

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)	OSHRC DOCKET NO.
)	
Complainant,)	08-1104
)	
v.)	REGION IV
)	
IMPERIAL SUGAR COMPANY and)	
IMPERIAL-SAVANNAH, L.P.,)	Inspection No.
)	310988712
Respondents.)	
)	
)	

JOINT STATEMENT OF DISPUTED ISSUES AND PROPOSED TIMELINES

Pursuant to the Notice of Initial Pretrial Conference and Order for Parties to Confer and Submit Planning Recommendations dated January 12, 2009, Complainant, the Secretary of Labor, United States Department of Labor (“Complainant”) and Respondents, Imperial Sugar Company and Imperial-Savannah, L.P. (“Respondents”) hereby submit, through the undersigned counsel, the following:

A. Statement of Contested Issues

1. Whether Respondents have committed “willful,” “serious,” and “other than serious” violations as alleged in the Citations and Notifications of Penalty issued on July 25, 2008.

2. Whether the penalties assessed by Complainant against Respondents are appropriate in light of the gravity of the violations and Respondents’ size, history of violations, and good faith, pursuant to Section 17(j) of the Occupational Safety and Health Act of 1970 (“the Act”), 29 U.S.C. § 666(j).

3. Whether Respondents can establish their affirmative defenses to the Citations and Notifications of Penalty.

B. Proposed Timelines – The parties cannot agree on a proposed timeline and thus propose separate timelines as set forth below:¹

Complainants Proposed Timeline:

1. **Amendment of Pleadings** – Motions to amend the pleadings and Citations and Notifications of Penalty shall be filed and served no later than Monday, June 8, 2009. Responses thereto shall be filed and served no later than Friday, June 19, 2009.

2. **Discovery** – Due to the large number of alleged violations (one hundred and forty (140) separate items), including seventy-four (74) “willful” items and eight (8) “willful” and “serious” citations issued pursuant to Section 5(a)(1) of the Act, complex factual and legal issues, and myriad witnesses, the parties anticipate conducting extensive discovery in this case.

a. **Complainant’s Discovery** – Complainant has propounded interrogatories and document requests and has received Respondents’ written answers thereto. Complainant anticipates propounding additional written discovery, including more than twenty-five (25) interrogatories, either by stipulation of the parties or leave of the Occupational Safety and Health Review Commission (“the Commission”). Complainant anticipates deposing at least thirty-five (35) to forty-five (45) fact witnesses, either by stipulation of the parties or leave of the Commission.

¹ The parties certify, by their signatures below, that they have attempted in good faith and made reasonable efforts to agree on the dates proposed herein, including exchanging drafts of this document and conferring by telephone on two occasions, and could not reach agreement on such dates.

b. Respondents' Discovery – Respondents have propounded interrogatories and document requests and Complainant has served her written answers thereto. Respondent anticipates propounding additional written discovery, including more than twenty-five (25) interrogatories either by stipulation of the parties or leave of the Commission. Respondent anticipates deposing at least thirty-five (35) to forty-five (45) fact witnesses, either by stipulation of the parties or leave of the Commission.

c. Discovery Cut-Off – All discovery, including depositions of fact witnesses, shall be completed no later than Friday, January 15, 2010. All discovery shall be served in sufficient time for the responses thereto to be served by this deadline.

3. Expert Disclosures and Depositions – The parties shall exchange expert reports signed by the experts including all information required by Fed. R. Civ. P. 26(a)(2)(B) no later than Friday, February 12, 2010. Rebuttal expert reports, if any, shall be exchanged no later than Friday, March 12, 2010. All expert discovery, including depositions, shall be completed no later than Friday, April 30, 2010.

4. Dispositive or Partially Dispositive Motions – All dispositive or partially dispositive motions shall be filed and served no later than Friday, May 28, 2010. Responses thereto shall be served and filed no later than Friday, June 18, 2010.

5. Pre-Hearing Disclosures – The parties shall file and exchange pre-hearing disclosures pursuant to Fed. R. Civ. P. 26(a)(3) no later than Tuesday, June 8, 2010. No later than Friday, June 18, 2010, a party shall file and exchange Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party, and any deposition counter-designations under Fed. R. Civ. P. 32(a)(4).

6. Motions in Limine – Motions in limine shall be filed and served no later than Wednesday, June 23, 2010. Responses thereto shall be filed and served no later than Friday, July 2, 2010.

7. Daubert Motions – Motions challenging the qualifications of experts shall be filed and served no later than Wednesday, June 23, 2010. Responses thereto shall be filed and served no later than Friday, July 2, 2010.

8. Pre-Hearing Statements – Pre-Hearing Statements shall be filed and served no later than Friday, June 25, 2010.

9. Hearing – The hearing shall begin on or after Tuesday, July 20, 2010. Complainant estimates that the hearing in this matter will take approximately three (3) to four (4) weeks.

Respondents' Proposed Timeline:

1. Amendment of Pleadings – Motions to amend the pleadings and Citations and Notifications of Penalty shall be filed and served no later than Monday, February 23, 2009. Responses thereto shall be filed and served no later than Monday, March 9, 2009.

2. Discovery – Due to the large number of alleged violations (one hundred and forty (140) separate items), including seventy-four (74) “willful” items and eight (8) “willful” and “serious” citations issued pursuant to Section 5(a)(1) of the Act, complex factual and legal issues, and myriad witnesses, the parties anticipate conducting extensive discovery in this case.

a. Complainant's Discovery – Complainant has propounded interrogatories and document requests and has received Respondents' written answers

thereto. Complainant anticipates propounding additional written discovery, including more than twenty-five (25) interrogatories, either by stipulation of the parties or leave of the Commission. Complainant anticipates deposing at least thirty-five (35) to forty-five (45) fact witnesses, either by stipulation of the parties or leave of the Commission.

b. Respondents' Discovery – Respondents have propounded interrogatories and document requests and Complainant has served her written answers thereto. Respondent anticipates propounding additional written discovery, including more than twenty-five (25) interrogatories either by stipulation of the parties or leave of the Commission. Respondent anticipates deposing at least thirty-five (35) to forty-five (45) fact witnesses, either by stipulation of the parties or leave of the Commission.

c. Discovery Cut-Off – All discovery, including depositions of fact witnesses, shall be completed no later than Friday, October 2, 2009. All discovery shall be served in sufficient time for the responses thereto to be served by this deadline.

3. Expert Disclosures and Depositions – The parties shall exchange expert reports signed by the experts including all information required by Fed. R. Civ. P. 26(a)(2)(B) no later than Friday, October 16, 2009. Rebuttal expert reports, if any, shall be exchanged no later than Friday, October 30, 2009. All expert discovery, including depositions, shall be completed no later than Tuesday, December 15, 2010.

4. Dispositive or Partially Dispositive Motions – All dispositive or partially dispositive motions shall be filed and served no later than Friday, January 15, 2010. Responses thereto shall be served and filed no later than Friday, February 5, 2010.

5. Pre-Hearing Disclosures – The parties shall file and exchange pre-hearing disclosures pursuant to Fed. R. Civ. P. 26(a)(3) no later than Friday, February 12,

2010. No later than Friday, February 19, 2010, a party shall file and exchange Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party, and any deposition counter-designations under Fed. R. Civ. P. 32(a)(4).

6. Motions in Limine – Motions in limine shall be filed and served no later than Friday, February 26, 2010. Responses thereto shall be filed and served no later than Monday, March 8, 2010.

7. Daubert Motions – Motions challenging the qualifications of experts shall be filed and served no later than Friday, February 26, 2010. Responses thereto shall be filed and served no later than Monday, March 8, 2010.

8. Pre-Hearing Statements – Pre-Hearing Statements shall be filed and served no later than Friday, March 19, 2010.

9. Hearing – The hearing shall begin on or after Tuesday, April 13, 2010. Respondents estimate that the hearing in this matter will take approximately three (3) weeks.

C. Electronic Filing – The parties agree that all documents shall be filed and served electronically in accordance with the Commission’s Rules of Procedure and instructions for electronic filing.

D. Consolidation – Respondents intend to file a motion to consolidate this action with Docket Nos. 08-0533 and 08-1195. Complainant intends to file an opposition to such motion.

Respectfully submitted this 23rd day of January, 2009.

IMPERIAL SUGAR COMPANY and
IMPERIAL-SAVANNAH, L.P.

/s/ Charles H. Morgan
CHARLES H. MORGAN
charlie.morgan@alston.com
MATTHEW J. GILLIGAN
matt.gilligan@alston.com
ASHLEY D. BRIGHTWELL
ashley.brightwell@alston.com
JEREMY D. TUCKER
jeremy.tucker@alston.com

ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424

Telephone: 404/881-7000
Facsimile: 404/253-8757

Attorneys for Respondents

CAROL A. DEDEO
Deputy Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

SHARON D. CALHOUN
Counsel

By: /s/ Karen E. Mock
Senior Trial Attorney

ANGELA F. DONALDSON
Trial Attorney

Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street, SW
Room 7T10
Atlanta, GA 30303

Telephone: 404/302-5435
Facsimile: 404/302-5438
Email: Mock.Karen@dol.gov
Donaldson.Angela@dol.gov

Attorneys for Complainant

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CERTIFICATE OF SERVICE

I certify that all parties have consented that all papers required to be served may be served and filed electronically. I further certify that a copy of the JOINT STATEMENT OF DISPUTED ISSUES AND PROPOSED TIMELINES was electronically served on January 23, 2009 on the following parties:

Karen E. Mock
Mock.Karen@dol.gov
Angela F. Donaldson
Donaldson.Angela@dol.gov
Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street S.W.
Room 7T10
Atlanta, Georgia 30303

/s/ Charles H. Morgan
Charles H. Morgan
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
charlie.morgan@alston.com