



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.

ENVISION WASTE SERVICES,

Respondent.

OSHRC Docket No. 12-1600

ORDER FOR SETTLEMENT & BRIEFING

Respondent filed a petition seeking review of the judge's decision in this case, and the matter was directed for review on February 10, 2014. As set forth below, the Commission is requesting briefs from the parties but holding the briefing schedule in abeyance for 45 days to allow the parties to pursue settlement.

Briefs are requested on all of the issues raised in Respondent's petition, including the merits of the affirmed items and the characterization of the items affirmed as willful. Also, the Commission requests that the parties address the appropriateness and amounts of the assessed penalties.

It is the Commission's policy to "permit[] and encourage[]" settlement "at any stage of the proceedings." Commission Rule 100(a), 29 C.F.R. § 2200.100(a). Before the hearing in this case, Respondent filed an uncontested motion requesting that the case be assigned to settlement proceedings.¹ The motion was denied. Consistent with Commission policy, the briefing schedule will be held in abeyance for 45 days from the date of this Order to allow the parties time to engage in settlement discussions.

If the parties enter into a settlement agreement resolving any or all of the citation items during the abeyance period, they must submit the agreement to the Commission's Executive

¹ Respondent filed its motion pursuant to Commission Rule 120(b), 20 C.F.R. § 2200.120(b), following the Secretary's amendment of the citations at issue to increase the total proposed penalty from \$34,300 to \$231,000, i.e., above the \$100,000 threshold for mandatory settlement proceedings. Commission Rule 120(b)(1), 29 C.F.R. § 2200.120(b)(1). There is no threshold amount for voluntary settlement proceedings under Commission Rule 120(a), 29 C.F.R. § 2200.120(a).

Secretary in accordance with Commission Rule 100(c), 29 C.F.R. § 2200.100(c), within 45 days of the date of this Order. If either or both parties decide to terminate settlement discussions prior to the expiration of the abeyance period, or are unable to reach agreement during this period, the parties must promptly inform the Commission, as well as each other. Once such notice has been received, or once the abeyance period expires without notice of a settlement, the Commission will issue an order lifting the abeyance and initiating the briefing schedule. At that time, all briefs will be filed in accordance with the following.²

The opening briefs for both parties are to be filed simultaneously, within 40 days of the abeyance being lifted. The reply briefs for both parties are to be filed simultaneously, within 30 days after the opening briefs are filed. The length of each opening brief may not exceed 45 pages of text, and the length of each reply brief may not exceed 25 pages of text. 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.

SO ORDERED.

/s/ _____
Thomasina V. Rogers
Chairman

/s/ _____
Cynthia L. Attwood
Commissioner

Dated: February 24, 2014

² 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.