

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, February 4, 2021 – 1:00 p.m.

Present: Dale L. Schultz Chairman (Telephonic)  
Joseph M. Hennelly, Jr. Vice Chair (Telephonic)  
Scott P. LeMarr Commissioner (Telephonic)  
Steven J. Krenzel Commissioner (Telephonic)

James Ashley Director (Telephonic)  
Gaetano Testini Chief Legal Counsel (Telephonic)  
Jason M. Porter Deputy Director (Telephonic)  
Trevor Laky Legislative Affairs Chief/Public Information Officer (Telephonic)  
Jessie Atencio ADOSH Director (Telephonic)  
Steve Black ADOSH Compliance (Telephonic)  
Miguel Castillo 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 Brad Smith (Airtronics, LLC) and Olga Gallego (Recyco, Inc.).

Approval of Minutes of January 28, 2021 Regular Meeting Minutes.

This item was moved to the next meeting.

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 Proposed Civil Penalties Against Uninsured Employers.

1. 2CSP20/21-0073 My Handy Helper LLC \$5,000

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

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

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Chairman Schultz discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

Airtronics, LLC 1822 S Research Loop <u>Tucson, AZ 85710</u> Site Location:          1822 S Research Loop Tucson, AZ 85710 Inspection No:         T3633 - 1502819 Inspection Date:       11/18/2020	Complaint Years in Business:            45 Empl. Covered by Inspection: 86
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SERIOUS – Citation 1 - Item 1 –

- a) 1822 S Research Loop, Tucson: Employees were not required to wear a mask or cloth covering to prevent the spread of COVID-19 in the workplace.
- b) 1822 S Research Loop, Tucson: Employees were not provided with basic training to prevent the spread of COVID-19 in the workplace. A.R.S. 23-403A

Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio discussed ADOSH’s investigation of the complaint items, summarized the citation and proposed penalty.

Chairman Schultz checked if Mr. Smith would like to comment.

Mr. Smith commented that he appreciates the way the citation was proposed, it is very accurate in terms of how it is being presented. He noted, however, that they have been diligent in looking at the COVID-19 OSHA guidance which recommends that employers encourage, but not mandate, workers to wear cloth face coverings at work. They have followed OSHA and CDC guidance encouraging social distancing, so they feel like they have followed that guidance and from his perspective as an employer, health is their number one priority in keeping people safe which, without a mandate, puts employers in a difficult situation when there are individuals that are not open to wearing facemasks.

Chairman Schultz understood Mr. Smith’s position, and recognized this is a very, very difficult area where it is very hard to balance that some employees don’t want to wear masks but we have to protect the workers who are at risk and who are exposed. There is a complaint, indicating at least somebody feels at risk because of the employer’s failure to mandate a mask requirement.

Vice Chair Hennelly concurred with Chairman Schultz’s remarks and moved to approve the citation and proposed penalty as presented; Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Smith for joining the call and appreciated all of the efforts the employer has taken as evidenced by their thorough safety program but for the one item.

Baldwin Pipeline, LLC  
6145 S E Ivy St  
Mesa, AZ 85205

Complaint  
Years in Business: 5  
Empl. Covered by Inspection: 2

Site Location: 2659 W Guadalupe Rd  
Mesa, AZ 85202  
Inspection No: V4364 - 1507106  
Inspection Date: 12/17/2020

SERIOUS – Citation 1 - Item 1 –

- a) 2659 W Guadalupe Rd, Mesa, AZ 85202: One employee was working in an excavation that was 15 ft deep, 12 ft wide at the base, 38 ft wide at the top and 120 ft long without training. 29 CFR 1926.12(b)(2)  
Div. Proposal - \$1,000.00                                          Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 2659 W Guadalupe Rd, Mesa, AZ 85202: One employee was working in an excavation that was 15 ft deep, 12 ft wide at the base, 38 ft wide at the top and 120 ft long with spoil piles less than two feet from the edge. 29 CFR 1926.651(j)(2)  
Div. Proposal - \$1,000.00                                          Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 2659 W Guadalupe Rd, Mesa, AZ 85202: One employee was working in an excavation that was 15 ft deep, 12 ft wide at the base, 38 ft wide at the top and 120 ft long without a protective system installed to prevent a cave-in or collapse. 29 CFR 1926.652(a)(1)  
Div. Proposal - \$1,000.00                                          Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,000.00                                          TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties noting a correction to Citation 1, Item 1 should state 29 CFR 1926.21(b)(2), and reviewed the photographs.

Chairman Schultz thanked Mr. Atencio for the additional explanation of the non-serious citation for the ladder given that the employee did have an adequate means of being able to get out of the trench in the event of a cave in.

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

Recyco, Inc.  
650 E 22<sup>nd</sup> St  
Tucson, AZ 85713

Planned  
Years in Business: 26  
Empl. Covered by Inspection: 5

Site Location: 650 E 22<sup>nd</sup> St  
Tucson, AZ 85713  
Inspection No: T3633 -1504456  
Inspection Date: 12/2/2020

SERIOUS – Citation 1 - Item 1 –

- a) Mezzanine area above offices: The south and the west edge of the mezzanine area which were each 25 feet long and which were eight feet eight inches above the floor did not have guardrails or other protective system to keep employee from falling. 29 CFR 1910.28(b)(1)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) Bailing area. The operator control platform on a Mosley brand baler, unknown model and serial number, which was eight feet 11 inches above the ground, and a portion of which was above the baler hopper, did not have a guardrail system. 29 CFR 1910.28(b)(6)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 650 E 22<sup>nd</sup> St, Tucson: Employees were required to conduct maintenance and cleaning on a Mosley brand baler, model and serial numbers unknown, without a program in place. 29 CFR 1910.147(c)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4 –

- a) Shop: A Mitsubishi brand forklift, model #20 and serial #AT117B-05588, did not have a working handbrake, horn, damaged seat and missing load rack extension.

- b) Shop: A Toyota brand forklift, model and serial numbers unknown, lacked a seatbelt, damaged seat, and missing load rack extension. 29 CFR 1910.178(p)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 5a –

- a) Shop: A Headley & Whitmore Co brand metal shear, model #53 and unknown serial numbers, did not have the cutting blades guarded. 29 CFR 1910.212(a)(3)(ii)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 5b –

- a) Shop: A Headley & Whitmore Co brand metal shear, model #53 and unknown serial numbers, did not have an adequate guard over the flywheel. 29 CFR 1910.219(b)(1)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz thanked Mr. Atencio for his explanation and noted he was initially concerned about the non-serious items but given only one instance of the hazard he can see why it is non-serious and appreciates the consideration in rating the hazards as “higher-lesser” and the grouping of the forklift citations and the machine guarding citations, which could have been cited separately. He thanked Mr. Black for his thoroughness in conducting the inspection which identified a lot of issues to help the employer provide a safer workplace.

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

Ms. Gallego understands the report and what they need to do to be in good standing. She believes the citations stem from old machines that they need to fix.

Chairman Schultz thanked Ms. Gallego for her comments. He noted that once they take the vote, she will receive a formal citation and have an opportunity to work with Mr. Atencio and his team. He appreciates the willingness to improve safety in the workplace.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Laky noted so far there have been 1,615 legislative bills posted, and the agency’s bill, HB 2160, has passed the House Commerce Committee on January 27, and the Rules Committee on February 2, and Third Read today, and is now ready to move to the Senate.

Mr. Ashley has been in communication with the State Auditor General’s Office regarding the agency’s Sunset Review which will take place in 2023. The process starts in 2022 and he wants to make sure the agency is fully prepared.

Ms. Dimas confirmed Commission meeting dates through March 2021.

Public Comment.

There was no other public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary