



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.

BARDAV, INC., d/b/a MARTHA'S
VINEYARD MOBILE HOME PARK

Respondent.

OSHRD Docket No. 10-1055

BRIEFING NOTICE

The Commission requests that the parties brief the following issues:

- (1) Did the judge err in affirming Citation 1, Item 9, which alleged a violation of 29 C.F.R. § 1926.21(b)(2) (safety instruction)?
- (2) Did the judge err in affirming Citation 1, Item 11, which alleged a violation of 29 C.F.R. § 1926.651(h)(1) (water accumulation in excavations)?
- (3) Did the judge err in affirming Citation 2, Item 1, which alleged a violation of 29 C.F.R. § 1926.651(k)(2) (action by competent person)?
 - (a) In particular, did the judge err by concluding that § 1926.651(k)(2) applied to the cited condition? In addressing this question, the parties are asked to discuss the scope of § 1926.651(k)(2).
 - (b) Did the judge err in affirming Citation 2, Item 1, as a willful violation?
- (4) Did the judge err by vacating Citation 2, Item 2, which alleged a violation of 29 C.F.R. § 1926.652(a)(1) (employee protection in excavations), on grounds that it was duplicative of Citation 2, Item 1? The parties are also asked to address the merits and characterization of Citation 2, Item 2.

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 29, 2012

/s/

Ray H. Darling, Jr.
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.