MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, November 21, 2024 - 1:00 p.m.

Present: Dennis P. Kavanaugh

Chairman

Joseph M. Hennelly, Jr.

Vice Chair

D. Alan Everett

Commissioner

Orion J. Godfrey

Commissioner

Gaetano J. Testini

Director

Afshan Peimani

Chief Legal Counsel

Lisa Padgett

Deputy Director (Telephonic)

Charles Carpenter

Legislative Affairs Chief/Public Information Officer

Brian Hudson Victoria Medina

ADOSH Director ADOSH Supervisor

James Reitmeier

ADOSH Supervisor

Anna Maria Stonerock

ADOSH Compliance

Crystal Wilder

ADOSH Admin

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); Lindsey Wheeler (Premier Risk Management); Anthony (Tony) Sanchez (Valley Care Landscaping, LLC); George Woods (City of Scottsdale); Haerin Hong So, Yoon Hong and Jinsoo So (next of kin).

Approval of Minutes of November 14, 2024 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the November 14, 2024 regular session meeting and Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett 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.

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 - 1. 2CNP24/25-3146

Tortillas Don Juan, LLC

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

Arizona Western Fixture and Display, Inc. 1. PP-2024-AD245-0044

Brad Haslem, Inc., (FN) dba BHI 2. CP-2024-ZP447-0014

Dynamite Manufacturing LLC DBA Man Cave RV 3. CP-2024-RS480-0125

Midway Chevrolet Company 1, LLC DBA Midway Chevrolet 4. RF-2024-MB431-0056

Yam Westgate, LLC 5. UR-2024-AM866-0025

Vice Chair Hennelly moved to approve the items on the Consent Agenda and Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett 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.

City of Scottsdale - Scottsdale Police Department

7447 E Indian School Rd

Scottsdale, AZ 85251

Fatality/Catastrophe

Years in Business:

61

Empl. Covered by Inspection:

6

Site Location:

7447 E Indian School Rd

Scottsdale, AZ 85251

Inspection No:

FC-2024-TM082-0053

Inspection Date:

June 14, 2024

Mr. Hudson summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending a citation for City of Scottsdale - Scottsdale Police Department.

Chairman Kavanaugh clarified with Mr. Hudson that the jurisdiction of the Commission is specifically for OSHA and other State laws associated with the labor and protection of employees.

Commissioner Godfrey asked if the weapon was secured according to the policies and procedures and Mr. Hudson described what happened at the time of the incident.

Chairman Kavanaugh confirmed with Mr. Hudson if it was consistent with rules and policies.

Chairman Kavanaugh noted he had a request to speak from Haerin Hong So.

Ms. So addressed the Commission about the loss of Officer Ryan So.

Chairman Kavanaugh offered the condolences of the Commissioners and noted the jurisdiction constraints and hopes the family gets the closure they need and appreciates the comments.

Mr. Hudson noted he and the ADOSH team share in the condolences to the family and truly sorry this event occurred.

The Commission took no action.

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

Fatality/Catastrophe

Years in Business:

Covered by Inspection:

Inspection No:

FC-2024-EG419-0079

Inspection Date:

May 24, 2024 525 W Orchid Ln

Site Location: 525 W Orchid Ln Phoenix, AZ 85021

<u>SERIOUS</u> – 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

<u>SERIOUS</u> – 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 noted this matter was remanded to ADOSH for further information. Mr. Hudson reviewed the ADOSH's inspection, summarized the citation and proposed penalty.

Commissioner Godfrey and Mr. Hudson discussed if the contractor was an employee and that information came after the invitation to attend the November 7, 2024 Commission Meeting. Mr. Hudson noted there were two other employees that were still exposed to the fall.

Vice Chair Hennelly confirmed with Mr. Hudson the work the three individuals were performing was under the supervision of Valley Care Landscaping.

Chairman Kavanaugh confirmed that the citation recommendation would still stand because multiple individuals were exposed to the hazards regardless of whether the decedent was a contractor or employee. Mr. Hudson confirmed noting at the last meeting he was focused on the fatality and forgot there was two other employees that were exposed to the fall hazard.

Mr. Sanchez provided additional testimony to the Commissioners.

Chairman Kavanaugh confirmed with Mr. Hudson that if the inspector goes to a site and aware there is a general or prime contractor the investigation would be expanded to cover all entities. Vice Chair Hennelly added the regulation for multiple contractors does not alleviate a contractor from the responsibilities to maintain safety, it adds to the responsibilities of another contractor to also ensure safety.

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

Althoff Industries, LLC dba AAA Pallet

& Lumber Company

3401 West Harrison Street

Referral-Employer Reported

Years in Business:

45 26

Empl. Covered by Inspection:

Phoenix, AZ 85009

Site Location:

3401 West Harrison Street

Phoenix, AZ 85009

Inspection No:

RF-2024-JW184-0092

Inspection Date:

July 1, 2024

SERIOUS – Citation 1 - Item 1a –

a) 3401 W Harrison St, Phoenix: Two employees were required to wear N95 dust mask respirators brand name, model #, and serial # unknown, without having a written respirator protection program in place. 29 CFR 1910.134(c)(1)

Div. Proposal - \$4,839.00

Formula Amt. - \$4,839.00

SERIOUS – Citation 1 - Item 1b –

a) 3401 W Harrison St, Phoenix: Two employees were required to wear N95 dust mask respirators brand name, model #, and serial # unknown, without having received medical evaluations. 29 CFR 1910.134(e)(1)

Div. Proposal - \$0.00

Formula Amt. - \$4,839.00

SERIOUS – Citation 1 - Item 1c –

a) 3401 W Harrison St, Phoenix: Two employees were required to wear N95 dust mask respirators brand name, model #, and serial # unknown, without having been fit tested. 29 CFR 1910.134(f)

Div. Proposal - \$0.00

Formula Amt. - \$4,839.00

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

a) 3401 W Harrison St, Phoenix: Two employees were required to wear N95 dust mask respirators brand name, model #, and serial # unknown, without having received respirator training. 29 CFR 1910.134(k)

Div. Proposal - \$4,839.00

Formula Amt. - \$4,839.00

<u>SERIOUS</u> – Citation 1 - Item 3 –

a) 3401 W Harrison St, Phoenix: One employee cleaned the saw dust of a Powermatic tilting arbor saw model # 72 serial #272185 with a dado saw blade without there being a written emergency control program in place. 29 CFR 1910.147(c)(1)

Div. Proposal - \$8,067.00

Formula Amt. - \$8,067.00

SERIOUS - Citation 1 - Item 4 -

a) 3401 W Harrison St, Phoenix: Two employees used a Powermatic tilting arbor saw model # 72 serial #272185 with a dado saw blade to cut grooves into wooden blocks without using combs or suitable jigs. 29 CFR 1910.213(a)(15)

Div. Proposal - \$8,067.00

Formula Amt. - \$8,067.00

SERIOUS – Citation 1 - Item 5a –

a) 3401 W Harrison St, Phoenix: Three employees used hazard chemicals such as; propane, WD-40 Multi-Use Product Aerosol, and bleach, without having a written hazard communication program. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$4,839.00

Formula Amt. - \$4,839.00

SERIOUS – Citation 1 - Item 5b –

a) 3401 W Harrison St, Phoenix: Three employees used hazard chemicals such as; propane, WD-40 Multi-Use Product Aerosol, and bleach, without having access to the safety data sheets for the chemicals they used. 29 CFR 1910.1200(g)(8)

Div. Proposal - \$0.00

Formula Amt. - \$4,839.00

TOTAL PENALTY -\$30,651.00 TOTAL FORMULA AMT. - \$45,168.00

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

Chairman Kavanaugh confirmed the case was referred to the Commission due to the injury and hospitalization.

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

Springbrook SGC, LLC

Complaint

10500 East Lost Canyon Drive

Years in Business:

Empl. Covered by Inspection:

5

20

Scottsdale, AZ 85255

1150 E Vista Del Lago

Tempe, AZ 85281

Inspection No:

Site Location:

CP-2024-T3633-0165

Inspection Date:

May 21, 2024

SERIOUS – Citation 1 - Item 1 –

a) First basement level: A Porter Cable brand table saw, unknown model and serial number, was not guarded by a hood which covered the blade. 29 CFR 1926.304(h)(1)

Div. Proposal - \$4,610.00

Formula Amt. - \$4,610.00

SERIOUS – Citation 1 - Item 2 –

a) Lowest basement level, north side: Employees used sump pumps which were plugged into 120-volt single phase outlets to pump water out of the six dewatering sumps, and the circuits did not have ground fault circuit interrupters. 29 CFR 1926.404(b)(1)(ii)

Div. Proposal - \$3,687.00

Formula Amt. - \$3,687.00

SERIOUS – Citation 1 - Item 3 –

- a) Lowest basement level, north side: The 12 foot deep dewatering sump located closest to the northeast corner of the lowest basement level had a cover in place which left a 17 inch by 21 inch section of the sump uncovered.
- b) Lowest basement level, north side: The 12 foot deep dewatering sump located west of the dewatering sump closest to the northeast corner of the lowest basement level had a cover in place which left a 15 inch by 20 inch section of the sump uncovered. 1926.501(b)(7)(ii)

Div. Proposal - \$4,610.00

Formula Amt. - \$4,610.00

SERIOUS – Citation 1 - Item 4 –

a) Lower basement, north side: Employees were assigned to enter the six dewatering sump holes which were each five feet wide and 12 feet deep for the purpose of working with the sump pumps, and the company's written confined space program had not been implemented. 29 CFR 1926.1203(d)

Div. Proposal - \$4,610.00

Formula Amt. - \$4,610.00

TOTAL PENALTY - \$17,517.00

TOTAL FORMULA AMT. - \$17,517.00

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

Chairman Kavanaugh remembered the prior case and asked if it is a regular business practice for an owner of a company to be the onsite superintendent for construction. He also noted that last year there were several violations, and noted there were no repeat citations. Mr. Hudson responded.

Commissioner Godfrey noted that at least one item may have been a repeat. Mr. Reitmeier noted that the past citation was not finalized yet to be a repeat.

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

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through January 2025.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:56 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By: Gaetano J. Testini, Director

Kara Dimas, Commission Secretary