

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, January 11, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner (Telephonic)
	Gaetano J. Testini	Executive Deputy Director
	Afshan Peimani	Chief Legal Counsel
	Lisa Padgett	Deputy Director
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Renee Pastor	Self-Insurance (Telephonic)
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	Alissa Bodie	Labor Investigator
	Phil Murphy	ADOSH Interim Director
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:03 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15); Stephanie Hefner (Snell and Wilmer); Julia Harry (51st St Carwash LP DBA Raceway Car Wash); James Russell Griffin, Jaimee Griffin and Cesar Flores (Pinal Excavating LLC dba P.E. Drilling); Dave Howard and Angelica Gallego (PRM-Premier Risk Management). Also in attendance on the telephone, confirmed by roll call were Tracy Foss, Amy Robinson, Garrett Mahoney (Risk Program Administrators “Securis”); Ryan Cole (The Trust “Securis”); Joe Zingaro and Susan Strickler (AZ Counties Insurance Pool); Monique Allen (Bashas’ / Raley’s Company); and Alan McVay (Dignity Health).

Approval of Minutes of December 21, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the December 21, 2023 regular session meeting 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.

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. American Furniture Warehouse Co. Inc.
2. Arizona Counties Workers' Compensation Pool
3. Dignity Health
4. McKee Foods Corporation
5. Raley's Arizona LLC dba Bashas'
6. Securis Insurance Pool, Inc.
7. The Arizona School Alliance for Workers' Compensation, Inc.

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

Discussion and Action regarding Proposed Retaliation Penalty.

1. ST-2324-0111 West Direct Oil, LLC DBA Diesel Direct

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a subsequent Civil Penalty in the amount of \$1,000.00 for violation of A.R.S. § 23-372(A).

Commissioner Everett moved to approve issuance of a subsequent Civil Penalty for violation in the amount of \$1,000.00 to West Direct Oil, LLC DBA Diesel Direct. 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 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.

Chairman Kavanaugh noted that Antech Corporation is a rare occurrence, it is a failure to abate citation. Mr. Murphy explained that a follow-up inspection can be performed to confirm abatement of hazards by the employer.

Antech Corporation	Follow-Up	
4261 S Country Club Rd	Years in Business:	72
Tucson, AZ 85714	Empl. Covered by Inspection:	5
Site Location:	4261 S Country Club Rd, Ste 101 Tucson, AZ 85714	
Inspection No:	FU-2023-T3633-0124	
Inspection Date:	August 30, 2023	

FTA-SERIOUS – Citation 1 - Item 1a –

- a) Spray finishing area: Employees used products including paints and powder coats, and the company had not developed and implemented a written hazard communication program.
29 CFR 1910.1200(e)(1)
Div. Proposal - \$55,944.00

FTA-SERIOUS – Citation 1 - Item 1b –

- a) Spray finishing area: Employees used products including paints and powder coats, and safety data sheets (SDS) were not maintained at the site for these products. 29 CFR 1910.1200(g)(8)
Div. Proposal - \$0.00

FTA-SERIOUS – Citation 1 - Item 1c –

- a) Spray finishing area: Employees used products including paints and powder coats, and the employees had not been trained concerning the company's hazard communication program and concerning the availability of Safety Data Sheets (SDS). 29 CFR 1910.1200(h)(1)
Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 1a –

- a) Powder coating booth: Employees sprayed powder coating on metal parts, and the booth where this work was done was constructed out of wood. 29 CFR 1910.107(b)(1)
Div. Proposal - \$27,972.00

SERIOUS – Citation 2 - Item 1b –

- a) Powder coating booth: The powder coating booth did not have a visible gauge or other device to indicate if the required ventilation air flow rate was maintained. 29 CFR 1910.107(b)(5)(i)
Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 1c –

- a) Powder coating booth: The powder coating booth did not have the lighting installed behind glass or other transparent panels. 29 CFR 1910.107(b)(10)
Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 1d –

- a) Powder coating area: Light switches installed on the north and west walls of the booth were not of explosion-proof type approved for Class I, group D locations. 29 CFR 1910.1200(e)(1)
Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 2 –

- a) Painting area: Employees who did painting and powder coating were required to use 3M brand half-face respirators, and a respiratory protection program was not provided. 29 CFR 1910.134(c)(1)
Div. Proposal - \$21,972.00
- TOTAL PENALTY - \$105,888.00

Commissioner Valdez moved to approve the citation and proposed penalties of \$10,046.00 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.

Pinal Excavating LLC dba P.E. Drilling
236 North Valley Farms Road
Coolidge, AZ 85128

Complaint
Years in Business: 40
Empl. Covered by Inspection: 3

Site Location: 1350 W Rose Garden Ln
Phoenix, AZ 85027
Inspection No: CP-2023-JR339-0010
Inspection Date: July 14, 2023

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) Southeast side of site: Two employees were working in a dry well that was not identified as a confined space. 29 CFR 1926.1203(a)

PINAL EXCAVATING LLC DBA P.E. DRILLING was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard, the employer not identifying all confined spaces in which one or more of the employees it directs may work, which was contained in ADOSH Inspection Number V0936-1499063, Citation Number 2, Item Number 2, which was issued on 2/2/2021 and was affirmed as final order on 3/8/2021 with respect to a workplace at 3333 W Peoria Ave, Phoenix, AZ 85029.

Div. Proposal - \$8,930.00

Formula Amt. - \$8,930.00

REPEAT-SERIOUS – Citation 1 - Item 2 –

- a) Southeast side of site: Two employees were working in a dry well without having received confined space training. 29 CFR 1926.1207(a)

PINAL EXCAVATING LLC DBA P.E. DRILLING was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard, the employer not identifying all confined spaces in which one or more of the employees it directs may work, which was contained in ADOSH Inspection Number V0936-1499063, Citation Number 2, Item Number 3, which was issued on 2/2/2021 and was affirmed as final order on 3/8/2021 with respect to a workplace at 3333 W Peoria Ave, Phoenix, AZ 85029.

Div. Proposal - \$8,930.00

Formula Amt. - \$8,930.00

SERIOUS – Citation 2 - Item 1a –

- a) Southeast side of site: Two employees were donning personal fall arrest harnesses with self-retracting lifelines whose anchors were not installed under the supervision of a qualified person. 29 CFR 1926.502(d)(15)(ii)

Div. Proposal - \$4,465.00

Formula Amt. - \$4,465.00

SERIOUS – Citation 2 - Item 1b –

- a) Southeast side of job site: Two employees working adjacent to an excavation were donning a personal fall arrest harnesses without having received fall protection training. 29 CFR 1926.503(a)(1)

Div. Proposal - \$0.00
TOTAL PENALTY - \$22,325.00

Formula Amt. - \$4,465.00
TOTAL FORMULA AMT. - \$27,769.00

Mr. Murphy discussed ADOSH's inspection, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Kavanaugh clarified the Repeat-Serious citations for the same conditions cited by in 2021 became final. Mr. Murphy confirmed noting a same or similar conditions.

Chairman Kavanaugh noted he did not have a request to speak form.

Commissioner Everett moved to approve the citations and proposed penalties 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

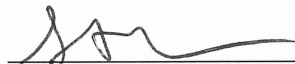
Ms. Dimas confirmed Commission meeting dates through February 2024, noting the January 18, 2024 meeting date will be cancelled and the February 8, 2024 meeting will be held at the Industrial Commission Tucson office.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:44 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By 
Gaetano J. Testini, Director

ATTEST:


Kara Dimas, Commission Secretary