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SECRETARY OF LABOR,

Complainant,

v.

COASTAL PAVING, INC.,

Respondent.

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DOCKET NO. 02-0107

## DECISION AND ORDER

### *Procedural History*

This proceeding is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”). This case arose following an OSHA inspection conducted on or about June 22, 2001 through December 20, 2001. Following the inspection, the Secretary issued to Respondent Coastal Paving, Inc. (“Respondent” or “Coastal”) three citations alleging twenty-three serious, willful and other- than-serious violations, and proposing a total penalty of \$99,995.00. A hearing in this matter was scheduled to commence on November 2, 2002, in New York, New York. On October 25, 2002, counsel for Coastal filed a Notice of Motion to Withdraw Respondent’s Opposition, whereby Coastal withdrew its contest of all three citations and the penalties proposed therefor. Respondent has represented that it is no longer in business and that the site at issue has been dismantled. It has also represented that it has no employees, no payroll, and no bulletin boards or workplace that former employees frequent. In view of these representations, posting requirements in this matter are suspended.<sup>1</sup>

### *Jurisdiction*

At all times relevant to this proceeding, Coastal was engaged in business as a manufacturer of asphalt, and of the material used as a base beneath asphalt, and related activities. In its Answer, Coastal did not dispute that it was an employer engaged in a business affecting commerce. I find,

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<sup>1</sup>No affected employees or employee representatives requested party status in this matter.

accordingly, that Coastal is an employer within the meaning of section 3(5) of the Act and that the Commission has jurisdiction over the subject matter and the parties in this proceeding.

***Discussion***

Coastal states in its Motion that it is “incapable to refute the claims of the Complainant and as such hereby withdraws all of its contest to those charges.” I construe Coastal’s Motion to be a Motion to Withdraw the Citation and Complaint, and I hereby GRANT the Motion.

***Findings of Fact and Conclusions of Law***

1. Coastal Paving, Inc., was, at all times pertinent hereto, an employer within the meaning of section 3(5) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (1970).
2. The Commission has jurisdiction over the parties and the subject matter of this case.
3. The subject citations and proposed penalties are hereby affirmed.

**ORDER**

Based upon the foregoing decision, it is hereby ORDERED that:

1. Citation 1, Item 1, alleging a serious violation of 29 C.F.R. § 1910.23(c)(1), is AFFIRMED with a penalty of \$1,250.00.
2. Citation 1, Items 2a and 2b, alleging serious violations of 29 C.F.R. §§ 1910.95(k)(1) and 1910.95(k)(2), respectively, are AFFIRMED with a grouped penalty of \$1,250.00.
3. Citation 1, Items 3a, 3b and 3c, alleging serious violations of 29 C.F.R. §§ 1910.134(c)(1), 1910.1000(c), and 1910.1000(e), respectively, are AFFIRMED with a grouped penalty of \$2,500.00.
4. Citation 1, Items 4a and 4b, alleging serious violations of 29 C.F.R. §§ 1910.146(c)(2) and 1910.146(c)(4), respectively, are AFFIRMED with a grouped penalty of \$2,500.00.
5. Citation 1, Item 5, alleging a serious violation of 29 C.F.R. § 1910.146(g)(1), is AFFIRMED with a penalty of \$2,500.00.
6. Citation 1, Items 6a, 6b, 6c and 6d, alleging serious violations of 29 C.F.R. §§ 1910.147(c)(5)(i), 1910.147(c)(5)(ii), 1910.147(c)(5)(ii)(C)(2), and 1910.147(c)(5)(ii)(D), respectively, are AFFIRMED with a grouped penalty of \$2,500.00.
7. Citation 1, Item 7, alleging a serious violation of 29 C.F.R. § 1910.147(c)(6)(i), is AFFIRMED with a penalty of \$2,500.00.

