

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, April 28, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	D. Alan Everett	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Jason Porter	Deputy Director
	Renee Pastor	Self Insurance
	Lisa Padgett	Labor Director
	Melissa Spurgeon	Labor Supervisor
	Jennifer Cox	Labor Investigator
	Sarah Tucker	Labor Investigator
	Jessie Atencio	ADOSH Director
	Carlos (Charlie) Preciado	ADOSH Compliance
	Miguel Castillo	ADOSH Compliance
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were William E. Beebe (Arizona Recycles); and Monique Handy (Pinnacle West Capital Corp).

Approval of Minutes of April 21, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the April 21, 2022 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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 Requests for Renewal of Self-Insurance Authority.
 1. Pinnacle West Capital Corporation
 2. Textron, Inc.
 3. YRC Inc. dba YRC Freight

Chairman Schultz commented on the wonderful experience modification factor of .80, especially given the nature of the operations of Pinnacle West Capital Corporation and their 6,500 employees in Arizona.

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

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2021-0099 Vital Pharmaceuticals, Inc., dba Bang Energy \$2,692.00

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 \$2,692.00 for violation of A.R.S. § 23-364.

Vice Chair Hennelly and Ms. Padgett discussed that the investigation did not disclose a pattern during the review of the company; there was only one incident for this employer.

Chairman Schultz thanked Ms. Padgett and her team for their thorough investigation.

Vice Chair Hennelly moved to approve issuance of a Penalty for Retaliation in the amount of \$2,692.00 to Vital Pharmaceuticals, Inc., dba Bang Energy. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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.

Arizona Recycles LLC	Fatality/Catastrophe
902 E Hughes Access Rd	Years in Business: 9
Tucson, AZ 85756	Empl. Covered by Inspection: 5
Site Location: 902 E Hughes Access Rd	
Tucson, AZ 85756	
Inspection No: FC-2022-E7721-0008	
Inspection Date: November 24, 2021	

SERIOUS – Citation 1 - Item 1 –

- a) 902 E Hughes Access Rd, Tucson, AZ 85756: Two employees operated a Toyota forklift, model and serial numbers unknown, without the required training. 29 CFR 1910.178(l)(1)(i) Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 902 E Hughes Access Rd, Tucson, AZ 85756: Two employees used a Toyota forklift, model and serial numbers unknown, where the seatbelt had been removed.
- b) 902 E Hughes Access Rd, Tucson, AZ 85756: Two employees used a Toyota forklift, model and serial numbers unknown, with an unserviceable seat. 29 CFR 1910.178(p)(1)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00
TOTAL PENALTY - \$2,000.00 TOTAL FORMULA AMT. - \$2,000.00

Mr. Atencio and the Compliance Officer, Mr. Preciado were available for questions. Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr clarified, and Mr. Atencio confirmed, that the citation for the forklift was the result of the Compliance Officer being onsite investigating another incident. .

Chairman Schultz checked if Arizona Recycles would like to comment.

Mr. Beebe noted this was a terrible tragedy for the family and company. They worked together for 30 years. He wanted to thank the Tucson ADOSH people, they were there in an instant, and helped and consoled his people. The forklift seatbelt has been fixed, the employer now has a more formal training program and will meet with ADOSH consultation.

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

White Cardinal Contracting LLC	Unprogrammed Related	
1010 E Jefferson St	Years in Business:	3
Phoenix, AZ 85034	Empl. Covered by Inspection:	5
Site Location:	2050 W Southern Ave Phoenix, AZ 85041	
Inspection No:	UR-2022-V4364-0022	
Inspection Date:	February 16, 2022	

SERIOUS – Citation 1 - Item 1 –

- a) 2050 W Southern Ave, Phoenix, Bldg 9: Three employees decked the second-floor level of new multi-building that height was measured at 10.3 ft above the ground level without fall protection. 29 CFR 1926.501(b)(13)
Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

- a) 2050 W Southern Ave, Phoenix, Bldg. 9: Three employees decked a new construction second-floor level multi-family building without fall protection training. 29 CFR 1926.503(a)(1)
Div. Proposal - \$2,500.00 Formula Amt. - \$2,500.00
TOTAL PENALTY - \$3,750.00 TOTAL FORMULA AMT. - \$3,750.00

Mr. Atencio and the Compliance Officer, Mr. Castillo were available for questions. Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr inquired to Mr. Atencio how it was ascertained that the safety and fall protection programs were not shared with employees. Mr. Castillo stated this company did not have toolbox talks before starting their day.

Chairman Schultz checked if anyone would like to comment.

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

CMH Manufacturing West, Inc. dba Clayton Homes	Referral	
231 N. Apache Rd	Years in Business:	66
<u>Buckeye, AZ 85326</u>	Empl. Covered by Inspection:	20
Site Location:	231 N. Apache Rd Buckeye, AZ 85326	
Inspection No:	RF-2022-B5049-0006	
Inspection Date:	November 2, 2021	

SERIOUS – Citation 1 - Item 1 –

- a) Assembly Line Station #8: Employees required to work underneath mobile homes were not protected from being struck by, crushed or pinned by mobile homes during the manufacturing process. A.R.S. 23-403.A
Div. Proposal - \$5,000.00 Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 –

- a) Assembly Line Station #8: Employees were exposed to a chain under stress, without guarding in place. 29 CFR 1910.212(a)(1)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00
- TOTAL PENALTY - \$7,000.00 TOTAL FORMULA AMT. - \$7,000.00

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

Chairman Schultz noted his shock that this was not a fatality and asked how the employee is doing. Mr. Atencio did not know.

Chairman Schultz checked if anyone would like to comment.

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

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to A.A.C. R20-5-601, R20-5-602, and R20-5-629 to adopt the revised Federal Occupational Safety and Health standards included in the following OSHA Final Rules:

- Standards Improvement Project - Phase IV
- Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (September 30, 2019)
- Revising the Beryllium Standard for General Industry
- Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (August 31, 2020)
- Cranes and Derricks in Construction: Railroad Roadway Work
- Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction.

Mr. Porter provided some background noting in January the Commission approved to move forward with rulemaking to amend Rule 601 (Construction Standard), 602 (General Industry Standard) to adopt four final rules published by Federal OSHA that pertain to the Beryllium Standard which were updates to those rules and initiated that process. The proposal today would be to continue to adopt those four Rules and two additional Rules so that all six can be done together.

Mr. Porter focused on the two additional rules for 601, 602 and adding 629 (Record Keeping and Reporting). The first is the "Standards Improvement Project – Phase IV" which revised existing standards in the recordkeeping (29 CFR 1904), general industry (29 CFR 1910), and construction (29 CFR 1926) standards. The purpose of OSHA's Standards Improvement Project was to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards, which permit improved compliance by employers and reduce costs and paperwork burdens where possible, without reducing employee protections. OSHA reports that many of the revisions in the Final Rule reduce costs while improving worker safety and health or privacy. The revisions include an update to the consensus standard incorporated by reference for signs and devices used to protect workers near automobile traffic, a revision to the requirements for roll-over protective structures to comply with current consensus standards, updates for storage of digital x-rays, and the method of calling emergency services to allow for use of current technology. According to the final rule the method of calling emergency services to allow for use of current technology would be the only new requirement that would increase a burden and Federal OSHA estimated it would be about a \$32,000 increase for all employers nationwide to comply with that standard. As to the remaining changes in the rule Federal OSHA predicted it would reduce burden costs on employers. Federal OSHA also revised two standards to align with current medical practice: a reduction to the number of necessary employee x-rays and updates to requirements for pulmonary function testing. To protect employee privacy and prevent identity fraud, OSHA also removed from the standards the requirements that employers include an employee's social security number on exposure monitoring, medical surveillance, and other records.

The second proposed rule entitled "Cranes and Derricks in Construction: Railroad Roadway Work" revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications with regard to the application of the standard to cranes and derricks used for railroad roadway work. The Final Rule adds exemptions pertaining to: (1) "flash-butt welding trucks" and equipment with similar attachments; (2) working conditions of certain employees with respect to which Federal agencies exercise statutory authority to prescribe and enforce occupational safety and health standards; (3) use of rail stops and rail clamps on covered equipment; (4) work

area controls when employers are subject to specified on-track safety program requirements; (5) railroad roadway maintenance machine ("RMM") restrictions on out-of-level work; (6) use of cranes or derricks to drag a load sideways; (7) use of a hydraulic piston for raising and lowering a boom; (8) the requirement to obtain and follow equipment manufacturer's guidance for equipment modifications for RMMs; and (9) the requirement that employers must follow the manufacturer's guidance, instructions, procedures, prohibitions, limitations, or specifications pertaining to RMMs. According to Federal OSHA, this rulemaking created exemptions in all of those areas which reduce burdens on impacted stakeholders, created exemptions and clarifications, recognize the unique equipment and circumstances in railroad roadway work, and reflect the preemption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration. OSHA reports that the revised standard provides a clearer understanding of which regulatory requirements are applicable, resulting in a more effective regulatory program and ultimately improved safety.

Mr. Porter requested the Commission's consideration and adoption of six final rules promulgated by Federal OSHA that will impact Arizona Rules 601, 602 and 629 and asked the Commission for approval to initiate the rulemaking process by filing a notice of proposed rulemaking with the Secretary of State.

Commissioner LeMarr recalled the previous action of the Commission to amend four rules already made for Beryllium. Mr. Porter noted the process was initiated and not completed and changing course and adding two new rules to that rulemaking to adopt all outstanding standards.

Commissioner Everett moved to approve proposed rulemaking and to authorize the Legal Division to initiate the rulemaking process by filing a Notice of Proposed Rulemaking for A.A.C. R20-5-601, R20-5-602, and R20-5-629 with the Office of Secretary of State in compliance with the provisions of the Administrative Procedure Act. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on the second AZ Hires Vets Job Fair being held today. Ms. Stonerock commented on the event noting there was a large display of state agencies and several veterans asked for information. Mr. Ashley noted that updated division materials for Labor, Claims, ADOSH and including a new Accounting division recruiting brochure were distributed.

Mr. Ashley noted another job fair event at Phoenix College for a paralegal program, and thanked Deborah Kimmick and Cynthia Coronado from the ALJ Division for bringing this event to the Agency's attention and their work to set up a presence at the College which was a successful event.

Ms. Dimas confirmed Commission meeting dates through July 2022.

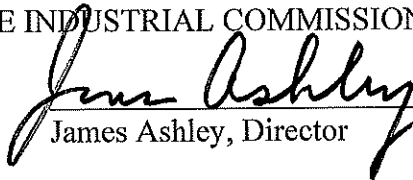
Public Comment.

There was no public comment.


Commissioner Everett moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:06 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary