

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, October 12, 2023 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner (Telephonic)
	Lisa Padgett	Deputy Director
	Afshan Peimani	Chief Legal Counsel
	Mark Norton	ADOSH Director
	Phil Murphy	Assistant ADOSH Director
	Brandt Smith	ADOSH Whistleblower Supervisor
	Anna Maria Stonerock	ADOSH Admin
	Melissa Spurgeon	Labor Director
	Yvonne Borunda	Legal Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Pete Thompson (Asphalt Paving & Supply); and Paige Millan (Snell and Wilmer). Also in attendance on the telephone, confirmed by roll call was Evelyn Zeidler (First Response Roofing AZ LLC).

Approval of Minutes of October 5, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the October 5, 2023 regular session meeting and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Everett and Commissioner Valdez 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. 2CNP23/24-1838 Bjelde Construction LLC aka LNB Enterprises, Inc
2. 2CSP23/24-0210 Native Music Coalition
3. 2CNP23/24-1940 Economy Drywall LLC

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

Chairman Kavanaugh noted that discrimination files were removed from today's Agenda.

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

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

Mr. Norton noted he would present four cases and removed Whish Body Products, LLC from today's agenda.

Armenta Masonry LLC	Complaint	
7805 E Paloma Ave	Years in Business:	10
Mesa, AZ 85212	Empl. Covered by Inspection:	8
Site Location: 2585 Los Altos Rd		
	Gilbert, AZ 85297	
Inspection No: CP-2023-Q6169-0034		
Inspection Date: April 17, 2023		

SERIOUS – Citation 1 - Item 1 –

- a) 2585 Los Altos Rd, Gilbert, Arizona: Eight employees constructing block walls in an excavation measuring 27' deep x 130' Long x 140' wide without training on hazards associated with such work. 29 CFR 1926.21(b)(2)
Div. Proposal - \$3,349.00 Formula Amt. - \$3,349.00

SERIOUS – Citation 1 - Item 2a –

- a) 2585 Los Altos Rd, Gilbert, Arizona: Eight employees constructing block walls in an excavation measuring 27' deep x 130' Long x 140' were without a means of egress within 25' of lateral travel. 29 CFR 1926.651(c)(2)
Div. Proposal - \$3,394.00 Formula Amt. - \$3,394.00

SERIOUS – Citation 1 - Item 2b –

- a) 2585 Los Altos Rd, Gilbert, Arizona: Eight employees constructing concrete block walls in an excavation measuring 27' deep x 130' Long x 140' had the spoil piles less than 2' away from the excavation edge. 29 CFR 1926.651(j)(2)
Div. Proposal - \$0.00 Formula Amt. - \$3,394.00

SERIOUS – Citation 1 - Item 2c –

- a) 2585 Los Altos Rd, Gilbert, Arizona: Eight employees constructing concrete block walls in an excavation measuring 27' deep x 130' Long x 140' without a visual and manual inspection

conducted by a competent person before employees entered the space to work. 29 CFR 1926.651(k)(1)

Div. Proposal - \$0.00

Formula Amt. - \$3,394.00

SERIOUS – Citation 1 - Item 2d –

- a) 2585 Los Altos Rd, Gilbert, Arizona: Eight employees constructing concrete block walls in an excavation measuring 27' deep x 130' Long x 140' without an adequate protective system in place to prevent a cave-in or collapse. 29 CFR 1926.652(a)(1)

Div. Proposal - \$0.00

Formula Amt. - \$3,394.00

TOTAL PENALTY - \$6,788.00

TOTAL FORMULA AMT. - \$16,970.00

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

Commissioner Everett clarified with Mr. Norton that the basement was not for an existing home but was for a new build.

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

Asphalt Paving & Supply, Inc.
2425 North Glassford Hill Road
Prescott Valley, AZ 86314

Complaint
Years in Business: 40
Empl. Covered by Inspection: 8

Site Location: Karen Ave and S Senator Hwy
Prescott, AZ 86303
Inspection No: CP-2023-Q6169-0035
Inspection Date: May 2, 2023

SERIOUS – Citation 1 - Item 1 –

- a) Southeast corner of Karen Ave and S Senator Hwy Prescott: Three employees installing waterlines in a trench approximately 9 ft deep x 37 ft long and 42 in wide without first receiving training related to hazards associated with working in excavations. 29 CFR 1926.21(b)(2)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 2a –

- a) Southeast corner of Karen Ave and S Senator Hwy Prescott: Two employees installing a water main line inside a trench approximately 9 ft deep x 37 ft long and 42 in wide without an adequate protective system in place. 29 CFR 1926.652(a)(1)

Div. Proposal - \$4,687.00

Formula Amt. - \$4,687.00

SERIOUS – Citation 1 - Item 2b –

- a) Southeast corner of Karen Ave and S Senator Hwy Prescott: Two employees accessed and egressed a trench 9 feet deep, 37 feet long and 42 inches wide with a ladder located outside of a protective system. 29 CFR 1926.652(g)(1)(iii)

Div. Proposal - \$0.00	Formula Amt. - \$7,813.00
TOTAL PENALTY - \$10,937.00	TOTAL FORMULA AMT. - \$18,750.00

Mr. Norton discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Kavanaugh checked if anyone would like to comment.

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

City of Flagstaff Aquaplex
 211 W Aspen Ave
 Flagstaff, AZ 86001

Complaint	
Years in Business:	95
Empl. Covered by Inspection:	66

Site Location:	211 W Aspen Ave Flagstaff, AZ 86001
Inspection No:	CP-2023-A7717-0114
Inspection Date:	June 16, 2023

SERIOUS – Citation 1 - Item 1 –

- a) 211 W Aspen Ave, Flagstaff, Arizona: One employee was required to wear a tight fitting half mask respirator, model and serial number unknown, without an adequate written respiratory program implemented in the work place. 29 CFR 1910.134(c)(1)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$6,696.00 | Formula Amt. - \$6,696.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 2 –

- a) Chlorine room: Two employees were required to fill a chlorine dispensing unit with CCH Endurance calcium hypochlorite tablets without unobstructed access to flush the eyes in the event of an exposure.
 - b) Pool area: Two employees were required to participate in cleaning the pool using Acid Magic Advanced Formula without unobstructed access to flush the eyes in the event of an exposure. 29 CFR 1910.151(c)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$6,696.00 | Formula Amt. - \$6,696.00 |
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SERIOUS – Citation 1 - Item 3 –

- a) 211 W Aspen Ave: Employees required to use Drytec Calcium Hypochlorite Granular, CCH Endurance calcium hypochlorite tablets, and Acid Magic Advanced Formula and a written Hazard Communication program had not been developed and implemented in the work place. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$6,696.00	Formula Amt. - \$6,696.00
TOTAL PENALTY - \$20,088.00	TOTAL FORMULA AMT. - \$20,088.00

but have been provided along with the training program. They were not wearing their harnesses which has been a big thing for them and everything had been addressed within 24 hours by the Production Manager.

Chairman Kavanaugh noted the Commission was aware of the correction of the gasoline can and appreciate the additional information.

Ms. Zeidler noted she would like Item 2 to be removed.

Mr. Norton commented that in reviewing the file, there is information that during the interviews with one of the employees, he explained he had been employed with the employer for a year and had not received any training with the company since being hired, supporting the reasons the citation was recommended.

Chairman Kavanaugh asked if it was possible that the training information was subsequently sent to the investigator. Mr. Norton noted it is possible and that the only abatement list in the file was the abatement of the gasoline can and can go back and check on that abatement.

Chairman Kavanaugh asked Ms. Zeidler if she had the date the information was sent. Ms. Zeidler noted she did not have it in front of her.

Mr. Norton noted that in the notes there are comments from one of the management representatives on site, the Project Manager, he was unsure of what the roofing requirements were as well.

Ms. Zeidler commented that everyone on site are now in compliance.

Chairman Kavanaugh confirmed Ms. Zeidler's comments that training materials are available now in the event there are future inspections.

Vice Chair Hennelly wants to determine if the materials were sent in for abatement purposes.

Chairman Kavanaugh requested it be continued to the next meeting (still before the six month time period expires) and the Commission will take action at the October 26th meeting.

Ms. Zeidler noted she could re-send that information to Ms. Stonerock.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2023.

Ms. Padgett announced Melissa Spurgeon has been selected as the Labor Director and noted her experience and background.

Chairman Kavanaugh congratulated Ms. Spurgeon.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:42 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Lisa K. Padgett
Lisa K. Padgett, Deputy Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary