

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT, DOCKET NO. OSHANC 2002-4156
OSHA INSPECTION NO. 305091423
v. CSHO ID NO. 17732

PRIMAX CONSTRUCTION, INC.,
RESPONDENT.

ORDER

APPEARANCES:

Complainant:

Ralf F. Haskell
Special Deputy Attorney General
North Carolina Department of Justice

Respondent:

Parker Canady, President of Primax Construction, Inc.

BEFORE:

Hearing Examiner: Ellen R. Gelbin

THIS MATTER came on for hearing before the undersigned Administrative Law Judge on September 30, 2003 in Winston-Salem, North Carolina;

Others present for the hearing were Tom Elder, NC Department of Labor Health Compliance Officer (HCO); Doug Jones, NC Department of Labor Compliance Supervisor; Ronnie Hall, respondent's job superintendent and Robert C. Hovis, respondent's safety consultant;

After reviewing the record file, hearing the evidence and arguments of counsel and Mr. Canady, and after considering the applicable legal authorities, the undersigned makes the following:

FINDINGS OF FACT

1. Complainant is charged by law with responsibility for compliance with and enforcement of the provisions of N.C. Gen. Stat. §§95-126 et. seq., the Occupational Safety and Health Act of North Carolina (the Act).
2. Respondent is a corporation engaged in the construction business which conducts business in, and under the laws, of the State of North Carolina.
3. On May 15, 2002, HCO Tom Elder was driving past 6225 University Parkway in Winston-Salem, North Carolina (job site) and saw, in plain view, a trenching operation in progress with a man standing in a trench, over 5 feet deep, without the protection of retaining devices. The man was not wearing a hard hat.
4. On the job site, respondent was constructing an Advance Auto Parts store and parking area and installing drain lines and utilities. The outer shell of the building had been mostly completed and stood within an apex of two roads created by University Parkway and Stanleyville Road.
5. The HCO approached the trenching operation on the job site and identified Neal Pendergrass as the man in the trench and as the foreman for Pendergrass & Holder Plumbing (hereafter P&H). The HCO determined that P&H was a subcontractor engaged in laying a sewer line from an Advance Auto Parts store under construction to the main sewer line under University Parkway. The HCO conducted a proper opening conference with Mr. Pendergrass regarding the trenching operations of P&H.
6. After only cursory questioning about the classification of the soil in the trench and the requirements under the Act for protection of employees during trenching operations, the HCO was able to determine that Mr. Pendergrass was not a competent person within the meaning of 29 CFR §1926.650.
7. Mr. Pendergrass identified Mr. Ronnie Hall as the job superintendent for the general contractor, respondent Primax Construction, Inc. The HCO met Mr. Hall as he walked around from the opposite side of the Advance Auto Parts store. The HCO conducted a proper opening conference with Mr. Hall regarding the trenching operation. The HCO determined that Mr. Hall was a competent person within the meaning of the Act. Mr. Hall was the only one of respondent's employees on the job site that day and he never entered the trench.
8. Based upon his measurements at the job site, the HCO determined that the trench was 20 inches wide at the bottom and 130 feet long. He determined that the trench sloped from the Advance Auto Parts store from a depth of approximately 1 foot to an ultimate depth of 6 feet 4 inches near the tie-in at University Parkway. He discovered that the trench was over 5 feet deep for more than 34 feet of the length of the trench. The width of the trench at the top was 4 feet, 7 inches. The width of the trench at the top fell significantly short of the standards required by the Act and should have been as follows:
 - Class A soil: 11 feet
 - Class B soil: 14 feet 4 inches
 - Class C soil: 20 feet 8 inches (the most likely category for this soil)
9. The HCO noticed and photographed that the bottom of the trench in the area deeper than 5 feet was flat, as if it had been hand-shoveled, and evidenced foot prints.
10. The HCO also noted that the trench did not contain any stairways, ladders, ramps or other means of safe egress from the portion of the trench which was over 4 feet deep.
11. The HCO observed that spoil piles 2 to 3 feet high excavated from the trench by P&H were deposited within 2 feet from the edge of the trench and contained brick-sized rocks and debris.
12. The HCO determined that there were no hard hats available to the crew working the trenching operation.
13. Mr. Hall has been a superintendent in charge of construction, scheduling and safety for respondent for over three years.
14. Mr. Hall had contracted with O'Brien Southern Trenching, Inc. (O'Brien) to be the subcontractor in charge of furnishing and installing the sewer line.
15. Mr. Hall's prior dealings with O'Brien led him to the conclusion that O'Brien could and would furnish competent workers to furnish and safely install sewer lines.
16. Respondent's contract with O'Brien provided that it would comply with all safety standards and that a failure to comply would be a breach of the contract. Respondent's contract with O'Brien contemplated that any subcontractors O'Brien retained would also be bound by the terms of the contract.
17. According to Mr. Hall, Primax retained the right to control safety on the job site and to stop work by O'Brien or other subcontractors if they violated safety standards.
18. When Mr. Pendergrass arrived at the job site on the morning of May 15, 2002, he came with two trucks: one with an excavator and one with a 3-4 man crew and materials. Mr. Pendergrass met with Mr. Hall and identified himself as a representative of P&H sent by O'Brien to furnish and install the sewer line. Mr. Hall had never before worked with nor heard of P&H. He made no inquiry of Mr. Pendergrass or anyone else at P&H regarding their experience with trenching operations or their knowledge of safety standards.
19. Prior to digging the trench on May 15, 2002, P&H had dug only residential drainage trenches, less than 4-5 feet deep. They were not familiar with the OSHA standards for trenches over 4-5 feet deep.
20. The sewer drain pipe was to be a gravity-fed line, sloping from the Advance Auto Parts store to the tie-in under University Parkway. Mr. Hall knew that the location of the tie-in would be over 5 feet deep.
21. Mr. Hall regularly conducts "tool box" meetings with all of respondent's subcontractors during which he addresses safety issues. His normal routine is to walk the construction site all day inspecting the work of subcontractors.
22. Prior to P&H beginning their work, Mr. Hall held a safety meeting in which he discussed with Mr. Pendergrass that the trench would need to be over 5' deep. He discussed the fact that, due to the location of a fixed chain-link fence on one side of the proposed trench and the permanent curbing on the other side of the proposed trench, there was not enough room to slope or bench the trench within the standards of the Act. Therefore, he discussed with Mr. Pendergrass that P&H would need to provide some type of shoring system once the trench reached 5 feet in depth. Mr. Hall believed that Mr. Pendergrass understood his instructions.
23. Mr. Hall asked who the competent person was for P&H. Mr. Pendergrass responded that he was the foreman. Without making any further inquiry, Mr. Hall assumed that Mr. Pendergrass was the competent person on site for the subcontractor.
24. Despite his belief that Pendergrass knew what he was doing, Mr. Hall did not observe on either of the P&H trucks any trench boxes or shoring equipment. He assumed another truck would be delivering the equipment as it was needed.
25. Mr. Hall watched P&H skillfully excavate the trench for approximately 1 ½ to 2 hours until the trench length was about 38 to 40 feet long.
26. The North Carolina Department of Transportation then diverted Mr. Hall's attention to the opposite side of the store, where they were requiring traffic control devices on Stanleyville Drive for the paving of the Advance Auto Parts parking lot and acceleration and deceleration lanes.
27. When Mr. Hall walked to the opposite side of the store under construction, the trench was not yet over 5 feet deep. From the opposite side of the store, Mr. Hall could not see the trenching operation.
28. Mr. Hall supervised the efforts of his subcontractors on the Stanleyville side of the store for the next 2 ½ to 3 hours. During that period, he did not do his normal walk-through of the construction site and he did not inspect the progress of P&H on the trenching operations. In order to accomplish such an inspection, he would have had to walk around the building a few hundred feet and it would have taken him only a few minutes to do so.
29. At the closing conference on the same day, the HCO determined that citations would be issued for the following violations of the Act:
 - a. Citation 1, Item 1a - 29 CFR §1926.652(a)(1): failing to provide adequate sloping, benching, shielding or other type of protection in a trench over 5 feet deep;
 - b. Citation 1, Item 1b - 29 CFR §1926.21(b)(2): failing 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 exposures to illness or injury;
 - c. Citation 1, Item 1c - 29 CFR §1926.100(a): failing to protect each employee standing in the trench over 5 feet deep with a hard hat;
 - d. Citation 1, Item 1d - 29 CFR §1926.651(c)(2): failing to provide a stairway, ladder, ramp or other safe means of access or egress to the trench where it was 5 feet deep or more;
 - e. Citation 1, Item 1e - 29 CFR §1926.651(j)(2): failing to place and keep excavated or other materials or equipment at least 2 feet from the edge of excavations and/or failing to place and keep retaining devices sufficient to prevent materials or equipment from falling into the excavation; and
 - f. Citation 1, Item 1f - 29 CFR §1926.651(k)(1): failing to ensure that a competent person conducted regular and frequent inspections of the trenching operations.

**Citation 1, Item 1a - 29 CFR §1926.652(a)(1)
(Inadequate Trench Protection)**

30. The trench on the job site was in violation of 29 CFR §1926.651(a)(1) in that it was over 5 feet deep for over 34 feet in length without adequate protection from cave-ins, and thus, constituted a hazard.
31. The violation was serious in that there existed the possibility of an accident: to wit, a cave-in.
32. The likelihood of a cave-in was substantially increased by the vibrations made by the excavator located at the end of the trench closest to University Parkway, by the traffic on University Parkway and by the weight of the spoil piles within 2 feet of the trench.
33. The substantial probable result of such an accident would be serious permanent injury or death.
34. Mr. Pendergrass, the foreman for the subcontractor P&H, was exposed to the hazard during the period observed by the HCO.
35. Mr. Pendergrass or other members of his crew were also exposed to the hazard during the period in which they flattened the bottom of the trench with shovels and laid the pipe.
36. None of respondent's employees was exposed to the hazard.
37. The \$1,050.00 penalty imposed for the violation cited in Citation 1, Item 1a was properly calculated in accordance with the North Carolina Operations Manual as follows:
 - a. the severity of the violations was properly determined to be high;
 - b. the probability assessment was properly deemed to be medium;
 - c. the gravity based penalty was properly calculated to be \$3,500;
 - d. the adjustment factor for size was properly calculated to be 50%;
 - e. the adjustment factor of 10% for respondent's cooperation, their toolbox meetings, and their safety programs was properly applied;
 - f. the adjustment factor of 10% for no history of prior violations was properly applied; and
 - g. the total reduction of 70% to the \$3,500.00 gravity based penalty to reduce the penalty to \$1,050.00 was properly applied.
38. Respondent could have avoided or abated this violation by making regular and frequent inspections to ensure that the subcontractor was using trench boxes or other protective devices to prevent the trench from caving-in.
39. The respondent did not know that its subcontractor was exposing its employees to a cave-in hazard because Mr. Hall did not see Mr. Pendergrass in the trench when it was over 5 feet deep. However, under the Act's multi-employer workplace policy, Mr. Hall had the responsibility to make regular and frequent inspections, especially if he anticipated a change of condition, and should have known of the violation because:
 - a. He knew that portions of the trench were required to be deeper than 5 feet;
 - b. He knew that P&H could not slope or bench the trench in accordance with the Act because there was not enough room between the permanent chain-link fence and the permanent curbs of the parking lot and, thus, would need trench boxes or other shoring devices;
 - c. He knew that P&H had not brought trench boxes or shoring equipment;
 - d. He had never worked with P&H in the past and he should have specifically questioned Mr. Pendergrass to determine whether he was a competent person and whether he and his crew had the training and experience necessary to complete the job safely and in accordance with the Act. If he had, he would have discovered that P&H had no experience or training regarding excavations over 4-5 feet deep;
 - e. He knew that in a 2 ½ to 3 hour period, P&H would likely carve out the trench to the point where it was over 5 feet deep, thus constituting a change of condition; and
 - f. He was within several hundred feet of the trenching operation for a period of 2 ½ to 3 hours and he could and should have inspected the trenching operation during that time.
40. Even if Mr. Hall's attention had been unusually diverted to the opposite side of the building for a long period of time by the requirements of the North Carolina Department of Transportation, the violation could have been prevented if Mr. Hall had instructed Pendergrass to alert him as soon as they dug the trench 5 feet deep or more.

**Citation 1, Item 1b - 29 CFR §1926.21(b)(2)
(Failure to Instruct)**

41. Based upon his prior experience with O'Brien, Mr. Hall believed that the subcontractors sent by O'Brien were properly instructed in trenching safety. However, "[i]f an employer is allowed to 'contract' away his responsibility in providing a safe workplace, the effectiveness of the safety standards employed by the legislative Act would be drastically diminished." *Brooks v. Reharc, Inc.*, 91 N.C. App. 459, 468-69 (1988). Thus, respondent, as the general contractor, could not rely on O'Brien to ensure that the employees of P&H were adequately trained.
42. Mr. Hall told P&H employees prior to their initiating the trenching operation, that the trench could not be sloped or benched and, thus, had to be shored. Pendergrass and his employees "acted" as if they understood. However, Mr. Hall had never before worked with P&H. He could and should have asked some questions regarding soil classifications and shoring requirements in order to determine whether Mr. Pendergrass was a competent person and whether his employees were instructed in accordance with 29 CFR §1926.21(b)(2) of the Act.
43. Because trenching operations are generally known in the construction industry as extremely dangerous and potentially fatal, general contractors should not be too embarrassed, too busy, or too complacent to challenge an excavator's knowledge of the Act and his ability and intention to comply with the Act.
44. As a result of respondent's violation of 29 CFR §1926.652(a)(1) as contained in Citation 1, Item 1a, Mr. Hall did not know that P&H employees were not trained or experienced in excavating trenches in excess of 5 feet and thus, were not trained or experienced in recognizing and avoiding unsafe conditions and the regulations applicable to the job site so that they could control and eliminate any hazards or other exposures to illness or injury.
45. This violation created the possibility of an accident: to wit, Mr. Pendergrass was working in the trench, which was over 5 feet deep, without adequate protection from a cave-in in violation of 29 CFR §1926.652(a)(1); without a hard hat in violation of 29 CFR §1926.100(a); without adequate egress from the trench in violation of 29 CFR §1926.651(c)(2); and without adequate protection from materials from the spoil pile or the excavator itself from falling into the trench upon him, in violation of 29 CFR §1926.651(k)(1).
46. Mr. Pendergrass or other members of his crew were also exposed to the hazards during the period in which they flattened the bottom of the trench with shovels and laid the pipe.
47. None of respondent's employees was exposed to the hazard.
48. The substantial probable result of such an accident would be abrasions, broken bones, cuts requiring stitches, a fractured skull, serious permanent injury or death.
49. Had the HCO determined the penalty as if this were the sole violation, he would have calculated it as shown in paragraph 37, above.
50. The violation was properly grouped with Citation 1, with no additional penalty assessed.

**Citation 1, Item 1c - 29 CFR §1926.100(a)
(Failure to Wear Hard Hats)**

51. Mr. Pendergrass did not wear a hard hat in the 5 foot deep trench as required by 29 CFR §1926.100(a).
52. Mr. Pendergrass or other members of his crew were also exposed to the hazard during the period in which they flattened the bottom of the trench with shovels and laid the pipe.
53. His failure to wear a hard hat created the possibility of an accident, to wit: protection of his head during a cave-in or in the event brick-sized rocks and other debris fell from the spoil pile on his head.
54. The likelihood of debris from the spoil piling falling into the trench was increased by the vibrations created by the excavator and by the traffic on University Parkway.
55. The substantial probable result of such an accident would be bruises and abrasions about the head, a cut requiring stitches, a fractured skull, serious bodily injury and death.
56. Respondent did not know that Mr. Pendergrass was in the trench over his head without a hard hat. However, for the reasons set forth in paragraph 39, above, respondent should have known of the hazardous condition.
57. Respondent could have avoided or abated this violation by making regular and frequent inspections to ensure that the P&H's employees were wearing hard hats in the trench.
58. Had the HCO determined the penalty as if this were the sole violation, he would have calculated it as shown in paragraph 37, above.
59. This violation was properly grouped with Citation 1, with no penalty assessed.

**Citation 1, Item 1d - 29 CFR §1926.651(c)(2)
(Failure to Provide Safe Egress From Trench)**

60. The area in which the HCO observed Mr. Pendergrass in the trench was over 5 feet deep for approximately 34 feet. No where in that 34 foot length was there a safe means of egress, such as a stairway, ladder or ramp, in violation of 29 CFR §1926.651(c)(2).
61. Mr. Pendergrass or other members of his crew were also exposed to the hazard during the period in which they flattened the bottom of the trench with shovels and laid the pipe.
62. The lack of a safe means of egress from the trench created the possibility of an accident, to wit: inability to escape the trench in the event of a cave-in.
63. The likelihood of injury was increased because at one end of the trench, the excavator was actively moving its steel arms into and out of the ditch removing dirt.
64. The substantial probable result of such an accident is serious permanent injury or death.
65. Respondent did not know that Mr. Pendergrass was in the trench without a safe means for egress. However, for the reasons set forth in paragraph 39, above, respondent should have known of the hazardous condition.
66. Respondent could have avoided or abated this violation by making regular and frequent inspections to ensure that the subcontractor was providing a safe means for egress at least every 25 feet in the portions of the trench over 4 feet deep.
67. Had the HCO determined the penalty as if this were the sole violation, he would have calculated it as shown in paragraph 37, above.
68. This violation was properly grouped with Citation 1, with no penalty assessed.

**Citation 1, Item 1e - 29 CFR §1926.651(j)(2)
(Failure to Keep Excavated Materials Further Than 2 Feet From Trench)**

69. The 2-3 foot spoil piles created by P&H were placed within 2 feet of the edge of the trench in violation of 29 CFR §1926.651(j)(2).
70. The location of the spoil piles created the possibility of an accident, to wit: brick-sized rocks and debris falling on workers in the trench and the weight of the spoil piles causing a trench cave-in.
71. The substantial probable result of such an accident is abrasions and contusions to the head, cuts requiring stitches, a fractured skull, serious permanent injury or death.
72. Respondent did not know that P&H had deposited the spoil piles within 2 feet of the edge of the trench. However, for the reasons set forth in paragraph 39, above, respondent should have known of the hazardous condition.
73. Mr. Pendergrass was exposed to this hazard during the period the HCO observed him in the trench.
74. Mr. Pendergrass or other members of his crew were also exposed to the hazard during the period in which they flattened the bottom of the trench with shovels and laid the pipe.
75. The hazard could have been abated by respondent making regular and frequent inspections of the trenching operating and instructing P&H to establish the spoil piles more than 2 feet from the edge of the trench.
76. Had the HCO determined the penalty as if this were the sole violation, he would have calculated it as shown in paragraph 37, above.
77. This violation was properly grouped with Citation 1, with no penalty assessed.

**Citation 1, Item 1f - 29 CFR §1926.651(k)(1)
(Failure to Ensure a Competent Person Inspected for Hazards)**

78. Mr. Pendergrass was not a competent person pursuant to 29 CFR §1926.650.
79. Mr. Hall was a competent person within the meaning of 29 CFR §1926.650.
80. In violation of 29 CFR §1926.651(k)(1), respondent failed to inspect the trenching operation during a 2 ½ to 3 hour period in which Mr. Hall knew that P&H would be creating a 130 foot long trench, which would become deeper than 5 feet and which would not be amenable to sloping or benching. Although Mr. Hall was involved in serious matters on the other side of the construction site, it would have taken only a few minutes for him to walk the distance to the trenching site periodically to observe the progress and to determine if the subcontractor was complying with safety standards.
81. The failure of respondent to make regular and frequent inspections of the trenching operation created the possibility of an accident: to wit: a cave-in or brick-sized debris falling into the trench upon the workers.
82. The substantial probable result of such an accident is bruises and contusions to the head, a cut requiring stitches, a fractured skull, serious permanent injury or death.
83. Respondent knew or should have known that it had a duty to make regular and frequent inspections of the trenching operation.
84. Mr. Pendergrass was exposed to this hazard during the period that the HCO observed him in the trench.
85. Mr. Pendergrass or other members of his crew were also exposed to the hazard during the period in which they flattened the bottom of the trench with shovels and laid the pipe.
86. The hazard could have been abated by respondent checking in with the trenching operation periodically for a few minutes when he knew that substantial progress was being made on a trench which would ultimately progress to over 5 feet deep.
87. Had the HCO determined the penalty as if this were the sole violation, he would have calculated it as shown in paragraph 37, above.
88. This violation was properly grouped with Citation 1, with no penalty assessed.

CONCLUSIONS OF LAW

1. The foregoing findings of fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. Respondent is subject to the provisions and jurisdiction of the Act.
3. Respondent was a general contractor on the job site.
4. The work that Mr. Hall did on behalf of respondent is: (1) hiring, scheduling and coordinating contractors on the job site; (2) normally walking through the job site during the day inspecting the work for compliance with construction and safety standards; (3) holding "tool box" meetings with contractors to review with them their responsibilities for complying with construction safety standards; and (4) retaining the ability to stop work if the subcontractors were not in compliance, among other things, was directly and vitally related to the construction project. Romeo Guest Associates, Inc., OSHANC 96-3513 (1998); Grossman Steel & Aluminum Corp., ¶ 20,791 (RC 1976); Bechtel/Pwr. Corp., 4 BNA OSHC 1005, 1975-1976 CCH OSHD P 20,503 (No. 5064, 1976) aff'd per curiam 548 F.2d 248 (8th Cir. 1977)
5. Respondent was a controlling employer with supervisory capacity over the job site. Romeo Guest Associates, Inc., OSHANC 96-3513 (1998); Grossman Steel & Aluminum Corp., ¶ 20,791 (RC 1976); Anning-Johnson Co. v. U.S. Occupational Safety and Health Review Comm'n., 516 F.2d 1081 (9th Cir. 1975)
6. Respondent was required, within its regular supervisory capacity, to make reasonable efforts to anticipate hazards to P&H's employees and to make reasonable efforts to inspect the job site to detect violations that P&H employees may have created. Romeo Guest Associates, Inc., OSHANC 96-3513 (1988); Secretary of Labor v. David Weekely Homes, OSHRC Docket No. 96-0898, ___ BNA OSHC ___ (Rev. Comm. 2000)
7. Respondent should have known that trenching operations are dangerous and constitute a frequent hazard on construction sites.
8. For 2 ½ to 3 hours, respondent's superintendent failed periodically to take a few minutes to walk several hundred feet to inspect the trenching operation even though he had never before worked with P&H; even though the subcontractor had brought no shoring equipment to the site that morning; and even though he knew that the subcontractor would eventually deepen the trench to over 5 feet.
9. Respondent, by reasonable diligence in carrying out its normal supervisory responsibilities over period of 2 ½ to 3 hours, should have seen P&H employees working in the trench over 5 feet deep without protection from brick-sized debris falling on their bare heads or a cave-in. Romeo Guest Associates, Inc., OSHANC 96-3513 (1988); Secretary of Labor v. David Weekely Homes, OSHRC Docket No. 96-0898, ___ BNA OSHC ___ (Rev. Comm. 2000)
10. The Complainant proved by a preponderance of the evidence that respondent violated the sections of the Act as set forth in the Findings of Fact above, that the violations were serious as determined in all of the Items in Citation 1 and that the proposed penalty assessed for Citation 1, Item 1a was figured appropriately.
11. The method of abatement would be for respondent to: (a) make reasonable efforts within its normal supervisory capacity to anticipate hazards to subcontractor's employees and identify any such hazards; (b) make reasonable efforts within its given supervisory capacity to detect violations that its subcontractors may create or to detect hazards that are long-standing and in plain view; and (c) to correct any hazards it discovers or to have the subcontractor correct the hazards it identifies during the course of its supervisory responsibilities.

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** as follows:

1. Citation 1, Items 1a-f are hereby **AFFIRMED** and the penalty is hereby imposed in the amount of \$1,050.00;
2. Respondent shall be paid within ten (10) days of the filing date of this Order; and
3. The penalty shall be the following: (a) make reasonable efforts within its normal supervisory capacity to anticipate hazards to subcontractor's employees and identify any such hazards; (b) make reasonable efforts within its given supervisory capacity to detect violations that its subcontractors may create or to detect hazards that are long-standing and in plain view; and (c) to correct any hazards it discovers or to have the subcontractor correct the hazards it identifies during the course of its supervisory responsibilities.

This the 20th day of October, 2003.

Ellen R. Gelbin
Administrative Law Judge