

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)
)
 Complainant)
)
 v.) Docket No. 08-1104
)
 IMPERIAL SUGAR COMPANY;)
 IMPERIAL-SAVANNAH, L.P.)
)
 Respondents.)
 _____)

RESPONDENTS' PROPOSED ORDER ON
MOTION TO DISMISS

Pursuant to the February 10, 2009 Notice of Hearing, Scheduling Order and Special Notices, attached is a proposed order regarding Respondents' Motion to Dismiss, filed on January 27, 2009.

Respectfully submitted, this 26th day of February, 2009.

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Attorneys for Respondents

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)	
)	
Complainant,)	OSHRC Docket No. 08-1104
)	
v.)	
)	
IMPERIAL SUGAR COMPANY;)	
IMPERIAL-SAVANNAH, L.P.)	
)	
)	
Respondents.)	
_____)	

ORDER ON MOTION TO DISMISS (Proposed)

Pending before the Commission is Respondents’ Motion to Dismiss Citation 2, Items 4 through 15. Respondents submit that the allegations contained in Citation 2, Items 4 through 15, which allege violations of 29 C.F.R. § 1910.22(a)(1) and (2), fail to state a claim upon which relief can be granted.

1. The alleged violative condition alleges only the existence of a “hazardous accumulation” of combustible dust. While citations are frequently inartfully drawn and are not to be as tightly construed as other pleadings, the citations do need to provide appropriate notice to the employer as to the nature of the violation – both for purposes of defending against the citation and for properly abating the citation. *See, e.g., Alden Leeds, Inc. v. Occupational Safety and Health Review Comm’n*, 298 F.3d 256, 261 (3d Cir. 2002); *Marshall v. B.W. Harrison Lumber Co.*, 569 F.2d 1303, 1308 (5th Cir. 1978).

2. Because the citations at issue allege a hazard, but do not adequately describe or define it, the citations at issue do not provide the Respondents fair notice of the alleged violations and do not, pursuant to 29 U.S.C. § 658(a) and 29 C.F.R. § 1903.14(b) describe with particularity the nature of the alleged violations, the Commission hereby **GRANTS**

Respondents' Motion. Citation 2, Items 4 through 15 of the Complaint are hereby dismissed for failure to state a claim upon which relief can be granted.

SO ORDERED this ____ day of _____, 2009.

The Honorable Covette Rooney
U.S. OSHRC Judge

Prepared By:

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CERTIFICATE OF SERVICE

I certify that all parties have consented that all papers required to be served in this action may be served and filed electronically. I further certify that a copy of the within and foregoing RESPONDENTS' PROPOSED ORDER ON MOTION TO DISMISS was electronically served on February 26, 2009 on the following counsel:

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