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SECRETARY OF LABOR,

Complainant,

v.

DIAZ CORPORATION,

Respondent.

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DOCKET NO. 02-0876

APPEARANCES:

Christine T. Eskilson, Esq.  
Office of the Solicitor of Labor  
U.S. Department of Labor  
Boston, Massachusetts  
For Complainant

David M. Lipman, Esq.  
Lipman, Katz & McKee, P.A.  
Augusta, Maine  
For Respondent

BEFORE:     MICHAEL H. SCHOENFELD  
                  Administrative Law Judge

***AMENDED DECISION AND ORDER***

This amended Decision and Order is issued pursuant to Rule 90(b)(3), 29 C.F.R. § 2200.90(b)(3) to correct an error arising through oversight in the Decision and Order in this matter dated July 25, 2003.

**Procedural History**

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”). Following an OSHA inspection of a work site in Waterville, Maine, which ended on April 24, 2002, the Secretary issued to The Diaz Corporation (“Daiz”) a citation alleging eight (8) serious violations of various safety and health standards appearing in Parts 1910 and 1926 of Title 29 of the Code of Federal Regulations and proposed civil penalties totaling \$ 16,800.

After several prior attempts at settlement, the case came on for hearing in Augusta, Maine, on July 15, 2003. <sup>1</sup> During the course of the hearing, the parties, after diligent negotiations, reached a settlement

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<sup>1</sup> No affected employees or representatives of affected employees have requested party status at  
(continued...)

of all issues and placed into the record the terms of that agreement.

***Jurisdiction***

Diaz admits that it is an employer engaged in a business affecting commerce and is an employer within the meaning of section 3(5) of the Act.

***Discussion***

The Settlement Agreement between the parties meets the criteria of Rule 100, 29 C.F.R. §2200.100 and is approved.

***FINDINGS OF FACT AND CONCLUSIONS OF LAW  
AND  
ORDER***

1. Respondent was, at all times pertinent hereto, an employer within the meaning of section 3(5) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (1970).
2. The Commission has jurisdiction over the parties and the subject matter of this case.
3. The terms of the settlement agreement entered into the record are approved and incorporated as part of this Decision and Order.
4. Under the terms of that settlement:
  - a. Citation 1, Item 1, is AFFIRMED as amended to allege an other-than-serious violation of 29 C.F.R. §1926.151(a)(3) for which no penalty is assessed.
  - b. Citation 1, Item 2, is AFFIRMED as a serious violation of 29 C.F.R. § 1926.153(g) for which a penalty of \$750 is assessed.
  - c. Citation 1, Item 3, is AFFIRMED as an other-than-serious violation of 29 C.F.R. § 1926.651(k)(1) for which a penalty of \$1,500 is assessed.

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<sup>1</sup>(...continued)  
any time.

- d. Citation 1, Item 4, is AFFIRMED as a serious violation of 29 C.F.R. § 1926.652(a)(1) for which a penalty of \$3,000 is assessed.
- e. Citation 1, Item 5 (as amended), is AFFIRMED as a serious violation of 29 C.F.R. § 1926.652(c)(4)(ii) for which a penalty of \$1,500 is assessed.
- f. Citation 1, Item 6, is WITHDRAWN.
- g. Citation 1, Item 7, is AFFIRMED as serious violation of 29 C.F.R. § 1926.701(b) for which a penalty of \$ 450 is assessed.
- h. Citation 1, Items 8a and 8b are AFFIRMED as a single serious violation of 29 C.F.R. §§ 1910.1200(e)(1) and 1910.1200(h) for which a penalty of \$ 750 is assessed.
- i. None of the foregoing agreements, stipulations, and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained within the Citations, Notification of Penalties and the Complaint herein. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of settling this matter economically and amicably and they shall not be used for any purpose, except for proceedings and matters arising under the Occupational Safety and Health Act (29 U.S.C. 651, *et seq.*).

/s/  
Michael H. Schoenfeld  
Judge, OSHRC

Date: August 13, 2003  
Washington, D.C.