

MINUTES OF MEETING
 OF THE INDUSTRIAL COMMISSION OF ARIZONA
 Held at 800 West Washington Street
 Phoenix, Arizona 85007
 Thursday, November 16, 2023 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Lisa Padgett	Deputy Director
	Afshan Peimani	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Mark Norton	ADOSH Director
	Phil Murphy	Assistant ADOSH Director
	Brandt Smith	Whistleblower Supervisor
	Anna Maria Stonerock	ADOSH Admin
	Yvonne Borunda	Legal Division
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15); Stephanie Hefner (Snell and Wilmer); Rob Fransway (Springbrook SGC, LLC); and Kim Stovers (Thorobred Framing, Inc.). Also in attendance on the telephone, confirmed by roll call was Mike Derkenne (Beal Derkenne Construction, LLC).

Approval of Minutes of November 2, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the November 2, 2023 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly 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.

APS Drywall LLC	Unprogrammed Related
8301 N 103 Ave Lot 150	Years in Business: 4
Peoria, AZ 85345	Empl. Covered by Inspection: 31
Site Location: 1150 E Vista Del Lago	
	Tempe, AZ 85282
Inspection No: UR-2023-RS480-0074	
Inspection Date: May 26, 2023	

SERIOUS – Citation 1 - Item 1 –

- a) Sixth floor West building facing south air duct hole: One employee performing wood framing was exposed to a potential fall hazard while working within 7' of a floor hole measuring 45" in width, 72" in length and 11' above the lower level which was lacking a secured cover. 29 CFR 1926.502(i)(3)

Div. Proposal - \$4,687.00	Formula Amt. - \$4,687.00
TOTAL PENALTY - \$4,687.00	TOTAL FORMULA AMT. - \$4,687.00

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

Mr. Fransway requested to speak. This company was brought on shortly before the inspection. He wanted to clarify that there had been no falls through floor holes, they did have an accident and in his opinion, no fault could be determined..

Chairman Kavanaugh asked Mr. Fransway his relationship to the company.

Mr. Fransway stated he was the owner of the property. He wanted to mention he heard there was a fall through a floor hole, and it is not true. The Compliance Officer found many hole covers in the same area with nails driven through them but the covers pulled up and put back down again, they were in place they were just not secured.

Mr. Fransway also noted the tremendous efforts to get the APS Drywall crew trained in fall protection and he bought extra fall protection kits so there was no excuse for someone not to have one.

Mr. Norton noted the reason ADOSH was there was the fire department wrote a referral to ADOSH with concerns for the safety and health of the employees and the employer was told that if they did not get the problems fixed they were going to shut the job down. A Compliance Officer was sent and spent three or four days at the job site. There was an accident on that site in April 2021 and will talk about that in other case files.

Chairman Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Mr. Norton noted the provided division proposal was \$4,687.00 for the citation.

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

Beal Derkenne Construction, LLC	Unprogrammed Related
4640 E Elwood St - Suite 6	Years in Business: 15
Phoenix, AZ 85022	Empl. Covered by Inspection: 24
Site Location: 4640 E Elwood St - Suite 6	
Phoenix, AZ 85022	
Inspection No: UR-2023-RS480-0073	
Inspection Date: May 26, 2023	

SERIOUS – Citation 1 - Item 1 –

- a) 1150 E Vista Del Lago Tempe, AZ 85287: One employee poured a concrete slab for a pump within 15 feet of a manhole that was over 20 feet deep by 32 inches in diameter and did not have a cover on it. 29 CFR 1926.501(b)(4)(ii)

Div. Proposal - \$4,018.00	Formula Amt. - \$4,018.00
TOTAL PENALTY - \$4,018.00	TOTAL FORMULA AMT. - \$4,018.00

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

Chairman Kavanaugh checked if Mr. Derkenne would like to comment.

Mr. Derkenne noted they were surprised about the citation as they were aware of the inspection and present for the follow-up meeting with the Compliance Officer but were under the impression that they would be notified of any citation toward Beal Derkenne Construction prior to them being issued.

Chairman Kavanaugh thanked Mr. Derkenne for being online and offering comments.

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

Enrique Quezada, A Single Man	Fatality/Catastrophe
5545 North 43rd Avenue	Years in Business: 1
<u>Phoenix, AZ 85019</u>	Empl. Covered by Inspection: 2
Site Location: 1202 W Golden Ln	
Phoenix, AZ 85021	
Inspection No: FC-2023-JW184-0018	
Inspection Date: May 15, 2023	

Mr. Norton summarized ADOSH's investigation and reviewed the file and photographs. ADOSH was not recommending a citation for Enrique Quezada, A Single Man.

Vice Chair Hennelly asked if there was any thought given to the absence of a safety program or discussion. Mr. Norton noted there was discussion about it and they attempted to get additional information from the employer, but were unsuccessful.

Chairman Kavanaugh noted he probably did not have worker comp insurance. Mr. Norton noted they made referrals for that and referral to the Registrar of Contractors. Commissioner Everett noted he had the same question.

The Commission took no action.

P&R Plumbing Inc	Unprogrammed Related
1150 E Vista Del Lago	Years in Business: 8
<u>Tempe, AZ 85282</u>	Empl. Covered by Inspection: 8
Site Location: 1150 E Vista Del Lago	
Tempe, AZ 85282	
Inspection No: UR-2023-RS480-0076	
Inspection Date: May 26, 2023	

SERIOUS – Citation 1 - Item 1a –

- a) Second Floor East Tower: One employee was exposed to falls to the lower floor 11 ft. below while installing plumbing pipe through a floor hole measuring 45" in width and 72" in length. 29 CFR 1926.501(b)(4)(i)

Div. Proposal - \$3,572.00

Formula Amt. - \$8,929.00

SERIOUS – Citation 1 - Item 1b –

- a) Second Floor East Tower: One employee was exposed to falls to the lower level, 11 ft. below while installing plumbing pipe through a floor hole measuring 45" in width and 72" in length, that was lacking a secure cover. 29 CFR 1926.502(i)(3)

Div. Proposal - \$0.00

Formula Amt. - \$6,696.00

SERIOUS – Citation 1 - Item 2 –

- a) Second Floor East Tower: One employee installed plumbing pipe through a floor hole that was 45 inches wide by 72 inches long with a drop of 11' to the lower level, and did not have training on fall protection. 29 CFR 1926.503(a)(1)

Div. Proposal - \$2,678.00

Formula Amt. - \$6,696.00

TOTAL PENALTY - \$6,250.00

TOTAL FORMULA AMT. - \$22,321.00

Mr. Norton 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 Kavanaugh, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Springbrook SGC, LLC
 1111 North Mission Park Boulevard
 Chandler, AZ 85224

Referral
 Years in Business: 30
 Empl. Covered by Inspection: 11

Site Location: 1150 E Vista Del Lago Dr.
 Tempe, AZ 85287

Inspection No: RF-2023-RS480-0069
 Inspection Date: May 26, 2023

REPEAT SERIOUS – Citation 1 - Item 1 –

- a) 1150 E Vista Del Lago Tempe, AZ 85287: One employee worked on the 14th floor finishing columns within three feet of an unflagged steel wire warning line system. 29 CFR 1926.502(f)(2)(i)

SPRINGBROOK SGC, LLC WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD, NO FLAGGING, WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1554292, CITATION 02, ITEM NUMBER 01, WHICH WAS ISSUED ON 01/12/2022 AND WAS AFFIRMED AS FINAL ORDER 02/04/2022 WITH RESPECT TO A WORKPLACE AT 1020 E VISTA DEL LAGO DR, TEMPE, AZ 85287

Div. Proposal - \$8,930.00

Formula Amt. - \$8,930.00

REPEAT SERIOUS – Citation 1 - Item 2 –

- a) 1150 E Vista Del Lago Tempe, AZ 85287: One employee worked on installing airducts without training on recognizing potential fall hazards. 29 CFR 1926.503(a)(1)

SPRINGBROOK SGC, LLC WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD, NO FALL PROTECTION TRAINING, WHICH WAS CONTAINED IN ADOSH INSPECTION NUMBER 1554292, CITATION 01, ITEM NUMBER 02, WHICH WAS ISSUED ON 01/12/2022 AND WAS AFFIRMED AS FINAL ORDER 02/04/2022 WITH RESPECT TO A WORKPLACE AT 1020 E VISTA DEL LAGO DR, TEMPE, AZ 85287

Div. Proposal - \$5,357.00

Formula Amt. - \$5,357.00

SERIOUS – Citation 2 - Item 1 –

- a) 1150 E Vista Del Lago, Tempe, AZ 85287: 1150 E Vista Del Lago, Tempe, AZ 85287: Employees exposed to health hazards while performing construction activities such as drywall framing, electrical install, stucco work, and plumbing due to multiple bottles filled with urine found laying in various locations on the jobsite.
- b) 1150 E Vista Del Lago, Tempe, AZ 85287: Employees exposed to trip and fall hazards, punctures and lacerations while performing construction activities such as drywall framing, electrical install, stucco work, and plumbing due to excessive debris, cords, microwaves, protruding nails, and other scrap material in the walkway and stairwells. 29 CFR 1926.25(a)

Div. Proposal - \$2,678.00

Formula Amt. - \$2,678.00

SERIOUS – Citation 1 - Item 2 –

- a) 1150 E Vista Del Lago Tempe, AZ 85287: One employee worked to install HVAC equipment with tools such as a rotary hammer (make and model unknown) and was not provided with adequate PPE. 29 CFR 1926.28(a)

Div. Proposal - \$2,678.00

Formula Amt. - \$2,678.00

SERIOUS – Citation 1 - Item 3 –

- a) 1150 E Vista Del Lago, Tempe, AZ 85287: Employees performing construction activities onsite such as drywall framing, electrical install, stucco work, and plumbing did not have knowledge of an emergency action plan or where to go in the event of an emergency. 29 CFR 1926.35(a)

Div. Proposal - \$2,678.00

Formula Amt. - \$2,678.00

SERIOUS – Citation 1 - Item 4a –

- a) 1150 E Vista Del Lago Tempe, AZ 85287: Employees onsite did not have access to running water for handwashing after using the restroom. 29 CFR 1926.51(f)(3)(ii)

Div. Proposal - \$2,678.00

Formula Amt. - \$2,678.00

SERIOUS – Citation 1 - Item 4b –

- a) 1150 E Vista Del Lago Tempe, AZ 85287: Two employees used a restroom facility and did not have access to hand soap. 29CFR 1926.51(f)(3)(iii)

Div. Proposal - \$0.00

Formula Amt. - \$2,678.00

SERIOUS – Citation 1 - Item 4c –

Mr. Norton discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs. Mr. Norton explained the Repeat-Serious calculations has a multiply of two for Citation 1, Items 1 and 2.

Mr. Fransway noted that they have not had violations in the past, he had requested two voluntary consultations on this site because of its size. There is 1.4 million square feet and it takes three days for a person to work their way through the building. Mr. Fransway noted that each of the consultations took a week and were very costly in terms of production and time.

Mr. Fransway reviewed and described each of the photographs he had 11 employees on the jobsite as support people to keep an eye on other people. He described the difficulties with finding quality employees. They had fall protection training and discussed the equipment he provided. He discussed his abatement efforts for emergency action plan, he sent pictures and video and the Compliance Officer had difficulty seeing the videos, and he tried to abate every item within a few days of the visit.

Vice Chair Hennelly asked if there was a designated safety manager on site for this project and how often he is there. Mr. Fransway noted that he does and he is an engineer and they are there 40 hours a week.

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

Mr. Norton noted the next two files were the same company.

<p>Thorobred Framing, Inc. 3950 East Presidio Street Ste. 102 Mesa, AZ 85215</p> <hr style="width: 30%; margin-left: 0;"/> <p>Site Location: 5647 E. Sayan St Mesa, AZ 85215</p> <p>Inspection No: CP-2023-JW184-0008</p> <p>Inspection Date: June 7, 2023</p>	<p>Complaint</p> <p>Years in Business: 43</p> <p>Empl. Covered by Inspection: 5</p>
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SERIOUS – Citation 1 - Item 1 –

- a) Roof Lot #44: One employee was on the roof of a newly built single story residential home, framing the trusses approximately 11' 4" above the lower level without fall protection. 29 CFR 1926.501(b)(13)
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| Div. Proposal - \$4,465.00 | Formula Amt. - \$4,465.00 |
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SERIOUS – Citation 1 - Item 2 –

- a) Roof Lot# 44: Two employees were doing framing work on the roof of a newly built single story residential home, approximately 11' 4" above the lower level without having received fall protection training. 29 CFR 1926.503(a)(1)

Div. Proposal - \$4,465.00	Formula Amt. - \$4,465.00
TOTAL PENALTY - \$8,930.00	TOTAL FORMULA AMT. - \$8,930.00

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

Chairman Kavanaugh checked if the Commissioners had any questions.

Thorobred Framing, Inc.
3950 East Presidio Street Ste. 102
Mesa, AZ 85215

Unprogrammed Related
Years in Business: 43
Empl. Covered by Inspection: 4

Site Location: 5647 E. Sayan St
Mesa, AZ 85215
Inspection No: UR-2023-JW184-0009
Inspection Date: June 7, 2023

SERIOUS – Citation 1 - Item 1 –

- a) Roof Lot #43: Two employees were on the roof of a newly built single story residential home, sheathing the roof approximately 11' 4" above the lower level without fall protection. 29 CFR 1926.501(b)(13)
Div. Proposal - \$4,465.00 Formula Amt. - \$4,465.00

SERIOUS – Citation 1 - Item 2 –

- a) Lot #43 Roof: Two employees were doing framing work on the roof of a newly built single story residential home, approximately 11' 4" above the lower level without having received fall protection training. 29 CFR 1926.503(a)(1)
Div. Proposal - \$4,465.00 Formula Amt. - \$4,465.00
TOTAL PENALTY - \$8,930.00 TOTAL FORMULA AMT. - \$8,930.00

Mr. Norton noted the reason for the two individual inspections, and it is not uncommon for separate crews to be working on different lots. Mr. Norton discussed ADOSH's inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Kavanaugh checked if Ms. Stovers would like to comment. She indicated she did not.

Ms. Stovers commented on the 12 feet, she noted that their fall protection harnesses that they provide to their crews do not take effect until 12 feet, they do not even stop you until you hit 12 feet, and does not work for six or ten feet. Since this, ADOSH has done their fall protection training for all of their crews and guys, all of their equipment has been inspected and is done twice annually.

Chairman Kavanaugh noted he appreciated the clarification.

Vice Chair Hennelly asked if there were harnesses out there that work for six feet? Mr. Norton noted there are, and any time an employee uses any type of fall arrest system, one thing they are supposed to be trained on, and why there are so many training violations, is they are supposed to be able to calculate what they call a fall distance. Depending on the system, they would have to take into consideration the height of the employee, the stopping distance, the total fall distance because every harness will have differences depending on the manufacturer.

For the first file, Inspection No: CP-2023-JW184-0008, Commissioner Everett moved to approve the citation and proposed penalties as presented and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

For the second file, Inspection No: UR-2023-JW184-0009, Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas announced the retirement of Ruben G. Rodriguez Senior after 16 year as an Industrial Hygienist in the ADOSH Division and Donald Joe Hedgecock after 5 years as an Elevator Inspector in the ADOSH Division.

Chairman Kavanaugh congratulated them for their service and wished them well and happiness in their retirement.

Ms. Dimas confirmed Commission meeting dates through December 2023.

Chairman Kavanaugh noted the comment period remains open for the public to comment on those rate changes.

Public Comment.

There was no public comment.

The meeting was adjourned at 2:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Director

ATTEST:



Kara Dimas, Commission Secretary