MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, December 8, 2022 - 1:00 p.m.

Present: Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr. Vice Chair

D. Alan Everett

Commissioner

James Ashley

Director

Gaetano Testini

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief/Public Information Officer

Jessie Atencio

ADOSH Director (Telephonic)

Victoria Medina

ADOSH Compliance

Ernesto Garcia

ADOSH Compliance

Kara Dimas

Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Kristian Cirerol (CMR Construction LLC) and Kaila Hopkins (Snell & Wilmer).

Approval of Minutes of December 1, 2022 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the December 1, 2022 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

- 1. 2CNP22/23-0980 Ainsworth Phoenix LLC \$1,000
- 2. 2CNP22/23-1013 All Terrain Demolition LLC \$1,000
- 3. 2CNP22/23-0836 Modern Desert Landscapes LLC \$1,000

Commissioner Everett moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Mr. Atencio stated he was removing Brady Industries of Arizona, LLC dba Brady IFS and will not be bringing it back to the Commission as it was under the threshold for Commission review.

Beacon Group, Inc.

308 W Glenn St

Fatality

Years in Business:

Empl. Covered by Inspection:

54 5

Tucson, AZ 85705

308 W Glenn St

Tucson, AZ 85705

Inspection No:

Site Location:

FC-2022-A7576-0021

Inspection Date:

September 9, 2022

Mr. Atencio summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending a citation for Beacon Group, Inc. because the victim was not an employee, but was rather a client of the employer.

Vice Chair Hennelly and Mr. Atencio discussed the employee relationship and went through a detailed examination of the requirements for someone to be an employee of the organization.

Vice Chair Hennelly noted the caption of the document showed 500 employees in the establishment and Mr. Atencio confirmed it was a reference to employees and clients.

Vice Chair Hennelly commented that the organization discusses with guardians or parents or physicians giving treatment the susceptibility of a client to the environmental conditions they are exposed to and in this case the person's mother was the contact. Mr. Atencio noted it was, but in this case there were two medications which neither the coaches nor management were aware of, that the client was taking.

The Commission took no action.

Wide World of Maps, Inc.

17230 N Cave Creek Rd

Phoenix, AZ 85032 Site Location: Fatality/Catastrophe

Years in Business:

Empl. Covered by Inspection:

47 3

17230 N Cave Creek Rd

Phoenix, AZ 85032

Inspection No:

FC-2022-R0175-0001

Inspection Date:

August 16, 2022

SERIOUS – Citation 1 - Item 1a –

a) 17230 N Cave Creek Rd, Phoenix: Employees were exposed to chemicals such as, KILZ® 3 Premium Interior/Exterior Primer, without a written hazard communication program. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$975.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 1b –

a) 17230 N Cave Creek Rd Phoenix AZ 85032: Employees utilized hazardous products such as KILZ® 3 Premium Interior/Exterior Primer, without receiving training on the hazards of working with such products. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00 TOTAL PENALTY - \$975.00

Formula Amt. - \$600.00 TOTAL FORMULA AMT. - \$1,200.00

Complaint

Years in Business:

Empl. Covered by Inspection:

20

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties unrelated to the fatality, and reviewed the photographs.

The Commissioners had some questions with respect to the citations proposed and other possible citations. Mr. Atencio explained there were some unresolved questions in the file.

Vice Chair Hennelly made a motion to remand to ADOSH for further review. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Antech Corporation

4261 S Country Club Rd Tucson, AZ 85714

Site Location:

4261 S Country Club Rd

Tucson, AZ 85714

Inspection No: Inspection Date:

CP-2022-T3633-0060

November 7, 2022

REPEAT - SERIOUS - Citation 1 - Item 1a -

a) Spray finishing area: Employees used products including paints and powder coats, and the company had not developed and implemented a written hazard communication program. 29 CFR 1910.1200(e)(1)

Antech Corporation was previously cited for a violation of this occupational safety and health standard or its equivalent standard, no hazard communication program, which was contained in ADOSH Inspection Number 1462697, Citation Number 2, Item Number 3 and was affirmed as a final order on September 9, 2020, with respect to a workplace locate at 4261 S Country Club Rd, Ste 101, Tucson, AZ, 85714.

Div. Proposal - \$6,216.00

Formula Amt. - \$3,108.00

REPEAT - SERIOUS - Citation 1 - Item 1b -

a) Spray finishing area: Employees used products including paints and powder coats, and safety data sheets (SDS) were not maintained at the site for these products. 29 CFR 1910.1200(g)(8)

Antech Corporation was previously cited for a violation of this occupational safety and health standard or its equivalent standard, safety data sheets not maintained, which was contained in ADOSH Inspection Number 1462697, Citation Number 2, Item Number 4 and was affirmed as a final order on September 9, 2020, with respect to a workplace locate at 4261 S Country Club Rd, Ste 101, Tucson, AZ, 85714.

Div. Proposal - \$0.00

Formula Amt. - \$3,108.00

SERIOUS – Citation 2 - Item 1a –

a) Powder coating booth: Employees sprayed powder coating on metal parts, and the booth where this work was done was constructed out of wood. 29 CFR 1910.107(b)(1)

Formula Amt. - \$3,108.00

SERIOUS – Citation 2 - Item 1b –

a) Powder coating booth: The powder coating booth did not have a visible gauge or other device to indicate if the required ventilation air flow rate was maintained. 29 CFR 1910.107(b)(5)(i) Formula Amt. - \$3,108.00 Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 1c –

a) Powder coating booth: The powder coating booth did not have the lighting installed behind glass or other transparent panels. 29 CFR 1910.107(b)(1) Formula Amt. - \$3,108.00 Div. Proposal - \$0.00

SERIOUS - Citation 2 - Item 1d -

a) Powder coating booth: Light switches installed on the north and west walls of the booth were not of explosion-proof type approved for Class I, group D locations. 29 CFR 1910.107(c)(6) Formula Amt. - \$3,108.00 Div. Proposal - \$0.00

SERIOUS - Citation 2 - Item 2 -

a) Powder coating booth: Employees who did powder coating were required to use 3M brand halfface respirators, and a respiratory protection program was not provided. 29 CFR 1910.107(c)(1) Formula Amt. - \$3,108.00 Div. Proposal - \$3,108.00

SERIOUS – Citation 2 - Item 3 –

a) Shop: A Farr brand fume and dust collector, model GSP4 and serial number 993296001, which was used to provide exhaust ventilation to the plasma cutting table, was not working. 29 CFR 1910.1000(e)

Div. Proposal - \$3,108.00 \$15,540.00 TOTAL PENALTY -

Formula Amt. - \$3,108.00 TOTAL FORMULA AMT. - \$24,864.00

Mr. Atencio discussed ADOSH's inspection, summarized the citations and proposed penalties, and reviewed the photographs.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

AZ Budget Flooring LLC

850 E Ohio St

Tucson, AZ 85714

Programmed Planned

Years in Business: Empl. Covered by Inspection:

4 2

Site Location:

4345 E University Blvd

Tucson, AZ 85705

Inspection No:

PP-2023-E7721-0067

Inspection Date:

November 16, 2022

SERIOUS – Citation 1 - Item 1a –

a) 434 E University Blvd, Tucson, AZ 85705: The employer did not have a hazard communication program for two tile setters who used Mapei brand, Ultra Tile polymer-modified mortar mix, a skin and eye corrosive. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$2,486.00

Formula Amt. - \$2,486.00

SERIOUS – Citation 1 - Item 1b –

a) 434 E University Blvd, Tucson, AZ 85705: Two tile setters used Mapei brand, Ultra Tile polymer-modified mortar mix, a skin and eye corrosive, without access to this product's safety data sheet. 29 CFR 1910.1200(g)(8)

Div. Proposal - \$0.00

Formula Amt. - \$2,486.00

SERIOUS - Citation 1 - Item 2 -

a) 434 E University Blvd, Tucson, AZ 85705: Two tile setters used Mapei brand, Ultra Tile polymer-modified mortar mix without hazard communication training. 29 CFR 1910.1200(h)(1) Formula Amt. - \$2,486.00 Div. Proposal - \$2,486.00

SERIOUS – Citation 1 - Item 3 –

a) 434 E University Blvd, Tucson, AZ 85705: Two tile setter who mixed and used who used Mapei brand, Ultra Tile polymer-modified mortar mix, a skin and eye corrosive, did not use personal protective equipment. 29 CFR 1910.95(a)

Div. Proposal - \$2,486.00

Formula Amt. - \$2,486.00

Programmed Planned

Empl. Covered by Inspection:

Years in Business:

23

3

TOTAL PENALTY -\$7,458.00 TOTAL FORMULA AMT. - \$9,944.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Vice Chair Hennelly asked for confirmation that there had been no abatement since the inspection and Mr. Atencio confirmed.

Commissioner Everett moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

CMR Construction LLC

4725 S Contractors Way

Site Location:

Tucson, AZ 85714

5761 S Park Ave

Inspection No:

Tucson, AZ 85714 PP-2022-E7721-0047

Inspection Date:

June 29, 2022

REPEAT SERIOUS - Citation 1 - Item 1 -

a) 5761 S Park Ave, Tucson, AZ 85706: Two framers installed plywood sheathing on a 20'-high roof without fall protection. 29 CFR 1926.501(b)(10)

CMR CONSTRUCTION LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard, no fall protection, which was contained in ADOSH Inspection Number 1504447, Citation Number 1, Item Number 1 and was affirmed as a final order on 02/09/2021 with respect to a workplace located at 5761 S Park Ave, Tucson AZ, 85714.

CMR CONSTRUCTION LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard, no fall protection, which was contained in ADOSH Inspection Number 1494962, Citation Number 1, Item Number 1 and was affirmed as a final order on 05/20/2021 with respect to a workplace located at 1730 W Happy Valley Rd, Phoenix, AZ, 85085.

Div. Proposal - \$4,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2 - Item 1 –

a) 5761 S Park Ave, Tucson, AZ 85714: Two framers worked around a 18"-wide by 9'-long hole located on the second floor with a 12' drop to the lower level. 29 CFR 1926.501(b)(4)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Atencio noted this one was from last week that he requested to bring back to the Commission with no changes. Mr. Atencio discussed ADOSH's inspection, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if Mr. Cirerol would like to comment. Mr. Cirerol did not make any comments.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through January 2023.

Public Comment.

There was no public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:01 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Ву

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary