

# THE INDUSTRIAL COMMISSION OF ARIZONA



## LEGAL DIVISION

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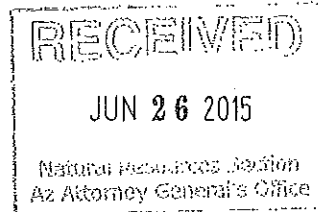
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LAURA L. MCGRORY, DIRECTOR

June 23, 2015

The Honorable Michael A. Mosesso  
ALJ Division  
Industrial Commission of Arizona  
800 W. Washington Street, 4<sup>th</sup> Floor  
Phoenix, AZ 85007



\*15 JUN 23 AM 08:54 10P/ALJ/FAK

Re: ADOSH vs. ARIZONA STATE FORESTRY DIVISION  
Inspection No: L3419-317242683

Dear Judge Mosesso:

Enclosed for filing please find the parties' jointly submitted proposed Findings & Order.

Thank you for your consideration in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Valli Goss".

Valli Goss  
Attorney for ADOSH

Enclosure

c: David Selden, Esq. (by mail and email)  
Joy Hernbrode, Esq. (by mail and email)

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

DIVISION OF OCCUPATIONAL SAFETY &  
HEALTH OF THE INDUSTRIAL  
COMMISSION OF ARIZONA,

Complainant,

v.

STATE OF ARIZONA, ARIZONA STATE  
FORESTRY DIVISION,

Respondent.

NO. L3419-317242683

**FINDINGS AND ORDER  
APPROVING SETTLEMENT  
AGREEMENT**

*Assigned to ALJ Michael A. Mosesso*

On July 1, 2013 through December 3, 2013, the Division of Occupational Safety and Health of the Industrial Commission of Arizona ("ADOSH" or "Division") conducted an inspection of the worksite of Respondent Arizona State Forestry Division ("ASFD" or "Respondent") located at the Weaver Mountains/Yarnell Hill Fire, Yarnell, Arizona 85362, Inspection No. L3419-317242683.

This inspection resulted in ADOSH issuing a Citation and Notification of Penalty to the Respondent on December 5, 2013, specifically:

1. ADOSH issued Citation 1, Item 1 alleging a Willful Serious violation of A.R.S. § 23-403(A). ADOSH assessed a monetary penalty in the amount of \$70,000.00 for Citation 1, Item 1.
2. ADOSH also issued Citation 1, Item 1 with an additional \$25,000.00 penalty under A.R.S. § 23-418.01 for each of the nineteen employees who died, in the total amount of \$475,000.00.
3. ADOSH issued Citation 2, Item 1 alleging a Serious violation of A.R.S. § 23-403(A). ADOSH assessed a monetary penalty in the amount of \$7,000.00 for Citation 2, Item 1.

4. ADOSH issued Citation 2, Item 2 alleging a Serious violation of A.R.S. § 23-403(A). ADOSH assessed a monetary penalty in the amount of \$7,000.00 for Citation 2, Item 2.

On December 19, 2013, Respondent filed a timely notice of contest and petition for hearing with respect to the Citations.

Hearing is set for October 13, 2015 in Phoenix.

During the proceedings, ADOSH was represented by attorney Valli Goss, and Respondent by David Selden of the Cavanagh Law Firm and Joy Hernbrode of the Arizona Attorney General's Office.

On June 3, 2015, the parties filed a Settlement Agreement stating their desire to settle this matter without the necessity of a formal hearing.

The Tribunal, having considered the entire file and all related matters, now enters the FINDINGS AND ORDER as follows:

#### FINDINGS

1. This Settlement Agreement is in furtherance of the purpose of industrial safety and the Arizona Occupational Safety and Health Act of 1972.

2. This Settlement Agreement is a full and final determination of this matter and obviates any need for and constitutes a waiver of the right to hearing or any alternate determination on the merits of the citations, classifications, and stated penalties.

#### ORDER

1. The parties' Settlement Agreement filed on June 3, 2015, including the no admission of liability provisions in paragraphs 1, 4 and 9 of the Settlement Agreement is approved, adopted in its entirety, and incorporated by reference in this Order.

2. Citation 1, Item 1, the additional penalties under A.R.S. § 23-418.01, Citation 2, Item 1, and Citation 2, Item 2 are amended by reclassifying them into one citation as follows:

Citation 1, Item 1 Type of Violation: Unclassified

A.R.S. § 23-403: The employer did not furnish to each of its employees employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm, in that firefighters were exposed to the risk of smoke, fire, serious injury or death.

- a. On June 30, 2013, personnel assigned to the Yarnell Hill Fire and under the management of the Arizona State Forestry Division failed to re-evaluate, re-prioritize and update fire suppression strategies and plans after fire behavior and weather conditions dramatically changed, which resulted in firefighter exposure to serious hazards resulting from a rapidly progressing, wind-driven wildland fire.

3. In lieu of payment of the assessed penalties to ADOSH, Respondent shall provide enhanced safety training for incident command management, additional fire suppression activities, and improved wildland firefighter safety, and shall pay to the dependents of each of the nineteen firefighters who experienced fatal injuries the aggregate sum of Ten Thousand Dollars (\$10,000.00) for each decedent, unless waived as described herein. With respect to the twelve decedents of the named Plaintiffs in *Ashcraft et al. v. State of Arizona, et al.*, U.S. District Court for the District of Arizona, Cause No. CV-14-02308, this obligation shall be satisfied upon the execution of a waiver by each Plaintiff in that case. With respect to each of the remaining seven decedents, this payment obligation shall be satisfied upon payment to the spouse; or if no spouse, to the children pro rata; or if no children, to the parents; the aggregate amount of such payments shall not exceed \$70,000.00.

4. Respondent's request in the Settlement Agreement to withdraw its Request for Hearing with regard to Inspection No. L3419-317242683 is granted with prejudice.

5. The hearing set for October 13, 2015 is cancelled.

6. Each party is to bear its own attorney's fees and costs. It is further ordered

that ADOSH is not responsible for any portion of mediator Chris Skelly's fees.

**NOTICE:** Any party dissatisfied with this Decision may request review to the Review Board by filing a written request with the Administrative Law Judge Division of the Industrial Commission within fifteen (15) days after mailing of this Decision as provided by Arizona Revised Statutes, §§ 23-421(C) and 23-423 (A) and (B). If no such request is made within the time provided, this Decision becomes final.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

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Michael A. Mosesso  
Vice Chief Administrative Law Judge