MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 2675 East Broadway Boulevard  
Tucson, Arizona 85716  
Thursday, October 24, 2019 – 1:30 p.m.

Present: Dale L. Schultz Chairman  
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 (Telephonic)  
Jessie Atencio ADOSH Director  
Alex Ceballos Compliance Officer  
Riley Hill Compliance Officer  
Jordan Senia Compliance Officer  
Kara Dimas Commission Secretary

Chairman Schultz convened the meeting at 1:30 p.m. Also in attendance was Mike Bruns (Lee’s Pipelines, Inc.).

Approval of Minutes of September 19, 2019 and October 10, 2019 Regular Meeting Minutes.

Approval of the Minutes of the September 19, 2019 regular meeting was postponed to a future agenda, as a quorum who participated in the September 19, 2019 regular meeting was not present.

Commission LeMarr moved to approve the Minutes of the October 10, 2019 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel 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. 2CNP-18/19-0719 Gringros Landscaping LLC $1000
2. 2CC19/20-0003 Iron Horse Welding Work LLC $1000

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

1. Parker Hannifin Corporation
Commissioner LeMarr moved to approve the items on the Consent Agenda and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission’s Legislative Affairs Chief/Public Information Officer. This agenda item may include discussion regarding potential legislation and the operations of the Industrial Commission.

Mr. Laky discussed the Commission’s efforts and also what to expect next legislative session. The Commission has also unveiled a cancer presumption data and statistics page on the website which will be updated monthly.

Mr. Ashley provided the Commissioners with the current data.

Mr. Laky explained that the Commission has wanted to gather this information for a long time and the new Claims system facilitates compiling the data. The Agency will be working on producing additional types of reports.

Mr. Ashley discussed Mr. Laky’s successful communication with several media outlets regarding the collected data. Mr. Ashley also offered to the Senate Ad Hoc Committee assistance from ADOSH Industrial Hygienists (IH). In addition, the Commission is exploring conducting a safety summit focused on municipalities, first responders and firefighters.

Chairman Schultz noted a terrific way to get involved with preventative efforts.

Mr. Laky discussed deviation rates for self-insured employers which are set to expire in 2020, meeting with stakeholders, and achieving a consensus.

Mr. Laky noted the Commission will be working with the Registrar of Contractors to help them ensure a contractor has workers’ compensation coverage when necessary before the contractor is issued a license.

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

Chairman Schultz discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties. Mr. Atencio noted today’s citations were all anonymous complaints.

Advanced Manufacturing & Power Systems AZ, Inc. Complaint
9 N 41st Ave Years in Business: 1
Phoenix, AZ 85009 Empl. Covered by Inspection: 9
Site Location: 9 N 41st Ave
Phoenix, AZ 85009
Inspection No: V4364-1404992
Inspection Date: 6/3/2019
SERIOUS – Citation 1 - Item 1 –
a) 9 N 41st Ave, Phoenix, AZ 85009: The employer did not provide training to three employees in the use, care, maintenance, working life, and disposal of the Personal Fall Arrest Systems utilized while painting and masking the tops of generator enclosures. 29 CFR 1910.132(f)(1)
Div. Proposal - $900.00
Formula Amt. - $900.00

SERIOUS – Citation 1 - Item 2a –

a) 9 N 41st Ave, Phoenix, AZ 85009: A written respiratory protection program was not developed and implemented in the workplace for four employees who worked with hazardous chemicals and welded. 29 CFR 1910.134(c)(1)
Div. Proposal - $1,500.00
Formula Amt. - $2,500.00

SERIOUS – Citation 1 - Item 2b –

a) 9 N 41st Ave, Phoenix, AZ 85009: Three employees were required to wear a Honeywell 7700 series and MSA Advantage 200LS half-mask tight-fitting respirators without receiving a medical evaluation. 29 CFR 1910.134(c)(1)(ii)
Div. Proposal - $0.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2c –

a) 9 N 41st Ave, Phoenix, AZ 85009: Three employees were required to wear a Honeywell 7700 series and MSA Advantage 200LS half-mask tight-fitting respirators without receiving a fit test. 29 CFR 1910.134(c)(1)(iii)
Div. Proposal - $0.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2d –

a) 9 N 41st Ave, Phoenix, AZ 85009: Two welders were required to wear MSA Advantage 200LS half-mask tight-fitting respirators while welding carbon and alloy steels and were not trained.

b) 9 N 41st Ave, Phoenix, AZ 85009: One painter was required to wear a Honeywell Series 7700 half-mask tight-fitting respirator while working with Carboguard and was not trained.

c) 9 N 41st Ave, Phoenix, AZ 85009: An employee was required to wear a respirator, unknown brand, model, and serial number, while applying a sealant onto of a generator enclosure without receiving training. 29 CFR 1910.134(c)(1)(viii)
Div. Proposal - $0.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3 –

a) 9 N 41st Ave, Phoenix, AZ 85009: Two employees were operating a Hyster 60 forklift, model #H60FT and serial #L177V02502F, without receiving training.

b) 9 N 41st Ave, Phoenix, AZ 85009: Two employees were operating a Doosan forklift, model #D1206-7 and serial #FDC09-2300-00052, without receiving training. 29 CFR 1910.178(l)(1)(i)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 4 –
a) 9 N 41st Ave, Phoenix, AZ 85009: Two welders were welding carbon and alloy steel and had not received training.

b) 9 N 41st Ave, Phoenix, AZ 85009: A painter used Carboguard during the mixing and application process, without receiving training.

c) 9 N 41st Ave, Phoenix, AZ 85009: An assembly lead was coating with Fiber Seal, on the tops of generator enclosures, without receiving training. 29 CFR 1910.1200(h)

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<th>Div. Proposal</th>
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<td>Formula Amt.</td>
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<td>TOTAL PENALTY</td>
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<td>TOTAL FORMULA AMT.</td>
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Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties. Mr. Atencio corrected the amount for Citation 1 item 2a as $1,500 for Formula Amount and Division Proposal and the Total Formula Amount should be $9,900.00

Commissioner LeMarr and Mr. Atencio discussed that despite photograph #1 showing the employee wearing fall protection connected to the lift, the employee was not trained on the purpose of the fall protection.

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

Catalina Roofing and Supply, Inc. dba Catalina Roofing
2021 W Williams Dr.
Phoenix, AZ 85027

Site Location: 30011 W Freda Ln.
Buckeye, AZ 85396

Inspection No: V4364 -1410394
Inspection Date: 6/21/2019

REPEAT-SERIOUS – Citation 1 - Item 1 –

a) 30011 W Freda Ln, Lot #322, Buckeye, AZ, 85396: Four employees were installing roof tile on a residential roof approximately 10' above the ground level without a fall protection system. 29 CFR 1926.501(b)(10)

The Catalina Roofing and Supply, Inc., DBA Catalina Roofing was previously cited for violation of this Occupational Safety and Health standard or its equivalent standard 1926.501(b)(10), which was contained in ADOSH Inspection Number 1195590, Citation 1 Item 1 And was affirmed as a final order on April 20, 2017, and was abated in December, 2016. With respect to a workplace located at Paradise Cove at the Islands, Lot #324, Gilbert, AZ west elevation.

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SERIOUS – Citation 2 - Item 1a –

a) 30011 W Freda Ln, Lot #322, Buckeye, AZ 85396: An employee was required to wear an SAS Safety brand N95 respirator without receiving a medical evaluation. 29 CFR 1910.134(c)(1)(ii)

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SERIOUS – Citation 2 - Item 1b –

a) 30011 W Freda Ln, Lot #322, Buckeye, AZ 85396: An employee was required to wear an SAS Safety brand N95 respirator without receiving a fit test. 29 CFR 1910.134(f)(2)
Div. Proposal - $0.00  Formula Amt. - $1,500.00

SERIOUS – Citation 2 - Item 1c –

a) 30011 W Freda Ln, Lot #322, Buckeye, AZ 85396: Training was not provided to an employee who was required to wear an SAS Safety brand N95 respirator. 29 CFR 1910.134(k)(1)
Div. Proposal - $0.00  Formula Amt. - $1,500.00

SERIOUS – Citation 2 - Item 2a –

a) 30011 W Freda Ln, Lot #322, Buckeye, AZ 85396: Three employees were exposed to respirable crystalline silica dust. 29 CFR 1926.1153(d)(2)(i)
Div. Proposal - $1,500.00  Formula Amt. - $1,500.00

SERIOUS – Citation 2 - Item 2b –

a) 30011 W Freda Ln, Lot #322, Buckeye, AZ 85396: A written exposure control plan was developed or implemented in the workplace for employees cutting concrete roof tiles. 29 CFR 1926.1153(g)(1)
Div. Proposal - $0.00  Formula Amt. - $1,500.00
TOTAL PENALTY - $6,000.00 TOTAL FORMULA AMT. - $9,000.00

Mr. Atencio clarified that only the first Citation was a Repeat-Serious and the remaining items were Serious, and discussed ADOSH’s investigation, summarized the citations and proposed penalties.

Commissioner LeMarr and Mr. Atencio discussed several photographs. and that proper fit testing would have prevented the citation.

Chairman Schultz complimented the inspection and Photograph 13 which clearly shows the extent of the exposure to the silica dust and well as excellent picture to show exposure to the others of the roof.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.
a) Sun City Blvd & Unit 60, Florence, AZ: Three employees worked in an excavation that was approximately 12’-17’ deep, 15’ wide at the top, 5’ wide at the base, and 60’ long without receiving training. 29 CFR 1926.21(b)(2)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2a –

a) Sun City Blvd & Unit 60, Florence, AZ: Two employees worked under several 2” and 4” conduit pipes that were not protected from breaking. 29 CFR 1926.651(b)(4)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2b –

a) Sun City Blvd & Unit 60, Florence, AZ: Two employees worked in an excavation 12’-17’ deep, 15’ wide at the top, 5’ wide at the base, and 60’ long, without a means of egress. 29 CFR 1926.651(c)(2)
Div. Proposal - $0.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2c –

a) Sun City Blvd & Unit 60, Florence, AZ: Two employees worked in an excavation that was approximately 12’-17’ deep, 15’ wide at the top, 5’ wide at the base, and 60’ long that did not have the spoil piles at least 2’ from the edge of the excavation. 29 CFR 1926.651(j)(2)
Div. Proposal - $0.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2d –

a) Sun City Blvd & Unit 60, Florence, AZ: Two employees worked in an excavation that was approximately 12’-17’ deep, 15’ wide at the top, 5’ wide at the base, and 60’ long that was not inspected by a competent person. 29 CFR 1926.651(k)(1)
Div. Proposal - $0.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3 –

a) Sun City Blvd & Unit 60, Florence, AZ: Two employees worked in an excavation that was approximately 12’-17’ deep, 15’ wide at the top, 5’ wide at the base, and 60’ long without an adequate protective system. 29 CFR 1926.652(a)(1)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00
TOTAL PENALTY - $4,500.00
TOTAL FORMULA AMT. - $9,000.00

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

Chairman Schultz and Mr. Atencio discussed the tab data and trench boxes. Chairman Schultz noted the symbiotic relationship, the box keeps you safe from the dirt, and the dirt keeps you safe from the box.

Chairman Schultz asked what was in the pipes, Mr. Bruns noted they were empty.
Chairman Schultz noted he thought he had seen the non-serious citations classified as serious in the past. Mr. Atencio explained that in this instance the compliance officer chose the non-serious citation based on the information received.

Chairman Schultz noted he appreciates the compliance officers’ grouping and the non-serious citations because we have an employer who has done a number of things right but has not met the standards and wanted to make sure everyone understands he appreciates the efforts that are obvious and knows how hard it is to keep tract of everybody everyday everywhere but this definitely put these folks at risk with the things that were not done as thoroughly or as completely as they might have been.

Mr. Atencio noted there were other excavations on the premises which were not in violation.

Commissioner LeMarr and Mr. Bruns discussed what Mr. Bruns was doing differently since the inspection.

Commissioner LeMarr moved to amend the citation proposing a 25% reduction for a total of $3,375.00, because the company has abated the dangers and modified their practice. Commissioner Krenzel seconded the motion. Chairman Schultz, 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 2019. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed the Agency VPP Audit scheduled for November 6, 7, and 8, the five Special Government Employees (SGE’s) that will participate, and that staff have been working hard and looking forward to the audit. Mr. Atencio noted there will be an opening, and closing, just like a regular inspection. Chairman Schultz would like to thank them for doing this.

Mr. Ashley noted the Golden Hard Hat award recipient for October was for ADOSH Consultation who are on track to achieve 1,000 consultation visits this year. Chairman Schultz noted his amazement at the increase in the number of consultations in a relatively short period of time and without doubling the size of the staff, making so many more workplaces and workers safe.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced an update from Workers’ Compensation Research Institute (WCRI) who will be holding their 2021 Conference in Phoenix; Laure Lamy will present a WCRI update at our November 7, 2019 meeting.

Mr. Atencio introduced Mr. Senia, the newest Compliance Officer for the Tucson office.

Ms. Dimas confirmed Commission meeting dates through December 2019. There was some discussion about visiting Douglas or Bisbee for the first quarter of 2020.

Public Comment.

There was no public comment.
Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:36 p.m.

ATTEST:

Kara Dimas, Commission Secretary

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director