

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 2675 East Broadway Boulevard  
Tucson, Arizona 85716  
Thursday, November 15, 2018 – 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
	Jessie Atencio	ADOSH Director
	Steven Black	Compliance Officer
	Sylvia Sinohui	ADOSH
	Kari DiStasio	ALJ Division
	Charlie Preciato	Compliance Officer
	Margarita Aguayo	ADOSH
	Corina Schaffner-Fegard	ALJ
	Alex Ceballos	Compliance Officer
	Michael Martin	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:30 p.m. Also in attendance was John Calkins (EPCOR).

Approval of Minutes of November 8, 2018 Regular Meeting.

Ms. Dimas noted there was not a quorum of the Commissioners to approve the November 8, 2018 Minutes; as such, approval of the minutes will be added to the agenda for the next meeting.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

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- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C-17/18-0649 - Green Canyon Landscaping, Inc. for \$1,000.00
  2. 2C-17/18-0651 - L & H Home Services, Inc. for \$1,000.00
  3. 2C-17/18-0886 - Pat Ryan Home Repair, Inc. for \$1,000.00
  4. 2C-18/19-0321 - Scarizona Scaregrounds, LLC for \$5,000.00



TOTAL PENALTY - \$12,000.00

TOTAL FORMULA AMT. - \$14,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and abatement.

Commissioner LeMarr and Mr. Atencio discussed the prior inspection history.

Commissioner LeMarr, Mr. Atencio and Mr. Black discussed abatement and noted there was no new information.

Commissioner Krenzel and Mr. Atencio discussed if the written programs were received, and noted nothing has been received.

Chairman Schultz, Mr. Atencio, Mr. Black and Commissioner LeMarr discussed notices posted for confined space and what the employees thought about the severity of the hazard, their process of metering and ventilating the space and the employees' understanding of the policy for the confined space.

Chairman Schultz noted that the employees recognized the high risk area as demonstrated by their metering and ventilating. He noted they were not treating it as a permitted confined space and did not have any policy or procedures or program that told them what to do in the event it was a permitted confined space. Chairman Schultz was troubled by the lack of awareness on the part of the employees and by the employer not providing the employees with sufficient information and training to maintain a safe workplace.

Chairman Schultz asked why a penalty was not issued for failure to have training, and why the citation would be grouped when the employees were at risk, no controls were in place and ADOSH had not been provided a copy of a written program. Chairman Schultz also noted that lack of training is a separate standard and would be a root cause if there was a fatality. Mr. Black provided his reason for grouping the citation and not issuing a separate penalty.

Commissioner LeMarr requested that since the two files were the same company, and someone from the operator was present, he would like him to address the matters collectively.

Hunt Mgt., LLC  
5310 E Shea Blvd., #2  
Scottsdale, AZ 85254

Site Location: 5632 E Hunt Hwy.,  
Florence, AZ 85143  
Inspection No: T3633 - 1343042  
Inspection Date: 08/29/2018

Complaint  
Years in Business: 19  
Empl. Covered by inspection: 5

SERIOUS – Citation 1 - Item 1 –

- a) Influent area: The headworks pit, which was approximately 24 feet long, 12 feet wide, and 4 feet deep, had a damaged cover.
- b) Effluent area: The metering vault, which was approximately 4 feet long, 3 feet wide, and 5 feet deep, did not have the cover installed.

- c) Effluent area: The excavation for the effluent lift station, which was approximately 12 feet wide, and 5 feet 6 inches deep, was not protected with a cover or guardrail. 29 CFR 1910.22(c)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 –

- b) Effluent area: An electrical circuit breaker box which served lighting and 120 volt outlets did not have a dead-front cover installed. 29 CFR 1910.305(d)(2)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

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

Commissioner LeMarr, Mr. Atencio, and Mr. Testini discussed the responsibility during the chain of events, and liability for the complaints. Mr. Atencio discussed ADOSH policy when there are multiple employers and identification of an employer/employee relationship. Mr. Black noted that during the inspection the employees identified Hunt Mgt. LLC as the employer. Mr. Black also noted they were informed at the time of the inspection that EPCOR had been appointed as a manager for Johnson Utilities.

Chairman Schultz and Mr. Black discussed whether the circuit breaker that did not have a panel on it would be capable of arc flashing and possible electrocution, and if warning signs need to be posted. Chairman Schultz and Mr. Black referred to photographs 1 and 2 regarding the open meter vault with valves that presents an exposure without warning for employees.

Chairman Schultz referred to photographs 5 and 6 noting the front cover for the circuit panel was on another piece of equipment. Chairman Schultz and Mr. Black discussed this circumstance and if there was any abatement.

Chairman Schultz asked Mr. Calkins if he had anything he would like to share.

Mr. Calkins, the Compliance Director for EPCOR USA, Inc. provided some background on EPCOR which operates water, waste water and natural gas services and is the largest investor owned utility in the southwest. EPCOR has over 300 employees and operates six waste water treatment plants, 20 public water systems, water transmission lines and natural gas operation in Houston. Employee safety, general public safety and contractors are their top priority. He noted their parent company is based in Edmonton and their wide footprint. He noted their relationship with Johnson Utilities began on August 22, 2018 when an agreement was signed with the Corporation Commission to act as a consultant for the Corporation Commission and assess the water system and provide a report to the Corporation Commission on October 5, 2018. He noted on August 31, 2018 they were appointed as interim manager/operator of Johnson Utilities. He noted their responsibilities and issues to correct, such as all PPE. He also noted that EPCOR was working on their first application for the VPP program in Arizona and their desire to be the first investor owned water utility to receive VPP recognition. Their first step was to implement employee training and started with confined space awareness.

Commissioner LeMarr and Mr. Calkins discussed the ultimate liability and collectability. EPCOR currently does the customer billing and collection for services, and the funds are administered by EPCOR and reports are provided to the Corporation Commission. Mr. Calkins noted they are the

interim manager and do not own the system, they just run and operate it. He noted that other regulatory agencies raised a similar question, and have provided him with documentation that any or all future enforcement related actions will be issued under the name Johnson Utilities and will be copied to EPCOR. Mr. Testini added that there may be some documentation as to when the liability starts and when the company was appointed interim operator on August 31, 2018.

Commissioner LeMarr clarified at the time of the inspection on August 29, 2018 EPCOR was not the operator.

Commissioner LeMarr moved to approve the citations and proposed penalties as presented for Inspection No. T3633-1343012 for a total amount of \$12,000. Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented for Inspection No. T3633-1343042 for a total amount of \$4,000. Commissioner Krenzel seconded the motion. Chairman Schultz commented that if it were not for the involvement of EPCOR and the expected improvement to EPCOR standards, he would propose an increased penalty and agrees with Commissioner LeMarr that with EPCOR on board he hopes to see vast improvements in terms of protection of not only the employees, but the public in terms of the water supply. 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 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley provided an update on the new Claims System and appearing before the Internet Technology Approval Committee (ITAC) for additional approvals. The agency was granted full and unanimous approval to continue to the final stage of the process for a February 19, 2019 roll out. One of the many benefits with the new system is meaningful data extraction and ability to share the data with stakeholders to help promote safe workplaces throughout the state.

Chairman Schultz commended staff for the progress.

Mr. Ashley provided an update on the Governor's Recidivism Reduction Program to help released inmates become productive members of society and how the agency is participating by teaching OSHA 10-hour classes which have trained 202 inmates over the course of ten classes.

Chairman Schultz and Mr. Ashley discussed the Gemba walk for Tucson ALJ and ADOSH.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2018.

Mr. Atencio introduced his new ADOSH Admin Assistant, Margarita Aguayo.

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 2:38 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary