



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.

ALLSTATE SERVICES, LTD., d/b/a A&R
DEMOLITION,

Respondent.

OSHRC Docket No. 09-0035

BRIEFING NOTICE

The Commission requests that the parties brief the following issue with respect to Citation 1, Item 2:

Did the judge err in affirming Respondent's alleged failure to provide interim protection under the Lead in Construction standard in violation of 29 C.F.R. § 1926.62(d)(2)(v)? In briefing this issue, the parties are asked to discuss the meaning of the term "cutting" in 29 C.F.R. § 1926.62(d)(2)(iv) in light of (1) the preamble to the Lead in Construction standard; (2) the document entitled "Protective Work Practices for Lead-Based Paint Abatement" in the standard's rulemaking docket; and (3) the OSHA technical manual, TED 01-00-015. *Cf. Bianchi Trison Corp.*, 409 F.3d 196, 202 (3d Cir. 2005), *aff'g*, 20 BNA OSHC 1801 (No. 01-1367, 2004) (consolidated) (ALJ) (noting difference between torch cutting and mechanical shearing).

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 therefore within the applicable time for filing

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.

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: January 6, 2010

/s/ _____
Ray H. Darling, Jr.
Executive Secretary