# 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.

# a. Approval of Proposed Civil Penalties Against Uninsured Employers.

#### 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 or 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

Fatality/Catastrophe

13840 N Desert Harbor Dr

Years in Business: 47

Peoria, AZ 85381

Empl. Covered by Inspection:

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.

Fatality/Catastrophe

371 W Cullumber Ave

Years in Business:

Empl. Covered by Inspection:

34

5

Gilbert, AZ 85233

E Empire Blvd and N Village Ln

Queen Creek, AZ 85142

Inspection No:

Site Location:

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.

Chairman Schultz confirmed with Mr. Petersen that a workers' compensation claim was filed.

The Commission took no action.

Wide World of Maps, Inc. 17230 N Cave Creek Rd

Fatality/Catastrophe

Programmed Planned Years in Business:

Empl. Covered by Inspection:

Years in Business: Empl. Covered by Inspection:

47

3

1

2

Phoenix, AZ 85032

17230 N Cave Creek Rd

Phoenix, AZ 85032

Inspection No:

Site Location:

FC-2022-R0175-0001

Inspection Date:

August 16, 2022

Mr. Atencio noted this file was remanded to ADOSH for further review in December and reviewed ADOSH's investigation. ADOSH was not recommending serious citations related to the incident for Wide World of Maps, Inc. but were issuing a few non-serious citations.

Chairman Schultz noted the ADOSH folks do an incredible job identifying issues for this business to be able to improve safety for their folks and appreciates the diligence, thoroughness the team goes through each time to help people and the consultative approach.

The Commission took no action.

City-Wide Handyman LLC

135 S Stratford Dr Tucson, AZ 85716

135 S Stratford Dr

Tucson, AZ 85716

Inspection No:

Site Location:

PP-2023-RS480-0019

Inspection Date:

October 14, 2022

### SERIOUS – Citation 1 - Item 1 –

a) 135 S. Safford Drive Tucson, AZ 85743: Two employees were on a low slope roof, tarring and coating at a height of 11'5" high without fall protection. 29 CFR 1926.501(b)(10)

Div. Proposal - \$2,642.00

Formula Amt. - \$2,642.00

#### SERIOUS – Citation 1 - Item 2a –

a) 135 S Stratford Dr, Tucson, AZ 85716: A written Hazard Communication program was not implemented for two roofers that were using APOC 211 Aluminum Roof Coating and Roof X Tribuilt 100 Rubberized Flashing Cement. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$2,486.00

Formula Amt. - \$2,486.00

### <u>SERIOUS</u> – Citation 1 - Item 2b –

a) 135 S Stratford Dr, Tucson, AZ 85716: Two roofers were not trained on the hazards associated with APOC 211 Aluminum Roof Coating and Roof X Tribuilt 100 Rubberized Flashing Cement. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00

Formula Amt. - \$2,486.00

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

Vice Chair Hennelly commented he was having trouble with the math for these citations. Mr. Atencio noted the reductions are taken serially and checked the calculations.

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

Mr. Vrtiska noted they have evidence of their fall protection training that he and another individual on the job received when they previously worked at a solar company.

Chairman Schultz explained the process and expressed appreciation for employers being involved in the process because that is what the Commissioners are trying to accomplish to promote safe workplaces.

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 asked Mr. Vrtiska to send his training information to ADOSH.

Multi-Pro Roof Solutions, LLC

2636 W Orangewood Ave Suite #101

Phoenix, AZ 85051

Site Location:

2640 E 10<sup>th</sup> St

Tucson, AZ 85716

Inspection No:

PP-2023-MN610-0004

Inspection Date:

November 28, 2022

### SERIOUS – Citation 1 - Item 1 –

a) 2640/2642 E. 10th St, Tucson, AZ 85716: Two employees were on a low slope roof, tarring and coating at a height of 11'5" high without fall protection. 29 CFR 1926.501(b)(10) Div. Proposal - \$6,216.00 Formula Amt. - \$6,216.00

#### SERIOUS – Citation 1 - Item 2 –

a) 2640/2642 E. 10th St, Tucson, AZ 85716: Six roofers were working on a low slope roof that measured 11 feet 6 inches without fall protection training. 29 CFR 1926.503(a)(1)

Div. Proposal - \$6,216.00

Formula Amt. - \$6,216.00

Programmed Planned

Empl. Covered by Inspection:

7

6

Years in Business:

TOTAL PENALTY - \$12,432.00

TOTAL FORMULA AMT. - \$12,432.00

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

Vice Chair Hennelly asked about the math for the citations. Mr. Atencio checked the calculation and the amounts were corrected to \$6,216.00 for each citation for a new total penalty of \$12,432.00.

Chairman Schultz noted that Item 1 states that it was abated and asked if it was corrected by using fall protection or job completion. Mr. Atencio noted it was abated by fall protection but was not corrected within 24 hours to receive a quick fix abatement.

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

Red Hawk Construction LLC

Programmed Planned

2032 N 64<sup>th</sup> St

Years in Business: 17 Empl. Covered by Inspection: 6

Mesa, AZ 85215

1400 W Hunt Hwy

San Tan Valley, AZ 85143

Inspection No:

Site Location:

PP-2022-E7721-049

Inspection Date:

August 5, 2022

# <u>SERIOUS</u> – Citation 1 - Item 1 –

a) 1400 W Hunt Hwy, San Tan Valley, AZ 85142: Three employees worked inside a trench at the southeast end measuring 9' deep 5"6' to 12' wide at the bottom and with an overall length of 52'7" without trenching/excavation training. 29 CFR 1926.21(b)(2)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

# SERIOUS – Citation 1 - Item 2 –

- a) 1400 W Hunt Hwy, San Tan Valley, AZ 85142: The employer did not support electrical lines inside an excavation where three employees were working.
- b) SE end of the excavation: The employer did not support an active gas line that ran north to south inside an excavation where three employees were working. 29 CFR 1926.651(b)(4) Div. Proposal \$2,000.00 Formula Amt. \$2,000.00

# <u>SERIOUS</u> – Citation 1 - Item 3 –

- a) SE End of Excavation: Three employees worked inside an excavation that measured, 9' deep, 5'6" to 12' wide as the bottom, and 52'7' long, without an inspection conducted by a competent person.
- b) SW End of Excavation: Three employees worked inside an excavation that measured 9' deep, 5'6" to 12' wide at the bottom, and 52'7" long without an inspection conducted by a competent person. 29 CFR 1926.652(k)(1)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

#### SERIOUS – Citation 1 - Item 4 –

- a) SE End of Excavation: Three employees worked inside an excavation that measured 9' deep, 5'6" to 12' wide at the bottom, and 52'7" long without an adequate protective system installed.
- b) SW End of Excavation: Three employees worked inside an excavation that measured 9' deep, 5'6" to 12' wide at the bottom, and 52'7" long without an adequate protective system installed. 29 CFR 1926.652(a)(1)

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

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James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary