

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES,)	
)	No. 65729-1-1
)	
Respondent,)	DIVISION ONE
)	
v.)	UNPUBLISHED OPINION
)	
MORRISON KNUDSEN,)	
)	
Appellant.)	FILED: October 24, 2011
)	

Grosse, J. — This is the second time this case has come before us. It involves safety and health violation citations issued to Morrison Knudsen by the Department of Labor and Industries (the Department) under the Washington Industrial Safety and Health Act of 1973 (WISHA), chapter 49.17 RCW, for work on the Harbor Island Terminal 18 Redevelopment Project. In the first case,¹ this court upheld the superior court’s finding that the work was done at an “uncontrolled hazardous waste site” and that Morrison Knudsen was engaged in a clean-up operation as defined in Part P of former WAC 296-62, the hazardous waste regulations.² We remanded to the Board with directions to abide by the order of the superior court and directed the Board to apply Part P.

¹ Dep’t of Labor & Indus. v. Morrison Knudsen (Knudsen I), 130 Wn. App. 27, 121 P.3d 726 (2005), review denied, 156 Wn.2d 1037 (2006).

² At the time this case was before the Industrial Appeals Judge, the Board of Industrial Insurance Appeals (Board), and the trial court, the pertinent sections of the Washington Administrative Code (WAC) were former WAC 296-62-300 through -3195 (1999). Since that time, the hazardous waste rules have been repealed and recodified, with minor amendments not at issue here, in former chapter 296-843 WAC (effective 5/1/2004). Because the project, the citations, and the appeals were based on the prior provisions of the WAC, this opinion will refer to those rules and regulations. See Knudsen I, 130 Wn. App. at 29 n.1.

On remand, the Board concluded that Part P applied to only a small portion of Morrison Knudsen's work. The Board dismissed all but three violations. The Board reduced those three violations to non-serious. The Department appealed to the superior court. Judge Erlick again reversed the Board, holding that the Board had failed to follow the law of the case whereby this court determined that Harbor Island was an uncontrolled hazardous waste site and that the employer was performing a clean-up operation. Morrison Knudsen appeals.

The facts of this case are well known to the parties and will not be set forth here. We find the superior court's findings more than adequately reflect the record of proceedings before the Board. And, those findings amply support the superior court's conclusions of law. We adopt the findings and conclusions of the superior court in their entirety. Accordingly, we affirm the trial court's decision and, for the second time, remand this case to the Board with instructions to abide by the order of the superior court.

Grosse, J.

WE CONCUR:

Erington, J.

Cox, J.

