

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, December 7, 2023 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Gaetano J. Testini	Director
	Afshan Peimani	Chief Legal Counsel (Telephonic)
	Phil Murphy	ADOSH Assistant Director
	Brandt Smith	ADOSH Supervisor
	Mary Spitzer	ADOSH Compliance
	Nathan Miller	ADOSH Compliance
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15); Stephanie Hefner (Snell and Wilmer) Mark Norton; Jesus Gonzalez and Tracy Gonzalez (Chayce Concrete, LLC); Kevin Warren, Albert Federico and Juan Roman (Efficient Electric, Inc.); Julia Harry and Marc Mattfolk (Clear Sky Capital Real Estate Solutions DBA Raceway Car Wash).

Approval of Minutes of November 30, 2023 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the November 30, 2023 regular session meeting and Commissioner Everett 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 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.

Lonigan Construction CORP 1510 West Sand Pebble Drive <u>Oro Valley, AZ 85737</u>	Complaint Years in Business: 1 Empl. Covered by Inspection: 1
Site Location: 980 W 34th Street Tucson, AZ 85713	
Inspection No: UR-2023-RS480-0082	
Inspection Date: August 7, 2023	

- a) 980 W 34th St. Tucson, AZ 85713: Employees performed rigging and assisted with the lifting of metal guardrail panels, using the Altec AC38-1275 Crane, SN: 0114EG1204, within a 20-foot radius of the overhead powerlines operating at 8KV. 29 CFR 1926.1408(a)(2)

Div. Proposal - \$26,787.00

Formula Amt. - \$26,787.00

TOTAL PENALTY - \$26,787.00

TOTAL FORMULA AMT. - \$26,787.00

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

Vice Chair Hennelly and Mr. Murphy discussed the information that supported the willfull violation.

Chairman Kavanaugh confirmed the photographs and video were provided by the Complainant.

Vice Chair Hennelly moved to approve the citation and proposed penalty 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.

Mr. Murphy noted the next file was related.

Valley Crane Service LLC
401 East Teton Road
Tucson, AZ 85756

Complaint

Years in Business: 20

Empl. Covered by Inspection: 1

Site Location: 980 W 34th Street
Tucson, AZ 85713

Inspection No: CP-2023-RS480-0081

Inspection Date: August 7, 2023

WILLFUL-SERIOUS – Citation 1 - Item 1 –

- a) 980 W. 34th St. Tucson, AZ 85713: A crane operator performed lift operations using an Altec AC38-1275 crane, SN:0114EG1204 in close proximity to powerlines operating at 8Kv, while moving guardrail panels and he lacked a current operator certification. 29 CFR 1926.1427(c)(2)

Div. Proposal - \$26,787.00

Formula Amt. - \$26,787.00

WILLFUL-SERIOUS – Citation 1 - Item 2 –

- a) 980 W. 34th St. Tucson, AZ 85713: A crane operator performed lift operations using an Altec AC38-1275 crane, SN: 0114EG1204 within 20-feet of the 8 KVA overhead powerlines. 29 CFR 1926.1408(a)(2)

Div. Proposal - \$26,787.00

Formula Amt. - \$26,787.00

SERIOUS – Citation 2 - Item 1a –

- a) 980 W. 34th St, Tucson, AZ 85713: The employer did not provide monthly crane inspections for the Altec AC38-1275 Crane, SN: 0114EG1204 which included the name and signature of the person conducting the inspection. 29 CFR 1926.1412(e)(3)(i)

Div. Proposal - \$2,009.00

Formula Amt. - \$2,009.00

SERIOUS – Citation 2 - Item 1b –

- a) 980 W 34th St. Tucson, AZ 85713: An annual crane inspection for the Altec AC38-1275 Crane, SN: 0114EG1204 used to lift fabricated guardrail panels was not provided upon request. 29 CFR 1926.1412(f)(7)
Div. Proposal - \$0.00 Formula Amt. - \$2,009.00

SERIOUS – Citation 2 - Item 1c –

- a) 980 W 34th St. Tucson, AZ 85713: The employer was operating an Altec AC38-1275 Crane, SN: 0114EG1204 with a broken boom angle indicator for up to four hours per week on the job site. 29 CFR 1926.1416(e)(1)
Div. Proposal - \$0.00 Formula Amt. - \$2,009.00
TOTAL PENALTY - \$55,583.00 TOTAL FORMULA AMT. - \$59,387.00

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

Chairman Kavanaugh confirmed it was the same jobsite as the previous file. Mr. Murphy agreed.

Commissioner Valdez and Mr. Murphy discussed that this was also a willful, Citation 1 Item 1 and 2 were willful, Citation 2 is the same scenario as Lonigan Construction. Citation 1 was willful for the lack of certification, the owner knew he was required to have certification and had successfully taken the certification test twice before, but failed the third time.

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

Mr. Murphy noted the next three files were related.

Chayce Concrete, LLC
12665 W El Nido CT
Litchfield Park, AZ 85340

Site Location: 2401 E Route 66
Flagstaff, AZ 86004
Inspection No: UR-2023-EG419-0010
Inspection Date: September 5, 2023

Unprogrammed Related
Years in Business: 18
Empl. Covered by Inspection: 4

SERIOUS – Citation 1 - Item 1 –

- a) Around the Trench: The employer failed to provide a safe place of employment that was free from recognized hazards in that one Employee was subject to impalement hazards on multiple occasions while pouring and finishing concrete due to the failure to effectively guard the form stakes against impalement. A.R.S. §23-403.A
Div. Proposal - \$3,572.00 Formula Amt. - \$3,572.00
TOTAL PENALTY - \$3,572.00 TOTAL FORMULA AMT. - \$3,572.00

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. Hearing none.

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.

Efficient Electric, Inc. 8925 W Larkspur Dr #106 Peoria, AZ 85381	Unprogrammed Related Years in Business: 10 Empl. Covered by Inspection: 3
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Inspection No: UR-2023-EG419-0011
 Inspection Date: September 5, 2023
 Site Location: 2401 E Route 66
 Flagstaff, AZ 86004

SERIOUS – Citation 1 - Item 1a –

- a) Around the Trench: Two employees were exposed to an impalement hazard while working adjacent to form stakes during the installation of electrical utilities. A.R.S. §23-403.A
 Div. Proposal - \$5,357.00 Formula Amt. - \$5,375.00

SERIOUS – Citation 1 - Item 1b –

- a) North side of trench: One employee was subject to impalement hazards on multiple occasions while installing telecommunication due to the failure to effectively guard the rebar stakes against impalement. 29CFR 1926.701(b)
 Div. Proposal - \$0.00 Formula Amt. - \$5,375.00
- TOTAL PENALTY - \$5,357.00 TOTAL FORMULA AMT. - \$10,714.00

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

Chairman Kavanaugh noted he had a request to speak.

Mr. Warren provided some background, they were installing underground conduit in the trench and within an hour of being made aware of the violation, the concrete guy came back and put on the covers, it was corrected as soon possible and have pictures. They did a safety meeting the following week about impalement hazards and making sure all rebar and concrete stakes have caps.

Mr. Murphy noted the multi-employer policy that even if another employer creates a hazardous condition and you are exposing your employees to that hazardous condition even though you are not creating it or have the correcting abilities of it, you cannot expose your employees to it, you have to notice the person who has the ability to correct it or the general contractor.

Vice Chair Hennelly asked Mr. Murphy if he was aware of the photographs. Mr. Murphy commented that he appreciated that it was abated quickly and was not sure if the employer provided the pictures to the Compliance Officer.

Mr. Warren noted abatement photographs were submitted to the Compliance Office within two hours of the inspection.

Vice Chair Hennelly moved to amend the citation and proposed penalties. Because of the prompt attention to abatement he suggested a 20% Good Faith Discount for a total of \$4,286.00. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

On-Site Builders, Inc. 8825 N 23rd Ave Ste 100 Phoenix, AZ 85021	Program Planned Years in Business: 70 Empl. Covered by Inspection: 1
Site Location: 2401 E Route 66 Flagstaff, AZ 86004	
Inspection No: PP-2023-EG419-0009	
Inspection Date: September 5, 2023	

SERIOUS – Citation 1 - Item 1 –

- a) North side of trench: One employee installing telecommunications lines was subject to impalement hazards while working in close proximity to unguarded rebar stakes. 29 CFR 1926.701(b)

Div. Proposal - \$5,357.00	Formula Amt. - \$5,357.00
TOTAL PENALTY - \$5,357.00	TOTAL FORMULA AMT. - \$5,357.00

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

Vice Chair Hennelly confirmed this was the controlling General Contractor for the three files.

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

Clear Sky Capital Real Estate Solutions DBA Raceway Car Wash 4401 E Baseline Rd Ste #108 Phoenix, AZ 85042	Referral Years in Business: 9 Empl. Covered by Inspection: 3
Site Location: 1025 N 51st Ave Phoenix, AZ 85043	
Inspection No: RF-2023-MB431-0019	
Inspection Date: September 12, 2023	

SERIOUS – Citation 1 - Item 1 –

- a) 1025 N 51st Ave, Phoenix, AZ, 85043: One employee performed maintenance on a tunnel carwash conveyor, and an energy control (lockout/tagout) procedure had not been developed. 29 CFR 1910.147(c)(4)(i)

Div. Proposal - \$8,929.00	Formula Amt. - \$8,929.00
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SERIOUS – Citation 1 - Item 2 –

and have certificates of completion. All of the information was provided to the investigator providing all of the online training that is required, unfortunately this incident was poor judgement by the employee and a violation of company policy.

Vice Chair Hennelly asked Ms. Harry about the materials that are online on a portal called Train You Well and all new hires are required to complete with 24 to 48 hours. It is done on their first day on site and are provided a link and can do it on their phone as paid training and there is follow-up to make sure everybody in the company has completed it. Ms. Harry noted records were provided as part of the package submitted.

Mr. Mattfold noted he had nothing to add to Ms. Harry's comments.

Mr. Murphy noted that based on the interviews it was a common practice about a half hour before closing employees would start cleaning and it was common practice to use the emergency stop instead of the lock out/tag out procedures. Management stated that is the way he does the process to hit the emergency stop which is not authorized for lock out/tag out procedures. He noticed in the file a one page document explaining what lock out/tag out is and was more like a flyer and not a program.

Vice Chair Hennelly moved to remand back to ADOSH for further discussion with the employer to resolve contested issues 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.

Discussion and/or Action regarding the consideration of Appointment of Interim Director of the Arizona Division of Occupational Safety and Health. The Commission may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(1).

Chairman Kavanaugh recognized and thanked Mr. Norton for all his years of service for the Commission and in the industry for worker safety.

Chairman Kavanaugh noted because of Mr. Norton's resignation an Interim Director of Arizona Division of Occupational Safety and Health is needed while a national search and asked if there was a motion to recommend to appoint an Interim Director.

Chairman Kavanaugh moved to appoint Mr. Murphy to the position as an Interim Director of Arizona Division of Occupational Safety and Health. 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.

Chairman Kavanaugh congratulated Mr. Murphy and looks forward to continue to work with him in this new capacity.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Testini announced that a menorah was placed in the lobby.

Ms. Dimas announced the retirement of Tina Rivera, the Administrative Assistant II in the Labor Division after 30 years.

Ms. Dimas confirmed Commission meeting dates through January 2024.

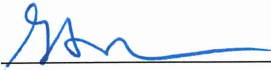
Public Comment.

There was no public comment.

The meeting was adjourned at 1:48 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Director

ATTEST:



Kara Dimas, Commission Secretary