

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, April 25, 2024 – 1:00 p.m.

Present: Dennis P. Kavanaugh	Chairman
D. Alan Everett	Commissioner
Maria Cecelia Valdez	Commissioner (Telephonic)
Orion J. Godfrey	Commissioner
Gaetano J. Testini	Executive Deputy Director
Afshan Peimani	Chief Legal Counsel
Lisa Padgett	Deputy Director (Telephonic)
Charles Carpenter	Legislative Affairs Chief/Public Information Officer
Renee Pastor	Self-Insurance (Telephonic)
Melissa Spurgeon	Labor Director
Christina Sanchez	Labor Supervisor
David Baugh	Labor Investigator
Alissa Bodie	Labor Investigator
Kimberly Gooby	Labor Investigator
Brian Hudson	ADOSH Director
Phil Murphy	ADOSH Assistant Director
James Reitmeier	ADOSH Compliance
Ernesto Garcia Silva	ADOSH Compliance
Jonathon Wright	ADOSH Compliance
Victoria Medina	ADOSH Compliance
Andrew Dimas	ADOSH Compliance
Taryn North	ADOSH Compliance
Anna Maria Stonerock	ADOSH Compliance
Valerie Ruiz	Medical Resource Office Manager
Joffrey Drummond	Claims
Yvonne Borunda	Acting Commission Secretary

Chairman Kavanaugh convened the meeting at 1:19 p.m.. In attendance, confirmed by roll call were Anne Ryman (ABC15); Stephanie Hefner (Snell and Wilmer); Russel Rhine, Robert Batty and Caleb Kerr (American Woodmark Corp); Jimmy Daley Jr. (Daley Roofing); Lisa Sandal (Next of Kin); Claudia Castro (Next of Kin); Luis Parra (Atty for Castro's Iron Works); and Rachel Brozina (Kids' Chance of Arizona). Also in attendance on the telephone, confirmed by roll call were Lauren Pew (Pima County); Elizabeth Aguallo (Diocese of Tucson); Mitchell Oscanots (FedEx Freight); Eli Dalton-Webb.

Approval of Minutes of April 15, 2024 Regular Meeting Minutes.

Commissioner Godfrey moved to approve the Minutes of the April 15, 2024 regular session meeting and Commissioner Everett seconded the motion. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey 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 Scottsdale
2. Pima County
3. Roman Catholic Church Diocese of Tucson

b. Approval of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.

1. CP-2024-JW184-0046 Arizona Merchants, LLC dba Marshalls Distribution Center
2. PP-2024-JW184-0043 Arrowmark Underground LLC dba Local Underground Construction
3. UR-2024-JW184-0049 Gray Wolf Integrated Construction Company
4. CP-2024-VM508-0024 Kids Empire Gilbert (AZ) LLC
5. UR-2024-MB431-0032 Kory Excavation, LLC
6. PP-2024-JW184-0041 M S W Contracting LLC
7. PP-2024-JW184-0042 Molina Contracting Inc
8. CP-2024-T3633-0139 Noble Industries LLC
9. CP-2024-VM508-0020 Ocean Blue Cottonwood
10. CP-2024-EG419-0028 Oldcastle APG Northeast, Inc.
11. CP-2024-VM508-0022 Poolman 2000, LLC
12. RF-2024-JR339-0032 Progressive Services, Inc. dba Progressive Roofing
13. CP-2024-T3633-0145 Tucson Rubberized Coatings, Inc.

Chairman Kavanaugh removed the City of Scottsdale from the consent agenda at the request of Ms. Pastor.

Commissioner Everett moved to approve the remaining items on the Consent Agenda and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0098 American Solar Electric, Inc.

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$21,900.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

TOTAL PENALTY - \$156,259.00

TOTAL FORMULA AMT. - \$156,259.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh noted he had a request to speak from Mr. Batty with American Woodmark.

Mr. Batty, the Director of the facility in Kingman Arizona, thanked the Commission for the opportunity to comment, and introduced Mr. Rhine, Safety Manager and Mr. Kerr, Vice President of Manufacturing. He offered his sincere condolences to the family and co-workers. They appreciated the ADOSH inspector's sensitivity and concern with all parties during the investigation. They cooperated with ADOSH and appreciated their professionalism; however they are surprised that the citation has been classified as a Willful violation under the general duty clause. Their strong safety programs and safety policies have allowed their facility to maintain an impressive safety record for nearly 40 years with no previous or similar incidents. Through this tragic accident, they have always fully cooperated with OSHA professionals and look forward to a continued strong partnership with them to improve safety in their manufacturing facilities and look forward to meeting with them in conference. He would like to note it said ADOSH has not received abatement, however they immediately held that truck out of service for over 100 days as they worked with the original equipment manufacturer to get the backup alarm repaired. Nationwide they went through their entire fleet at 18 manufacturing facilities and any truck, whether equipped with OEM back up alarm or not was checked and made sure they had those safety devices. Local additional actions were taken, they were under the understanding they would certify abatement after they received the citation. As this is the first time they are seeing the citations, they would respectfully ask for time to review the citation before answering questions.

Mr. Hudson responded that the reason for the Willful classification was that after 197 inspections were completed on the backup alarm it still was not fixed.

Chairman Kavanaugh thank them for the clarification and noted that a lot of times abatement information has not reached the file.

Mr. Dalton-Webb requested to speak but does not have any connection to this matter.

Commissioner Godfrey moved to approve the citation and proposed penalties as presented and Commissioner Valdez seconded the motion. Commissioner Godfrey wanted to take a moment acknowledge the inspectors that go out to these sites and have to witness the aftermath of an incident with the professionalism in which they maintain themselves and the sensitivity in which they use to interact with the agencies and the other people involved. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

FedEx Freight, Inc.
4475 E Mohave Airport Drive
Kingman, AZ 86401

Site Location: 4955 N Interstate Way
Kingman, AZ 86401
Inspection No: FC-2024-VM508-0021
Inspection Date: November 9, 2023

Fatality/Catastrophe
Years in Business 15
Empl. Covered by Inspection: 1

Mr. Hudson summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending a citation for FedEx Freight, Inc.

Chairman Kavanaugh checked if anyone else on the phone would like to comment. There was no comment.

Mr. Oscanots representing FedEx Freight offered condolences to the family and friends and appreciation for ADOSH's work do for workplace safety.

The Commission took no action.

Maria Lopez, A Single Woman DBA Mexkitez Landscaping 800 W Washington Phoenix, AZ 85007	Fatality/Catastrophe Years in Business: 2 Empl. Covered by Inspection: 1
Site Location: 6421 E Lafayette Blvd Scottsdale, AZ 85251	
Inspection No: FC-2024-TN976-0021	
Inspection Date: November 2, 2023	

Mr. Hudson summarized ADOSH's investigation and reviewed the file and photographs. ADOSH was not recommending a citation for Maria Lopez, A Single Woman DBA Mexkitez Landscaping.

Chairman Kavanaugh checked if anyone would like to comment.

Chairman Kavanaugh checked if anyone else on the phone would like to comment. There was no comment.

The Commission took no action.

Castro's Iron Works & Steel Supply, Inc. 519 East Frontage Road Nogales, AZ 85621	Fatality/Catastrophe Years in Business: 20 Empl. Covered by Inspection: 2
Site Location: 248 N Morley Ave Nogales, AZ 85621	
Inspection No: FC-2024-MB431-0029	
Inspection Date: November 6, 2023	

Mr. Hudson summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending a citation for Castro's Iron Works & Steel Supply, Inc.

Chairman Kavanaugh asked if a citation was issued to the general contractor in this matter and confirmed it was on the consent agenda.

The Commission took no action.

Daley Roofing, LLC 2402 S 18th Pl Phoenix, AZ 85034	Referral Years in Business: 18 Empl. Covered by Inspection: 5
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Site Location: 718 W Polk St
Phoenix, AZ 85007
Inspection No: RF-2024-TM082-0010
Inspection Date: November 15, 2023

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) Roof: Four employees were working on a commercial, low slope roof that was 20 feet above the ground and the employees had not been trained on fall protection. 29 CFR 1926.503(a)(1)

Daily Roofing, LLC was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent Standard 29 CFR 1926.503(a)(1) which was contained in the ADOSH inspection 1374458, citation 1, item 2, and was affirmed final order on August 13, 2019, and abated on January 26, 2019, with respect to a workplace located at 1370 S Higley Rd, Gilbert, AZ.

Div. Proposal - \$12,500.00

Formula Amt. - \$12,500.00

SERIOUS – Citation 2 - Item 1 –

- a) 718 W Polk St, Phoenix: Five employees spray foaming a roof at a height of 20 feet above the ground without fall protection. 29 CFR 1926.501(b)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

TOTAL PENALTY - \$18,750.00

TOTAL FORMULA AMT. - \$18,750.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalties.

Chairman Kavanaugh noted he had a request to speak from Mr. Daley.

Mr. Daley did not wish to speak.

Commissioner Everett moved to approve the citation and proposed penalties as presented and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Testini noted Ms. Brozina is the President of the Arizona Kids Chance and will be at our next meeting to do a presentation about Arizona Kids' Chance.

Mr. Testini congratulated Chairman Kavanaugh, Commissioner Valdez and Commissioner Godfrey for receiving unanimous Senate confirmations.

Public Comment.

Mr. Dalton-Webb noted he had some public comments on the Agenda and some additional comments not on the Agenda. Mr. Dalton-Webb commented on ADOSH items 1 and 2. He expressed concern over where the funds go when they are collected by ADOSH. Chairman Kavanaugh explained that the fees collected go into the general fund. Mr. Dalton-Webb discussed

what his understanding was of how the legislature determined how the workers' compensation system should operate.


There was no other public comment.

The meeting was adjourned at 2:29 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By 
Gaetano J. Testini, Executive Deputy Director

ATTEST:


Yvonne Borunda, Acting Commission Secretary