

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, November 7, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Orion J. Godfrey	Commissioner
	Gaetano J. Testini	Director
	Sophia Cox	Assistant Chief Legal Counsel
	Lisa Padgett	Deputy Director
	Charles Carpenter	Legislative Affairs Chief/Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	Vincent Argana	Labor Investigator
	Kimberly Gooby	Labor Investigator
	Brian Hudson	ADOSH Director
	Phil Murphy	ADOSH Assistant Director
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Geneva Haber (Snell and Wilmer); Anne Ryman and Alpha Kamara (ABC15); Darin Perkins (self); Anthony Sanchez (Valleycare); and Lindsey Wheeler (Premier Risk Management). Also in attendance on the telephone, confirmed by roll call were Kali VanderMeeden (MasTec, Inc.); Dan Rosenberg, Leslie Vigil and Linda Reynolds (SK Food Group, Inc.); Ravi Bandlamuri (Desert Engineering Group); and Paul Li (TSMC).

Approval of Minutes of October 31, 2024 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the October 31, 2024 regular session meeting and Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey 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.

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a. Approval of Requests for Initial Application for Self-Insurance Authority.

1. MasTec, Inc.

2. SK Food Group, Inc.

b. Approval of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.

1. PP-2024-JW184-0097 L & W Supply Corporation
2. CP-2024-T3633-0177 Metal Finishing Solutions, Inc.

c. Approval of Proposed Youth Employment Penalty.

1. YL-2425-0007 Fresh Foods Leasing, LLC DBA Subway

Chairman Kavanaugh removed Fresh Foods Leasing, LLC DBA Subway from the consent agenda.

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

Approval of Proposed Youth Employment Penalty.

1. YL-2425-0007 Fresh Foods Leasing, LLC DBA Subway

Ms. Spurgeon summarized the Labor Department's investigation into a violation of A.R.S. §§ 23-232(A)(8)(b), 23-233(A)(2), (3) and (4), and 23-233(B). Ms. Spurgeon noted over the last year they employed 309 youths under the age of 18, 14 of which were under the age of 16. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$1,000.00 for violating the same statute.

Chairman Kavanaugh noted they violated five Arizona statutes and asked if there was a reason they broke the law, there were several underage youths for this employer and asked if there could be a penalty for each violation. Ms. Spurgeon believed it was probably a lack of knowledge of the law, as they immediately made changes to come into compliance. Ms. Spurgeon and Ms. Cox confirmed the statute only allows a maximum penalty of \$1,000.00 regardless of the number of violations.

Commissioner Valdez moved to approve the issuance of a Civil Penalty in the amount of \$1,000.00 to Fresh Foods Leasing, LLC DBA Subway. Commissioner Everett seconded the motion. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Sick Time Subsequent Civil Penalty.

1. Mak Pack LLC DBA Mak Pack Dog Training & Boarding

Ms. Spurgeon summarized the Labor Department's investigation into a violation of A.R.S. § 23-372(A) and A.R.S. § 23-375(C) for a prior Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon noted in December 2023 the Labor Department assessed a civil penalty in the amount of \$250.00 for violating the same statute, which was not paid by the employer. On August 11, 2024 the Labor Department received another complaint against the employer for the same violation. The

employer is still not in compliance with the statute. The Department recommended issuance of a subsequent Civil Penalty of \$1,000.00 for violation of A.R.S. § 23-372(A).

Commissioner Everett moved to approve the issuance of a Subsequent Civil Penalty in the amount of \$1,000.00 to Mak Pack LLC DBA Mak Pack Dog Training & Boarding. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2025.

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Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) and set forth the maximum and current assessment rates. The Commission is authorized under § 23-961(G) to levy an assessment to fund the Administrative Fund. The maximum allowed is 3% and the current Administrative Fund rate for calendar year 2024 is 2.25%. In fiscal year 2024 the total assessment revenue for the Administrative Fund was \$23.4 million and total expenses were \$21.6 million, including a \$600,000.00 sweep from the Administrative Fund from the Legislature for the Budget process. The Commission is authorized under § 23-1065(A) and 23-1065(F) to levy assessments to fund the obligations of the Special Fund. The maximum assessments allowed are 1% for 1065(A) for general Special Fund liabilities and .5% under 1065(F) for Apportionment for a combined maximum rate of 1.5%. For calendar year 2025 the assessment rate is 0% under both statutes.

Ms. Simpson reviewed the four premium options for calendar year 2025 of 2%, 1%, no change and decrease of 1% from the current 2.25% in premium projections along with the cash balance, operating budget and expenditures. Ms. Simpson noted the current headcount of full-time employees, the additional responsibilities for several of the division in the Agency and the request for additional full-time employees to fill vacant positions and the need for funding of \$25.3 million dollars and the need to increase revenue along with the budget sweep of funds from the administrative and special funds. If the Commission wishes to maintain at least \$5 million operating cash in the Administrative Fund Account from Tax revenues on a quarterly basis, which is a goal and not a rule, Ms. Simpson recommended keeping the current CY25 assessment rate at 2.25%. This would provide sufficient funds and an operating cushion and cover the increased additional full-time employees and if there is a potential for additional fund sweeps.

Chairman Kavanaugh and Ms. Simpson discussed the federal funds and grants roles in funding the agency.

Chairman Kavanaugh noted the Special Fund is sound enough and has sufficient revenues to address any additional retraining needs for injured workers.

Ms. Simpson reviewed the options for 2025 for §§ 23-1065(A) and 1065(F), noting the fund is actuarially sound as of June 30, 2024 with a healthy unrestricted balance. Ms. Simpson noted we no longer have insolvent carriers which was a big part and reduced our expenses. Ms. Simpson recommended maintaining the 0% rate for both §§ 23-1065(A) and 1065(F) for CY 2025.

Chairman Kavanaugh asked if there were any comments.

Commissioner Valdez moved to keep the current assessment rate under § 23-961(G) at 2.25%; under § 23-1065(A) at 0%; and under § 23-1065(F) 0% for CY 2025. Commissioner



Godfrey seconded the motion. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey 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.

United Pumping Service, Inc. 14000 E Valley Blvd City of Industry, CA 91746	Fatality/Catastrophe Years in Business: 54 Empl. Covered by Inspection: 1
Site Location: 5088 W Innovation Cir Phoenix, AZ 85083	
Inspection No: FC-2024-T3633-0162	
Inspection Date: May 16, 2024	

Mr. Hudson summarized ADOSH's investigation and reviewed the file. ADOSH did not recommend a citation for United Pumping Service, Inc.

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

The Commission took no action.

TSMC Arizona Corporation 5088 W Innovation Cir Phoenix, AZ 85083	Unprogrammed Related Years in Business: 3 Empl. Covered by Inspection: 10
Site Location: 5088 W Innovation Cir Phoenix, AZ 85083	
Inspection No: UR-2024-T3633-0163	
Inspection Date: May 16, 2024	

SERIOUS – Citation 1 - Item 1 –

- Lorry B Building, sulfuric acid offloading station: TSMC employees were exposed to hazards from an over-pressurization, including the risk of skin and eye exposure to sulfuric acid and the risk of falling debris from the truck and building structure, when a tanker truck was filled with a mixture of waste sulfuric acid and hydrogen peroxide without the relief valve(s) on the tanker trailer being open.
- Lorry B Building, sulfuric acid offloading station: TSMC employees were exposed to the risk of skin and eye exposure to waste sulfuric acid when waste transfer hoses, fittings, and connections were used to transfer waste sulfuric acid at pressures exceeding 40 pounds per square inch (PSI), when these same hoses, fittings, and connections were pressure tested to only approximately 22 pounds per square inch (PSI). A.R.S. §23-403.A

Div. Proposal - \$16,131.00	Formula Amt. - \$16,131.00
TOTAL PENALTY - \$16,131.00	TOTAL FORMULA AMT. - \$16,131.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.



Commissioner Godfrey and Mr. Hudson discussed the two citations, one was for the truck and the exposure of sulfuric acid and debris to any employees in the area. Commissioner Godfrey thought this could have been two separate citations.

Commissioner Everett thought the hoses and fittings would have belonged to the truck. Mr. Hudson explained the hoses and fittings were part of the unloading process from TSMC, and the hoses were tested for 22 pounds of pressure, but were flowing at 40 pounds of pressure running through the hoses.

Chairman Kavanaugh confirmed the waste was coming through TSMC lines to the truck were over pressurized and the citation was under the general duty clause and not for the explosion of the truck.

Chairman Kavanaugh checked if anyone would like to comment, he did not have a request to speak.

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

ValleyCare Landscaping, LLC  
5930 W Rivera Dr  
Glendale, AZ 85304

Fatality/Catastrophe  
Years in Business: 7  
Covered by Inspection: 2

Inspection No: FC-2024-EG419-0079  
Inspection Date: May 24, 2024  
Site Location: 525 W Orchid Ln  
Phoenix, AZ 85021

SERIOUS – Citation 1 - Item 1 –

- a) Backyard Pool: Employees were required to work around the empty pool in order to set up a tarp prior to entering the pool for restoration work without a fall protection system in place to protect them from falling into the deep end approximately eight feet deep. Per ADOSH Director as Causal Factor 29 CFR 1926.501(b)(15)  
Div. Proposal - \$11,524.00                      Formula Amt. - \$11,524.00

SERIOUS – Citation 1 - Item 2 –

- a) Backyard Pool: Employees were required to work around an empty pool in order to set up a tarp prior to entering the pool for restoration work without fall protection training in order to minimize the hazard of working around the deep end of a pool that was approximately eight feet deep. 29 CFR 1926.503(a)(1)  
Div. Proposal - \$3,457.00                      Formula Amt. - \$3,457.00  
TOTAL PENALTY - \$14,981.00                      TOTAL FORMULA AMT. - \$14,981.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Commissioner Godfrey and Mr. Hudson discussed the difference between the citations, one is exposure and the other for training.

Commissioner Everett asked about options for the employer for fall protection. Mr. Hudson noted the employer would have to do a risk assessment, and that ADOSH could not tell them how to do it, they would have to plan a proper way to eliminate the fall or other controls.

Chairman Kavanaugh noted there was a request to speak from Mr. Sanchez.

Mr. Sanchez disputed that the person that fell was an employee of the company, but rather was an independent contractor.

Mr. Hudson noted there was nothing in the investigation to substantiate that the injured person was an independent contractor and not an employee.

Commissioner Godfrey asked Mr. Sanchez if he had documentation. Mr. Sanchez noted he had a subcontractor agreement, that he signed on the day he arrived from Texas, and stated it was never asked for.

Commissioner Godfrey asked Mr. Hudson what kind of difference that information would make for ADOSH. Mr. Hudson noted signed documentation of a contract would be used as a factor to determine whether the injured person was an employee or not.

Commissioner Valdez asked if there would be a difference in the citation based on the fact that he was a contractor as opposed to being an employee for the company. Mr. Murphy responded that it might not make a difference if this were a multi-employer situation.

Commissioner Godfrey asked if he provided the subcontractor with fall protection. Mr. Sanchez stated he had his own, he came with a hard hat and all that stuff, and unfortunately, he was not wearing his hard hat at that time.

Commissioner Everett made a motion to remand the file back to ADOSH for further review to determine whether the injured person was an employee. Commissioner Valdez seconded the motion. Chairman Kavanaugh noted he would appreciate Mr. Sanchez working with ADOSH and finding the primary contractor. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Desert Engineering Group, Inc.

3162 E 46th St

Tucson, AZ 85713

Site Location: 3162 E 46th St  
Tucson, AZ 85713  
Inspection No: CP-2024-T3633-0161  
Inspection Date: May 9, 2024

Complaint

Years in Business: 33

Empl. Covered by Inspection: 29

SERIOUS – Citation 1 - Item 1a –

- a) 3162 E 46th St, Tucson: Employees did maintenance work on machines including saws, mechanical power presses, and CNC mills, and a periodic inspection of the energy control (lockout/tagout) procedure had not been conducted. 29 CFR 1910.147(c)(6)(i)  
Div. Proposal - \$8,067.00                      Formula Amt. - \$8,067.00

SERIOUS – Citation 1 - Item 1b –





SERIOUS – Citation 1 - Item 5c –

- a) 3162 E 46th St, Tucson: Employees operated and maintained four mechanical power presses (three Niagara brand mechanical power presses, unknown model and serial numbers, and one Cleveland Punch & Shear Works Co. brand mechanical power press, unknown model and serial number 10226-2, and records of the maintenance tasks were not maintained. 29 CFR 1910.217(e)(1)(i)(C)

Div. Proposal - \$0.00

Formula Amt. - \$8,067.00

SERIOUS – Citation 1 - Item 5d –

- a) Maintenance shop: The operator of the Cleveland Punch & Shear Works Co. brand mechanical power press, unknown model and serial number 10226-2, had not been trained regarding safe methods of work in that the operator had not been trained to not to put their hands into the point of operation of the press.
- b) Maintenance shop: The operator of the Cleveland Punch & Shear Works Co. brand mechanical power press, unknown model and serial number 10226-2, had not been adequately supervised in that he was not following the training to remove parts from the point of operation using the provided tools. 29 CFR 1910.217(f)(2)

Div. Proposal - \$0.00

Formula Amt. - \$8,067.00

TOTAL PENALTY - \$38,721.00

TOTAL FORMULA AMT. - \$76,288.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty. Mr. Hudson commented that they did receive an email today that all items were abated.

Chairman Kavanaugh noted he did not have a request to speak and asked Mr. Bandlamuri if he wished to speak or if just listening.

Mr. Bandlamuri noted their employees are their top priority, they are certified aerospace, and certification is required and documentation. They understand the ADOSH inspector found issues and they fixed all of the issues for all of the citations in a timely manner and were done in June. They shared all of the documents with ADOSH, and he sent an email this morning to Ms. Votta. They understand they were not compliant and have fixed the issues in a timely manner. They think the fines are excessive because they are a small manufacturing company.

Commissioner Godfrey moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Commissioner Everett commented that it might be good to clarify the next steps and options.

Mr. Hudson noted he will receive his employer rights, and the citations go out today and they would be eligible for settlement conferences and things of that nature and if requested they will take place.

Chairman Kavanaugh noted that at a settlement conference these issues could be reviewed and discussed. It is helpful to know that corrective action was taken.

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

Nirvana Center  
2 North 35th Avenue  
Phoenix, AZ 85009

Site Location: 2 North 35th Avenue  
Phoenix, AZ 85009  
Inspection No: CP-2024-MS021-0015  
Inspection Date: May 7, 2024

Complaint  
Years in Business: 8  
Empl. Covered by Inspection: 96

SERIOUS – Citation 1 - Item 1a –

- a) Cultivation rooms: Employees used chemicals such as Ventana Plant Sciences Chlorine Dioxide 25g Fast Release Deodorizing Gas (ClO<sub>2</sub>) without a written Hazard Communication Program. 29 CFR 1910.1200(e)(1)  
Div. Proposal - \$9,218.00                      Formula Amt. - \$9,218.00

SERIOUS – Citation 1 - Item 1b –

- a) Cultivation rooms: Employees used chemicals such as Ventana Plant Sciences Chlorine Dioxide 25g Fast Release Deodorizing Gas (ClO<sub>2</sub>) without Hazard Communication training. 29 CFR 1910.1200(h)(1)  
Div. Proposal - \$0.00                      Formula Amt. - \$9,218.00

SERIOUS – Citation 1 - Item 2a –

- a) Cultivation rooms: Employees voluntarily used half face respirators with no written respiratory protection program. 29 CFR 1910.134(c)(2)(ii)  
Div. Proposal - \$6,913.00                      Formula Amt. - \$6,913.00

SERIOUS – Citation 1 - Item 2b –

- a) Cultivation rooms: Employees voluntarily used half face respirators with no medical evaluations provided. 29 CFR 1910.134(c)(4)  
Div. Proposal - \$0.00                      Formula Amt. - \$6,913.00  
TOTAL PENALTY - \$16,131.00                      TOTAL FORMULA AMT. - \$32,262.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

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

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

North West Roofing AZ, Inc. dba North West Roofing AZ  
2755 South Locust Street  
Denver, CO 80222

Site Location: 6400 E Thomas Rd  
Scottsdale, AZ 85251  
Inspection No: CP-2024-EG419-0069  
Inspection Date: May 10, 2024

Complaint  
Years in Business: 57  
Empl. Covered by Inspection: 1

a) 6400 E Thomas Rd, Building 10: Employees were conducting tile installation work on a three story building without the use of a fall protection system to protect themselves from falls. 29 CFR 1926.501(b)(13)	
Div. Proposal - \$8,067.00	Formula Amt. - \$8,067.00

a) 6400 E Thomas Rd, Building 10: An employee climbed on the roof of a three story building to inspect progress, although he had not received fall protection training. 29 CFR 1926.503(a)(1)  
Div. Proposal - \$8,067.00 Formula Amt. - \$8,067.00

a) 6400 E Thomas Rd, Building 10: Employees were using a chop saw to cut stone without a wet method or shroud to prevent them from breathing in silica dust. 29 CFR 1926.1153(c)(1)

Div. Proposal -	\$8,067.00	Formula Amt. -	\$8,067.00
TOTAL PENALTY -	\$24,201.00	TOTAL FORMULA AMT. -	\$24,201.00


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

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

Ms. Dimas confirmed Commission meeting dates through December 2024.

There was no public comment.

The meeting was adjourned at 2:26 p.m.

By:   
Gaetano J. Testini, Director

*Kara Dimas*  
Kara Dimas, Commission Secretary