

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, March 9, 2023 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	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
	Anna Maria Stonerock	ADOSH Admin
	Yvonne Borunda	Acting Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Kevin Caruso, Geri McCall (Caruso Niday Collision Center, LLC), Lea Bartynski (Snell & Wilmer), Anne Ryman (ABC 15), Darren VandeVoorde (Raley's/Bashas'). Also in attendance on the telephone, confirmed by roll call were Elizabeth Aguallo (Roman Catholic Church Diocese of Tucson), Ashley Lee, David Mathews, John Gamble (City of Phoenix), Monique Allen (Raley's Arizona, LLC dba Bashas'), James Laguna (Yuma School District 1 dba Palmercroft Elementary School), Victor Ayala, Brad Lloyd, Jason Mejia, Robby Garvey, Amy Cotner, Matt Blandeburgo, Chad Cecil & Eduardo Hernandez (Lloyd Construction Company Inc.), David Coye, Bod Denning, Shawn Senoir, Jason Parker & Freddy Tavera (Qualite Sports Lighting LLC) and Jordan Frazier, Mac Romero (T3 Engineered Products, Inc.).

Approval of Minutes of February 23, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the February 23, 2023 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. Commissioner LeMarr abstained. 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.

1. 2C21/22-0083 Arrow Fire & Land Management LLC \$1,000

2. 2CNP22/23-1161 Sabino Roofing LLC \$1,000
3. 2CNP22/23-1357 The Illest Period LLC \$1,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. City of Chandler
2. City of Phoenix
3. Pima County
4. Raley's Arizona, LLC dba Bashas'
5. Roman Catholic Church Diocese of Tucson

Commissioner LeMarr moved to approve the items on the Consent Agenda 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 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.

Yuma School District-1 dba Palmcroft Elementary School	Fatality/Catastrophe	
901 W 6 th St Dr	Years in Business:	17
<u>Yuma, AZ 85364</u>	Empl. Covered by Inspection:	7
Site Location:	17230 N Cave Creek Rd	
	Phoenix, AZ 85032	
Inspection No:	FC-2022-E7721-0057	
Inspection Date:	August 16, 2022	

Mr. Atencio summarized ADOSH's investigation and reviewed the file and photographs. ADOSH recommended one Non-Serious citation for Yuma School District-1 dba Palmcroft Elementary School.

Chairman Schultz checked if anyone would like to comment. There was no comment.

Directly Ashley confirmed with Mr. Atencio that the Yuma Police Department is pursuing traffic charges.

The Commission took no action.

BRW Contracting LLC	Complaint	
19580 W Indian School Rd Ste 105-105	Years in Business:	15
<u>Buckeye, AZ 85396</u>	Empl. Covered by Inspection:	5
Site Location:	Jack Rabbit Trail and Indian School	
	Buckeye, AZ 85396	
Inspection No:	CP-2023-F9669-0027	
Inspection Date:	October 5, 2022	

SERIOUS – Citation 1 - Item 1 –

- a) Jobsite: Three employees worked in an excavation that was approximately 15' deep, 26' wide at the top, and 140' long without an adequate protective system in place. 29 CFR 1926.652(a)(1)

Div. Proposal - \$4,144.00	Formula Amt. - \$4,144.00
TOTAL PENALTY - \$4,144.00	TOTAL FORMULA AMT. - \$4,144.00

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

Chairman Schultz inquired if the hazards were abated; Mr. Atencio responded that they were abated.

Chairman Schultz checked if anyone would like to comment.

Commissioner Everett moved to approve the citation and proposed penalty 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.

Caruso Niday Collision Center, LLC
10222 W Santa Fe Dr
Sun City, AZ 85351

Complaint
Years in Business: 29
Empl. Covered by Inspection: 11

Site Location: 10222 W Santa Fe Dr
Sun City, AZ 85351
Inspection No: CP-2023-A7717-0045
Inspection Date: February 16, 2023

SERIOUS – Citation 1 - Item 1a –

- a) Paint Shop: Two employees were required to wear 3M brand tight fitting half-mask respirators, model and serial numbers unknown, without a written respiratory program developed or implemented in the workplace. 29 CFR 1910.134(c)(1)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$3,572.00 | Formula Amt. - \$3,572.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 2–

- a) Mixing Room: Two employees used a pedestal Dedoes Cyclone paint shaker, model and serial numbers unknown, without a guard in place to prevent accidental contact.
- b) Mixing Room: Two employees used a swamp cooler, brand, model and serial numbers unknown, to cooler off the area without a guard over the rotating drum to prevent accidental contact. 29 CFR 1910.212(a)(1)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$3,572.00 | Formula Amt. - \$3,572.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 3 –

- a) Caruso Niday Collision Center, LLC: The employer did not develop or implement a written Hazard Communication Program for employees required to use lacquer thinner, Autocare Sho Shine wax, Mag & Aluminum Wheel cleaner, PPG 4000 Crystal Silver paint, PPG T4037 Silver Glass Flake paint, Sprint acrylic hardener, Yellow Super Trim Band Adhesive, and SEM EZcoat. 29 CFR 1910.1200(e)(1)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$3,572.00 | Formula Amt. - \$3,572.00 |
|----------------------------|---------------------------|

TOTAL PENALTY - \$10,716.00

TOTAL FORMULA AMT. - \$10,716.00

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.

Commissioner LeMarr asked if there were any abatements. Mr. Atencio responded that Citation 2 was not abated but that the non-serious citations are abated. Mr. Atencio responded that two of the citations require trainings which take time to complete.

Chairman Schultz had a question regarding the grouping of the citations. Mr. Atencio responded that the grouping is because of the hazmat program.

Chairman Schultz and Mr. Atencio discussed the machine guarding.

Chairman Schultz checked if anyone would like to comment. Kevin Caruso commented regarding the paint shaker. Mr. Caruso stated that the company has replaced the paint shaker with a Red Devil commercial paint shaker.

Commissioner LeMarr moved to amend the citation 1 item 2, because of the prompt attention to safety and correcting the protocol, by including a 25% Good Faith Discount for a total of \$2,679.00. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Lloyd Construction Company, Inc.
2180 N Wilmot Rd
Tucson, AZ 85712

Referral
Years in Business: 15
Empl. Covered by Inspection: 6

Site Location: 130 W Congress St
Tucson, AZ 85701
Inspection No: RF-2023-T3633-0062
Inspection Date: November 14, 2022

SERIOUS – Citation 1 - Item 1 –

- a) Fenced construction area west of building: Asbestos-containing fireproofing was disturbed during construction activities on November 2, 2022, resulting in visible debris being generated without the establishment of regulated area(s), without exposure assessments and monitoring, without the methods of compliance required for the appropriate class of asbestos work, and without the proper training for employee(s) working in the area where the visible debris was generated. General supervisory authority was not utilized to ensure that all work involving asbestos at the site, including work conducted by subcontractors, was done as specified in the ADOSH Construction Asbestos standard. 29 CFR 1926.1101(d)(5)

Div. Proposal - \$7,252.00	Formula Amt. - \$7,252.00
TOTAL PENALTY - \$7,252.00	TOTAL FORMULA AMT. - \$7,252.00

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

Commissioner LeMarr asked if one side of the eleven-story building could have been encapsulated. Mr. Atencio responds that it is possible. Commissioner LeMarr and Mr. Atencio discussed asbestos.

Chairman Schultz asked if this will be a multiple employer situation. Mr. Atencio responded that this is isolated to the general contractor.

Chairman Schultz checked if anyone would like to comment. There was no 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.

Qualite Sports Lighting LLC
215 W Mechanic St
Hillsdale, MI 49242

Complaint
Years in Business: 10
Empl. Covered by Inspection: 3

Site Location: 500 N Bisbee Ave
Wilcox, AZ 85643
Inspection No: CP-2023-T3633-0077
Inspection Date: February 2, 2023

SERIOUS – Citation 1 - Item 1a –

- a) Basketball court: An employee who removed lights from a pole on the basketball court had not been trained concerning the need to deenergize and tag circuit(s) which controlled electrical power to the lights. 29 CFR 1926.21(b)(2)
Div. Proposal - \$3,349.00 Formula Amt. - \$3,349.00

SERIOUS – Citation 1 - Item 1b –

- a) Basketball court: An employee who removed lights from a pole on the basketball court did not have the electrical disconnect tagged. 29 CFR 1926.417(a)
Div. Proposal - \$0.00 Formula Amt. - \$3,349.00
TOTAL PENALTY - \$3,349.00 TOTAL FORMULA AMT. - \$6,698.00

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

Chairman Schultz checked if anyone would like to comment.

David Coye commented regarding the lock out tag out procedure. He took over the project a few days before the citation was issued, he had a safety meeting with all new employees and discussed many issues among those being the lock out tag out system. Mr. Coye mentioned the challenges to locate the hardware for the lock out tag out in Wilcox, Arizona but he found one. Mr. Coye commented that he is OSHA 30-hour construction safety certified for seven years, and the lift operator is also OSHA 10-hour construction safety certified. Chairman Schultz thanked Mr. Coye for sharing that he cares for the safety of the employees.

Commissioner LeMarr moved to amend the citation and proposed penalties, because of the prompt attention to safety and correcting the protocol, by including a 25% Good Faith Discount for

a total of \$2,512.00. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Tri-Mega Mechanical Heating & AC, LLC
 5160 W Missouri Ave
Glendale, AZ 85301

Programmed Planned
 Years in Business: 17
 Empl. Covered by Inspection: 4

Site Location: 971 N Jason Lopez Cir
 Florence, AZ 85132
 Inspection No: UR-2022-R0175-0003
 Inspection Date: December 20, 2022

SERIOUS – Citation 1 - Item 1 –

- a) 971 N Jason Lopez Cir: Two employees were replacing duct work on the second story roof with an open sided edge, and there was no fall protection system in place. 9 CFR 1926.501(b)(1)

Div. Proposal - \$9,324.00	Formula Amt. - \$9,324.00
TOTAL PENALTY - \$9,324.00	TOTAL FORMULA AMT. - \$9,324.00

Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Schultz checked if anyone would like to comment.

Chairman Shultz thanked Mr. Atencio for making this area an emphasis in the inspections due to the dangers.

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

T3 Engineered Products, Inc.
 2560 N Coyote Dr
Tucson, AZ 85745

Complaint
 Years in Business: 17
 Empl. Covered by Inspection: 44

Site Location: 2560 N Coyote Dr
 Tucson, AZ 85745
 Inspection No: CP-2023-T3633-0073
 Inspection Date: January 23, 2023

SERIOUS – Citation 1 - Item 1a –

- a) Chrome plating shop: Employees were required to wear half-face respirators when working in the chrome plating shop, and the employees had not been fit tested on an annual basis. 29 CFR 1910.134(f)(2)

Div. Proposal - \$7,252.00	Formula Amt. - \$7,252.00
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SERIOUS – Citation 1 - Item 1b –

- a) Chrome plating area: The employer classified the chrome plating area as a regulated area and the sign demarking the area was not legible, in that it was sideways and was covered in dust. 29 CFR 1910.1026(e)(2)
Div. Proposal - \$0.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 1c –

- a) Chrome plating shop: Employees who were exposed to chromium (VI) above the action level were not provided with medical surveillance annually. 29 CFR 1910.1026(k)(2)(ii)
Div. Proposal - \$0.00 Formula Amt. - \$7,252.00

SERIOUS – Citation 1 - Item 2a –

- a) Fabrication shop: The Amada brand band saw, model HA 400 and unknown serial number, did not have the unused portions of the blade to the right and left of the guide wheels, guarded.
b) Grinding shop: The Norton brand OD grinder, unknown model and serial number, had an irregularly-shaped turning wheel which was not guarded. 29 CFR 1910.212(a)(1)
Div. Proposal - \$5,801.00 Formula Amt. - \$5,801.00

SERIOUS – Citation 1 - Item 2b –

- a) Grinding area: The section of the guard covering the pulley connected to the drive mechanism for the Norton brand OD grinder, unknown model and serial number, was broken so that the pulley was not guarded. 29 CFR 1910.219(d)(1)
Div. Proposal - \$0.00 Formula Amt. - \$5,801.00
TOTAL PENALTY - \$13,053.00 TOTAL FORMULA AMT. - \$33,358.00

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

Chairman Schultz checked with Jordan Frazier if he would like to comment. Mr. Frazier commented on items 1 and 2. Mr. Frazier commented that the Norton grinder has been fixed and the irregular wheel was taken off and they are waiting on a part for the saw.

Chairman Schultz thanked Mr. Frazier for appearing and thanked him for keeping the workplace safe. Chairman Schultz asked Mr. Frazier if he would share any records of the training and abatement effort that has been done with Mr. Atencio or Compliance and to reach out to the Consultation team for training.

Commissioner Everett 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners that Janet Artis is the new Special Fund Manager. Mr. Ashley provided Ms. Artis' background.

Ms. Borunda confirmed Commission meeting dates through April 2023.

Public Comment.

There was no other 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 2:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Yvonne Borunda
Yvonne Borunda, Acting Commission Secretary