

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, February 17, 2022 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
D. Alan Everett	Commissioner (Telephonic)
James Ashley	Director (Telephonic)
Gaetano Testini	Chief Legal Counsel (Telephonic)
Jason M. Porter	Deputy Director (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Renee Pastor	Self Insurance (Telephonic)
Phil Murphy	ADOSH Assistant Director (Telephonic)
Steve Black	ADOSH Compliance (Telephonic)
Anna Maria Stonerock	ADOSH Admin (Telephonic)
Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Phillip Cundiff and Nikki Cross (City of Avondale); Teresa Canjar (City of Chandler); George Woods, Denise Plug and Kevin Cullens (City of Scottsdale); Christopher Hansen and Nichole Martinez (City of Tempe); Dawn Rivera, Francisco Lopez, Chad Hester and Renee Rivera (FR Builders, LLC); Eric Meyer (Sharp Creek Contracting, Inc); Miguel Angel Rodriguez Castellano (Red Hammer Construction); and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of February 10, 2022 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the February 10, 2022 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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 Requests for Renewal of Self-Insurance Authority.

1. City of Avondale
2. City of Chandler
3. City of Scottsdale

4. City of Tempe

Chairman Schultz noted that while two of the experience modification factors (“e-mods”) are fairly high the Commission would engage in further review and perhaps institute a change of process.

Commissioner Everett moved to approve the items on the Consent Agenda 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.

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.

FR Builders LLC  
1570 S Sabino Ct  
Gilbert, AZ 85296

Fatality/Accident  
Years in Business: 1  
Empl. Covered by Inspection: 2

Site Location: 2336 E Utopia Rd  
Phoenix, AZ 85024  
Inspection No: B5049 - 1551177  
Inspection Date: 09/01/2021

SERIOUS – Citation 1 - Item 1 –

- a) 2336 E Utopia Rd, Phoenix, AZ 85024: One employee was working from a top plate of a framed wall, approximately 12' above the ground level, without fall protection. 29 CFR 1926.501(b)(13)  
Div. Proposal - \$2,800.00    Formula Amt. - \$2,800.00

SERIOUS – Citation 1 - Item 2 –

- a) 2336 E Utopia Rd, Phoenix, AZ 85024: An employee was working approximately 12' above the ground level without initial fall protection training. 29 CFR 1926.503(a)(1)  
Div. Proposal - \$1,000.00    Formula Amt. - \$1,000.00
- TOTAL PENALTY - \$3,800.00    TOTAL FORMULA AMT. - \$3,800.00

Mr. Murphy discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented 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.

Red Hammer Construction LLC  
3232 W Turney Ave

Unprogrammed Related  
Years in Business: 1

Phoenix, AZ 85017

Empl. Covered by Inspection: 2

Site Location: 3232 N 20<sup>th</sup> St  
Phoenix, AZ 85016  
Inspection No: UR-2022-V4364-0006  
Inspection Date: 11/30/2021

SERIOUS – Citation 1 - Item 1 –

- a) 3232 N 20th St, Phoenix, AZ 85016: An employee operated an all-terrain Dynalift brand Telescopic Handler, Model # DL9-44, Serial # SN 31151 without training. 29 CFR 1910.178(l)(1)(i)  
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 3232 N 20th St, Phoenix, AZ 85016: Two employees framed the roof of a multi-family garage building that height was measured at 11 ft above the ground level without fall protection. 29 CFR 1926.501(b)(13)  
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 3232 N 20th St, Phoenix, AZ 85016: Two employees were rolling trusses on a new garage building without fall protection training. 29 CFR 1910.503(a)(1)  
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00  
TOTAL PENALTY - \$3,000.00 TOTAL FORMULA AMT. - \$3,000.00

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

Chairman Schultz checked if anyone on the phone would like to comment.

Commissioner Everett 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.

Samuel, Son & Co. (USA) Inc. dba Caid Industries  
2275 E Ganley Rd  
Tucson, AZ 85706  
Planned  
Years in Business: 55  
Empl. Covered by Inspection: 249  
Site Location: 2275 E Ganley Rd  
Tucson, AZ 85706  
Inspection No: PP-2022-T3633-0014  
Inspection Date: 12/08/2021

SERIOUS – Citation 1 - Item 1 –

- a) Heavy fabrication area: A welder/fabricator had an 8-hour time-weighted average sound level exposure of 97.3 dBA (80 dB measurement threshold), and a hearing conservation program had not been implemented.

- b) Heavy fabrication area: A welder/fitter had an 8-hour time-weighted average sound level exposure of 98.0 dBA (80 dB measurement threshold), and a hearing conservation program had not been implemented.
- c) Heavy fabrication area: A welder/fitter had an 8-hour time-weighted average sound level exposure of 92.9 dBA (80 dB measurement threshold), and a hearing conservation program had not been implemented. 29 CFR 1910.95(c)(1)  
Div. Proposal - \$1,625.00 Formula Amt. - \$1,625.00

SERIOUS – Citation 1 - Item 2 –

- a) Mining shop: A cable and sign used as a barrier device to restrict employee exposure to the back side of the dies on a Cincinnati brand Press Brake, unknown model and serial number 48708 was on the ground behind the press so that the area wasn't guarded.
- b) Mining shop: A cable and sign used as a barrier device to restrict employee exposure to the back side of the dies on a Cincinnati brand Press Brake, unknown model and serial number, was on the ground behind the press so that the area wasn't guarded.
- c) Machine shop: A Mighty Machinery brand horizontal band saw, model M-918 and serial number 861106, did not have guards covering the unused portions of the blade to the right and left of the guide wheels.
- d) Main fab: A Piranha brand ironworker machine, model P-70 and serial number P70-1195, did not have a guard installed on the punch section. 29 CFR 1910.212(a)(1)  
Div. Proposal - \$1,625.00 Formula Amt. - \$1,625.00

SERIOUS – Citation 1 - Item 3a –

- a) Mining: Employees welded stainless steel, and initial exposure monitoring for airborne exposure to chromium (VI) had not been conducted.
- b) Manufacturing building (2001): Employees welded stainless steel, and initial exposure monitoring for airborne exposure to chromium (VI) had not been conducted. 29 CFR 1910.1026(d)(2)(i)  
Div. Proposal - \$1,625.00 Formula Amt. - \$1,625.00

SERIOUS – Citation 1 - Item 3b –

- a) Tunnel Heavy fabrication shop: Initial employee exposure monitoring for chromium (VI) conducted by the employer in 2019 revealed employee exposures which were above the Permissible Exposure Limit (PEL), and periodic monitoring was not conducted. 29 CFR 1910.1026(d)(2)(iv)  
Div. Proposal - \$0.00 Formula Amt. - \$1,625.00

SERIOUS – Citation 1 - Item 3c –

- a) Heavy fabrication: Some employees who welded and plasma cut stainless steel had chromium (VI) exposures which exceeded the Permissible Exposure Limit (PEL), and regulated areas were not established. 29 CFR 1910.1026(e)(1)  
Div. Proposal - \$0.00 Formula Amt. - \$1,625.00

SERIOUS – Citation 1 - Item 3d –

- a) Heavy fabrication shop: Initial employee exposure monitoring for chromium (VI) conducted by the employer in 2019 revealed employee exposures which were above the PEL, and engineering and work practice controls were not consistently used. 29 CFR 1910.1026(f)(1)(i)  
 Div. Proposal - \$0.00 Formula Amt. - \$1,625.00

SERIOUS – Citation 1 - Item 3e –

- a) Heavy fabrication shop: Initial employee exposure monitoring for chromium (VI) conducted by the employer in 2019 revealed employee exposures which were above the PEL, and medical surveillance for the effects of chromium (VI) had not been made available to employees. 29 CFR 1910.1026(k)(1)(i)(A)  
 Div. Proposal - \$0.00 Formula Amt. - \$1,625.00  
 TOTAL PENALTY - \$4,875.00 TOTAL FORMULA AMT. - \$11,375.00

Mr. Murphy discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs. Mr. Murphy noted that the Compliance Officer, Mr. Black was available for questions.

Chairman Schultz noted it was a very thorough inspection which found many issues to help this employer improve the safety for their employees.

Chairman Schultz checked if anyone on the phone would like to comment.

Commissioner Everett moved to approve the citation and proposed penalties as presented and 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.

Sharp Creek Contracting, Inc.  
 2275 E Ganley Rd  
 Tucson, AZ 85706

Complaint  
 Years in Business: 19  
 Empl. Covered by Inspection: 5

Site Location: 5810 W Thunderbird Rd  
 Glendale, AZ 85306  
 Inspection No: CP-2022-O2204-0018  
 Inspection Date: 01/26/2022

SERIOUS – Citation 1 - Item 1 –

- a) 5810 W Thunderbird Rd, Glendale, AZ 85306: Three employees were working in an excavation 14' deep, 30' wide and 70' long, without training. 29 CFR 1926.21(b)(2)  
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 –

- a) 5810 W Thunderbird Rd, Glendale, AZ 85306: Three employees working in an excavation that was 14 feet deep, 70 feet long, and 30 feet wide without a protective system in installed. 29 CFR 1926.652(a)(1)  
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

- a) 5810 W Thunderbird Rd, Glendale, AZ 85306: Three employees used a fiberglass ladder to access and egress an excavation that did not extend 3' above the landing. 29 CFR 1910.1053(b)(1)

Div. Proposal - \$1,200.00	Formula Amt. - \$1,200.00
TOTAL PENALTY - \$4,200.00	TOTAL FORMULA AMT. - \$4,200.00

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

Chairman Schultz checked if anyone on the phone would like to comment.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted that a portion of the rulemaking regarding the first emergency temporary standard ("ETS") known as the Healthcare ETS, expired at the end of December, however there were a couple of provisions predominately related to recordkeeping that state plans were expected to adopt. The Healthcare ETS rulemaking was amended with the Attorney General's Office to successfully file with the Secretary of State. It will include the COVID19 log and reporting portion and became effective with the recent filing with the Secretary of State and is reflected on the State Plan Activity portal filing with Federal OSHA. The second emergency temporary standard was withdrawn by Federal OSHA after the recent US Supreme Court ruling last month.

Mr. Ashley commented that the Commission received another data set from the National Council on Compensation Insurance ("NCCI") showing opioid prescription use in workers' compensation in Arizona has decreased by 62% over the last three-year study period. This is a greater decline than the region and nation.

Mr. Ashley attended the Associated General Contractor's event at the Capitol and there were several legislators, staff and other stakeholders in attendance. Chris Bagby with Markham Construction shared that they achieved two million man-hours without a workplace injury which is a significant achievement.

Mr. Ashley noted legislation with necessary clarifying and clean-up language for the municipal firefighter cancer reimbursement fund statutory responsibility passed in committee this week.

Chairman Schultz thanked Mr. Ashley noting it is early in the legislative session.

Ms. Dimas confirmed Commission meeting dates through April 2022.

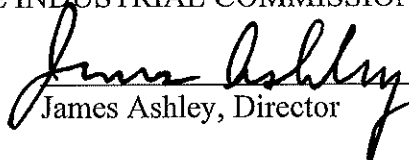
Public Comment.

There was no public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly 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 2:02 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary