



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

One Lafayette Centre
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Washington, DC 20036-3419

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SECRETARY OF LABOR
Complainant,

v.

A A QUALITY CONSTRUCTION MATERIALS
Respondent.

OSHRC DOCKET
NO. 92-2461

**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 October 20, 1993. The decision of the Judge will become a final order of the Commission on November 19, 1993 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 November 9, 1993 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:

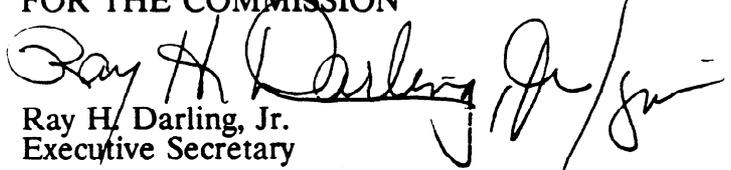
Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

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: October 20, 1993

DOCKET NO. 92-2461

NOTICE IS GIVEN TO THE FOLLOWING:

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

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

Robert L. Gambell, Esquire
Riley, O'Mellio, Shoveland & Jones
180 White Horse Pike
Clementon, NJ 08021

Michael H. Schoenfeld
Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th St. N.W., Suite 990
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SECRETARY OF LABOR,

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v.

AA QUALITY CONSTRUCTION
 MATERIALS,

Respondent.

OSHRC Docket No. 92-2461

Appearances:

William G. Staton, Esq.
 Office of the Solicitor
 U.S. Department of Labor
 For Complainant

Robert Gambell, Esq.
 Riley, O'Melio, Shoveland &
 Jones
 Clementon, New Jersey
 For Respondent

Before: Administrative Law Judge Michael H. Schoenfeld

DECISION AND ORDER

Background and Procedural History

This case arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 - 678 (1970) ("the Act").

Having had its worksite inspected by a compliance officer of the Occupational Safety and Health Administration, A.A. Quality Construction Material, ("Respondent") was issued citations alleging 3 willful, 10 serious and 4 other-than-serious violations of the Act. Penalties of \$15,100, \$9,300 and \$300 were proposed for the willful, serious and other than serious violations, respectively. Respondent timely contested. Following the filing of a

complaint and answer and pursuant to a notice of hearing, the case came on to be heard on June 14, 1993, in Philadelphia, Pennsylvania. No affected employees sought to assert party status.

Jurisdiction

Complainant alleges and Respondent does not deny that it is an employer engaged in the manufacture and sale of construction materials. Respondent does not deny that it uses tools, equipment and supplies which have moved in interstate commerce. I find that Respondent is engaged in a business affecting interstate commerce.

Based on the above finding, I conclude that Respondent is an employer within the meaning of § 3(5) of the Act.¹ Accordingly, the Commission has jurisdiction over the subject matter and the parties.

Discussion

The parties, through the diligent efforts of counsel achieved a settlement during a series of conferences held at the time and place of the hearing (Tr. 2-5). The statements of settlement made at the hearing have been reduced to a written Stipulated Settlement.

ORDER

The terms and conditions of the Stipulated Settlement, incorporated herein in its entirety, are approved.



MICHAEL H. SCHOENFELD
Judge, OSHRC

Dated: **OCT 19 1993**
Washington, D.C.

¹ Title 29 U.S.C. § 652(5).