## MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, September 7, 2023 – 1:00 p.m.

Present: Dennis P. Kavanaugh

Chairman

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic) Commissioner (Telephonic)

Scott P. LeMarr D. Alan Everett

Commissioner

Maria Cecilia Valdez

Commissioner (Telephonic)

Gaetano J. Testini

Director

Afshan Peimani

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief/Public Information Officer

Renee Pastor

Self Insurance (Telephonic)

Jessie Atencio Anna Maria Stonerock ADOSH Director ADOSH Admin

Kara Dimas

**Commission Secretary** 

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Gary Martinez and Brenda Martinez (Next of Kin); Anne Ryman (ABC15); and Paige Millan (Snell & Wilmer). Also in attendance on the telephone, confirmed by roll call Katie Cormier; Sandra Martinez, Jodie Broderick and Stephanie Garcia (SRP); Chi Nguyen (Albertsons) and Cristen Gassett (QuickTrip Corporation).

## Approval of Minutes of August 31, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the August 31, 2023 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez 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 Requests for Renewal of Self-Insurance Authority.

- 1. Albertsons Companies, Inc.
- 2. Medtronic, Inc.
- 3. QuickTrip Corporation
- 4. Salt River Project Agricultural Improvement and Power District and The Salt River Valley Water Users' Associations (SRP)

#### 5. TMC Healthcare

Chairman Kavanaugh moved Albertsons Companies, Inc.to the regular agenda for further questions.

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

Approval of Requests for Renewal of Self-Insurance Authority for Albertsons Companies, Inc.

Chairman Kavanaugh noted he would be in support but had a question. In reviewing the application for renewal, commented that he understands there are discussions of a merger between Albertson's and Kroger that could happen in 2024 pending state and/or federal regulators. If during the term of the self-insurance renewal that merger occurs, how would that affect the authorization of self-insurance renewal.

Ms. Pastor noted that if Kroger Co. were to acquire Albertson's, a couple of things could happen. She noted that both companies are self-insured and could opt to maintain separate self-insurance for Albertson's, at which time the annual renewal will stay the same. The other option is to take under the Kroger Co. self-insurance authority and be a subsidiary of the company, be merged directly into the company, or they could be separately insured through a company. She did not think that would be the case since both companies have a very vast risk management program and she would anticipate that they would just envelop under one kind of roof or maintain separate self-insurance authorities.

Chairman Kavanaugh thanked Ms. Pastor and noted as part of approval asked if the Commission could include a stipulation that if the merger occurs during this approval year, if the status of the situation can be checked with regards to self-insurance at that time in case action is necessary.

Ms. Pastor noted the new rules allow the Commission to make this stipulation.

Chairman Kavanaugh proposed a motion to allow that stipulation for this approval for Albertson's to come back to the Commission for review if and when the acquisition would occur during the next year of approval for self-insurance. Commissioner Everett seconded the motion.

Ms. Pastor requested to add at that time to look at separate financial statements when it happens or possibly some proforma financial statements.

Chairman Kavanaugh agreed.

Chairman Kavanaugh asked Ms. Nguyen if she had any comments. Hearing none.

Chairman Kavanaugh noted with the addition of that stipulation, Chairman Kavanaugh, Vice Chair Hennelly, Commissioner LeMarr, 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.

Mr. Atencio removed J.G. Sheet Metal and Roofing Pro LLC and La Canasta Mexican Food Products, Inc. as those files were not ready for Commission.

Torrent Resources Incorporated

Fatality

1509 E Elwood

Years in Business:

Empl. Covered by Inspection:

50 11

Phoenix, AZ 85040

25651 W Durango St Buckeye, AZ 85326

Inspection No:

Site Location:

FC-2023-A7717-0097

Inspection Date:

April 19, 2023

Mr. Atencio summarized ADOSH's investigation and reviewed the file. ADOSH did not recommend any serious citations for Torrent Resources Incorporated.

Chairman Kavanaugh checked if anyone would like to comment.

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

Boss Powder Coating LLC

Complaint

5624 N 53<sup>rd</sup> Ave

Years in Business:

Empl. Covered by Inspection:

1 5

Glendale, AZ 85301

5624 N 53rd Ave

1

Inspection No:

Site Location:

Glendale, AZ 85301

Inspection 1.e.

CP-2023-A7717-0117

Inspection Date:

June 27, 2023

#### SERIOUS – Citation 1 - Item 1 –

a) Cartridge Filter Booth: Two employees were required to spray Sherwin Williams Powdura Superdurable Polyester TGIC powder coating in a cartridge filter booth that did not remove the overspray dust. 29 CFR 1910.107(d)(2)

Div. Proposal - \$2,679.00

Formula Amt. - \$2,679.00

## SERIOUS - Citation 1 - Item 2 -

a) 5624 N 53rd Ave, Glendale, AZ 85301: Two employees were required to wear Gerson tight fitting half mask respirator, model #M8200 and serial numbers unknown, without a written respiratory program developed or implemented in the work place. 29 CFR 1910.134(c)(1) Div. Proposal - \$2,679.00 Formula Amt. - \$2,679.00

SERIOUS – Citation 1 - Item 3a –

a) 5624 N 53rd Ave, Glendale, Az, 85301: Two employees were required to use Powdura Superdurable Polyester TGIC Powder Coating and Acetone without a written Hazard Communication Program having been developed or implemented in the work place. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$2,679.00

Formula Amt. - \$2,679.00

## SERIOUS – Citation 1 - Item 3b –

a) 5624 N 53rd Ave, Glendale, Az, 85301: Two employees were required to use Powdura Superdurable Polyester TGIC Powder Coating and Acetone without being provided Hazard Communication training. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00

Formula Amt. - \$2,679.00

TOTAL PENALTY - \$8,037.00

TOTAL FORMULA AMT. - \$10,716.00

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

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 LeMarr, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

United Irrigation, Inc. DBA United GLI

Complaint

2093 N Mt Juliet Rd Ste 12

Years in Business:

Empl. Covered by Inspection:

22 10

Mt. Juliet, TN 37122

6206 E Desert Moon Loop

Tucson, AZ 85750

Inspection No:

Site Location:

CP-2023-RS480-0066

Inspection Date:

May 11, 2023

### SERIOUS – Citation 1 - Item 1 –

a) 6206 E Desert Moon Loop, Tucson, AZ: Two employees worked in an excavation that was 4'2" wide, over 80' long, and varying depths from 4' to 7' deep without being trained on the hazards associated with the excavation. 29 CFR 1926.21(b)(2)

Div. Proposal - \$4,465.00

Formula Amt. - \$4,465.00

### SERIOUS – Citation 1 - Item 2a –

a) 6206 E Desert Moon Loop, Tucson, AZ: Two employees were laying sand in an excavation, that was 4'2" wide, over 80' long, and varying depths from 4' to 7' deep without a proper means of egress within 25' of lateral travel. 29 CFR 1926.651(c)(2)

Div. Proposal - \$4,465.00

Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 2b –

a) Ventana Golf Course: Two employees worked in an excavation that was 4'2" wide, over 80' long, and varying depths from 4' to 7' deep without having a competent person. 29 CFR 1926.651(k)(1)

Div. Proposal - \$0.00

Formula Amt. - \$4,465.00

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

a) 6206 E Desert Moon Loop, Tucson, AZ: Two employees were laying sand in an excavation, that was 4'2" wide, over 80' long, and varying depths from 4' to 7' deep and there were spoil piles at the edge of the excavation. 29 CFR 1926.651(j)(2)

Div. Proposal - \$0.00

Formula Amt. - \$4,465.00

### SERIOUS – Citation 1 - Item 3 –

a) 6206 E Desert Moon Loop, Tucson, AZ: 6206 E Desert Moon Loop, Tucson, AZ: Two employees were laying sand in an excavation that was 4'2" wide, over 80' long, and varying depths from 4' to 7' deep that was not protected against cave or collapse. 29 CFR 1926.651(a)(1))

Div. Proposal - \$4,465.00

Formula Amt. - \$4,465.00

TOTAL PENALTY - \$13,395.00

TOTAL FORMULA AMT. - \$22,325.00

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

Chairman Kavanaugh checked if anyone would like to comment.

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

Discussion and Action Regarding Raising the Threshold for ADOSH Cases Going Before Commission.

Chairman Kavanaugh noted that due to the increase in penalties this past year ADOSH was looking to increase the threshold for citations that require separate discussion and action by the Commission and that matters below that threshold would be part of the Consent Agenda.

Mr. Atencio noted that was correct and requested that this item be tabled for a future meeting, he was trying to aggregate additional data and information for the actual penalty structure so he can provide the value that is necessary for them to go forward.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through November 2023.

### Public Comment.

There was no public comment.

The meeting was adjourned at 1:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Gaetano J. Testini, Director

ATTEST:

Kara Dimas, Commission Secretary