

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, October 7, 2021 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (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)
	Jessie Atencio	ADOSH Director (Telephonic)
	Bryce Rucker	ADOSH Consultation (Telephonic)
	Ana Maldonado	ADOSH Consultation (Telephonic)
	Devyn Devers	ADOSH Consultation (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:02 p.m. Also in attendance on the telephone, confirmed by roll call were Terri Rybacki, Ann Back and Susan Russell (Macy's); Andrew Gillette (Andrew Gillette, DBA Andrew Gillette Sole Proprietor) and Kenneth Wollenberg (3rd Party Safety Consultant for Fiesta Canning Co. Inc.); Fawn Slade, Ally Rando, Phuong Tran and Jane Thomason (National Nurses United); Debbie Johnston (Arizona Hospital and Healthcare Association); Zachary Barnett and Loren Delicana (Federal OSHA); Darin Perkins (Central Arizona Project); Roshell Lee and Ginger Schell (Ashton Tiffany for Securis); Ashley Pritchett (City of Phoenix); Nichole Martinez (City of Tempe); Shawn Iurla and Christine Wood (Town of Gilbert); Dianne Shoemake and Lorena Sanchez (City of Glendale); William Oster and Thomas Partin (City of Surprise); and April Uptain (Integreon).

Approval of Minutes of September 16, 2021 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the September 16, 2021 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett 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. 2CNP20/21-0656 Anne Ashworth \$1,000
2. 2CNP21/22-0078 GoGet My Laundry LLC \$1,000
3. 2CSP21-22-0010 Dominguez Brothers Drywall LLC \$1,000

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

1. Macy's Inc.
2. Viad Corp

Chairman Schultz requested to have Macy's Inc. moved forward to the regular agenda for further discussion.

Commissioner LeMarr moved to approve the remaining items on the Consent Agenda as presented and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

1. Macy's Inc.

Chairman Schultz is concerned with the declining experience modification factor ("e-mod") which has declined from 1.09 to 1.16 to 1.22 and is now 1.27, noting the Commission is concerned when any of the self-insured employers have a modification that is above 1.10 and there are quite a number in a row above that, causing concern and the Commission would like to know Macy's intent to address the issues with their claims experience.

Ms. Pastor reached out to Macy's staff who are on the call. She and Mr. Rucker, from ADOSH, had a meeting with Macy's to go over some of the key drivers and scheduled a consultation on September 29th which they were unable to finish because the distribution center is almost a million square feet and a lot of ground to cover. She recommended that Macy's self-insurance be renewed for six months, after which Macy's may return to discuss the completion of their ADOSH consultation.

Mr. Rucker discussed the September 29th consultation visit, and stated there is a follow-up visit to be scheduled for January/February 2022.

Chairman Schultz would like to know if Macy's most recent experience will lower their experience modification at its next calculation and what changes are being put in place for now and in anticipation of their busiest season.

Ms. Pastor noted that in 2020 the losses dropped off, as you know most of the year was closed, and did not see injuries in the stores, injuries that occurred were in the distribution center.

Ms. Rybacki asked for the follow-up visit in January/February since she will be flying in for the consultation. She does not have an Occupational and Safety Manager in that facility now and has flown out three times in the last two months to be in the facility. Ms. Rybacki outlined the steps Macy's is taking for the peak season. The Macy's maintenance staff started addressing the items

from the initial consultation and are taking this seriously. Some of the safety concerns identified in the Goodyear facility have been shared with other facilities.

Chairman Schultz wanted to know more about the seasonal temps and training and whether there is an expectation that they follow all of the safety rules.

Ms. Rybacki notes they are not hiring temps in the distribution center, they are actually colleagues that they hope to continue to employ after peak season. They go through the exact same training that all of the regular season colleagues go through.

Chairman Schultz thanked Ms. Rybacki for making the changes and sounds like they are addressing issues proactively.

Commissioner LeMarr moved to approve the self-insurance renewal for Macy's Inc. for six months at which point they can have the Commission reconsider their updated experience modification factor at that time and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz thanked the Macy's representatives for joining today. Ms. Pastor thanked the Macy's staff for embracing the partnership with the ICA.

Discussion and Action regarding Proposed Exempt Rulemaking (Pursuant to A.R.S. § 23-1702(E)) regarding the Municipal Firefighter Cancer Reimbursement Fund.

Mr. Testini requested authority to move forward with Rulemaking for the Municipal Firefighter Cancer Reimbursement Fund which is a newly created fund through the Legislature this year. Pursuant to A.R.S. §23-1702(E) the Commission is required to adopt rules on or before January 1, 2022 to carry out the Municipal Firefighter Cancer Reimbursement Program established in Title 23, Chapter 11, Article 1. The proposed rules would number from R20-5-1401 through R20-5-1404 and address the establishment of the Municipal Firefighter Cancer Reimbursement form approved by the Commission, the process by which the municipal payors can seek reimbursement from the Municipal Firefighter Cancer Reimbursement Fund, required attestations that must be made in connection with the reimbursement claim, the timeline for municipal payors to submit a reimbursement claim, the consequence of the municipal payor failing to file a timely reimbursement claim or not including all eligible amounts in a reimbursement claim, the deadline by which the Commission will process reimbursement payments in claims, record keeping and record inspection requirements pertaining to reimbursement claims and requirements pertaining to overpayment by the fund. The Legal Division is requesting permission to proceed with proposed rulemaking by seeking an exemption from Executive Order 2021-02 from the Arizona Governor's Office and upon receiving such exemption filing the proper notices with the Arizona Secretary of State.

Mr. Testini noted this is a beginning of a new Article, Article 14 within the Arizona Administrative Code and anticipates future rulemaking to address other parts of the cancer reporting.

Mr. Porter noted for the stakeholders that are listening to this agenda item, even though this is exempt rulemaking, the Commission will be publishing a notice of proposed exempt rulemaking with the Secretary of the State's Office and will be holding a public hearing in November and will get that information out so that all of the stakeholders will have an opportunity to take a look at proposed language and provide feedback.

Mr. Testini asked that the resolution be signed electronically because of the tight timeline to make the rules.

Chairman Schultz and Mr. Porter discussed that the Notice will be posted on the Commission website to ensure the information is readily available for stakeholders to provide comment.

Mr. Testini noted that the public hearing is tentatively scheduled for November 30, at 10:00am.

Mr. Porter noted this legislation that created the Municipal Firefighter Cancer Reimbursement Fund was not legislation that was initiated by the Industrial Commission, this was largely sponsored by the Arizona League of Cities and Towns. If stakeholders on this call have questions about the legislation itself, the best place to direct those questions would be to the League, but the Commission will be happy to answer any questions about the technical requirements of the statutes to the extent we can.

Chairman Schultz checked if anyone on the phone would like to address this issue.

Chairman Schultz read the Resolution.

Commissioner LeMarr moved to approve proposed rulemaking for the Municipal Firefighter Cancer Reimbursement Fund and to authorize the Legal Division to proceed with final rulemaking with electronic signatures. Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Rulemaking regarding the COVID-19 Healthcare Standards Adopted by Federal OSHA in 29 C.F.R. § 1910(U).

Mr. Porter provided an overview of the legal authority and a brief background on the procedure accompanying the standard. Under A.R.S. §23-405 and §23-410, the Commission has full power authority and jurisdiction to promulgate Occupational Safety and Health Standards and Rules relating to working conditions and practices of employees in the state of Arizona. The Federal Occupational Safety and Health Act of 1970 requires the Commission to adopt standards that are at least as effective as standards that are adopted by Federal OSHA. State Plans like Arizona can do this by either incorporating by reference standards developed by Federal OSHA or developing their own standards that meet the requirements of being at least as effective. Rulemaking when it comes to Occupational Safety and Health standards is typically conducted under the Arizona Administrative Procedures Act which involves notice to the impacted community of what the proposed rules will be and an opportunity for public comment. The Commission is very familiar with this process. Under A.R.S. §23-414 the Commission “may provide for emergency temporary standards or regulations to take immediate effect upon filing with the Secretary of State if it determines that employees are exposed to great danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards and such emergency standards or regulations are necessary to protect employees from such danger”. The Commission would be required if they pursued the process in §23-414 to promulgate a standard and in accordance with the normal notice and comment rulemaking process contained in §23-410 no later than six months after filing of an emergency temporary standard. This process would allow the Commission to put standards into effect upon filing with the Secretary of State, however, would still need approval of the Arizona Governor’s Office for an exemption from the rulemaking moratorium and all emergency

rulemaking in Arizona requires approval from the Arizona Attorney General before it can be filed with the Secretary of State.

Chairman Schultz wanted to clarify, even if the Commissioners adopt the emergency standards within six months we would have to go back through the same process again. Mr. Porter responded that the notice that is filed with the Secretary of State would serve as a notice of proposed rulemaking and the standards would go into immediate effect upon filing with the Secretary of State, but that would also kick off the normal notice and comment rulemaking process to the extent that standard would continue to be in place for a more extended period of time. At this point, we have not been told whether Federal OSHA intends to adopt Subpart U in its current form or in a revised form on a permanent basis, it is currently set to expire on December 21, and we are waiting to hear whether all or some part of the standards would continue into some kind of permanent rule. It will require additional rulemaking down the road once we get more clarity on those questions from Federal OSHA.

Chairman Schultz asked Mr. Barnett or Ms. Delicana if there were any updates or predictions as to what will happen at the expiration of the temporary standard. Mr. Barnett commented that he has not heard a word about it. Chairman Schultz noted that he had not seen anything published, or articles or heard anything in the news and just wondering if there was something additional.

Mr. Porter provided some background noting that the Arizona State Plan was notified of the ETS and pursuant to CFR29-1953.5(b), which is the section that pertains for Federal OSHA emergency temporary standard rulemaking authority, on June 16, 2021 the Commission notified Federal OSHA of its intent to adopt the majority of the COVID-19 Healthcare ETS and provided information to demonstrate that certain provisions of the ETS were already adequately addressed under Arizona state law. Specifically in that correspondence the Commission notified Federal OSHA that Arizona already has extensive laws pertaining to earned paid sick time which the Commission is very familiar with, and earned paid sick time can be used for COVID-19 testing, vaccinations, when there is a business closure, quarantine or for a COVID-19 illness and the vast majority of employees in Arizona that would be working in healthcare settings covered by the standards would have rights to accrue and use their earned paid sick time for these purposes. That law has been in effect for several years now, and posted FAQs on our website that make it very clear to employees and employers across the state that earned paid sick time can be used for those purposes and developed a FAQ list pertaining to earned paid sick time for COVID-19 in particular that has been on our website since the outset of the pandemic. Additionally, the Commission notified Federal OSHA that Arizona already has laws in effect to prohibit discrimination and retaliation pertaining to the exercise of both earned paid sick time and those discrimination and retaliation provisions are enforced by the Industrial Commission's Labor Department. Also, we have laws that prohibit discrimination and retaliation in the context of an employee engaging in safety related protected activity and those statutes are enforced by ADOSH's whistleblower and discrimination unit. Federal OSHA did not respond to the Commission's request for two months, until September 16, 2021. Following receipt of that response letter, ADOSH notified OSHA Acting Regional Administrator James Wulff on September 21, that ADOSH was moving forward with the rulemaking process and would be presenting OSHA's ETS findings at the next Commission meeting which is today. We have been moving forward as expeditiously as we can on this process.

ADOSH and the Legal Division are proposing to adopt a new section which is R20-5-602.02 which is going to be titled "Subpart U COVID-19 Healthcare" and that new administrative rule will incorporate by reference the OSHA interim final rule published on June 21, 2021 titled "Occupational Exposure to COVID-19 Emergency Temporary Standard Interim Final Rule". The

Commission was provided links to the Federal Register Rulemaking Activity which is quite lengthy, and provided a link to the Commissioners to review, the standards are also published in the Code of Federal Regulations in 92 CFR 1910 subpart U and a link was also provided to the Commissioners for review. According to Federal OSHA the COVID-19 Healthcare Rule is designed to protect healthcare and healthcare support service workers from occupational exposure to COVID-19 in settings where people with COVID-19 are reasonably expected to be present. The standard exempts coverage for certain workplaces where all employees are fully vaccinated and individuals with possible COVID-19 are prohibited from entry, and it exempts from some of the requirements of the standard fully vaccinated employees in well-defined areas where there is no reasonable expectation individuals with COVID-19 would be present. During the period that the standard is in effect, covered healthcare employers would be required to develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace. Covered employers will also be required to implement other measures to reduce transmission of COVID-19 in workplaces relating to the following areas: 1. Patient screening and management. 2. Standard and transmission-based precautions. 3. Personal protective equipment including facemasks or respirators. 4. Controls for aerosol generating procedures. 5. Physical distancing of at least six feet when feasible. 6. Physical barriers. 7. Cleaning and disinfection. 8. Ventilation. 9. Health screening and medical management. 10. Training. 11. Anti-retaliation. 12. Recordkeeping and reporting requirements. According to Federal OSHA, the standards also encourage vaccination by requiring employers to provide reasonable time and paid leave for employee vaccinations and any accompanying side effects. Arizona earned paid sick time in the vast majority of cases is already providing those benefits to employees. The standard also encourages the use of respirators where respirators are used in lieu of required facemasks by including a mini respiratory protection program that applies to such use. More information about the standard was provided to the Commissioners and links were provided for Federal OSHA's website and FAQs and webinar. In order to adopt the healthcare standard as an emergency temporary standard, with an immediate effective date, it would have to go through the process of Governor's Office approval and approval by the Arizona Attorney General's Office, in order to go through that process the Commission must determine that: 1. Employees subject to the standards are exposed to a grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and 2. Emergency standards or regulations are necessary to protect those employees from such danger. OSHA underwent analysis which was contained in the Federal Register Publication in three sections. Section 3 which pertained to pertinent legal authority, Section 4 which was the rational for the ETS and Section 5 was the need for specific provisions of the ETS. Also provided was a link to the Arizona Department of Health Services COVID-19 Dashboard which provides Arizona specific information about the State's response to COVID-19 and there is a considerable amount of good data about the State's response to COVID-19, vaccination rates and that sort of information. He also noted that Mr. Atencio, Mr. Barnett, and Ms. Delicana were available for questions.

Chairman Schultz was struggling with the need for this to be an emergency standard. It seems to take quite an incredibly long time for Federal OSHA to act most of the time and he was actually pleasantly surprised at the speed in the processing of this standard. We are in a very different position now than just a month ago, three months ago, six months ago, a year ago, a lot of things have changed over that time. Working in healthcare, something as little as the availability of PPE and the quality of the PPE is dramatically different now than it was. The ability to protect folks has changed dramatically and the knowledge of transmission, how it works and the key issues. There have been dramatic changes as we understand more and have implemented monitors and have made a dramatic difference. At this point, he thought we were in a very different position. While Chairman Schultz struggles with the need to make this an emergency standard, this is a very critical issue and we wanted to open it up for discussion.

Chairman Schultz noted there were a number of folks from National Nurses United that requested to comment and he invited them to share their knowledge.

Ms. Slade has been a nurse for about 10 years at Carondelet St. Joseph's Hospital in Tucson which is owned by Tenant Healthcare Corporation in Dallas, Texas. The nurses at the facility are part of the National Nurses United, the only unionized registered nurses in the state of Arizona. Ms. Slade spoke of her concerns that still exist due to COVID, and provided anecdotal evidence to support the need for the emergency temporary standard.

Chairman Schultz thanked Ms. Slade and asked if there was anyone else from National Nurses United that would like to like to comment.

Ms. Rando, a registered nurse for over eight years has been at the bedside with this pandemic since it started. She currently works at Carondelet St. Mary's Hospital in Tucson, and with Ms. Slade they represent the two facilities in the State of Arizona that are unionized with Nurses United. Ms. Rando spoke of her concerns with the hospital's response to the emergency standard, and provided support for the need for the emergency temporary standard.

Chairman Schultz asked if there was anyone else on the phone that would like to comment relative to the COVID-19 Healthcare Standard.

Ms. Johnston is with the Arizona Hospital and Healthcare Association. She appreciated the opportunity to listen in on the discussion and also provide some comments. She noted what the Chairman stated and that they are also struggling with the need for this to be an emergency right now. They are in a very different position than previously. The emergency right now is really the lack of staff and the ETS is not going to fix that, it is something that they all together as participating in the healthcare delivery system need to be focusing on in the future. She wanted to thank the ADOSH staff for the webinar yesterday, she thought it would help with some hospitals that have been struggling with better understanding the ETS. She will push that information out to both their members and other healthcare providers through the Arizona Coalition for Healthcare Emergency Response which they administer through a DHS grant. She thanked the Commission for the opportunity to comment and looks forward to working with the Commission on the rulemaking.

Chairman Schultz thanked Ms. Johnston and asked if there was anyone else on the phone that would like to comment concerning the rulemaking.

Ms. Thomason, the lead industrial hygienist in the health and safety division for National Nurses United, stated that while the pandemic has shifted over the last almost two years, it is not over. The case rates are still extremely high across the country including in the state of Arizona which means that there are still patients being hospitalized, still patients coming to clinics in the state of Arizona seeking care who might have COVID or do have confirmed COVID infection which means that healthcare workers and nurses in the state of Arizona and across the country are still being exposed in the workplace if their employers are not doing the infection control that is required by the OSHA ETS. Ms. Thomason spoke of her concerns and the need for the emergency temporary standard.

Chairman Schultz reiterated that based on the numbers that he sees from the data received, that in fact he does not see the grave danger that was perhaps present before, and does not believe it

is the same situation now and personally thinks it is best for the Commission to proceed under our normal notice and comment rulemaking process, but do it as expeditiously as possible.

Mr. Porter framed the question for the Commission to consider for a motion. Mr. Porter noted he prepared two separate resolutions for the Commission and as indicated earlier, the vast majority of the rulemaking is notice and comment rulemaking and there is a particular procedure associated with notice and comment rulemaking and a resolution authorizing the Legal Division and ADOSH to move forward with that process as expeditiously as possible. The second as indicated earlier, under §23-414 the Commission does have authority to adopt emergency temporary standards upon publication with the Secretary of State which would need to be approved by the Arizona Governor's Office as well as the Attorney General's Office before we can file, but for that process to be initiated the Commission would need to make findings of grave danger and the standards included in the ETS are necessary to protect the subject employees. There are two different resolutions and if the Commission is inclined to direct the Legal and ADOSH Divisions to move forward with notice and comment rulemaking, the motion could be simply that, if the Commission is inclined to move forward with adoption of emergency temporary standards, then the Commission would need to make findings on the grave danger and necessity requirements and direct Legal and ADOSH Divisions to move forward with the ETS process.

Chairman Schultz asked if the Commissioners had any questions for Mr. Porter.

Hearing none, Chairman Schultz stated he would entertain a motion to consider the resolution putting forth the normal rulemaking and comment process.

Commissioner Everett moved to approve the normal rulemaking and comment process and authorize the Legal Division to proceed with rulemaking with electronic signatures. Commissioner LeMarr seconded the motion. Chairman Schultz, 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.

Andrew Gillette, A Single Man
dba Andrew Gillette Sole Proprietor
1626 N. 144th Dr.
Goodyear, AZ 85395

Site Location: 116 N. 11th Ave.
Phoenix, AZ 85007
Inspection No: V4364 - 1533457
Inspection Date: 5/27/2021

Complaint
Years in Business: 1
Empl. Covered by Inspection: 5

SERIOUS – Citation 1 - Item 1 –

- a) 116 N. 11th Ave. Phoenix, AZ 85007: An employee was framing and cleaning the roof of a multi-family building that was approximately 20 ft above the ground level without fall protection.

- a) 7978 N Central Hwy, McNeal, AZ: The company had instituted a hearing conservation program in response to sound levels which exceeded the 8-hour time-weighted average of 85 decibels, and a monitoring program had not been implemented. 29 CFR 1910.95(d)(1)
Div. Proposal - \$3,000.00 Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 1b –

- a) Jalapeno canning line: The seamer machine operator had an 8-hour time-weighted average sound level exposure of 93.6 dBA, (90 dB measurement threshold) and it was not ensured that hearing protectors were worn.
- b) Jalapeno canning line: The empty can operator had an 8-hour time-weighted average sound level exposure of 95.0 dBA, (90 dB measurement threshold) and it was not ensured that hearing protectors were worn.
- c) Jalapeno canning line: The filler machine operator had an 8-hour time-weighted average sound level exposure of 91.4 dBA, (90 dB measurement threshold) and it was not ensured that hearing protectors were worn. 29 CFR 1910.95(i)(2)(i)
Div. Proposal - \$0.00 Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 1c –

- a) Jalapeno canning line: The seamer machine operator had an 8-hour time-weighted average sound level exposure of 94.1 dBA, (80 dB measurement threshold) and it was not ensured that hearing protectors were worn.
- b) Jalapeno canning line: The empty can operator had an 8-hour time-weighted average sound level exposure of 95.4 dBA, (80 dB measurement threshold) and it was not ensured that hearing protectors were worn.
- c) Jalapeno canning line: The filler machine operator had an 8-hour time-weighted average sound level exposure of 92.3 dBA, (80 dB measurement threshold) and it was not ensured that hearing protectors were worn.
- d) Jalapeno sorting line: A sorter employee had an 8-hour time-weighted average sound level exposure of 89.4 dBA, (80 dB measurement threshold) and it was not ensured that hearing protectors were worn.
- e) Jalapeno sorting line: A sorter employee had an 8-hour time-weighted average sound level exposure of 89.7 dBA, (80 dB measurement threshold) and it was not ensured that hearing protectors were worn. 29 CFR 1910.95(i)(2)(ii)(A)
Div. Proposal - \$0.00 Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 1d –

- a) Jalapeno canning line: The seamer machine operator had an 8-hour time-weighted average sound level exposure of 94.1 dBA, (80 dB measurement threshold) and only a single hearing protector was provided for employee use.
- b) Jalapeno canning line: The empty can operator had an 8-hour time-weighted average sound level exposure of 95.4 dBA, (80 dB measurement threshold) and only a single hearing protector was provided for employee use.
- c) Jalapeno canning line: The filler machine operator had an 8-hour time-weighted average sound level exposure of 92.3 dBA, (80 dB measurement threshold) and only a single hearing protector was provided for employee use.

- b) Jalapeno line: Two sprocket wheels and chains which powered and moved the filled can conveyor between the filling machine and the seamer machine were not fully enclosed.
 - c) Chili trim line: The sprocket wheel and chain which powered the sorting conveyor was not fully enclosed.
 - d) Chili unloading line: The sprocket wheel and chain which powered the east end of the chili unloading conveyor was not enclosed.
 - e) Chili unloading line: The sprocket wheel and chain which powered the west end of the chili unloading conveyor was not enclosed. 29 CFR 1910.219(f)(3)
- | | |
|----------------------------|----------------------------------|
| Div. Proposal - \$1,125.00 | Formula Amt. - \$1,125.00 |
| TOTAL PENALTY - \$8,625.00 | TOTAL FORMULA AMT. - \$18,750.00 |

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

Chairman Schultz checked if Mr. Wollenberg would like to comment.

Mr. Wollenberg did not wish to comment.

Commissioner Everett moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, 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 Mr. Atencio had an update on one of our Voluntary Protection Program partners.

Mr. Atencio stated that Prudential Overall Supply, one of the first industrial launderers to come into the Voluntary Protection Program for Arizona, just surpassed their third audit and have a five-year exemption for any program planned inspections. Through their efforts they helped Cintas and other industrial launderers that are working toward VPP status. This one Prudential Overall Supply location really launched all other Prudential Overall Supply workplaces into VPP including several in California and a few others back east and are very proud of them.

Mr. Atencio also noted that this morning he was invited by one of the SHARP members, Nathan Hardsole, to present an overview of the SHARP program to a group of about 40 people from both Federal OSHA and State plan states at the Cast Stone Institute Annual Member Convention in Tucson.

Chairman Schultz remembered his visit to Prudential Overall Supply and extended his personal congratulations on their achievement and was thankful for their very important help in spreading the word about the benefits of the Voluntary Protection Program.

Chairman Schultz thanked Mr. Ashley for sending along the Medical Data Report on Opioid Utilization which clearly demonstrates that when we use data to implement policy changes that in fact we can achieve dramatic reductions. Arizona's numbers compared to the region, countrywide and the overall reduction of a number of opioid scripts in the state to workers' comp injured workers and the reduction of costs to the system are dramatic. Also, the overall Arizona Medical Data Report, which is not as encouraging but it definitely demonstrates some significant opportunities

for the Commission to attempt to continue to improve our system and improve the care to our injured workers and reduce the costs of that care.

Mr. Ashley noted it was very encouraging looking at opioid prescription rates for new work comp claims seeing the reduction knowing that the Treatment Guidelines and ODG (Official Disability Guidelines) through evidence-based medicine is working to make sure we are seeing injured workers receive the highest quality care possible to heal and get back to work successfully and healthy.

Chairman Schultz agreed and noted that when we use data we can achieve results.

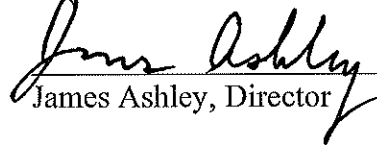
Ms. Dimas confirmed Commission meeting dates through December 2021. Commissioner LeMarr noted that he may not be available on November 4 and did not want to jeopardize not having a quorum. Vice Chair Hennelly will be available on November 4.

Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 3:07 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:

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Kara Dimas, Commission Secretary