

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, March 18, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	Steven J. Krenzel	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)
	Jessie Atencio	ADOSH Director (Telephonic)
	Miguel Castillo	ADOSH Compliance (Telephonic)
	Ron Mills	ADOSH Compliance (Telephonic)
	Karen Schomburg	ADOSH Compliance Supervisor (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 Digger Oster and Thomas Partin (City of Surprise); Carolyn Horton, Uyen Nguyen and Nancy Board (Costco); Teresa Murphy, Glen Smith and John Bissot (Prescott Motors, Inc.); Victoria Bostwick (next of kin); Joyce Snyder (Warehouse Equipment Solutions Tucson LLC); Joe Ramirez (Catalina Roofing Supply, Inc. dba Catalina Roofing); and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of March 4, 2021 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the March 4, 2021 regular session meeting 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.

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. 2C20/21-0028 Sun State Minor Home Improvements LLC \$1,000

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

1. City of Surprise
2. Costco Wholesale Corporation
3. The Salvation Army U.S.A. Western Territory

Chairman Schultz commended the City of Surprise on their incredible experience modification which demonstrates their commitment to safety and congratulated Costco Wholesale's for their wonderful progress in reducing their experience modification factor.

Chairman Schultz deferred the civil penalty for Sun State Minor Home Improvements until the next meeting.

Commissioner LeMarr moved to approve the amended items on the Consent Agenda and 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 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.

Prescott Motors, Inc.	Fatality/Accident	
500 Prescott Lakes Parkway	Years in Business:	10
Prescott, AZ 86301	Empl. Covered by Inspection:	3
Site Location:	2158 Forest Mountain Rd	
	Prescott, AZ 86303	
Inspection No:	B5049 -1504426	
Inspection Date:	11/30/2020	

SERIOUS – Citation 1 - Item 1 –

- a) 500 Prescott Lakes Parkway, Prescott, AZ 86301: An employee was fatally injured when he fell 16' feet and it was not reported by the employer. 29 CFR 1904.39(a)(1)
- | | |
|----------------------------|-------------------------------|
| Div. Proposal - \$1,000.00 | Formula Amt. - \$900.00 |
| TOTAL PENALTY - \$1,000.00 | TOTAL FORMULA AMT. - \$900.00 |

Mr. Atencio noted that Mr. Mills was available for questions. Mr. Atencio discussed ADOSH's fatality investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Schultz expressed his feelings about how devastating and tragic this accident was, and it shows the importance of working in pairs. This is a horrible situation.

Chairman Schultz checked if representatives from Prescott Motors would like to comment.

Chairman Schultz checked if Ms. Bostwick would like to comment.

workplaces are safe and become safer after accidents like this happen but sometimes events like this are unforeseeable.

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

Mr. Atencio advised that the next ADOSH Advisory Committee is on March 31, 2021, and based upon his research in this file, the Registrar of Contractors has only three contractors, one of which has a revoked license, who perform this type of work, so he is going to ask the Advisory Committee to think of ways to do outreach and provide more guidance and information that would prevent this from happening in the future.

Chairman Schultz noted it was not the first collapse and it is dangerous work. It's not about the individual event, it's about following through to try to improve safety throughout Arizona in all similar situations.

Catalina Roofing and Supply, Inc. dba Catalina Roofing 2021 W Williams Dr. Phoenix, AZ 85027	Complaint Years in Business: 39 Empl. Covered by Inspection: 4
Inspection No: V4364 -1510698	
Inspection Date: 01/19/2021	
Site Location: 31707 N 40 th Way Lot #27 Cave Creek, AZ 85331	

REPEAT-SERIOUS – Citation 1 - Item 1a –

- a) 31707 N 40th Way, Lot #27, Cave Creek, AZ 85331: Two employees required to use a SAS Safety brand N95 respirator, without receiving respiratory medical evaluations. 29 CFR 1910.134(e)(1)

The Catalina Roofing and Supply, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 1910.134(C)(1)(II), which was contained in ADOSH Inspection Number 1410394, Citation Number 2, Item Number 1A and was affirmed as a final order on 11/22/2019, with respect to a workplace located at 30011 W Freda Ln., Lot #322, Buckeye, AZ 85396, and abated on 06/26/2019.

Div. Proposal - \$3,000.00

Formula Amt. - \$1,500.00

REPEAT-SERIOUS – Citation 1 - Item 1b –

- a) 31707 N 40th Way, Lot #27, Cave Creek, AZ 85331: An employee was required to wear an SAS Safety brand N95 respirator, without receiving respiratory fit tests. 29 CFR 1910.134(f)(1)

The Catalina Roofing and Supply, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 1910.134(F)(2), which was contained in ADOSH Inspection Number 1410394, Citation Number 2, Item Number 1B and was affirmed as a final order on 11/22/2019, with respect to a workplace located at 30011 W Freda Ln., Lot #322, Buckeye, AZ 85396, and abated

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$6,500.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Schultz commented that it was incredibly ironic to the impact that COVID has had on virtually all working environments. For instance this, this is basically an office which probably uses a service for their cleaning, so this employer probably has never before had hazardous chemicals to deal with. Now up pops COVID, and they implement an effective program and that includes the ability to sanitize surfaces and in fact using Virus Plus, which is very effective, but virtually all sanitizers contain either alcohol or other disinfecting chemicals that qualify as potentially hazardous chemicals. Here they are doing their best to comply with COVID-19 CDC regs and OSHA regs and can easily see you would not even think that that you need an eyewash station in a basically clerical area. It is interesting the overall impact of COVID had, the changes it has required and do not believe he had seen anywhere the CDC pronouncement or OSHA issued and you do not see it anywhere in the media, that these disinfectants that now we want you to use, can potentially require you do hazard communications, glove and gown people and provide eyewash stations.

Mr. Atencio noted that was a good point, and he has had multiple conversations with many different organizations, associations and individual employers and ADOSH has been doing as much education as they can to inform employers of 29 CFR1200(e)(1) for hazard communication.

Chairman Schultz commented that it is fascinating the direction this sometimes takes, and would encourage all of the compliance and consultation folks to do what they can to try and educate employers about this additional exposure that is created.

Commissioner LeMarr moved to amend the citation and proposed penalties to include a 25% Good Faith Reduction for a total of \$3,000. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Atencio for the In-Compliance Report detailing the significant number of inspections that found employers were complying.

Woodpecker Framing, LLC.
4113 E. Maldonado Dr.
Phoenix, AZ 85042

Referral
Years in Business: 10
Empl. Covered by Inspection: 4

Inspection No: R2410 -1493991
Inspection Date: 09/21/2020
Site Location: 10040 E Happy Valley Rd Suite #2015
Scottsdale, AZ 85255

SERIOUS – Citation 1 - Item 1a –

- a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were wearing N95 dust masks for required use without a written respiratory protection program in place.
29 CFR 1910.134(c)(1)
Div. Proposal - \$1,000.00
- Formula Amt. - \$1,000.00

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented that on March 23 and 24, 2021 the Workers' Compensation Research Institute (WCRI) will hold their virtual conference, and he will be participating in a panel to wrap up the first day on the topic of Responding to and Moving Beyond COVID-19. He will have the opportunity to talk about the good steps taken in Arizona over the course of the last year including everything from the Governor's Workers' Compensation Executive Order to all the actions we have taken here at the agency to ensure that the workers' compensation system continues to run smoothly, is responsive and efficient.

Chairman Schultz congratulated Mr. Ashley, noting it is an excellent organization and proud that he was part of the panel.

Mr. Laky provided an update on HB 2160, which has passed the Senate and Third Read with strong bipartisan support. The legislation is going before the Governor to be signed, mostly likely next week.

Ms. Dimas confirmed Commission meeting dates through May 2021. Commissioner LeMarr noted he would not be available on May 20th.

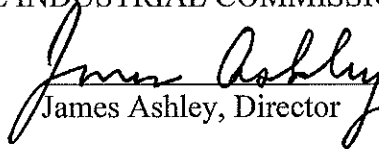
Public Comment.

There was no other public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel 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 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary