



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.

ACME ENERGY SERVICES d/b/a BIG DOG
DRILLING, and its successors,
Respondent.

OSHRC Docket No. 08-0088

BRIEFING NOTICE

The issues that follow have been identified by the Review Commission as of particular interest on review. The parties, however, are free to brief issues that are presented in the Petition for Discretionary Review in addition to the ones enumerated below.

- (1) Did the judge err in concluding that neither Respondent nor its industry recognized the hazard alleged under § 5(a)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654(a)(1)?
 - a. Commissioner Thompson asks the parties to address the following: In concluding that there was no industry recognition, did the judge articulate with reasonable specificity sufficient for review a reliability or relevance determination regarding expert testimony within the scope of Fed. R. Evid. 702? If so, must the Review Commission apply an abuse of discretion standard to review the judge's decision to exclude or disregard expert testimony covered by Fed. R. Evid. 702? If so, did the judge abuse his discretion?
- (2) Did the judge err in concluding that the Secretary failed to establish there was a feasible means of abatement that would eliminate or materially reduce the hazard?

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

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

08-0088

Notice is given to the following:

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