

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, April 20, 2023 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	D. Alan Everett	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Jessie Atencio	ADOSH Director
	Marilyn Carter	HR Manager
	Lisa Padgett	Labor Director
	Christina Sanchez	Labor Division
	Ruby Tate	Claims Manager
	Audrika Gavins	Claims Division
	Andy Campbell	ALJ Chief Judge
	Janine Locke	Special Services Manager
	Allen Shayo	Ombudsman
	Anna Maria Stonerock	ADOSH Admin
	Jacob Hogstrom	ADOSH
	Angela Mejia	ADOSH
	Ernesto Garcia	ADOSH
	Kerry Smith	ADOSH
	Tom Martz	ADOSH
	Steve Harder	ADOSH
	Andrew Dimas	ADOSH
	Angela Murphy	ADOSH
	Sylvia Sinohui	ADOSH
	James Reitmeier	ADOSH
	Chuck Thompson	ADOSH
	Latasha Thues	ADOSH
	Fred Hightower	ADOSH
	Victoria Media	ADOSH
	Taryn North	ADOSH
	Jonathan Wright	ADOSH
	Brandt Smith	ADOSH
	Javier De Echavarri	ADOSH
	Claude Art Ward	ADOSH
	Yvonne Borunda	Legal Division
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Dean Hoffman, Mike Miller and Kevin Knowles (Interstate Wreck Rebuilders, Inc.); Lea

Bartynski (Snell & Wilmer); and Katelyn Parady (COSH). Also in attendance on the telephone, confirmed by roll call were Natalie Beckley and Irania Fimbres-Ruiz (AB46 Investments, LLC).

Approval of Minutes of April 6, 2023 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the April 6, 2023 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.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to Title 20, Chapter 5, Article 6, Occupational Safety and Health Standards.

Discussion of this item was combined with the next item.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to Title 20, Chapter 5, Article 8, Occupational Safety and Health Rules of Procedure Before the Industrial Commission of Arizona.

Mr. Testini noted there were two rulemaking items relating to ADOSH; Title 20, Chapter 5, Article 6, Occupational Safety and Health Standards and Title 20, Chapter 5, Article 8, Occupational Safety and Health Rules of Procedure Before the Industrial Commission of Arizona. In the five-year review reports filed with GRRC for Article 6 on August 30, 2019 and Article 8 on May 29, 2020, the Commission ensured rulemaking to address inconsistencies, modernize and streamline the rules especially since ADOSH Hearings which were held at the Industrial Commission have moved to the Office of Administrative Hearings. Article 6 has language and procedures for ADOSH cases that come before the Commission with respect to the Whistleblower statute.

Chairman Schultz suggested they be taken individually and asked if there were any questions. Chairman Schultz read the resolution for Article 8.

Vice Chair Hennelly moved to accept the recommendation of staff for Article 8 and authorize the Legal Division to proceed with the proposed rulemaking by filing a request with the Governor's Office for permission to proceed with rulemaking, and upon receiving permission to file a Notice of Proposed Rulemaking and Notice of Docket Opening with the Secretary of State. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Chairman Schultz read the Commission action part of the resolution for Article 6.

Commissioner Everett moved to accept the recommendation of staff for Article 6 and authorize the Legal Division to proceed with the proposed rulemaking by filing a request with the Governor's Office for permission to proceed with rulemaking, and upon receiving permission to file a Notice of Proposed Rulemaking and Notice of Docket Opening with the Secretary of State. 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 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.

Mr. Atencio removed American Roofing LLC from today's agenda noting he just received additional information.

AB46 Investments LLC
250 N Meyer Ave
Tucson, AZ 85705

Complaint
Years in Business: 6
Empl. Covered by Inspection: 109

Site Location: 250 N Meyer Ave
Tucson, AZ 85705
Inspection No: CP-2023-T3633-0075
Inspection Date: January 30, 2023

SERIOUS – Citation 1 - Item 1a –

- a) Cultivation room: Two employees were exposed to a Dura-Cyl 230 HP cylinder of compressed carbon dioxide (CO2) that was stored in a room without ventilation.
- b) Cultivation room: Two cylinders of carbon dioxide were used to provide carbon dioxide for the plants, and the cylinders were not supported to prevent them from being knocked over.
29 CFR 1910.101(b)
Div. Proposal - \$9,324.00 Formula Amt. - \$9,324.00

SERIOUS – Citation 1 - Item 1b –

- a) Cultivation room: Employees were assigned to address a release of carbon dioxide, a hazardous material, from a Dura-Cyl-230 HP brand cylinder, and an emergency response plan had not been developed and implemented. 29 CFR 1910.120(q)(1)
Div. Proposal - \$0.00 Formula Amt. - \$9,324.00
- TOTAL PENALTY - \$9,324.00 TOTAL FORMULA AMT. - \$18,648.00

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

Chairman Schultz checked if anyone would like to comment.

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 Everett voted in favor of the motion. The motion passed.

America Roofing LLC
1005 S 30th Ave
Phoenix, AZ 85009

Unprogrammed Related
Years in Business: 22
Empl. Covered by Inspection: 6

Site Location: 15240 N 142nd Ave
Surprise, AZ 85379
Inspection No: UR-2023-F9669-0044
Inspection Date: February 7, 2023

Removed from today's agenda.

Interstate Wreck Rebuilders, Inc.
 3215 W Lincoln St. 51
 Phoenix, AZ 85009 Inspection 10
 Site Location: 3215 W Lincoln St
 Phoenix, AZ 85009
 Inspection No: CP-2023-A7717-0035
 Inspection Date: January 9, 2023

Complaint
 Years in Business: 51
 Empl. Covered by Inspection: 10

SERIOUS – Citation 1 - Item 1 –

- a) Fab Department: Two employees were required to wear tight fitting half-mask respirators, brand, models and serial numbers unknown, without a written Respiratory Program developed and implemented in the workplace.
- b) Fab Department: Two employees were required to use Moldex N95 respirators, model and serial numbers unknown, without a written Respiratory Program developed and implemented while welding inside steel tanks. 29 CFR 1910.134(c)(1)
 Div. Proposal - \$5,801.00 Formula Amt. - \$5,801.00

SERIOUS – Citation 1 - Item 2 –

- a) Fab Department: Two employees were required to enter a confined space to weld without a written confined space program developed and implemented by the employer. 29 CFR 1910.146(c)(4)
 Div. Proposal - \$5,801.00 Formula Amt. - \$5,801.00

SERIOUS – Citation 1 - Item 3 –

- a) Fab Department: One employee operated a Toyota brand forklift to move equipment around the production floor, model and serial numbers unknown, without training.
- b) Fab Department: One employee operated a Hyster forklift to move metal around the production floor, model #H80XL and serial numbers unknown, without training. 29 CFR 1910.178(l)(1)(i)
 Div. Proposal - \$5,801.00 Formula Amt. - \$5,801.00

SERIOUS – Citation 1 - Item 4 –

- a) Production floor: An employee was operating a press brake, brand, model, and serial numbers unknown, to bend 3/16” gauge steel that lacked guarding.
- b) Production floor: An employee was operating a press brake, brand, model, and serial numbers unknown to bend 3/16” gauge steel that lacked guarding.
- c) Production floor: An employee used a bench grinder, brand, model, and serial numbers unknown to grind down hand tools and welding soap stones without the spindle end nut guard installed.
- d) Production floor: A Hornet plasma cutting table, model #HHT98-ECKP and serial #2851, was used by an employee to cut flat stock steel into shapes that lacked guarding.
- e) Production floor: A sheer, brand, model, and serial numbers unknown, was used by an employee to cut expanded metal without the guard in place to prevent accidental contact with the blade. 29 CFR 1910.212(a)(1)
 Div. Proposal - \$5,801.00 Formula Amt. - \$5,801.00

TOTAL PENALTY - \$23,204.00 TOTAL FORMULA AMT. - \$23,204.00

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

Chairman Schultz and Mr. Atencio discussed no signage or floor markings as administrative controls.

Commissioner LeMarr and Mr. Atencio discussed why the violation of 1910-134(f)(1) was considered non serious for the first matter and serious for the second matter. The difference between the two cases is the first involved a written respiratory program that was not followed and the second there was not a program in place.

Chairman Schultz and Mr. Atencio discussed the lesser assessment due to infrequency to exposures, length of time, application and reviewed photograph #5.

Chairman Schultz noted the Commission has seen a number of fatalities due to confined spaces and without testing have no idea whether the baffles are stopping the good air and containing the bad or toxic air.

Chairman Schultz and Mr. Atencio discussed the soap stone grinding, evaluating and exposure guarding overall issues.

Chairman Schultz checked if anyone would like to comment.

Mr. Miller thanked the Commission noting this was his first time doing this, they have been in business a long time doing the same thing for years and would like to think they keep a clean record. He noted that for some of the citations there is no complaint from them, however they did have a confined space permit program in place, and cannot say why it was not enforced and why employees were not actively using it, but that has changed and they hired an outside company to come in and make it even better than what is required by the standards. He asked the Commission to consider reducing penalties so he could use some of the funds to make the corrections and make their workspace a safer environment.

Commissioner LeMarr asked Mr. Miller about abatement. Mr. Miller noted they have certified all of their forklift drivers already. They have a confined space permit already in place, and acknowledge it was sufficient to meet the standards, that is back in place and being held to a high standard and they are having a third-party come in and look at that and give recommendations to make it better and safer. They want a safe environment and have employees that have been working with them for over thirty years and consider them family.

Commissioner LeMarr confirmed with Mr. Miller that they have a written respiratory program and training process. Mr. Miller noted they do, and they cannot find it, but they have one. They have their paint and steel suppliers who supply the respirators have come out and done all of that for them, and the guys know the intervals to change the cartridges and to store them in a space like Ziplock bag or some sort of confined area, to not get it contaminated from the outside, they could not find the written program but are having another one completed right now.

Chairman Schultz asked Mr. Miller about the third-party consultant and the time frame.

Chairman Schultz thanked Mr. Miller for treating this as a learning experience and hopefully they can tell what the Commission is about is making sure that we help employers create the safest working conditions and that it carries on in the future, not just a fix and operations go back.

Commissioner LeMarr moved to amend the citation and proposed penalties for Items 1 and 3 for abatement on those two areas and suggested a 25% Good Faith Discount for a total penalty of \$20,303.50 subject to verification. Commissioner Everett 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 turned the floor over to Chairman Schultz and noted it has been a pleasure to work with and serve with him.

Chairman Schultz commented that he was not sure if everyone knew his story. It was the summer after he graduated from high school, he was lucky enough to get a job on the night mail file crew at the Industrial Commission. It was one of his very first actual jobs and working that 4:00 to 11:00 shift enabled him to go to school and take all his classes during the day and actually pay his own way through Glendale Community College, he loves our community colleges system, and then onto ASU where he graduated with a Management Degree. His luck and attachment to the Industrial Commission continued because he was hired into an intern program in the Office of the Director of the Industrial Commission. Not only was the Industrial Commission the vehicle for his getting advanced education it then was his first actual 8:00 to 5:00 job. He can never say enough about the opportunities it provided to him, in terms of knowledge which has enabled him to succeed in different areas throughout his career and skills and understanding of how a business and how regulatory agencies can relate in the best manner to provide as much safety as we possibly can and that is what we are all about. We are here to do what we can to facilitate the economy of the State of Arizona and to ensure people are employed safely. To his fellow Commissioners, he could not be any prouder of what they have done to help make this hopefully a little bit better place than what they found it. It has been an incredible eight years and he cannot believe how much it has meant to him and his entire career and to be back here 50 years later after first touching the Industrial Commission to be here and be part of this and to see the good work that all of you do every day and he was so proud to be a part of it. Thank you.

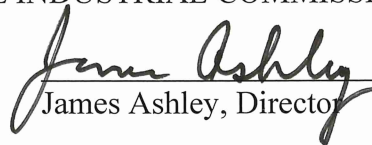
Public Comment.

There was no public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly 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 1:48 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary