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| Secretary of Labor,<br>Complainant,<br><br>v.<br><br>Hi-Tech Builders, Inc.,<br>Respondent. | OSHRC Docket No. **97-1976** |

Appearances:

Matthew Vadnal, Esquire
United States Department of Labor
Office of the Solicitor
San Francisco, California
For Complainant

Jae Park, Vice President
Hi-Tech Builders, Inc.
Agana, Guam
For Respondent

Before: Administrative Law Judge Nancy J. Spies

## DECISION AND ORDER

Hi-Tech Builders, Inc., contests a two-item citation issued by the Secretary on October 9, 1997. Item 1 of the citation alleges a willful violation of § 1926.105(a) for failure to provide fall protection for employees working at heights 25 feet above the surface below. Item 2 alleges a willful violation of §1926.750(b)(2)(i) for failure to provide a tightly planked and substantial floor below where employees were working.

Hi-Tech's vice-president Jae Park represented the company *pro se* at the hearing held on March 20, 22, and 23, 1999. Hi-Tech does not dispute jurisdiction and coverage. Hi-Tech argues that the inspection conducted by the Occupational Safety and Health Administration (OSHA) was invalid and that evidence gathered during that inspection should not be admitted into the record. The Secretary has filed a post-hearing brief. Hi-Tech has declined to file a brief.

For the reasons set out below, items 1 and 2 of the citation are affirmed.

*Background*

In January 1997, the Occupational Safety and Health Administration (OSHA) began an inspection of an expansion and renovation project underway at the Guam International Airport. OSHA's inspection was part of a local emphasis program called PAC Isles (Tr. 22).

Hi-Tech was performing structural steel erection for the expansion of the airport. The prime contractor on the project was Hanjin, with whom OSHA compliance officer Daniel J. Mooney held an opening conference on January 24, 1997. Mooney held a closing conference with Hanjin on January 29, but he subsequently observed what he believed were ongoing safety violations on the construction site. (The construction site was visible from a nearby public roadway on which Mooney regularly drove.) Consequently, Mooney continued his inspection of the construction project and held another closing conference with Hanjin on February 4, 1997 (Tr. 23-24).

On April 21, 1997, before the Secretary had issued any citations to any of the employers working on the airport construction project, Mooney was driving on the public roadway next to the airport. Mooney noticed that some of the workers (including several Hi-Tech employees) were engaged in conduct that he believed was violative of OSHA's safety standards. On April 21, 22, and 24, Mooney and fellow OSHA compliance officer Randy White videotaped the airport construction site from a public parking lot located 50 to 200 yards away from the site. The video camera the compliance officers used was equipped with a zoom lens capable of magnifying the objects viewed up to 30 times (Tr. 27). Mooney and White informed Hanjin that they were continuing their inspection of the construction site (Tr. 25-26).

Mooney and White stated that they attempted to meet Hi-Tech's representatives but could not get anyone from Hi-Tech to come to Hanjin's trailer. The compliance officers went to the area of the west wing expansion where the steel erection was taking place. They met with Andy Kim, Hi-Tech's president, and with Hi-Tech employee Richard Lobo. Kim identified himself as Hi-Tech's on-site supervisor. The compliance officers showed Kim and Lobo their credentials and explained the purpose of their investigation (Tr. 79-80, 125). Mooney testified that Hi-Tech was not unionized so there was no employee representative with whom he and White could meet

(Tr. 131). White stated that when he and Mooney went out to the site, Hi-Tech's employees "all disappeared" (Tr. 421).

As a result of Mooney and White's inspection, the Secretary issued the citation in the instant case to Hi-Tech on October 9, 1997.

*The Validity of OSHA's Investigation*

Hi-Tech charges that OSHA violated §§ 8(a) and (e) of the Act. Hi-Tech argues that the compliance officers conducted most of their investigation of Hi-Tech's worksite, including all of the videotaping, before holding the opening conference with Kim and Lobo.

Section 8(a) provides:

> In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge is authorized--
>
> (1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and
>
> (2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

Section 8(e) provides:

> Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

Hi-Tech basis its argument that OSHA's inspection is invalid on two claims: first, that Mooney and White impermissibly videotaped its worksite before holding an opening conference with Hi-Tech and without Hi-Tech's knowledge; and, second, that Mooney and White did not afford Hi-Tech the opportunity of accompanying them during their walk-around inspection.

Hi-Tech relies on *L. R. Willson & Sons, Inc.*, for support. In *Willson*, the employer moved to suppress a videotape taken off-site before the compliance officer presented his

credentials to the employer, claiming that the compliance officer violated §§8 (a) and (e) by videotaping first. The undersigned denied the employer's motion. The Review Commission affirmed that decision in *L. R. Willson & Sons, Inc.,* 17 BNA OSHC 2059 (No. 94-1546, 1997). The Fourth Circuit Court of Appeals affirmed the Review Commission's ruling that the videotape was admissible, but reversed and remanded the Commission's decision with regard to the burden of proof on the unpreventable employee misconduct defense. *L. R. Willson & Sons, Inc.,* 134 F. 3d 1235 (4th Cir. 1998).[1]

In *Willson*, Joseph Dear, then Assistant Secretary of Labor for OSHA, observed from his hotel window employees working without fall protection at a construction site across the street from the hotel where he was staying. Dear telephoned an OSHA compliance officer, Ronald Anderson, and described to him what he had just seen.

> Anderson came to make an inspection of the site. However, rather than going immediately to the Willson site, Anderson obtained permission from the Peabody Hotel to videotape the activities on the site from the hotel's roof. For approximately 50 minutes, Anderson videotaped the activities at the site, which included two employees working at a height of about 80 feet without adequate safety cables, through a "16" power camera lens. Anderson then went to the site, presented his credentials, and was allowed to interview the two employees he had observed.

*L. R. Willson & Sons*, 134 F. 3d at 1237.

> In affirming the admissibility of the videotape, the Court of Appeals stated:
>
> Although surveillance is a type of search that can invoke Fourth Amendment protections if performed unreasonably, we hold that Anderson's long distance observations were not unreasonable. . . . Although, as Willson points out in its brief, the roof of the Peabody Hotel was not completely open to the public, and Anderson did employ a high powered lens in shooting the videotape, the crucial aspect of the situation seems to be that Willson left the construction site open to observation from vantages outside its control. As the inquiry should focus on what sort of "expectation of privacy" Willson had, we believe that a sustained view from a hotel across the street is difficult to classify as an unreasonable intrusion into Willson's "private space."

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[1] Park, a non-lawyer, cites the *Willson* case in support of his position because of dicta in the decision in which the Review Commission expresses disapproval of the compliance officer's videotaping for 45 minutes while allowing employees to remain exposed to potentially fatal fall hazards. The Review Commission urges the Secretary "to take steps to prevent it in the future." *L. R. Willson,* 17 BNA OSHC at 2062.

*Id.* at 1238.

With regard to the off-site videotapes violating § 8(a)(1), the court of appeals stated that the Review Commission reads § 8(a)(1) "as focusing on the entrance onto a worksite, and thus concluded that it does not apply to 'off-site' observations such as the one in this case. . . . Nothing in the statute or its legislative history indicates that § 8(a)(1)'s requirements apply to nontrespassory observations of worksites." *Id.*

In the present case, the compliance officers were in a public parking lot, which was more accessible to the general public than the top of the Peabody Hotel in *Willson*. A case more apposite to the situation here is *GEM Industrial, Inc.*, 17 BNA OSHC 1184 (No. 93-1122, 1995).

In *GEM*, the employer's construction site was visible from the main road. The compliance officer turned onto an industrial parkway and parked in a parking lot for the completed, occupied building next to GEM's worksite. From his car the compliance officer took several photographs. The compliance officer then proceeded to the worksite and presented his credentials to the employer's foreman. Approximately 10 to 15 minutes elapsed between the time of the compliance officer's arrival at the parking lot and his presentation of credentials. GEM argued that the compliance officer violated §§ 8(a) and (e) and moved to suppress the photographs taken by the compliance officer. The administrative law judge granted GEM's motion and suppressed the photographs. The Review Commission reversed the administrative law judge's ruling, finding that the employer had no reasonable expectation of privacy:

> The CO observed the violative conditions from his car parked in the parking lot of a completed building next to GEM's site, a lot in which any member of the public could park to conduct business in the occupied building. The road that he took into the industrial park was not closed off. There was a sign identifying the park, but there is nothing in the record to indicate that it was intended to exclude the public.

*Id.*, 17 BNA OSHC at 1186-1187.

The case law is clear that an employer has no reasonable expectation of privacy in a construction worksite that is visible from areas to which the public has access. Hi-Tech could not reasonably expect that its steel erection at the Guam International Airport would remain

private when it was visible from both the public roadway and from a public parking lot located nearby. OSHA's compliance officers did not violate § 8(a).

Hi-Tech also argues that the compliance officers violated § 8(e) by not offering its representatives the opportunity to accompany them on their walk-around inspection of Hi-Tech's worksite. Hi-Tech's development of this theory is somewhat sketchy. Hi-Tech acknowledges that Mooney and White met with Hi-Tech president Andy Kim and that they presented their credentials to him in an opening conference. Hi-Tech's argument appears to be that the compliance officers delayed the opening conference until they had conducted most of their investigation, and that president Kim did not understand English well enough to comprehend his rights under the Act.

Mooney and White explained that when they first arrived at the construction site, they were unable to summon anyone from Hi-Tech to the prime contractor's trailer. They chose to go to the area where Hi-Tech was erecting structural steel. There is no evidence that they purposely delayed holding the opening conference. Kim testified at the hearing. While it was clear that he is not fluent in English, the undersigned observed that he was able to understand English and to communicate what he wanted understood.

The compliance officers spoke to Kim about the alleged violations. It is unclear from the record whether the compliance officers formally offered Kim an opportunity to accompany them on their inspection. Kim was not questioned on this point by either the Secretary or Hi-Tech. Mooney's testimony on this point is somewhat vague (Tr. 136):

> Well, the walk-around conversation, basically, consisted of that we observed several hazards, which we described. Some of them we did not cite.
>
> We said that we needed to obtain some measurements so we could determine the fall heights.
>
> And we showed--we tried to show some of the video, but it was bright out, you couldn't see the screen.
>
> And we said that we were later going to have a closing conference and go over the hazards we videotaped from off site at the closing conference.
>
> So the conversation was probably a few minutes, at the most.

The Review Commission has held that a compliance officer's failure to comply with § 8(e) does not necessarily invalidate the citations. "The extent of the efforts required on the part

of the inspector to satisfy section 8(e) will depend upon the circumstances of the particular case." *Concrete Construction Co.,* 15 BNA OSHC 1614, 1618 (No. 89-2019, 1992). Furthermore, the Commission held that, even if a showing is made that the employer was not afforded an opportunity to accompany a compliance officer, vacation of the citation is not appropriate where the employer's "preparation or presentation of its defense is not prejudiced." *Concrete Construction,* 15 BNA OSHC at 1618.

Nothing in the record indicates either that Hi-Tech was not afforded an opportunity to accompany the compliance officers on their walk-around, or that Hi-Tech's defense was in any way compromised by not having a representative accompany the compliance officers during their inspection. There is no basis to dismiss the case or to surpress the evidence from Mooney's and White's inspection based on a violation of either §§ 8(a) or 8(e).

*Citation No.1*

The Secretary has the burden of proving her case by a preponderance of the evidence.

> In order to establish a violation of an occupational safety or health standard, the Secretary has the burden of proving: (a) the applicability of the cited standard, (b) the employer's noncompliance with the standard's terms, (c) employee access to the violative conditions, and (d) the employer's actual or constructive knowledge of the violation (*i.e.,* the employer either knew or, with the exercise of reasonable diligence could have known, of the violative conditions).

*Atlantic Battery Co.,* 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994).

In order to establish that a violation is "serious" under § 17(k) of the Act, the Secretary must establish that there is a substantial probability of death or serious physical harm that could result from the cited condition. In determining substantial probability, the Secretary must show that an accident is possible and the result of the accident would likely be death or serious physical harm. The likelihood of the accident is not an issue. *Spancrete Northeast, Inc.,* 15 BNA OSHC 1020, 1024 (No. 86-521, 1991).

*Item 1: Alleged Willful Violation of § 1926.105(a)*

The Secretary alleges that Hi-Tech committed a willful violation of §1926.105(a), which provides:

> Safety nets shall be provided when workplaces are more than 25 feet above the ground or water surface, or other surfaces where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts is impractical.

The Review Commission has held that the hazards of falling to the exterior of a building during steel erection are regulated by § 1926.105(a). *Peterson Brothers Steel Erection Co.,* 16 BNA OSHC 1196, 1198 (No. 90-2304, 1993). Because of the type of fall hazard involved, § 1926.105(a) is applicable to the steel erection work being performed by Hi-Tech at the Guam International Airport expansion. Employees worked more than 25 feet above the ground level and were exposed to exterior falls.

Section 1926.105(a) requires the use of one of the listed devices. The Secretary establishes a *prima facie* case upon showing that the employees were exposed to falls in excess of 25 feet and that none of the protective measures was used. *Century Steel Erectors, Inc. v. Dole*, 888 F. 2d 1399, 1402-1403 (D. C. Cir. 1993).

The videotape taken by the compliance officers shows Hi-Tech employees working at heights of approximately 50 feet. The method of fall protection used by the employees was safety lines, belts, and lanyards. In many instances shown in the videotape, the employees failed to tie off. These instances were frequent and were in plain view. Hi-Tech's president was on the site. Hi-Tech had constructive, if not actual, knowledge that its employees were failing to tie off (Exhs. C-1, C-2 through C-12; Tr. 55).

"To establish a violation of § 1926.105(a) for failing to require a listed fall protection device other than a safety net, the Secretary must also show that the device was practical in the cited employer's circumstances." *George Campbell Painting Corporation*, 1999 OSHRC No. 29, p. 11 (No. 94-3121, 1999). The use of safety belts and lanyards by Hi-Tech's employees was practical. White testified that attaching temporary columns or "stanchions" to the beam and then stretching a lifeline between them as a tie off point before lifting the beam into place was

one practical means of abatement (Tr. 466-467). Vice-president Park testified that the use of safety belts, lanyards, and lifelines was practical and feasible (Tr. 540).

The Secretary has established that Hi-Tech violated § 1926.105(a).

*Item 2: Alleged Willful Violation of § 1926.750(b)(2)(i)*

Section 1926.750(b)(2)(i) provides:

> Where skeleton steel erection is being done, a tightly planked and substantial floor shall be maintained within two stories or 30 feet, whichever is less, below and directly under that portion of each tier of beams on which any work is being performed, except when gathering and stacking temporary floor planks on a lower floor, in preparation for transferring such planks for use on an upper floor. Where such a floor is not practicable, paragraph (b)(1)(ii) of this section applies.

Section 1926.750(b)(1)(ii) provides:

> On buildings or structures not adaptable to temporary floors, and where scaffolds are not used, safety nets shall be installed and maintained whenever the potential fall distance exceeds two stories or 25 feet. The nets shall be hung with sufficient clearance to prevent contacts with the surface of the structures below.

It is undisputed that § 1926.750(b)(2)(i), which is intended to prevent falls to the interior of a building, applies to Hi-Tech's worksite. Noncompliance with the cited standard is established by evidence that none of the protective measures mentioned in the standard was used. *El Paso Crane & Rigging, Inc.*, 16 BNA OSHC 1419 (No. 90-1106, 1993).

Hi-Tech provided neither temporary floors nor safety nets below and directly under where its employees were performing work. The employees were exposed to a 30-foot fall to the interior of the building. The employees were in plain view of Hi-Tech president Kim, who was on the site.

Although infeasibility was not pled, the issue was raised and tried at the hearing. Hi-Tech argues that during the steel erection phase of the project, use of temporary flooring or safety nets would prevent the use of guy wires necessary to secure the columns and plumb the building (Tr. 399-400, 510-511). However, Mooney testified credibly that the use of fall protection was feasible. Temporary flooring could have been used by installing additional girders and installing metal decking around the guy wires and tack welding or overlapping the decking (Tr. 86-87). Interior nets could have been linked together and attached to wire ropes strung around the

columns (Tr. 88). Aerial lifts, which are available on Guam, could have been used to lift the employees to the area where the work was being performed (Tr. 90-91).

The Secretary has established that Hi-Tech violated § 1926.750(b)(2)(i).

*Willful Classification*

The Secretary classified items 1 and 2 as willful violations.

> A violation is willful if committed with intentional, knowing or voluntary disregard for the requirements of the Act or with plain indifference to employee safety. . . . A willful violation is differentiated from a nonwillful violation by a heightened awareness, a conscious disregard or plain indifference to employee safety. . . . A willful charge is not justified if an employer has made a good faith effort to comply with a standard or to eliminate a hazard, even though the employer's efforts are not entirely effective or complete.

*Valdak Corp.*, 17 BNA OSHC 1135, 1136 (No. 93-239, 1995) (citations omitted).

Bruce Williams was hired by Hanjin to be the safety and security officer on the airport project (Tr. 204). In late 1995 or early 1996, Hi-Tech began work on the project. Williams had almost daily contact with Hi-Tech president Kim and vice-president Park (Tr. 210-211). Williams stated that he had "a continuous problem with Hi-Tech Builders" because its employees would not use fall protection. According to Williams, "Many times they either didn't have the safety belt and were not hooked up to the safety line, and/or the safety line was not in place" (Tr. 215).

Williams pointed out Hi-Tech's safety violations to Kim and Park "many times" (Tr. 218). Park would tell Williams that he would take care of the problem, but, as Williams testified, "[E]ventually that became a problem with what he was saying and what was being done'" (Tr. 220).

Williams wrote several memoranda to Hi-Tech with copies to the project's management warning that the company was jeopardizing their workers' safety. One of the memoranda, dated April 22, 1996, states in part (Exh. C-21, pp. 3-4):

> Hi-Tech or High Risk?
> Technology has made great leaps in the work place [and] equipment and you should take advantage of this to protect your men and your company. I recommend a competent safety manager on this project to handle the following:

--Training: I've cited the same violations so many times that I'm dizzy! Document your training and remove the repeat offenders as liabilities.

--(Over the weekend): You erected the curtain wall frame without:

(1) approved sketch of hanging scaffold

(2) installing mid-rail

(3) men were climbing down the crane's main line without a safety line.

(4) men were climbing the columns without life[lines].

--Today: During present erection at E-17, zone 4:

(1) men working at edge, outside barricade, without safety belts or harness.

(2) at apron level, zone 1, a cage was being worked on that is a "condemned" cage from Samsung. DO NOT USE! CUT IT UP FOR SCRAP!

--Tomorrow? The same? or worse? Do you care?

I do! As of today, Hi-Tech has been put on the "Hazardous List." Hanjin management has been notified! Their decision is forthcoming.

On April 22, 1996, Williams halted Hi-Tech's work because its employees were working outside a barricade without safety belts or safety lines (Exh. C-21; Tr. 222-223, 227). Williams had to tell Hi-Tech employees to tie off at least five times (Tr. 243). Williams recommended at one safety meeting that one of Hi-Tech's employees be terminated because Williams had caught him twice when he was not tied off. Park told Williams that he wanted to keep the employee on the job (Tr. 245).

From August 1996 to August 1998, Carlos Buhain was the Safety Administrator for Hanjin (Tr. 341). Beginning in March 1997, approximately one month before the OSHA inspection, Buhain kept a log book in which he documented several Hi-Tech safety violations (Exh. C-26).

Felix Mansapit worked as a safety inspector on the airport project for the entirety of the project (Tr. 285-286). He stated that Hi-Tech's fall protection program was "very poor" (Tr. 295). When asked on how many occasions he observed Hi-Tech employees working without fall protection, Mansapit replied, "Oh, gosh. I really couldn't put a number on that. Maybe daily. Daily. Gosh, I would say numerous. I don't know how you would tag a number on numerous, but, you know, numerous occasions" (Tr. 296). Mansapit repeatedly told Park about the ongoing problems with Hi-Tech's workers. Park responded that he knew more about

the OSHA construction standards than most people and that he would take care of the problems (Tr. 298-299).

In April 1996, Mansapit wrote three letters to Hanjin listing Hi-Tech's safety violations and recommending that special measures be taken to improve Hi-Tech's safety performance. The first letter, dated April 22, 1996, states in part:

> Your subcontractor HiTech is rapidly becoming a high risk and possible expensive liability on this project, with their personnel not using fall protection on heights in excess of 25 ft. In addition, unless they can see your safety officer, all fall protection is disregarded totally.

The Secretary contends that Hi-Tech's well-documented history of notices that its employees were routinely failing to use fall protection establishes that items 1 and 2 are willful.

> [W]hether a willful violation exists depends upon the employer's state of mind with respect to the requirements imposed by a standard. . . . [A]n employer who has notice of the requirements of a standard and is aware of a condition which violates that standard but fails to correct or eliminate employee exposure to the violation demonstrates knowing disregard for purposes of establishing willfulness.

*Aviation Constructors, Inc.*, 1999 OSHRC No. 27, p. 7 (No. 96-0593, 1999).

The facts fully warrant a willful classification in this case. Hi-Tech was repeatedly notified by a number of safety personnel over a period of several months that its employees were not tying off or using any other means of fall protection while working at heights of 50 feet to the exterior, and 30 feet to the interior, of the structure. Kim and Park refused to take any corrective action. Park either told whomever notified him of the violative conduct that he would take care of it, and then ignored it; or he would arrogantly assert that he knew more about OSHA safety standards than they did. The record establishes that on numerous occasions Hi-Tech was warned that its employees were exposing themselves to fall hazards. The safety personnel sent memos, held meetings, and threatened corrective action against Hi-Tech, yet Hi-Tech refused to enforce OSHA's standards.

As Hi-Tech's managing partner, Mr. Park refused to accept the advice of anyone with safety responsibility on the worksite. He dissected and re-interpreted every safety requirement so that the company could work exactly as it wished; and it wished not to be bothered with safety

restrictions. Hi-Tech has amply demonstrated its intentional and knowing disregard for the requirements of the Act, as well as its plain indifference to employee safety.

Items 1 and 2 of the violation are classified as willful.

*Penalty Determination*

The Commission is the final arbiter of penalties in all contested cases. Under § 17(j) of the Act, in determining the appropriate penalty, the Commission is required to find and give "due consideration" to (1) the size of the employer's business, (2) the gravity of the violation, (3) the good faith of the employer, and (4) the history of previous violations. The gravity of the violation is the principal factor to be considered.

Although there was some evidence that Hi-Tech had 22 employees at the time of the inspection, Park testified that the company actually had less than 10 employees. Park's estimate will be accepted for purposes of the penalty determination (Tr. 559-561). Hi-Tech had previously been cited for violations of the fall protection standards (Tr. 428-429). Few are arguably less deserving of a good faith credit than is Hi-Tech in these circumstances.

The gravity of the violations is high. The employees were exposed to 30- and 50-foot falls which would most likely have resulted in death. Employees were in immediate proximity to the hazard as they walked narrow girders and climbed over obstructions. Mooney and White observed four or five employees exposed on April 21; and during a 5-minute span on April 24, they saw another four or five employees who were exposed to fall hazards in separate instances (Tr. 92).

The Secretary proposed a penalty of $49,000.00 for each of the items, for a total penalty of $98,000.00. While the undersigned agrees that a high penalty is warranted based on the bad faith and the high gravity of the violations, she is also mindful of the small size of the employer and the similarity between the fall protection violations cited as items 1 and 2. Accordingly, it is determined that the appropriate penalty for item 1 is $30,000.00, and for item 2 is $30,000.00.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a).

## ORDER

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

(1) Item 1 of the citation, alleging a willful violation of § 1926.105(a), is affirmed and a penalty of $30,000.00 is assessed; and

(2) Item 2 of the citation, alleging a willful violation of § 1926.750(b)(2)(i), is affirmed and a penalty of $30,000.00 is assessed.

NANCY J. SPIES
Judge

**Date**: October 28, 1999