

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, February 10, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman (Telephonic)
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	Scott P. LeMarr	Commissioner (Telephonic)
	James Ashley	Director (Telephonic)
	Afshan Peimani	Assistant Chief Legal Counsel (Telephonic)
	Jason M. Porter	Deputy Director (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Jessie Atencio	ADOSH Director (Telephonic)
	Charlie Preciado	ADOSH Compliance (Telephonic)
	Jordan Senia	ADOSH Consultation (Telephonic)
	Donald Kautz	ADOSH Compliance (Telephonic)
	Mark Norton	ADOSH Compliance (Telephonic)
	Anna Maria Stonerock	ADOSH Admin (Telephonic)
	Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Nitra Hawkins and Lisa Angiano (City of Mesa); CamaLe Russell, Christine Nickel, Kevin Burke, Tracey Booth and JR Imes (City of Peoria); Pamela Dominguez (Alliant Insurance Services); David Mathews, Ashley Lee, John Gamble and Thomas Husband (City of Phoenix); Allie Matthews, Sara Hussak, Emely Aguino, Vince Tracey and Lynn Wojcik (City of Tucson); Mayra Alexandre, Adrian Aranda, Monica Welch, Douglas Allen and Robert Duffy (City of Yuma); Buddy Phillips (McKee Foods); Marijon Anderson (The Arizona School Alliance for Workers' Compensation, Inc.); John Surma, Heather Hendon and Darin Perkins (Vicki's Avondale Truck Wash DBA Danny's Avondale Truck Wash); Roberto Longoria (Next of Kin); Marion Martinez (Next of Kin); Joe Aguano (Next of Kin) and Isabel Rodriguez (Next of Kin); Sandi McCulloch and Justin Monson (Crothall Healthcare, Inc.); and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of January 27, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the January 27, 2022 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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. City of Mesa
2. City of Peoria
3. City of Phoenix
4. City of Tucson
5. City of Yuma
6. McKee Foods Corporation
7. Pima County
8. The Arizona School Alliance for Workers' Compensation, Inc.

Chairman Schultz noted that in light of COVID 19, the experience modification factors for the municipalities are not truly representative of their risk, and the Commission is exploring a better measure of risk for municipalities in the future. He asked if the Commissioners would like to move any items from the Consent Agenda for further discussion.

Vice Chair Hennelly requested to move the City of Yuma and the City of Tucson from the consent agenda to give them the opportunity to show their presentations.

Chairman Schultz asked for a motion to approve the remaining items on the Consent Agenda.

Vice Chair Hennelly moved to approve the remaining items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

1. City of Tucson

Ms. Matthews provided the Commission with supplemental information in support of the City of Tucson's renewal request, including statistical analysis.

Vice Chair Hennelly thanked the City of Tucson for their presentation which is helpful for their application and also going forward, especially the statistical analysis.

Chairman Schultz agreed with the value of the statistics and was impressed with the breadth of the departments that were involved in the video, who are doing the deep dive to try to determine where their issues are and can readily see how broad their program is in trying to influence outcomes and get champions in the vast array of different departments within the city.

Vice Chair Hennelly moved to approve the City of Tucson's self-insurance authority and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

2. City of Yuma

Mr. Duffy noted they provided a memo with an overview of the City of Yuma’s safety program and their efforts to reduce employee injuries and asked if there were any question before he highlighted some areas.

Mr. Duffy appreciated the time to talk and explained that while the city’s experience modification is a little high the City of Yuma has been looking at the frequency and severity rates in order to focus their efforts moving forward. He recently has been talking to the Tucson ADOSH Consultation staff and will have a second visit in April. Also, the Mayor signed a Proclamation that the first week in June will be employee safety week to highlight safety throughout the city.

Chairman Schultz thanked Mr. Duffy and noted it is a wonderful testimony to their ability to influence and the support from the top.

Mr. Duffy is proud of the proclamation, which he expects to have a positive spill-over effect on the public and different businesses. They continue to do the safety training and inspections with their different departments to bring down the frequency and severity rates.

Chairman Schultz noted the Commission is looking forward to resuming its face-to-face public meetings throughout the state.

Commissioner LeMarr moved to approve the City of Yuma’s self-insurance authority and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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 Schultz and Mr. Porter discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

Vicki’s Avondale Truck Wash dba	Fatality/Accident	
Danny’s Avondale Truck Wash	Years in Business:	20
925 N 101 st Ave	Empl. Covered by Inspection:	20
<u>Avondale, AZ 85215</u>		
Site Location:	925 N 101 st Ave	
	Avondale, AZ 85215	
Inspection No:	E7721 - 1552146	
Inspection Date:	08/30/2021	

SERIOUS – Citation 1 - Item 1 –

- a) 925 N 101st Ave, Avondale, AZ: The employer did not perform a hazard assessment for personal protective equipment in the workplace. 29 CFR 1910.132(d)(2)
 Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2a –

- a) Washout Bay Bldg: The employer did not develop a written Respiratory Program for employees required to wear tight-fitting respirators. 29 CFR 1910.134(c)(1)
 Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

Mr. Aguano and Mr. Atencio discussed that the confined space program details the shared responsibilities between the employer and employee, and the manufacturer determines the frequency of calibration.

Mr. Surma noted there was a difference in the proposed penalty that they received and the version that Mr. Atencio reviewed. Mr. Perkins noted that listening to the proposed citation there was an additional citation presented that was not on the copy of the agenda sheets they were emailed prior to the meeting.

Mr. Surma highlighted that the employer has retained consultants and has undertaken efforts to abate the conditions and issues that are at issue on the citation. The employer provides the employees with whatever equipment necessary to perform the task or requested as needed.

Ms. Hendon, the Vice President of the employer, appreciated the Commission hearing this matter and inviting them to participate. She commented that it is small family business which cares greatly for their employees and considers them "family." During the last 20 years the business has never had a significant injury or illness and the employer does not hesitate to buy the equipment and supplies to ensure that the employees can do their job safely. The business is devastated by the loss of these two deeply loved family members. The business put their faith in safety professionals who came highly recommended and that was misplaced. They have since hired Mr. Perkins, who completed an audit of the programs and Ms. Hendon and the manager have successfully completed the OSHA 10-Hour course. Additionally, they took immediate action to cover the items that were identified in the closing conference and the comprehensive respiratory protection program was implemented along with training, medical evaluations, and fit testing. Staff attended a refresher confined space training and mock rescue. The confined space program has been updated and the business has started utilizing confined space permits to document the elimination of the hazards when using the alternate entry procedures and the business is committed to continue to update the programs as appropriate. At the time of the accident, they believed that procedures and practices in place were what the law required and what their work required to prevent an incident like this, because it prohibited employees from entering confined spaces until they had been cleared and verified as safe. They are at a loss as to what happened that day, and she is personally distraught and grieves daily for this immense loss; the business is committed to ensuring that nothing ever happens like this again.

Chairman Schultz inquired whether the employees had worked on this truck or similar trucks performing this same function.

Mr. Preciado noted that both technicians had experience doing this kind of work assignment.

Chairman Schultz asked about the length of time the employees were employed. Mr. Preciado noted one victim had 10-14 years and the second victim about five years. Ms. Hendon and Mr. Surma confirmed these time frames.

Chairman Schultz commented that he appreciated the next of kin joining today and asked if they had any additional questions or comments.

Mr. Aguano asked if training documentation for the confined space program was sent to ADOSH. Mr. Atencio explained employers are not required to send documentation, beyond the OSHA 300 logs, of their training programs to ADOSH.

Ms. Rodriguez asked if the employees were supposed to have certificates saying the training programs were completed. Mr. Atencio noted not always.

Ms. Rodriguez asked about evacuation back up plans, and Mr. Atencio explained the employer is not required to have a secondary plan.

Commissioner LeMarr moved to approve the citation and proposed penalties in the amount of \$13,600.00 as presented and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Crothall Healthcare, Inc.
4445 S 36th St
Phoenix, AZ 85040

Complaint
Years in Business: 55
Empl. Covered by Inspection: 40

Site Location: 4445 S 36th St
Phoenix, AZ 85040
Inspection No: CP-2021-A7717-0002
Inspection Date: 08/03/2021

Mr. Ashley asked Mr. Atencio to confirm the inspection date and Mr. Atencio removed this file from the agenda.

Discussion, Action, and Potential Resolution regarding Proposed Rulemaking to A.A.C. R20-5-601 and R20-5-602 to adopt the revised Federal Occupational Safety and Health standards included in the following OSHA Final Rules:

1. "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors" (published September 30, 2019);
2. "Revising the Beryllium Standard for General Industry";
3. "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors" (published August 31, 2020);
4. "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction".

Mr. Porter noted they would like to move forward with rulemaking that modifies two existing rules R20-5-601 for OSHA standard adopted for Construction and R20-5-601 for General Industry. He proposed simple rulemaking that will modify the dates included in those rules and adopted the Federal Occupational Safety and Health Standards that are published in 29 CFR 1926 (Construction) and 29 CFR 1910 (General Industry). This rulemaking will adopt four final rules that were promulgated by Federal OSHA that apply to occupational exposure to Beryllium and Beryllium Compounds under both Construction and General Industry standards, employers are subject to standards for occupational exposure to Beryllium and OSHA promulgated its Beryllium rules back in 2017 and the Commission adopted those Beryllium standards and over the last several years there have been some slight modifications to those Beryllium standards and this rulemaking is intended to bring the Commission's adopted standards up to speed with the revisions that have been made to the Federal standards.

Vice Chair Hennelly moved to approve rulemaking process by filing a Notice of Proposed Rulemaking and include electronic signature on the Resolution. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the Commission works closely with the Arizona Chapter of the Associated General Contractors and discussed an upcoming stakeholder event on February 17th.

Ms. Dimas confirmed Commission meeting dates through April 2022. Commissioner LeMarr may not be available on April 21 but may be able to call in.

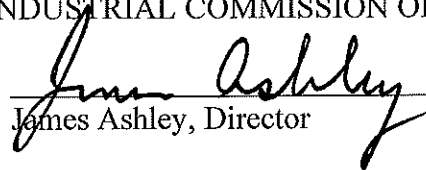
Public Comment.

There was no other public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 2:41 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary