

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, June 9, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	D. Alan Everett	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Director
	Karen Schomburg	ADOSH Supervisor
	Steven Black	ADOSH Compliance
	Brandt Smith	ADOSH Investigator Supervisor
	Pete Johnston	ADOSH Investigator
	Laura Orosco	ADOSH Investigator (Telephonic)
	John Randolph	ADOSH Compliance
	Bertha Cecilia Herrera	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 Susan Strickler (ACIP); Kevin Ott (Canyon State Enterprises); and Kiana Lawrence (Snell & Wilmer). Attending telephonically were Dianne Shoemake and Lorena Sanchez (City of Glendale); Christine Lloyd (Town of Gilbert); Tracy Foss (Securis Insurance Pool); Gary Kazlowski, Jerry Gonzales and Bob Saenz (Hasa Inc).

Approval of Minutes of May 26, 2022 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the May 26, 2022 regular session meeting and Chairman Schultz seconded the motion. Chairman Schultz, 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. Learjet Inc.

SERIOUS – Citation 1 - Item 4 –

- a) 4672 E. Old W Rd, Kingman, AZ 86401: One employee standing on the top step of an eight-foot A frame ladder. 29 CFR 1926.1053(b)(13)

Div. Proposal -	\$1,500.00	Formula Amt. -	\$1,500.00
TOTAL PENALTY -	\$6,000.00	TOTAL FORMULA AMT. -	\$7,500.00

Mr. Atencio noted this citation was brought back to the Commission for consideration, after further review there was a citation that was not grouped and added, and the proposed penalties amount did not change on the division side, but the proposed formula amount did change because of the grouping. Ms. Schomburg, Compliance Officer, was available for questions. This was part of a multi-employer inspection and summarized the citation and proposed penalties and reviewed the photographs.

Commissioner LeMarr noted the receipt for fall protection and safety equipment and asked if there was any follow up to see the equipment has been implemented. Mr. Atencio noted there has not been but ADOSH can follow up.

Chairman Schultz checked if anyone would like to comment; hearing none:

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

Canyon State Enterprises, LLC		Complaint	
2959 Rhoades Ave		Years in Business:	2
<u>Kingman, AZ 86401</u>		Empl. Covered by Inspection:	5
Site Location:	The Ranch at Long Mt, N Old Ranch Ln and Rte 66		
	Kingman, AZ 86401		
Inspection No:	CP-2022-F9669-0002		
Inspection Date:	December 13, 2021		

SERIOUS – Citation 1 - Item 1 –

- a) 4780 E Lazy River Rd, Kingman, AZ 86401: Two employees applying stucco from fabricated scaffolding exposed to a fall distance measured at an approximate height of 11'7" without fall protection. 29 CFR 1926.451(g)(1)

Div. Proposal -	\$1,500.00	Formula Amt. -	\$1,500.00
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SERIOUS – Citation 1 - Item 2a –

- a) 4780 Lazy River Rd, Kingman, AZ 86401: Four employees applying stucco from a light-duty frame scaffold without training. 29 CFR 1926.454(a)

Div. Proposal -	\$1,500.00	Formula Amt. -	\$1,500.00
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SERIOUS – Citation 1 - Item 2b –

- a) 4780 Lazy River Rd, Kingman, AZ 86401: Four employees applying stucco from a light-duty frame scaffold without training on hazards associated with erecting, disassembling and moving scaffolds. 29 CFR 1926.454(b)
 Div. Proposal - \$0.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

- a) 4780 E Lazy River Rd, Kingman, AZ 86401: Two employees were working from a roof approximately nine feet at the eve above the ground level without a fall protection system in place to prevent a fall. 29 CFR 1926.501(b)(1)
 Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00
 TOTAL PENALTY - \$4,500.00 TOTAL FORMULA AMT. - \$6,000.00

Mr. Atencio and the Compliance Officer, Ms. Schomburg were available for questions noting this was part of the same multi-employer inspection. Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz and Mr. Atencio discussed whether photograph #1 demonstrates a possible ladder violation, but concluded the employer was not in violation because the method of ladder use is accepted by the manufacturer.

Chairman Schultz checked if Mr. Ott would like to comment but he did not.

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

Hasa, Inc. 735 N Eleven Mile Corner Rd Eloy, AZ 85131 <hr/> Site Location: 735 N Eleven Mile Corner Rd Eloy, AZ 85131 Inspection No: CP-2022-T3633-0029 Inspection Date: March 7, 2022	Complaint Years in Business: 30 Empl. Covered by Inspection: 66
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REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) 735 N Eleven Mile Corner Road, Eloy: An employee who completed maintenance work on equipment including the acid bottle filling machine had not been trained concerning the company's energy control (lockout/tagout) procedure. 29 CFR 1910.147(c)(7)(i):

HASA, INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD, 29 CFR 1910.147(C)(7)(i) WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1478293, CITATION NUMBER 01, ITEM NUMBER 004B, AFFIRMED AS A FINAL ORDER ON 12/17/2020, WITH RESPECT TO A WORKPLACE LOCATED AT 735 N ELEVEN MILE CORNER RD, ELOY, AZ, 85131.

Div. Proposal - \$12,500.00 Formula Amt. - \$2,500.00

REPEAT-SERIOUS – Citation 1 - Item 2 –

- a) Maintenance shop: Employees used a Ridgid brand table saw, unknown model and serial number, to cut plastic panels and the blade did not have a guard.
- b) Acid bottling area: The ingoing nip point for the bottom conveyor roller for the conveyor which moved the boxes through the sealer on the one-gallon acid case-sealer machine, unknown model and serial number, did not have a guard.
- c) Acid bottling area: The rollers for the side conveyor which helped move the boxes through the sealer on the one-gallon acid case sealer machine, unknown model and serial number, were not guarded. 29 CFR 1910.212(a)(1)

HASA, INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD, 29 CFR 1910.212(a)(1) WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1478293, CITATION NUMBER 01, ITEM NUMBER 005, AFFIRMED AS A FINAL ORDER ON 12/17/2020, WITH RESPECT TO A WORKPLACE LOCATED AT 735 N ELEVEN MILE CORNER RD, ELOY, AZ, 85131.

Div. Proposal - \$12,500.00

Formula Amt. - \$2,500.00

REPEAT NON-SERIOUS – Citation 2 - Item 1 –

- a) Old acid area: A junction box located on the west end of the old acid area had a cover which was damaged so that it was not closed on the right end. 29 CFR 1910.305(b)(2)(i)
Div. Proposal - \$975.00
Formula Amt. - \$975.00

SERIOUS – Citation 3 - Item 1 –

- a) 735 N Eleven Mile Corner Road, Eloy: Employees conducted maintenance work on machines and equipment and a periodic inspection of the energy control (lockout/tagout) procedure had not been conducted. 29 CFR 1910.147(c)(6)(i)
Div. Proposal - \$2,500.00
Formula Amt. - \$2,500.00

SERIOUS – Citation 3 - Item 2 –

- a) Maintenance shop: A Milwaukee brand right angle grinder, catalogue #2680-20 and partially illegible serial number, and equipped with a Sait brand model A30S-BF cut-off wheel, did not have a guard installed. 29 CFR 1910.243(c)(1)
Div. Proposal - \$2,500.00
Formula Amt. - \$2,500.00

SERIOUS – Citation 3 - Item 3 –

- a) Maintenance shop: The circuit breaker panel on the south wall of the shop had five openings which were not closed. 29 CFR 1910.305(b)(1)(ii)
Div. Proposal - \$2,500.00
Formula Amt. - \$2,500.00

TOTAL PENALTY - \$33,475.00

TOTAL FORMULA AMT. - \$13,475.00

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

Commissioner LeMarr, Mr. Atencio and Mr. Black discussed that this was the second recent inspection, based on two separate complaints; Mr. Black did both inspections.

Chairman Schultz confirmed the last complaint was March.

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

Mr. Bob Saenz noted that all of the issues cited have been addressed and arrested and taken care of and they should be good going forward.

Chairman Schultz instructed him to submit the evidence to Mr. Atencio.

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

Healthcare Arizona, LLC
3350 N Cotton Lane
Goodyear, AZ 85395

Site Location: 3350 N Cotton Lane
Goodyear, AZ 85395
Inspection No: CP-2022-T3633-0021
Inspection Date: January 25, 2022

Complaint
Years in Business: 1
Empl. Covered by Inspection: 40

SERIOUS – Citation 1 - Item 1 –

- a) Packaging area: Employees changed the poly film wrapper on the Lian Rou Machinery & Equipment Co., Ltd. brand mattress roll-packing machines, model KP26 and various serial numbers, and a lockout/tagout procedure had not been developed for this work.
- b) Packaging area: Employees rethreaded the poly film on the Lian Rou Machinery & Equipment Co., Ltd. brand mattress roll-packing machines, model KP26 and various serial numbers, and a lockout/tagout procedure had not been developed for this work.
- c) Foam machine: Employees cleaned under the conveyor of the foam machine, unknown model and serial number, and a lockout/tagout procedure had not been developed for this work. 29 CFR.1910.147(c)(4)(i)
Div. Proposal - \$2,500.00
Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 –

- a) Bailing area: The Nantong Healthcare Machinery Co., Ltd. brand bailer, Type HKPK450 and unknown serial number, did not have the ingoing nip point on the ram roller guarded. 29 CFR 1910.212(a)(1)
Div. Proposal - \$2,500.00
Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3 –

- b) Foam area: An employee who worked both in the control area and outside of the control area of the foam machine had a 15-minute time-weighted average (Ceiling) exposure to toluene-2,4-diisocyanate of 0.140 parts per million, which was 7.0 times greater than the Arizona Division of Occupational Safety and Health Permissible Exposure Limit of 0.02 parts per million, and feasible engineering controls had not been determined and implemented.
- c) Foam area: An employee who worked in the control area of the foam machine had a 15-minute time-weighted average (Ceiling) exposure to toluene-2,4-diisocyanate of 0.069 parts per million, which was 3.6 times greater than the Arizona Division of Occupational Safety and Health Permissible Exposure Limit of 0.02 parts per million, and feasible engineering controls had not been determined and implemented. 29 CFR 1910.1000(e)
- | | |
|-----------------------------|----------------------------------|
| Div. Proposal - \$0.00 | Formula Amt. - \$2,500.00 |
| TOTAL PENALTY - \$12,500.00 | TOTAL FORMULA AMT. - \$15,000.00 |

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

Commissioner LeMarr confirmed that in photograph #5 the sign that says danger pinch point was related to the processing and not the sprockets next to it. Mr. Atencio noted that while it could be for both, if an employee is working on this machine the pinch point was between the two rollers.

Chairman Schultz checked if anyone would like to comment; hearing none:

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

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH Discrimination Complaints whether the provisions of A.R.S. §23-425 have been violated.

Mr. Atencio noted these cases involved the Respondents not providing any information despite multiple attempts to contact them.

WB-19-7039-26 Cuevas v. JBS Plumbing

Mr. Atencio reported the Commissioners were provided copies of the Report of Investigation (ROI) for their consideration prior to the Commission Meeting. Mr. Atencio summarized the ROI, noting the complaint was filed timely, and provided the framework for analysis which includes a protected activity, employer knowledge, an adverse action, and a nexus between the protected activity and adverse action. Investigator Orosco attempted to reach the Respondent by mailing two 10-day letters with proof of delivery; attempted three telephone calls and no contact was attainable and voicemail was always full and therefore ADOSH could not leave messages; additionally, ADOSH contacted the third-party personnel who only handles payroll and workers' compensation

claims. ADOSH was able to establish that protected activity was the reason for the JBS Plumbing termination. Mr. Atencio noted the Supervisor, Mr. Smith and Investigator, Ms. Orosco, were available for questions.

Mr. Atencio noted there is a list of whistleblower complaints and ADOSH is working on the backlog and this is not uncommon for the next year to see some of the older ones coming to fruition.

Chairman Schultz and Mr. Ashley noted they have made substantial progress filling open positions in that department, it has been expanded and is fully staffed for the first time.

Chairman Schultz checked if anyone would like to make a statement.

Commissioner LeMarr made a motion to affirm the decision rendered by ADOSH. Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

WB-19-7039-40 Pagliasotti v. Calpro Roofing

Mr. Atencio noted the Supervisor, Mr. Smith and Investigator, Mr. Johnston, were available for questions. Mr. Atencio reported the Commissioners were provided copies of the Report of Investigation (ROI) for their consideration prior to the Commission Meeting and noted they were not getting much information back from the Respondent. Mr. Atencio summarized the ROI, noting the complaint was filed timely, and provided the framework for analysis which includes a protected activity, employer knowledge, an adverse action, and a nexus between the protected activity and adverse action. ADOSH was able to establish that protected activity was the reason for the Calpro Roofing termination. Numerous attempts to reach the employer including telephone calls, letters and an opening letter to inform the Respondent of the investigation; none of the letters were returned to the sender. The investigation concluded that the Complainant would not have been terminated but for engaging in the protected activity.

Commissioner LeMarr and Mr. Johnston discussed the recommended "make whole" relief and how the \$4,000 was determined.

Commissioner Everett, Mr. Atencio and Mr. Johnston discussed the entire crew being terminated but only one person filed a complaint.

Commissioner LeMarr made a motion to affirm the decision rendered by ADOSH. Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

WB-19-7039-26 Cuevas v. JBS Plumbing
WB-19-7039-40 Pagliasotti v. Calpro Roofing

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to Title 20, Chapter 5, Article 2, SELF-INSURANCE REQUIREMENTS FOR INDIVIDUAL EMPLOYERS AND WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND 41-621, Article 7 SELF-INSURANCE REQUIREMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01, Article 11 SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS, and Article 15 WORKERS' COMPENSATION SELF-INSURANCE.

Mr. Testini noted this process was started a couple of years ago and the last six months picked up steam with a goal to replace the current structure of three different Articles that apply to different types of self-insureds including individual employers, municipal employers and pools with the goal to streamline the self-insurance program into one Article, make it a more uniform and less restrictive process. The plan is to repeal Articles 2, 7 and 11 and use Article 15 as a stand-alone to handle all different types of self-insurance.

Chairman Schultz commented that this is one of the areas that this Commission takes incredibly seriously because of the potential liability if self-insured employers or pools become financially unable to fulfill their obligations. It is something that the Commission considers very carefully and believes these changes are significant and improve the self-insurance program both in terms of the administration of the program and assuring the financial security of all self-insured employers and pools. He applauded the staff for the work that it took to go through, meetings with stakeholders, rules and statutes as well as many hours spent by staff going through the existing rules and statutes and looking for opportunities to improve. He commended staff for putting together this packet which were last amended in 2005.

Chairman Schultz read the Resolution.

Mr. Ashley asked if there were any comments from stakeholders on the phone regarding this item. Hearing none. Chairman Schultz asked if there were any comments from the audience. Hearing none.

Commissioner Everett moved to approve the proposed rulemaking consistent with the proposed rules identified and seek approval from the Governor's Office and initiate rulemaking with the Secretary of State as stated in the Resolution. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted recent legislation related to Firefighter cancer claims. One is related to data compilation and another for municipality reimbursement of cancer claims which the legislature asked the Commission to assess those cities and towns and then pay claims from that assessment. He asked Mr. Laky to share information on what the agency will be doing for training stakeholders to be able to engage in the steps to meet statutory deadlines.

Mr. Laky noted this along with Article 15 has been quite the undertaking of a lot of staff. Last year's legislation requires insurance carriers, self-insureds, and insurance pools to record with the Industrial Commission the cancer claims from Firefighters or Fire Investigators. It will be valuable data for the Commission which the industry can utilize as well. Trainings will be conducted at the end of the month to get the stakeholder community up to date, the Commission has done a

significant job internally to get the system to where we need it once people submit the information. A registration portal has been set up today and sent out with stakeholders already registering.

Chairman Schultz and Mr. Ashley discussed the legislative appropriated funds to cover the administrative costs.

Mr. Laky noted the data information will be substantial that the agency will collect.

Chairman Schultz noted he wanted to make sure that he brought that up, because it is highly unusual, and it is due to the efforts of this team that we actually have a funded mandate as opposed to an unfunded mandate which is what we usually get with responsibilities and duties without financial assistance to handle those. This team fought hard to make sure we got some reimbursement for the expenses that we are going to incur. Traditionally this Commission has accepted responsibilities that are placed upon it and dutifully carried them out. But these things require significant work effort and expense to do properly and wanted to thank the team.

Ms. Dimas confirmed Commission meeting dates through September 2022.

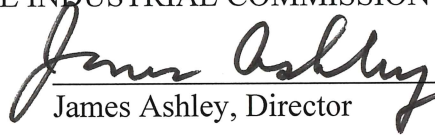
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:34 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary