

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, February 7, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Deputy Director
	Gaetano Testini	Chief Legal Counsel
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Director
	Steven Black	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance was Scot Butler (representing an undisclosed client).

Approval of Minutes of January 31, 2019 Regular Meeting.

Commissioner Krenzel moved to approve the Minutes of the January 31, 2019 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel 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. 2C18/19-0316 Nietos Framing, LLC
2. 2C18/19-0278 Rosie's Den LLC, dba Rosie's Den Cafe
3. 2CNP18/19-0093 Ultimate Welding & Fabrication, LLC
4. 2C18/19-0537 L & H Home Services, Inc.
5. 2C18/19-0538 Soto Express, Inc.

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. City of Mesa
2. The Arizona School Alliance for Workers' Compensation



Div. Proposal - \$0.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 –

- a) Batch mixer area: Employees unplugged pipes below the batch mixing tanks while the tanks were in use, and this job task had not been assessed to determine if the employees were potentially exposed to burn hazards. 29 CFR 1910.132(d)(1)

Div. Proposal - \$5,000.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$5,750.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties.

Commissioner LeMarr and Mr. Black discussed the previous incidents that were investigated and if new procedures were recommended and not followed or if changes were made to remedy the prior incidents.

Vice Chair Hennelly and Mr. Atencio discussed that the prior incidents were clogs, not boil overs; Mr. Atencio mentioned the photographs from the inspection were not included for the Commissioners.

Chairman Schultz echoed the concerns of Vice Chair Hennelly, and asked about the use of personal protection equipment. Chairman Schultz, Mr. Black and Mr. Atencio discussed the extent of the injuries and whether wearing protective equipment could have prevented the burn.

Commissioner Krenzel asked if the employees were back to work and if the company was addressing the frequency of the clog by using lock out/tag out procedures. Mr. Black updated the commissioners on the work status of the employees and the engineering controls. Mr. Atencio added the lock out/tag out was for implements and servicing equipment and not addressed other processes for electrical, gravity and clogs where lock out/tag out is needed and believes the company needs more time for assessment to address the problems that led to the injuries.

Commissioner Krenzel and Mr. Black discussed whether the vats lock in place when they are turned.

Commissioner LeMarr noted a typographical error in the report, the date of inspection should be August 2018 and not 2019.

Vice Chair Hennelly questioned Mr. Atencio about abatement efforts of the employer.

Commissioner Krenzel 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 Krenzel, voted in favor of the motion. The motion passed.

Dollar Tree Stores, Inc. dba Dollar Tree Stores, Inc. #3639 Complaint

11227 E Villa Linda,  
Scottsdale, AZ 85259

Years in Business: 30

Covered by inspection: 4

Site Location: 11227 E Villa Linda  
Scottsdale, AZ 85259

Inspection No: T1999 - 1336248

Inspection Date: 08/07/2018

REPEAT SERIOUS – Citation 1 - Item 1 –

- a) Stockroom: The exit access for the back stockroom was reduced to 16 inches wide. 29 CFR 1910.36(g)(2)

DOLLAR TREE STORES, INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD 29 CFR 1910.36(g)(2) WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1170707, CITATION NUMBER 01, ITEM NUMBER 01, ISSUED ON 11/03/16 AND WAS FINAL ORDER ON 8/28/17, WITH RESPECT TO A WORKPLACE LOCATED AT 16815 E SHEA BLVD #127, FOUNTAIN HILLS, AZ AND FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD 29 CFR 1910.37(a)(3) WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1224253, CITATION 01, ITEM NUMBER 01, INSTANCE B, ISSUED ON 6/1/17, AND FINAL ORDER ON 6/26/18 WITH RESPECT TO A WORKPLACE LOCATED AT 3927 E. GRANT ROAD, TUCSON.

Div. Proposal - \$25,000.00	Formula Amt. - \$25,000.00
TOTAL PENALTY - \$25,000.00	TOTAL FORMULA AMT. - \$25,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs and noted abatement.

Commissioner LeMarr and Mr. Atencio discussed the violation in October for the same hazard. The occurrence of the same violation in different stores suggests the employer is not adequately training or updating their store managers. It was mentioned that in addition to the October citation, there are two more citations pending for the same conditions in different stores.

Commissioner LeMarr and Mr. Atencio discussed \$125,000 in potential fines. The recurrences demonstrate a gap in training or notification on company policies.

Commissioner Krenzel and Mr. Atencio discussed corporate knowledge, and with more violations on the way, what they are going to do or if they are going to try to make it safer for employees; Mr. Atencio explained that a shortage of available labor and an influx of inventory contribute to the problems. Commissioner Krenzel stated that since these are corporate owned stores and not individual franchises, they have a centralized training for store managers.

Mr. Atencio referred to the abatement photographs. Commissioner LeMarr noted the photographs prove the employer can resolve the issue. Mr. Atencio noted ADOSH is trying to work with them proactively.

Commissioner LeMarr discussed that in the citations in October, the store manager had something fall on him resulting in two citations, one for a blocked fire exit and one for not having a wide enough aisle.

Vice Chair Hennelly was curious if turnover was also part of the problem or issue.

Chairman Schultz and Mr. Atencio discussed the three complaints.

Chairman Schultz and Mr. Atencio discussed that the Federal OSHA agreement is ongoing and the better opportunity to cite willful if it happens again and encourages consultation programs and

projects throughout the state to help where they can for the 83 stores in Arizona. Chairman Schultz asked if any of the stores incurred a federal fine.

Chairman Schultz, Commissioner LeMarr, Mr. Testini, and Mr. Atencio discussed ranges for fines beyond a \$25,000 penalty, and when the Commission could consider a willful violation considering employer knowledge and disregard for the standard, restrictions and limits.

Chairman Schultz questioned whether the classification should be a Higher Greater (HG) in light of the prior incidents of the concussion as a serious injury from the same circumstances.

Commissioner Krenzel wondered if there is a regional manager to whom the store manager reports and if so, is it the same person or has there been turnover. Mr. Atencio was not sure but has dealt with the regional manager on the last citation because the store manager was out.

Commissioner LeMarr and Mr. Atencio discussed the operating policies and procedures manual for every store and part of what they agreed to with Federal OSHA and the dates for the two pending citations.

Vice Chair Hennelly noted that given the discussion and the corporate structure and ownership, they certainly know about this and asked that ADOSH should take a good look at it for the upcoming ones.

Mr. Porter noted that on the global settlement piece he thought ADOSH could consolidate a series of protests and do a global settlement, not a nationwide settlement, just Arizona, assuming the Office of Administrative Hearings would consent. Chairman Schultz expressed the necessity to stay within the guidelines for issuing citations and penalties. Mr. Porter noted the deadline could not be extended but there are caps for different severities of citations and reviewed §23-418(b) and §23-418(a) relates to serious citations. Mr. Attention discussed the repeat citations.

Commissioner LeMarr moved to issue the citation as proposed for \$25,000 to meet the time limit of the FOM and option for the ADOSH Director and Legal to authorize a global settlement since there are two more pending files. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or Action regarding Proposed ADOSH State Plan Change 136: Pre-issuance Review of ADOSH Citations and Proposed Penalties.

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Mr. Porter requested approval to move forward with the process for State Plan Changes. He explained the background regarding the role of the Commission in the pre-issuance review process for ADOSH citations. The proposed changes are the product of extensive discussions with Federal OSHA and counsel. He noted the request for expedited approval and once approved the change would become effective immediately and supersede any conflicting provisions in the current FOM and be incorporated into the future FOM.

Commissioner LeMarr and Mr. Porter discussed agreement between Federal OSHA and the state and the package is the product of the discussions.

Mr. Porter noted he believed the outcome to be fair and addresses many of our concerns and presents a reasonable resolution for the process.

Commissioner Krenzel moved to approve the proposed State Plan Change 136 as presented. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel, voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) to obtain Legal Advice regarding Proposed ADOSH State Plan Change 136: Pre-issuance Review of ADOSH Citations and Proposed Penalties.

This item was provisional and on the agenda in the event there was a need for an executive session to obtain advice from counsel. There was no need for an executive session.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted that Mr. Laky was at the Legislature, as well as the status of the Commission's legislative agenda.

Mr. Ashley noted the Governor was in Yuma today meeting with the agriculture community to thank them for their instrumental role in the development of the drought contingency plan.

Ms. Dimas noted that the February 14, 2019 meeting was cancelled and confirmed Commission meeting dates through March 2019. Commissioner LeMarr noted that March 27 was ICA Day at the Capitol. Vice Chair Hennelly will not be available that week.

Mr. Ashley noted for the ICA Day at the Capitol the keynote speaker will be Senate President Karen Fann.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:04 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary