MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 9, 2020 – 1:00 p.m.

Present:

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

James Ashley  Director
Gaetano Testini  Chief Legal Counsel
Trevor Laky  Legislative Affairs Chief / Public Information Officer
Renee Pastor  Self Insurance
Janine Locke  Special Services Manager
Jessie Atencio  ADOSH Director
Kara Dimas  Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance was Shanlie Blair (Snell & Wilmer).

Approval of Minutes of December 5, 2019, December 12, 2019 and December 19, 2019 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the December 5, 2019 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. Commissioner Krenzel abstained. The motion passed.

Vice Chair Hennelly moved to approve the Minutes of the December 12, 2019 regular session meeting 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.

Commissioner LeMarr moved to approve the Minutes of the December 19, 2019 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. Vice Chair Hennelly abstained. 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. 2CSP19/20-0074 Gardenias Tranquility Inc $1000
2. 2C19/20-0082 Valley Med Trans Inc. $1000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Mesa Unified School District No. 4
2. Arizona Counties Workers’ Compensation Pool
3. The Arizona School Alliance for Workers’ Compensation, Inc. Pool
4. Regis Corporation

Vice Chair Hennelly requested that b.2. (Arizona Counties Workers’ Compensation Pool) be heard separately.

Commissioner LeMarr moved to approve the remaining items on the Consent Agenda 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.

Arizona Counties Workers’ Compensation Pool

Vice Chair Hennelly and Ms. Pastor discussed that some of the financial ratios are moving in the wrong direction, specifically when looking at the equity to liabilities and the cash. Ms. Pastor explained that it is based on losses, fewer insurance recoveries and various levels of stop loss causing the premiums to increase. Vice Chair Hennelly noted that since it is three years in a row of decline, he would like to know about it if it happens again next year.

Commissioner LeMarr and Ms. Pastor discussed if there was a particular county that is disproportionately higher that another. Ms. Pastor noted there were more presumption claims. She noted that a lot of the actuarial reports are not taking into account some of the presumption claims and going forward she wants to make sure they are counted too.

Chairman Schutz asked if they are using an actuary to determine their funding level, if the Commission gets a copy of the report and to what level they are funding. Ms. Pastor noted they are funding at expected levels and not discounting. Chairman Schutz noted it is concerning because the issue with presumptions is only going to increase in the near future and the financial picture could change greatly.

Chairman Schultz and Ms. Pastor discussed that the counties do not have individual excess coverage, instead the excess coverage applies to the total pool, but each county does have varying degrees of stop loss.

Commissioner LeMarr moved to approve the request for self-insurance renewal authorization from the Arizona Counties Workers’ Compensation Pool 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.

Safety Committee Update and Topic Discussion.
Ms. Locke announced the Agency’s VPP Celebration on Monday January 13, 2020. Chairman Schultz commended the Safety Committee for continuing to keep the emphasis going. She noted there were five outstanding items from the audit that are being outsourced to contractors.

Ms. Locke provided information regarding the work flow and standard work for the Safety Cross process. She noted the confusion between recordable and reportable, Human Resources will determine if it is recordable on the OSHA logs.

Chairman Schultz and Ms. Locke discussed the OSHA 300 logs which need to be completed and posted by Human Resources by February 1, 2020.

Commissioner LeMarr and Ms. Locke discussed that building tenants’ injuries are separate and reported directly through ADOA; the commission is alerted for common areas and building issues only.

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

Proactive Facility Management Services, Inc.  
dba PROactive FMS Inc.  
23233 N Pima Rd Ste. 113365  
Scottsdale, AZ 85255  

Site Location:  
2619 E Chambers St.  
Phoenix, AZ 85040  

Inspection No:  
I7246 -1413908  
Inspection Date:  
07/09/2019  

Fatality/Accident  
Years in Business:  
21  
Empl. Covered by Inspection:  
6  

SERIOUS – Citation 1 - Item 1 –

a) 2619 E Chambers St, Phoenix, AZ 85040: Three employees working on a roof were not protected from falling through skylights approximately 30’ above the ground level. 29 CFR 1926.501(b)(4)

Div. Proposal - $2,000.00  
Formula Amt. - $2,000.00

SERIOUS – Citation 1 - Item 2 –

a) 2619 E Chambers St, Phoenix, AZ 85040: Three employees were not provided fall protection training. 29 CFR 1926.503(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, and reviewed the photographs.

Commissioner LeMarr commented that there were three of these incidents in 2019 where people fell through the skylights and were deceased. If you look at pictures 1 and 2, you can see this is a big commercial building and not a small facility, it is a major commercial contract and the notion that a contractor would be taking questionable skilled labor and putting them up on the roof is not appropriate. For skylights you put a couple of cones around them and some tape and that
would have alleviated someone dying on the job. You cannot have been in this business, getting commercial contracts like this, and not know what safety protocols should be.

Mr. Atencio noted they are covered by CopperPoint as their workers’ comp insurance and have a records request for this file and have been in communication with ADOSH and probably have their own investigation.

Chairman Schultz noted he had the same concern as Commissioner LeMarr and wondered if Item #2 regarding the training program is rated as a higher lesser and his thinking, that lack of training of people who were on the job for just a short period of time led to this issue as much as the lack of PPE, and considers this to be a higher greater also just like the lack of fall protection, coupled with that failure to do a job hazard analysis in which you actually go and inspect, think about, talk about and plan your work around the hazard and identify opportunities to mitigate those hazards.

Commissioner LeMarr noted they should know better and know they have rookies on the roof and that it’s incumbent upon these license holders to make sure they have a crew that understands what the hazards are and how to work safely.

Chairman Schultz, Commissioner LeMarr, and Mr. Atencio discussed why this was a higher lesser as opposed to the higher greater.

Commissioner LeMarr noted it seemed like a $3,000 combined fine for a company and a contractor who provided a dangerous environment for their employee is not meaningful enough.

Chairman Schultz, Mr. Testini, and Mr. Ashley discussed the options to change the fine.

Commissioner LeMarr moved to amend the citation and proposed penalties for Item 1 and 2 to remove the adjustment factors, Item 1 penalty of $5,000 and Item 2 penalty of $2,500 for a total amount of $7,500. 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.

Commissioner LeMarr asked for a follow-up regarding CopperPoint’s Audit into this matter.

ALR Construction, Inc.  
1719 ½ S 22nd Ave  
Phoenix, AZ 85009  

Referral  
Years in Business: 25  
Empl. Covered by Inspection: 6

Site Location: 455 N 5th St  
Phoenix, AZ 85004

Inspection No: E0782-1436182  
Inspection Date: 10/07/19

SERIOUS – Citation 1 - Item 1 – 

a) 445 N 5th St, Phoenix, AZ 85004: Two employees were working in an excavation that was 12 feet deep, 16 feet wide at the top, 16 feet wide at the bottom, 73 feet long and had not received training in the recognition and avoidance of unsafe conditions as it pertains to excavation work. 29 CFR 1926.21(b)(2)  
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00
SERIOUS – Citation 1 - Item 2 –

a) 445 N 5th St, Phoenix, AZ 85004: Two employees were working in an excavation that was 12 feet deep, 16 feet wide at the top, 16 feet wide at the bottom, and 73 feet long that had not been inspected by a competent person. 29 CFR 1926.651(k)(1)
Div. Proposal - $1,000.00  Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 3 –

a) 445 N 5th St, Phoenix, AZ 85004: Two employees were working in an excavation that was 12 feet deep, 16 feet wide at the top, 16 feet wide at the bottom, 73 feet long and were not protected from cave-in hazards of the northern excavation wall.

b) 445 N 5th St, Phoenix, AZ 85004: Two employees were working in an excavation that was 12 feet deep, 16 feet wide at the top, 16 feet wide at the bottom, 73 feet long and were not protected from cave-in hazards of the western excavation wall, as they entered the excavation using a dirt ramp. 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, and reviewed the photographs.

Commissioner LeMarr, Chairman Schultz and Mr. Atencio discussed why this was not a repeat since the prior file is not yet final.

Vice Chair Hennelly 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.

Sahuaro Pipeline Corporation, Inc. dba Sahuaro Contracting
371 W Cullumber Ave
Gilbert, AZ 85233

Site Location: E Ray Rd and S Val Vista Dr
Gilbert, AZ 85296

Inspection No: V4364 -1422666
Inspection Date: 08/02/19

SERIOUS – Citation 1 - Item 1 –

a) E Ray Rd and Val Vista Dr.: One employee with a shovel was leveling the bottom of a trench that was 2 feet in width by 13 feet in depth by 100 feet in length without having first received training in the recognition and avoidance of unsafe conditions and the regulations applicable to excavations to control or eliminate any hazards or other exposure to illness or injury. 29 CFR 1926.21(b)(2)
Div. Proposal - $1,500.00  Formula Amt. - $1,500.00
SERIOUS – Citation 1 - Item 2a –

a) E Ray Rd and Val Vista Dr.: Two employees with shovels were inside a trench section that was 10 feet in width by 10 feet in length by 15 feet in depth uncovering an existing sewer line, and the trench's west and east walls did not have an adequate protective system installed to preclude a cave-in or collapse. CFR 1926.652(b) or (c) 29
Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2b –

a) E Ray Rd and Val Vista Dr.: Two employees were installing Speed Shore brand vertical shores in a trench that was 2 feet in width by 100 feet in length by 13 feet in depth, and a copy of the tabulated data which identifies the registered professional engineer who approved the data, was not maintained at the jobsite during construction of the protective system. 29 CFR 1926.652(b)(3)(iii)
Div. Proposal - $0.00 Formula Amt. - $0.00

SERIOUS – Citation 1 - Item 2c –

a) E Ray Rd and Val Vista Dr.: Two employees with shovels were uncovering an existing sewer line in a trench that was 10 feet in width by ten 10 feet in length by 15 feet in depth, and the hydraulic shoring device and sheathing that was used was not setup using the specifications from the manufacturer's tabulated data.

b) E Ray Rd and Val Vista Dr.: Two employees were installing Speed Shore brand vertical shoring systems in a trench that was 2 feet in width by 100 feet in length by 13 feet in depth, and the hydraulic shoring systems were not setup using the specifications from the manufacturer's tabulated data. 29 CFR 1926.652(c)(2)(iii)
Div. Proposal - $0.00 Formula Amt. - $0.00

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

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

Commissioner LeMarr and Mr. Atencio discussed if there was a defense since the excavation was completed before ADOSH was on the scene.

Commissioner LeMarr 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.

One Stop Contracting Inc.  
195410 N 55th Dr.  
Glendale, AZ 85308

Complaint  
Years in Business: 17
Emp. Covered by Inspection: 3

Site Location: 5011 E Wagoner Rd  
Scottsdale, AZ 85254

Inspection No: V4364-1445380
Inspection Date: 11/08/19
SERIOUS – Citation 1 - Item 1a –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: A written respiratory protection program was not established and implemented for one employee, who was required to use a 3M brand N95 respirator, while on the roof dry cutting concrete roof-tile. 29 CFR 1910.134(c)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 1b –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: One employee was required to wear a 3M N95 respirator, model number unknown, serial number unknown while dry-cutting concrete roof tile, and a medical evaluation was not performed on the employee to determine the employee’s ability to use a respirator. 29 CFR 1910.134(e)(1)
Div. Proposal - $0.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 1c –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: One employee was required to wear a 3M brand N95 respirator, model number unknown, and serial number unknown, while dry cutting roof tile, and was not fit tested prior to initial use of the respirator. 29 CFR 1910.134(f)(2)
Div. Proposal - $0.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 2 –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: One employee was required to wear a 3M brand N95 respirator, model number unknown, serial number unknown, while dry cutting roof tile on the roof, without training. 29 CFR 1910.134(k)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 3 –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: Two employee were working on a single story residential home roof 9’ above the ground level without a fall protection system installed. 29 CFR 1926.501(b)(10)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 4 –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: Two employees were working on a single story residential home roof 9’ above the ground level without receiving fall protection training. 29 CFR 1926.503(a)(1)
Div. Proposal - $1,000.00  
Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 5a –

a) 5011 E Wagoner Rd., Scottsdale AZ, 85254: One employee was dry cutting roof tiles with a STIHL gas powered cut-off saw, model number TS410 and serial numbers unknown, without implementing engineering controls or work practice controls as per Table 1. 29 CFR 1926.1153(c)(1)
Div. Proposal - $1,000.00               Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 5b –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: One employees, who was dry cutting with a
STIHL gas powered cut-off saw, model number TS410 and serial numbers unknown,
without an exposure control plan implemented. 29 CFR 1926.1153(g)(1)
Div. Proposal - $0.00               Formula Amt. - $1,000.00

SERIOUS – Citation 1 - Item 6 –

a) 5011 E Wagoner Rd., Scottsdale, AZ 85254: One employee was exposed to respirable
crystalline silica dust while dry cutting roof tiles with a STIHL gas powered cut-off saw,
model number TS410 and serial numbers unknown, without training associated with
respirable crystalline silica. 29 CFR 1926.1153(i)(1)
Div. Proposal - $1,000.00               Formula Amt. - $1,000.00

NON-SERIOUS – Citation 2 - Item 1 –

a) 19541 N 55th Dr., Glendale, AZ 85308: The OSHA 300 logs and 300A Summaries for 2016,
2017, and 2018 were not provided within four hours. 29 CFR 1910.40(a)
Div. Proposal - $400.00               Formula Amt. - $400.00
TOTAL PENALTY - $6,400.00       TOTAL FORMULA AMT. - $9,400.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citations and proposed
penalties, and reviewed the photographs.

Chairman Schultz and Mr. Atencio discussed the notations regarding the use of the
respirators on the photographs.

Vice Chair Hennelly was surprised that there was no training program after being in business
for 17 years.

Commissioner LeMarr and Mr. Atencio discussed the available options if the employer
showed up with a program.

Commissioner LeMarr 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.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for
2020. This Agenda Item may include discussion regarding the Commission budget and review of
Division, Department, and Section specific objectives.

Mr. Ashley commented that the agency has been working on the VPP status since 2018 and
invited the Commissioners to the celebration of achieving certification, where one of the external
Special Government Employees will talk about his experience during the audit.
Mr. Ashley stated the ICA Day at the Capitol is being planned for March 19 beginning at 11:00 am.

Mr. Ashley noted there will be two Executive Gemba Walks this month, and that ADOA is very interested in the VPP process since the ICA received the Good Government Award last month.

Mr. Ashley announced that Daniel Ruiz will be replacing Chief Gilbert Davidson as Chief of Operations.

Mr. Ashley also shared a series of tweets posted by an injured worker regarding their positive experience with the ICA.

**Announcements, Scheduling of Future Meetings and Retirement Resolutions.**

Ms. Dimas presented a retirement resolution for Marty Bonillas, Special Fund Investigator for 25 years of state service.

Mr. Ashley suggested cancelling the next meeting since there were no ADOSH citations pending.

Mr. Ashley discussed the next rural outreach meeting in Flagstaff. Ms. Dimas confirmed Commission meeting dates through February 2020.

**Public Comment.**

There was no public comment.

Commissioner LeMarr 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 2:31 p.m.

**THE INDUSTRIAL COMMISSION OF ARIZONA**

By [Signature]

James Ashley, Director

**ATTEST:**

Kara Dimas

Kara Dimas, Commission Secretary