

State of New Mexico
 Environment Department
 Occupational Health and Safety Bureau
 525 Camino de los Marquez, Suite 3
 Santa Fe NM 87505
 Phone: (505) 476-8700 Fax: (505) 476-8734



Citation and Notification of Penalty

To:
 Kabana Inc
 AND ITS SUCCESSORS
 616 I- 40 S Frontage Road
 Albuquerque, NM 87102

Inspection Number: 1645789
Inspection Date(s): 01/24/2023-01/24/2023
Issuance Date: 05/10/2023

Inspection Site:
 616 I- 40 S Frontage Road
 Albuquerque, NM 87102

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the Environment Department, Occupational Health and Safety Bureau at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting-The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference- An informal conference is not required. However, at the request of an employer, affected employee, or representative of employees, the Bureau Chief or the Bureau Chiefs designee may hold an informal conference. At this conference any issues raised by an inspection, citation, proposed penalty, proposed petition for modification of abatement date or proposed petition for variance may be discussed. If you intend to request an informal conference, take care to schedule it early enough to allow time to contest after the informal conference discussion, should you decide to do so.

When the conference is requested by an employer, an affected employee or representative shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee. When the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee.

The request for an informal conference and the informal conference meeting shall not extend or modify in any manner:

- 1) an abatement date established in the citation;
- 2) the deadline for an employer to file a notice of contest;
- 3) any other filing deadline related to the citation; or
- 4) any matter pending before the bureau.

Once an employer files a notice of contest, a petition for modification of the abatement date, a request for a commission hearing, a petition for variance, or other filing with the Occupational Health and Safety Review Commission or the Environment Department, the opportunity for an informal conference is no longer available.

Right to Contest- You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Bureau Chief in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. It is recommended that the Notice of Contest be filed via "Certified Mail".

Penalty Payment- Penalties are due within 15 working days of receipt of this notification unless contested. Make your check or money order payable to the Environment Department, Occupational Health and Safety Bureau. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For violations which you do not contest, you should notify the Occupational Health and Safety Bureau (OHSB) that each cited violation has been abated. To certify abatement, you should complete the "Description of Corrective Action Taken" box which follows each citation and sign the statement on the last citation page. You are not required to certify abatement if the compliance officer observed that abatement has occurred during the on-site inspection. The citation may indicate that you should submit additional documentation such as photographs, purchase orders, copies of written programs, etc. Failure to return all completed forms and documents to the Program Manager no later than 10 days after the abatement date may result in additional penalties.

You are also required to inform your employees about abatement activities by posting a copy of each document submitted to OHSB or a summary of the document near the place where the violation occurred. Documents must remain posted for 3 working days after submission to OHSB.

Employer Discrimination Unlawful- The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Environment Department, Occupational Health and Safety Bureau at the address shown above.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Environment Department, Occupational Health and Safety Bureau at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

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Inspection Date(s): 01/24/2023-01/24/2023
Issuance Date: 05/10/2023

Citation and Notification of Penalty

Company Name: Kabana Inc
Inspection Site: 616 I- 40 S Frontage Road Albuquerque, NM 87102

Citation 1 Item 1 Type of Violation: **Serious**

Section 50-9-5(A), NMSA 1978 (New Mexico Occupational Health and Safety Act): Every employer shall furnish to each of his employees' a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. On or about January 24, 2023, Employees are exposed to flammable chemicals where an ash tray with cigarette buds were located on a workstation within 4 inches from a full squeeze bottle of acetone. Employees were exposed to fire hazards while working in the vicinity of an employee who was smoking next to a squeeze bottle of acetone. Acetone is recognized as a highly flammable substance within the chemical industry, because the acetone was labeled with a pictogram showing that acetone is a flammable substance. When acetone is exposed to an open flame source such as a cigarette a fire is feasible which could result in the death of employees. One feasible and acceptable method to correct this hazard is: Employees will only smoke within designated areas during breaks and lunch hours. Pursuant to the Albuquerque Clean Indoor Air Ordinance § 9-5-5-4 SMOKING Prohibited to smoke in any indoor workplace or indoor public space.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

June 06, 2023
\$4,800.00

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Citation and Notification of Penalty

Company Name: Kabana Inc
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Citation 1 Item 2 a Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.215(a)(4): Work rests. On offhand grinding machines, work rests shall be used to support the work. They shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted closely to the wheel with a maximum opening of one-eighth inch to prevent the work from being jammed between the wheel and the rest, which may cause wheel breakage. The work rest shall be securely clamped after each adjustment. The adjustment shall not be made with the wheel in motion.

Kabana is exposing employees to caught in, caught between, and struck-by hazards in that the tool rest was removed while working on grinder. The employer did not ensure the tool rest was adjusted after wear of the wheel to the required 1/8 of an inch to prevent possible work jam between the tool rest and the wheel.

PROOF OF ABATEMENT:

Date Corrected:

Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

June 06, 2023
\$3,600.00

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Citation and Notification of Penalty

Company Name: Kabana Inc
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Citation 1 Item 2 b Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.215(b)(9): Exposure adjustment. Safety guards of the types described in Subparagraphs (3) and (4) of this paragraph, where the operator stands in front of the opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b)(3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch. (See Figures O-18, O-19, O-20, O-21, O-22, and O-23.)

Kabana is exposing employees to caught in, caught between, and struck-by hazards in that the tongue guard was removed while working on grinder. The employer did not ensure the tongue guard was adjusted properly. Distance between the wheel and tongue guard exceeded the required 1/4 inch.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

June 06, 2023
\$0.00

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I attest that all corrective actions contained in this document are accurate and affected employees have been informed of the abatement.

Signature

Date

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DocuSigned by:

Gregory Marquez

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Gregory J. Marquez, Program Manager

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INVOICE

Company Name: Kabana Inc

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Issuance Date: 05/10/2023

Summary of Penalties for Inspection Number: 1645789

Citation 1 Item 1, Serious	\$4,800.00
Citation 1 Item 2a, Serious	\$3,600.00
Citation 1 Item 2b, Serious	\$0.00

TOTAL PROPOSED PENALTIES: **\$8,400.00**

Please remit payment promptly to this office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: Environment Department, Occupational Health and Safety Bureau. Please indicate OHSB's Inspection Number (indicated above) on the remittance.

OHSB does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

DocuSigned by:
Gregory Marquez
309D20B21A80461...

Gregory J. Marquez, Program Manager

5/10/2023

Date