



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.

S.J. LOUIS CONSTRUCTION OF TEXAS,

Respondent.

OSHRC Docket No. 12-1045

### **BRIEFING NOTICE**

The Commission requests that the parties brief the following issues regarding the the alleged violation of section 5(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654(a)(1):

- (1) Did the judge err in finding that Respondent had knowledge of the violative condition? In addressing this issue, the parties are asked to discuss *W.G. Yates & Sons Construction, Co.*, 459 F.3d 604, 608-09 (5th Cir. 2006).
- (2) Did the judge err in finding that the Secretary established a feasible means of abatement based on Respondent's failure to implement the company's confined space entry procedures?
- (3) Did the judge err in rejecting Respondent's unpreventable employee misconduct defense?

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.<sup>1</sup> The first brief is to be filed within 40 days of this notice. A party who does not intend to file a brief

---

<sup>1</sup> 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.

