

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

PSC INDUSTRIAL OUTSOURCING LP,

Respondent.

CASE NO. OSH 2009-15

ORDER NO. 324

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) by conference call on June 22, 2009, and attended by J. Gerard Lam, Deputy Attorney General, for Complainant, and Brent I. Clark (by telephone), for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1 (HAR § 12-60-2(b)(1)(A))

Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$2,500.00, resulting from Inspection No. 311435184, was valid and proper.

Citation 1, Item 1 alleged:

HAR § 12-60-2(b)(1)(A) was violated because:

Employer's written safety and health program was not effective in designating who would conduct atmospheric testing for subcontractor's hot work activities at their plant facilities, not effective in determining who would conduct official determinations if it was safe to proceed with subcontractors' hot work activities at their plant facilities, nor effective in addressing subcontractors working at their plant facilities. The employer's

program failed to control subcontractor's welding activities which resulted in a waste oil storage tank to explode causing one fatality and three workers being injured on October 7, 2008.

2. Citation 1, Item 2 (HAR § 12-60-2(b)(3))

Whether Citation 1, Item 2, including the characterization as "Serious" and the associated penalty of \$2,500.00, resulting from Inspection No. 311435184, was valid and proper.

Citation 1, Item 2 alleged:

(HAR § 12-60-2(b)(3)) was violated because:

Employer conducted ineffective audits and inspections of subcontractors' hot work activities at their waste oil recycling plant facility to ensure employer's hot work permitting and atmospheric testing protocols were being properly done by employer's personnel before allowing subcontractor personnel to conduct hot work activities at their establishment. Subcontractor's welding activities resulted in a waste oil storage tank to explode causing one fatality and three workers being injured on October 7, 2008.

3. Citation 1, Item 3 (29 CFR. 1910.252(a)(2)(iv))

Whether Citation 1, Item 3, including the characterization as "Serious" and the associated penalty of \$2,500.00, resulting from Inspection No. 311435184, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1910.252(a)(2)(iv) [Refer to chapter 12-78.1, HAR] was violated because:

Employer allowed subcontractor to proceed with welding activities over a multiple week period even though employer did not conduct official determinations if it was safe to proceed with subcontractor's welding activities at their waste oil recycling plant facility. On October 7, 2008,

subcontractor's welding activities caused a waste oil storage tank to explode resulting in one fatality and three workers being injured.

4. Citation 1, Item 4 (29 CFR 1910.252(a)(2)(vi)(C))

Whether Citation 1, Item 4, including the characterization as "Serious" and the associated penalty of \$2,500.00, resulting from Inspection No. 311435184, was valid and proper.

Citation 1, Item 4 alleged:

29 CFR 1910.252(a)(2)(vi)(C) [Refer to chapter 12-78.2, HAR] was violated because:

Employer allowed subcontractor to proceed with welding activities over a multiple week period even though employer did not conduct atmospheric testing nor conducted official determinations if it was safe to proceed with subcontractor's welding activities at their waste oil recycling plant facility. On October 7, 2008, subcontractor's welding activities caused a waste oil storage tank to explode resulting in one fatality and three workers being injured.

5. Citation 1, Item 5 (29 CFR 1910.252(a)(2)(xiii)(D))

Whether Citation 1, Item 5, including the characterization as "Serious" and the associated penalty of \$2,500.00, resulting from Inspection No. 311435184, was valid and proper.

Citation 1, Item 5 alleged:

29 CFR 1910.252(a)(2)(xiii)(D) [Refer to chapter 12-78.2, HAR] was violated because:

Employer did not effectively train and/or orient subcontractor personnel who visited and/or worked at their waste oil recycling plant facility to make them aware of hazards and safety and health protocols to follow at their establishment. Lack of knowledge of the plant facility hazards and safety and health protocols to follow contributed to subcontractor's

welding activities taking place at the waste oil recycling plant facility that resulted in a waste oil storage tank to explode causing one fatality and three workers being injured on October 7, 2008.

6. Citation 1, Item 6 (29 CFR 1910.252(a)(2)(xiv)(E))

Whether Citation 1, Item 6, including the characterization as "Serious" and the associated penalty of \$2,500.00, resulting from Inspection No. 311435184, was valid and proper.

Citation 1, Item 6 alleged:

29 CFR 1910.252(a)(2)(xiv)(E) [Refer to chapter 12-78.2, HAR] was violated because:

Employer allowed subcontractor to proceed with welding activities over a multiple week period even though employer did not determine that the subcontractor's welder secured approval that conditions were safe to proceed with welding activities at their waste oil recycling plant facility. On October 7, 2008, subcontractor's welding activities caused a waste oil storage tank to explode resulting in one fatality and three workers being injured.

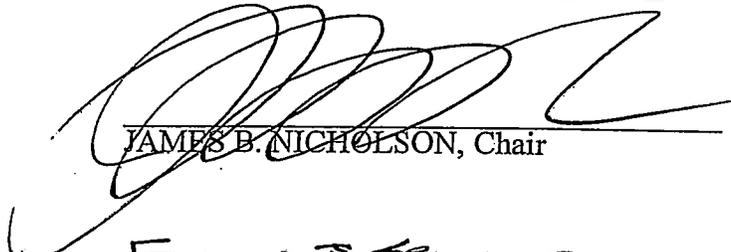
- B. The deadline for the parties' final naming of witnesses is **July 24, 2009**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. The discovery cutoff date is **August 21, 2009**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- D. The parties may engage in discovery without prior motion or showing of good cause.
- E. Trial in this matter is scheduled for **October 12, 2009 at 9:30 a.m., and October 13 - 14, 2009 at 8:30 a.m.**, in the Board's hearing room located at

830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.

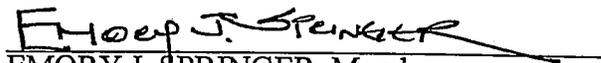
- F. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, June 22, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

J. Gerard Lam, Deputy Attorney General
Brent I. Clark