



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.

TAMPA ELECTRIC COMPANY,

Respondent.

OSHRC Docket No. 17-2144

BRIEFING NOTICE

The parties are requested to brief the issues presented in the Secretary's petition for discretionary review, and in particular:

- (1) Did the judge err in requiring the Secretary to prove actual exposure to anhydrous ammonia at a level above OSHA's permissible exposure limit in order to establish that Respondent violated 29 C.F.R. § 1910.120(q)(3)(iv) (procedures for handling emergency response)?
- (2) Did the judge err in ruling at the hearing that evidence Critical Intervention Services (CIS) employees suffered adverse health effects due to anhydrous ammonia exposure is irrelevant to determining whether a violation of § 1910.120(q)(3)(iv) has been established?

The parties are advised that when a case is directed for review to consider either the merits or characterization of an item, 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 not intending to file a brief shall notify the Commission in writing within the applicable time for filing briefs, and shall serve a copy on all other parties.

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, regulations, 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.

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: April 23, 2019

/s/ _____
John X. Cervený
Executive Secretary