

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,	)	OSHRC DOCKET NO.
	)	
Complainant,	)	10-1705
	)	
v.	)	REGION IV
	)	
SEA WORLD OF FLORIDA, LLC,	)	
	)	
Respondent.	)	

**SECRETARY'S PRE-HEARING EXCHANGE**

A. Unresolved issues of law and fact

Citation 2, Item 1, Instance (a)

1. Whether Respondent recognized the struck-by and drowning hazards presented by permitting its trainers to have unprotected contact with Tilikum during "dry work" performances.

2. Whether prohibiting trainers from having any unprotected contact with Tilikum during "dry work" performances – as they have for more than one and one-half years – is a feasible means of materially reducing the allegedly recognized hazards.

Citation 2, Item 1, Instance (b)

3. Whether Respondent's recognized the struck-by and drowning hazards presented by permitting its trainers to have unprotected contact with the killer whales other than Tilikum during "water work" and "dry work" performances.

4. Whether prohibiting trainers from having any unprotected contact with killer whales during "water work" performances – as they have for more than one and one-half years – is a feasible means of materially reducing the allegedly recognized hazards.

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5. Whether prohibiting trainers from having any unprotected contact with killer whales during "dry work" performances is a feasible means of materially reducing the allegedly recognized hazards.

Citation 1, Item 1

6. Whether Respondent's failure to provide a guardrail for the stairs (as alleged in the serious citation of this item) violated 29 C.F.R. 1910.23(d)(1)(iii).

Citation 3, Item 1

7. Whether Respondent's failure to provide a weather proof enclosure for the receptacle (as alleged in the other-than-serious citation of this item) violated 29 C.F.R. 1910.305(j)(2)(v).

**B. Witnesses**

1. Lara A. Padgett  
Safety and Health Compliance Officer  
OSHA Tampa Area Office  
5807 Breckenridge Parkway, Suite A  
Tampa, Florida 33610

Ms. Padgett, who was the lead OSHA inspector in this matter, would be expected to testify as to her the facts she learned during the inspection, including the bases for recommending issuance of the citations and associated penalties.

2. Les Grove  
OSHA Tampa Office Area Director  
OSHA Tampa Area Office  
5807 Breckenridge Parkway, Suite A  
Tampa, Florida 33610

Mr. Grove is the Area Director of the Tampa OSHA office who has jurisdiction over the SeaWorld of Florida Park in Orlando. Mr. Grove would be expected to testify regarding the

citations that were issued, the classification of the citations, and OSHA's recommended abatement.

3. Chuck Tompkins  
Corporate Curator of Zoological Operations  
SeaWorld Parks & Entertainment  
9205 South Park Center Loop, Suite 400  
Orlando, FL 32819

Mr. Tompkins would be expected to testify about SeaWorld's killer whale program and the risks to trainers who worked with Tilikum and with the other killer whales. He also would be expected to testify as to the incidents and injuries involving the killer whale trainers at SeaWorld facilities and the Loro Parque facility. He also would be expected to testify as to the feasible abatement measures that SeaWorld has instituted to reduce the risk of future incidents and injuries.

4. Dave Duffus, Ph.D.  
582 Judah Street  
Victoria, BC, Canada  
V8Z 2K1

Dr. Duffus would be expected to testify as an expert witness on killer whales, and provides opinions as to whether it is safe for SeaWorld's killer whale trainers to work in the pools or near to the pool edges with killer whales, including in that determination whether SeaWorld's training practice can provide sufficient certainty to make trained animals safe for human contact by providing sufficient predictability and control.

Dr. Duffus was awarded a B.Sc. Biology, (University of Regina 1978), M.Sc. Geography, (University of Regina 1984), and Ph.D. Geography, (University of Victoria 1988). His current appointment is Associate Professor with Tenure at the University of Victoria with 25 years of service. He has held an adjunct appointment in Zoology at the University of Guelph to work on

specific marine ecology studies. He served as Foreman of the Coroner's Jury in the inquest into the death of Keltie Byrne, a killer whale trainer at Sealand in Victoria, BC caused by Tilikum, the whale involved in Dawn Brancheau's death in Orlando. Through the past 25 years of marine mammal field research, killer whales and their various behaviors have been common elements of Dr. Duffus' environment.

The Secretary may call one or more of the following persons as witnesses:

- 5. Lynn Schaber  
Trainer – Shamu Stadium, SeaWorld of Florida

(b) (6) (b) (6)

Ms. Schaber was a member of the trainer group assigned to Tilikum and worked as a spotter during the Dine With Shamu show on the day of the fatal accident. Ms. Schaber would be expected to testify regarding what she observed on the day of the accident and to discuss her training and experience as a SeaWorld trainer.

- 6. Jennifer Mairot  
Supervisor – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821

Ms. Mairot held the same position as Ms. Brancheau and has information regarding her job responsibilities, her knowledge of SeaWorld's training protocols, and her understanding of the history of the killer whales housed at Shamu Stadium, including Tilikum. Ms. Mairot would be expected to testify regarding matters with her experience and knowledge as a trainer and then manager at SeaWorld of Florida.

- 7. Jay "Jan" Topoleski  
Trainer – Shamu Stadium, SeaWorld of Florida

(b) (6)

Mr. Topoleski worked with Ms. Brancheau immediately before her death. Mr. Topoleski would be expected to testify regarding his role as a spotter. Mr. Topoleski also would be expected to testify regarding the shows that were performed on February 24, 2010, the behavior of the killer whales during the show, what he observed during Tilikum's attack, and his knowledge of SeaWorld's safety protocols.

8. Craig Thomas  
Asst. Curator – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821

Mr. Thomas responded to the emergency calls after Tilikum attacked Ms. Brancheau. Mr. Thomas would be expected to testify about his efforts to assist in rescuing the victim, SeaWorld's safety and training protocols, and his knowledge of the killer whales housed at SeaWorld of Florida.

9. Brian Rokeach  
SeaWorld of California  
500 SeaWorld Drive  
San Diego, CA 92109

Mr. Rokeach would be expected to testify regarding SeaWorld of San Diego's safety and training protocols, the killer whales housed at San Diego's Shamu Stadium, his knowledge of killer whale behavior, and the hazards associated with working with killer whales. He also would be expected to testify regarding his experience working as a trainer/supervisor at Loro Parque, including what happened with the killer whale Keto and trainer Alexis Martinez in December 2009 – two months before Dawn Brancheau was killed in Orlando. Finally, he would be expected to testify about his involvement in other incidents with killer whales, including the incident with Orkid in November 2006 that is the subject of a video produced by SeaWorld in this matter.

10. Ken Peters  
SeaWorld of California  
500 SeaWorld Drive  
San Diego, CA 92109

The Secretary believes that Mr. Peters is the Assistant Curator for Shamu Stadium at SeaWorld of California. Mr. Peters would be expected to testify regarding his experience of working with the killer whales housed at San Diego's Shamu Stadium, his understanding of the safety and training protocols, and his knowledge of accidents/incidents involving killer whales at SeaWorld parks. Additionally, he would be expected to testify about his involvement in incidents with killer whales, including the incident with Kasatka in November 2006 that is the subject of a video produced by SeaWorld in this matter.

11. Mike Scarpuzzi  
SeaWorld of California  
500 SeaWorld Drive  
San Diego, CA 92109

Mr. Scarpuzzi was the Curator for Animal Training at SeaWorld of California. Mr. Scarpuzzi would be expected to testify about SeaWorld's training and safety protocols, his knowledge of incident reports involving the killer whales and the difference and similarities of Florida and San Diego's safety and training protocols.

12. Freddie Herrera  
Security Officer – SeaWorld of Florida

(b) (6)

Mr. Herrera is a security officer who was assigned to work at the Shamu Stadium on the day of the fatal accident. He would be expected to testify as to what he observed in Ms. Brancheau's performances with Tilikum on the day of the accident and previously.

13. Kelly Flaherty Clark  
Curator, Animal Training, SeaWorld of Florida

7007 SeaWorld Drive  
Orlando, FL 32821

Ms. Flaherty Clark is the Curator for Animal Training for the SeaWorld of Florida. Ms. Flaherty Clark would be expected to testify about SeaWorld's training and safety protocols in theory and as applied.

14. Kristin McMahon-Van Oss  
Asst. Supervisor – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
15. Tanner Grogan  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
16. Lauren Brown  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
17. Jeremy Rippey  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
18. Nicholas Rubino  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
19. Branden Loetz  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
20. Adriel Lott  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
21. Emma Welch

- Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
22. Shana Groves  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
23. Joseph Sanchez  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
24. Amber Seymour  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
25. Daniel Richardville  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
26. Lisa Kendra  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
27. Kelly Aldrich  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
28. Kelly Weiland  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
29. Brian Faulkner  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821
30. Kevin Krueger

Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821

- 31. Kevin Voigtman  
Trainer – Shamu Stadium, SeaWorld of Florida  
7007 SeaWorld Drive  
Orlando, FL 32821

If called as a witness, each of the foregoing persons would be expected to testify about the hazards presented by Tilikum and by working with the killer whales generally, including any incidents in which he or she was involved or about which he or she had been made aware.

- 32. Jeffrey Ventre, M.D.

(b) (6)

Dr. Ventre worked as a trainer at SeaWorld in the 1990s and became one of SeaWorld's "star" trainers. If called as a witness, Dr. Ventre would be expected to testify as to the hazards presented to trainers by SeaWorld's killer whales and the means that would effectively abate those hazards.

- 33. John Jett, Ph.D.

Dr. Jett worked as a trainer at SeaWorld in the 1990s, including as a trainer with Tilikum. If called as a witness, Dr. Jett would be expected to testify as to the hazards presented to trainers by SeaWorld's killer whales generally and Tilikum specifically, and as to the means that would effectively abate those hazards.

- 34. Darcy Murphine  
Compliance Safety & Health Officer, CAL/OSHA  
Division of Occupational Safety and Health  
Cal/OSHA San Diego District  
7575 Metropolitan Drive, Suite 207,  
San Diego, CA 92108

Ms. Murphy conducted the inspection following the 2006 incident with trainer Ken Peters and the killer whale named Kasatka. She would be expected to testify concerning what she found in her investigation regarding the incident, including the hazards involved and communicated to SeaWorld of California.

35. Kim Ashdown  
Former Trainer – Shamu Stadium, SeaWorld of Florida

The Secretary understands that Ms. Ashdown was a trainer for 12 years, and she worked at Shamu Stadium from approximately September 2009 to January 2010. If located, she would be expected to testify about her experience at Shamu Stadium, including her expressed concerns regarding working near Tilikum.

The Secretary may call any person listed as a witness by Respondent. Additionally, the Secretary reserves the right to call any witnesses made necessary by the introduction of unexpected or disclosed evidence and any witnesses necessary for impeachment or rebuttal.

**C. Exhibits**

1. Corporate Incident Reports, SeaWorld 226-777, 1150-1152, 1360-1385, 1455-1458, 2659-2669, 2722-2728.
2. SeaWorld of Orlando, Animal Training Standard Operating Procedures ("SOPs"), SeaWorld 959-1108.
3. SeaWorld Orlando, Shamu Stadium Manual, SeaWorld 1849-1927
4. Rules of Thumb for Training, SeaWorld 56
5. Video: Dine with Shamu, Feb. 24, 2010 (SEA 950)
6. Video: Kasatka and Ken Peters, Nov. 2006 (no bates number)
7. Video: Orkid and Brian Rokeach, Nov. 2006 (no bates number)
8. Video clips: "Killer Whale Aggression," produced from Chuck Tompkins tapes (no bates number)

9. Video: Shows at SeaWorld Florida on Feb. 23 and 24, 2010 (no bates number)
10. Report of Autopsy of Dawn Brancheau, SEA 1359-1365
11. Report of Autopsy of Daniel Dukes, SEA 1367-1376
12. Tilikum Animal Profile (June 2010), SeaWorld 1365-1366
13. Killer Whale Animal Profiles (2009), SeaWorld 934-958
14. Jenny Mairot interview statement (to OSHA), SEA 1262-1265
15. Statement made by Lynn Schaber to the Orange County Sheriff's Office, SEA 1073 (written)
16. Statement made by Lynn Schaber to the Orange County Sheriff's Office, SEA 1113 (oral)
17. Statement made by Fredy Herrera to the Orange County Sheriff's Office, SEA 1070 (written)
18. Statement made by Fredy Herrera to the Orange County Sheriff's Office, SEA 1113 (oral)
19. Kristen McMahon-Van Oss interview statement (to OSHA), SEA 1272-1275
20. Todd and Suzanne Connell's statements to OSHA, SEA 1352-1357
21. Four AVI clips of Tilikum (produced by SeaWorld to the Secretary) (no bates numbers)
22. Video: Steve Aibel and Kyuquet (produced by SeaWorld without bates number) (video of the incident only – not the news stories portions – to be played without sound)
23. Video: Underwater camera in G Pool, February 24, 2010 (no bates number)
24. SeaWorld of Florida training materials, SEA 625-681
25. Loro Parque Killer Whale Service and Loan Agreement, SeaWorld 2681-2721
26. Shamu Stadium Orientation checklists, SeaWorld 1708-1710
27. Photos of G Pool ("Dine With Shamu" pool), SeaWorld 2670-2680
28. Google Maps - Shamu Stadium

29. Cal OSHA investigation file 2006, SEA 2183-2579
30. Q&A for interactions with guests, SeaWorld 1341-1353
31. Spotter Responsibilities, SeaWorld 1735-1737
32. Tilikum Monthly Recaps, SeaWorld 130-189
33. Tilikum - Animal Training Record, SeaWorld 82-123
34. Expert Report of D.A. Duffus (no bates numbers)
35. Shamu Staff Development Checklist, SeaWorld 14-15
36. Shamu Stadium Task Approval Checklist, SeaWorld 16-18
37. Trainer Approvals, SeaWorld 19-23, 25-28, 77-81
38. Photographs depicting missing guardrails on bridge to the stage, SEA 1243-1246
39. Photographs depicting missing weather proof enclosures, SEA 1247-1250
40. Photograph from OSHA file depicting employee exposure to Tilikum, SEA 1242
41. Photographs depicting Tilikum and depicting how close employees would get to him before the incident, SEA 2580-2598, 2601 (copies produced to Respondent with this prehearing exchange)
42. Photographs depicting other trainer exposures to killer whales, SEA 2599-2600 2601 (copies produced to Respondent with this prehearing exchange)
43. Photograph showing use of a "target pole" in training, SEA 2602 (copy produced to Respondent with this prehearing exchange)
44. Jan Topoleski Statement to Orange Co. Sheriff's Office, SEA 1065-1066
45. Internet (YouTube) video of whales attacking and killing a pelican:  
<http://www.youtube.com/watch?v=52o5yV6G7tY> (website)
46. Clinical Notes Report (Tilikum), SeaWorld 191-224
47. Shamu Stadium Manual, SeaWorld of California, SeaWorld 1459-1501

- 48. Marine Mammals Safety Guidelines Manual (SeaWorld San Diego), SeaWorld 1578-1676
- 49. Animal Training Safety Guidelines, SeaWorld 1712-1841
- 50. Animal Training Department Response Procedures (SeaWorld San Antonio), SeaWorld 2248
- 51. Marine Mammals Safety Guidelines Manual (SeaWorld San Antonio), SeaWorld 2260-2370

The Secretary may offer any exhibit listed by Respondent. Additionally, the Secretary reserves the right to offer any exhibit made necessary by the introduction of unexpected or disclosed evidence and any exhibits necessary for impeachment or rebuttal.

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SOL Case No. 10-09014

UNITED STATES OF AMERICA

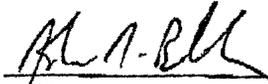
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SEA WORLD OF FLORIDA, LLC,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

I certify that the foregoing Secretary's Pre-Hearing Exchange was served this 13th day of September, 2011, by facsimile, addressed to:

Ms. Carla Gunnin Stone  
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Atlanta, Georgia 30303-1557

  
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JOHN A. BLACK  
Attorney

SOL Case No. 10-09014

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DATE: September 13, 2011  
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SUBJECT: Secretary of Labor v. SeaWorld of Florida, LLC  
OSHC Docket No. 10-1705  
NO. OF PAGES: 15 (Including Cover Sheet)

**PLEASE CALL OR HAND DELIVER THE FOLLOWING DOCUMENT IMMEDIATELY TO:**

NAME: Honorable Ken S. Welsch  
Administrative Law Judge

TELEPHONE: Telephone: 404.562.1640  
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