



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.

BARNHART, INC.,

Respondent.

OSHRC Docket No. 10-0108

BRIEFING NOTICE

The Commission requests that the parties brief the following issues:


- (1) Did the judge err in affirming a violation of the OSHA fall protection training certification requirement, 29 C.F.R. § 1926.503(b)(1), as alleged in Serious Citation 1, Item 8b, given Respondent's status as a controlling employer? *See, e.g., McDevitt Street Bovis, Inc.*, 19 BNA OSHC 1108, 1109 (No. 97-1918, 2000) (holding that a controlling employer "may be held responsible for the violations of other employers 'where it could reasonably be expected to prevent or detect and abate the violations' " (citation omitted)). Specifically, what further actions, if any, must Respondent have taken to satisfy its responsibility as a controlling employer with respect to Item 8b? *See David Weekley Homes*, 19 BNA OSHC 1116, 1118 (No. 96-0898, 2000) (vacating fall protection training citation issued to general contractor "[b]ecause the Secretary . . . failed to define what would have constituted compliance . . . under the circumstances").
- (2) If Item 8b is affirmed, is it properly characterized as serious?

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: August 11, 2011



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.

10-0108

NOTICE IS GIVEN TO THE FOLLOWING:

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