

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, August 31, 2023 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Gaetano J. Testini	Director
	Afshan Peimani	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Renee Pastor	Self-Insurance (Telephonic)
	Charles Carpenter	MRO Manager
	Renee Englen	MRO Assistant
	Melissa Spurgeon	Interim Labor Director
	Jessie Atencio	ADOSH Director
	Chuck Thompson	ADOSH Supervisor
	Jonathon Wright	ADOSH Compliance
	Steven Black	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call, were Shawn LaVoie (McCain Construction); Brandon Glenn, Michael Rubin, Jason Woelfel Randy Robinson; Brian Wieland and Ron Barclay (The Klark Organization I LLC); Anne Ryman (ABC15); Lacy Cooper (Schmitt Schnecter); Art Carranza and Elida Carranza (APC Pallets, Inc.); Matthew Trasic (Nammo Defense Systems Inc.); R. Enrique Alvarez (I&ID); Tyler Painton and Scott Moe (US LBM Holdings, LLC DBA Truss Fab Companies); Lea Bartynski and Paige Millan (Snell & Wilmer). Also in attendance on the telephone, confirmed by roll call, Christine O'Donnell and Pauline Williams (FAIR Health, Inc.); Brian Tassinari and Angelica Terrazas (Willetta Partners); Gregory Marlatt and Merrill Marlatt (Desert Tech Transportation, LLC); Maria Romero (Next of Kin); Bess Tilley and Duncan Tilley (Next of Kin).

Approval of Minutes of August 17, 2023 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the August 17, 2023 regular session meeting and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez 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. Dole Food Company, Inc.
 2. Trademark Construction
 3. Young Electric Sign Company

Commissioner Everett moved to approve the items on the Consent Agenda and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action regarding the 2023/2024 Arizona Physicians' and Pharmaceutical Fee Schedule.

Mr. Carpenter thanked the Commission for the opportunity to present the final staff recommendations for the 2023-2024 Physicians' and Pharmaceutical Fee Schedule. Mr. Carpenter also thanked the many stakeholders who have provided input and feedback that was used to improve and update the Fee Schedule this year. Most of the updates in this year's Fee Schedule were based on recommendations initiated by stakeholders and public comments.

First, staff recommends including the updated service codes, relative value units (RVUs), and reimbursement values as presented in the tables accompanying the published final draft. This year, staff recommends using values from FAIR Health to establish the RVUs assigned to "gap" codes. Previously, we have used values from Optum to assign RVUs to "gap" codes. Staff analyzed the methodology used by FAIR Health to establish those values and believe their values better align with actual market values. The methodology used in calculating the final reimbursement values is outlined in detail in the published final recommendations. Staff did not use any values from the Office of Workers' Compensation Program in establishing RVUs and removed the reference to that step in this year's recommendations. The recommended 2023/2024 Fee Schedule will continue to use the Centers for Medicare and Medicaid Services, or CMS's, surgical global periods, assign RVUs to consultation services, and delineate codes that are unique to Arizona.

Staff recommends updating the RBRVS conversion factors used in the 2023/2024 Fee Schedule by increasing the conversion factor for Surgery services to \$72 and the conversion factor for Pathology, Medicine, Physical Medicine and Rehabilitation, and Evaluation and Management Services to \$68.

Second, staff recommends adopting the service codes and reimbursement values as presented in the Healthcare Common Procedure Coding System, or HCPCS, table accompanying the published final recommendations. The reimbursement values are based on the reimbursement values published by the CMS in the April 2023 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule. Staff recommends maintaining separate values for rural and nonrural areas and utilizing the methodology established by CMS to designate rural and nonrural areas in Arizona. HCPCS codes that did not have a value assigned by CMS were assigned a reimbursement value based on data from FAIR Health with the exception of miscellaneous codes. The values were then multiplied by a conversion factor of 1.4 resulting in the reimbursement values listed in the final recommended table.

Staff initially proposed to adopt a dental fee schedule in this year's update. Unfortunately, this requires the procurement of certain contracts that to date have not been fully executed. As such, we do not recommend adopting a dental fee schedule at this time. Staff will continue to work with all the parties with the intent to have a fully executed contract in place prior to the next fee schedule update.

Third, staff recommends continuing to designate Medi-Span® as the source to reference Average Wholesale Price (AWP).

Fourth, staff recommends adopting the deletions and additions to the 2023 edition of the American Medical Association's Current Procedural Terminology publication, also known as the CPT®.

Fifth, staff recommends adopting the revisions in each section of the Fee Schedule Guidelines that remove references that were already named in the Introduction Section and update the language regarding Arizona specific codes to improve clarity. Staff also recommends adding the HCPCS and Home Healthcare Guidelines as new sections of the Fee Schedule.

Sixth, staff recommends amending the Introduction Section of the Fee Schedule by removing the reference to the 1995 and 1997 Documentation Guidelines and replace the documentation standard with the American Medical Association's Evaluation and Management Code and Guideline Changes and the Guidelines for Evaluation and Management Services in the current CPT® publication. Staff recommends removing the reference to Optum 360, The Essential RBRVS and adding language that incorporates by reference FAIR Health data to assign RVUs to "gap" codes. Staff also recommends adding language to Subsection (A)(14) that clarifies the use of appropriate modifiers and place of service codes. Additionally, staff recommends amending Section B by adding the updated documentation standards in Subsection (B)(9). Staff recommends updating the language in Subsection J(4) to reference the appropriate manner to bill and reimburse supplies and materials given the adoption of the HCPCS codes.

Seventh, staff recommends adding language to Section C of the Anesthesia Guidelines that clarifies billing procedures.

Eighth, staff recommends adding modifier "59" to the Surgery Guidelines and additional language to modifier "AS" that clarifies appropriate reimbursement when the modifier is billed.

Ninth, staff recommends deleting HCPCS codes U0001 and U0002 from the Pathology and Laboratory Guidelines. These codes were developed in response to the COVID-19 Public Health Emergency and are no longer in use.

Tenth, staff recommends adding Section F to the Medicine Guidelines to clarify the codes that are to be used for Moderate Sedation based on the provider who performs the service.

Eleventh, staff recommends adding language to the Physical Medicine and Rehabilitation Guidelines that clarifies and emphasizes the documentation expectations for healthcare providers who bill for these services. This language was added based on reimbursement issues brought to our attention. Staff also recommends updating the language in Section D to reference the amended instructions in the Introduction Section on billing and reimbursing materials and supplies.

Twelfth, staff recommends adding the descriptions for the Arizona Specific Codes to the Special Services Guidelines and include documentation expectations when codes AZ003 and AZ004 are billed by healthcare providers. Staff also recommends the deletion of Arizona Specific Code AZ044. This code is no longer necessary since there are CPT® codes that should be used when services are provided outside of regular business hours.

Thirteenth, staff recommends adding billing and reimbursement guidelines on impairment examinations. This addition takes into consideration any additional time spent performing the service for complex cases. This change was not in the original proposal. The concern was brought to the attention of the Medical Resource Office in the time period following the publication of this year's proposal. Staff met with multiple healthcare providers and payers prior to adding this language to the recommended update. All of the feedback we received was positive and stakeholders unanimously felt that it represents an improvement in the Fee Schedule. Staff also recommends updating the Evaluation and Management Guidelines to correspond with the updates to the Evaluation and Management Guidelines in the 2023 CPT® publication.

Finally, staff recommends updating the Special Services Code Table to reallocate the CPT® codes that were previously included in this section to the Medicine Codes Table. This update aligns with the format of the current CPT® publication.

The Medical Resource Office recommended the Commission adopt the proposed revisions to the Pharmaceutical Fee Schedule as presented.

Chairman Kavanaugh thanked Mr. Carpenter and noted it is a complex and complicated process and thought he demonstrated an amazing level of patience and attention to detail and the Commission appreciates that.

Chairman Kavanaugh asked if there were any questions or comments, hearing none.

Commissioner Everett moved to approve staff recommendations to approve the 2023/2024 Fee Schedule as presented approve the Resolution of Authorization and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh commented that the Commission appreciates all of the input from the stakeholder communities and the tremendous, detailed work from staff, this is an annual exercise that sometimes defies imagination. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2223-0129, QZZA, LLC

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$1,050.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$1,050.00 to QZZA, LLC. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez 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 Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Desert Tech Transportation, LLC	Fatality
27290 E County 10 th St	Years in Business: 8
<u>Wellton, AZ 85356</u>	Empl. Covered by Inspection: 5
Site Location: Ave 22 E & Hwy 80	
Yuma, AZ 85356	
Inspection No: FC-2023-E7721-0103	
Inspection Date: May 10, 2023	

Mr. Atencio summarized ADOSH's investigation and reviewed the file. ADOSH did not recommend any serious citations for Desert Tech Transportation, LLC.

Chairman Kavanaugh checked if anyone would like to comment.

Commissioner Valdez moved to approve the non-serious citation and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Nammo Defense Systems Inc.	Fatality
4051 N Higley Rd	Years in Business: 16
<u>Mesa, AZ 85215</u>	Empl. Covered by Inspection: 10
Site Location: 4051 N Higley Rd	
Mesa, AZ 85215	
Inspection No: FC-2023-T3633-0096	
Inspection Date: March 23, 2023	

SERIOUS – Citation 1 - Item 1 –

- a) Plant 4, Building 23: Employees were assigned to removed scrap propellant from a mixing bowl using hand methods and the exit door in the north wall was blocked by stored items. 29 CFR 1910.37(a)(3)
Div. Proposal - \$6,696.00 Formula Amt. - \$6,696.00

SERIOUS – Citation 1 - Item 2 –

- a) 4051 N Higley Rd, Mesa: A Process Hazard Analysis was conducted for the TAL-1512/TAL-X-1512 Propellant/50 Gallon Mixer, dated 02-15-2022, and the system to promptly address the team's findings was not effective in that recommendations listed for Step 29 and for Step 41 did not have any record that the recommendations had been addressed or completed. 29 CFR 1910.119(e)(5)
Div. Proposal - \$15,625.00 Formula Amt. - \$15,625.00

SERIOUS – Citation 1 - Item 3 –

- a) Plant 4, Building 23: Employees were assigned to remove scrap propellant from a mixing bowl using hand methods and an operating procedure meeting the requirements of the ADOSH Process Safety Management standard was not developed. 29 CFR 1910.119(f)(1)
 Div. Proposal - \$15,625.00 Formula Amt. - \$15,625.00

SERIOUS – Citation 1 - Item 4 –

- a) Plant 4, Building 23: Employees were assigned to removed scrap propellant from a mixing bowl using hand methods and the training provided to employees did not include safe work practices applicable to the task. 29 CFR 1910.119(g)(1)(i)
 Div. Proposal - \$15,625.00 Formula Amt. - \$15,625.00

SERIOUS – Citation 1 - Item 5 –

- a) Plant 4, Building 23: Employees were assigned to removed scrap propellant from a mixing bowl using hand methods which involved potential changes to the process safety information including chemical stability, an evaluation of the consequences of deviation, and information pertaining to the equipment in the process, and a pre-startup safety review was not conducted. 29 CFR 1910.119(i)(1)
 Div. Proposal - \$15,625.00 Formula Amt. - \$15,625.00

SERIOUS – Citation 1 - Item 6 –

- a) Plant 4, Building 23: Employees were assigned to removed scrap propellant from a mixing bowl using hand methods which involved changes to equipment and procedures, and the employer's management of change procedure was not implemented for these changes. 29 CFR 1910.119(l)(1)
 Div. Proposal - \$15,625.00 Formula Amt. - \$15,625.00
 TOTAL PENALTY - \$84,821.00 TOTAL FORMULA AMT. - \$84,821.00

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

Chairman Kavanaugh noted there were no adjustments on any of the citations. Chairman Kavanaugh and Mr. Atencio discussed it was because of size of the company, in this case the company is too big to receive a reduction and there was no quick fix abatement provided. Due to Legislative changes last year, ADOSH penalties conform with federal penalties of the same type of citations, and the proposed penalties are the maximum penalty for higher greater.

Chairman Kavanaugh checked if anyone would like to comment.

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

US LBM Holdings, LLC DBA Truss Fab Companies	Fatality
5275 S Pinal Dr	Years in Business: 18
<u>Apache Junction, AZ 85120</u>	Empl. Covered by Inspection: 25
Site Location: 5275 S Pinal Dr	
Apache Junction, AZ 85120	

SERIOUS – Citation 1 - Item 2 –

- a) Southeast production area: One employee was exposed to a rotating saw blade while operating a Whirlwind Up-cut saw, model and serial numbers unknown, without an adequate guard in place to prevent accidental contact.
- b) Southeast production area: One employee was exposed to a rotating saw blade while operating a Whirlwind Up-cut saw, model and serial numbers unknown, without an adequate guard in place to prevent accidental contact.
- c) Southeast production area: One employee was exposed to an ingoing nip point created by an electric conveyor belt that lacked a guard.
- d) Southeast production area: One employee was exposed to an ingoing nip point created by an electric conveyor belt that lacked a guard.
- e) Southeast production area: One employee was exposed to rotating parts while operating a green Morgan band re-saw, model and serial numbers unknown, without a guard in place to prevent accidental contact.
- f) Southeast production area: One employee was exposed to an ingoing nip point while operating a green Morgan band resaw, model and serial numbers unknown, that had an electric conveyor belt that lacked a guard. 29 CFR 1910.212(a)(1)
Div. Proposal - \$4,465.00 Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 3a –

- a) Electrical room: One employee was exposed to a shock hazard by accessing an electrical panel labeled HP1 that was missing circuit breakers. 29 CFR 1910.305(b)(1)(ii)
Div. Proposal - \$4,465.00 Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 3b –

- a) Electrical room: One employee was exposed to a shock hazard by accessing an energized electrical panel labeled HP1, make, model, and serial # unknown that lacked an adequate cover.
- b) Electrical room: One employee was exposed to a shock hazard by accessing an energized electrical panel, make, model, and serial # unknown that was missing a front cover.
- c) Southeast assembly area: One employee was exposed to a shock hazard while using a microwave that plugged into an outlet with a broken faceplate. 29 CFR 1910.305(b)(2)(i)
Div. Proposal - \$0.00 Formula Amt. - \$4,465.00

TOTAL PENALTY - \$11,608.00 TOTAL FORMULA AMT. - \$16,073.00

Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties.

Chairman Kavanaugh checked if there were any questions or comments.

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

Arizona Professional Roofing, LLC
441 S Barkley
Mesa, AZ 85204

Complaint
Years in Business: 3
Empl. Covered by Inspection: 2

Div. Proposal - \$0.00

Formula Amt. - \$2,009.00

SERIOUS – Citation 1 - Item 1c –

- a) Spray paint booth: One employee was required to wear a North brand tight fitting full face respirator, model and serial numbers unknown, without a fit test. 29 CFR 1910.134(c)(iii)
- | | |
|------------------------|---------------------------|
| Div. Proposal - \$0.00 | Formula Amt. - \$2,009.00 |
|------------------------|---------------------------|

SERIOUS – Citation 1 - Item 2 –

- a) South shop: An employee was operating a Yale forklift, model number C9148 and serial number 5021352-05, to lift pallets without receiving training. 29 CFR 1910.178(l)(1)(ii)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$2,679.00 | Formula Amt. - \$2,679.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 3 –

- a) South shop: An employee was operating a Yale brand forklift, model number C9148 and serial number 5021352-05, without a seatbelt. 29 CFR 1910.178(p)(1)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$2,009.00 | Formula Amt. - \$2,009.00 |
|----------------------------|---------------------------|

TOTAL PENALTY - \$6,697.00	TOTAL FORMULA AMT. - \$10,715.00
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Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalties.

Chairman Kavanaugh checked if there were any questions or comments.

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

Greenberry Industrial LLC
600 SE Maritime Ave Ste 190
Vancouver, WA 98661

Site Location: I-17 & Dove Valley Rd
Phoenix, AZ 85083

Inspection No: UR-2023-T3633-0083

Inspection Date: March 13, 2023

Referral

Years in Business:	45
Empl. Covered by Inspection:	251

SERIOUS – Citation 1 - Item 1 –

- a) Fab 1 lower basement, east side: Employees used Miller brand, Bobcat 250 model, various serial numbers, LPG-powered welder/generators, and the fans used to distribute the exhaust gasses from the equipment were not installed and operated in a manner which gathered the contaminants and conveyed them to suitable points of safe disposal. 29 CFR 1926.57(c)
- | | |
|-----------------------------|----------------------------|
| Div. Proposal - \$11,162.00 | Formula Amt. - \$11,162.00 |
|-----------------------------|----------------------------|
- | | |
|-----------------------------|----------------------------------|
| TOTAL PENALTY - \$11,162.00 | TOTAL FORMULA AMT. - \$11,162.00 |
|-----------------------------|----------------------------------|

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

Chairman Kavanaugh checked if there were any questions or comments.

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

H.J.D. Construction and Engineering LLC
8855 N 40th Ave
Phoenix, AZ 85018

Programmed Planned
Years in Business: 20
Empl. Covered by Inspection: 20

Site Location: 14560 W Greenway Rd
Surprise, AZ 85379
Inspection No: PP-2023-Q6169-0023
Inspection Date: March 14, 2023

SERIOUS – Citation 1 - Item 1 –

- a) 14560 W Greenway Rd: One employee was not provided with safety glasses while they performed jobsite inspections around employees using pneumatic nail guns. 29 CFR 1926.102(a)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 2 –

- a) Building A-2 Fourth floor: Three employees were framing approximately 40' above the ground level, without fall protection. 29 CFR 1926.501(b)(13)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

TOTAL PENALTY - \$14,063.00

TOTAL FORMULA AMT. - \$14,063.00

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

Chairman Kavanaugh checked if there were any questions or comments.

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

HomeGuard Services, LLC
DBA HomeGuard Exterior Construction Services
6850 W 52nd Ave
Arvada, CO 80002

Programmed Planned
Years in Business: 10
Empl. Covered by Inspection: 7

Site Location: 9848 E Old Vail Rd
Tucson, AZ 85747
Inspection No: PP-2023-T3633-0116
Inspection Date: June 16, 2023

SERIOUS – Citation 1 - Item 1 –

- a) 9848 E Old Vail Rd, Tucson, AZ 85747: Seven employees were performing roofing work on a low slope roof 22' above the ground without a fall protection system installed. 29 CFR 1926.501(b)(10)

Div. Proposal - \$2,679.00	Formula Amt. - \$2,679.00
TOTAL PENALTY - \$2,679.00	TOTAL FORMULA AMT. - \$2,679.00

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

Chairman Kavanaugh checked if there were any questions or comments.

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

McCain Construction LLC	Complaint	
3120 W Carefree Hwy Ste 1-690	Years in Business:	15
<u>Phoenix, AZ 85086</u>	Empl. Covered by Inspection:	4
Site Location:	Loop 303 and Glendale Ave	
	Phoenix, AZ 85086	
Inspection No:	CP-2023-R0175-0020	
Inspection Date:	March 6, 2023	

SERIOUS – Citation 1 - Item 1 –

- a) Near Loop 303 and Glendale Ave, Waddell AZ: Four employees building concrete forms in an excavation 7'3" deep x 17' wide x 20' long that did not receive training in the recognition and avoidance hazards associated with such work. 29 CFR 1926.21(b)(2)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$6,250.00 | Formula Amt. - \$6,250.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 2 –

- a) Loop 303 and Glendale Ave, Waddell AZ: One employee operating a Dewalt, model DWF83PL and serial numbers unknown, pneumatic nail gun without eye protection.
 - b) Loop 303 and Glendale Ave, Waddell AZ: One employee operating Milwaukee, 18V grinder, model number unknown and serial #L64BF223400164, without eye protection.
 - c) Loop 303 and Glendale Ave, Waddell AZ: One employee operating a Makita, model AT1150A and serial numbers unknown, pneumatic nail gun without eye protection.
 - d) Loop 303 and Glendale Ave, Waddell AZ: One employee operating a Milwaukee, 18V circular saw, model numbers unknown and serial #J72AD183002087, without eye protection. 29 CFR 1926.102(a)(1)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$6,250.00 | Formula Amt. - \$6,250.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 3a –

- a) Loop 303 and Glendale Ave, Waddell AZ 85355: Four employees building concrete forms in an excavation 7'3" deep x 17' wide x 20' long and did not have a safe means of egress. 29 CFR 1926.651(c)(2)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$4,687.00 | Formula Amt. - \$4,687.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 3b –

- a) Loop 303 and Glendale Ave, Waddell AZ 85355: Four employees building concrete forms in an excavation 7'3" deep x 17' wide x 20' and the spoil piles were not at least two feet from the edge of the excavation. 29 CFR 1926.651(j)(2)
 Div. Proposal - \$0.00 Formula Amt. - \$4,687.00

SERIOUS – Citation 1 - Item 3c –

- a) Loop 303 and Glendale Ave, Waddell AZ 85355: Four employees building concrete forms in an excavation 7'3" deep x 17' wide x 20' long that was not inspected by a competent person prior to the start of work in the excavation. 29 CFR 1926.651(k)(1)
 Div. Proposal - \$0.00 Formula Amt. - \$4,687.00
- TOTAL PENALTY - \$17,187.00 TOTAL FORMULA AMT. - \$26,561.00

Mr. Atencio discussed ADOSH’s inspection, summarized the citation and proposed penalties.

Mr. LaVoie noted this was his first time seeing the citation, and after review, all of the items in the citation have been corrected. He noted this was a new crew and their training has been taken care of since the inspection. He has also reinforced the eye protection implemented at the company, all employees had them and he did not know why they were not wearing them, and that has been discussed. The trenching ingress and egress was addressed immediately and a box with bridge and ladder was in place within 12 hours. He verified everything the next morning and everything was abated at that point.

Chairman Kavanaugh noted he appreciated the updates.

Commissioner Valdez asked Mr. LaVoie if the training for the competent person was completed.

Mr. LaVoie noted that the employees went through trenching and excavation for competent person training.

Chairman Kavanaugh checked if there were any other questions or comments.

Commissioner Everett asked Mr. Atencio if he was advised that the items had been abated and Mr. Atencio found nothing in the record showing abatement.

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

The Klark Organization I LLC
3635 S 43rd Ave #200
Phoenix, AZ 85009

Site Location: 7500 N Silverbell Rd
Tucson, AZ 85743
Inspection No: RF-2023-E7721-0097
Inspection Date: April 26, 2023

Referral
Years in Business: 12
Empl. Covered by Inspection: 5

SERIOUS – Citation 1 - Item 1 –

- a) 7500 N Silverbell Rd, Tucson, AZ 85743: Two employees were scrapping out the rooftop at the west side, adjacent to a parapet wall, 31" inches in height, lacking an adequate fall protection system installed. 29 CFR 1926.501(b)(1)

Div. Proposal - \$10,938.00

Formula Amt. - \$10,938.00

SERIOUS – Citation 1 - Item 2 –

- a) 4500 N Silverbell Rd, Tucson, AZ 85743: Employees were working next to a 31" high parapet wall, 35' above the ground level, without adequate fall protection training to recognize the hazard. 29 CFR 1926.503(a)(1)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

TOTAL PENALTY - \$18,751.00

TOTAL FORMULA AMT. - \$18,751.00

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

Chairman Kavanaugh checked if there were any questions or comments.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through October 2023.

Mr. Testini noted that Melissa Spurgeon has been named the Interim Labor Director and Lisa Pagett has been moved up to Deputy Director of the Industrial Commission.

Public Comment.

There was no public comment.

The meeting was adjourned at 2:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Director

ATTEST:



Kara Dimas, Commission Secretary