

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, January 25, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner (Telephonic)
	Gaetano J. Testini	Director
	Afshan Peimani	Chief Legal Counsel
	Lisa Padgett	Deputy Director
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Renee Pastor	Self Insurance
	Phil Murphy	ADOSH Interim Director
	Anna Maria Stonerock	ADOSH Admin
	Tristan Larcom	ADOSH CHSO
	Kathy Moreno	ADOSH CHSO
	Martin Hoyos	ADOSH CHSO
	Mary Spitzer	ADOSH CHSO
	Nathan Miller	ADOSH CHSO
	Zachary Parish	ADOSH CHSO
	Art Wood	ADOSH
	Julie Bermudez	Legal Secretary
	Yvonne Borunda	Acting Commission Secretary

Chairman Kavanaugh convened the meeting at 1:01 p.m. In attendance, confirmed by roll call was Stephanie Hefner (Snell and Wilmer).

Approval of Minutes of January 11, 2024 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the January 11, 2024 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly and Commissioner Everett and 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.

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- a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CNP23/24-2042 CEC Custom Builders Inc. \$1,000
2. 2CSP23/24-0224 Wildcat Heating & Cooling, LLC \$1,000

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

Discussion and Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B).

Ms. Pastor discussed lump sum commutations and the process for updating the discount rate to be used in calculating the present value of an award under A.A.C. R20-5-121 and R20-5-122. Staff recommended setting the discount rate at 2.23% for calculating fixed period and permanent lump sum commutations, effective immediately and replacing the current rate of 1.67%.

Commissioner Everett moved to approve staff recommendation to use a 2.23% discount rate in the calculation for lump sum commutations under A.A.C. R20-5-121 and R20-5-122, effective immediately. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, 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 Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

<p>Advanced Framing Construction LLC          2909 Farm to Market 1570          Greenville, TX 75402</p> <hr/> <p>Site Location: 9975 W Encanto Blvd          Avondale, AZ 85392</p> <p>Inspection No: UR-2023-Q6169-0038          Inspection Date: July 28, 2023</p>	<p>Complaint</p> <p>Years in Business: 14</p> <p>Empl. Covered by Inspection: 3</p>
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SERIOUS – Citation 1 - Item 1a –

- a) Building A1: Three employees were sheathing and installing floor trusses on the second deck at a height approximately 11 feet above the ground without fall protection. 29 CFR 1926.501(b)(13)

in the alternative

- a) Building A1: Three employees were sheathing and installing floor trusses on the second deck at a height approximately 11 feet above the ground without the fall protection plan documenting the infeasibility of fall protection or why its use would create a greater hazard. 29 CFR 1926.502(k)(5)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 1b –

- a) Building A1: Three employees were sheathing and installing floor trusses on the second deck at a height approximately 11 feet from the ground without a fall protection system installed under the supervision of a qualified person. 29 CFR 1926.502(d)(15)(ii)  
Div. Proposal - \$0.00 Formula Amt. - \$7,813.00  
TOTAL PENALTY - \$7,813.00 TOTAL FORMULA AMT. - \$15,626.00

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

Chairman Kavanaugh checked if anyone would like to comment.

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

EMJ Construction, LLC  
5525 N Macarthur Blvd, Suite 400  
Irving, TX 75038

Site Location: 9975 W Encanto Blvd  
Avondale, AZ 85392  
Inspection No: CP-2023-Q6169-0037  
Inspection Date: July 28, 2023

Complaint  
Years in Business: 55  
Empl. Covered by Inspection: 3

SERIOUS – Citation 1 - Item 1 –

- a) Building A1: Three employees were sheathing and installing floor trusses on the second deck at a height approximately 11 feet above the ground without fall protection. 29 CFR 1926.501(b)(13)  
in the alternative  
a) Building A1: Three employees were sheathing and installing floor trusses on the second deck at a height approximately 11 feet above the ground without the fall protection plan documenting the infeasibility of fall protection or why its use would create a greater hazard. 29 CFR 1926.502(k)(5)  
Div. Proposal - \$10,046.00 Formula Amt. - \$10,046.00  
TOTAL PENALTY - \$10,046.00 TOTAL FORMULA AMT. - \$10,046.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Kavanaugh checked if anyone would like to comment.

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



a) Building #3: One employee was marking chalk lines from the third floor of a multi-family residential construction project without a fall protection system in place. 29 CFR 1926.501(b)(13)

Div. Proposal - \$6,697.00	Formula Amt. - \$6,697.00
TOTAL PENALTY - \$6,697.00	TOTAL FORMULA AMT. - \$6,697.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Kavanaugh checked if anyone would like to comment.

Commissioner Everett and Mr. Murphy discussed the violations and penalty amount. Commissioner Everett noted that there are two numbers that are the same. Mr. Murphy agreed and will modify the formula.

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

Discussion and Action Regarding Raising the Threshold for ADOSH Cases Going Before Commission.

Mr. Murphy and Chairman Kavanaugh discussed the 2022 ADOSH adoption of the civil penalty structure currently in place, as allowed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 which gave OSHA the ability to increase penalties. This marked the first increase since 1990 and allowed for a 78% increase overall. The expectation was that the State plan states would follow OSHA in order to remain "as effective" and ADOSH adopted the new regulations in late 2022. He also discussed the impact on ADOSH and the timelines.

Now that OSHA's civil penalties are much higher than the \$2,500.00 set point currently in place and will increase annually and states must have civil penalties similar to be considered "as effective" as Federal OSHA, also to move case files through the process and potentially improve on what has, for the past three years or more, been a negative trending of "lapse time". Mr. Murphy requested increasing the penalty amount threshold for ADOSH Cases being heard by the Commissioners.

Commissioner Evertt and Mr. Murphy discussed the number of cases that have been presented to the Commission due to the penalty rates and the number of cases that have not been presented.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Kavanaugh announced that Mr. Murphy presented recognition awards to Martin Hoyos, Tristan Larcom, Nathan Miller, Kathy Moreno, Zachary Parish, and Mary Spitzer.


Ms. Borunda confirmed Commission meeting dates through March 2024.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:31 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By   
Gaetano J. Testini, Executive Deputy Director

ATTEST:

  
Yvonne Borunda, Acting Commission Secretary