

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, 1986 - JUNE 30, 1987  
VOLUME VIII



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

## PREFACE

This publication contains the orders of the Virginia General District and Circuit Courts in contested cases from July 1, 1986, through June 30, 1987, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of Section 40.1-49-7 which states, "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the General District and Circuit Courts. Every Commonwealth's Attorney's office shall receive at least one copy of each such order (1979, c. 354)."

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

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

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OCCUPATIONAL HEALTH

PART I

COMMONWEALTH

v.

ELLIS RADIATOR AND JACK SERVICE

Docket NO. 85-5439

July 16, 1986

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William B. Bray, Assistant Commonwealth Attorney, for Plaintiff  
David E. Nagle, Attorney for Defendant  
Before the Honorable Thomas Overton Jones, Judge

Disposition: Final, by trial.

Nature of Case: An occupational health inspection lasting from June 10, 1985 through August 1, 1985, of the employer's radiator repair shop revealed violations of the Virginia Occupational Safety and Health standards with respect to occupational exposure to lead. A follow-up inspection was conducted from October 3, 1985, to November 19, 1985, to assure abatement of the previously noted violations. As a result of the follow-up inspection, the following citations were issued to the employer on November 22, 1985 for violations of 1910.1025 et seq.:

I. "Failure to Abate" Citations

<u>Violation</u>	<u>Proposed Penalty</u>
1910.1025(f)(4)(i)	\$1680.00
1910.1025(i)(1)	
1910.1025(i)(4)(iii)	
1910.1025(j)(1)(i)	\$1260.00
1910.1025(g)(2)(v)	\$ 200.00

II. "Serious" Citation

<u>Violation</u>	<u>Proposed Penalty</u>
1910.1025(e)(1)	\$ 420.00

III. "Other Than Serious" Citations

<u>Violation</u>	<u>Proposed Penalty</u>
1910.1025(g)(2)(i)	0
1910.1025(h)(1)	0
1910.1025(n)(3)(i)	0

The employer submitted a timely notice, pursuant to Virginia Code Section 40.1-49.4(A)(4)(b), to contest the citations and proposed penalties.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

First of all, I think that the Commonwealth has shown by a preponderance of the evidence that violations did exist and that the failure to abate certainly did exist. It concerns me because I think these are fairly serious violations. We are dealing with the health of employees, and Mr. Stagg certainly has been injured, and I think some of the other employees also have been affected by the lead contamination. And I can't help but even look at some of these medical reports, and I really can't read the doctor's writing, but I see that there are complaints here by the individuals that their blood was out of order. They were experiencing headaches, acute headaches and exposure to lead. We have only two employees that have gotten the required medical examinations, and I believe the evidence was that these are the only two employees at this time that are exposed to the lead. And, of course, we have had no inspection by Mr. Anderson or Mr. Ogle since the inspection dates of October the 3rd to November 19th. I think the inspection was actually made October the 3rd.

As far as the serious violation is concerned, I'm going to assess the penalty of \$420 in this particular case. As far as the abatements are concerned, I'm inclined to reduce that amount to a penalty of \$500 based on the condition that there be further examination done by Mr. Anderson and Mr. Ogle and have them return back here with a report to what the situation is at this particular time as far as the employees are concerned. That is what I would be inclined to do.

#### FOLLOW-UP INSPECTION

A monitoring inspection was conducted of Ellis Radiator and Jack Repair Service, 937 Myers Street, Richmond, Virginia, on August 5, 1986, by Mr. Richard Anderson, Industrial Hygienist Regional Supervisor. Mr. Anderson's report indicates that the employer has exhibited good faith in his efforts to abate the cited conditions, and indeed has abated the violations noted on November 22, 1985. On August 5, 1986, no apparent violations of VOSH standards were observed.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the defendant has abated the violations cited in the citations attached hereto as Exhibit A. Each such violation cited in Exhibit A is hereby affirmed. Judgment is hereby granted for the plaintiff against the defendant for \$500 for the "serious" violation and \$420 for the "failure to abate" violations as civil penalties for these violations.

Let the clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this Order at the site of the violation for three working days or until abatement of the violation, whichever period is longer.

ENTERED this 6th day of October, 1986.

**INDUSTRIAL SAFETY**

**PART II**



COMMONWEALTH

v.

BASSETT FURNITURE INDUSTRIES

Docket NO.

September 24, 1986

GENERAL DISTRICT COURT FOR THE COUNTY OF NOTTOWAY

Mayo K. Gravitt, Commonwealth Attorney, for Plaintiff  
Before the Honorable Richard E. Lewis, Jr., Judge

Disposition: Final, by trial.

Nature of the Case: Citations were issued for violations of VOSH Standards  
1910.212(a)(1) and 1910.213(q)(2).

ORDER

This Court being of the opinion that the sections cited not shown to have been  
violated, citations vacated.

ENTERED September 24, 1986.

COMMONWEALTH

v.

FENCO, INCORPORATED

Docket NO.

September 24, 1986

GENERAL DISTRICT COURT FOR THE CITY OF STAUNTON

Dawn A. Murphy, Assistant Commonwealth Attorney, for Plaintiff  
Frank L. Summers, Jr., Attorney for Defendant  
Before the Honorable T. N. Cooley, Judge

Disposition: Consent Order

Nature of the Case: Citations were issued for violations of VOSH Standards  
1910.36(b)(8).

ORDER

This day came Plaintiff, by counsel, Dawn A. Murphy, the Assistant Commonwealth's Attorney of this jurisdiction, and Defendant, by counsel, Frank L. Summers, Jr., 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 stipulated and agreed as follows: The Defendant is before this Court pursuant to Section 40.1-49.4.E, contesting a citation VOSH No. 3315199 issued to it by the Plaintiff. A copy of the citation and the summons in this matter were each posted at the Defendant's workplace for three working days or longer.

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

Plaintiff and Defendant now agree to the following schedule of abatement and penalties: The above-referenced citation will be corrected by construction of a second door to provide egress in the Morris Mill Road structure within sixty (60) days from the entry of this Order, and the Defendant will pay Two Hundred Dollars (\$200.00), civil penalty, which represents a 75% reduction in the originally computed penalty in order to defray costs of constructing the additional exit.

By entering into this agreement, the Defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter, other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Section 40.1-49.4, it is ADJUDGED, ORDERED AND DECREED that the Defendant abate the violation cited in this matter within sixty (60) days from the date of this Order. The violation cited above is hereby affirmed and judgment is hereby granted for the Plaintiff against the Defendant for Two Hundred Dollars (\$200.00) as civil penalties for this violation.

Let the Clerk forthwith transmit certified copies of this Order to the Defendant and to the Commissioner of Labor and Industry. The Defendant shall post a copy of this Order at the site of violation for three working days or until abatement of the violation, whichever period is longer.

ENTERED this 24th day of September, 1986.

CONSTRUCTION SAFETY

PART III

COMMONWEALTH

v.

BEAVERS & CECIL CONTRACTORS, INC.

Docket NO. V-87-1

April 6, 1987

GENERAL DISTRICT COURT FOR THE COUNTY OF TAZEWELL

Before the Honorable T.J. Bondurant, Judge

Disposition: Affirmed in part, dismissed in part.

Nature of the Case: Citations were issued following an investigation initiated pursuant to the Virginia Occupational Safety and Health (VOSH) Emphasis Program for Trenches and Excavations. The contested violations were of VOSH Standards 1926.651(i)(1), 1926.652(b) and 1926.100(a).

ORDER

This day came the plaintiff, by counsel, Elizabeth Scott, and the defendant, by counsel, Harris Hart II, pursuant to a summons to be heard upon the defendant's contest of Virginia Occupational Safety and Health citations issued by the plaintiff.

Upon consideration of the evidence and arguments of the parties:

The Court dismisses the violation based on §1926.652(b), depth of ditch; and the Court affirms the citations based on §1926.651(i)(1) storing of excavated material, and §1926.100(a), the wearing of hard hats, as other than serious violations. A civil penalty of One Hundred Dollars (\$100.00) is hereby assessed against the defendant.

The defendant shall post a copy of this Order and a copy shall remain posted for three (3) working days.

ENTERED this 6th day of April, 1987.

COMMONWEALTH

v.

CAPITAL MASONRY, INC.

Docket NO. 85-57550

October 7, 1986

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William B. Bray, Assistant Commonwealth Attorney, for the Plaintiff  
Richard Schneider, Safety Consultant, for Defendant  
Before the Honorable Thomas O. Jones, Judge

Disposition: Citation affirmed after trial.

Nature of the Case: Pursuant to an inspection conducted of a construction site at which employees of the defendant were working, the plaintiff, Virginia Occupational Safety and Health (VOSH), issued a citation to the defendant for its alleged violation of the following VOSH regulation:

1926.451(d)(10): Guardrails. . . approximately 42 inches high, with a midrail. . . toeboards, shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor.

This was a Repeat Violation, with reference made to VOSH Citation issued on September 15, 1983; Inspection No. 012598959.

A penalty of \$960. was recommended.

FINDINGS OF FACT

Upon the testimony of Virginia Occupational Safety and Health (VOSH) Compliance Officer Rebecca S. Rogero, the Court finds that the defendant allowed its employees to work on scaffold more than 10 feet above the ground without the protection of guardrails or toeboards, in violation of the aforementioned VOSH regulation.

The defendant's employees were engaged in masonry work on a single story warehouse project in Richmond, Virginia in July, 1985. On July 23, 1985, ten of such employees were working atop scaffold in excess of 10 feet above the ground.

In response to the plaintiff's allegations, the defendant presented testimony that these 10 employees were actually engaged in the erection of scaffold, not in the actual laying of cinder block. Defendant presented additional testimony to the effect that, in any event, it is impractical to have such guardrails up while fork-lift trucks are engaged in stacking cinder blocks up on the scaffold.

However, in consideration of all of the evidence, it is clear that at least some of the employees atop the scaffold were involved in duties other than erecting scaffold. Indeed, certain of these employees were involved in mixing mortar, a

task entirely unrelated to scaffold erection. Finally, while it is true that guardrails must be removed to enable the stacking of cinder blocks, we have a span of 273 feet of unguarded scaffold here. The proper practice would be to put up the guardrails and toe boards and then temporarily remove those sections necessary to enable forklift trucks to stack the cinder blocks.

Based on these facts, I find that the defendant did violate the VOSH regulation as cited. The employees working atop the scaffold had a right to be safe. Accidents do happen when guardrails are not properly installed. However, this is not quite so dangerous a situation as would be had the Officer observed the employees actually engaged in block laying. While some of the employees observed atop the scaffold were involved in tasks unrelated to scaffold erection, I believe that these tasks were of a mere preliminary nature; preparing the area for the block layers, mixing mortar, etc. Had the Officer gone by later in the afternoon and observed block layers who would have been exposed to this fall hazard all day, we would have a much more serious violation. Therefore, I am reducing the penalty from \$960, as proposed, to \$600.

#### ORDER

IT IS THEREFORE ORDERED that the citation issued by the plaintiff pursuant to Section 40.1-49.4 of the Code of Virginia is hereby affirmed as a Repeat Violation and the proposed penalty of \$960 be reduced to \$600. The defendant is hereby ORDERED to pay six hundred dollars (\$600) to the Virginia Department of Labor and Industry forthwith.

The clerk is ordered to send a certified copy of this order to counsel for plaintiff and for defendant and to the Department of Labor and Industry, Virginia Occupational Safety and Health Program, P.O. Box 12064, Richmond, Virginia 23241.

ENTER this 21st day of October, 1986.

COMMONWEALTH

v.

CLIFTON FORGE-WAYNESBORO TELEPHONE COMPANY, INC.

Docket NO. 375

April 23, 1987

CIRCUIT COURT FOR THE CITY OF CLIFTON FORGE

Jeffrey A. Crackel, Commonwealth Attorney, for Plaintiff  
Kelly O. Stokes, Attorney for Defendant  
Before the Honorable Duncan M. Byrd, Jr., Judge

Disposition: Nonsuited at Plaintiff's request.

Nature of the Case: Citation was issued for violation of VOSH Standard  
1926.400(c)(2).

ORDER

CAME THIS DAY the plaintiff's attorney and moved this Court for entry of an Order of nonsuit pursuant to §8.01-380, Code of Virginia, 1950, as amended. It appearing that it is appropriate to enter such an Order, it is accordingly ADJUDGED, ORDERED and DECREED that this cause be, and hereby is, nonsuited at plaintiff's request.

And nothing further remaining to be done, this cause is stricken from the Court's docket.

ENTERED April 23, 1987.



COMMONWEALTH

v.

CONSTRUCTION SERVICES OF ROANOKE, INC.

Docket NO. 85-0-8916

February 11, 1987

GENERAL DISTRICT COURT FOR THE CITY OF ROANOKE

Gene Cheek, Assistant Commonwealth Attorney, for Plaintiff  
Before the Honorable James P. Brice, Judge

Disposition: Final, by trial on the merits.

Nature of the Case: Following a general schedule safety inspection of the defendant's work site, citations were issued for the alleged violation of Virginia Occupational Safety and Health (VOSH) regulations. The citation related to the following VOSH regulation was properly contested and, accordingly, was the basis of this action:

1926.652(c):                   The side(s) of trench(es) in hard or compact soil were not shored or otherwise supported when the trench was 5 feet or more in depth and 8 feet or more in length.

ORDER

IT APPEARING TO THE COURT that the defendant violated VOSH regulation 1926.652(c), as cited,

IT IS THEREFORE ORDERED that this citation be affirmed. However, the proposed penalty, in the amount of \$200.00, is hereby reduced to \$150.00. Accordingly, the defendant is hereby ORDERED to pay to the plaintiff the sum of one hundred and fifty dollars (\$150.00).

ENTER nunc pro tunc for July 17, 1985.

COMMONWEALTH

v.

DEE SHORING COMPANY, INC.

Docket NO. 86-019132

Docket NO. 86-052694

December 15, 1986

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William B. Bray, Assistant Commonwealth Attorney, for the Plaintiff

Donald D. Anderson, for Defendant

Before the Honorable J.R. Davila, Judge

Disposition: Consent Order entered, two individual contested cases were consolidated.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.451(a)(13), 1926.451(g)(5), 1926.500(d)(1), 1926.28(a), 1926.105(a), 1926.500(b)(1), 1926.25(a), 1926.102(a)(1), 1926.700(b)(2); (first contested case) and violations of VOSH Standards 1926.500(f)(1)(iv), 1926.500(d)(1), 1926.200(g)(1), 1926.450(b)(12), 1926.500(f)(1)(iv), (other) and 1926.500(f)(5)(ii), (second contested case).

ORDER

This day came plaintiff by counsel, William Bray, Assistant Commonwealth's Attorney for this jurisdiction, and defendant by counsel, Donald D. Anderson, Esquire, 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, stipulated and agreed as follows:

The defendant is before this court pursuant to §40.1-49.4.E. contesting the citations (attached hereto as Exhibit A), issued to it by the plaintiff as a result of VOSH inspection numbers W8522-051-85 and W8522-005-86, which two cases have been consolidated in this Order. A copy of the citations, the summons in this matter, and a draft of this Order were each posted at the defendant's workplace for three working days or longer.

No employer or employee representative has appeared in this matter or has filed a notice of contest of the abatement time.

By entering into this agreement, the defendant does not admit to any civil liability arising from said violations alleged in this matter other than for the purposes of subsequent proceedings pursuant to Title 40.1 of the Code of Virginia.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to §40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited in this matter within the time shown in the citations attached hereto as Exhibit A. Each such violation cited in Exhibit A is hereby affirmed. Judgment is hereby granted for the plaintiff against the defendant in case number W8522-051-85 in the amount of \$1,500.00 and in case number W8522-005-86 in the amount of \$1500.00, as civil penalties for these violations.

Let the clerk forthwith transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry, P.O. Box 12064, Richmond, Virginia 23241. The defendant shall post a copy of this Order at the site of the violation, or where notices to employees are customarily posted, for three working days or until abatement of the violation, whichever period is longer.

ENTERED this 15th day of December, 1986.

COMMONWEALTH

v.

MARK EDWARDS t/a EDWARDS CUSTOM BUILDERS

Docket NO. 21530

June 27, 1986

GENERAL DISTRICT COURT FOR THE CITY OF HAMPTON

Reginald M. Harding, Assistant Commonwealth Attorney, for Plaintiff  
Darrell Miller, Attorney for Defendant  
Before the Honorable Wilford Taylor, Judge

Disposition: Final, by trial

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.100(a) and 1926.21(b)(2).

ORDER

THIS DAY came the Plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, with notice timely sent to the Defendant, to be heard upon the Defendant's contest and appeal of a Virginia Occupational Safety and Health citation issued by the Plaintiff:

FINDING OF FACT

1. Subsequent to an inspection by the Plaintiff of the Defendant's workplace in this jurisdiction, the Plaintiff issued a timely citation VOSH No. W2065-04785 to the Defendant, alleging violations of the Virginia Occupational Safety and Health Law, standards or regulations, requiring abatement of those violations, and proposing civil penalties for the violations.

2. The Defendant filed a timely notice to contest.

3. Copies of the citation and the summons in this matter were posted at the Defendant's workplace for three or more working days. No employee or representative of employees of the Defendant has appeared to seek party status in this matter.

4. Specifically, the Defendant was cited for violation of Section 1926.100 (a) and Section 1926.21(b)(2) of the Virginia Occupational Safety and Health Standards adopted by the Commonwealth of Virginia pursuant to Section 40.1-22(5) and 40.1-6(2) of the Virginia State Code, and Section 40.1-51(a) of the Virginia State Code.

5. On December 2, 1985, Edwards Custom Builders was working as a subcontractor on townhouses being built at 10 Commons Lane in Hampton, Virginia.

6. Mr. Richard Belcher, an employee of Edwards Custom Builders was framing the second story of the townhouses at 10 Commons Lane in close proximity to a free standing cinderblock firewall.

7. The firewall was 28 feet high from the ground, and 18 feet high from the base of the second floor, and had no bracing.

8. While Mr. Belcher was working at approximately 11:00 a.m. a gust of wind estimated to be 57 m.p.h. fractured the wall at the base of the second floor, and the wall fell intact on top of Mr. Belcher and broke up on impact.

9. The wind conditions for December 2, 1985 were recorded from Langley Air Force Base, approximately one mile from 10 Commons Lane.

10. The death of Mr. Belcher resulted from the wall collapsing on him.

11. Thomas Shrewsbury, foreman on the job site felt that the wall should have been braced, but the brick masons did not brace it. The brick masons were separate sub-contractors at this job site.

12. The violation was cited as a "serious" violation because of the death and serious physical harm that resulted and would result from such a violation.

#### CONCLUSIONS OF LAW

1. The court after hearing evidence and argument on behalf of the Plaintiff, finds for the Plaintiff and orders that the citation be affirmed and that judgment is hereby granted to the Plaintiff against the Defendant for Four Hundred and Twenty Dollars (\$420.00) as civil penalty for violation of Section 1926.21(b)(2), Section 1926.100(a) of the Virginia Occupational Safety and Health Standards, and Section 40.1-51(a) of the Virginia State Code, i.e., not furnishing a place of employment free from recognized hazards likely to cause death or serious physical harm to employees by allowing employees to work in close proximity to an unbraced masonry wall in high winds; not instructing each employee in the recognition and avoidance of such unsafe conditions, specifically working near tall masonry walls during gusty wind conditions, and, allowing employees to work without protective helmets in areas of the job site where they could be struck on the head by falling material.

2. The clerk shall forthwith mail certified copies of this order to each of the parties.

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

ENTER this 23rd day of April, 1987.

COMMONWEALTH

v.

INNKEEPER MOTOR LODGE WEST, INC.

Docket NO.

November 5, 1986

CIRCUIT COURT FOR THE CITY OF DANVILLE

Leslie M. McCann, Assistant Commonwealth Attorney, for Plaintiff  
Randy Sinclair, Attorney for Defendant  
Before the Honorable J.F. Ingram, Chief Judge

Disposition: Consent Order Entered

Nature of the Case: On appeal from decision in General District Court, in defendant's favor, regarding the following cited conditions:

1. Title 40.1-51.1(a) (General Duty), serious violation: Failure to provide a safe work place for employees working from roof of building, 13 feet above ground below, without adequate fall protection.
2. ARM Section 37(a), Other-than-serious violation: Failure to post Job Safety and Health Notice where notices to employees are normally posted.
3. 1926.100(a), Other-than-serious violations: Failure to provide protective helmets to employees.

ORDER

This day came appellant Carol Amato, Commissioner of Labor and Industry, by counsel, Mr. Leslie McCann, the Commonwealth's Attorney of this jurisdiction, and defendant by counsel, Mr. Randy Sinclair, 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, stipulated and agreed as follows:

The Commonwealth is before this Court pursuant to Virginia Code §40.1-49.5, appealing a judgment of the General District Court of the City of Danville, docket number V865017 rendered on August 26, 1986, in favor of the defendant.

No employee or employee representative has appeared in the prior hearing or in this matter, nor have they filed a notice of contest of the abatement time. A copy of the citations, a draft of this Order and notice of this hearing have each been posted at the defendant's workplace, where notices to employees are customarily placed, for three working days or longer.

Plaintiff and defendant have agreed to the schedule of abatement and penalties as set forth in the citations attached hereto as Exhibit A.

This agreement shall not be construed as an admission of civil liability for any violation alleged by the Commissioner, other than for purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and/or good cause shown, pursuant to Virginia Code §40.1-49.5, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited in this matter within the time shown in the citations attached hereto as Exhibit A. Each such violation cited in Exhibit A is hereby affirmed. Judgment is hereby granted for the appellant against the appellee for \$300.00 as civil penalties for these violations.

Let the Clerk forthwith transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry, 205 North Fourth Street, P.O. Box 12064, Richmond, Virginia 23241. The defendant shall post a copy of this Order at his worksite for three working days.

ENTERED this 15th day of November, 1986.

COMMONWEALTH

v.

J.B. EURELL COMPANY, INC.

Docket NO. 86-65928

May 4, 1987

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

William B. Bray, Assistant Commonwealth Attorney, for Plaintiff  
Stephen P. Andrews, Attorney for Defendant  
Before the Honorable William Wimbush, Judge

Disposition: Consent Order Entered.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.500(c)(1) and 1926.500(g)(1).

ORDER

It appearing that an inspection and subsequent allegations by the Commonwealth of Virginia, ex rel., Commissioner of Labor and Industry, having resulted in the issuance of a citation and summons to J.B. Eurell Co. (defendant) for the alleged violation at 401 North Fifth Street, Richmond Exhibition Center, Richmond, Virginia, of certain Virginia Occupational Safety and Health (VOSH) standards set forth specifically below; and

It appearing that the defendant, J.B. Eurell co., Inc., while not admitting any civil liability arising from the aforesaid alleged violations other than under Title 40.1, Code of Virginia, has agreed to an offer of settlement made by the plaintiff whereby the defendant shall tender to the plaintiff the sum of four hundred and twenty dollars (\$420.) and has consented to abatement of the violations which were alleged as follows:

<u>VOSH Regulation Alleged to Have Been Violated</u>	<u>Proposed Penalty</u>	<u>Agreed Penalty</u>
1. 1926.500(c)(1): Wall opening(s) from which there was a drop of more than 4 feet, and the bottom(s) of the opening(s), were less than 3 feet above the working surface(s) were not guarded by rail(s) in a manner that would effectively reduce the danger of falling:  (a) Low roof, adjacent passageway to north side of roof: 60	\$420.00	\$210.00



inch x 84 inch opening existed  
in side of high roof wall.  
fall hazard of 40 feet.

(b) Low roof, northwest corner:  
48 inch by 52 inch opening  
existed in side of high roof  
wall near area used as  
passageway. Fall hazard of  
40 feet.

(c) Low roof, northeast corner:  
37 inch by 37 inch opening  
existed in side of high roof  
wall near area used as a  
passageway. Fall hazard of  
40 feet.

2.	1926.500(g)(1): Employees engaged in built-up roofing work on low- pitched roofs with a ground to cave height greater than 16 feet were not protected from falling by using one of the methods described in 29 CFR 1926.500 (g) (1)(i) through (iii) at all unprotected sides and edges of the roof:	\$420.00	\$210.00
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(a) Low south roof: Employees  
involved in built-up roof  
work were not protected  
from fall hazard of 43 feet  
by a motion stopping or  
warning line system. An  
employee fell from the  
roof's edge and was injured  
April 17, 1986.

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TOTAL		\$840.00	\$420.00
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This Court having now determined that the aforesaid proposed settlement constitutes a lawful and reasonable settlement and serves the public interest in resolving such disputes expeditiously while at the same time promoting safety in the workplace; and pursuant to Va. Code Section 40.1-49.4D,

IT IS HEREBY ORDERED:

1. That J.B. Eurell Co. committed the violations described above; however, this Order does not constitute a determination of liability under any statute or principle of law other than Title 40.1, Code of Virginia; and

2. That J.B. Eurell Co. shall pay the sum of four hundred and twenty dollars (\$420.00) to the Commonwealth of Virginia as an agreed penalty for the violations described above; and
3. That J.B. Eurell Co. shall immediately abate the violations described above; and
4. That this settlement agreement is hereby approved, affirmed and entered on this 4th day of May, 1987.

COMMONWEALTH

v.

L.F. JENNINGS, INC.

Docket NO. 86-10039

April 7, 1987

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

David Ellis Field, Assistant Commonwealth Attorney, for Plaintiff  
Gerald I. Katz, Attorney for Defendant  
Before the Honorable Richard T. Horan, Judge

Disposition: Consent Order Entered.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.451(a)(4), 1926.451(a)(13) and 1926.100(a).

ORDER

The parties are before the Court pursuant to Title 40.1 of the Code of Virginia. In order to provide for the safety and health of the defendant's employees and to conclude this matter without litigation, the parties have stipulated and agreed as follows:

1. The plaintiff issued citations to the defendant for alleged violations of Virginia Occupational Safety and Health (VOSH) regulations. A copy of these citations are attached hereto as Exhibit A.
2. The conditions alleged to be violative of such VOSH regulations have been abated.
3. The citations shall be affirmed as issued, provided, however, that defendant shall pay a reduced civil penalty of \$405.00.
4. By entering into this agreement, the defendant does not admit to any civil liability arising from the violations alleged in this matter other than for the purpose of subsequent enforcement proceedings pursuant to Title 40.1 of the Code of Virginia.

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

ORDERED that each violation alleged in the attached citation is hereby affirmed and the defendant shall pay to the plaintiff \$405.00 as a civil penalty for these violations.

The Clerk shall transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry, VOSH, P.O. Box 12064, Richmond, Virginia 23241.

ENTERED this 7th day of April, 1987.

COMMONWEALTH

v.

LYTTLE UTILITIES, INC.

Docket No. A-2245

February 13, 1987

CIRCUIT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Assistant Commonwealth Attorney, for Plaintiff  
Sandy T. Tucker, Attorney for Defendant  
Before the Honorable James E. Kirby, Judge

Disposition: Final by Settlement Agreement.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.652(b). Citations 1926.651(i)(1) and 1926.652(h) were dismissed by the General District Court.

ORDER

This day came the Commonwealth of Virginia by its Assistant Commonwealth's Attorney and Lyttle Industries, Inc., by its counsel, Sandy T. Tucker, and represented to this Court that a settlement of the matter pending before the Court has been reached.

Therefore the Court does make the following findings of fact in accordance with the settlement:

1. Lyttle Utilities, Inc. is engaged in the construction industry and on March 7, 1986, they were engaged in trench work on the east side of Broad Street at its intersection with Bethlehem Road located in the County of Henrico.

2. Mr. Harold D. Williams, an inspector with the Department of Labor and Industry, conducted an on-site investigation of the trenching operation and observed that the trench was 40 feet long by 3 feet wide at the bottom by 8 feet deep.

3. Mr. Williams further observed that men were working in the trench and that the sides of the trench were not shored, sheeted, braced, sloped or otherwise supported, in accordance with Tables P-1 and P-2 of Section 1926.652 of the Virginia Occupational Safety and Health Standards.

4. Lyttle Industries, Inc. claims and the Commonwealth does not deny that up until this 40 foot segment of trench, Lyttle had used a trench shield or trench box, but for this 40 foot segment it was difficult to use the same.

5. On September 18, 1984, Lyttle Utilities, Inc., received a Virginia Occupational Safety and Health citation for a violation of Section 1926.652(b) for which Lyttle paid a civil fine of two hundred dollars (\$200.00).

Therefore, the Court finds that Lyttle Utilities, Inc. has violated Section 1926.652(b) of the Virginia Occupational Safety and Health Standards for the construction Industry:

1926.652(b): The side(s) of the trench(es) in unstable or soft material which were more than 5 feet in depth, were not shored, sheeted, braced, sloped or otherwise supported in accordance with Tables P-1 and P-2:

and that this is a repeat violation.

The Court therefore ORDERS that Lyttle Industries, Inc. pay, in accordance with the settlement, a civil fine of two hundred forty dollars (\$240.00) to the Commissioner of Labor and Industry.

The settlement is entered into under the following terms and conditions:

1. Lyttle Utilities, Inc. consents to abatement of the alleged violation and pay the negotiated sum without admission of any civil liability arising from such violation except for future repeat violation in accordance with Section 40.1-49.4(D) Code of Virginia.

2. The Commissioner agrees that this violation will not be used to show a repeat violation for a matter pending in Chesterfield County.

It is further ORDERED that certified copies of the Order be mailed to Sandy T. Tucker, Attorney at Law, Williams Mullen & Christian, Post Office Box 1320, Richmond, Virginia 23210; to Commissioner, Department of Labor and Industry, Post Office Box 12064, Richmond, Virginia 23241 and to the Attorney for the Commonwealth.

ENTER: 2/13/87

COMMONWEALTH

v.

SALCO MECHANICAL CONTRACTORS

Docket NO. 86-3998

June 17, 1986

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

David Ellis Field, Assistant Commonwealth Attorney, for Plaintiff  
Samuel Salzberg, Pro Se, for Defendant  
Before the Honorable Thomas V. Rothrock, Jr., Judge

Disposition: Final, by trial and settlement agreement.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.652(c), 1926.650(e) 1926.651(i)(1), and 1926.652(h).

ORDER

This day came plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and defendant pursuant to defendant's motion to rehear 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, stipulated and agreed as follows:

This Court has jurisdiction to hear this motion pursuant to Virginia Code §18.2-428 (1950, as amended).

The defendant is before this Court pursuant to §40.1-49.4 contesting a citation VOSH No. H8167-083-85, issued to it by the plaintiff. A copy of the citation, the summons in this matter and the draft of this Order were each posted at the defendant's workplace for three working days or longer.

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

Plaintiff and defendant have agreed to the schedule of abatement and penalties set forth in the amended citation, attached hereto as Exhibit A.

By entering into this agreement, the defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to §40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited in this matter within the time shown in the amended citation attached hereto as Exhibit A. Each such violation cited in Exhibit A is hereby affirmed. Judgment is hereby granted for the plaintiff against the defendant for \$200.00 as civil penalties for these violations.

Let the clerk forthwith transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this Order at the site of violation for three working days or until abatement of the violation, whichever period is longer.

ENTERED this 5th day of September, 1986.

COMMONWEALTH

v.

SHENANDOAH MASONRY CO., INC.

No. 86-3783

May 23, 1986

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

William Boyce, Assistant Commonwealth Attorney, for Plaintiff  
Before the Honorable Robert T.S. Colby, Judge

Disposition: Citation affirmed after trial.

Nature of the Case: Pursuant to a general schedule inspection of Shenandoah Masonry, Inc. (defendant), a citation was issued for the violation of the following Virginia Occupational Safety and Health (VOSH) regulation:

1926.451(d)(7): To prevent movement, the [tubular welded frame] scaffold shall be secured to the building or structure at intervals not to exceed 30 feet horizontally and 26 feet vertically.

A penalty of \$420 was recommended.

FINDINGS OF FACT

Trial was held on this matter in the General District Court for the City of Alexandria on May 23, 1986. Shenandoah, the defendant, failed to appear.

Upon the testimony of the VOSH Compliance inspector involved in this case, Sharief Hashim, that he personally observed the defendant's violation of the aforementioned regulation, as detailed in the citation served upon the defendant, the Court finds that the defendant violated such regulation as alleged. Specifically, the defendant, on or about December 5, 1985, allowed its employees to work on a 54 feet high tubular welded frame scaffold that was tied to the structure only at the approximate 14 feet and 20 feet levels vertically; thereby exposing employees to an approximately 50 feet fall to concrete and debris.

ORDER

It is therefore ORDERED that the citation issued by the plaintiff pursuant to Section 40.1-49.4 of the Code of Virginia and the penalty assessed therein in the amount of \$420.00 be and is hereby affirmed and the defendant is hereby ordered to pay this amount to the Virginia Department of Labor and Industry forthwith.

The clerk is ordered to send a certified copy of this Order to counsel for plaintiff and defendant and to the Department of Labor and Industry, Virginia Occupational Safety and Health Program, P.O. Box 12064, Richmond, Virginia 23241.

Enter this 8 day of August, 1986.



COMMONWEALTH

v.

SMC CONCRETE CONSTRUCTION, INC

Docket NO. GV87-1632

February 14, 1987

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

Trudi A. Berlin, Assistant Commonwealth Attorney, for the Plaintiff  
Raymond C. Curry, Jr., President, for Defendant  
Before the Honorable T.S. Colby, Judge

Disposition: Final by trial and settlement order

Nature of the Case: Citations were issued for violation of VOSH Standard  
1926.28(a).

ORDER

THIS DAY came the plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, 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, stipulated and agreed as follows:

Plaintiff and the defendant have agreed to the schedule of abatement and penalties set forth in Citation 1, instance (a) of VOSH Report H8167-075-86 describing a violation of Standard 1926.28(a) attached hereto as Exhibit A.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Va. Code §40.1-49.4 (1950), as amended, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited per agreement in this matter within the time shown in the citation attached hereto as Exhibit A. Each such violation cited per agreement of the parties is hereby affirmed. Judgment is hereby granted for the Plaintiff against the defendant in the amount of Four Hundred Twenty Dollars (\$420.00) as civil penalties for the violations.

Let the clerk forthwith transmit certified copies of this order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this order at the site of violation for three (3) working days or until abatement of the violation, whichever period is longer.

ENTERED this 14th day of February, 1987.

COMMONWEALTH

v.

SMC CONCRETE CONSTRUCTION, INC.

Docket NO. GV87-1633

February 14, 1987

GENERAL DISTRICT COURT FOR THE CITY OF ALEXANDRIA

Trudi A. Berlin, Assistant Commonwealth Attorney, for Plaintiff  
Raymond C. Curry, Jr., President, for Defendant  
Before the Honorable Robert T.S. Colby, Judge

Disposition: Final by trial and settlement order.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.402(a)(4) and 1926.402(c)(1).

ORDER

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

Plaintiff and defendant have agreed in reference to VOSH Report No H8167-070-86 that Citation 1, instances (a) and (b) of Standard 1926.402(a)(4), attached hereto as Exhibit A, are to be vacated. The amended citation is attached hereto as Exhibit B.

Plaintiff and defendant have further agreed to the schedule of abatement set forth in Citation 2, instance (a) describing a violation of Standard 1926.402(c)(1), attached hereto as Exhibit C.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Va. Code §10.1-49.4 (1950) as amended, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited per agreement in this matter within the time shown in the citations attached hereto as Exhibit C. Each such violation cited per agreement of the parties is hereby affirmed.

Let the clerk forthwith transmit certified copies of this order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this order at the site of violation for three (3) working days or until abatement of the violation, whichever period is longer.

ENTERED this 14th day of February, 1987.

COMMONWEALTH

v.

THREE C'S CONSTRUCTION COMPANY

Docket NO. V86-1250

November 11, 1986

GENERAL DISTRICT COURT FOR THE COUNTY OF WASHINGTON

Michael Lepchitz, Assistant Commonwealth Attorney, for Plaintiff  
R. Wayne Austin, Attorney for Defendant  
Before the Honorable Thomas L. Hutton, Judge

Disposition: Final, by trial and settlement order.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.400(a), Section 110-17(a); 1926.602(c)(1)(vi), ARM - Section 37(a), 1926.100(a), 1926.350(a)(9) and 1926.400(h)(1).

ORDER

This day came plaintiff, by counsel, the Commonwealth Attorney for Washington County, Virginia, and defendant, by counsel, R. Wayne Austin, 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, stipulated and agreed as follows:

Defendant is before this Court pursuant to Section 40.1-49.4.E, Code of Virginia, 1950, as amended, contesting VOSH citation No. 17376062 issued to it by plaintiff;

Plaintiff and defendant have agreed to reduce the assessed civil penalty from six hundred-sixty dollars (\$660.00) to three hundred-thirty dollars (\$330.00).

WHEREFORE, upon agreement of the parties and for good cause shown and pursuant to Section 40.1-49.4, Code of Virginia, 1950, as amended, it is

ADJUDGED, ORDERED and DECREED that civil penalties assessed for violations in VOSHA citation No. 17376026 are reduced from six hundred sixty dollars (\$660.00) to three hundred thirty dollars (\$330.00). Judgement is hereby granted for the plaintiff against defendant for three hundred-thirty dollars (\$330.00) as civil penalties for these violations.

The Clerk of the General District Court is directed to transmit certified copies of this Order to defendant and to the Commissioner of Labor and Industry.

There being nothing further to be done this cause is stricken from the docket.

ENTERED this 12th day of November, 1986.

COMMONWEALTH

v.

WILLIAMS ENTERPRISES, INC.

Docket NO. L-86-2436

January 7, 1987

CIRCUIT COURT FOR THE CITY OF NORFOLK

J.P. Fulton, III, Assistant Commonwealth Attorney, for Plaintiff  
David R. Clarke, Attorney for Defendant  
Before the Honorable John E. Clarkson, Judge

Disposition: Final, by trial

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.28(a) and 1926.105(a). The matter was heard by Judge Clarkson, the Commonwealth having filed an appeal from the decision of the General District Court.

ORDER

This matter came before the Court for a trial de novo without a jury, complainant having appealed the decision of the General District Court.

Defendant, a steel erection contractor, was charged with having violated 29 C.F.R. §1926.28(a) and 29 C.F.R. §1926.105(a), these standards having been adopted by the Safety and Health Codes Board pursuant to Section 40.1-22(5) of the Code of Virginia.

Upon consideration of the testimony of the parties' witnesses, the evidence presented and the memoranda submitted by counsel, it appearing that:

A) The alternative means of fall protection recited in §1926.105(a) were practical and one of these alternative means, temporary floors, was in place at the time of the alleged violation, which would therefore obviate the need for exterior nets; and it further appearing that

B) The Commonwealth failed to prove that the use of safety lines attached to the inside of the structure was an appropriate means of fall protection under §1926.28(a) and the facts of this case, and failed to prove that a reasonably prudent employer familiar with steel erection would have utilized safety lines in this particular situation, it is therefore

ADJUDGED, ORDERED, and DECREED that the citations for violations of 1926.105 (a) and §1926.28(a) are hereby dismissed.

ENTERED this 3 day of April, 1987.

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