



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.

CALDWELL TANKS, INC.,

Respondent.

OSHRC Docket No. 16-1029

BRIEFING NOTICE

The Commission requests the parties to address the following questions on review of the administrative law judge's decision:

1. Does the cited provision of the welding standard (29 C.F.R. § 1926.353(b)(1)) presume that a hazard exists "whenever welding, cutting, or heating is performed in a confined space"?

In briefing this issue, the parties are asked to address the meaning of the term "confined space" in the cited provision and whether the Secretary's interpretation of the term is reasonable and entitled to deference. The parties should also specifically discuss how the meaning of "confined space," as used in the cited provision, was affected, if at all, by OSHA's later promulgation and revocation of 29 C.F.R. § 1926.21(b)(6)(ii) and OSHA's promulgation of the Confined Spaces in Construction standard (Part 1926-Subpart AA). *See* 37 Fed. Reg. 3512, 3514 (February 17, 1972); 80 Fed. Reg. 25366, 25518-19 (May 4, 2015).

2. Did the Secretary provide sufficient notice of his interpretation of the cited provision?

The parties are advised that when the merits or characterization of an item are before the Commission on 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 that 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: May 18, 2018

/s/

John X. Cerveny
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.