



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.

WYNNEWOOD REFINING CO., LLC,
and its successors,

Respondent.

OSHRC Docket Nos. 13-0644 & 13-0791

BRIEFING NOTICE

The Commission requests that the parties brief the following issues:

- (1) With respect to Serious Citation 1, Items 1, 2a, 2b, 2c, 3a, 3b, and 4 (Docket No. 13-0791), and Repeat Citation 2, Items 2, 3, 4, and 5 (Docket No. 13-0791), did the judge err by concluding that (1) the Process Safety Management standard, 29 C.F.R. § 1910.119, is applicable to the Wickes boiler, and (2) the Wickes boiler does not fall under the Workplace Fuel Exemption?
- (2) With respect to each item affirmed by the judge that alleges a violation of the PSM standard, § 1910.119, did the judge err by characterizing the alleged violation as serious?
- (3) With respect to Repeat Citation 2, Items 2, 3, 4, and 5 (Docket No. 13-0791), and Repeat Citation 2, Item 1 (Docket No. 13-0644), did the judge err by rejecting the Secretary's repeat characterization of those items? Specifically, the parties are asked to address whether application of the factors for determining successor liability, *see Sharon & Walter Construction, Inc.*, 23 BNA OSHC 1286 (No. 00-1402, 2010), is necessary given that only Wynnewood Refining Co. is cited in the instant and prior citations, and there is no indication that the corporation was ever dissolved during this time frame. The parties are also asked to address whether, for each item at issue, the violations alleged in the instant and prior citations are "substantially similar."

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: March 18, 2016

/s/ _____
John X. Cervený
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.