



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.

AMERICAN ENGINEERING &
DEVELOPMENT CORPORATION,

Respondent.

OSHRC Docket No. 10-0359

BRIEFING NOTICE

The Commission requests that the parties brief the following issues:

- (1) In affirming Citation 1, Item 1, which alleges a repeat violation of 29 C.F.R. § 1926.652(a)(1), did the judge err by concluding that Respondent had knowledge of the violative conditions?
- (2) If the Secretary established that Respondent had knowledge of the violative conditions alleged in Citation 1, Item 1, did the judge err by rejecting Respondent's affirmative defense of unpreventable employee misconduct?

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.

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.

BY DIRECTION OF THE COMMISSION

Dated: March 3, 2011

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