



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.

AKM LLC d/b/a Volks Constructors,

Respondent.

OSHRC Docket No. 06-1990

BRIEFING NOTICE

The issues that follow have been identified by the Review Commission as those of particular interest on review. The parties, however, are free to brief issues that are presented in the Petition(s) for Discretionary Review in addition to those enumerated below.

- (1) Did the judge err in holding that Items 1–5 of Citation 2 were not time-barred by section 9(c) of the Occupational Safety and Health Act (“the Act”), 29 U.S.C. § 658(c)?
- (2) (a) As to Items 2 and 5 of Citation 2, did the judge err in holding that either or both of these items were not time-barred where the specific time period under 29 C.F.R. § 1904.29 (b)(3) and 29 C.F.R. § 1904.32(b)(6), the cited provisions, had expired before the six-month limitations period set forth in section 9(c) of the Act?

(b) Of what relevance are the obligations to (1) review OSHA log entries at the end of the year “as extensively as necessary to make sure that they are complete and correct” (29 C.F.R. § 1904.32(b)(1)); (2) retain the OSHA log for five years (29 C.F.R. § 1904.33(a)); and (3) update the log during the retention period (29 C.F.R. § 1904.33(b)(1))?
- (3) As to Item 1 of Citation 2, did the judge err in affirming a violation of 29 C.F.R. § 1904.29(b)(2) where each recordable injury or illness had not been entered on the OSHA 300 Log ? If not, where an employer fails to


complete both the OSHA 300 Log and the OSHA 301 Incident Report for each recordable injury or illness, is citation of 29 C.F.R. § 1904.29(b)(2) duplicative of 29 C.F.R. § 1904.29(b)(3)?

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 therefore 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: October 18, 2007



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 the authorities 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.

06-1990

NOTICE IS GIVEN TO THE FOLLOWING:

Michael P. Doyle, Counsel for Appellate Litigation
Charles F. James, Counsel for Appellate Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

Arthur G. Sapper, Esq.
Robert C. Gombar, Esq.
James A. Lastowka, Esq.
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, D.C. 20005