

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, January 19, 2023 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	Ruby Tate	Claims Manager
	Bernard Celaya	Claims
	Jessie Atencio	ADOSH Director
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Leon McMahan, Heather Abraham and Jeff Vrtiska (Citywide Handyman); Kelly Bojorquez and Sam Ogden (SNH AZ Tenant LLC dba Forum at Desert Harbor); Dan O'Connor, Dallas Petersen Jr., and Andrew Petersen (Sahuaro Pipeline Corporation Inc.); and Kaila Hopkins (Snell & Wilmer).

Approval of Minutes of December 19, 2022 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the December 19, 2022, regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly 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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CSP22/23-0120 Desertview Roofing LLC \$1,000

Vice Chair Hennelly moved to approve the items on the Consent Agenda and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett 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).

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 1.67% for calculating fixed period and permanent lump sum commutations, effective immediately and replacing the current rate of 1.08%.

Vice Chair Hennelly moved to approve staff recommendation to use a 1.67% discount rate in the calculation for lump sum commutations under A.A.C. R20-5-121 and R20-5-122, effective immediately. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Ms. Pastor noted they will be published on the website early next week.

Mr. Ashley acknowledged Ms. Pastor's significant work on Article 15 and self-insurance rate development and the reforms that came out of Article 15 including the ability to develop premium and plan rates, set deviation rates, determine the annual tax assessment adding clarity and fairness to the community. He presented Ms. Pastor with the Golden Hard Hat award for the month of January.

Chairman Schultz offered his personal thanks, noting Ms. Pastor made a difference.

Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Bernard Celaya

Chairman Schultz explained the purpose of the appointment of Special Assistants within the Commission to perform certain activities legally on behalf of the Commission's Claims Division. There is a Resolution for the appointment of Bernard Celaya as Special Assistant.

Mr. Ashley highlighted Mr. Celaya's experience and background.

Vice Chair Hennelly moved to appoint Bernard Celaya as Special Assistant and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly 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.

1. WB-2021-0054 Critter Control Operations, Inc. v. Evans

Mr. Atencio provided the Commissioners with an update. This file was previously remanded to ADOSH for further review. Since that time, Mr. Atencio received a letter from counsel for Claimant withdrawing their claim against the employer.

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 Salt River Project from today's agenda.

SNH AZ Tenant LLC DBA Forum at Desert Harbor 13840 N Desert Harbor Dr <u>Peoria, AZ 85381</u>	Fatality/Catastrophe Years in Business: 47 Empl. Covered by Inspection: 4
Site Location: 13840 N Desert Harbor Dr Peoria, AZ 85381	
Inspection No: FC-2022-A7576-0015	
Inspection Date: July 25, 2022	

Mr. Atencio summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending a citation for SNH AZ Tenant LLC DBA Forum at Desert Harbor.

Chairman Schultz checked if anyone would like to comment.

The Commission took no action.

Sahuaro Pipeline Corporation, Inc. 371 W Cullumber Ave <u>Gilbert, AZ 85233</u>	Fatality/Catastrophe Years in Business: 34 Empl. Covered by Inspection: 5
Site Location: E Empire Blvd and N Village Ln Queen Creek, AZ 85142	
Inspection No: FC-2022-RS480-0008	
Inspection Date: August 8, 2022	

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. ADOSH was not recommending a citation for Sahuaro Pipeline Corporation, Inc.

Vice Chair Hennelly and Mr. Atencio discussed that a spotter is not required for this situation. Spotters are used in cranes and not in this case, the training element under 21 (b)(2) is very broad and general but does encompass that employees are trained on safety and health to do their job safely.

Chairman Schultz and Mr. Atencio discussed if there were any issues about hearing or dust and visibility impairments but it did not seem like it. The photos do not show dust that would compromise vision and the excavator does have a backup alarm as required.

Chairman Schultz checked if Mr. Petersen would like to comment.

Mr. Dallas Petersen, Asset Manager and HR Manager for Sahuaro Contracting, noted the death was a tragic accident which has had a major impact on the company, employees and their families. As HR Manager this was the first time he had to navigate anything of this magnitude. They have had several lessons on how to improve the functionality of the operations as a whole regarding best practices and have implemented those accordingly. They appreciated all of the work Mr. Atencio and his staff have done during the course of the investigation which was handled in a professional and efficient manner.











Div. Proposal - \$2,000.00  
TOTAL PENALTY - \$8,000.00

Formula Amt. - \$2,000.00  
TOTAL FORMULA AMT. - \$8,000.00

Mr. Atencio noted this file was in conjunction with Salt River Project ("SRP") which is being pulled because there is additional information the Compliance Officer and Mr. Norton received, necessitating a closer look. The prime contractor doing the work is Red Hawk Construction LLC. Mr. Atencio noted the national emphasis on trenching and excavation. Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

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

Mr. Atencio explained that the Commissioners may have noticed there are new penalty amount effective September 24, 2022 which apply to files after that date.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced and congratulated Anna Maria Stonerock on becoming a naturalized US citizen. Ms. Stonerock commented on the long process and how it is a dream come true.

Ms. Dimas confirmed Commission meeting dates through March 2023.

Ms. Dimas presented a retirement resolution for Carol Surrell for 7 years of service as a Workers' Compensation Claims Adjuster I in the Special Fund Division and a second retirement resolution for Michael Mosesso for 30 years of service as a Chief Administrative Law Judge in the ALJ Division.

Mr. Ashley discussed the Administrative Law Judge Division, succession planning, and division leadership plans.

Public Comment.

There was no public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:18 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary