



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.

CRANESVILLE AGGREGATE COMPANIES,
INC., d/b/a SCOTIA BAG PLANT,

Respondent.

OSHRC Docket Nos. 09-2011 & 09-2055

REMAND ORDER

Before: MACDOUGALL, Chairman; ATTWOOD and SULLIVAN, Commissioners.

BY THE COMMISSION:

This case is before the Commission on remand from the United States Court of Appeals for the Second Circuit. *Sec’y of Labor v. Cranesville Aggregate Cos.*, 878 F.3d 25 (2d Cir. 2017). Former Administrative Law Judge Ken S. Welsch vacated six citations issued by the Occupational Safety and Health Administration, concluding that the Mine Safety and Health Administration’s standards, rather than OSHA’s, applied to the cited conditions. *Cranesville Aggregate Cos.*, 24 BNA OSHC 1115, 1123 (No. 09-2011, 2013) (consolidated) (ALJ) (“Because MSHA has statutory authority to regulate the working conditions[,] . . . MSHA preempts OSHA’s authority under § 4(b)(1) of the [OSH] Act.”). The judge’s decision became the final order of the Commission. *Cranesville Aggregate Cos.*, 25 BNA OSHC 2001 (No. 09-2011, 2016) (consolidated). The Second Circuit reversed, ruling that “the Commission did not afford proper deference to the Secretary’s reasonable determination” regarding applicability of OSHA’s standards. 878 F.3d at 36.

By mandate filed February 27, 2018, the court has remanded this case to the Commission. We, in turn, remand this case to the Chief Administrative Law Judge for reassignment and further proceedings consistent with the court's opinion.

SO ORDERED.

/s/ _____
Heather L. MacDougall
Chairman

/s/ _____
Cynthia L. Attwood
Commissioner

/s/ _____
James J. Sullivan, Jr.
Commissioner

Dated: March 13, 2018