



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

SECRETARY OF LABOR,

Complainant

v.

OSHRC Docket No. 96-1091

NAVIERAS NPR, INC.,

Respondent

DIRECTION FOR REVIEW AND REMAND

The Secretary has filed a letter which we shall consider a Petition for Discretionary Review in the above cited action. Pursuant to 29 U.S.C. §§ 661 (j) and 29 C.F.R. § 2200.92(a), and noting that the parties apparently entered a settlement agreement prior to the judge's decision dismissing the case based on the Secretary's failure to file a complaint, the decision of the Administrative Law Judge is directed for review. The case additionally is remanded to the judge for consideration of the parties' settlement agreement.

DATED: December 23, 1996


STUART E. WEISBERG
Chairman



DANIEL GUTTMAN
Commissioner

NOTICE OF DIRECTION FOR REVIEW AND REMAND

The attached Direction for Review and Remand by the Occupational Safety and Health Review Commission was issued and served on the following on December 23, 1996.

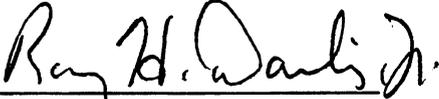
Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, USDOL
200 Constitution Ave., N.W. Room S4004
Washington, D.C. 20210

Patricia Rodenhausen
Office of the Solicitor, U.S. DOL
201 Varick St., Room 707
New York, NY 10014

Fernando Guardiola, Manager Loss Prevention
Navieras NPR, Inc.
P. O. Box 71306
San Juan, PR 00936-8306

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
1120 20th Street, Suite 990
Washington, D.C. 20036-3419

FOR THE COMMISSION


Ray H. Darling, Jr.
Executive Secretary

U.S. Department of Labor

Office of the Solicitor
201 Varick Street
New York, New York 10014



Reply to the Attention of: SOL:SDD
50519
Tel. 212-337-2081
FAX 212-337-2112

BY FEDERAL EXPRESS

December 16, 1996

Ray Darling, Executive Secretary
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, N.W.
Suite 980
Washington, D. C. 20036-3419

Dear Mr. Darling:

Re: Secretary of Labor v. Navieras NPR, Inc.
OSHRC Docket No. 96-1091

We forward to you the executed stipulated settlement which was belatedly received in our office on December 10, 1996. Judge Sommer vacated the citations and dismissed this matter due to the fact that no complaint was filed in this matter. His order was docketed by your office on November 22, 1996, and will become a final order on December 23, 1996. Due to administrative difficulties, this matter was received by facsimile transmission in the Long Island Area OSHA Office on or about November 14, 1996, but was not received by us until December 10.

We respectfully request that the Commission accept this settlement, and that the order dismissing the citations be set aside. Thank you for your assistance in this matter.

Sincerely,

Patricia M. Rodenhausen
Regional Solicitor

BY:


Stephen D. Dubnoff
Counsel for Occupational Safety and Health

cc: Fernando Guardiola, Manager

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

ROBERT B. REICH, Secretary of Labor,
United States Department of Labor,

Complainant,

v.

NAVIERAS NPR, INC.

: OSHRC Docket or
:
: Inspection No.
:
: 106896913

STIPULATED SETTLEMENT

J. DAVITT McATEER
Acting Solicitor of Labor

PATRICIA M. RODENHAUSEN
Regional Solicitor

STEPHEN D. DUBNOFF
Counsel for Occupational
Safety & Health

U.S. Department of Labor
Attorneys for ROBERT B. REICH
Secretary of Labor.
Complainant.

POST OFFICE ADDRESS:

Patricia M. Rodenhausen
Regional Solicitor
U.S. Department of Labor
201 Varick Street, Rm. 707
New York, NY 10014
Tel. 212-337-2081

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

<p>ROBERT B. REICH, Secretary of Labor, United States Department of Labor,</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">v.</p> <p>NAVIERAS NPR, INC.</p> <p style="text-align: center;">Respondent.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>OSHRC Docket or</p> <p>Inspection No.</p> <p>106896913</p>
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STIPULATED SETTLEMENT

Based upon the following recital, the Complainant and the Respondent herein agree to the following as a conclusion of this matter:

1. The Complainant, ROBERT B. REICH, Secretary of Labor, United States Department of Labor, hereby withdraws Item 1 of Citation No. 2.
2. The Complainant, ROBERT B. REICH, Secretary of Labor, United States Department of Labor, hereby amends the notification(s) of proposed penalty to reflect a total amended proposed penalty of \$2,500 to be assessed as follows:

<u>CITATION NO.</u>	<u>ITEM NO.</u>	<u>ORIGINAL PROPOSED PENALTY</u>	<u>AMENDED PROPOSED PENALTY</u>
1	1	\$5,000	\$2,500
2	1	\$ 200	\$ 0
TOTAL PROPOSED PENALTY:		\$5,200	\$2,500

3. Based upon the above, the Respondent, NAVIERAS NPR, INC., herein withdraws its notice of contest as to the citation(s) and notification(s) of proposed penalty, as modified herein.

4. Respondent affirmatively states that:

(a) All violations alleged in the citation(s) have been abated.

5. Respondent affirmatively states that it will comply in the future with the Occupational Safety and Health Act.

6. Respondent certifies that on November 8, 1996, this stipulation will be posted where affected employees may see it.

7. On or before 12/1/96, Respondent will pay the amended proposed penalty of \$2,500 by forwarding a check made payable to "Occupational Safety and Health-Labor" in that amount to the U.S. Department of Labor - OSHA, BBV Plaza Building, Suite 5B, 1510 FD Roosevelt Avenue, Guaynabo, Puerto Rico 00968.

8. This proposed Stipulated Settlement is not to be taken as an admission for the purpose of any proceeding other than one arising under the Occupational Safety and Health Act.

(CHOOSE APPROPRIATE CERTIFICATE)

CERTIFICATE OF SERVICE

I hereby certify that on _____, I served a copy of the attached Stipulated Settlement on _____, the authorized employee representative at the following address:

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Fernando Guardiola

TITLE: Manager - Loss Prevention & Claims

CERTIFICATE OF SERVICE

I hereby certify that on _____, I personally delivered a copy of the attached Stipulated Settlement on _____, the authorized employee representative at the following address:

NAME: _____

TITLE: _____

CERTIFICATION OF NONREPRESENTATION

I hereby certify that there is no authorized employee representative for the employees affected by the action which is the subject of the attached Stipulated Settlement.

NAME: _____

TITLE: _____

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

ROBERT B. REICH, Secretary of Labor, United States Department of Labor,	:	OSHRC Docket or
	:	Inspection No.
Complainant,	:	106896913
	:	
v.	:	
	:	
NAVIERAS NPR, INC.	:	
	:	
Respondent.	:	

ORDER APPROVING SETTLEMENT

Respondent in Inspection No. 106896913, by a letter dated 7/22/96, contested citation issued to it by Complainant on 6/27/96. In that letter, Respondent also contested the \$5,200 penalty proposed by Complainant for the citation.

An executed Stipulated Settlement has been received from the parties, and this stipulation addresses all matters at issue between the parties in this proceeding. The Stipulation having been read and considered, it is

ORDERED:

(1) That the terms of the Stipulated Settlement are approved and incorporated as part of this Order; and

(2) That this Order, pursuant to Section 12(j) of the Act, 29 U.S.C. Section 661(j) will become the final order of the Commission at the expiration of thirty (30) days from the date of docketing by the Executive Secretary, unless within that time a member of the Commission directs that it be reviewed.

Dated this _____ day of _____, 1996.

SO ORDERED:

Judge, Occupational Safety
and Health Review Commission



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

Phone: (202) 606-5400
Fax: (202) 606-5050

SECRETARY OF LABOR
Complainant,
v.
NAVIERAS NPR, INC.
Respondent.

OSHRC DOCKET
NO. 96-1091

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on November 22, 1996. The decision of the Judge will become a final order of the Commission on December 23, 1996 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before December 12, 1996 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: November 22, 1996

DOCKET NO. 96-1091

NOTICE IS GIVEN TO THE FOLLOWING:

Patricia M. Rodenhausen
Regional Solicitor, U.S. DOL
201 Varick Street, Room 707
New York, NY 10014

Fernando Guardiola, Manager
Navieras, NPR, Inc.
P. O. Box 71306
San Juan, PR 00936

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th St. N.W., Suite 990
Washington, DC 20036 3419

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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

NAVIERAS NPR, INC.,

Respondent.

Docket No. 96-1091

ORDER

On July 31, 1996 the Secretary requested an extension of time within which to file a complaint to October 10, 1996. In an ORDER dated August 26, 1996 the undersigned granted an extension and directed that the complaint be filed "on or before September 14, 1996" with the admonition that "THE SOLICITOR IS HEREBY NOTIFIED THIS EXTENSION IS FINAL-NO FURTHER EXTENSIONS. FAILURE TO FILE A COMPLAINT WILL RESULT IN SUMMARY DISMISSAL OF THE CITATIONS". No complaint has been filed to date.

Petitioner having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case and it appearing that the petitioner has failed to do so in obvious deliberate disregard of the ORDER issued,

It is therefore ORDERED that this action be, and it hereby is DISMISSED and the citations vacated and set aside.



IRVING SOMMER
Chief Judge

DATED: **NOV 18 1996**
Washington, D.C.