditch. The flame travelled back to the area where the defendant's employees were working, causing a flash fire that killed one employee and seriously injured another.

5. The torch was supplied by Joe Durda, the superintendent for Hickman Construction Company, and was being used by an employee of another subcontractor on site.
6. The defendant, through counsel, argued that the employer had no notice that the propane torch was to be used at the time that its employees were applying the waterproofing. Counsel stated that one of its employees had specifically instructed Joe Durda not to light the torch prior to their starting work.
7. The court heard the testimony of Donald Carbaugh, an employee of the defendant. Mr. Carbaugh was working with Mr. Reese (deceased employee) waterproofing the walls at the time that the fire occurred. Mr. Carbaugh testified that before he began work that morning he told Joe Durda not to light the torch. He stated that he and Mr. Reese then began work on the wall and about 5-10 minutes later the fire occurred.

CONCLUSIONS OF LAW

8. After hearing the testimony of Mr. Carbaugh, and presentations by counsel, the court finds in favor of the defendant. The court believes that the defendant had no notice that the torch was to be used and no evidence was submitted to establish knowledge on the part of the defendant's foreman as to the torch's use.
9. The Clerk shall mail certified copies of this order to all parties of record and to the Commissioner of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219.

Enter: July 27, 1990

Robert T. S. Colby
Judge

Legal counsel:

John M. Tran
Assistant Commonwealth's Attorney

R. Dennis Osterman

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF RICHMOND COUNTY

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

v.

Case No. V91-365

Douglas Endicott d/b/a DECCO BUILDERS
Defendant

ORDER

On April 26, 1991, came the plaintiff by counsel, the Commonwealth's Attorney for Richmond County, and the defendant pursuant to a summons, to be heard on defendant's contest of Virginia Occupational Safety and Health (VOSH) Citations issued by plaintiff on December 14, 1990. 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. Following an inspection by plaintiff's inspector, Danny J. Burnett, on November 28, 1990, of a jobsite on U.S. Highway 360 in Warsaw, Virginia, where defendant's employees were observed installing metal roofing on a one-story commercial building, plaintiff issued two VOSH Citations to the defendant, alleging Serious and Other Than Serious violations of VOSH Standards for the Construction Industry.
2. The first VOSH Citation alleged seven (7) Serious violations, and the second alleged seven (7) Other Than Serious violations as described below:

SERIOUS CITATION

1. § 1926.21(b)(2) - Employees were not trained in safety rules applicable to steel erection and metal roofing. A civil penalty of \$640.00 was assessed.
2. § 1926.28(a) - Employees were not provided fall protection while working from a 4" steel strut measuring 9'10" from the ground. A civil penalty of \$280.00 was assessed.
3. § 1926.100(a) - Employees were not wearing hard hats while working around and under roofing construction. A civil penalty of \$640.00 was assessed.
4. § 1926.404(b)(1)(ii) - Employer did not provide Ground Fault Circuit Interrupter (GFCI) protection for temporary electrical circuits on the work site. A civil penalty of \$280.00 was assessed.

5. § 1926.450(a)(1) - Ladders or another proper method of access were not used to exit a roof measuring 9'10" high. A civil penalty of \$200.00 was assessed.
6. § 1926.450(a)(5) - A ladder in use at the work site did not extend at least 36" above the roof line. A civil penalty of \$200.00 was assessed.
7. § 1926.450(a)(10) - A portable ladder in use at the work site was not secured to prevent accidental displacement. A civil penalty of \$200.00 was assessed.

OTHER THAN SERIOUS

1. ARM § 11.3(A) - No VOSH Job Safety and Health poster was posted or located at the worksite. A civil penalty of \$40.00 was assessed.
2. § 1926.50(c) - No person certified to render First-Aid was present at the worksite. No penalty was assessed.
3. § 1926.59(e)(1) - The employer did not implement or develop a Hazard Communication program. No penalty was assessed.
4. § 1926.59(g)(8) - The employer did not maintain Material Safety Data Sheets, (MSDS') at the worksite. No penalty was assessed.
5. § 1926.59(h) - Employees were not provided information and training on hazards present at the worksite, including acetylene, oxygen, and gasoline. No penalty was assessed.
6. § 1926.152(a)(1) - The employer did not use an approved safety container for storage of less than 5 gallons of combustible liquids. No penalty was assessed.
7. § 1926.450(a)(2) - The employer provided a structurally defective aluminum ladder, missing one of two non-skid safety shoes. No penalty was assessed.

A total civil penalty of \$2,480.00 was assessed for both VOSH Citations. Defendant contested the amount of the civil penalties pursuant to Va. Code § 40.1-49.4(A)(4)(b), and the matter was set for trial and argued before this Court.

CONCLUSIONS OF LAW

3. The Court finds that defendant violated each of the VOSH Standards for the Construction Industry listed above. Defendant did not contest the substantive violations, only the amount of civil penalty assessed concurrent with the VOSH Citations. Furthermore, Plaintiff has established through a preponderance of the evidence sufficient proof of the violations at trial.

4. The Court AFFIRMS the issuance of all violations in each VOSH Citation, and ORDERS that the civil penalties be modified as follows:

SERIOUS CITATION

1. The civil penalty is reduced to \$320.00.
2. The civil penalty is vacated.
3. The civil penalty is vacated.
4. The civil penalty is reduced to \$140.00.
5. The civil penalty is vacated.
6. The civil penalty is reduced to \$50.00.
7. The civil penalty is reduced to \$50.00.

OTHER THAN SERIOUS CITATION

1. The civil penalty is reduced to \$40.00.

Judgment is hereby granted to the plaintiff in the total amount of \$600.00.

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

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

Enter: April 26, 1991

Tristram T. Hyde, IV
Judge

Legal counsel:

William T. King
Commonwealth's Attorney

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

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

v.

HARRISON-WRIGHT COMPANY, INC.,
Defendant

AGREED ORDER

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

The parties are before this Court pursuant to §40.1-49.4(E) of the Code of Virginia, to be heard on defendant's contest of citations issued by plaintiff on March 27, 1990. These citations allege serious, repeat, and other-than-serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for the Construction Industry.

The following violations were cited as serious. In consideration for the actions of the defendant set forth below, the plaintiff agrees to take the following actions concerning the Serious violations:

1. Citation 1, item 1 -- §1926.651(c)(2):

A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees.

This violation, cited as serious, and the proposed penalty of \$640 are vacated.

2. Citation 1, item 2a -- §1926.652(e)(1)(ii):

Support systems were not installed and removed in a manner that protected employees from cave-ins, structural collapses, or from being struck by members of the support system.

3. Citation 1, item 2b -- §1926.651(j)(1):

Adequate protection was not provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face.

The above violations (items 2a and 2b) were grouped because they involved similar or related hazards. These violations, cited as serious, and the proposed penalty of \$420 are vacated.

4. Citation 1, item 3 -- §1926.651(k)(1):

An inspection was not conducted by the competent person prior to the start of work and as needed throughout the shift.

This violation, cited as serious, is reduced to other-than-serious and the proposed penalty of \$420 is reduced to \$100.

The following violation was cited as repeat. In consideration for the actions of the defendant set forth below, the plaintiff agrees to take the following actions concerning this repeat violation:

5. Citation 2, item 1 -- §1926.652(c):

Designs of support systems shield systems being used were not designed and constructed in accordance with the requirements of paragraph (c)(1); or, in the alternative, paragraph (c)(2); or, in the alternative, paragraph (c)(3); or, in the alternative, paragraph (c)(4).

This violation, cited as repeat, is reduced to other-than-serious and the proposed penalty of \$280 is reduced to \$140.

The defendant was also cited for ten other-than-serious violations on Citation 3 for which no penalties were assessed. In consideration for the actions of the defendant set forth below, the plaintiff agrees to vacate the following other-than-serious violations:

6. Citation 3, item 1.

7. Citation 3, item 2.

8. Citation 3, item 10.

The violations for Citation 3, items 3 through 9 will retain their classification as other-than-serious violations, with no penalty.

In consideration for the actions of the plaintiff set forth above, the defendant agrees to the following:

1. Defendant has abated the above violations.

2. Defendant agrees to pay the penalty of \$240 within fifteen (15) days of the entry of this Order.

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, item 3, Citation 2, item 1 and Citation 3, items 3 through 9 are AFFIRMED as other-than-serious violations. 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: January 10, 1991

Edgar L. Turlington, Jr.
Judge

Legal counsel:

Thomas G. Shaia
Assistant Commonwealth's Attorney

David C. Kohler
Christian, Barton, Epps, Brent & Chappell

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF STAFFORD COUNTY

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

v.

N.V.M., INC.,
Defendant

AGREED ORDER

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

The parties are before this Court pursuant to §40.1-49.4(E) of the Code of Virginia, to be heard on defendant's contest of citations issued by plaintiff on or about November 21, 1989. These citations allege serious and other-than-serious violations of the Virginia Occupational Safety and Health (VOSH) Standards for Construction Industry.

The defendant was cited for the following serious violations:

1. Citation 1, item 1a -- §1926.21(b)(2): the employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury:
2. Citation 1, item 1b -- §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:
3. Citation 1, item 1c -- §1926.451(a)(13): an access ladder or equivalent safe access to scaffold(s) was not be provided:
4. Citation 1, item 1d -- §1926.451(a)(2): unstable objects were not used to support scaffolds or planks:

5. Citation 1, item 1e -- §1926.451(d)(3): tubular welded frame scaffold(s) were not properly braced by cross-bracing or diagonal braces, or both, to secure vertical members laterally and to align them so that the erected scaffold was plumb, square, and rigid:

The above violations (1a, 1b, 1c, 1d, and 1e) were grouped because they involved similar or related hazards that may increase the potential for injury resulting from an accident. The plaintiff has agreed to reduce the proposed penalty of \$640 for this group of alleged violations to \$320.

6. Citation 1, item 2 -- §1926.100(a): employees were not protected by protective helmets while working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns:

The plaintiff has agreed to reduce the proposed penalty of \$480 for Citation 1, item 2 to \$240; the classification as a serious violation will remain as cited.

The defendant was also cited for the following other-than-serious violations:

7. Citation 2, item 1 -- § 11.3.A. of the ARM: a Job Safety and Health notice was not posted to inform employees of the protections and obligations provided in the Labor Laws of Virginia:
8. Citation 2, item 2 -- §1926.59(e)(1): employer had not developed or implemented a written hazard communication program which describes how the criteria in 29 CFR 1926.59(f), (g) and (h) will be met:
9. Citation 2, item 3 -- §1926.59(g)(1): employer did not have a material safety data sheet for each hazardous chemical used in the workplace:
10. Citation 2, item 4 -- §1926.59(h): employees were not provided information and training as specified in 29 CFR 1926.59(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard is introduced into their work area:

Citation 2, items 1 through 4 will retain their classification as other-than-serious violations, with no penalty.

Defendant has abated the aforesaid violations and agrees to pay the penalty of \$560 within fifteen (15) days of the entry of this Order.

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 - 1e, Citation 1, item 2 be AFFIRMED as serious; and Citation 2, items 1 - 4 will be AFFIRMED as other than serious violations. 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: October 5, 1990

John W. Scott, Jr.
Judge

Legal counsel:

Daniel M. Chichester
Commonwealth's Attorney

Jack Goins, President
N.V.M., Inc.

Other Than Serious Citation 1, Item 1

§1926.151(b)(2): Temporary buildings located within other buildings or structures were not of either noncombustible construction or of combustible construction having a fire resistance of not less than 1 hour.

No penalty was proposed.

The total proposed penalty was one thousand twelve hundred sixty dollars, (\$1,260.00).

2. No employee or employee representative appeared in this matter or has filed a notice of contest.
3. Plaintiff and Defendant hereby agree that, in consideration for Plaintiff's amendment of the above VOSH Citations, Defendant withdraws its notice of contest to the violations and penalty.
4. The Plaintiff and Defendant agree to the following amendments of the citations at issue:

Serious Citation 1, Item 1

Title 40.1-51.1.(a), Code of Virginia is amended to a Serious violation of §1926.553(a)(4) to read as follows:

Base mounted drum hoist(s) in use did not meet applicable requirements for testing, inspection, maintenance, and operations as prescribed by the manufacturer.

This violation and the penalty of \$420 are affirmed.

Serious Citation 1, Item 2

§1926.105(a), and the accompanying proposed penalty are vacated.

Serious Citation 1, Item 3

§1926.500(d)(1), and the accompanying penalty of \$420 are affirmed.

Other Than Serious Citation 1, Item 1

§1926.151(b)(2) is affirmed. No penalty was proposed.

5. Defendant agrees to provide the Plaintiff within 30 days of the entry of this Agreed Order written procedures specifying the inspection, maintenance and recordkeeping requirements used by the Defendant in the operation of its "Astro Climbers" and "Sky Climbers."

6. Defendant agrees to remit to the Department of Labor and Industry, at 205 North Fourth Street, Richmond, Virginia 23219, the civil penalty of eight hundred forty dollars, (\$840.00) as assessed in paragraph 4 above, no later than fifteen days after notification of entry of this Agreed Order.

7. This Agreed Order shall be posted by the Defendant with the original citations for ten (10) working days at a conspicuous place, or where notices to employees are normally posted.

8. Pursuant to Va. Code § 40.1-51.3:2 (1990), 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 Virginia Occupational Safety and Health Citations and proposed penalties as amended above, be AFFIRMED and become a final order of this Court in accordance with Va. Code § 40.1-49.4(E).

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

Enter: May 22, 1991

William H. Hansbarger
Judge

Legal counsel:

Tonya Robinson
Assistant Commonwealth's Attorney

W. Scott Railton, and
Karen P. Power
Reed, Smith, Shaw & McClay

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF CHESAPEAKE

COMMONWEALTH OF VIRGINIA, *ex rel.*)
Commissioner of Labor and Industry)
Plaintiff,)
v.) File # V90-15233
PERHAM-DAYTON CORPORATION)
Defendant.)

AGREED ORDER

Comes now the Plaintiff by counsel, the Assistant Commonwealth's Attorney for the City of Chesapeake, 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:

1. The parties are before this Court pursuant to Virginia Code § 40.1-49.4(E) to be heard on Defendant's contest of two Virginia Occupational Safety and Health (VOSH) Citations, arising from inspection number 105744957, and issued to Defendant by Plaintiff on May 31, 1990. The citations allege the following violations of VOSH Standards for the Construction Industry:

CITATION 1

VIOLATION 1

SERIOUS, § 1926.100(a) - Employee was not wearing a hard hat when working in an excavation. A civil penalty of \$200.00 is proposed.

VIOLATION 2a

SERIOUS, § 1926.651(j)(2) - Spoils material from an excavation measuring at least 6 feet deep was not retained or stored at least 2 feet from the edge of the excavation.

VIOLATION 2b

SERIOUS, § 1926.651(k)(1) - A competent person had not performed daily inspections of the condition of the excavation walls or nearby spoils pile.

VIOLATION 2c

SERIOUS, § 1926.652(a)(1) - An excavation measuring at least 6 feet deep had not been adequately shored, sloped or braced to prevent a possible cave-in. A civil penalty of \$300.00 is proposed for the grouped items 2a, 2b, and 2c.

CITATION 2

VIOLATION 1
OTHER THAN SERIOUS, § 1926.152(a)(1) - A non-approved container was used to store gasoline at the job site. No penalty is proposed.

VIOLATION 2
OTHER THAN SERIOUS, § 1926.602(a)(9) - A Case model 580E backhoe did not have an operable horn. No penalty is proposed.

2. Plaintiff and Defendant hereby agree that, in consideration for Plaintiff's amendment of the above VOSH Citations, Defendant withdraws its notice of contest to the violations and penalty. The Plaintiff and Defendant agree to the following amendments of the citations at issue:

CITATION 1

VIOLATION 1
SERIOUS, § 1926.100(a) - This violation is vacated together with its proposed civil money penalty.

VIOLATION 2a
SERIOUS, § 1926.651(j)(2) - Defendant does not contest this violation and agrees to the assessment of a civil penalty of \$300.00.

VIOLATION 2b
SERIOUS, § 1926.651(k)(1) - This violation is vacated.

VIOLATION 2c
SERIOUS, § 1926.652(a)(1) - This violation is vacated.

CITATION 2

VIOLATION 1
OTHER THAN SERIOUS, § 1926.152(a)(1) - Defendant does not contest this violation.

VIOLATION 2
OTHER THAN SERIOUS, § 1926.602(a)(9) - Defendant does not contest this violation.

3. Defendant agrees to pay the civil penalty of \$300.00 as assessed in paragraph 2 above, no later than fifteen days after notification of entry of this Agreed Order.

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

5. 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 Citations for violations of Virginia Occupational Safety and Health Standards for the Construction Industry be amended and become a final order in accordance with the terms of this Agreed Order, and § 40.1-49.4(E), Code of Virginia.

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

Enter: April 25, 1991

C. H. Whitehurst
Judge

Legal counsel:

Derrick A. Mungo
Assistant Commonwealth's Attorney

Jerold A. Mueller, Attorney
Perham-Dayton Corporation

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA, <u>ex rel.</u>)	
Commissioner of Labor and Industry)	
Plaintiff,)	
)	
v.)	Case No. GV 90-8358
)	GV 90-8359
TEAGUE MASONRY, INC.)	
Defendant.)	

DEFAULT JUDGMENT

Citations were issued, to the defendant, as a result of two (2) safety inspections conducted by the plaintiff, Virginia Occupational Safety and Health (VOSH), Department of Labor and Industry, in September of 1989.

The defendant contested the following citations and penalties as a result of the first inspection:

§1926.100(a)--cited as serious violation, penalty of \$640;

§1926.451(a)(2), §1926.451(d)(4) and §1926.451(d)(7)--these violations were grouped and cited as one serious violation, with a penalty of \$640;

§1926.451(a)(13)--cited as serious violation, with a penalty of \$640;

§1926.451(e)(5)--cited as serious violation, with a penalty of \$420;

§1926.451(e)(4)--cited as serious violations, with a penalty \$420;

§1926.451(d)(10) and §1926.451(e)(10)--these violations were grouped and cited as one willful violation with a penalty of \$8000.

The company was cited for nine (9) other-than-serious violations for which no penalty was assessed: §140.1-49.4.P and §59.1-409.A.1; §40.1-49.4.P and §59.1.409.A.2; §1926.59(e)(1); §1926.59(e)(2)(i); §1926.59(g)(8); §1926.59(h); §1926.152(a)(1); §1926.601(b)(8) and §1926.706(a)(1).

The penalties assessed for the above violations equal \$10,760.

The defendant also contested the following citations and penalties as a result of the second inspection:

\$1926.601(b)(8)--cited as serious violation, with a penalty of \$240;

\$1926.100(a)--cited as willful violation, with a penalty of \$8000;

\$1926.451(a)(2), \$1926.451(d)(4) and \$1926.451(a)(13)--these violations were grouped and cited as one willful violation with a penalty of \$8000;

\$1926.451(a)(13)--cited as willful violation, with a penalty of \$7000; and

\$1926.451(d)(10)--cited as willful, with a penalty of \$8000.

The penalties as assessed for the above violations equal \$31,240. The total penalty due for both inspections is \$42,000.

ORDER

On July 20, 1990, came the plaintiff, by counsel, the Assistant Commonwealth's Attorney of this jurisdiction. Defendant, after proper service of the Summons did not appear to be heard on its contest of the Virginia Occupational Safety and Health (VOSH) citations issued by the plaintiff. Plaintiff made a motion for a default judgment to be entered against the defendant.

The court finds for the plaintiff and ORDERS that the citations as issued and described above, be AFFIRMED. Judgment is hereby granted to the plaintiff, against the defendant in the amount of Forty-Two Thousand Dollars (\$42,000) as a civil penalty for the violations of the Virginia Occupational Safety and Health (VOSH) Standards listed above.

The Clerk shall forthwith mail certified copies of this Order to counsel and parties of record and to the Commissioner of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219 within ten (10) working days after the entry of this Order.

Enter: July 25, 1990

Robert B. Parkerson
Judge Robert B. Parkerson

Legal counsel:

Gary K. Aronhalt
Assistant Commonwealth's Attorney

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