UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Secretary of Labor, Complainant v. Meridian Construction and Development, LLC, Respondent.	OSHRC Docket No. **06-0454**

Appearances:

J. Phillip Giannikas, Esquire, Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee
For Complainant

Mark J. Beverwyk, Representative, Risk Management Partners, LLC, Alpharetta, Georgia
For Respondent

Before: Administrative Law Judge Ken S. Welsch

DECISION AND ORDER

Meridian Construction and Development, LLC (Meridian) is in business as a general construction contractor. On January 10, 2006, Meridian was in charge of constructing new residential condominiums in Birmingham, Alabama, when the project was inspected by Occupational Safety and Health Administration (OSHA) compliance specialist Phyllis Battle. As a result of the OSHA inspection, Meridian received a serious citation on February 21, 2006. Meridian timely contested the citation.

The serious citation alleges violations of 29 C.F.R. § 1926.405(b) (item 1) for failing to close openings around conductors entering temporary power boxes; 29 C.F.R. § 1926.405(g)(2)(iii) (item 2) for failing to retain the insulation or outer sheathing in a splice of an electrical flexible cord; 29 C.F.R. § 1926.501(c) (item 3) for failing to erect toeboards, screens or guardrails systems to prevent objects from falling from higher levels; 29 C.F.R. § 1926.1053(b)(1) (item 4a) for failing to ensure the side rails on a portable ladder extended at least 3 feet above the upper landing; and,

29 C.F.R. § 1926.20(b)(2) (item 4b) for failing to conduct frequent and regular inspections of the worksite by a competent person. The citation proposes a total penalty of $3,500.00

The case is designated for Simplified Proceedings under 29 C.F.R. § 2200.200. The hearing on June 15, 2006, was held in Birmingham, Alabama. Meridian is represented by Mark Beverwyk of Risk Management, a safety consultant firm. Jurisdiction and coverage are stipulated (Tr. 5). The parties filed post hearing statements of position.

Meridian denies the violations and claims the multi-employer worksite defense. Meridian asserts as a general contractor whom neither created nor had employees exposed to the hazards, it should not have been cited for the violations because of its active program of training, monitoring, and disciplining subcontractors' employees in accordance with OSHA CPL 2-0.124, dated December 10, 1999.

For the reasons discussed, the serious citation is affirmed and a total penalty of $2,000 is assessed.

Background

Meridian is in business as a general contractor overseeing construction projects "focused primarily on the development of upscale, high-density, multi-family units throughout the southeast" (Exh. C-11; Tr. 140). Meridian employs approximately 50 employees (Tr. 78).

In approximately June 2005, Meridian began work on the Bristol Southside condominium project in Birmingham, Alabama. Meridian was the general contractor. The Bristol Southside project consists of new, two 4-story buildings and a refurbished existing parking garage. The project has 156 condominium units. The project is scheduled to be completed in August 2006. The site clearing and foundation work was completed and the framing work began in October 2005 (Exhs. C-1, C-2; Tr. 12, 140-141).

To perform the construction work, Meridian contracted various subcontractors. Meridian's site superintendent was Lonnie Roberts and his field supervisor was Leonard Ziegler. Roberts and Ziegler worked at the project and maintained a trailer in the garage area as an office (Exh. C-2; Tr. 16, 102).

On January 10, 2006, OSHA compliance specialist Battle was driving by the project at approximately 3:00 p.m., when she observed employees at the edge of the roof without utilizing fall

protection. Pursuant to OSHA's special emphasis program, Battle parked her automobile and initiated an OSHA inspection of the project (Tr. 12, 14-15).

At the time of Battle's inspection, three subcontractors were on site; A. F. Contractors, the framing contractor[1], H. R. VanKirk, the electrical contractor, and H&M Mechanical, the plumbing contractor (Tr. 18). The three subcontractors were contracted by Meridian (Exhs. R- 2; R-3). During her inspection, Battle heard employees working and observed evidence of their work on the upper levels of the project although she did not actually see any employees (Tr. 22, 64, 106-107). There is no dispute the alleged violative conditions Battle observed were caused either by the framing subcontractor or by the electrical subcontractor (Tr. 108). Battle considered Meridian as general contractor, also responsible for the conditions because of its control over the worksite (Tr. 41, 50).

As a result of Battle's inspection, a serious citation was issued to Meridian. Also, similar citations were issued to the subcontractors, A. F. Contractors and H. R. VanKirk, depending on the nature of the violative condition (Tr. 54, 61, 67, 72).

Discussion

Multi-Employer Worksite Doctrine

It is undisputed Meridian did not create the alleged violative conditions. Nor, does the record show Meridian's two employees on site were exposed to the unsafe conditions. The violations involving the temporary power boxes and the improper splice were caused by the electrical contractor, A. F. Contractors. H. R. VanKirk, as framing contractor, was responsible for the lack of toeboards and inadequate job ladder (Tr. 107-108).

Under the multi-employer worksite doctrine, a general contractor who has control over a worksite may be liable for violations of the Occupational Safety and Health Act (Act) even if the employees exposed to the hazard are solely employees of another employer. A general contractor is responsible on a construction site to ensure a subcontractor's compliance with safety standards if it can be shown the general contractor could reasonably be expected to prevent or detect and abate the violative condition by reason of its supervisory capacity and control over the worksite.

[1]The employees without fall protection were employed by the framing contractor. No citation was issued to Meridian for the lack of fall protection because there was no evidence Meridian was aware of the condition. The framing contractor had established a controlled access zone which the employees violated (Tr. 95-96).

McDevitt Street Bovis, Inc., 19 BNA OSHC 1108, 1111-1112 (No. 97-1918, 2000)*; Centex-Rooney Construction Co.*, 16 BNA OSHC 2127, 2129-2130 (No. 92-0851, 1994).

Meridian does not dispute the application of the multi-employer worksite doctrine. Meridian claims it complied with OSHA's Directive CPL 2-0.124 ("Multi-Employer Citation Policy") issued by the Secretary on December 10, 1999, by exercising reasonable care to prevent and detect violations on the site. The Directive describes OSHA's policy for issuing citations on multi-employer worksites[2].

Meridian's Control of the Worksite

The issue of whether Meridian had sufficient supervisory authority and control of the condominium project to prevent or detect and abate the unsafe conditions is not in dispute.

Meridian agrees it was the controlling employer. Meridian acknowledges such control over subcontractors in its written safety program. In its program, Meridian describes itself as the "Controlling Employer for their Multi-employer worksites" (Exh. C-11, p.10). The safety program also identifies its responsibility for the safety of a subcontractor's employees. Meridian's safety program recognizes that "as the General Contractor, we have an overall responsibility to correct hazards and eliminate exposure of subcontractor workers to unsafe conditions at the site." Meridian further states "as the controlling employer, we exercise reasonable care to prevent and detect violations on their construction sites."

Reasonable care by Meridian is considered:

> Conducting periodic inspections of appropriate frequency for the scale of the project, number or types of hazards, safety history and safety practices of the employer it controls, history of non-compliance of the employer it controls
>
> Implementing an effective system for promptly correcting hazards
>
> Enforcing the other employer' (subcontractors) compliance with safety and health requirements with an effective, graduated system of enforcement and follow-up inspections

[2]It is noted the Review Commission does not consider an OSHA CPL or other internal directives as binding on the Commission and may only look to them as an aid in resolving interpretations under the Act. The CPL does not confer procedural or substantive rights on employers and does not have the force and effect of law. *Drexel Chemical Company*, 17 BNA OSHC 1908, 1910, n. 3 (No. 94-1460, 1997).

Meridian's safety policy is also reflected in Meridian's subcontract agreements (Exhs. R- 2, R-3). Meridian contracted the subcontractors in this case to do the framing and electrical work. Meridian used American Institute of Architects (AIA) contract form for its agreement with their subcontractors. To the AIA contract, Meridian attached a "Scope of Work" statement as Exhibit A.

The subcontract agreements which Meridian required its subcontractors to sign in order to work on its condominium project retained Meridian's authority and control over the project. Meridian, not the subcontractors, dictated the terms of the subcontract and what occurred on the worksite. As a general contractor, Meridian held a unique position on the construction project. The subcontract agreements provided Meridian multiple methods to enforce subcontractor compliance with OSHA requirements. Meridian chose the subcontractors for the work, controlled the scheduling of their work and could exact penalties or ultimately terminate the subcontract if the subcontractor failed to meet its obligations. Meridian maintained authority to fire a subcontractor for the violation of OSHA regulations. It retained control over the subcontractor's actions, as well as authority over conditions affecting the general safety on the worksite. In addition to requiring subcontractors to accept responsibility for compliance with OSHA's safety requirements, its subcontractors were required to hold Meridian harmless for a failure to comply.

The Review Commission considers it sufficient supervisory authority and control where the general contractor has specific authority to demand a subcontractor's compliance with safety requirements, stop a contractor's work for failure to observe safety precautions, and remove a contractor from the work site. *McDevitt Street Bovis, Inc., supra.* Meridian held this control over subcontractors in this case.

Meridian's project superintendent and the assistant superintendent were continually present on site. Meridian hired the subcontractors. Meridian controlled the sequencing of work and the quality of work. Meridian retained authority to correct deficiencies in the work of the subcontractors. Meridian conducted weekly job and safety coordination meetings on site and subcontractors' representatives were required to attend. Meridian levied a $250 fine to subcontractors who failed to attend the weekly meetings.

Meridian is, therefore, found to have sufficient authority and control over the worksite under the multi-employer worksite doctrine. If the alleged electrical, toeboards, or ladder violations identified in the citation are supported by the record, Meridian is held responsible as the general

contractor if it is shown Meridian should have reasonably been expected to have detected and abated the unsafe conditions.

The Alleged Violations

The Secretary has the burden of proving a violation.

> 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).

Meridian does not dispute the application of the cited electrical, toeboard, ladder and inspection standards to the worksite. Bristol Southside is a construction project and Part 1926 standards apply to construction activities. Meridian, also, does not specifically dispute the violative conditions observed by Battle. She was accompanied during the inspection by Meridian's site superintendent Roberts. The conditions were immediately abated by the appropriate subcontractor at the direction and insistence of Meridian (Tr. 98, 110-111).

Although there is no evidence Meridian had actual knowledge of the violative conditions observed by Battle, the issue is whether it should have known, with reasonable diligence of the unsafe conditions. An employer who lacks actual knowledge can nevertheless have constructive knowledge of conditions that could be detected through an inspection of the worksite. An employer has constructive knowledge of a violation if the employer fails to use reasonable diligence to discern the presence of the violative condition. *Pride Oil Well Serv.*, 15 BNA OSHC 1809, 1814 (No. 87-692, 1992).

Item 1 - Alleged Violation of §1926.405(b)(1)

The citation alleges conductors in two locations entering temporary electric power boxes were not protected from abrasion because the openings where the conductors entered the boxes were not effectively closed. Section 1926.405(b)(1) provides:

> *Cabinets, boxes, and fittings. (1) Conductors entering boxes, cabinets, or fittings*. Conductors entering boxes, cabinets, or fittings shall be protected from abrasion, and openings through which conductors enter shall be effectively closed. Unused openings in cabinets, boxes, and fittings shall also be effectively closed.

In two locations in the alleyway where employees regularly travel, CO Battle observed two temporary electric power boxes with openings that were not closed and the conductors were subject to abrasion (Exhs. C-1, C-3, C-5; Tr. 19, 27, 30-31, 35, 44, 48). The alleyway was located between the two buildings under construction (Tr. 35, 48). The temporary power boxes were used to provide electric power throughout the buildings and provide power to such things as lighting, hand tools and equipment (Exh. R-2; Tr. 27, 30, 47-48).

The conductors in instance (a) which were 240 volts entered an opening in the box which allowed a significant amount of space and sharp edges (Exh. C-3; Tr. 30). In instance (b), the insulation and protective outer sheathing had been pulled away from the conductors. The conductors were 120 volt. The plastic outer sheathing around the conductors did not connect to the bushing where the conductor leads entered the box and the inner conductor leads were exposed (Exh. C-5; Tr. 44).

The openings in the electrical boxes were not closed and the cords entering the boxes were not protected from abrasions by sharp edges around the openings (Exh. C-3, C-5; Tr. 27, 44). Battle was concerned the insulation around the cords could tear exposing the conductor and energizing the box (Tr. 31, 44, 49). An employee coming in contact with the box could be electrocuted (Tr. 39-40).

Battle described the electrical boxes as quite obvious, in the open, and clearly visible (Tr. 35, 42, 52). The conditions were in plain view of anyone walking through the alleyway. The unsafe condition should have been obvious to the superintendents. It was in a "very central location that was traveled by probably all employees on site" (Tr. 35). Battle also concluded the condition had existed more than four to six weeks (Tr. 33, 48). This was based upon the length of time the framing contractor had been on the project because the framing contractor would need electrical power for the hand tools and equipment used on the project (Tr. 33, 48). Meridian agrees framing began in November 2005 (Tr. 145).

Although employees were not seen in the area, Meridian does not dispute the boxes were regularly used to provide electric power to the hand tools and lighting. While on site, Battle could hear the sound of the power tools being used (Tr. 118-119). Also, Meridian does not dispute the condition existed at least four weeks and was in a well-traveled location, clearly visible. Meridian

had the electric subcontractor immediately abate the conditions. OSHA was still on site (Exhs. C-4, C-6).

The record reflects that as general contractor, two of Meridian's supervisors were regularly present on site and claimed they inspected the site daily for unsafe conditions. However, there is no showing why such an obvious violative condition was not detected during the four weeks it existed. Meridian does not dispute its superintendents should have detected and abated the exposed openings in the two power boxes. As shown during the inspection, Meridian's authority extended to ensuring the unsafe conditions was immediately abated by the subcontractor (Tr. 98, 110-111). As general contractor, Meridian's violation of §1926.405(b)(1) is established.

Item 2 - Alleged Violation of §1926.405(g)(2)(iii)

The citation alleges a hard service flexible cord had an improper splice. Section 1926.405(g)(2)(iii) provides:

> *Splices.* Flexible cords shall be used only in continuous lengths without splice or tap. Hard service flexible cords No. 12 or larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

The record establishes that in the alleyway between the two buildings, a hard service flexible cord, lying on the ground, contained a splice which had exposed conductors. The outer sheathing had been pulled back and the inner leads were held together by black electrical tape. The black tape was the only thing "insulating" the places where the copper wires were joined and the inner leads were visible through the tape (Exh. C-7; Tr. 55). The hard service cord was 240 volts (Tr. 56). The flexible cord powered the temporary power boxes, discussed previously, and ran from a permanent installation service box (Tr. 56-57). According to Battle, if the ground became wet, the uninsulated splice could cause shock, burn or electrocution hazards to anyone walking in the immediate vicinity (Tr. 59-60).

The alleyway was a regular path used by employees when moving between the buildings. The cord was lying on the ground "in a very open, plain view location" (Tr. 60, 61). As with the electrical boxes, Battle concluded the improper splice had existed for four to six weeks (Tr. 58). The splice was repaired while Battle was still on site by the electrical subcontractor at the direction of Meridian (Exh. C-8; Tr. 59).

As general contractor who controlled the worksite, Meridian's superintendents were in a position to detect and abate the improper splice if they performed daily inspections. The unsafe condition had existed for a long time and was clearly visible. Meridian failed to show its superintendents exercised reasonable diligence in detecting the improper splice. As general contractor, Meridian's violation of §1926.405(g)(2)(iii) is established.

Item 3 - Alleged Violation of §1926.501(c)

The citation alleges toeboards were not erected on the fourth floor above the courtyard breezeway to prevent objects from falling to the courtyard breezeway. Section 1926.501(c) provides:

> *Protection from falling objects.* When an employee is exposed to falling objects, the employer shall have each employee wear a hard hat and shall implement one of the following measures:
>
> (1) Erect toeboards, screens, or guardrail systems to prevent objects from fall from higher levels; or
>
> (2) Erect a canopy structure and keep potential fall objects far enough from the edge of the higher level so that those objects would not go over the edge if they were accidentally displaced; or
>
> (3) Barricade the area to which objects could fall, prohibit employees from entering the barricaded area, and keep objects that may fall far enough away from the edge of a higher level so that those objects would not go over the edge if they were accidentally displaced.

While CO Battle was walking through the courtyard breezeway, a big roll of tape fell from the upper level (Exh. C-1; Tr. 22, 63). When she went to the fourth floor, she saw no toeboards around the edge of the walkway above the courtyard breezeway (Exh. C-9; Tr. 22, 100). An area of approximately 20 linear feet lacked toeboards (Tr. 22). Battle testified the toeboards would prevent objects such as tools or materials from falling off the upper level walkway and striking employees as they pass through the breezeway (Tr. 62-63). Also, there is no showing of a canopy or other barricade had been installed to prevent objects from falling off the floor (Tr. 65). Although she did not see employees, Battle noted work taking place on the fourth floor (Tr. 22, 64). She saw tools and other items strewn around the floor (Tr. 106-107).

The courtyard breezeway was a well-traveled area where employees frequently walked on their way to the various other locations on site (Tr. 63, 66). Battle concluded the lack of toeboards existed at least four weeks because it was the framing contractor's responsibility to install the guardrails (Tr. 64). Meridian did not dispute Battle's conclusion. The lack of toeboards was obvious and in plain view of anyone walking on the fourth floor.

As general contractor in control of the worksite, Meridian violated §1926.501(c) in its failure to detect and abate the lack of toeboards. Meridian failed to show its superintendents exercised reasonable diligence.

Item 4a - Alleged Violation of §1926.1053(b)(1)

The citation alleges the side rails on an ll-foot job-made ladder did not extend at least 3 feet above the upper landing. Section 1926.1053(b)(1) provides:

> When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

During her inspection on the first floor, Battle observed an 11-foot job-made wooden ladder in place to access the second floor in Building A (Exh. C-10; Tr. 23, 68, 101). It was one of two ladders used by employees to access the second floor (Tr. 70). The ladder's side rails did not extend at least 3 feet above the second floor landing. Also, there was no grasping devices which would allow an employee to dismount the ladder safely once he climbed to the second floor (Tr. 23, 102).

Battle concluded the ladder had been in place at least four weeks because it was designed and installed by the framing contractor (Tr. 71). Meridian offered no evidence refuting Battle's conclusion. The ladder was used to access framing work being done on the upper levels (Tr. 71). The ladder was in plain view; "it was not hidden from anybody" (Tr. 71). In fact, according to Battle, superintendent Roberts was familiar with the area and the location of the ladders because "he carried me through the site" (Tr. 72).

As general contractor in control of the worksite, Meridian violated §1926.1053(b)(1) in its failure to detect and abate the condition. Its superintendents on site were not shown to have exercised reasonable diligence.

Item 4b - Alleged Violation of §1926.20(b)(2)

The citation alleges frequent and regular inspections of the jobsite and equipment were not conducted by a competent person. Section 1926.20(b) provides:

> *Accident prevention responsibilities.* (1) It shall be the responsibility of the employer to initiate and maintain such programs as may be necessary to comply with this part. (2) Such programs shall provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employers. (Emphasis added).

Battle concluded Meridian's superintendents failed to perform regular safety inspections of the worksite based on her finding the electrical, ladder and toeboard violative conditions (Tr. 73). Superintendent Roberts told Battle that he was on site daily and was responsible for conducting walk-throughs of the site (Tr. 73). He said he conducted daily inspections (Tr. 74-75, 86). There was no written proof of the superintendents' inspections or evidence as to the extent and scope of such inspections (Tr. 73). Battle agreed "frequent and regular inspections" of a worksite as large as Bristol Southside needed to be performed every day or at least every other day (Tr. 73-74).

The record shows the superintendents' inspections, if performed, were inadequate in detecting obvious unsafe conditions which had existed for at least four weeks. As demonstrated by Battle's short inspection, such conditions were in plain sight and did not require anything but a cursory walk-through to detect.

According to Meridian, both superintendents had received OSHA's 30 hour safety certification course (Tr. 139). Although, not argued by the Secretary, there is some question whether the superintendents were competent persons as defined by 29 C.F.R. §1926.32(f).[3]

Meridian agrees the superintendents duties included "to inspect and correct whatever violations they discovered" (Tr. 139). The fact the supervisors did not detect or correct the problems

[3]29 C.F.R. §1926.32(f) defines "competent person" as "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."

with the power boxes, splice, lack of toeboards, and the job-made ladder which had existed for a long time is evidence of the inadequacy of Meridian's inspection program on this site.

Because of Meridian's failure to conduct inspections as contemplated by the standard, Meridian's violation of §1926.20(b)(2) is established.

Serious Classification

In order to establish a violation is "serious" under § 17(k) of the Act, the Secretary must establish there is a substantial probability of death or serious physical harm that could result from the cited condition and the employer knew or should have known of the violation. Showing the likelihood of an accident is not required. *Spancrete Northeast, Inc.*, 15 BNA OSHC 1020, 1024 (No. 86-521, 1991).

Meridian's violations of the electrical, toeboard, and ladder standards are properly classified as serious. As general contractor, Meridian should have detected and abated the unsafe conditions through its control over its worksite based on the length of time the conditions existed and the obvious nature of the unsafe conditions which were in plain view. The electrical violations, improper ladder and lack of toeboards could have caused serious injury or death from electrocution, head injuries or fall hazards. Also, the failure to detect these unsafe conditions through an inadequate inspection program could result in serious injury or death to employees.

Penalty Consideration

In determining an appropriate penalty under the Act, consideration of the size of the employer's business, history of the employer's previous violations, the employer's good faith, and the gravity of the violation is required. Gravity is the principal factor.

With 50 employees and no history of past serious citations, Meridian is given credit for size and history (Tr. 78, 97). Meridian is also given credit for good faith (Tr. 78). Battle considered Meridian's safety program good (Tr. 98). Meridian provides periodic safety training to subcontractors' employees.

A penalty of $500.00 is reasonable for Meridian's violation of § 1926.405(b)(1) (Item 1). Meridian was the general contractor and had no employees exposed to the exposed openings in the power boxes. Also, Meridian did not create the unsafe condition. However, all employees on site

were potentially exposed if they plugged into the temporary power box. The unsafe condition should have been detected and abated by Meridian as part of its control of the worksite.

A penalty of $500.00 is reasonable for Meridian's violation of § 1926.405(g)(2) (Item 2). Meridian was the general contractor and had no employees exposed to the improper splice of the hard service cord. Also, Meridian did not cause the improper splice. However, all employees on the site were potentially exposed if walking on the flexible hard service cord. The unsafe condition should have been detected and abated by Meridian as part of its control of the worksite.

A penalty of $500.00 is reasonable for Meridian's violation of § 1926.501(c) (Item 3). Meridian was the general contractor and had no employees exposed to the lack of toeboards. Meridian did not create the unsafe condition. However, all employees on the site were potentially exposed to being struck by falling materials or tools into the courtyard/breezeway. The unsafe condition should have been detected and abated by Meridian as part of its control of the worksite.

A grouped penalty of $500.00 is reasonable for Meridian's violations of § 1926.1053(b)(1) (Item 4a) and § 1926.20(b)(2) (Item 4b). Meridian was the general contractor and did not create the unsafe condition involving the inadequate job ladder. However, all employees on the site were potentially exposed if they used the portable ladder to access the second floor. The unsafe condition should have been detected and abated by Meridian as part of its control of the worksite. Also, the number of unsafe conditions observed by Battle during her short walk-through of the worksite shows Meridian's inspection program was inadequate. Meridian's two superintendents on site failed to conduct proper inspections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

ORDER

Based upon the foregoing decision, it is ORDERED:

1. Item 1, serious violation of § 1926.405(b)(1)(vii), is affirmed and a penalty of $500.00 is assessed;

2. Item 2, serious violation of § 1926.405(g)(2)(iii), is affirmed and a penalty of $500.00 is assessed;

3. Item 3, serious violation of § 1926.501(c), is affirmed and a penalty of $500.00 is assessed; and

4. Items 4a and 4b, serious violations of § 1926.1053(b)(1) and § 1926.20(b)(2), are affirmed and a grouped penalty of $500.00 is assessed.

\S\ Ken S. Welsch
KEN S. WELSCH
Judge

Date: July 31, 2006