

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, June 27, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Orion J. Godfrey	Commissioner
	Gaetano J. Testini	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
	Jennifer Cox	Labor Supervisor
	Kimberly Gooby	Labor Investigator
	Alissa Bodie	Labor Investigator
	Vincent Argana	Labor Investigator
	Brian Hudson	ADOSH Director
	Andrew Dimas	ADOSH Supervisor
	Anna Maria Stonerock	ADOSH Compliance
	Bethany Votta	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:09 p.m. In attendance, confirmed by roll call were Stephanie Hefner and Geneva Haber (Snell and Wilmer); Bruce Morris (GP Portable Buildings LLC); Irwin Valdivia and Laura Valdivia (Latitude Corp.); Lindsey Wheeler (Premier Risk Management); David Long (Statewide Towing & Transport, L.L.C.); Carlos Paramo (the Paramo Family); Aaron Watts (Backyard Accents, L.L.C.); Charles Keller (Snell and Wilmer representing Red's Plastering); Tony Rojo (Red's Plastering); John Van and Scott Lee (Lee's Pipelines, Inc); Mike Thraen (Refrigeration Systems Construction and Service Company Inc); David Headlee (Headlee Roofing Co Inc); and Darin Perkins (self).

Approval of Minutes of June 13, 2024 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the June 13, 2024 regular session meeting and Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, 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. BH Automotive, LLC
2. Macy's Inc.
3. Nordstrom, Inc.
4. The Salvation Army USA, Western Territory

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

1. UR-2024-JW184-0065 Eleven Western Builders Inc
2. CP-2024-RS480-0112 Mario Zayas DBA MZ Masonry
3. RF-2024-VM508-0033 Red's Plastering Inc
4. CP-2024-T3633-0141 Rincon Cleaning Services, LLC
5. CP-2024-AD245-0019 Town of Payson Street Department

c. Approval of Proposed Youth Employment Penalty.

1. YL-2324-0053 MMPR Hospitality LLC
2. YL-2324-0050 Morrison Brothers Ranch, L.L.C.

Chairman Kavanaugh removed the renewal for The Salvation Army USA from the Consent Agenda to be heard separately.

Commissioner Godfrey removed both proposed youth labor penalties for MMPR Hospitality and Morrison Brothers Ranch from the Consent Agenda to be heard separately.

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

Approval of Requests for Renewal of Self-Insurance Authority.

The Salvation Army USA, Western Territory -

Chairman Kavanaugh made a motion to approve the self-insurance renewal for a six-month period and within that six-month period, they are mandated and directed by the Commissioners to seek and receive ADOSH Consultation Services and at the end of that six-month period, the renewal request will come back to the Commissioners to consider what action will be taken at that time. He confirmed with the Chief Counsel that, under Rule 20-5-209 subsection H, the Commission has the authority to take that action. Commissioner Everett seconded the motion.

Vice Chair Hennelly commented that he shares the concerns about the eMod ratio, the claims were high and unacceptable, the declination after meeting with Consultation not to go forward was a concern and thinks the motion was appropriate.

Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Approval of Proposed Youth Employment Penalty.

YL-2324-0053 MMPR Hospitality LLC and YL-2324-0050 Morrison Brothers Ranch, L.L.C. –

Commissioner Godfrey removed MMPR Hospitality because they had approximately 5 to 16, under 16-year-olds employed with 40 incidents. Morrison Brothers Ranch was removed for having two youths under 16 employed for six incidents. Both companies are fined \$600.00. He asked if the numbers were accurate and if it was a blanket fine or per incident or violation fee structure.

Ms. Spurgeon confirmed the violations are based on the time keeping record and are accurate. The penalty is based on the Statute that they violated. MMPR Hospitality the violations that involve while school is in session and the 17 incidents violating §23-233(a)(4) has a \$200 civil penalty for the school violation verses the one with the 13 incidents at 11:30 pm is when school is not in session and have a penalty schedule that is consistent based on the Statutes.

Commissioner Godfrey confirmed the total penalty for MMPR Hospitality with 40 violations is \$600.00.

Ms. Spurgeon confirmed the same penalty schedule for all youth labor cases, the maximum they can award is \$1,000.00 and that is typically when there is an injury or more serious incident.

Commissioner Godfrey commented that he found it very concerning that a youth labor violation, especially a company that condones children under the age of 16 skipping school to work for them and can do this 106 times in one case and 40 times in the other and be fined \$600.00 in total. That is essentially nothing.

Chairman Kavanaugh noted that the Commission may want to set this as a future agenda item, the status of the youth labor penalty violations and help the Commission understand when they were last change or amended, it has likely been decades.

Commissioner Godfrey moved to accept the Department of Labor's recommendation in these two matters. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, 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-2324-0138 ProDrivers Staffing, Inc.

Chairman Kavanaugh noted that the parties have resolved the issue and it is removed from today's agenda.

2. RT-2324-0147 Southwest Airlines Co.

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. For violation of A.R.S. 23-364 a \$9,750.00 for violation of the LOI and \$9,750.00 to deter future violations. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$19,500.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh commented that when he started with the Commission last year there were a series of Southwest Airlines cases regarding this area that were based on a 2019 Collective Bargaining Agreement with Southwest and the Union, that Agreement did not contain a provision to opt out of Arizona jurisdiction and they have a five-year time limit. He was a little surprised that Southwest Airlines entered into a new Collective Bargaining Agreement since 2023 and seems as if they would have had the opportunity with a single sentence in the Collective Bargaining Agreement to opt out of Arizona jurisdiction.

Ms. Spurgeon noted the first one was 2016 and did not have language to waive the rights, the August 2023 one also does not have language to waive the rights.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$19,500.00 to Southwest Airlines Co. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

3. RT-2324-0148 Southwest Airlines Co.

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. For violation of A.R.S. 23-364 \$9,750.00 for each violation of the LOI and LOW and \$9,750.00 to deter future violations. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$29,250.00 for violation of A.R.S. § 23-364.

Commissioner Godfrey moved to approve issuance of a Penalty for Retaliation in the amount of \$29,250.00 to Southwest Airlines Co. Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey 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 Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Mr. Hudson noted at the beginning of the meeting Mr. Keller wanted to have his case pulled from the Consent Agenda and pull Red's Plastering Inc. for further discussion.

Chairman Kavanaugh and Ms. Peimani discussed the proper procedure.

Commissioner Valdez made a motion to reconsider the action on Red's Plastering Inc's case and to bring it back for separate presentation and discussion. Commissioner Everett seconded the

motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

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

Red's Plastering, Inc. 2317 South 15th Avenue Phoenix, AZ 85007	Referral Years in Business:	23
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Inspection No: RF-2024-VM508-0033

Inspection Date: January 8, 2024

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

Commissioner Godfrey commented that it is important that the Commission recognize all safety concerns in this particular case, and it is especially egregious due to the fact that it is a group 1 carcinogen with the International Agency for Research on Cancer and is the highest classification and most dangerous carcinogenic classification they can get.

Chairman Kavanaugh confirmed this was the only citation. Mr. Hudson confirmed and noted from memory the other PPE was appropriate.

Mr. Keller with Snell & Wilmer representing Red's Plastering, Inc., appreciated the Commission hearing this. He noted that what the Commission just heard was half the story and he was going to tell the rest of the story. The Compliance Officer did drive up and it was a national emphasis, she conducted the inspection, was very complimentary, it was a wall-to-wall inspection. There was proper PPE and N95 dust masks, glasses, hard hats, shoes, gloves and the employer had an extensive respiratory protection program, extensive silica exposure control plan in place, scaffolding properly erected, SDSs and hazard communication program was on site. Following the inspection, the Compliance Officer stated it was an in compliance inspection and left voice mails to the business owner complimenting on the site and the in compliance inspection. He did not want to waste time on the preceding that occurred that brought them to this point, he was aware this was not a time and place to contest the citation. The point is, first of all there was no exposure, the employees had proper glasses, N95, were trained on the N95s and using them properly. What was going on was Red's Plastering had wetted the cementation type materials and they were pushing them off of the scaffold from the 3rd floor into the wall of the building purposely to keep down the necessary dust. There was not testing done on the amount of silica in the product or in the air, it was just what she witnessed was just dust. Based on the N95s and the glasses there was no exposure, they were complying with both their respiratory protection plan and silica exposure control plan. There was water on site. The issue, the emergency wash systems, the Compliance Officer wanted them on the 3rd floor of the scaffold. They had dual eye wash systems in every truck, the trucks were located at the bottom of the scaffold, there was a hose in place with running water and also other bottles of water and other sources of water used on the scaffold. But the Compliance Officer was insisting, contrary to standard interpretations of OSHA that unless it was on the actual level of the scaffold it was not sufficient and not suitable. The other position was, she continued to contend that the emergency eyewash needed to be 60 minutes and was referring to the SDS. The SDS is continuous rising for 60 minutes but it also says rinse continuously with water for several minutes and the several minutes is what is what is the emergency eyewash. There is no eyewash system that you can make that is not plumbed that is going to provide you with a continuous flush for 60 minutes. Also they continue to contend that pursuant to the standard interpretation, suitable eyewash systems

are interpreted under an OSHA standard interpretation that the Compliance Office should evaluate the specific job, tasks, PPE and the work conditions, and that was never done, if it was not on the 3rd floor, it was a citable offense and that is what you see here. The company was pretty upset because they take extraordinary measures to protect their employees, and thought it was pretty rare that you go to a stucco company on site, you are going to see an exposure control plan, proper respiratory protection and everybody having the proper fit tests and medical evaluations. They were very upset by this and wished him to come today and discuss the facts and circumstances.

Mr. Hudson commented from the report, there were interviews conducted with employees who did acknowledge that working with this substance could cause potential hazards for the individuals that were working and appreciated what Mr. Keller was saying in reference to they had the PPE, however PPE is the last line of defense and is not always the best form. We want to start with the elimination of hazards and then work our way down. There is still some exposure that obviously the only way the PPE would work is if there is exposure it has to effectively hit the PPE. Secondly, in the report there is a note/memorandum for Ridgenote Administration, October 18, 2010 with the subject of Region 5 requesting guidance on enforcing cement and chromium stated that generally an eyewash facility being on the floor below the active working deck would not be within the work area. This is not a citation, this eyewash station is not issued in the aspect that it is general duty clause, it is a specific citation to having an eyewash station and washing stations within an immediate are of the work zone.

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

Statewide Towing & Transport, L.L.C.
 4051 East Michigan Street
 Tucson, AZ 85714

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

Site Location: 4051 East Michigan Street
 Tucson, AZ 85714
 Inspection No: FC-2024-MB431-0043
 Inspection Date: January 30, 2024

SERIOUS – Citation 1 - Item 1 –

- a) Maintenance bay: One employee performed maintenance on a Landoll Corporation, Model 440, sliding axle trailer, and an energy control (lockout/tagout) procedure had not been developed. 29 CFR 1910.147(c)(4)(i)

Div. Proposal - \$15,625.00	Formula Amt. - \$10,938.00
TOTAL PENALTY - \$15,625.00	TOTAL FORMULA AMT. - \$10,938.00

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

Chairman Kavanaugh noted he had a request to speak from Carlos Paramo. Mr. Paramo was unable to speak.

Commissioner Godfrey moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly,

Interior Fiber- Cement (Medium Density), and VersaBond Flex Modified Thinset Mortar without a written hazard communication program in place. 29 CFR 1910.1200(e)(1)
Div. Proposal - \$7,813.00 Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 3b –

- a) 1325 East Gibson Lane, Phoenix: Three employees were exposed to handling of hazardous chemicals during daily job duties including Polyblend Non-Sanded Grout, James Hardie Interior Fiber- Cement (Medium Density), and VersaBond Flex Modified Thinset Mortar without having received hazard communication training. 29 CFR 1910.1200(h)(1)
Div. Proposal - \$0.00 Formula Amt. - \$7,813.00
TOTAL PENALTY - \$23,439.00 TOTAL FORMULA AMT. - \$54,691.00

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

Chairman Kavanaugh noted he did not have a request to speak.

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

Bull Moose Tube of Casa Grande, LLC
1001 N Jefferson Ave
Casa Grande, AZ 85122

Referral-Employer Reported
Years in Business: 19
Empl. Covered by Inspection: 67

Site Location: 1001 N Jefferson Ave
Casa Grande, AZ 85122
Inspection No: RF-2024-T3633-0142
Inspection Date: January 10, 2024

SERIOUS – Citation 1 - Item 1a –

- a) Mill 1: One employee operated the uncoiler section of the mill, unknown manufacturer, model and serial number, from which the retainer section had been removed from the machine and was not available to ensure that the steel slits could not fall off the reel. A.R.S. 23-403.A
Div. Proposal - \$6,697.00 Formula Amt. - \$6,697.00

SERIOUS – Citation 1 - Item 2a –

- a) Mill 1: The floors behind Mill 1, which included the spaces in front of and around the electrical cabinets serving the mill, were not kept in a dry condition. 29 CFR 1910.22(a)(2)
Div. Proposal - \$6,697.00 Formula Amt. - \$6,697.00

SERIOUS – Citation 1 - Item 2b –

- a) UV coating area (Mill 1 line): Allied PhotoChemical brand KZ 1252 BK pipe coating, a corrosive and toxic liquid, was spilled on the floor around the UV coater, and the spill had not been cleaned or removed. 29 CFR 1910.22(a)(3)
Div. Proposal - \$0.00 Formula Amt. - \$6,697.00

- a) Building 1315 Sanding Area: Two employees used 3M tight-fitting half-face respirators, model and serial number unknown, without a Written Respiratory Protection Program implemented in the workplace. 29 CFR 1910.134(c)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 1b –

- a) Building 1315 Sanding Area: Two employees wear a tight-fitting half-face respirator, model and serial numbers unknown, without an initial medical evaluation. 29 CFR 1910.134(e)(1)

Div. Proposal - \$0.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 1c –

- a) Building 1315 Sanding Area: Two employees wear a tight-fitting half-face respirator, model and serial numbers unknown, without a respirator fit test. 29 CFR 1910.134(f)(1)

Div. Proposal - \$0.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 1d –

- a) Building 1315 Body Shop/Sanding Area: Two employees wore tight-fitting half-face respirators, model and serial numbers unknown without adequate respirator training. 29 CFR 1910.134(k)

Div. Proposal - \$0.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 2 –

- a) Building 1315 outside body shop: One employee operated a Komatsu forklift, model FG25ST-16 and serial number unknown, without the required training. 29 CFR 1910.178(l)(1)(i)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 3 –

- a) Body Shop Area: One employee used a JET Industrial Grinder, serial number unknown that had no guards at the ingoing nip points.
b) Body Shop Area: One employee used a JET Industrial Grinder, serial number unknown that had no guards at the rotating parts.
c) Body Shop Area: One employee used a Belt Sander, Model IBGB-436, serial number unknown that had no guards at the ingoing nip points.
d) Body Shop Area: One employee used a Belt Sander, Model IBGB-436, serial number unknown that had no guards at the rotating parts. 29 CFR 1910.212(a)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 4a –

- a) Building 1315 Body Shop/Sanding Area: Two employees are exposed to respiratory hazards when sanding/grinding auto parts and when using the Fibril Lite Fiberglass Filler without a Written Hazard Communication Program. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

SERIOUS – Citation 1 - Item 4b –

- a) Building 1315 Body Shop/Sanding Area: Two employees are exposed to respiratory hazards when sanding/grinding auto parts and when using the Fibral Lite Fiberglass Filler without being trained on Hazard Communication. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

TOTAL PENALTY - \$25,000.00

TOTAL FORMULA AMT. - \$50,000.00

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

Chairman Kavanaugh noted he did not have a request to speak.

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

The Commission took a break at 2:27 p.m.

The Commission returned to session at 2:35 p.m.

GP Portable Buildings LLC (FN)

2001 Old Highway 66

Winslow, AZ 86047

Site Location: 2001 Old Highway 66

Winslow, AZ 86047

Inspection No: CP-2024-AD245-0025

Inspection Date: January 17, 2024

Complaint

Years in Business: 19

Empl. Covered by Inspection: 2

SERIOUS – Citation 1 - Item 1a –

- a) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #1 that had a top step height of approximately 67 1/2" without handrails on both sides.
- b) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #2 that had a top step height of approximately 67 1/2" without handrails on both sides.
- c) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #3 that had a top step height of approximately 67 1/2" without handrails on both sides.
- d) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #4 that had a top step height of approximately 67 1/2" without handrails on both sides.
- e) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #5 that had a top step height of approximately 61 1/2" without handrails on both sides.
- f) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #6 that had a top step height of approximately 61 1/2" without handrails on both sides.
- g) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #7 that had a top step height of approximately 61 1/2" without handrails on both sides.
- h) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #8 that had a top step height of approximately 61 1/2" without handrails on both sides.
- i) 2001 Old Highway 66, Winslow: Employees were installing roofing materials from Catwalk #9 that had a top step height of approximately 61 1/2" without handrails on both sides.

Commissioner Godfrey asked about Item 1a with the formula penalty about of \$11,162.00 why the proposed penalty amount \$15,625.00 was listed. Mr. Hudson noted the way the penalties are written and grouped, the higher penalty amount listed for Item 1c is the greater penalty amount is listed as the penalty amount.

Commissioner Everett noted it was kind of unusual for the Commission to see that.

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

Mr. Morris with Graceland Portable Buildings who have portable buildings throughout the United States. Their Arizona division is one of their newer facilities and after it was put in place a process to ensure the safety of their employees. He understands that there was an anonymous report, and it came to him through the plant manager stating that there was an anonymous report, and it was a staged OSHA violation. There was a disgruntled employee who said take a picture of me doing this. So, they raised him on a forklift and took the photos. He promised that within their safety protocol, this is not permitted, and they do not condone this in any measure or fashion. He understands that when the Compliance Officer was there, he noted to the plant manager Mr. Aragon, and he started immediately working and sending photos. There has been abatement, those platforms have been fixed. He just wanted to state they have abated immediately and thanked the Commission for allowing him to speak on their abatement efforts.

Commissioner Godfrey commented at the beginning of the citation it says no citations were abated and is he to understand that they were. Mr. Dimas responded that he did not receive abatement from the employer, and he discussed this during the break with Mr. Morris, ADOSH has not received proof of abatement at the time the file was submitted. The plant manager resigned recently and have not received abatement yet to mark it as abated.

Mr. Morris stated he can send all information if need be.

Chairman Kavanaugh noted if the Commission proceeds with the recommend citations and the employer contests it that could be an issue of discussion once you receive the documentation of abatement.

Mr. Hudson agreed their goal is to build a safe culture across the state of Arizona and work with companies and building that culture. As they get abatement documentation in, they do work with the companies and move forward with it through the remainder of the process and part of their conversations.

Chairman Kavanaugh commented that he has learned that it does happen in terms of the timing and submission of the report.

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

Headlee Roofing Co., Inc.
951 West 1st Avenue
Mesa, AZ 85210

Site Location: 1252 E Sunburst Ln

Program Planned
Years in Business: 40
Empl. Covered by Inspection: 4

Div. Proposal - \$11,292.00
TOTAL PENALTY - \$17,745.00

Formula Amt. - \$11,292.00
TOTAL FORMULA AMT. - \$50,010.00

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

Chairman Kavanaugh noted Mr. Headley requested to speak.

Mr. Headley noted he was not here to complain. He thanked the Commissioners for their service and it is appreciated. He appreciated the work of the Compliance Officer; it is a thankless job and usually treated with anything but respect. It is appreciated. He commented on the new Director Mr. Hudson, and was worried when Mr. Atencio left, but the search for somebody and did a good job taking him on. He appreciates his attitude towards enforcement and his service. The real reason he was here was to request to please continue the Chairman's Roofer's Alliance, that has been valuable to him and his fellow roofing contractors, they do really appreciate being able to come down and meet with the Compliance Inspectors to keep things right out front. At least every two months they are grounded to push the button to make sure safety is very important. He has been doing this for 40 years, most of these guys that work for him are friends and it is important to him that they go home at the end of every day. He begs and pleads with them to do what he can and to get them to do what they need to do to be safe. But unless he is standing there 100% of the time, it is just a battle.

Chairman Kavanaugh noted he appreciated Mr. Headley's comments. Back in the 80's roofing companies were a big challenge, and he appreciated his attendance and participation in the Roofer's Alliance that we have today to bring together, talk about information, share information and best practices. He hopes that many more of his colleagues would participate because he firmly believes it is an important way to keep safety in the forefront and share ideas on how to make sure that people comply with the rules and your colleagues can go home.

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

Mr. Hudson commented that the Roofer's Alliance was a topic of discussion this week to come up with ways to continue growing it. This is a good example, and he appreciated his mentioning it.

Latitude South, Corp. (FN)
949 W Silverlake Rd
Tucson, AZ 85713

Site Location: 949 W Silverlake Rd
Tucson, AZ 85713
Inspection No: CP-2024-T3633-0143
Inspection Date: January 12, 2024

Complaint
Years in Business: 17
Empl. Covered by Inspection: 51

WILLFUL SERIOUS – Citation 1 - Item 1 –

- a) Production area: The Panasonic Factory Automation brand robotic welding machine, model PA 112S and serial number J0923, had the control circuit for the light curtains bypassed so

that employees were not protected from point of operation hazards and rotating parts hazards. 29 CFR 1910.212(a)(1)	
Div. Proposal - \$140,633.00	Formula Amt. - \$140,633.00
TOTAL PENALTY - \$140,633.00	TOTAL FORMULA AMT. - \$140,633.00

Mr. Hudson discussed ADOSH’s inspection, this is a Willful citation and summarized the citation and proposed penalty and that is why it is a high penalty amount.

Commissioner Godfrey asked if anyone, other than the employee who bypassed these precautions aware of this?

Mr. Hudson noted the report, the manager made the comment to the maintenance crews, the maintenance crews told them it was going to be pretty expensive to fix the light curtain and the discussion was to get it fixed a little later and told the maintenance crew, and essentially directed them to bypass the circuit. He did not know how many times it was used, if it was used on a daily basis, obviously it had been used at least once, because the injury did occur. It may have been an item used several times. There is management involved and had the knowledge of it and at least one employee that utilized it and it caused an injury. Thankfully it was not a serious injury and it could have been a lot worse.

Chairman Kavanaugh noted he did not have a request to speak.

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

Lee's Pipelines, Inc.	Complaint	
435 South Hamilton Court	Years in Business:	26
<u>Gilbert, AZ 85233</u>	Empl. Covered by Inspection:	14
Site Location:	435 South Hamilton Court	
	Gilbert, AZ 85233	
Inspection No:	CP-2024-TN976-0029	
Inspection Date:	January 8, 2024	

SERIOUS – Citation 1 - Item 1 –

- a) Wares Farms, trench 2: Two employees were installing sewer lines inside an open excavation that was 286 feet long by approximately 20 feet wide by 28 feet deep without a safe means of egress. 29 CFR 1926.651(c)(2)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$7,813.00 | Formula Amt. - \$7,813.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 2 –

- a) Wares Farms, trench 2: Two employees were installing sewer lines inside an open excavation that was 286 feet long by approximately 20 feet wide by 28 feet deep and the soil piles were not at least two feet from the edge of the excavation. 29 CFR 1926.651(j)(2)
- | | |
|----------------------------|---------------------------|
| Div. Proposal - \$7,813.00 | Formula Amt. - \$7,813.00 |
|----------------------------|---------------------------|

SERIOUS – Citation 1 - Item 3a –

- a) Wares Farms, trench 2: Two employees were installing sewer lines inside a trench box in an open excavation measuring 286 feet long by approximately 20 feet wide by 28 feet deep, while the trench box was not being used in a manner that was consistent with the recommendations of the manufacture, as the maximum depth chart was exceeded.
- b) Wares Farms, trench 2: Two employees were installing sewer lines inside a trench box in an open excavation measuring 286 feet long by approximately 20 feet wide by 28 feet deep, while the trench box was not being used in a manner that was consistent with the recommendations of the manufacture, as the trench box was not at least 1 ft. 6 in. above the grade. 29 CFR 1926.652(c)(2)(i)

In the alternative

- a) Wares Farms, trench 2: Two employees were installing sewer lines inside a trench box in an open excavation measuring 286 feet long by approximately 20 feet wide by 28 feet deep, while the trench box was not being used in a manner that was consistent with the recommendations of the registered professional engineer. 29 CFR 1926.652 (b)(4)
Div. Proposal - \$7,813.00 Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 3b –

- a) Wares Farms, trench 2: Two employees were installing sewer lines inside a trench box in an open excavation that was 286 feet long by approximately 20 feet wide by 28 feet deep while lateral movement was not being restricted. 29 CFR 1926.652(g)(1)(ii)
Div. Proposal - \$0.00 Formula Amt. - \$7,813.00
TOTAL PENALTY - \$23,439.00 TOTAL FORMULA AMT. - \$31,252.00

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

Chairman Kavanaugh noted the employer was cited last year and confirmed none of the citations were repeat.

Chairman Kavanaugh noted he did not have a request to speak.

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

Refrigeration Systems Construction and
Service Company, Inc.
2135 E University Dr, Suite 105
Mesa, AZ 85213

Referral-Employer Reported
Years in Business: 25
Covered by Inspection: 3

Site Location: 2135 E University Dr, Suite 105
 Mesa, AZ 85213
Inspection No: RF-2024-TN976-0034
Inspection Date: January 24, 2024

SERIOUS – Citation 1 - Item 1a –

- b) Back of the shop: One employee was exposed to an ingoing nip point when feeding label ties into two unguarded ingoing rubber rollers right before the cutter on Label tie Machine #7.5.
- c) Back of the shop: One employee was exposed to an ingoing nip point when feeding label ties into two ingoing rubber rollers that was missing one guard on Label tie Machine #7.5. 29 CFR 1910.212(a)(1)
Div. Proposal - \$8,067.00 Formula Amt. - \$8,067.00

SERIOUS – Citation 1 - Item 2 –

- a) Front shop area: One employee was exposed to an unguarded projecting shaft end on the wire welding machine that was approximately 5” long and 1” wide while operating the wire welder. 29 CFR 1910.219(c)(4)(i)
Div. Proposal - \$6,453.00 Formula Amt. - \$6,453.00

SERIOUS – Citation 1 - Item 3 –

- a) Wire welding machine top: One employee was exposed to an unguarded chain and sprocket while operating the wire welder.
- b) Wire welding machine bottom: One employee was exposed to an unguarded chain and sprocket while operating the wire welder.
- c) Front shop area: One employee was exposed to an unguarded chain and sprockets #1 on Plastic line Machine #8 while operating the machine.
- d) Front shop area: One employee was exposed to an unguarded chain and sprockets #2 on Plastic line Machine #8 while operating the machine.
- e) Back shop area: One employee was exposed to an unguarded chain and sprocket that powered the end rollers on Label tie Machine #7.5 while operating the machine.
- f) Front shop area: Two employees were exposed to a partially vertical unguarded chain and sprocket on Plastic line Machine #11 while operating the machine.
- g) Front shop area: Two employees were exposed to a partially horizontal unguarded chain and sprocket #1 on Plastic line Machine #11 while operating the machine.
- h) Front shop area: Two employees were exposed to a long horizontal unguarded chain and sprocket #2 on Plastic line Machine #11 while operating the machine.
- i) Front shop area: Two employees were exposed to a horizontal unguarded chain and sprocket #3 on Plastic line Machine #11 while operating the machine. 29 CFR 1910.219(f)(3)
Div. Proposal - \$11,292.00 Formula Amt. - \$11,292.00

SERIOUS – Citation 1 - Item 4 –

- a) Front shop area: One employee was exposed to a spinning projecting shaft with a thumb screw on the end on the wire welding machine while operating the machine. 29 CFR 1910.219(h)(1)
Div. Proposal - \$8,067.00 Formula Amt. - \$8,067.00

SERIOUS – Citation 1 - Item 5 –

- a) Front shop area: Two employees operated and performed maintenance on Plastic line Machine #8 without having lockout/tagout procedures for the machine.
- b) Front shop area: One employee performed maintenance on Plastic line Machine #11 without having lockout/tagout procedures for the machine.

Mr. Hudson noted he is from a rural area and had discussions with various companies in the areas and try to push Consultation for the rural communities, it is a concern of his. Rural communities have industry, businesses and workers and wanted to make sure they know that we can really assist them with our Consultation Programs because our Consultation Programs are free of charge, and some of these companies could definitely utilize those opportunities so we are pushing those going forward.

Commissioner Godfrey noted the \$1,000.00 penalty for the Non-Serious item. Mr. Hudson noted they are working on streamlining their process.

Chairman Kavanaugh noted he did not have a request to speak.

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

WCP Oil LLC	Complaint
8350 E McDowell Rd	Years in Business: 5
<u>Scottsdale, AZ 85257</u>	Covered by Inspection: 2
Site Location: 706 E, 706 AZ-260	
Payson, AZ 85541	
Inspection No: CP-2024-AD245-0020	
Inspection Date: January 3, 2024	

SERIOUS – Citation 1 - Item 1 –

- a) Car Wash Chemical Room: Two employees were exposed to corrosive materials such as Auto Lux brand ALTP-12 High PH Presoak, AL-120 Tire & Wheel Cleaner, ALTP-21LPH Low PH Foaming Detergent, and Turtle Wax Pro brand Low PH Tri-Foam Conditioner while exchanging containers for a chemical pump without being provided with an eye wash station in the area for immediate emergency use. 29 CFR 1910.151(c)
Div. Proposal - \$10,046.00 Formula Amt. - \$10,046.00

SERIOUS – Citation 1 - Item 2a –

- a) 706 E, 706 AZ-260, Payson: Two employees were exposed to corrosive materials such as Auto Lux brand ALTP-12 High PH Presoak, AL-120 Tire & Wheel Cleaner, ALTP-21LPH Low PH Foaming Detergent, and Turtle Wax Pro brand Low PH Tri-Foam Conditioner while exchanging containers for a chemical pump without a written hazard communication program in place. 29 CFR 1910.1200(e)(1)
Div. Proposal - \$10,046.00 Formula Amt. - \$10,046.00

SERIOUS – Citation 1 - Item 2b –

- a) Car Wash Chemical Room: Two employees were exposed to corrosive materials such as Auto Lux brand ALTP-12 High PH Presoak, AL-120 Tire & Wheel Cleaner, ALTP-21LPH Low PH Foaming Detergent, and Turtle Wax Pro brand Low PH Tri-Foam Conditioner that

necessitated the use of chemical gloves, eye protection, and face protection without a hazard assessment being completed. 29 CFR 1910.132(d)(1)

Div. Proposal - \$0.00

Formula Amt. - \$10,046.00

SERIOUS – Citation 1 - Item 3 –

- a) Mold storage room: One Burr King brand belt sander, model and serial number unknown, did not have a guard to protect the operator from the ingoing nip points between the sanding belt and the roller wheels. 29 CFR 1910.212(a)(1)

Div. Proposal - \$10,046.00

Formula Amt. - \$10,046.00

TOTAL PENALTY - \$30,138.00

TOTAL FORMULA AMT. - \$40,184.00

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

Chairman Kavanaugh noted he did not have a request to speak.

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

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Zollinger and Lopez - Chairman Kavanaugh noted the Commissioners received the analysis from the Legal Department. The bottom-line recommendation are two alternatives depending on whether a full and final settlement becomes finalized. One option – if the settlement is finalized and approved, the recommendation is award attorney fees of 25% of the settlement amount (\$10,625.00) to be paid to the Petitioner. Second option – if the settlement is not finalized, the recommendation is the Commission award attorneys' fees of \$4,212.99.

Commissioner Everett moved to adopt the recommendation from the Legal Department for the Findings and Award granting attorney's fees as indicated and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, 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 would like to hold a Commission Meeting in Flagstaff on September 26th at the State Bar Workers' Compensation Seminar and perhaps make a VPP site visit on September 25th.

Ms. Dimas asked about confirmation for the Claims Seminar for August 15th and 16th.

Ms. Dimas confirmed Commission meeting dates through August 2024.

Mr. Testini noted a few years ago the State started a leadership for state employees SALC, this is the 3rd cohort being held and it is a very competitive process and 26 people have been picked.

Out of the 26, he was happy to announce that three were selected from the Agency: Melissa Spurgeon, Sophia Cox and Brandt Smith.

Chairman Kavanaugh and Mr. Testini noted the sweep of the Special Fund was paid, and one-quarter of the Administrative Fund sweep was also paid, and will continue to make payments quarterly.


Public Comment.

There was no public comment.

The meeting was adjourned at 3:44 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Executive Deputy Director

ATTEST:



Kara Dimas, Commission Secretary