

FINAL ORDERS OF THE VIRGINIA COURTS
IN
CONTESTED CASES ARISING UNDER THE
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT

VOLUME XVI
JULY 1, 1994 - JUNE 30, 1995



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

PREFACE

This publication contains the orders of the Virginia General District and Circuit Courts in contested cases from July 1, 1994, through June 30, 1995, 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. 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.

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL

Theron J. Bell, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 94-18
)	
B & H ROOFING AND ABATEMENT, INC.,)	
)	
Defendant.)	

DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell's Motion for Decree Pro Confesso against B&H Roofing and Abatement, Inc., declaring that the contested Virginia Occupational Safety and Health (VOSH) citations and penalties totaling \$ 250.00, identified by VOSH Inspection Number 123655276 and as attached to the Commissioner's Bill of Complaint, be upheld. Defendant's representative appeared at the hearing and was heard on the motion.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one days have elapsed since service of process on the Defendant and that no responsive pleading has been filed by the Defendant, it is therefore

ADJUDGED, ORDERED, and DECREED that Plaintiff be awarded judgment by default in this cause affirming the VOSH citations and penalties of \$ 250.00. It is also ADJUDGED, ORDERED, and DECREED that the Clerk of this Court shall send to the Defendant a copy of this Decree by certified mail.

ENTER: December 9, 1994

JUDGE: Robert G. O'Hara, Jr.

I ASK FOR THIS:

THERON J. BELL,
Commissioner of Labor and Industry

By: John C. Gould
Counsel

John C. Gould
Commonwealth's Attorney
City of Hopewell
223 Municipal Building
Hopewell, Virginia 23860-2721
(804) 541-2255

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

THERON J. BELL, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH94-879
)	
BAT MASONRY COMPANY, INC.)	
)	
Defendant.)	

FINAL ORDER

Upon this agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The parties are before this court pursuant to Code § 40.1-49.4.E upon the defendant's contest of the Virginia Occupational Safety and Health (VOSH) Citations and proposed penalties, arising from inspection number 123661779, and issued by Commissioner Bell to the defendant on January 27, 1994. A copy of the citations is attached as Exhibit A.
2. The defendant filed a timely notice of contest of the citations and proposed penalties. Thereafter, the Commissioner filed a bill of complaint pursuant to Code § 40.1-49.4.E to initiate the present litigation.
3. Upon agreement of the parties, the court ORDERS:
 - a. Violation 1-1a remains part of a grouped "serious" violation. The defendant shall pay \$1,000.00 in lieu of the proposed penalty.
 - b. Violation 1-1b is vacated.
 - c. Violation 1-1c remains part of a grouped "serious" violation.

- d. Violation 1-1d is amended to "other than serious" with no proposed penalty.
- e. Violation 2-1 remains an "other than serious" violation. The defendant shall pay \$275.00 in lieu of the proposed penalty.

4. Commissioner Bell acknowledges receipt of \$1,275.00 as the total agreed payment in lieu of penalties.

5. By the endorsement of its counsel below, the defendant certifies that all violations alleged in the original citation, attached, have been abated. Within three months from the execution of this order the defendant shall provide the Commissioner with records of employee training provided on the topics of scaffold erection, and safe work practices on scaffolding. Defendant shall hereafter provide the same training to all new employees. The defendant shall train "competent persons," as defined in VOSH Std. § 1926.32(f), to direct and supervise all of the defendant's scaffold erections at its worksites. These records shall include written mandatory procedures for erecting scaffolding, a list of the scaffold erection situations governed by the procedures, the names of employees or contractors responsible for training employees, a written description of the training process, and signed receipts executed by employees who have received the training. The defendant shall mail or deliver these records within three months of the date of this order to:

Mr. Richard C. Angell, Regional Supervisor
Department of Labor and Industry
1500 East Main Street, Suite 222
Richmond, Virginia 23219

6. In the event defendant shall fail to comply with any term of this order, the defendant shall pay to the Commissioner \$1,200.00, that is, the remaining amount of the original proposed penalty of \$2,475.00 within fifteen days of the date of the breach. Payment

shall be made by check or money order and shall be payable to the Commonwealth of Virginia, with the VOSH inspection number noted on the payment. This payment shall not waive or limit any other remedy the Commissioner may seek for any such breach.

7. The defendant forthwith shall post a copy of this order for thirty consecutive days at all its workplaces in conspicuous locations where notices to its employees generally are posted.

8. Pursuant to Code § 40.1-49.4.D, the defendant's agreement to this settlement does not admit to any civil liability for the alleged violations. This agreement does not purport to limit the effect of Code § 40.1-51.3:2. The defendant's agreement to the entry of this order shall not limit the Commissioner's use of this order in future proceedings under Code §§ 40.1-49.4.I, -J, or -K, or under any other authority. This order shall be construed to advance the purpose of Code § 40.1-3.

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies of this order to counsel.

ENTER: Herbert C. Gill, Jr.
Judge

November 2, 1994
Date

WE ASK FOR THIS:

T. Leslie Lindsey, Jr.
T. Leslie Lindsey, Esquire
Assistant Commonwealth's Attorney
Counsel for Commissioner Bell
Post Office Box 25
Chesterfield, Virginia 23832-0025
(804) 748-1221

SEEN AND AGREED TO:

Ann Adams Webster

Ann Adams Webster, Esquire
Counsel for defendant

MORRIS & MORRIS, P.C.
1200 Ross Building
801 East Main Street
Richmond, Virginia 23219
(804) 344-8300

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HALIFAX

THERON J. BELL, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
v.	)	Chancery No. CH93-000093
)	
BEST PLASTERING, INC.,)	
)	
Defendant.)	

FINAL ORDER

On November 15, 1993 this Court issued a Decree Pro Confesso, pursuant to Virginia Code § 40.1-49.4(E), and Rules 2:8 and 2:17, Rules of the Supreme Court of Virginia, upholding and affirming certain Virginia Occupational Safety and Health (VOSH) citations and penalties totaling \$21,000.00, issued to Best Plastering, Inc. on May 14, 1992. On February 28, 1994 the Commissioner of Labor and Industry and Best Plastering, Inc., both represented by counsel, presented testimony on the defendant's Motion To Set Aside Order And Decree Pro Confesso.

WHEREFORE, upon consideration of the pleadings and arguments of counsel, the Court rules that the Commissioner and the Secretary of the Commonwealth correctly conducted service of process on the defendant, following the provisions of Code § 8.01-329(C); that the defendant received sufficient notice reasonably calculated to apprise it of the pendency of this action; and that the defendant failed to make a timely response, and thereby was properly subjected to a Decree Pro Confesso. This Court OVERRULES the defendant's Motion To Set

Aside, and UPHOLDS the Decree Pro Confesso, awarding judgment by default and upholding the VOSH citations and penalties of \$21,000.00.

ENTER: July 19, 1994

JUDGE: Charles L. McCormick, III

WE ASK FOR THIS:

Theron J. Bell,
Commissioner of Labor and Industry

By: John E. Greenbacker, Jr.
Plaintiff's Counsel
John E. Greenbacker, Jr.
Commonwealth's Attorney
P.O. Box 550
Halifax, Virginia 24558
(804) 476-2139

SEEN AND OBJECTED TO:

Best Plastering Inc.

BY: Barbara Hudson
Defendant's Counsel
Barbara Hudson
726 Masonic Building
Danville, Virginia, 24541
(804) 793-3534

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRY

THERON J. BELL, Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. CH93-434
)	
DAVIS H. ELLIOT COMPANY, INC.)	
)	
Defendant.)	

FINAL ORDER

Upon agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The parties are before this court pursuant to Code § 40.1-49.4.E, and upon the defendant's contest of the Virginia Occupational Safety and Health (VOSH) Citation and proposed penalty, arising from inspection number 105772859, and issued by the Commissioner to the defendant on October 8, 1992. A copy of the citation is attached as Exhibit A.

2. The defendant filed a timely notice of contest of the citation and proposed penalty. Thereafter, the Commissioner filed a bill of complaint pursuant to Code § 40.1-49.4.E to initiate the present litigation.

3. As consideration for the modification of the terms of the original citations, the Employer withdraws its original notice of contest filed with respect to the above-styled case and waives its right to contest the terms in this Order. The citation and penalty, as herein modified,

including all new obligations contained in this Order, also constitute a final order of the Commissioner of Labor and Industry.

4. Upon agreement of the parties, the defendant shall pay \$800.00 in lieu of the proposed penalty. Commissioner Bell acknowledges receipt of \$800.00 as the total agreed payment in lieu of penalty.

5. By the endorsement of its counsel below, the defendant certifies that the violation alleged in the original citation, attached, has been abated.

6. Pursuant to Code § 40.1-49.4.D, the defendant's agreement to this settlement does not admit to any civil liability for the alleged violation. This agreement does not purport to limit the effect of Code § 40.1-51.3:2.

7. The defendant forthwith shall post a copy of this order for thirty consecutive days at its permanent work place in Cloverdale, Virginia, in a conspicuous location where notices to all its employees generally are posted.

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall deliver certified copies of this order to counsel.

ENTER: David V. Williams
Judge

January 24, 1995
Date

WE ASK FOR THIS:

Walter L. Penn, III

Walter L. Penn, III
Assistant Commonwealth's Attorney
Counsel for Commissioner Bell
P. O. Drawer 112
Martinsville, Virginia 24114-0112
(703) 632-9449

SEEN AND AGREED TO:

Doug Henson

Doug Henson
Counsel for defendant
THE CENTER FOR EMPLOYMENT LAW
2965 Colonnade Drive, S.W. Ste. 333
P. O. Box 21669
Roanoke, Virginia 24018
(703) 989-1021

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL

THERON J. BELL, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
v.	)	Chancery No. 94-19
)	
J. L. PARRISH INSULATION, INC.)	
)	
Defendant.)	

FINAL DECREE

On this 25th day of April, 1995, came Theron J. Bell, the Commissioner of Labor and Industry, (Commissioner), and J. L. Parrish Insulation, Inc., (JLP) by counsel, to be heard on the bill of complaint.

Commissioner Bell acknowledges receipt of \$500.00 as the total agreed payment in lieu of penalties.

Based on the agreement of the parties, it is ORDERED that the citations alleged to the bill of complaint are affirmed. This matter shall be DISMISSED, SETTLED.

The Clerk shall mail certified copies of this Order to counsel listed below.

Robert G. O'Hara, Jr.
Judge

April 28, 1995
Date

We ask for this:

**THERON J. BELL,
Commissioner of Labor and Industry**

By: Edwin N. Wilmot
Edwin N. Wilmot
Assistant Commonwealth's Attorney
100 E. Broadway
Room 252
Hopewell, VA 23860
(804) 541-2255

Seen and Agreed:

J. L. PARRISH INSULATION, INC.

By: R. L. Vance
R. Leonard Vance, Esq.
Attorney for JLP
Law Office of Kenneth F. Hardt
8707 Forest Hill Avenue
Richmond, Virginia 23235
(804) 320-1616

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

Theron J. Bell, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
v.	)	Chancery No. 94-266
)	
J. L. Parrish Insulation, Inc.)	
)	
Defendant.)	

ORDER

On this 28th day of April, 1995, came Theron J. Bell, the Commissioner of Labor and Industry, (Commissioner), and J. L. Parrish Insulation, Inc., (JLP) by counsel, to be heard on the bill of complaint.

Commissioner Bell acknowledges receipt of \$1,000.00 as the total agreed payment in lieu of penalties.

Based on the agreement of the parties, it is ORDERED that the citations alleged in the bill of complaint are affirmed. This matter shall be DISMISSED, SETTLED.

The Clerk shall mail certified copies of this Order to counsel listed below.

Johnny L. Morrison
Judge

4/28/95
Date

We ask for this:

THERON J. BELL, Commissioner
of Labor and Industry

By: Carl E. LaMondue
Carl E. LaMondue
Assistant Commonwealth's Attorney
601 Crawford Street
Portsmouth, VA 23704-3838
(804) 393-8581

Seen and Agreed:

J. L. PARRISH INSULATION, INC.

By: R. Leonard Vance
R. Leonard Vance, Esq.
Attorney for JLP
Law Office of Kenneth F. Hardt
8707 Forest Hill Avenue
Richmond, Virginia 23235
(804) 320-1616

VIRGINIA

IN THE CIRCUIT COURT OF THE COUNTY OF WARREN

THERON J. BELL,)	
Commissioner of Labor and Industry)	
)	
Plaintiff,)	
)	
v.	)	No. H93000076-00
)	
JEWELL PAINTING, INC.)	
)	
Defendant.)	

AGREED ORDER

Upon this agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The parties have agreed that the citations set forth in and attached to the Bill of Complaint in this matter are amended as follows:

a. Serious citation 1, grouped items 1a, 1b, and 1c are vacated.

b. Serious citation 1, item 2 is amended as follows:

1910.134(b)(1): Adequate written standard operating procedures governing the selection and use of respirators were not established as required by § 1910.134(a)(2):

(a) On Crooked Run Bridge, State Route 522/340 South, employees were using respirators, while engaged in the operation of spray painting the steel on the bridge with V.O.C. Vinyl Coating Paint and Epoxy Paint, in the absence of adequate written standard operating procedures to govern their selection and use.

Jewell Painting shall pay \$210.00 in lieu of the proposed penalty.

c. Serious citation 1, item 3 is vacated.

d. Serious citation 1, item 4 is vacated.

- e. Serious citation 1, item 5 is vacated.
- f. Serious citation 1, item 6 is reduced to other than serious. Jewell Painting shall pay \$200.00 in lieu of the proposed penalty.
- g. Serious citation 1, item 7 is affirmed. Jewell Painting shall pay \$294.00 in lieu of the proposed penalty.
- h. Serious citation 1, item 8 is vacated.
- I. Other-than-serious citation 2, item 1 is affirmed. Jewell Painting shall pay \$47.00 in lieu of the proposed penalty.
- j. Other-than-serious citation 2, item 2 is vacated.
- k. Other-than-serious citation 2, item 3 is vacated.

2. Commissioner Bell acknowledges receipt of \$751.00 as the total agreed payment in lieu of penalties.

3. Jewell Painting shall post a copy of this order for thirty consecutive days at its workplaces in Virginia in a conspicuous location where notices to its employees generally are posted.

4. Pursuant to Code § 40.1-49.4.D, the defendant's agreement to this settlement does not admit to any civil liability for the alleged violations. This agreement does not purport to limit the effect of Code § 40.1-51.3:2. The defendant's agreement to the entry of this order shall not limit the Commissioner's use of this order in future proceedings under Code § 40.1-49.4.I, -J, or -K, or under any other authority. This order shall be construed to advance the purpose of Code § 40.1-3.

5. Each party will bear its own costs in this matter.

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies of this order to counsel.

Entered this 16th day of December, 1994

John E. Wetzel, Jr.

Judge

WE ASK FOR THIS

Walter E. Hibbard

Walter E. Hibbard
Commonwealth's Attorney
P. O. Box 604
Front Royal, Va. 22630
(703) 635-5441
Counsel for Commissioner Bell

Joseph H. Kasimer

Joseph H. Kasimer
Kasimer & Ittig, P. C.
7653 Leesburg Pike
Falls Church, Virginia 22043
(703) 893-3914
Counsel for Jewell Painting

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

Theron J. Bell, Commissioner of Labor and Industry,)	
)	
Plaintiff,)	
)	
v.	)	Chancery No. 10705
)	
Service Metal Fabricators, Inc.)	
)	
Defendant.)	

FINAL ORDER

Upon this agreement of the parties and for good cause shown, the court finds and orders as follows:

1. The parties are before this court pursuant to Code § 40.1-49.4.E upon the defendant's contest of the Virginia Occupational Safety and Health (VOSH) Citation and proposed penalties, arising from inspection number 112378245, and issued by Commissioner Bell to the defendant on March 24, 1992. A copy of the citation is attached as Exhibit A.
2. The defendant filed a timely notice of contest of the citation and proposed penalties. Thereafter, the Commissioner filed a bill of complaint pursuant to Code § 40.1-49.4.E to initiate the present litigation.
3. Upon agreement of the parties, the court ORDERS:
 - a. Violation 1-1 and the proposed penalty for that violation are vacated.
 - b. Violation 1-2 is amended by deleting the "serious" classification. The defendant shall pay \$250.00 in lieu of the proposed penalty.
 - c. Violation 1-3 is amended by deleting the "serious" classification. The

defendant shall pay \$250.00 in lieu of the proposed penalty.

d. Violation 1-4 is amended to "other than serious." The defendant shall pay \$200.00 in lieu of the proposed penalty.

4. Commissioner Bell acknowledges receipt of \$700.00 as the total agreed payment in lieu of penalties.

5. By the endorsement of its counsel below, the defendant certifies that all violations alleged in the original citation, attached, have been abated. The defendant shall provide the Commissioner records demonstrating its implementation of a written lockout/tagout program, and the related employee training as required by VOSH Std. § 1910.147(b). These records shall include written mandatory procedures for locking and/or tagging out equipment in the defendant's workplace, a list of the equipment governed by the procedures, the names of employees or contractors responsible for training employees, a written description of the training process, and signed receipts executed by employees who have received the training. The defendant shall mail or deliver these records within thirty days of the date of this order to:

Ms. Elizabeth B. Tomlin, Regional Supervisor
Department of Labor and Industry
2551 Eltham Avenue, Suite H
Norfolk, Virginia 23513

6. In the event defendant shall fail to comply with any term of this order, the defendant shall pay to the Commissioner \$200.00, that is, the remaining amount of the original proposed penalty of \$900.00 within fifteen days of the date of the breach. Payment shall be made by check or money order and shall be payable to the Commonwealth of Virginia, with the VOSH inspection number noted on the payment. This payment shall not waive or limit any other remedy the Commissioner may seek for any such breach.

7. The defendant forthwith shall post a copy of this order for thirty consecutive days at its workplace in a conspicuous location where notices to its employees generally are posted.

8. Pursuant to Code § 40.1-49.4.D, the defendant's agreement to this settlement does not admit to any civil liability for the alleged violations. This agreement does not purport to limit the effect of Code § 40.1-51.3:2. The defendant's agreement to the entry of this order shall not limit the Commissioner's use of this order in future proceedings under Code § 40.1-49.4.I, -J, or -K, or under any other authority. This order shall be construed to advance the purpose of Code § 40.1-3.

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies of this order to counsel.

ENTER: William L. Person, Jr.
Judge

May 2, 1995
Date

WE ASK FOR THIS:

Patrick D. Kelley
Patrick D. Kelley
Assistant Commonwealth's Attorney
Post Office Box 333
Williamsburg, Virginia 23187
(804) 229-6080

SEEN AND AGREED TO:

James F. Thornton, III
James F. Thornton, III
Counsel for defendant
SPIRN, TARLEY, ROBINSON & TARLEY. P.L.L.C.
1313 Jamestown Road, Suite 202
Williamsburg, Virginia 23187
(804) 229-4281

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

Theron J. Bell, Commissioner of Labor and Industry,)	
)	
Plaintiff)	
)	
v.	)	Chancery Number: CH94005490-00
)	
SOUTHWEST TIMBER PRODUCTS, INC.)	
)	
Defendant)	

ORDER AND DECREE PRO CONFESSO

This cause came to be heard upon Commissioner Theron J. Bell’s Motion for Decree Pro Confesso against Southwest Timber Products, Inc., declaring that the contested Virginia Occupational Safety and Health (VOSH) Citations, identified by VOSH Inspection 112391289, be affirmed, and that judgment for penalties totaling \$13,900.00 be imposed as prayed for in the Commissioner’s Bill of Complaint.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of process upon the defendant corporation’s registered agent, and that no responsive pleadings have been filed by the defendant, nor has an appearance been made in this action on its behalf, it is therefore

ADJUDGED, ORDERED and DECREED that judgment by default be entered for the plaintiff against the defendant in the amount of \$13,900.00 in civil penalties for violation of the Virginia Occupational Safety and Health (VOSH) standards, that the citations set forth as Exhibit A in the Bill of Complaint be affirmed and that all violations be abated.

The Clerk shall strike this matter from the docket and place it among the ended chancery cases. The Clerk shall certify copies of this order to the Commonwealth's Attorney.

Pursuant to Rule 1:13, Rules of the Supreme Court of Virginia, endorsement by defense counsel shall be dispensed with.

ENTER: October 27, 1994

JUDGE: Charles B. Flannagan, II

We ask for this:

Roy F. Evans, Jr.

Roy F. Evans, Jr.
Commonwealth's Attorney
Counsel for Commissioner Bell
109 West Main Street
Marion, Virginia 24354
(703) 783-7164

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ROANOKE

CAROL A. AMATO, Commissioner of)	
Labor and Industry,)	
)	
Plaintiff,)	
v.	)	Chancery No. CH93-000217
)	
SUPERIOR METALS & MANUFACTURING,)	
INC.,)	
)	
Defendant.)	

ORDER AND DECREE PRO CONFESSO

This cause came to be heard upon Plaintiff Carol A. Amato, Commissioner of Labor and Industry's, Motion For Decree Pro Confesso against defendant Superior Metals & Manufacturing, Inc., declaring that the contested Virginia Occupational Safety and Health (VOSH) citations, identified by VOSH inspection number 112364369 and as attached to Plaintiff's Bill of Complaint, and accompanying penalties totaling \$5,480.00, be upheld.

UPON CONSIDERATION WHEREOF, it appearing to the Court that more than twenty-one (21) days have elapsed since service of Plaintiff's Subpoena in Chancery upon the Defendant, and that no responsive pleadings have been filed by Defendant, nor has any appearance been made in this action on its behalf, it is therefore

ADJUDGED, ORDERED and DECREED that Plaintiff be awarded judgment by default in this cause affirming the VOSH citations and penalties of \$5,480.00.

ENTER: *Kenneth E. Trabue* DATE: *July 21, 1994*

I ASK FOR THIS:

CAROL A. AMATO,
Commissioner of Labor and Industry

By: *Edwin R. Leach*
Of Counsel

Mr. Edwin R. Leach
Assistant Commonwealth's Attorney
305 East Main Street
Room 203
Salem, Virginia 24153
(703) 387-6174

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

THERON J. BELL,)	
Commissioner of Labor and Industry)	
)	
v.	)	Chancery No. C93-626
)	
VIRTEXCO CORPORATION)	
)	
Inspection No. 112393624)	

FINAL ORDER

Upon consent of the parties, the citations issued in the above-styled case shall be modified as followed:

1. Item 1 is reduced to Other-than-serious and affirmed.
2. Item 2 is reduced to Other-than-serious and affirmed.
3. Item 3 is reduced to Other-than-serious and affirmed.
4. Item 5 is reduced to Other-than-serious and affirmed.
5. Item 6 is reduced to Other-than-serious and affirmed.
6. Item 7 is reduced to Other-than-serious and affirmed.
7. Item 8 is reduced to Other-than-serious and affirmed.
8. Items 12a, 12b, and 12c are reduced to Other-than-serious and affirmed.
9. Items 4, 9, 10, and 11 are affirmed as Serious violations.

Virtexco Corporation has paid \$2160.00 in lieu of the penalties proposed in the citations. Accordingly, the citations are affirmed as set out above, and this matter is DISMISSED, SETTLED.

Pursuant to Virginia Code § 40.1-51.3:2, the fact of the 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 of Virginia 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. The Clerk shall strike this matter from the docket and place it among the ended Chancery cases. The Clerk shall certify copies of this order to the Commonwealth's Attorney and defense counsel.

Pursuant to Rule 1:13, endorsement by defense counsel shall be dispensed with.

ENTER: May 4, 1995 JUDGE: William F. Rutherford

We ask for this:

THERON J. BELL,
Commissioner of Labor and Industry

by: Elizabeth Dopp
Counsel

Elizabeth Dopp
Assistant Commonwealth's Attorney
City of Norfolk
Suite 600
800 East City Hall Avenue
Norfolk, Virginia 23510
(804) 664-4444

Seen and agreed:

VIRTEXCO CORPORATION

by: *Morris H. Fine*

Morris H. Fine

FINE, FINE, LEGUM & FINE

601 Pavilion Center

2101 Parks Avenue

Virginia Beach, Virginia 23451

(804) 422-1678