



As the Secretary points out, in their Notice of Rule 30(b)(6) Deposition, Respondents are seeking the designation of one or more Federal OSHA employees to testify with respect to the following matters as to other, non-Imperial facilities:

1. “the specific physical conditions found and facts gathered at” the inspection
2. the authentication of documents in the inspection files
3. “the identities of all Complainant’s employees and agents who have conducted inspections of or otherwise entered the Location [of the inspection] at any time since January 1, 2000, through the date of this Notice of Deposition”
4. “the identities of all of Complainant’s employees and agents who participated in, reviewed or approved the decision to issue the citations regarding the Location [of the inspection]”

Number 2 above is no longer an issue, assuming that the Secretary and the State plan agencies will stipulate, as indicated, to the authenticity of the records in the inspection files obtained through FOIA requests. Furthermore, as to Number 4 above, I agree with the Secretary that the information sought in that item is privileged and that Respondents may not have discovery in that regard.

As to Number 1 above, I note that Rule 26(b)(1) states, in relevant part, that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense....” I also note that “[r]elevancy is broadly construed, and a request for discovery should be considered relevant if there is ‘any possibility’ that the information sought may be relevant to the claim or defense of any party.” *Merrill v. Waffle House, Inc.*, 227 F.R.D. 467 (N.D. Tex. 2005) (citations omitted). On the other hand, upon reviewing the list of depositions Respondents wish to take, as set out on pages 1 and 2 of the Motion, I note that the list includes inspections that do not appear to involve sugar refineries. I conclude that discovery into inspections of facilities that do not conduct sugar refining would have no relevance to this matter with respect to industry custom and practice in sugar refineries. Respondents may thus only conduct the depositions set out in the list that involve inspections of sugar refineries. In addition, those depositions are limited to the information contained in the inspection files, such as the OSHA 1B’s and photographs taken by OSHA. Respondents may, however, inquire into the designee’s experience with sugar refineries, including OSHA inspections as well as other relevant work experience and education. Respondents may also inquire whether the designee has personal knowledge of any other inspections involving sugar refining facilities that are not already on the list in the Motion.

Finally, as to Number 3 above, I find that the information sought therein does not appear “reasonably calculated to lead to the discovery of admissible evidence,” with one exception.

Respondents may ask the Secretary's designee, if that individual is not the CO who inspected the facility, to identify the OSHA CO who conducted the inspection about which the designee is testifying.

SO ORDERED this 31<sup>st</sup> day of March, 2009.

/s/ Covette Rooney

COVETTE ROONEY

U.S. OSHRC JUDGE



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

1120 20th Street, NW, Ninth Floor  
Washington, DC 20036-3457

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**SECRETARY OF LABOR,** :

**Complainant,** :

**v.** :

**IMPERIAL SUGAR COMPANY,** :

**IMPERIAL-SAVANNAH, L.P.,** :

**Respondents.** :

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**OSHRC DOCKET NO. 08-1104**

**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 Order was electronically served on March 31, 2009, on the following parties:

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/s/Arnita Acty  
Legal Assistant