



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

CLEVELAND WRECKING COMPANY,

Respondent.

OSHRC Docket No. 07-0437

BRIEFING NOTICE

The issues that follow have been identified by the Review Commission as of particular interest on review.

1. With respect to Citation 2, Item 1, did the judge err in affirming a violation of 29 C.F.R. § 1926.501(c) based on Respondent's alleged failure to protect employees from falling objects? In addressing this issue, the parties are asked to consider what effect, if any, other provisions of the fall protection standard—including 29 C.F.R. § 1926.502(j)(4) and 29 C.F.R. § 1926.500(b)—have on whether the standard was violated. If a violation was established, did the judge err in characterizing it as willful?
2. With respect to Citation 2, Item 2, did the judge err in affirming a violation of 29 C.F.R. § 1926.852(a) based on Respondent's alleged failure to protect employees from materials dropped outside of exterior walls by use of an enclosed chute? If not, did the judge err in characterizing the violation as willful?
3. With regard to either of these citation items, did the judge err in treating the cited provisions as performance-based and applying a reasonable person test to determine what they require?
4. If the judge properly found that both cited standards were violated, would their abatements be duplicative under the particular factual circumstances of this case?

The parties are advised that when the merits or characterization of an item are before the

Commission for review, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party who does not intend to file a brief must notify the Commission in writing setting forth the reason therefor within the applicable time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: 9/22/2010

/s/ _____
Ray H. Darling, Jr.
Executive Secretary

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, case law, law journal articles and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.