



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.

OSHRC Docket Nos. 98-1986 & 98-1987

GUNITE CORPORATION,

Respondent,

AW LOCAL 718,

Authorized Employee
Representative.

ORDER

Before: RAILTON, Chairman, ROGERS and THOMPSON, Commissioners.

BY THE COMMISSION:

On September 30, 2004, the Commission issued its decision in *Gunite Corp.*, 21 BNA OSHC 1983, 2005 CCH OSHD ¶ 32,762 (Nos. 98-1986 & 98-1987, 2004). The Secretary thereafter petitioned the Seventh Circuit for review of the Commission's decision to vacate four citation items alleging violations of the air contaminant standard. On March 24, 2006, the court reversed the Commission's decision and remanded the case "with instructions to affirm the four contested citations." *Chao v. Gunite Corp.*, 442 F.3d 550, 560 (7th Cir. 2006). Accordingly, pursuant to the court's remand order, we affirm Serious Citation 1, Items 8a and 8b, and Willful Citation 2, Items 3a and 3b.

With regard to the characterization of and penalties assessed for these items, we affirm the judge. Therefore, we assess a penalty of \$7,000 for Items 8a and 8b, affirmed as serious, and a penalty of \$20,000 for Items 3a and 3b, affirmed as willful.

SO ORDERED.

_____/s/_____
W. Scott Railton
Chairman

_____/s/_____
Thomasina V. Rogers
Commissioner

_____/s/_____
Horace A. Thompson, III
Commissioner

Dated: June 14, 2006