SECRETARY OF LABOR, Complainant, v. GALLUZZO EQUIPMENT & EXCAVATING, INC., Respondent.	OSHRC DOCKET NO. 03-0738

Appearances:

Esther D. Curtwright, Esquire
Office of the Solicitor
U.S. Department of Labor
New York, New York
For the Complainant

Dominick Galluzzo, Vice-President
Galluzzo Equipment & Excavating, Inc.
Saddle Brook, New Jersey
For the Respondent, *pro se*.

Before: Covette Rooney
Administrative Law Judge

DECISION AND ORDER

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"). Respondent, Galluzzo Equipment & Excavating, Inc. ("GE&E"), is engaged in the business of excavation and, at all times relevant to this action, maintained a work site at the intersection of Union and Prospect Streets in Lodi, New Jersey. GE&E is an employer engaged in a business affecting commerce and is subject to the requirements of the Act. The Commission has jurisdiction over the subject matter and the parties in this proceeding.

From March 18 through April 1, 2003, the Occupational Safety and Health Administration ("OSHA") conducted an inspection of GE&E's work site. As a result of that inspection, GE&E was issued a seven-item serious citation and a two-item other-than-serious citation; the serious citation proposed a total penalty of $7,350.00, and the "other" citation proposed no penalty. By filing a timely notice of contest, GE&E brought this matter before the Commission. The case was designated for E-Z Trial pursuant to Commission Rule 203, 29 C.F.R. § 2200.203. The hearing in this case was

held on August 21, 2003, in New York, New York, and GE&E was represented *pro se* by its vice-president, Dominick Galluzzo. At the commencement of the hearing, the Secretary withdrew Item 1 of "Other" Citation 2 and amended Item 3 of Serious Citation 1 to allege a violation of Section 5(a)(1) of the Act instead of 29 C.F.R. § 1926.302(b)(1). GE&E had no objection to these amendments. (Tr. 6-8; Exh. G-1). The hearing addressed the remaining citation items, as amended. No briefs are required in E-Z Trial proceedings, and this matter is ready for disposition.

The Inspection

OSHA compliance officer ("CO") Charles Triscritti testified that on March 18, 2003, he was assigned to inspect the subject site, which was located on a two-lane road. Upon his arrival, he observed that one lane was closed and that employees were installing a concrete catch basin in an excavation in the closed lane; the excavation was also next to a sidewalk. The catch basin was suspended over the excavation by a crane, and there was moving traffic in the open lane. The CO at that time photographed several conditions that he believed were hazardous, that is, employees working under the crane without hard hats and a spoil pile located alongside the trench. Mr. Galluzzo was present at the site, but the CO could not hold an opening conference as Mr. Galluzzo would not speak with him. (Tr. 9-16; Exhs. G-2-8).

The CO returned to the site on March 20 and at that time held an opening conference with Mr. Galluzzo, who identified himself as vice-president. CO Triscritti explained to Mr. Galluzzo that he had observed hazardous conditions during his previous visit. The CO then saw other conditions at the site, that is, a homemade trench box in the excavation, some soil sloughing at the bottom of the trench box, a void in the wall of the trench, and a concrete pipe installed at the bottom of the trench; he also saw a frayed sling positioned around a concrete pipe that was to be installed. The CO explained to Mr. Galluzzo that the trench box was required to be designed and approved by a professional engineer and that he needed to examine the written data for the box to determine if its design was in compliance. CO Triscritti testified that Mr. Galluzzo stated that he was not a professional engineer and did not know what type of soil he was working in; Mr. Galluzzo also stated that he did not know the applicable OSHA standards. (Tr. 17-21; Exhs. G-9-11).

CO Triscritti returned to the site on March 26, and he noted that the pipe installation work continued with the use of the homemade trench box. He also noted a manufactured trench box on a sidewalk adjacent to the trench. The CO told Mr. Galluzzo that he could not continue to work in

that manner, after which Mr. Galluzzo removed the homemade trench box and installed the manufactured trench box. CO Triscritti went back to the site on March 27 and at that time observed an air hose fitting with no safety pin installed. He explained the need for a safety pin to Mr. Galluzzo, who abated the condition by putting a wire into the fitting. The CO made a final visit to the site on March 28, when he again saw that an air hose fitting did not have a safety pin installed. A closing conference was held on April 1, 2003. (Tr. 21-27, 31-32; Exhs. G-12-15).

Burden of Proof

The Secretary has the burden of proving her case by a preponderance of the evidence. In order to show a violation of an OSHA standard, the Secretary must prove: (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).[1] *Atlantic Battery Co.*, 16 BNA OSHA 2131, 2138 (No. 90-1747, 1994).

There is no dispute that the cited standards apply to GE&E's construction activities at the subject site. In addition, the record establishes that Mr. Galluzzo and three other employees, Juan Martinez, Avalaro Paraza and Vincent Cuzzaro, were exposed to the cited conditions. (Tr. 36, 42, 46, 50, 61). The record also establishes that Mr. Galluzzo, who was on the job on a daily basis, directed the work at the site and had authority over the site. (Tr. 91, 97). Had he exercised reasonable diligence, he would have been aware of the cited conditions. "Because corporate employers can only obtain knowledge through their agents, the actions and knowledge of supervisory personnel are generally imputed to their employers, and the Secretary can make a prima facie showing of knowledge by proving that a supervisory employee knew of or was responsible for the violation." *Todd Shipyards Corp.*, 11 BNA OSHC 2177, 2179 (No. 77-1598, 1984). "[W]hen a supervisory

[1] The Secretary establishes knowledge by showing the employer knew, or with the exercise of reasonable diligence could have known, of the hazardous condition. *Pride Oil Well Serv.*, 15 BNA OSHC 1809, 1814 (No. 87-692, 1992). Reasonable diligence involves several factors, including an employer's "obligation to inspect the work area, to anticipate hazards to which employees may be exposed, and to take measures to prevent the occurrence." *Frank Swidzinski Co.*, 9 BNA OSHC 1230, 1233 (No. 76-4627, 1981). Other factors are adequate supervision of employees and the formulation and implementation of adequate training programs and work rules to ensure that work is safe. *Gary Concrete*, 15 BNA OSHC 1051, 1054-55 (No. 86-1087, 1991); *Towne Constr. Co.*, 12 BNA OSHC 2185, 2190- 91(No. 83-1262, 1986), *aff'd*, 847 F.2d 1187 (6th Cir. 1988).

employee has actual or constructive knowledge of the violative conditions, that knowledge is imputed to the employer. *Dover Elevator Co.,* 16 BNA OSHC 1281, 1286 (No. 91-862, 1993).

The remaining element of proof that needs to be addressed is whether the conditions that existed at the site violated the cited standards. The alleged violations are discussed *infra*.

Serious Citation 1, Item 1a

This item alleges a violation of 29 C.F.R. § 1926.21(b)(2), which requires the employer to "instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury." The citation alleges that, throughout the site, the employer did not inform employees of the safety hazards and OSHA regulations associated with excavation work, on or about 3/18/2003.

The cited standard outlines no particular requirements for a safety program and requires only that an employer inform employees of "safety hazards which would be known to a reasonably prudent employer or which are addressed by specific OSHA regulations." *A.P. O'Horo Co.,* 14 BNA OSHC 2004, 2009 (1991); *Concrete Constr. Co.***,** 15 BNA OSHC 1614, 1619 (No. 89- 2019, 1992). Here, the Secretary alleges that GE&E failed to instruct its employees in the hazards associated with trenching. Specific standards address the activities and hazards associated therewith and for which GE&E allegedly failed to instruct its employees. The requirements for design of protective systems, work site inspections, stability of adjacent structures, design of shield systems and hard hats are set out at 29 C.F.R. §§ 1926.652, 1926.651(k),1926.651(i), 1926.652(g) and 1926.100(a), respectively. In support of the alleged violation, the Secretary relies on the testimony of the CO that Mr. Galluzzo told him that he did not know the OSHA standards for excavations. (Tr. 21, 33-34). At the hearing, Mr. Galluzzo presented no evidence that employees received any specific instructions in trenching safety. Mr. Galluzzo conceded that his written safety policy had no instructions in this regard and that he had never taken any excavation courses. He also conceded that the training his employees received in manhole safety and first aid had been done by another company, Con Edison. (Tr. 94-96, 97). Based on the record, GE&E employees were exposed to trenching hazards, such as cave-ins, and GE&E did not provide them information about trenching hazards or the means of preventing or avoiding such hazards. The Secretary has shown a violation of 29 C.F.R. 1926.21(b)(2), and the

violation is affirmed as serious because failing to train employees in trenching safety could result in death or serious physical injury.[2]

Serious Citation 1, Item 1b

This item alleges a violation of 29 C.F.R. § 1926.651(k)(1), which provides as follows:

> Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

The citation alleges that a competent person was not on site to make inspections as needed throughout the shift, on or about 3/18/2003.[3]

CO Triscritti testified that Mr. Galluzzo told him that he did not know the OSHA trenching standards or what type of soil he was working in; the inspection also revealed that Mr. Galluzzo did not know how to design and configure an adequate protective system. (Tr. 17-21, 34). Furthermore, Mr. Galluzzo acknowledged that he had not taken any excavation courses, and there was no evidence of any specific training that he had had that would qualify him to be a competent person. (Tr. 97). I find that the record establishes that Mr. Galluzzo was not a "competent person" within the meaning of the standard. The Secretary has demonstrated a violation of 29 C.F.R. 1926.651(k)(1), and the violation is affirmed as serious because the failure to have a competent person at the site could have resulted in a cave-in and serious injury or death.

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[2] Under section 17(k) of the Act, a violation is serious where there is a substantial probability that death or serious physical harm could result from the violation. It is the likelihood of serious physical harm or death arising from an accident, rather than the likelihood of the accident occurring, that is considered in determining whether a violation is serious. *Dravo Corp.*, 7 BNA OSHC 2095, 2101 (No. 16317, 1980). It is not necessary for the occurrence of the accident itself to be probable. It is sufficient if the accident is possible and its probable result would be serious injury or death. *Brown & Root, Inc., Power Plant Div.*, 8 BNA OSHC 1055, 1060 (No. 76-3942, 1980).

[3] A "competent person" under the standard is one who has had training in, and is knowledgeable about, soil analysis, protective systems, and the requirements of the standard.

Items 1a and 1b have been grouped for penalty purposes, and the Secretary has proposed a total penalty of $750.00 for these items.[4] The CO determined the severity of these two violations to be high and the probability of an injury occurring to be lesser as employee exposures were of short duration. The gravity-based penalty was reduced due to the small size of the employer's business and its lack of violations in the past three years; however, no reduction was given for good faith due to Mr. Galluzzo's actions during the inspection. (Tr. 48, 52). Based on the record, I find the Secretary's total proposed penalty of $750.00 to be appropriate. The proposed penalty is accordingly assessed.

Serious Citation 1, Item 2

Item 2 alleges a violation of 29 C.F.R. § 1926.100(a), which requires employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, to be protected by protective helmets. The citation alleges that on or about 3/18/2003, an employee was not wearing head protection.

CO Triscritti offered unrebutted testimony as to his observations of GE&E's employees working under the crane suspending the catch basin without hard hats, and his observations are shown in various photos that have been received in evidence.[5] (Tr. 13-16, 35; Exhs. G-4-6, G-8). Based on the record, employees were exposed to the hazard of falling objects from the crane operation, and the standard clearly requires head protection where there is a "possible danger" from falling objects. The Secretary has established the alleged violation of 29 C.F.R. 1926.100(a), and the violation is affirmed as serious.

The Secretary has proposed a penalty of $1,500.00 for this item. The CO determined that the severity of the violation was high and that the probability of an injury occurring was greater; in addition, the same reduction factors noted above were applied. (Tr. 51). I find the proposed penalty appropriate, and a penalty of $1,500.00 is therefore assessed.

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[4] Under section17(j) of the Act, the Commission is authorized to assess appropriate penalties for violations, giving due consideration to the gravity of the violation and to the size of the employer's business, its history of OSHA violations, and its good faith. *Merchant's Masonry, Inc.*, 17 BNA OSHA 1005, 1006-07 (No. 92-424, 1994). The most significant of these factors is the gravity of the violation, which includes the number of exposed employees, the duration of exposure, the precautions taken to prevent injury, and the degree of probability that an injury would occur. *Id.*

[5] In addition, Mr. Galluzzo acknowledged that he had entered the trench without a hard hat during the inspection. (Tr. 61-62, 91).

Serious Citation 1, Item 3

Item 3, as amended, alleges a violation of section 5(a)(a) of the Act, which requires each employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." The citation alleges that GE&E did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that, on or about 3/28/2003, a pneumatic hammer air hose fitting did not have a coupling hold tight wire in place.

To prove a section 5(a)(1) violation, the Secretary must show that: (1) a condition or activity in the employer's workplace presented a hazard to employees; (2) the employer or the employer's industry recognized the hazard; (3) the hazard was causing or likely to cause death or serious physical harm; and (4) feasible means existed to eliminate or materially reduce the hazard.[6] *Waldon Healthcare Center,* 16 BNA OSHA 1052 (Nos. 89-2804 and 89-3097, 1993)*; Tampa Shipyards Inc.,* 15 BNA OSHA 1533 (Nos. 86-360 and 86-469, 1992)*; Kastalon, Inc.,* 12 BNA OSHA 1928, 1931 (Nos. 79-3561 and 79-5543, 1986).

CO Triscritti testified that two employees, Juan Martinez and Avalaro Paraza, were working right by the cited air hose and fitting and were exposed to the hazard of being struck by the hose if it had separated from the fitting. (Tr. 35-36). The CO contacted a manufacturer of this type of hose and learned that a safety pin, wire or other mechanism would keep the fitting from disengaging under pressure; he also learned this was a recognized hazard in the industry. (Tr. 36-40; Exhs. G-16-18). The record indicates that the CO first saw this hazard on March 27; he informed Mr. Galluzzo, who abated the hazard by putting a wire in the fitting. (Tr. 26-27, 31-32, 35-36).

The record demonstrates all of the required elements to establish the alleged section 5(a)(1) violation, and it is clear that serious bodily injury could have occurred if the air hose had disengaged from the fitting and struck an employee. The alleged violation is therefore affirmed as serious. The Secretary has proposed a penalty of $600.00 for this item. The CO determined that the severity of

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[6] A hazard is "recognized" when the potential danger of a condition or activity is either actually known to the particular employer or generally known in the industry. *Seward Motor Freight, Inc.,* 13 BNA OSHC 2230, 2234 (No. 86-1691, 1989).

this particular violation was high and that the probability of an injury occurring was lesser, and the same reduction factors noted *supra* were applied. (Tr. 52). I find that the proposed penalty is appropriate, and a penalty of $600.00 is accordingly assessed.

Serious Citation 1, Item 4

This item alleges a violation of 29 C.F.R. § 1926.651(d), which requires employees exposed to public vehicular traffic to be provided and to wear warning vests or other suitable garments marked with or made of reflectorized or high-visibility material. The citation alleges that on the roadway, employees did not wear traffic vests, on or about 3/18/2003.

CO Triscritti testified that there were employees who were not wearing traffic vests as they walked along the work site, where there was traffic in the area; he saw a truck driver exit his truck and walk over to the excavation, where an equipment operator was not wearing a vest. (Tr. 40-42). Although the citation references March 18, the CO identified a photo he took on March 20; that photo shows a bus driving by the workplace but no employees. (Tr. 40; Exh. 19). Further, a second photo in the record, taken on March 20, depicts employees wearing traffic vests. (Exh. G-2). In response to Mr. Galluzzo's questioning, the CO acknowledged that employees were working inside a coned-off area and that there were police officers on the other side of the cones who were directing traffic every day. (Tr. 66-69). Based on the record, I find the Secretary has not met her burden of proving that employees were exposed to vehicular traffic. This item is therefore vacated.

Serious Citation 1, Item 5

Item 5 alleges a violation of 29 C.F.R. § 1926.651(j)(2), which provides that:

> Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.

The citation alleges that excavated soil and rock was stored adjacent to the excavation and was not protected from falling into the excavation, on or about 3/18/2003.

The record establishes that excavated soil and materials were placed right at the edge of the trench and were not protected from falling into the trench. CO Triscritti testified that employee Juan Martinez and Mr. Galluzzo were working in the trench and were exposed to the hazard of soil rolling

or falling into the excavation. (Tr. 42-42; Exhs. G-5, G-7).[7] The record further establishes that the excavated spoil pile was a serious hazard because it could have resulted in serious injuries if it had fallen into the excavation and onto the employees. (Tr. 53). GE&E offered nothing to rebut the Secretary's evidence in regard to this item, and the alleged violation of 29 C.F.R. 1926.651(j)(2) is affirmed as a serious violation. The Secretary has proposed a penalty of $750.00 for this item. The CO determined that the severity of the violation was high and that the probability of an injury occurring was lesser; the same reduction factors noted above were applied. (Tr. 54). I find that the penalty as proposed is appropriate, and a penalty of $750.00 is therefore assessed.

Serious Citation 1, Item 6

Item 6 alleges a violation of 29 C.F.R. § 1926.652(c), which states as follows:

> Designs of support systems, shield systems, and other protective systems shall be selected and constructed by the employer or his designee and shall be in accordance with the requirements of paragraph (c)(1); or, in the alternative, paragraph (c)(2); or, in the alternative, paragraph (c)(3); or, in the alternative, paragraph (c)(4)....

The citation alleges that the protective shield system, consisting of steel plate and supports, used for employee protection in an approximately 9-foot-deep excavation, was not designed and approved by a registered professional engineer, on or about 3/20/2003 and 3/26/2003.

CO Triscritti testified that the basis of this item was the homemade trench box in the excavation; there was no design of the box available, and it had no registered professional seal on it. The CO further testified that Mr. Galluzzo told him he had constructed the box himself and that he was not a registered professional engineer. (Tr. 21, 43-44; Exh G-9). At the hearing, Mr. Galluzzo conceded that he was unaware that the trench box had to be approved by an engineer. (Tr. 74). In addition, the record reveals that Mr. Galluzzo did not know the type of soil in which he was working; the record also reveals that the spoil pile at the edge of the trench was not protected to prevent its falling into trench, that part of the trench wall was missing, and that there was nothing supporting the pavement on the right side of the trench. (Tr. 20-21; Exh. G-9). These factors all contributed to the hazard of a trench collapse, which could have resulted in serious bodily injury to employees located in the excavation. The Secretary has demonstrated the alleged violation of 29 C.F.R. 1926.652(c), and this citation item is affirmed as a serious violation.

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[7] Another photo, Exhibit G-9, depicts a continuation of the condition on March 20.

The Secretary has proposed a penalty of $1,500.00 for this item. The CO determined that the severity of the violation was high, that the probability of an injury occurring was greater, and the same reduction factors noted above were applied (Tr. 55). I find that the proposed penalty of $1,500.00 is appropriate. A penalty of $1,500.00 is consequently assessed.

Serious Citation 1, Item 7

This item alleges a violation of 29 C.F.R. § 1926.652(g)(2), which provides that:

> Excavations of earth material to a level not greater than 2 feet (.61 m) below the bottom of a shield shall be permitted, but only if the shield is designed to resist the forces calculated for the full depth of the trench, and there are no indications while the trench is open of a possible loss of soil from behind or below the bottom of the shield.

The citation alleges that approximately three (3) feet of soil were not protected below the bottom of the shield system, on or about 3/20/2003 and 3/26/2003.

CO Triscritti testified that on March 20, he observed that soil located beneath the homemade trench box was sloughing off the wall. He also observed a void in the wall that was a result of soil that had fallen from the wall adjacent to the area around the trench box. Pursuant to his inspection, he concluded that the trench was 9 feet deep and that the trench box was 6 feet high. Accordingly, there were 3 feet of soil exposed under the trench box. (Tr. 18, 24, 44-45; Exhs. G-10, G-14). GE&E presented no evidence to rebut the CO's conclusions, and the record is clear that no calculations had been done with regard to the design of the homemade trench box. It is also clear, based on the sloughing of the wall, that employee Juan Martinez was exposed to the hazard of a cave-in that could have result in serious physical harm. The Secretary has established the alleged violation of 29 C.F.R. 1926.652(g)(2), and this item is affirmed as a serious violation.

The Secretary has proposed a penalty of $1,500.00 for this item. The CO determined that the severity of the violation was high and that the probability of an injury occurring was greater, and the same reduction factors noted *supra* were applied (Tr. 56). I find the proposed penalty to be appropriate, and a penalty of $1,500.00 is therefore assessed.

"Other" Citation 2, Item 2

This item alleges a violation of 29 C.F.R. § 1926.251(a)(10), which requires defective rigging equipment to be removed from service.

The citation alleges that a synthetic web sling with cuts was not inspected and removed from service, on or about 3/20/2003.

The CO testified that he observed a frayed sling wrapped around sewer pipe that was to be placed in the trench. Although the lift had not yet been made, the sling was rigged and ready to be lifted by crane. When the CO pointed out the condition, GE&E removed it from service right away and used another sling. (Tr. 46-47; Exh. G-11). The CO's testimony, which was not rebutted, is sufficient to establish a violation of the standard, particularly since the sling was ready to be used and would have been used but for the CO's intervention. This citation item is accordingly affirmed. The violation was classified as other-than-serious because the concrete pipe would not have been lifted that far off the ground, and, if the pipe had fallen out of the sling and struck an employee, any resulting injury would likely not have been serious. (Tr. 57). This citation item is thus affirmed as an other-than-serious violation. No penalty was proposed, and none is assessed.

Findings of Fact and Conclusions of Law

All findings of fact and conclusions of law relevant and necessary to a determination of the contested issues have been found specially and appear in the decision above. *See* Rule 52(a) of the Federal Rules of Civil Procedure. All proposed findings of fact and conclusions of law inconsistent with this decision are hereby denied.

ORDER

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

1. Citation 1, Items 1a and 1b, alleging serious violations of 29 C.F.R. §§ 1926.21(b)(2) and 1926.651(k)(1), respectively, are AFFIRMED, and a total penalty of $750.00 is assessed.

2. Citation 1, Item 2, alleging a serious violation 29 C.F.R. § 1926.100(a), is AFFIRMED, and a penalty of $1,500.00 is assessed.

3. Citation 1, Item 3, alleging a serious violation of section 5(a)(1) of the Act, is AFFIRMED, and a penalty of $600.00 is assessed.

4. Citation 1, Item 4, alleging a serious violation 29 C.F.R. § 1926.651(d), is VACATED.

5. Citation 1, Item 5, alleging a serious violation 29 C.F.R. § 1926.651(j)(2), is AFFIRMED, and a penalty of $750.00 is assessed.

6. Citation 1, Item 6, alleging a serious violation 29 C.F.R. § 1926.652(c), is AFFIRMED, and a penalty of $1,500.00 is assessed.

7. Citation 1, Item 7, alleging a serious violation 29 C.F.R. § 1926.652(g)(2), is AFFIRMED, and a penalty of $1,500.00 is assessed.

8. Citation 2, Item 1, alleging an other-than-serious violation 29 C.F.R. § 1926.21(b)(6)(i), is VACATED.

9. Citation 2, Item 2, alleging an other-than-serious violation 29 C.F.R. § 1926.251(a)(1), is AFFIRMED, and no penalty is assessed.

/s/
Covette Rooney
Judge, OSHRC

Dated: October 9, 2003
Washington, D.C.