

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, January 28, 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)
Jessie Atencio	ADOSH Director (Telephonic)
Anna Maria Stonerock	ADOSH Admin (Telephonic)
Steve Black	ADOSH Compliance (Telephonic)
Carlos "Charlie" Preciado	ADOSH Compliance (Telephonic)
Zakary Marquez	ADOSH Compliance (Telephonic)
Renee Pastor	Self Insurance (Telephonic)
Cherry Neumann	Assistant Claims Manager (Telephonic)
Lisa Padgett	Labor Director (Telephonic)
Victoria Kamm	Labor Supervisor (Telephonic)
Melissa Spurgeon	Labor Division (Telephonic)
Christina Sanchez	Labor Division (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 George Woods (City of Scottsdale); Caleb Blachke (City Of Willcox - Wastewater Treatment Plant); Noah Dray and Kevin Spiecker (CFS Metals, LLC); Bob Peshak (Enviroshare); Kimberly Williams (Impact Sign & Graphics); and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of January 7, 2021 Regular Meeting Minutes and January 14, 2021 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the January 7, 2021 regular session meeting 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.

Commissioner LeMarr moved to approve the Minutes of the January 14, 2021 regular session meeting 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.

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. 2CSP20/21-0027 Better Way Roofing LLC \$1,000
2. 2CMO20/21-0010 Hogan's Moving LLC \$5,000

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

1. City of Scottsdale

c. Approval of Proposed Youth Employment Penalty.

1. YL-2021-0053 Christian Care Management, Inc. DBA Fellowship Christian Care Mesa \$600

Chairman Schultz moved the City of Scottsdale to the regular agenda.

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

Approval of Requests for Renewal of Self-Insurance Authority.

1. City of Scottsdale

Chairman Schultz noted that while Ms. Pastor reviewed and recommended the request for exemption from posting a security deposit, his concern continues to be the high experience modification factor and he would like to know what plans, in addition to working with ADOSH consultation services, the city has to improve its safety performance and reduce the experience modification factor.

Mr. Woods stated they are meeting with ADOSH next week to sign the paperwork and begin the PEPP program. They have a financial commitment from the City Manager to make any improvements found during ADOSH's inspection. Additionally, they are implementing "Triage Now," a nurse case management system for every city employee beginning in February. They hope to get closer to VPP certified. He increased the frequency of meetings with public safety personnel. From the data analysis and the Origami claims system to get the information to see a lot are being injured during interactions with suspects and intend to address that to include more training and dynamic training to get a real world scenario to what they will be facing. They are also experimenting with hiring an additional safety personnel, perhaps an industrial hygienist, to give a little more expertise and identify situations that may be improved.

Chairman Schultz would appreciate quarterly updates on the progress of implementing the new programs. Mr. Woods agreed to provide quarterly updates and analysis of the trajectory of the programs.

Ms. Pastor explained that with the calculation of the 2020 taxes which are due February 15<sup>th</sup> she will prepare separate experience modification factors for police and fire to help drill down that information and include these calculations with the quarterly update.

Chairman Schultz thanked Ms. Pastor for her commitment to the self-insurance program and her efforts to help all of the self-insureds.

Commissioner Krenzel moved to approve the self-insurance renewal for the City of Scottsdale 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 of Resolution Appointing Custodian of Records.

Ms. Neumann recommended that Vicky Jones and Susan Gastelum be appointed as Custodians of Records.

Commissioner Krenzel moved to appoint Ms. Jones and Ms. Gastelum as Custodians of Records 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.

#### Discussion and Action regarding Proposed Retaliation Penalty.

1. ST-1819-0316 Neumann, LLC DBA Hatter & Hare \$4,650

Ms. Padgett provided the background of the Fair Wages and Healthy Families Act which also protected employees from retaliation for exercising their rights under the Earned Paid Sick Time law. Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$4,650 for violation of A.R.S. § 23-364.

Vice Chair Hennelly, Ms. Padgett and Ms. Kamm discussed and verified that the response from the employer was solely of a general statement that the employee had stopped working before he made the claim with the Labor Department. Ms. Padgett noted they provided payroll and time records and did not respond to requests for interviews. Ms. Kamm noted they did not have any further communication with the employer.

Chairman Schultz discussed with Mr. Testini that there were no statute of limitations concerns that applied.

Vice Chair Hennelly moved to approve issuance of a Penalty for Retaliation in the amount of \$4,650 to Neumann, LLC DBA Hatter & Hare. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.



- b) Lift stations and Waste Water Plant: Procedures to prevent unauthorized entry into permit spaces were not developed prior to entry. 29 CFR 1910.146(d)(9)  
Div. Proposal - \$0.00 Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 2d–

- a) Lift Stations and Waste Water Plant: Employees entered permit spaces without completing an entry permit. 29 CFR 1910.146(d)(10)  
Div. Proposal - \$0.00 Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 2e –

- a) Lift Stations and Waste Water Plant: Employees required to enter permit spaces were not trained with the knowledge and skills necessary to safely perform entry of a permit required confined space. 29 CFR 1910.146(g)(1)  
Div. Proposal - \$0.00 Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 2f–

- a) Lift Stations and Waste Water Plant: Employees were allowed to enter permit spaces without wearing a chest or full body harness.  
Div. Proposal - \$0.00 Formula Amt. - \$3,000.00

SERIOUS – Citation 1 - Item 3a –

- a) Lift Stations and Waste Water Plant: Employees were exposed to hazardous energy when performing maintenance of waste water filter cleaners and lift station pumps without an energy control program having been developed. 29 CFR 1910.147(c)(1)  
Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3b–

- a) Lift Stations and Waste Water Plant: Machine specific procedures were not developed for employees exposed to potentially hazardous energy while performing maintenance on lift station pumps and water filters. 1 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 1910.147(c)(4)(i)  
Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3c –

- a) Lift Stations and Waste Water Plant: Employees exposed to hazardous energy while performing maintenance on lift station pumps and water filters were not provided lockout/tagout training. 29 CFR 1910.147(c)(7)(i)  
Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 4a –

- a) Wastewater Plant: An employee worked with the hazardous chemical Macs Chain and Cable Lube (Category 1 Flammable Aerosol) without a written hazard communication developed or implemented. 29 CFR 1910.1200(e)(1)  
Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 4b–

- a) Waste Water Plant: An employee worked with Macs Chain and Cable Lube (Category 1 Flammable Aerosol) without an SDS for it available in the workplace. 29 CFR 1910.1200(g)(8)  
Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 – Item 4c –

- a) Waste Water Plant: An employee was not provided with information and training on the hazardous chemical Macs Chain and Cable Lube (Category 1 Flammable Aerosol). 29 CFR 1910.1200(h)(1)  
Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 5a –

- a) City of Willcox: Employees performed Class II asbestos operations and an exposure assessment was not completed. 29 CFR 1926.1101(f)(1)(i)  
Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 5b–

- a) City of Willcox: Employees who performed Class II asbestos operations were not supervised by a competent person. 29 CFR 1926.1101(g)(7)(i)  
Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 5c –

- a) City of Willcox: Employees who performed Class II asbestos operations did not wear and were not required to wear respirators. 29 CFR 1926.1101(h)(1)(iv)  
Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 5d –

- a) City of Willcox: Employees were not provided with protective clothing for Class II asbestos operations. 29 CFR 1926.1101(i)(1)  
Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 6a –

- a) City of Willcox: Employees who performed Class II asbestos operations were not provided with any training prior to performing work. 29 CFR 1926.1101(k)(9)(iv)(C)  
Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 6b–

- a) City of Willcox: Employees performed Class II asbestos operations, removing asbestos containing transite pipe with a saw, without a training program developed by the city. 29 CFR 1926.1101(k)(9)(i)
- |                             |                                  |
|-----------------------------|----------------------------------|
| Div. Proposal - \$0.00      | Formula Amt. - \$1,500.00        |
| TOTAL PENALTY - \$10,500.00 | TOTAL FORMULA AMT. - \$38,500.00 |

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs. Mr. Atencio noted that Citation 1, Item 1 should have a \$1,500 formula penalty and therefore the total formula amount of penalty would be \$37,500.

Vice Chair Hennelly and Mr. Atencio discussed there was no abatement at this time from the City but the City is planning to utilize ADOSH consultation services once this matter is settled and the City is aware of the PEPP Program.

Chairman Schultz asked if there was any other chemical exposure at the wastewater treatment plant. Mr. Atencio did not see any notations in the file regarding chemical exposure as the investigation was focused on the complaint items.

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

Mr. Blachke, the City Manager, filled in for the Utilities Director. He stated that safety is an important part of the city and the city has retained consultants and completed an exposure assessment which was rated favorably compared to the OSHA standards. Additionally, they have established a few policies, and are in the process of replacing their lines which are over 7 years old. They have adjusted rates so they can start replacing things. They are willing to work with ADOSH and want to ensure their employees are working in a safe environment and invest funds into getting the needed equipment, manuals and consultants in order to be compliant. Their consultants have started training competent person training, for PPE, lockout/tagout training, and are making videos to demonstrate how to correctly perform these functions and ensure they are following the standards.

Chairman Schultz noted to document the training and share the abatement efforts with Mr. Atencio, because it will make a significant difference.

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

CFS Metals Recycling, LLC.  
3126 E President St.  
Tucson, AZ 85714

Site Location: 3126 E President St  
Tucson, AZ 85714  
Inspection No: T3633 -1504798  
Inspection Date: 12/3/2020

Planned  
Years in Business: 7  
Empl. Covered by Inspection: 10

SERIOUS – Citation 1 - Item 1a –





Chairman Schultz noted it was terrific news and what we value is employers wanting to provide a safe workplace, and directed Enviroshare to submit the report directly to Mr. Atencio so he will take the report into account for the processing of the citation and penalties.

Mr. Peshak noted he will send it to Mr. Atencio along with the lockout/tagout. They want to show that they take this seriously and are willing to address all of the issues.

Chairman Schultz thanked them for providing the additional information.

Commissioner LeMarr moved to amend the proposed penalties. He noted it appears there has been substantial abatement already and knows the information chain will catch up with Mr. Atencio, and proposed a 25% Good Faith Reduction for the abatement put in place for a total of \$2,250.00. Commissioner Krenzle seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzle voted in favor of the motion. The motion passed.

Eclipse Construction, LLC.  
1910 S 7<sup>th</sup> Ave.  
Tucson, AZ 855713

Planned  
Years in Business: 3  
Empl. Covered by Inspection: 6

Site Location: 3020 E Sam Hughes Ct  
Tucson, AZ 85713  
Inspection No: E7721 - 1492037  
Inspection Date: 9/9/2020

REPEAT - SERIOUS – Citation 1 - Item 1 –

- a) 3020 E Sam Hughes Ct, Tucson, AZ 85716: Four employees were observed installing scissor trusses on a building that measured 12 feet high without fall protection. 29 CFR 1926.501(b)(13)

The Eclipse Construction, LLC was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard, no fall protection, which was contained in ADOSH Inspection Number 1414423, Citation Number 1926.501(B)(10), Item Number 1 and was affirmed as a final order on 12/13/2019, with respect to a workplace located at 9158 N Wagon Spoke Ct, Tucson, AZ 85742.

Div. Proposal - \$2,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2 - Item 1 –

- a) 3020 E Sam Hughes Ct, Tucson, AZ 85716: Three employees were observed installing scissor trusses at heights of 12 feet without fall protection training. 29 CFR 1926.503(a)(2)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$2,000.00

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

Commissioner Krenzel asked if there was a district or regional manager or safety officer to get the information to all of the stores or just location by location. Mr. Atencio responded that based on his past experience with the corporate office and the safety programs and what they are doing to prevent stock buildup, there were no safety officers but instead employees take on that role to help make sure the store is orderly.

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

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.

Mr. Atencio introduced Carlos ("Charlie") Preciado who performed the inspection on this matter.

Impact Sign & Graphics, LLC 5246 S. 40 <sup>th</sup> St Phoenix, AZ 85040	Complaint Years in Business: 6 Empl. Covered by Inspection: 4
Site Location: 5246 S. 40 <sup>th</sup> St Phoenix, AZ 85040	
Inspection No: R2410 -1493831	
Inspection Date: 09/21/2020	

SERIOUS – Citation 1 - Item 1 –

- a) Workshop: Two employees were wearing SAS 8611 Particulate Respirators for voluntary use while cutting wood without a hazard assessment being done to determine the need for PPE for that job task. 29 CFR 1910.132(d)(1)  
Div. Proposal - \$900.00 Formula Amt. - \$900.00

SERIOUS – Citation 1 - Item 2 –

- a) 5246 S 40<sup>th</sup> St, Phoenix, AZ 85040: One employee was operating a Nissan forklift, model #CPJ02A25PV and serial #CPJ02-9P2053, without prior evaluation of training. 29 CFR 1910.178(l)(5)  
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 3 –

- a) 5246 S 40<sup>th</sup> St, Phoenix, AZ 85040: Two employees used a Rockwell Unisaw, model number unknown and serial #83E01328, without a guard. 29 CFR 1910.213(c)(1)  
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 4a –

- a) 5246 S 40<sup>th</sup> St, Phoenix, AZ 85040: Two employees were working with hazardous chemicals such as Weld-On 773, Duration Satin Exterior Acrylic Latex, Lacquer Thinner P20, and Rapid Tac Rapid Remover without developing and implementing a written hazard

communication program. 29 CFR 1910.1200(e)(1)  
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 4b –

- a) 5246 S 40<sup>th</sup> St, Phoenix, AZ 85040: Two employees were working with hazardous chemicals such as Rapid Tac Rapid Remover in a secondary container without labeling to indicate the product identifier and specific information regarding the physical and health hazards of the chemical. 29 CFR 1910.1200(f)(6)(ii)  
Div. Proposal - \$0.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 4c –

- a) 5246 S 40<sup>th</sup> St, Phoenix, AZ 85040: Two employees were working with hazardous chemicals such as Weld-On 773, Duration Satin Exterior Acrylic Latex, Lacquer Thinner P20, and Rapid Tac Rapid Remover without maintaining the safety data sheet. 29 CFR 1910.1200(g)(8)  
Div. Proposal - \$0.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 5 –

- a) 5246 S 40<sup>th</sup> St, Phoenix, AZ 85040: Two employees were working with hazardous chemicals such as Weld-On 773, Duration Satin Exterior Acrylic Latex, Lacquer Thinner P20, and Rapid Tac Rapid Remover without training. 29 CFR 1910.1200(h)(1)  
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 2 - Item 1 –

- a) 5246 S 40<sup>th</sup> St, Phoenix, AZ 85040: The OSHA 300 Injury and Illness Logs and 300A Summaries were not provided as they were not maintained for the previous work years of 2017, 2018, and 2019.  
Div. Proposal - \$600.00 Formula Amt. - \$600.00  
TOTAL PENALTY - \$6,300.00 TOTAL FORMULA AMT. - \$8,700.00

Mr. Atencio noted Mr. Marquez was on the phone to answer any questions. 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. Atencio noted that Mr. Marquez did receive abatement today for the bottle labeling, the forklift backrest and data plate.

Ms. Williams noted she started working for the company in September and started in this position in November, when she received the letter with the citations she called Mr. Marquez to get on the same page. They do take everything seriously and has been communicating with Mr. Marquez to get everything into compliance. Anything they need to do to correct anything they will do and cooperate. She noted the MSD sheets for the chemical and the forklift certifications for the drivers have been provided. She will keep in communication with Mr. Marquez.

Chairman Schultz noted he appreciates the efforts, the desire is to help employers provide safe workplaces for the employees of Arizona. Keep them safe and keep them working.

Mr. Testini noted the inspection date of 9/21/2020 and in the written portion it says 9/22/2020. Mr. Atencio noted the notification of the complaint came in on the 21<sup>st</sup> and the onsite inspection took place on the 22<sup>nd</sup>.

Commissioner Krenzel moved to amend the proposed penalties. In light that there is evidence of abatement and the representative of the company has confirmed, and knows the information will catch up with Mr. Atencio, proposed a 25% Good Faith Reduction for a total of \$4,725.00. Commissioner LeMarr 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 noted that Mr. Laky would provide an update on HB 2160 introduced by Representative Steve Kaiser related to ADOSH, and the developments this week.

Mr. Laky noted that the agency's bill, HB 2160, has passed the Commerce Committee in the House and the next step will be the Rules Committee, most likely next week. He noted this is one bill of 1,362 bills that have been posted this year, more than most years since the bills that were not completed last year are proceeding this year. He noted there are great supporters for our bill, such as the Arizona Chamber of Commerce, the National Federation of Independent Businesses, the Home Builders Association, Arizona Chapter of Associated General Contractors, the Arizona Masonry Council, and the Arizona Rock Products Association, with these great supporters we will keep working to get this through.

Ms. Dimas confirmed Commission meeting dates through March 2021.

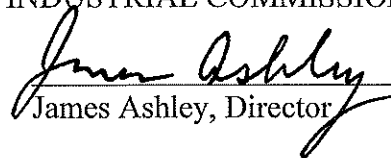
Public Comment.

There was no other public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly 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 2:54 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary