MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, January 11, 2024 – 1:00 p.m.

Present: Dennis P. Kavanaugh

Chairman

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic)

D. Alan Everett

Commissioner

Maria Cecilia Valdez

Commissioner (Telephonic)

Gaetano J. Testini

Executive Deputy Director

Afshan Peimani

Chief Legal Counsel

Lisa Padgett

Deputy Director

Trevor Laky

Legislative Affairs Chief/Public Information Officer

Renee Pastor

Self-Insurance (Telephonic)

Melissa Spurgeon Christina Sanchez

Labor Supervisor

Labor Director

Alissa Bodie

Labor Investigator

Phil Murphy

ADOSH Interim Director

Anna Maria Stonerock

ADOSH Admin

Kara Dimas

Commission Secretary

Chairman Kavanaugh convened the meeting at 1:03 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15); Stephanie Hefner (Snell and Wilmer); Julia Harry (51st St Carwash LP DBA Raceway Car Wash); James Russell Griffin, Jaimee Griffin and Cesar Flores (Pinal Excavating LLC dba P.E. Drilling); Dave Howard and Angelica Gallego (PRM-Premier Risk Management). Also in attendance on the telephone, confirmed by roll call were Tracy Foss, Amy Robinson, Garrett Mahoney (Risk Program Administrators "Securis"); Ryan Cole (The Trust "Securis"); Joe Zingaro and Susan Strickler (AZ Counties Insurance Pool); Monique Allen (Bashas' / Raley's Company); and Alan McVay (Dignity Health).

Approval of Minutes of December 21, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the December 21, 2023 regular session meeting 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.

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. American Furniture Warehouse Co. Inc.
- 2. Arizona Counties Workers' Compensation Pool
- 3. Dignity Health
- 4. McKee Foods Corporation
- 5. Raley's Arizona LLC dba Bashas'
- 6. Securis Insurance Pool, Inc.
- 7. The Arizona School Alliance for Workers' Compensation, Inc.

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

Discussion and Action regarding Proposed Retaliation Penalty.

1. ST-2324-0111 West Direct Oil, LLC DBA Diesel Direct

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 subsequent Civil Penalty in the amount of \$1,000.00 for violation of A.R.S. § 23-372(A).

Commissioner Everett moved to approve issuance of a subsequent Civil Penalty for violation in the amount of \$1,000.00 to West Direct Oil, LLC DBA Diesel Direct. Commission 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 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.

Chairman Kavanaugh noted that Antech Corporation is a rare occurrence, it is a failure to abate citation. Mr. Murphy explained that a follow-up inspection can be performed to confirm abatement of hazards by the employer.

Antech Corporation

Follow-Up

4261 S Country Club Rd

Years in Business:

Empl. Covered by Inspection:

72 5

Tucson, AZ 85714

4261 S Country Club Rd, Ste 101

Tucson, AZ 85714

Inspection No:

Site Location:

FU-2023-T3633-0124

Inspection Date:

August 30, 2023

FTA-SERIOUS – Citation 1 - Item 1a –

a) Spray finishing area: Employees used products including paints and powder coats, and the company had not developed and implemented a written hazard communication program. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$55,944.00

FTA-SERIOUS – Citation 1 - Item 1b –

a) Spray finishing area: Employees used products including paints and powder coats, and safety data sheets (SDS) were not maintained at the site for these products. 29 CFR 1910.1200(g)(8)
 Div. Proposal - \$0.00

FTA-SERIOUS – Citation 1 - Item 1c –

a) Spray finishing area: Employees used products including paints and powder coats, and the employees had not been trained concerning the company's hazard communication program and concerning the availability of Safety Data Sheets (SDS). 29 CFR 1910.1200(h)(1) Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 1a –

a) Powder coating booth: Employees sprayed powder coating on metal parts, and the booth where this work was done was constructed out of wood. 29 CFR 1910.107(b)(1) Div. Proposal - \$27,972.00

SERIOUS – Citation 2 - Item 1b –

a) Powder coating booth: The powder coating booth did not have a visible gauge or other device to indicate if the required ventilation air flow rate was maintained. 29 CFR 1910.107(b)(5)(i) Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 1c –

a) Powder coating booth: The powder coating booth did not have the lighting installed behind glass or other transparent panels. 29 CFR 1910.107(b)(10)

Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 1d –

a) Powder coating area: Light switches installed on the north and west walls of the booth were not of explosion-proof type approved for Class I, group D locations. 29 CFR 1910.1200(e)(1)
 Div. Proposal - \$0.00

SERIOUS – Citation 2 - Item 2 –

a) Painting area: Employees who did painting and powder coating were required to use 3M brand half-face respirators, and a respiratory protection program was not provided. 29 CFR 1910.134(c)(1)

Div. Proposal - \$21,972.00

TOTAL PENALTY - \$105,888.00

Mr. Murphy discussed ADOSH's follow-up inspection on abatement was not received for issued violations despite the companies' assurance to ADOSH, summarized the citations and proposed penalties, and reviewed the photographs.

Commissioner Everett moved to approve the citations and proposed penalties as presented and Vice Chair Hennelly seconded the motion.

Chairman Kavanaugh and Mr. Murphy discussed how often failure to abate situations arise, Mr. Murphy noted that about three in the last 11 years that he was aware of.

Vice Chair Hennelly and Mr. Murphy discussed the communications with the company, which included an informal conference and how a previous employee reached out to the division to notify the division that abatement was not provided. Mr. Murphy confirmed that since those events ADOSH has not heard from the employer.

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

51ST Avenue Carwash LP DBA Raceway Car Wash

Referral

4401 E Baseline Rd Ste# 108

Site Location:

Years in Business: 9 Empl. Covered by Inspection:

3

Phoenix, AZ 85042

1025 N 51st Ave

Phoenix, AZ 85043

Inspection No:

RF-2023-MB431-0019

Inspection Date:

September 12, 2023

SERIOUS – Citation 1 - Item 1 –

a) 1025 N 51st Ave, Phoenix, AZ, 85043: One employee performed maintenance on a tunnel carwash conveyor, and an energy control (lockout/tagout) procedure had not been developed. 29 CFR 1910.147(c)(4)(i)

Div. Proposal - \$2,679.00

Formula Amt. - \$8,929.00

SERIOUS – Citation 1 - Item 2 –

a) 1025 N 51st Ave, Phoenix, AZ 85043: One employee performed maintenance on a tunnel carwash conveyor, without having been trained on energy control (lockout/tagout) procedures. 29 CFR 1910.147(c)(7)(i)

Div. Proposal - \$2,679.00

Formula Amt. - \$8,929.00

SERIOUS – Citation 1 - Item 3 –

a) 1025 N 51st Ave, Car wash tunnel: One employee was exposed to the hazard of a rotating wraparound brush while cleaning the inside of a car wash tunnel. 29 CFR 1910.212(a)(1) Formula Amt. - \$8,929.00 Div. Proposal - \$2,679.00

SERIOUS – Citation 1 - Item 4a –

a) Laundry Room: Two employees used chemicals such as WD-40, Lime off and Tire Shine without a Hazard Communication program written and implemented in the workplace. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$2,009.00

Formula Amt. - \$6,696.00

SERIOUS – Citation 1 - Item 4b –

a) Laundry Room: Two employees used chemicals such as WD-40, Lime Off and Tire-Shine without having access to the chemicals Safety Data Sheets. 29 CFR 1910.1200(g)(8) Div. Proposal - \$0.00 Formula Amt. - \$6,696.00

SERIOUS – Citation 1 - Item 4c –

a) Laundry Room: Three employees were not trained in the hazards associated with chemicals such as WD-40, Lime Off and Tire Shine. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00

Formula Amt. - \$6,696.00

TOTAL PENALTY - \$10,046.00

TOTAL FORMULA AMT. - \$46,875.00

Chairman Kavanaugh noted this matter is being returned to the Commission with a correction to the name of the employer to 51ST Avenue Carwash LP DBA Raceway Car Wash. Mr. Murphy also noted the change in employees controlled by the employer is the parent company and total employees at this site is 7 and the Division Proposal has been adjusted. He discussed ADOSH's inspection, summarized the citation and proposed penalties.

Vice Chair Hennelly clarified that the amounts of the penalty were adjusted for the size of the employer and Mr. Murphy confirmed.

Vice Chair Hennelly also clarified the size is based on the employees at this particular location and not the overall size of the company nationally. Mr. Murphy confirmed the overall size of 51ST Avenue Carwash LP which is controlled by the employer is 7.

Vice Chair Hennelly asked about evidence of abatement for each citation. Mr. Murphy noted the employer has provided abatement to the compliance officer, it has not been reviewed yet and did not know the specifics of abatement efforts.

Chairman Kavanaugh clarified that if the Commission issues a citation today and have an informal conference then it could be reviewed.

Commissioner Everett clarified that when the employer meets at an informal conference and demonstrate abatement that Mr. Murphy can make adjustments to the penalty amount. Mr. Murphy confirmed.

Ms. Harry addressed the Commission, she is the Director of HR. She noted she has presented abatement for all items which is waiting review from the inspector. She thanked Mr. Murphy for his time and the adjustment to the calculation for the number of employees.

Chairman Kavanaugh noted he appreciated Ms. Harry's comments and efforts to abate and to clarify the issue of the number of employees and ownership at this location.

Commissioner Valdez moved to approve the citation and proposed penalties of \$10,046.00 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.

Pinal Excavating LLC dba P.E. Drilling

Complaint

236 North Valley Farms Road

40 Years in Business: 3

Coolidge, AZ 85128

Empl. Covered by Inspection:

Site Location:

1350 W Rose Garden Ln

Phoenix, AZ 85027

Inspection No:

CP-2023-JR339-0010

Inspection Date:

July 14, 2023

REPEAT-SERIOUS – Citation 1 - Item 1 –

a) Southeast side of site: Two employees were working in a dry well that was not identified as a confined space. 29 CFR 1926.1203(a)

PINAL EXCAVATING LLC DBA P.E. DRILLING was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard, the employer not identifying all confined spaces in which one or more of the employees it directs may work, which was contained in ADOSH Inspection Number V0936-1499063, Citation Number 2, Item Number 2, which was issued on 2/2/2021 and was affirmed as final order on 3/8/2021 with respect to a workplace at 3333 W Peoria Ave, Phoenix, AZ 85029.

Div. Proposal - \$8,930.00

Formula Amt. - \$8,930.00

REPEAT-SERIOUS – Citation 1 - Item 2 –

a) Southeast side of site: Two employees were working in a dry well without having received confined space training. 29 CFR 1926.1207(a)

PINAL EXCAVATING LLC DBA P.E. DRILLING was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard, the employer not identifying all confined spaces in which one or more of the employees it directs may work, which was contained in ADOSH Inspection Number V0936-1499063, Citation Number 2, Item Number 3, which was issued on 2/2/2021 and was affirmed as final order on 3/8/2021 with respect to a workplace at 3333 W Peoria Ave, Phoenix, AZ 85029.

Div. Proposal - \$8,930.00

Formula Amt. - \$8,930.00

SERIOUS – Citation 2 - Item 1a –

a) Southeast side of site: Two employees were dawning personal fall arrest harnesses with selfretracting lifelines whose anchors were not installed under the supervision of a qualified person. 29 CFR 1926.502(d)(15)(ii)

Div. Proposal - \$4,465.00

Formula Amt. - \$4,465.00

SERIOUS – Citation 2 - Item 1b –

a) Southeast side of job site: Two employees working adjacent to an excavation were dawning a personal fall arrest harnesses without having received fall protection training. 29 CFR 1926.503(a)(1)

Div. Proposal - \$0.00 TOTAL PENALTY - \$22,325.00

Formula Amt. - \$4,465.00 TOTAL FORMULA AMT. - \$27,769.00

Mr. Murphy discussed ADOSH's inspection, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Kavanaugh clarified the Repeat-Serious citations for the same conditions cited by in 2021 became final. Mr. Murphy confirmed noting a same or similar conditions.

Chairman Kavanaugh noted he did not have a request to speak form.

Commissioner Everett moved to approve the citations and proposed penalties 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through February 2024, noting the January 18, 2024 meeting date will be cancelled and the February 8, 2024 meeting will be held at the Industrial Commission Tucson office.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:44 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Gaetano J. Testini, Director

ATTEST:

Kara Dimas, Commission Secretary