

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, January 14, 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)  
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 Ahmed Najem and Larry Barnett (ALR Construction, Inc); Emily Vazquez (Snell & Wilmer); and Brett Barratt (NCCI).

Approval of Minutes of January 7, 2021 Regular Meeting Minutes.

This item was moved to the next meeting.

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. 2CNP20/21-0276 Beibei Amigos Language Preschool LLC \$1,000
2. 2CNP20/21-0151 Premier Diesel Equipment & Turbo LLC \$1,000
3. 2CNP20/21-0231 Canyon Carpentry & Tile LLC \$1,000
4. 2CNP20/21-0234 Southwest Garden Arts LLC \$1,000
5. 2CLP20/21-0013 HotShot Hardscape & Design LLC \$1,000

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

Discussion and Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B).

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Ms. Pastor discussed lump sum commutations and the process for updating the discount rate to be used in calculating the present value of an award under A.A.C. R20-5-121 and R20-5-122. Staff recommended setting the discount rate at 1.17% for calculating fixed period and permanent lump sum commutations, effective immediately.

Vice Chair Hennelly moved to approve staff recommendation to use a 1.17% discount rate in the calculation for lump sum commutations under A.A.C. R20-5-121 and R20-5-122, effective immediately. Commission LeMarr 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.

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Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

ALR Construction, Inc. 1719 ½ 22 <sup>nd</sup> Ave Phoenix, AZ 85009	Referral Years in Business: 23 Empl. Covered by Inspection: 5
Site Location: 1015 N 2 <sup>nd</sup> St Phoenix, AZ 85004	
Inspection No: V4364 -1485775	
Inspection Date: 07/29/2020	

REPEAT - SERIOUS – Citation 1 - Item 1 –

- a) 301 W Roosevelt St, Phoenix, AZ 85003: Three employees working in an excavation, 7' deep, 10' wide and 40' long, were not provided with training. 29 CFR 1926.21(b)(2)

ALR Construction, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.21(B)(2), which was contained in ADOSH Inspection Number 1436182, Citation Number 1, Item Number 1 and was affirmed as a final order on 2/5/20 and abated on 10/18/19, with respect to a workplace located at 445 N 5th St, Phoenix, AZ 85004.

ALR Construction, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.21(B)(2), which was contained in ADOSH Inspection Number 1436182, Citation Number 1, Item Number 1 and was affirmed as a final order on 2/5/20 and abated on 10/18/19, with respect to a workplace located at 15420 N Cotton Ln, Surprise, AZ 85338.

Div. Proposal - \$5,000.00

Formula Amt. - \$1,000.00

REPEAT - SERIOUS – Citation 1 - Item 2 –

- a) 301 W Roosevelt St, Phoenix, AZ 85003: Three employees working in an excavation, 7' deep, 10' wide and 40' long, without a protective system installed. 29 CFR 1926.652(a)(1)

ALR Construction, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.652(A)(1), which was contained in ADOSH Inspection Number 1436182, Citation Number 1, Item Number 1 and was affirmed as a final order on 1/8/20 and abated on 6/14/19, with respect to a workplace located at 445 N 5th St, Phoenix, AZ 85004.

Div. Proposal - \$2,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2 - Item 1 –

- a) 301 W Roosevelt St, Phoenix, AZ 85003: Three employees working in an excavation, 7' deep, 10' wide and 40' long, without a competent person conducting a daily inspection. 29 CFR 1926.651(k)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$8,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio noted this file was remanded to ADOSH at the last meeting. Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Najem did not have any comments this week. He did have a question if the previous citation could be revisited but Mr. Atencio noted the matter has already been closed. Chairman Schultz wanted to confirm that notification had been issued. Mr. Atencio noted to the best of his knowledge but would have to review the file, and it would have been sent to the employer where they request it during the opening and closing conference. Mr. Najem noted he was the safety coordinator on the project and they did have a trench box and there was an OSHA representative that stopped by for a site inspection and noted the issue.

Vice Chair Hennelly 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 Krenznel voted in favor of the motion. The motion passed.

Bam Shotcrete Inc  
8300 E County 6<sup>th</sup> St  
Yuma, AZ 85365

Referral  
Years in Business: 3  
Empl. Covered by Inspection: 5

Site Location: 36807 N 14<sup>th</sup> St  
Phoenix, AZ 85086  
Inspection No: T3633 -1495130  
Inspection Date: 09/24/2020

SERIOUS – Citation 1 - Item 1 –

- a) Outside east wall of substation: Employees operating a Genie brand aerial lift, model #A80/60 and serial #Z8008-2298, had not been instructed concerning the recognition and avoidance of live overhead power lines. 29 CFR 1926.95(a)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 –





Commissioner Krenzel moved to adjourn and Commissioner LeMarr 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 1:59 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary