

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, April 21, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	D. Alan Everett	Commissioner
	James Ashley	Director
	Jason Porter	Deputy Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Phil Murphy	Assistant ADOSH Director
	Sam Pounds	ADOSH Supervisor
	Carlos "Charlie" Preciado	Compliance Officer (Telephonic)
	Elissia Cain	Compliance Officer
	Hans Schmidt	Compliance Officer
	Casey Ruyle	Compliance Officer
	Anna Maria Stonerock	ADOSH Admin
	Renee Pastor	Self Insurance
	Kara Dimas	Commission Secretary

Acting Chairman Everett convened the meeting at 1:00 p.m. In attendance on the telephone, confirmed by roll call were Russell James (Industrial Suites LLC dba Mesa Plumbing Company); Lynette Woodie (ABF Freight) and Adam Young (Seyfarth Shaw LLP attorney for Lowe's Home Centers). Also in attendance in person were Anne Ryman (Arizona Republic) and Darin Perkins.

Approval of Minutes of March 31, 2022 Regular Meeting Minutes and April 7, 2022 Regular Meeting Minutes.

Chairman Schultz moved to approve the Minutes of the March 31, 2022 regular session meeting and the Minutes of the April 7, 2022 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Acting Chairman Everett 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.

- a) 1400 W Speedway Blvd, Tucson, AZ 85745: Two employees used 3M brand half face respirators, model and serial numbers unknown, without having been medically evaluated. 29 CFR 1910.134(e)(1)
Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 1c –

- a) 1400 W Speedway Blvd, Tucson, AZ 85745: Two employees were not fit tested before being required to use 3M brand, half face respirators. 29 CFR 1910.134(f)(1)
Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 1400 W Speedway Blvd, Tucson, AZ 85745: Two employees had not been trained before being required to use 3M brand half-face respirators, model and serial numbers unknown. 29 CFR 1910.134(k)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 1400 W Speedway Blvd, Tucson 85745: One employee used a Milwaukee 7” grinder, the ignition source, and acetone, a category 2 flammable liquid, to a resurface concrete floor. 29 CFR 1926.152(f)(3)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4a –

- a) 1400 W Speedway Blvd, Tucson 85745: A written hazard communication program had not been devised and implemented for two employees who used Hydrex brand, vinyl ester resin, denatured alcohol, and acetone during a remodeling job. 29 1910.1200(e)(1)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 4b –

- a) 1400 W Speedway Blvd, Tucson 85745: Three employees who used acetone, denatured alcohol, and epoxy did not have access to these hazardous products' safety data sheets. 29 CFR 1910.1200(g)(8)
Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 5 –

- a) 1400 W Speedway Blvd, Tucson 85745: Two employees who used acetone, denatured alcohol, and epoxy and were wounded in a flash fire had not received effective training on these hazardous chemicals. 29 CFR 1910.1200(h)(1)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

NON-SERIOUS – Citation 2 - Item 1 –

- a) Golf Pro Shop: One employee was hospitalized after sustaining injuries from a flash fire caused by a spark from a grinder that ignited acetone and epoxy vapors. 29 CFR 1904.39(a)(2)

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
TOTAL PENALTY - \$7,000.00	TOTAL FORMULA AMT. - \$10,000.00

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

Acting Chairman Everett, Mr. Ashley and Mr. Murphy discussed the penalty amount for Item 2 and the appropriate reduction factor.

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

Commissioner LeMarr left the call.

Industrial Suites, LLC DBA Mesa Plumbing Company 116 West Broadway Road Mesa, AZ 85210	Complaint Years in Business: 63 Empl. Covered by Inspection: 4
Site Location: 9421 E Main St Mesa, AZ 85207	
Inspection No: CP-2022-I8877-0004	
Inspection Date: February 3, 2022	

SERIOUS – Citation 1 - Item 1 –

- a) 9421 E Main St, Mesa, AZ 85207: Three employees who were working in a seven-foot deep, 29 inch wide, and approximately 600 feet long trench without training. 29 CFR 1926.21(b)(2)

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 2 –

- a) 9421 E Main St, Mesa, AZ 85207: Two employees were working in a trench, 7 feet deep, 29 inches wide and approximately 600 feet long, without the spoil piles placed 2 feet or more away from the excavation edge. 29 CFR 1926.651(j)(2)

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 3 –

- a) 9421 E Main St, Mesa, AZ 85207: Two employees working in a seven-foot deep, 29 inches wide, and approximately 600 feet long trench without a daily inspection being completed by a competent person. 29 CFR 1926.651(k)(1)

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 4 –

- a) 9421 E Main St, Mesa, AZ 85207: Two employees were working in a seven-foot deep, 29 inches wide, and approximately 600 feet long trench with no protective system in place. 29 CFR 1926.652(a)(1)
 Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 5 –

- a) 9421 E Main St, Mesa, AZ 85207: Two employees used an eight foot fiberglass Werner Co. A-frame ladder to access and egress an excavation that did not extend 3' above the landing. 29 CFR 1926.1053(b)(1)
 Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00
- TOTAL PENALTY - \$5,000.00 TOTAL FORMULA AMT. - \$5,000.00

Mr. Murphy discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Acting Chairman Everett checked if anyone on the phone would like to comment.

Chairman Schultz moved to approve the citation and proposed penalties as presented.

Mr. James raised questions regarding who took the photographs in the file and defended his company’s procedures.

Acting Chairman Everett asked if the Commissioners had any questions for Mr. James.

Mr. Ashley asked Mr. Murphy to outline the next steps in the process for Mr. James. Mr. Murphy reviewed the process.

The motion of Chairman Schultz was seconded by Vice Chair Hennelly. Chairman Schultz, Vice Chair Hennelly, Acting Chairman Everett voted in favor of the motion. The motion passed.

Lowe's Home Centers, LLC #1090 734 South Gilbert Road Gilbert, AZ 85296	Unprogrammed Related Years in Business: 101 Empl. Covered by Inspection: 120
Site Location: 734 South Gilbert Road Gilbert, AZ 85296	
Inspection No: UR-2022-I8877-0008	
Inspection Date: February 7, 2022	

SERIOUS – Citation 1 - Item 1 –

- a) 734 S Gilbert Rd, Gilbert, AZ 85296: Three employees exposed to falling material when using the load on the forklift to pull open a malfunctioning gate. A.R.S. 23-403A
 Div. Proposal - \$1,600.00 Formula Amt. - \$1,600.00

SERIOUS – Citation 1 - Item 2 –

- a) 734 S Gilbert Rd, Gilbert, AZ 85296: Three employees exposed to a forklift that was left unattended with the forks still elevated.

b) 734 S Gilbert Rd, Gilbert, AZ 85296: Three employees exposed to a forklift that was left unattended with the forks still elevated. 29 CFR 1910.178(m)(5)(i)	
Div. Proposal - \$1,600.00	Formula Amt. - \$1,600.00
TOTAL PENALTY - \$3,200.00	TOTAL FORMULA AMT. - \$3,200.00

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

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Young, who represents Lowe's Home Centers LLC, set forth his objections to the citation and penalties.

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

Discussion and Action regarding Final Rulemaking (Title 20, Chapter 5, Article 14 of the Arizona Administrative Code, including R20-5-1401, R20-5-1405; R20-5-1406; and R20-5-1407) pertaining to Firefighter and Fire Investigator Cancer Claim Reporting.

Mr. Porter presented the Final Proposed Rulemaking for Firefighter and Fire Investigator Cancer Claim Reporting. He provided background on the legislative bill and ARS §23-1971 which required insurance carriers, self-insured employers and self-insurance pools that provide workers' compensation coverage to firefighters and fire investigators to compile and report to the Commission claim and claim reserve information for all cancer related claims filed by or on behalf of firefighters or fire investigators. He reviewed the five points included in the rule: (1) to specify who may complete cancer-related claim reporting under ARS §23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) to establish the method by which cancer-related claim data is to be submitted to the Commission; (3) to prescribe the durations of time that a cancer-related claim must be reported; (4) to establish an annual reporting cycle with a designated reporting deadline; and (5) to define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The proposed rules seek to add detail and clarity to the general requirements in ARS §23-971, which the Commission anticipates will ultimately reduce the burden and uncertainty associated with cancer-related claim reporting.

The Commission previously approved the Legal Division to initial rulemaking process, Notice of Proposed Rulemaking was filed with the Secretary of State and published on February 11, 2022, a public hearing was held on March 21, 2022 and no oral or written comments were received. Approval has been received from the Governor's Office to proceed with final rulemaking and now the Legal Division is requesting approval from the Commission to approve and proceed with final rulemaking.

Vice Chair Hennelly moved to approve the Legal Division to proceed with Final Rulemaking and Chairman Schultz seconded the motion. Chairman Schultz, Vice Chair Hennelly, Acting Chairman Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley thanked everyone who participated in the ICA Workplace Safety Day at the Capitol on April 11, 2022. It was a great event and great turnout for a tradition which we started in 2016 and presented an opportunity to share the important work being done by ADOSH working with employers and employees and to recognize employers that go above and beyond workplace safety standards.

Mr. Ashley announced the Golden Hard Hat award for the month of April was presented to two employees in the Labor Department, Jennifer Cox and David Baugh for their achievements in high case closures and resolutions.

Chairman Schultz congratulated Ms. Padgett and her team for setting a great example.

Mr. Ashley noted the AZ Hires Vets program and Veterans job fair in March and provided an example of 17 applications for one position as an investigator in the Legal Division. He also noted additional Veteran job fairs are scheduled for April 28th and a virtual one scheduled for May 11th.

Ms. Dimas confirmed Commission meeting dates through June 2022.

Public Comment.

There was no other public comment.

Chairman Schultz moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Acting Chairman Everett voted in favor of the motion and the meeting was adjourned at 2:14 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary