

Diane



JULIAN M. CARROLL

GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC
Decision &
Order # 156*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

September 2, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 151

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

WARD ENGINEERING COMPANY

RESPONDENT


DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON, Commissioners.

PER CURIAM:

An Order of the Hearing Officer Permitting Respondent to Withdraw Notice of Contest, dated July 23, 1975, is before this Commission for review.

The Review Commission, upon thorough review of the record before it, hereby AFFIRMS the Hearing Officer's decision in all respects, and ORDERS that Respondent's Notice of Contest be and it hereby is withdrawn.


H. L. Stowers, Chairman

/s/ Charles B. Upton
Charles B. Upton, Commissioner

/s/ Merle H. Stanton
Merle H. Stanton, Commissioner

Date: September 2, 1975
Frankfort, Kentucky

DECISION NO. 156

151 (156)

This is to certify that a copy of this Decision and Order has been served by mailing or personal delivery on the following:

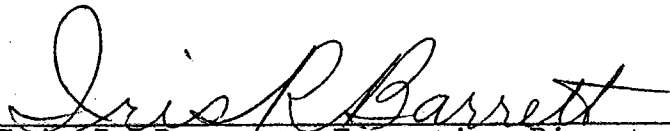
Commissioner of Labor
Commonwealth of Kentucky
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety and Health

Honorable Earl M. Cornett, General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Peter J. Glauber
Assistant Counsel

The Honorable D. Patton Pelfrey (Certified Mail #467049)
BROWN, TODD AND HEYBURN
16th Floor, Citizens Plaza
Louisville, Kentucky 40202

Mr. S. R. Catlett, Project Engineer (Certified Mail #467050)
Ward Engineering Company
Post Office Box 2008
Louisville, Kentucky 40201

This 2nd day of September, 1975.


Iris R. Barrett, Executive Director



JULIAN M. CARROLL

GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

July 23, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 151

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

WARD ENGINEERING COMPANY

RESPONDENT

NOTICE OF RECEIPT OF
ORDER PERMITTING RESPONDENT
TO WITHDRAW NOTICE OF CONTEST
AND ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure an Order Permitting Respondent To Withdraw Notice Of Contest of our hearing officer, the Honorable Lloyd Graper, has been received and is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may within 25 days from date of this notice submit a petition for discretionary review by this Commission.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission, and it is hereby ordered that unless this Order Permitting Respondent To Withdraw Notice Of Contest by the hearing officer in this matter is called for review and further consideration by a member of this Commission within 30 days of this date, it is adopted and affirmed as the Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been filed by one or more Review Commission members.

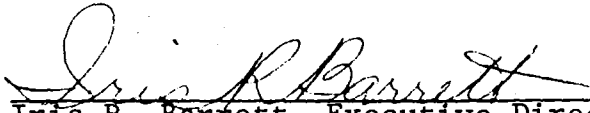
Commissioner of Labor
Commonwealth of Kentucky
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

Earl M. Cornett, General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Peter J. Glauber
Assistant Counsel

The Honorable D. Patton Pelfrey (Certified Mail #469040)
BROWN, TODD AND HEYBURN
16th Floor, Citizens Plaza
Louisville, Kentucky 40202

Mr. S. R. Catlett, Project Engineer (Certified Mail #469041)
Ward Engineering Company
Post Office Box 2008
Louisville, Kentucky 40201

This 23rd day of July, 1975.


Iris R. Barrett, Executive Director



JULIAN M. CARROLL
GOVERNOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

IRIS R. BARRETT
EXECUTIVE DIRECTOR

KOSHRD DOCKET NO. 151

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

ORDER PERMITTING RESPONDENT TO
WITHDRAW NOTICE OF CONTEST

WARD ENGINEERING COMPANY

RESPONDENT

* * * * *

Respondent, by letter dated May 12, 1975, having given notice of its intention to contest the alleged violations and penalties proposed as to one other than serious violation and as to two repeated other than serious violations as set forth in three Citations issued by Complainant on May 5, 1975, as follows:

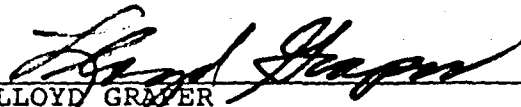
Citation #1. The standard, regulation or section of KRS Chapter 338 allegedly violated was 29 CFR 1926.652(b). A description of the alleged violation was: The sides of a trench more than five (5) feet in depth and more than eight (8) feet in length, were not shored, sheeted, braced, sloped, or otherwise supported by means of sufficient strength to preclude collapse (two employees working in a trench one hundred ten (110') feet long, six (6) feet ten inches (6'10") deep, nine (9) feet seven inches (9'7") wide in the paint storage building were subject to the hazard of soil failure). A penalty of \$175.00 was proposed.

Citation #2. The standard, regulation or section of KRS Chapter 338 allegedly violated was 29 CFR 1926.652(h). A description of the alleged repeated violation was: An adequate means of an exit such as a ladder was not provided in three (3) trenches more than four (4) feet deep, in which employees were required to enter (inside or near the paint storage building). A penalty of \$200.00 was proposed.

Citation #3. The standard, regulation or section of KRS Chapter 338 allegedly violated was 29 CFR 1926.651(i)(1). A description of the alleged repeated violation was: Excavated material from a trench in which employees were required to enter was not effectively shored and retained at least two (2) feet or more from the edge of the trench (the spoil pile on a six (6) foot high, seventy five (75) foot long, five (5) to eight (8) foot deep trench in the paint storage area, was not stored back at least two (2) feet). A penalty of \$700.00 was proposed.

and Complainant and Respondent having entered into a Stipulation and Settlement Agreement providing, among other things, for the reduction of the proposed penalties for Citations #2 and #3 to \$100.00 and \$300.00, respectively, and Respondent having moved to withdraw its Notice of Contest, and the record reflecting that (1) abatement of the violations has been accomplished on or before June 30, 1975; (2) that the employer (Respondent) has given assurance of continuing compliance; (3) payment of the penalties proposed by the Commissioner have been tendered; and (4) evidence has been furnished that the affected employees or their authorized representative have been afforded an opportunity to participate in the proceedings;

IT IS, THEREFORE, ORDERED AND ADJUDGED that Respondent's Motion to Withdraw its Notice of Contest shall be and it hereby is granted and it is further ORDERED AND ADJUDGED that the reduction of the proposed penalties for Citations #2 and #3 to \$100.00 and \$300.00, respectively shall be and they hereby are affirmed.


LLOYD GRATER
HEARING OFFICER, KOSHRC

DATED: July 23,, 1975
Frankfort, Kentucky

Decision No. 141