

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 19 November 2018

Case Nos.: 2015-FLS-00010; 2015-FLS-00011

In the Matters of:

FIVE M'S, LLC
d/b/a **L & W AUTO SALVAGE (L & W AUTO PARTS)** and
JOHN MORGAVAN, an individual,

and

FIVE M'S LLC
d/b/a **VALPARAISO CAR CARE TRANSMISSION** and
JOHN MORGAVAN, an individual,

Respondents.

Appearances:

Kevin Wilemon, Esq.
Office of the Solicitor
U.S. Department of Labor
Chicago, Illinois
For the Plaintiff

Gordon Etzler, Esq.
Gordon Etzler & Associates
Valparaiso, Indiana
For the Respondents

DECISION AND ORDER

These cases arise under the Fair Labor Standards Act of 1938 ("FLSA" or "Act"), 29 U.S.C. §§ 201-219, and the implementing regulations at 29 C.F.R. Parts 578 to 580. The Administrator of the Wage and Hour Division ("WHD"), U.S. Department of Labor ("Plaintiff") alleges that during the period October 1, 2013 to March 1, 2014, Respondents employed one individual under the age of 18 years contrary to the provisions of section 12(c) of the FLSA, violated section 11(c)'s child recordkeeping provisions, and assessed \$3,800.00 in civil money penalties ("CMP"). Plaintiff also assessed civil money penalties against Respondents in the amount

of \$38,500.00 for violating the provisions of Sections 6 and 7 of the Act by failing to pay 35 employees a total of \$14,477.06 in required minimum wages and overtime during the period October 7, 2012 to October 5, 2014. 29 C.F.R. § 570.140(b)(1); 579.1(a)(1)(i)(A); 530.302; and 579.3(a)(5). The cases were docketed by the Office of Administrative Law Judges (“OALJ”) on receipt of *Orders of Reference* from WHD received on August 27, 2015. For the reasons set forth in greater detail below, I reverse that part of the Administrator’s Determination finding a Section 12(c) violation and assessing \$3,800 in total civil money penalties for violations of Sections 11(c) and 12(c) of the FLSA and reduce the penalty for violations of Sections 6 and 7 to \$8,750.

Procedural Background

On September 11, 2015, I issued a *Notice of Docketing and Order of Consolidation*, consolidating the cases and directing the parties to exchange specified prehearing information. On October 14, 2015, Plaintiff filed a *Response to Notice of Docketing and Order of Consolidation*. In it, Plaintiff stated that “[o]n May 1, 2015, the Secretary of Labor filed a complaint in the United States District Court for the Northern District of Indiana to enjoin and restrain defendants . . . from violating the provisions of . . . the FLSA.”¹ Plaintiff requested that the above matters be stayed while the parties litigated the related case in District Court. In an *Order to Stay Proceedings* issued December 1, 2015, I granted Plaintiff’s unopposed request to stay this matter and held the cases in abeyance until further notice.

On April 25, 2017, Plaintiff filed a *Motion and Memorandum in Support of Partial Summary Decision*, which advised that the District Court had entered summary judgement in the Secretary of Labor’s favor in the related federal court litigation.² On May 9, 2017, Respondent filed a *Motion to Stay ALJ Proceedings During Defendants’ Appeal to the Seventh Circuit Court of Appeals* advising that the Seventh Circuit had docketed its appeal of the District Court’s decision and requesting that the instant proceeding, including deadlines for responding to the Plaintiff’s *Motion and Memorandum in Support of Partial Summary Decision*, be stayed pending the Seventh Circuit’s ruling. On May 15, 2017, Plaintiff filed a *Response in Opposition* to Respondent’s motion to stay this proceeding. On May 31, 2017, I held a conference call with the parties to discuss the motion to stay proceedings, in which the parties advised that they were pursuing mediation through the Seventh Circuit in an attempt to reach a settlement of the federal litigation and the cases before this Court. As such, I verbally granted the request to stay proceedings and continued to hold this matter in abeyance.

On October 5, 2017, Plaintiff filed a *Status Report and Request for Telephone Conference* advising that the “mediation did not result in a settlement, and, on October 3, 2017, Respondents withdrew their appeal of the District Court’s decision,” attaching the *Defendant-Appellants’ Notice*

¹ See *Perez v. Five M’s, LLC*, 2:15-cv-00176 (N.D. Ind.). Concurrent filing of FLSA actions is permissible.

² The March 1, 2017 District Court order resolved whether Respondents violated the minimum wage, overtime and recordkeeping provisions of the FLSA, whether Respondents’ violations were repeated or willful and whether a civil money penalty for the Section 6 and 7 violations was authorized. The District Court did not resolve whether the \$38,500 assessed penalties were appropriate under 29 C.F.R. §578.3 or whether Respondents violated the child labor provisions of the Act and, if so, whether the \$3,800.00 penalty related to this violation of the FLSA was appropriate. *Perez v. Five M’s*, Case No. 2:15-cv-00176-WCL-PFC (N.D. Ind. Mar. 1, 2017).

of *Withdrawal of Appeal* filed in District Court. Plaintiff requested a telephone conference call with the Court to discuss whether Respondents planned to file a substantive response to the *Motion and Memorandum in Support of Partial Summary Decision* and setting a hearing schedule. On October 13, 2017, I held a conference call with the parties. As the related federal court litigation had concluded, obviating the need to continue holding these matters in abeyance, I issued an *Order Lifting Stay and Approving Withdrawal of Counsel* on October 25, 2017.³

On March 14, 2018, Respondent filed a *Motion to Dismiss and Response to Plaintiff's Motion for Summary Judgement*. On March 23, 2018, Plaintiff filed *Acting Administrator's Response in Opposition to Respondent's Motion to Dismiss and Response to Plaintiff's Motion for Summary Judgement*. On March 23, 2018, Respondent filed an *Objection to Labor Department's Supplemental Motion and Memorandum in Support of Summary Decision on Child Labor Law Civil Money Penalty*. On April 5, 2018, Respondent filed a *Reply to Department of Labor's Response on Motion For Summary Judgement and In Support of Morgavan's Motion for Summary Judgement*.

In an Order issued on April 5, 2018, I **GRANTED** that part of Plaintiff's motion for summary decision as to whether Respondents violated sections 6 and 7 of the FLSA, whether Respondents' violations were repeated or willful and whether a civil money penalty was authorized.⁴ I **DENIED** that part of Plaintiff's motion for summary decision as to whether the \$38,500.00 assessed penalty was appropriate under 29 C.F.R. § 578.4. I **DENIED** Plaintiff's motion for summary decision as it related to whether Respondents violated the child labor provisions of the FLSA⁵ and, if so, the appropriateness of the \$3,800.00 civil money penalty under 29 C.F.R. § 579.5. Finally, I **DENIED** Respondent's motion to dismiss.⁶

³ Respondents were initially represented by Nicholas T. Otis, Esq. of the firm Newby Lewis Kaminski & Jones, LLP. On October 11, 2017, Mr. Otis filed a *Motion for Leave to Withdraw as Counsel for Defendants* requesting permission to withdraw his appearance as Respondents' representative in this matter. The Motion stated that Mr. Otis advised Respondents of his intent to withdraw verbally and via email. Plaintiff had no objection to the Motion for Leave to Withdraw. Given Plaintiff's lack of opposition, and that no hearing schedule had yet been set, I found that Mr. Otis's withdrawal as Respondents' representative would not cause undue delay or prejudice the rights of any party. For this reason, and because Respondents have been notified of the withdrawal, I found that withdrawal was appropriate under 29 C.F.R. § 18.22(e). Accordingly, I approved Mr. Otis's *Motion for Leave to Withdraw as Counsel for Defendants*. I advised Respondents that, if they should obtain new representation, such representative should enter a notice of appearance in accordance with 29 C.F.R. § 18.22(a). Mr. Gordon Etzler of Gordon Etzler & Associates, entered an appearance and represented Respondents in these matters at hearing.

⁴ See 29 C.F.R. § 580.12.

⁵ See 29 C.F.R. § 579.3.

⁶ The United States District Court for the Northern District of Indiana found that during the period June 30, 2012 through September 20, 2014, Respondents violated the FLSA's recordkeeping requirements; failed to pay overtime in excess of 40 hours in a work week to 35 employees for a total of \$12,800.23 in unpaid wages; failed to pay minimum wage to six employees in the amount of \$1,676.83; and that these violations were willful and repeated. The District Court also imposed liquidated damages of \$14,477.06, an amount equal to the total unpaid compensation.

As the case involved the same 35 employees and alleged FLSA violations at issue in these cases, I found the District Court's judgement resolved the issue of whether Respondents violated sections 6 and 7 of the FLSA. I determined the District Court's findings also resolved the question of whether Respondents' violations were repeated and willful. I found that Respondents' behavior was deemed to be "repeated" under 29 C.F.R. § 578.3(b)(1) and (2) pursuant to the

A *de novo* formal hearing was held in Chicago, Illinois on April 17, 2018 to resolve (1) the appropriateness of the \$38,500.00 in civil money penalties assessed for violations of Section 6 and 7 of the FLSA and (2) whether Respondents violated the child labor provisions of the FLSA and, if so, the appropriateness of the \$3,800.00 assessed civil money penalty. All parties were present and the following exhibits were received into evidence: Administrative Law Judge Exhibits (“ALJX”) 1-4, (Tr. 5); Administrator’s Exhibits (“AX”) 1-18, (Tr. 6, 103); and Respondent’s Exhibits (“RX”) A-H and K-N, (Tr. 6, 178). Seven witnesses testified at the hearing.

The parties were granted leave to file post-hearing briefs. Plaintiff filed its post-hearing brief on July 31, 2018 and Respondent on August 1, 2018. Both parties submitted replies on August 15, 2018. The parties’ briefs and the testimonial and documentary evidence submitted at trial were considered in rendering my decision.

Essential Findings of Fact

5 M’s LLC is the parent company of Valparaiso Transmission (also known as Valparaiso Car Care), Premier Auto Sales, and L & W Auto Salvage located in Valparaiso, Indiana and operated under Respondent John Morgavan’s direction and control. (Tr. 171). Valparaiso Transmission is an auto repair shop. L & W Auto Salvage is a salvage yard. Premier Auto Sales is a used car lot. (Tr. 101-02).

WHD conducted an investigation of Valparaiso Transmission for the period October 7, 2012 to October 5, 2014. (AX 2 at 1). In findings issued on April 24, 2015, WHD determined that Valparaiso Transmission violated Sections 6 and 7 of the FLSA by failing to pay required minimum wage and overtime to 21 employees, resulting in underpayments totaling \$8,411.36, and assessing a \$23,100.00 civil money penalty. (AX 2 at 1). The same investigation determined L & W Auto Salvage also violated Sections 6 and 7 of the FLSA resulting in underpayments to 14 employees totaling \$6,065.70, and assessed a \$15,400.00 civil money penalty. (AX 8 at 1). The

District Court’s findings that Respondents violated sections 6 and 7 in the time period corresponding to the Wage and Hour Division’s first investigation in 2005, and Respondents received notice of that violation. Additionally, I found that Respondents’ behavior was deemed to be “willful” pursuant to 29 C.F.R. § 578.3(c)(2) and (3) pursuant to the District Court’s findings that Respondents were informed by the Wage and Hour Division that their conduct was unlawful. I further found that Respondents either knew or were in reckless disregard of the requirements of the FLSA. Accordingly, I found that it was proper to assess a civil money penalty. I further found the District Court’s assessment of \$14,477.06 in liquidated damages did not cover the appropriateness of the \$38,500.00 assessed civil money penalties in this matter.

I held that Respondent’s repeated and willful violation of the FLSA and reckless disregard for the Act’s requirements authorized the assessment of civil money penalties for such behavior was distinct from whether the penalties actually assessed in this case were in fact appropriate under the circumstances. I determined the former was resolved by the district court judgement while the latter was not.

Additionally, I found there remained the issue of whether Respondents violated the child labor provisions of the FLSA and, if so, the appropriateness of the \$3,800.00 civil money penalty as this was also not resolved by the U.S. District Court order. That the Administrator chose not to join this allegation in the District Court action did not preclude this court from proceeding to hearing nor did an allegation that Plaintiff failed to bargain in good faith regarding a global settlement, though I determined evidence of such may be admissible as to the amount of any penalty approved by this court.

combined investigation resulted in back wages and overtime to 35 employees totally \$14,477.06 and a total CMP of \$38,500 for violating Sections 6 and 7 of the FLSA. (AX 10 at 23).

The same WHD investigation also found recordkeeping and employment violations of the child labor provisions of the FLSA involving a single minor and imposed \$3,800 in civil money penalties. (AX 4 at 1).

The WHD had previously investigated Valparaiso Transmission and John Morgavan in 2005, finding the same minimum wage and overtime violations as the 2012-2014 investigation. At the conclusion of that 2005 investigation, Morgavan agreed to future FLSA compliance. (Tr. 8).

On March 1, 2017, a federal district court entered judgement against Respondents ordering them to pay \$14,477.06 in back wages and overtime to the 35 Valparaiso Transmission and L & W Auto Salvage employees identified in the WHD investigation and liquidated damages in an amount equal to the unpaid compensation, or an additional \$14,477.06, to the same 35 employees. (AX 10 at 22-23). The District Court did not address the assessed civil money penalties or the alleged child labor act violations. Respondents withdrew their appeal of the district court Decision and Order.

John Morgavan's son, Alex, was born on November 14, 1996. (RX K at 2). No later than 2012, Alex Morgavan has been a part-owner of 5 M's. (Tr. 168-69, 183-84). During the period October 1, 2013 to March 1, 2014, Alex Morgavan worked part-time at Valparaiso Transmission and L & W Auto Salvage. (Tr. 149-151). At his father's direction, Alex's duties included sweeping floors, washing cars, cleaning the garage, and moving vehicles from one onsite location to another onsite location. (Tr. 44, 153). Alex did not receive any pay during this period and no W-2 form was provided to him or taxes withheld or paid on his behalf. (Tr. 175).

The FLSA prohibits employers from employing "any oppressive child labor in commerce or . . . in any enterprise engaged in commerce." 29 U.S.C. § 212(c). The Secretary of Labor is authorized to determine occupations "particularly hazardous for the employment of children between the ages of sixteen and eighteen years." 29 U.S.C. § 203(l). The Secretary of Labor has done so in Hazardous Occupation Order #2, which provides that the towing of vehicles on public roads or highways is a hazardous occupation and constitutes oppressive child labor. 29 C.F.R. § 570.52.

During the period November 14, 2013 to March 1, 2014, John Morgavan permitted Alex Morgavan, then 17 years old and in possession of a valid Indiana driver's license, (RX K at 1), to operate a single axle flatbed truck belonging to 5 M's to haul cars from the front of L & W Auto Salvage yard to the back. (Tr. 168). Alex Morgavan did not have any accidents or cause or suffer any injuries while operating the truck and he did not operate the truck on any public roads or highways. (Tr. 153). Alex Morgavan did operate Respondent's truck on public roads or highways after turning age 18 and obtaining an Indiana State chauffeur's license. (Tr. 155). Alex Morgavan did receive pay for working at 5 M's or one of its businesses after turning age 18. (Tr. 175). Alex Morgavan is the only person under the age of 18 who has ever worked at any of Respondent's businesses. (Tr. 91).

During the period October 1, 2013 to March 1, 2014, Respondents did not maintain any records at the Valparaiso Transmission worksite or other 5 M's property documenting Alex Morgavan's date of birth, or provide such records to WHD when asked during the investigation. (Tr. 84).

The Administrator, WHD assessed \$3,100.00 in civil money penalties against Respondents for allowing Alex Morgavan to drive a tow truck in violation of Section 12(c) of the FLSA and \$700.00 in civil money penalties for Respondent's failure to keep or produce required records of Alex Morgavan's date of birth during the period October 1, 2013 through March 1, 2014, in violation of section 11(c) of the FLSA. (AX 15 at 1).

The maximum CMP for violating Hazardous Occupation Order #2 is \$1,550.00. The Administrator doubled this amount to \$3,100.00 for Respondent's failure to ensure future compliance. The Administrator again doubled the maximum CMP of \$350.00 for Respondents' failure to ensure future compliance in assessing the \$700.00 penalty for the single recordkeeping violation. The Administrator did not apply any mitigating factors in calculating these penalties because Respondent violated a hazardous order and did not commit to future compliance. (AX 15 at 1).

Because the Administrator determined Respondents' conduct to be repeated or willful, the maximum CMP that could be assessed for a violation of sections 6 and 7 was \$1,100 per individual employee. (Tr. 112). In determining the amount of the civil money penalty to assess for the Section 6 (minimum wage) and 7 (overtime) violations, the Administrator multiplied the maximum CMP of \$1,100 by the number of affected employees. (Tr. 112-13). There were 14 affected employees at Valparaiso Transmission due back wages and 21 affected employees at L & W salvage, or a CMP of \$15,400 for Valparaiso Transmission and \$23,100 for L & W, for a total penalty of \$38,500.⁷ The reason the Administrator did not apply any factors that would tend to mitigate the penalties was because Respondents refused to pay the back wages owed and did not agree to future compliance. (Tr. 113).

The reason Respondents refused to pay the back wages assessed by the Administrator was because Respondent believed, albeit unreasonably, the 35 affected employees were auto service providers and thus exempt from the minimum wage and overtime provisions of the FLSA. (RX L at 1).

Respondent currently employs a total of 5 individuals. (Tr. 172).

Conclusions of Law and Discussion

Penalty for Failure to Pay Required Wages and Overtime

This Office has jurisdiction to make "a determination of whether the respondent has committed ... a repeated or willful violation of section 6 or section 7 of the Act, and the appropriateness of the penalty assessed by the Administrator." 29 C.F.R. § 580.12(b). A civil

⁷ These 35 employees are not service providers under *Encino Motorcars v. Navarro*, 138 S.Ct. 1134 (2018).

money penalty up to \$1,100 per violation may be assessed against any person who repeatedly or willfully violates section 6 or section 7 of the FLSA. 29 C.F.R. § 578.3(a).

Repeated violations are defined as violations

- (1) [w]here the employer has previously violated section 6 or 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division . . . that the employer allegedly was in violation of the provisions of the Act; or
- (2) [w]here a court or other tribunal has made a finding that an employer has previously violated section 6 or 7 of the Act

29 C.F.R. § 578.3(b).

Willful violations are defined as violations “where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act.” 29 C.F.R. § 578.3(c)(1). Conduct is deemed knowing “if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful.” 29 C.F.R. §578.3(c)(2). Conduct is “deemed to be in reckless disregard of the requirements of the Act . . . if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.” 29 C.F.R. § 578.3(c)(3).

A civil money penalty assessed for repeated or willful violations of section 6 or 7 must take into consideration “the seriousness of the violations and the size of the employer’s business,” 29 C.F.R. § 578.4(a), and may take into account other relevant factors. 29 C.F.R. § 578.4(b) contains an illustrative list of factors, such as whether the employer has made good faith efforts to comply with the FLSA and the employer’s explanation for the violations, a previous history of violations, the employer’s commitment to future compliance, the interval between violations, the number of employees affected and whether there is any pattern to the violations.

An ALJ has the authority to consider all factors delineated in the regulations and determine the appropriateness of the assessed penalty, and may affirm, deny, reverse or modify, in whole or in part, the determination of the Administrator. 29 C.F.R. § 580.12(b).

As I previously found Respondent’s conduct repeated or willful, the sole remaining issue for the Section 6 and 7 violations is the amount of the civil money penalties. The Administrator arrived at the \$38,500 penalty by multiplying the maximum penalty of \$1,100 for each violation by 35, the number of employees due back wages. The Administrator did not take into account any mitigating factors. I do so here.

At the time of the violations, the size of the Employer’s business was less than 100 and currently employs only 5 individuals. Seven years elapsed between the 2005 investigation and the current investigation. Respondent failed to pay the 35 employees a total of \$14,477.06 in required minimum wages and overtime from October 7, 2012 to October 5, 2014. That underpayment only amounts to about \$414 per employee over a two year period. While Respondent did refuse to pay

the back wages and overtime due, the refusal stems from Respondent's honest, though erroneous, belief that the 35 employees were exempt under the FLSA as auto service providers. Of course, militating against a reduction is the fact that Employer still believes its former employees are exempt and not due back wages.

I find an appropriate CMP under the current circumstances is \$250 for each of the 35 violations, or \$8,750 in total.

Violations of Child Labor Provisions

The Department of Labor's Hazardous Occupations Order No. 2 provides, in pertinent part, that the occupations of motor-vehicle driver⁸ and outside helper on any public road or highway "are particularly hazardous for the employment of minors between 16 and 18 years of age" and are, with limited exceptions, prohibited. 29 C.F.R. § 570.52(a). The towing of a vehicle on public roads and highways is prohibited under all circumstances. 29 C.F.R. § 570.52(b)(5).

Employers subject to the FLSA must maintain records of an employee's date of birth if under the age of 19. 29 CFR § 516.2(a)(3). Such records must be maintained at the place of employment or centralized recordkeeping offices and must be available for inspection by the WHD investigator. 29 C.F.R. § 516.7(b). Failure to do so is a violation of Section 11(c) of the FLSA. 29 C.F.R. § 579.3(a)(5). During the period October 1, 2013 to March 1, 2014, Respondents did not maintain any records at the Valparaiso Transmission worksite or other 5 M's property documenting Alex Morgavan's date of birth, or provide such records to WHD when asked during the investigation. Accordingly, the Administrator assessed a CMP. At the time the CMP was assessed for this violation, the maximum penalty was \$350.00. The WHD Administrator doubled this amount because of Respondent's failure to ensure compliance with child labor provisions going forward. 29 CFR § 579.5.

A civil money penalty assessed for violations of section 12 related to child labor must consider the size of the business, number of employees, history of prior violations, evidence of willfulness or failure to take precautions to avoid violations, the number of minors illegally employed, age of the minors so employed, occupations, exposure to hazards and any resultant injury, and hours of the day in which it occurred. Where appropriate, the ALJ must determine whether the violation is "de minimis," whether the person charged has given credible assurances of future compliance, and whether a CMP under the circumstances is necessary to achieve the objectives of the Act. 29 C.F.R. § 579.5(d)(1).

This Office has jurisdiction to make "a determination of whether the respondent has committed a violation of section 12 . . . and the appropriateness of the penalty assessed by the Administrator." 29 C.F.R. § 580.12(b).

As I find Alex Morgavan did not drive the flatbed truck on a public road, there is no violation of Hazardous Order No. 2 and no violation of section 12, the sole basis given by the

⁸ The term motor vehicle means any automobile, truck, truck-trailer, trailer, semitrailer, motorcycle or similar vehicle. 29 C.F.R. § 570.52(c)(1). The term driver means any individual who, in the course of employment, drives a motor vehicle at any time. 29 C.F.R. § 570.52(c)(2).

Administrator for the \$3,100 CMP. Given this finding, I need not decide whether a flatbed truck is a “tow truck” or what constitutes the “towing” of vehicles. I need not decide whether a minor owner of a business is subject to the child labor provisions of the FLSA. Finally, I need not reconcile the apparent conflict between parental rights under state and federal law allowing a parent to make decisions as to care, custody and control of their child in a family business and the child labor provisions of the FLSA.

The Administrator arrived at the assessed \$700.00 CMP for the recordkeeping violation by doubling the \$350 maximum penalty because Respondent violated a hazardous order and failed to commit to future compliance. The Administrator did not consider any mitigating factors.

I find this penalty excessive under the circumstances. As noted above, I find that Respondent did not violate a hazardous order and I find it unlikely the Administrator would have proceeded on the recordkeeping violation alone. There is no evidence of any similar recordkeeping violations committed by Respondent. The instant violation involved a single individual, the 17-year-old son of the Respondent. The evidence indicates that he was the only employee under age 18 who has ever worked at Respondent’s businesses. There is no evidence Respondent misrepresented his son’s age during the investigation or denied that he was under 18. The penalty was assessed in 2015 and there is no evidence that Respondent has employed minors since. Rather than verbally agree to future compliance, Respondent’s actions demonstrate he has. Accordingly, I find the recordkeeping violation in this case de minimis and the assessed \$700.00 penalty unnecessary to achieve the Act’s objectives.

Conclusion

While I find Respondents’ violations of sections 6 and 7 of the FLSA repeated or willful, under the circumstances, I reduce the Administrator’s assessed \$38,500.00 CMP to \$8,750.00. The Administrator’s finding of a violation of Hazardous Order No. 2 is reversed and the \$3,100.00 CMP set aside. While the Administrator’s determination that Respondent violated the recordkeeping provisions of the FLSA is affirmed, the assessed \$750.00 civil money penalty is set aside.

Order

Respondents are liable to pay a civil money penalty in the amount of \$8,750.00. The amount is due within 45 days of the date this decision becomes final, payable by certified check or money order to “Wage and Hour Division, U.S. Department of Labor” and mailed to: Wage and Hour Division, U.S. Department of Labor, P.O. Box 2638, Chicago, IL 60690-2638.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Administrative Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days of the date of issuance of the administrative law judge's decision. *See* 29 C.F.R. § 580.13. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

At the time you file the appeal with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. *See* 29 C.F.R. § 580.13.

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within

such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no appeal is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 580.12(e).