

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, November 17, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	D. Alan Everett	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Jessie Atencio	ADOSH Director
	Chuck Thompson	ADOSH Compliance
	Taryn North	ADOSH Compliance
	Tom Martz	ADOSH Compliance
	Andrew Dimas	ADOSH Compliance
	Margarita Jurado	ADOSH Compliance
	James Reitmeier	ADOSH Compliance
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Wes Poorman (Artistic Paver Mfg); Dean Fox (MDK Law Group for Next of Kin); Oscar Roether (Pacific NW LLC dba Hilton Cabinets); Terry Miller (Brake Masters); Anne Ryman (Arizona Republic); Luis Saenz (Southwest Forest Products); Ileri Larios (Guilo Framing LLC); Amber Counsolley (Messner Reeves); and Kaila Hopkins (Snell & Wilmer).

Approval of Minutes of November 3, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the November 3, 2022 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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.

Artistic Paver Mfg. Phoenix, Inc.	Fatality	
1508 N VIP Blvd	Years in Business:	13
Casa Grande, AZ 85122	Empl. Covered by Inspection:	33
Site Location:	1508 N VIP Blvd	
	Casa Grande, AZ 85122	
Inspection No:	FC-2022-E7721-0041	

- a) 1440 line: A live 4"X4" electrical junction box, powering equipment, lacked a cover to prevent accidental contact by employees.
- b) 1440 line: A live 4"X4" electrical junction box, powering equipment in the paver packing area, lacked a cover to prevent accidental contact by employees. 29 CFR 1910.305(b)(2)(i)
Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 9 –

- a) Sump south of 1440 line: An unknown brand extension cord, was used to power a portable submersible pump was damaged and in need of repair. 29 CFR 1910.305(g)(2)(ii)
Div. Proposal - \$4,200.00 Formula Amt. - \$4,200.00
- TOTAL PENALTY - \$20,000.00 TOTAL FORMULA AMT. - \$21,900.00

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

Chairman Schultz and Mr. Atencio discussed that the Non-Serious citations could have been listed as Serious citations with penalties, but ADOSH did not issue them as such based on the usage of the equipment.

Chairman Schultz noted that the pictures clearly demonstrate missing guarding in particular.

Chairman Schultz checked if Mr. Poorman would like to comment.

Mr. Poorman spoke about their abatement efforts since this incident, and their efforts before this incident to bolster and strengthen the safety culture.

Mr. Poorman presented photographic abatement evidence to the Commissioners. He wanted to thank the ADOSH inspectors, and the City of Casa Grande inspectors for identifying areas ripe for safety improvements.

Chairman Schultz commented that it is obvious that they made physical changes to improve safety and improved the new employee orientation, and asked if they improved the training of existing employees.

Mr. Poorman noted that they have and are auditing and amending each safety program to include redoing the hazard assessments for each position, completing a job risk analysis, and revamping their training with the assistance of a safety consultant.

Vice-Chair Hennelly asked if prior to the incident, if there was an individual charged with overseeing safety at the facility and if there was any prior engagement of a consultant or performance of any hazard assessment at the facility prior to this incident.

Mr. Poorman responded that it was himself and the production manager who oversaw safety, and several years ago there were some assessments but not to the level needed and they are working on that now.

Commissioner LeMarr moved to amend the citation and proposed penalties. Based on Mr. Poorman's photographs of remediation and abatement the employer is on the right path so

Commissioner LeMarr proposed a 20% Good Faith Discount for the abatement seen in the photographs for a total of \$16,000.00. Commissioner Everett seconded the motion.

Vice Chair Hennelly appreciated the comments on abatement and information provided with respect to it but his inclination would be to leave it for further analysis with Mr. Atencio.

Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. Vice Chair Hennelly voted against. The motion passed with a vote of three to one.

Guilo Framing LLC
 7245 W Wolf St
 Phoenix, AZ 85033

Fatality
 Years in Business: 3
 Empl. Covered by Inspection: 13

Site Location: 2301 E Fandango
 Gilbert, AZ 85298
 Inspection No: FC-2022-V4364-0043
 Inspection Date: May 25, 2022

GENERAL DUTY SERIOUS – Citation 1 - Item 1 –

- a) 2301 E Fandango Dr, Gilbert, AZ 85298: One employee used an extension ladder to access and egress a newly construction home roof next to form stakes that were uncapped to prevent impalement. A.R.S. 23-403.A
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 2 - Item 1 –

- a) Roof: One employee was working approximately 11’ above the ground level on a low slope roof, installing ½” OSB plywood sheathing to the roof of a single-story home, without initial fall protection training. 29 CFR 1926.503(a)(1)
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 2 - Item 2 –

- a) Roof: An employee used a Little Giant brand aluminum extension ladder, model #MegMax and serial numbers unknown, to access and egress the roof of a newly construction home approximately 9' above the ground level, without the rungs extending 3' above the surface. 29 CFR 1926.1053(b)(1)
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 2 - Item 3 –

- a) 1301 E Fandango, Gilbert, AZ 85298: An employee used a Little Giant brand aluminum extension ladder, model #MegaMax and serial numbers unknown, to gain access to a single-story roof of a new home, without the ladder secured to prevent displacement. 29 CFR 1926.1053(b)(7)
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 2 - Item 4 –

TOTAL PENALTY - \$3,600.00

TOTAL FORMULA AMT. - \$5,200.00

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

Chairman Schultz checked if Mr. Saenz would like to comment.

Mr. Saenz noted he would be willing to answer any questions and appreciated the opportunity. It was a very sad event that it happened in their organization and the first one in 37 years. The employer completed an investigation with their safety committee and as a result extended the guard on the 36" blade on both sides all the way up to the area where it would cut a piece of wood.

Chairman Schultz suggested Mr. Saenz provide Mr. Atencio with evidence of any abatement.

Mr. Atencio explained that the standard for these large blades only requires a guard of 180 degrees.

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

Brake Masters of Phoenix Store #176
2370 AZ-90
Bullhead City, AZ 86442

Site Location: 2370 AZ-95
Bullhead City, AZ 86
Inspection No: CP-2022-A5598-0008
Inspection Date: May 31, 2022

Complaint

Years in Business: 39
Empl. Covered by Inspection: 7

SERIOUS – Citation 1 - Item 1a –

- a) Shop Floor: Seven employees used a bench grinder, brand, model, and serial numbers unknown, without the spindle nut guard in place to prevent accidental contact. 29 CFR 1910.215(a)(2)(i)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 1b –

- a) Shop floor: Seven employees were exposed to a bench grinder, brand, model and serial numbers unknown, that did not have a work rest installed. 29 CFR 1910.215(a)(4)

Div. Proposal - \$0.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 1c –

- a) Shop Floor: Seven employees were exposed to a bench grinder, brand, model and serial numbers unknown, without a tongue guard installed. 29 CFR 1910.215(b)(9)

Div. Proposal - \$0.00

Formula Amt. - \$2,000.00

proposed a 15% Quick Fix Reduction for a total of \$5,100.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Pacific NW, LLC dba Hilton Cabinets
 518 S 16th St
 Phoenix, AZ 85034

Complaint
 Years in Business: 11
 Empl. Covered by Inspection: 95

Site Location: 518 S 16th St
 Phoenix, AZ 85034
 Inspection No: CP-2022-T3633-0056
 Inspection Date: August 24, 2022

SERIOUS – Citation 1 - Item 1a –

- a) Shop: The exit door by the west truck gate was blocked by wood and a tarp.
- b) Shop: The east exit door was blocked by items waiting for shipping. 29 CFR 1910.37(a)(3)
 Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 1b –

- a) West side of shop: The exit door located on the west wall of the building did not have a sign reading "Exit".
- b) North side of shop: The exit door located on the north side of the building by the countertop fabrication area did not have a sign reading "Exit".
- c) East side of shop: The exit door located on the east side of the building by one of the shipping door truck gates did not have a sign reading "Exit". 29 CFR 1910.37(b)(2)
 Div. Proposal - \$0.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 1c –

- a) North wall of shop: A door on the outside wall of the building on the north side near the loading area which was intentionally blocked and locked, was not marked "Not an Exit".
- b) East wall of shop: A door on the outside wall of the building on the east side, just north of the truck gate, which was intentionally locked, was not marked "Not an Exit". 29 CFR 1910.37(b)(5)
 Div. Proposal - \$0.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 –

- a) Production area: The operator of a VantiEdge brand edge banding machine, unknown model and serial number, had an 8-hour time-weighted average sound level exposure of 87.6 dBA (80 dB measurement threshold), and a hearing conservation program had not been established.
- b) Production area: The operator of the Selko model panel saw, model SK4 and unknown serial number, had an 8-hour time-weighted average sound level exposure of 85.9 dBA (80 dB measurement threshold), and a hearing conservation program had not been established.
- c) Production area: The operator of a VantiEdge brand edge banding machine, unknown model and serial number, had an 8-hour time-weighted average sound level exposure of 87.1 dBA (80 dB measurement threshold), and a hearing conservation program had not been established. 29 CFR 1910.95(c)(1)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 –

- a) Shop: Melamine panels and countertops were stored throughout the facility leaning against walls, posts, and equipment so that they were a hazard from falling. 29 CFR 1910.176(b)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$10,000.00

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

Chairman Schultz noted that the Non-Serious item could have easily been listed as Serious with penalties but understood that Mr. Atencio determined whether it was Serious or Non-Serious based upon the likelihood of use, frequency of use and potential exposure.

Chairman Schultz checked if Mr. Roether would like to comment.

Mr. Roether noted that Items 1 and 3 were abated within 24 hours, that documentation was intended to be sent, but he will supply that to Mr. Atencio. For Item 2, they are currently in the process of getting quotes and looking at Examinetics for hearing testing for employees working above the certified decibel level as well as implementing hearing training for those employees. They have and do supply ear plugs for employees and employees frequently use them in those areas but are going to be in the process of implementing the training. He noted exit signs were bought immediately and were put up after the compliance officer left. For item 3 and the storage material, racks were purchased and built and designated areas were created.

Chairman Schultz suggested that in the high noise areas, signage, visual cues like striping on the floors so someone thinks about it before they enter the high noise areas. He has been to so many places where ear plugs are right inside the door and not necessarily where they need to be used, so locating your preventive items as close as possible to the hazard is also very helpful.

Mr. Roether thanked him for the suggestion. He noted the affected areas notified in the report, they have put signs on those machines, "While operating this machine ear protection is required". By ADOSH standards it is not technically required because of the hearing conservation program, but as a company they are requiring ear protection in those stations now.

Chairman Schultz noted that was good and how to build it into the culture. He thanked Mr. Roether and noted all of the abatement information, training and investment in safety equipment is all important.

Commissioner Everett moved to amend the citation and proposed penalties with a 15% Good Faith Reduction based on the abatement for a total of \$5,100.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for MIS and MRO. He reviewed the metrics for MIS for the Risk Sense Security Score and Security Infrastructure, and

the MRO metrics for the billing dispute assistance program and education and training for healthcare professionals and payor representatives.

Mr. Ashley also noted the invitation to the Arizona Chapter of the Associated General Contractor's stakeholder reception on December 14, 2022.

Ms. Dimas confirmed Commission meeting dates through January 2023.

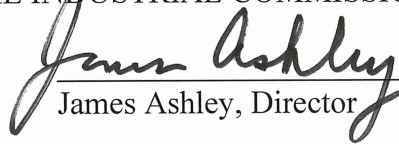
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 3:01 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary