

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, 1980 - JUNE 30, 1981
VOLUME II

ISSUED BY THE VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

P. O. BOX 12064

RICHMOND, VA 23241-0064

VOLUME II

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PART I
INDUSTRIAL SAFETY

COMMONWEALTH

v.

PENDLETON BUS LINES, INC.

No. 80-9782

August 25, 1980

GENERAL DISTRICT COURT FOR THE CITY OF ROANOKE

B. Cleveland, Assistant Commonwealth's Attorney, for Plaintiff

B. E. Harris, Esq., for Defendant

Before the Honorable Judge Cornelison, District Court Judge

Disposition: Final, by Consent Agreement

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violations of Job Safety and Health notice requirements, requirements for walking/working surfaces; flammable and combustible liquids; safety related work practice of electrical work; abrasive wheel machinery and mechanical power-transmission apparatus of machinery and machine guarding requirements.

Synopsis:

The citations were issued as a result of a follow-up safety inspection. Four citations were issued. Payment of \$310 was accepted by the Commonwealth as settlement of claims against defendant, this being the amount equal to the original proposed penalty of the initial inspection. The reasons for this were respondent's illness during initial inspection, as well as circumstances involving building leasing/sub-leasing.

COMMONWEALTH

v.

OLD DOMINION WOODCRAFTERS, INC.

No. C-8--1884

October 6, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF AUGUSTA

L. Irvin, Assistant Commonwealth's Attorney, for Plaintiff.
R. Helmick, President, Old Dominion Woodcrafters, for Defendant.
Before the Honorable J. E. Hess, District Court Judge

DISPOSITION: Final, by Consent Agreement

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: Alleged violation of failure to abate violation of
woodworking machine requirements.

SYNOPSIS:

The citations were issued as a result of a follow-up safety inspection,
specifically that:

- 1910.213 (h)(i): Radial saws did not have an upper hood that completely enclosed the upper portion of the blade down to a point including the end of the saw arbor and the sides of the lower exposed portion of the blade were not guarded to the full diameter of the blade by a device that automatically adjusted itself to thickness of the stock and remained in contact with the material being cut: machine room.
- 1910.213(n)(i): Metal guards covering the cutting heads and saws if used, were not provided on sanding room molding machine.
- 1910.213(n)(3): Hoods or suitable guards were not provided to prevent the hands of the operator from coming in contact with the in-running rolls of feed rolls on molding machine -- sanding room.

In his decision, Judge Hess stated that the company had shown good faith and that it was a small company. Accordingly, he reduced the penalty to \$75 per violation, equaling \$225.

COMMONWEALTH

v.

RADIANSUN INDUSTRIES

No. C84184

November 13, 1980

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

C. Breit, Assistant Commonwealth's Attorney, for Plaintiff
J. Lottimer, Vice-President, Radiansun, for Defendant
Before the Honorable W. Jerry Roberts, District Court Judge

DISPOSITION: Final, by Consent Agreement

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: Alleged violation of: machine guarding at point
of operation, exposure adjustment of abrasive wheel machinery; insuring the
usage of point of operation guards.

SYNOPSIS:

The citations were issued as a result of a general schedule investigation. Four citations were issued but only three were issues at trial. By mutual agreement of the parties the penalties were reduced to \$50 while the violations remained. Mr. Lottimer agreed to pay the sum. Judge Roberts set the court date for November 20, 1980 for the Court Order of the penalty.

COMMONWEALTH

v.

VIRGINIA FIBERGLASS PRODUCTS, INC.

No. 8015665

December 22, 1980

GENERAL DISTRICT COURT FOR THE CITY OF ROANOKE

C. G. Thompson, Assistant Commonwealth's Attorney, for Plaintiff
F. Van Balen, President, Virginia Fiberglass Products, Inc., for Defendant
Before the Honorable Carrol Ray, District Court Judge

DISPOSITION: Final, By Consent Agreement

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: Alleged violations of general requirements of walking/work surfaces; powered industrial truck requirements of Materials Handling & Storage; woodworking and abrasive wheel machinery requirements of Machine & Machine Guarding; and safety-related work practice requirements of Electrical.

SYNOPSIS:

The citations were issued as a result of a general schedule inspection. Three citations were issued. The company president entered into a consent agreement and paid a penalty of \$360. The court accepted the agreement.

COMMONWEALTH

V.

OVERSTREET-SMITH LUMBER CO., INC.

No. C81-750

June 15, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF BEDFORD

J. Updike, Assistant Commonwealth's Attorney, for Plaintiff
J. Robertson, Jr., President - Manager, Overstreet-Smith Co., for Defendant
Before the Honorable Richard Miller, District Court Judge

DISPOSITION: By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: The citation contested concerned only the penalty imposed for violation of guard requirements for hand-fed jointers.

SYNOPSIS:

Although Judge Miller felt that the violation was substantial he agreed to dismiss the penalty contingent upon abatement.

PART II
CONSTRUCTION SAFETY

COMMONWEALTH

V.

CONCRETE REPAIR SPECIALISTS, A DIVISION OF
COOPERATIVE CONSTRUCTION COMPANY, INC.

No. C80-1971

August 14, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF ALBEMARLE

L. Wilson, Commonwealth's Attorney, for Plaintiff
M. Collins, President, Concrete Repair Specialists, for Defendant
Before the Honorable Stephen Helvin, District Court Judge

DISPOSITION: By Trial

NATURE OF THE CASE: Alleged violation of elevator car door & gate requirements.

| Citation No | Item No. | Standard |
|-------------|----------|-------------|
| 1 | 1 | 1926.552(d) |

ORDER

This day came the Commonwealth of Virginia by her attorney, Lester A. Wilson, III, and came Concrete Repair Specialists, a Division of Cooperative Construction Company, Inc., by its President, Milton J. Collins, on a contested citation that said Concrete Repair Specialists are in violation of the safety and health laws of the Commonwealth of Virginia, to-wit:

Violation of 1926.552(d), Rule 204.6b in that car doors and gates were not provided to protect the full width of the car entrance openings of an elevator during construction of the Windham Housing for the Elderly and a violation of 1926.552(d), Rule 204.6b in that car doors and gates were not provided to protect the full width of the car entrance openings at said elevator at the construction site of Windham Housing for the Elderly in Crozet, Virginia.

WHEREUPON based on findings of fact and conclusions of law, the Court hereby confirms the Commissioner's citation and orders that a penalty of \$140 proposed by the Commissioner be assessed but that said \$140.00 be suspended.

COMMONWEALTH

v.

BARC ELECTRIC CO-OP

No. C80-788

August 18, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF ALLEGHENY

C. Alderman, Commonwealth's Attorney, for Plaintiff
W. McClung, Esq., for Defendant
Before the Honorable D. M. Byrd, Jr., District Court Judge

DISPOSITION: By Trial

NATURE OF THE CASE: Alleged violations of general requirements of power transmission and distribution.

| Citation No | Item No. | Standard |
|-------------|----------|-----------------------|
| 1 | 1 | 1926.950(b)(2) |
| 1 | 1a | 1926.950(c)(1)(i) |
| 1 | 1b | 1926.950(d)(1)(ii)(a) |
| 1 | 1c | 1926.950(d)(1)(iii) |

ORDER

The facts in brief are that an employee of BARC Electric Co-op failed to comply with the standards/regulations set forth in the citation, which resulted in his death.

The Court finds that BARC Electric Co-op has exercised reasonable diligence, both in job training and through its safety program, to insure that its employees were aware of the existing hazard in question, the appropriate safety precautions to prevent death or injury and the possible sanctions for failure to take said precautions. Therefore the employer, BARC Electric Co-op, did not and could not with the exercise of reasonable diligence know of the presence of the violation.

For the reasons stated, the citation is vacated and this action is dismissed.

COMMONWEALTH

v.

R. L. DIXON, INC.

No. C804170

August 26, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

N. Mikula, Commonwealth's Attorney, for Plaintiff
Before the Honorable Henry Shelton, District Court Judge

DISPOSITION: By Trial

NATURE OF THE CASE: Alleged violation of guarding of floor openings and floor holes.

| Citation No. | Item No. | Standard |
|--------------|----------|----------------|
| 1 | 1 | 1926.500(b)(1) |

ORDER

Judgment, that the plaintiff recover of the defendant the sum of \$240.

COMMONWEALTH

v.

WILLIAM B. HOPKE COMPANY, INC.

No. L49070

October 22, 1980

CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

K. Dennis, Commonwealth's Attorney, for Plaintiff
W. Dudley, Esq., for Defendant
Before the Honorable William G. Plummer, Circuit Court Judge

DISPOSITION: Final, by Trial

NATURE OF THE CASE: Alleged violation of specific trenching requirements

| Citation No. | Item No. | Standard |
|--------------|----------|-------------|
| 1 | 1 | 1926.652(a) |

FINDINGS OF FACT

1. On Friday, November 16, 1979, a crew of the William B. Hopke Co., Inc. ("Hopke Company"), was constructing a sanitary sewer in the Glen Manor Subdivision of Fairfax County, Virginia, in the area of the future Golden Ball Tavern Court.

2. The foreman in charge of the job on behalf of the Hopke Company at the time was Joseph Hawkins. Hawkins had fifteen to sixteen years of experience in the heavy construction industry but no formal training. He started as a laborer and has personal experience in all of the various positions connected with the industry. He has worked as a foreman for other contractors and has been a foreman for the Hopke Company for approximately three and one-half years.

3. Mr. Hawkins, with the assistance of the backhoe operator, was the person within the Hopke Company directly responsible for determining when the banks had been excavated to a stable slope. Mr. Hawkins also makes the determination when a "trench box" is to be utilized.

4. On the morning of November 16, 1979, at the time of the collapse, Mr. Hawkins, in good faith, believed that the banks were excavated to a stable and safe slope. Mr. Hawkins considered the soil to be hard and compact.

5. The soil in the area of the collapse is decomposed rock created by the chemical and physical weathering of the parent granite rock. There are foliation planes of weakness, sometimes referred to as relict joints, present in the parent rock which are preserved in the decomposed rock soil. The collapse occurred along a relict joint.

6. The mass of the soil in the area of the trench failure is hard and the sheer strength of the soil mass is considered to be relatively high. However, the sheer strength along the relict joint is appreciably lower. Standard methods of slope stability analysis in general give a deceptively high factor of safety in this type of soil.

7. The foliation plane or relict joint may have been 1/4 inch or less in thickness where it intersected the wall of the trench. The plane would have been hard to see by a man on top of the bank or in a backhoe excavating the trench.

8. The "cut sheets" indicate that the depth of the excavation in the area of the failure was approximately 14.5 feet. No measurements were made of the actual depth. The width of the excavation was measured at 25 to 30 feet.

9. The Court found that the slope of the sides of the excavation, as shown by measurements introduced by both parties, was not in compliance with VOSH standard 1926.652(a), and the "Approximate Angle of Repose" graphic representation, "Table P-1", incorporated by that standard.

10. On or about November 1, 1979, the Hopke Company was cited by Eugene L. Ellison of the Virginia Department of Labor and Industry, with a willful-serious violation of 1926.652(a) and assessed a penalty of \$6,480.

CONCLUSIONS OF LAW

A. The citation issued to the William B. Hopke Co., Inc., was prepared in accordance with the rules and procedures of Virginia. A notice of contest of the violation was timely filed by the Hopke Company.

B. This Court has jurisdiction over this action pursuant to § 40.1-49.5 of the Code of Virginia, as amended.

C. A contractor has a duty to make a reasonable inquiry into soil conditions before making an excavation.

D. The soil at the job site location was "unstable".

E. The slope of the sides of the excavation were not in accordance with the requirements of § 1926.652(a).

F. There was no evidence that the violation was "willful", but it was "serious" in that there was a substantial probability that death or serious physical harm could result.

G. The fine is reduced to \$1,000.

ORDER

This case came on for trial on October 22, 1980, upon an appeal from the General District Court of Fairfax County, Virginia, dismissing plaintiff's summons. The Court, sitting without a jury, heard the evidence of the plaintiff, at the conclusion of which it sustained a motion to strike the willful aspect of the violation, and;

Thereafter, the defendant did put on evidence in support of its position following which the Court, for the reasons stated in its findings of fact and conclusions of law, found the defendant guilty of a serious violation of § 1926.652(a) and imposed a fine of \$1,000.

Thereafter, on August 17, 1981, the defendant filed its Motion for Reconsideration asserting that it had been charged under an inapplicable provision of law, inasmuch as the opening in the ground was an "excavation" rather than a "trench" as those terms are defined in the regulations, and;

The Court being of the opinion that the defendant's point comes too late and was waived since the issue had not been raised at trial and that accordingly the Motion for Reconsideration should be denied;

It is ORDERED AND ADJUDGED as follows:

1. That the defendant committed a serious but not willful violation of § 1926.652(a) of the Virginia OSHA Regulations.
2. That the defendant is fined \$1,000.
3. That the defendant's Motion for Reconsideration is denied.

COMMONWEALTH

v.

SKYLINE CRANE SERVICE, INC.

No. 46721

April 10, 1980
Entered October 23, 1980

CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

K. Dennis, Assistant Commonwealth's Attorney, for Plaintiff
J. B. Clarke, Jr., D. R. Clarke, Esq., for Defendant
Before the Honorable F. Bruce Bach, Circuit Court Judge

DISPOSITION: By Trial

NATURE OF THE CASE: Alleged violations of head protection; guard rails, handrails, and covers; structural steel assembly; personal protective equipment and safety nets.

| Citation No. | Item No. | Standard |
|--------------|----------|-------------------------------|
| 1 | 1 | 1926.100(a) |
| 1 | 2 | 1926.500(e)(1)(iii) |
| 1 | 3 | 1926.751(d) |
| 2 | 1 | 1926.28(a) and 1926.105(a) |
| 2 | 1a | 1926.500(b)(1) |

ORDER

THIS CAUSE came on to be heard on the 10th day of April, 1980, upon the summons and citations issued to defendant by plaintiff, Commonwealth of Virginia, Department of Labor and Industry, on or about May 10, 1979, the exhibits and evidence heard ore tenus, and upon argument of counsel; and,

It appearing to the Court upon the evidence presented at trial and memoranda submitted by each of the parties that the defendant is liable under the applicable statute for failure to comply with the requirements of 29 CFR 1926.100(a) and 751 (d) as adopted by Sec. 40.1-48 of the Code of Virginia, 1950 as amended, violations characterized by plaintiff as Non-Serious. Further, defendant is liable for failure to comply with the requirements of 29 CFR 1926.105(a) also as adopted by said Sec. 40.1-48, characterized by plaintiff as Serious. Therefore, it is hereby,

ORDERED that the findings and the penalty assessments of the Virginia Department of Labor be and they hereby are adopted.

A total penalty of \$810 shall be paid by defendant.

AND THIS ORDER IS FINAL.

COMMONWEALTH

v.

RESICON BUILDING CORPORATION

No. 80-2387

November 13, 1980

GENERAL DISTRICT COURT FOR THE THE COUNTY OF ARLINGTON

K. Hennenberg, Commonwealth's Attorney, for Plaintiff
J. Purdy, Esq., for Defendant
Before the Honorable Ken MacFarlene Smith, District Court Judge

DISPOSITON: Final, by Consent Agreement

NATURE OF THE CASE: Alleged violation of guardrailing on manually propelled mobile scaffolding.

| Citation No. | Item No. | Standard |
|--------------|----------|-----------------|
| 2 | 1 | 1926.451(e)(10) |

ORDER

ON THE 13th day of November, 1980, counsel appeared on behalf of both parties; and

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

IT FURTHER APPEARING TO THE COURT that by agreement of both parties the recommended penalty for the violation is \$240; it is hereby

ADJUDGED AND ORDERED that the Defendant was in violation of the standards stated in the citation and that the Defendant shall pay the amount of \$240 to the Department of Labor and Industry.

COMMONWEALTH

v.

ARMSTRONG ELECTRIC COMPANY

NO. C80-2686

November 24, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF PITTSYLVANIA

D. Grimes, Assistant Commonwealth's Attorney, for Plaintiff
R. Wood, III, Esq., for Defendant
Before the Honorable F. Nelson Light, District Court Judge

DISPOSITIONL: By Trial, Appealed

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: Alleged violation of safety and personal protective equipment requirements.

SYNOPSIS:

The citations were issued as a result of a safety inspection following an accident. Judge Light held that Armstrong Electric Co., Inc., was in violation of 1926.28(a) in that an employer is responsible for employees wearing and using appropriate personal protective equipment (safety belts & lanyards), and imposed the proposed penalty of \$640. He declined to reduce the violation from "serious" to "other".

COMMONWEALTH

v.

PROFESSIONAL BUILDERS, INC.

No. 81-13826

January 8, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

K. Dennis, Assistant Commonwealth's Attorney, for Plaintiff
C. Rapattoni, President, Professional Builders, Inc.
Before the Honorable John Rothrock, District Court Judge

DISPOSITION: Final, by Consent Agreement

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violations of sanitation requirements in Occupational Health & Environmental Controls; Head protection requirements in Personal Protective & Life Saving Equipment; Scaffolding requirements in Ladders & Scaffolding.

| Citation No. | Item No. | Standard |
|--------------|----------|-----------------|
| 1 | 1 | 1926.51(a)(1) |
| 1 | 2 | 1926.100(a) |
| 2 | 1 | 1926.451(d)(10) |

SYNOPSIS:

The citations were issued as a result of a general schedule investigation. Two citations were issued. Prior to trial, a consent agreement was signed and Judge Rothrock accepted it and imposed a penalty of \$140.

COMMONWEALTH

v.

ALPINE CONSTRUCTION CORP.

No. 80-5967

January 20, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

N. Mikula, Assistant Commonwealth's Attorney, for Plaintiff
W. Marshall, Esq., for Defendant
Before the Honorable Reginald Morris, District Court Judge

DISPOSITION: Final, By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: Alleged violation of loading of explosives or blasting agents, and misfire requirements (1926.905 and 1926.911).

SYNOPSIS:

The citations were issued as a result of an accident fatality inspection involving explosives. Judge Morris allowed introduction into evidence an alternative method which could have been used to drill holes. In his summation, he noted that witnesses had testified that employees drilled after being told not to by the expert in the field. Judge Morris also found that digging occurred in the area of undetonated charges. In upholding the charges, he imposed the proposed penalty of \$400.

COMMONWEALTH

v.

RELIABLE PLUMBING & HEATING, INC.

No. C-80-17045

January 22, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

R. Alderman, Assistant Commonwealth's Attorney, for Plaintiff
R. Puckett, President, Reliable Plumbing and Heating, for Defendant
Before the Honorable Donald Howren, District Court Judge

Disposition by Trial

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violation of specific trenching requirements; an employee was struck by moving ground containing a metal post when a section of a bank caved in.

Synopsis:

The citations were issued as a result of a general schedule safety investigation. Two citations were issued. Judge Howren found the defendant guilty and reduced the proposed \$100 penalty to \$10 and assessed it against the defendant.

COMMONWEALTH

v.

RICHMOND PRIMOID, INC.

No. Page 1, Line 3

February 20, 1981

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

R. Morecock, Assistant Commonwealth's Attorney, for Plaintiff
M. Randolph, President of Richmond Primoid, Inc., for Defendant
Before the Honorable Robert Simpson, District Court Judge

DISPOSITION: Final, by Consent Agreement

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: Alleged violation of personal protective equipment and safety net requirements; specifically, employees were applying waterproofing material to the exterior roof of the 7th barrel from the east end of the Convention Center. The employees were not wearing any safety protective equipment nor were safety nets provided creating a full hazard to a lower road, a distance of 27'6".

SYNOPSIS:

The citation was issued as a result of a general schedule safety inspection. Mr. Randolph elected to pay a reduced penalty of \$100 as opposed to contesting the citation and penalty. Judge Simpson accepted the guilty plea and the agreement.

COMMONWEALTH

v.

ARMSTRONG ELECTRIC CO., INC.

No. LAW-13

April 15, 1981

CIRCUIT COURT FOR THE COUNTY OF PITTSYLVANIA

D. N. Grimes, Assistant Commonwealth's Attorney, for Plaintiff
T. McCandlish, Esq., for Defendant
Before the Honorable Samuel M. Hairston, Circuit Court Judge

DISPOSITION: Final, by Trial

NATURE OF THE CASE: Alleged violation of safety & personal protective equipment requirements.

| Citation No. | Item No. | Standard |
|--------------|----------|----------|
| 1 | 1 | 1926.28A |

ORDER

On April 15, 1981, came the parties, by counsel, before this Court for a hearing on the merits in this case. Having received all of the evidence and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. Armstrong Electric had an adequate safety program.
2. Armstrong Electric provided safety belts to its employees, and by its rules and regulations required the use of safety belts by its employees.
3. Failure of employees to wear safety belts in the particular instance charged by the Commonwealth of Virginia was an isolated instance where the employee violated the known safety requirement of Armstrong Electric.
4. Armstrong Electric did not and could not with reasonable diligence have known of the violation by its employees of Armstrong Electric's safety requirement.
5. Armstrong Electric used reasonable diligence to ensure compliance with the safety rules and regulations.
6. The employee in question knowingly violated a safety requirement of Armstrong Electric that was known to him.
7. Though it is not material to the violation alleged in this case, the Court finds that the racks employees climbed to reach their work stations served as ladders, and that in the use of the ladder made by racks it would have been impractical to use safety belts.

8. Armstrong Electric Company was not in violation of the standards codified at 29 C.F.R. § 1926.28(a) and 29 C.F.R. § 1926.105(a) and adopted as Occupational Safety and Health Standards under Virginia law.

NOW THEREFORE it is ORDERED that the citations against Armstrong Electric Company for alleged violation of Virginia Occupational Safety and Health Standards be, and hereby are, dismissed with prejudice.

COMMONWEALTH

v.

VIRGINIA PIPE OF SUPPLY COMPANY

No. 71977

April 29, 1981

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

W. Bray, Assistant Commonwealth's Attorney, for Plaintiff
T. McCandlish, Esq., for Defendant
Before the Honorable E. L. Turlington, Jr., District Court Judge

DISPOSITION: By Trial

NATURE OF THE CASE: Alleged violations involving hoist and elevator requirements.

ORDER

This day came the plaintiff by the Attorney for the Commonwealth, and the defendant and its counsel, Thomas W. McCandlish, in response to the plaintiff's summons, issued in accordance with the provisions of section 40.1-49.4 Virginia Code Annotated (Cum. Supp. 1980) alleging that the defendant has violated certain sections of the Virginia Occupational Safety and Health Standards for the Construction Industry (1979) as enumerated on the citation attached hereto.

The Attorney for the Commonwealth elected not to pursue the alleged violation of section 1926.21(b)(2), prior to trial, and the citation involving said section is therefore dismissed.

The counsel for the defendant, prior to trial, elected to withdraw its contest of the alleged violations of sections 1926.401(c), 1926.402(a)(10) and 1926.451(e)(4) prior to trial, and the citations involving said sections are therefore affirmed.

The Court having heard the testimony of C. L. Small, Jr., a compliance officer with the Virginia Department of Labor and Insutry, and Robert B., Rose, project manager for the defendant, and the argument of counsel doth hereby find the defendant is in violation of each of the sections aforesaid.

The principle contention of the defendant was that the cited conditions were created or controlled by and were the responsibility of John W. Daniel and Company, the general contractor for the project, and that the defendant was not responsible for any alleged violations.

The Court doth assess a penalty against the defendant for such violations in the sum of \$150. The summons and citation are made a part of this order.

The Court doth hereby vacate its prior order in this matter entered on May 28, 1981, pursuant to §40.1-49.4(E) Code of Virginia, to conform its order to the action taken at trial.

It is ORDERED that a certified copy of this Order be mailed by the Clerk to the Attorney for the Commonwealth for the City of Richmond, to the Attorney General for the Commonwealth of Virginia, to the Commissioner of Labor and Industry, and to Thomas W. McCandlish, Esquire, counsel for the defendant.

COMMONWEALTH

v.

UNITED OF NORFOLK, INC.

NO. C8117-785

May 6, 1981

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

S. L. Watt, Assistant, Commonwealth's Attorney, for Plaintiff
M. Howell, President, United of Norfolk, for Defendant
Before the Honorable Fred Martin, District Court Judge

DISPOSITION: Final, by Consent Agreement

NATURE OF THE CASE: Alleged violation of guardrail, handrail, and cover requirements; material handling equipment & job safety & health posting requirements.

ORDER

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

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

| <u>Alleged Violation</u> | <u>Type</u> | <u>Demand Penalty</u> | <u>Recommended Penalty</u> |
|--------------------------|-------------|-----------------------|----------------------------|
| 1926.500(d)(1) | serious | \$1000 | \$200 |
| 1900.37(1) | nonserious | none | none |
| 1926.602(c)(1) | nonserious | none | none |

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

2. Defendant agrees and stipulates to the following:

- a. That the recommended penalties amounting to \$200 will be paid in full pursuant to this Order:
- b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.

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

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$200.

It is further ORDERED that pursuant to the provisions of § 40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of \$200 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

C. W. JOHNSON, JR. CONSTRUCTION COMPANY

No. C-81-215

May 19, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF WASHINGTON

W. Austin, Assistant Commonwealth's Attorney, for Plaintiff
S. Hodges, Esq., for Defendant
Before the Honorable T. L. Hutton, Jr., District Court Judge

DISPOSITION: Final, by Consent Agreement

NATURE OF THE CASE: Alleged willful trenching requirements violation, specifically, a 13 x 3 x 35 foot trench had been dug and was not shored or otherwise supported; a piece of pipe had been laid in the trench by workmen.

SYNOPSIS:

The citation was issued as a result of a general schedule inspection. One citation was issued, it being a serious and willful violation of 1926.652(a).

HELD: Judge Hutton accepted the Inspector's recommendation and amended the citation from a "willful-serious" to a "serious" violation and imposed a judgment against the Defendant for \$800 + 8% per annum from May 19, 1981, until paid plus \$6 court cost.

COMMONWEALTH

v.

B. C. C. MECHANICAL, INC.

No. C81-2335

May 22, 1981

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

N. Butler, Assistant Commonwealth's Attorney, for Plaintiff
S. Peterson, Esq., for Defendant
Before the Honorable Robert S. Colby, District Court Judge

DISPOSITION: By Trial

NO FINAL ORDER RECEIVED FROM THE COURT

NATURE OF THE CASE: Alleged violation of trenching and excavation requirements; specifically, a trench was improperly sloped or shored soil was sandy clay with small stone and gravel. Also, no means of exit provided for employees in the trench.

SYNOPSIS:

The citation was issued as a result of a general schedule safety inspection. Judge Colby held that the Defendant violated the Labor Laws of Virginia. However, because no one was injured, the status of the violation was reduced from "serious" to "other" and the proposed penalty of \$210 was increased to \$500 and assessed.

COMMONWEALTH

v.

HARRIS ELECTRIC COMPANY, INC.

No. C81-6729

June 10, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Kelly Dennis, Assistant Commonwealth's Attorney, for Plaintiff
Before the Honorable G. William Hammer, District Court Judge

Disposition: Final, by Trial

Nature of the case: Failure to "de-energize" or "insulate" a work area.

| | | |
|--------------|----------|----------------|
| Citation No. | Item No. | Standard |
| 1 | 1 | 1926.400(c)(1) |

ORDER

THIS CAUSE having come before me, June 6, 1981, the defendant having been duly notified and having FAILED TO APPEAR, and the evidence having been adduced, ore tenus, through the investigators for the Department of Labor,

AND, IT APPEARING that Commonwealth has shown that the defendant failed to comply with VOSH requirement, Section 1926.400(c)(1), to wit: failing to "de-energize" a work area exposed to employees, or, alternatively, failing to "insulate" the area from human contact,

AND, pursuant to the findings of fact and conclusions of law, attached hereto as if incorporated herein,

IT IS ADJUDGED, ORDERED AND DECREED, that judgment is entered on behalf of the Commonwealth against the defendant in the amount of \$140, a civil penalty.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THE COURT FINDS that VOSH requirements, specifically Section 1926.400(c)(1), prescribe that workers shall not work "in such proximity to any part of an electrical power circuit . . ." unless he is protected ". . . by de-energizing the the circuit and grounding it or by guarding it by effective insulation or other means."

ADDITIONALLY, the court finds no defenses to this requirement, none having been offered, which would obviate the necessity of compliance,

IT APPEARING, that, on November 14, 1980, Inspector Don M. Falls of the Department of Labor and Industry responded to 4014 Spring Run Court, Chantilly, Virginia 22021, in the County of Fairfax. Inspector Falls testified that he found an employee of the defendant, a Mr. Stephen Feaganes, had sustained multiple burns on his arms and torso and had suffered temporary

concussion from a shock he had received from working on an energized electrical panel. The victim stated to the inspector that the "buss bar" was "hot" and he hit it while wiring the open panel box. Mr. Harris, owner of defendant corporation, stated to the inspector that it was "standard practice" and was done because, with the meter in place, there would then be no way to cut power to the box. He offered no explanation as to why no insulation was used.

IT FURTHER APPEARING, that defendant has a good safety program and a lack of prior citations; and the violation was not such that the defendant would presumptively have appreciated the hazard and knowingly disregarded it. The inspector testified, and the court finds, that the exposure created the possibility of death or serious injury. The inspector's data sheet and "Narrative" report is attached hereto as if incorporated herein.

FOR THESE REASONS, the court finds that the defendant has violated the VOSH requirements, that the violation is SERIOUS and the penalty of \$140 is reasonable.

COMMONWEALTH

v.

ROCKINGHAM BUILDERS, INC.

No. C81-3792

June 18, 1981

GENERAL DISTRICT COURT FOR THE COUNTY OF PRINCE WILLIAM

B. Rylan, Commonwealth's Attorney, for Plaintiff
C. Sivers, Esq., for Defendant
Before the Honorable Edwin P. Latimer, District Court Judge

Disposition: Final, by Trial

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

| Citation No. | Item No. | Standard |
|--------------|----------|----------------|
| 1 | 1 | 1926.652(a) |
| 1 | 1a | 1926.651(i)(1) |
| 1 | 1b | 1926.652(e) |
| 1 | 1c | 1926.652(h) |

ORDER

This case came to be heard on a citation filed by the Commonwealth of Virginia through its Department of Labor & Health containing four specifications and classified as "serious", and upon the presentation of evidence in open Court on the 18th day of June, 1981, argument by counsel and deliberation by the Court, Judge Edwin P. Latimer, substitute judge, presiding;

IT IS ADJUDGED, ORDERED and DECREED that specifications "1", "1b", and "1c" are dismissed; that specification "1a" is found to have been proven; that a \$50 fine is imposed for violation of the said specification and that the citation is amended from "serious" to be an "other" violation.

COMMONWEALTH

v.

O'FERRALL, INC.

No. --

June 30, 1981

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

W. Bray, Commonwealth's Attorney, for Plaintiff

R. Manson, Esq., for Defendant

Before the Honorable Lawrence A. Belcher, Sr., District Court Judge

Disposition: Final, by Consent Agreement

Nature of the case: Alleged violation regarding hoist requirements

ORDER

Plaintiff, the Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney's Office for the City of Richmond, and the defendant, O'Ferrall, Incorporated, by counsel, Richard C. Manson, Jr., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend that the non-serious alleged violation of 1926.21(b)(2) be dismissed, in consideration of defendant's agreements and stipulations set forth herein.

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

| <u>Alleged Violation</u> | <u>Type</u> | <u>Demand Penalty</u> | <u>Recommended Penalty</u> |
|--------------------------|-------------|-----------------------|----------------------------|
| 1926.552(b)(2) | Serious | \$280 | \$210 |
| 1926.552(a)(2) | Serious | \$0 | \$0 |
| 1926.552(b)(1)(i) | Serious | \$0 | \$0 |
| 1926.552(b)(5)(ii) | Serious | \$0 | \$0 |
| 1926.552(b)(8) | Serious | \$0 | \$0 |
| TOTAL | | \$280 | \$210 |

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

3. Defendant agrees and stipulates to the following:

a. That the recommended penalties amounting to \$210 will be paid in full pursuant to this order.

b. That complete abatement of the violative conditions noted in the citation accompanying the

summons incorporated herein by reference (including the alleged violation of 1926.21(b)(2)), will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.

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

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

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of \$210, together with the costs of this proceeding. It is further ordered that the Clerk shall forward to the Commissioner of Labor and Industry the sum of \$210, for deposit into the general fund of the Treasury of the Commonwealth, as provided by §40.1-49.4(D) Code of Virginia.

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