

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, September 15, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Rogelio Martinez	Senior Business Analyst
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Brian Downen	Compliance Officer
	Brad Harbour	Compliance Officer
	Glenn Saavedra	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Garrick Taylor with the Arizona Chamber of Commerce and Industry; Jeff Gray with Axiom Public Affairs; Wanda Thompson with Sunflower Farmers Markets, LLC, dba Sprouts Famers Market; Kurt Broer with Ranbro Steel Works, Inc.; Dan Sexton with AZ RV Salvage, LLC; John Simonson with Thorobred Chevrolet; and Jason Weber with Snell & Wilmer.

Approval of Minutes of September 1, 2016 Regular Meetings.

Commissioner Orchard moved to amend and approve the draft September 1, 2016 Minutes by inserting the words “as a result of comprehensive training program in place as well as abatement” in the paragraph at the top of page 8, so the sentence would read: “Commissioner Orchard moved to amend the proposed penalty as follows: Citation 1, Item 1 be reduced to \$4,000.00, as a result of comprehensive training program in place as well as abatement.” Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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.

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- a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C15/16-2596 GEM2K, LLC, dba Precision Precast Group
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. Bashas', Inc.
  2. Hyatt Corporation
  3. Kiewit Corporation
  4. Scottsdale Healthcare Hospitals DBA HonorHealth
  5. TMC Healthcare

Chairman Schultz indicated that, at the request of Bashas, Item (b)(1) would be removed from the Consent Agenda and heard at a later date. Commissioner Orchard moved to approve the remaining items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles provided an update on the Commission's budget requests and discussed meetings with the Joint Legislative Budget Committee ("JLBC") and the Office of Strategic Planning & Budgeting ("OSPB"). Mr. Charles discussed the role of OSPB in the budgeting process and the criteria OSPB uses in analyzing budget requests. Mr. Ashley discussed the role that agency scorecard metrics play in the budgeting process. Chairman Schultz commented on changes to the budget review process, the use of agency scorecard metrics in the process, and the effectiveness of the process in helping to prioritize, align, and monitor agency work and progress. Mr. Charles noted that OSPB representatives complimented Sylvia Simpson for her work on the Commission's budget requests.

Mr. Charles provided an update on the status of the Commission's legislative proposals. Chairman Schultz asked Mr. Charles to send the Commission's congratulations to Gretchen for her promotion in the Governor's Office.

Mr. Charles reported that he is working with Jessie Atencio to develop a format for periodically reporting ADOSH's goals, successes, and undertakings to stakeholders. He is also working with Mr. Atencio to develop a template for employers to report success stories.

Mr. Charles announced the upcoming ASU Global Center for Safety meeting. He reported that Mr. Atencio has been invited to participate at the meeting.

Mr. Charles stated that there were three upcoming Consultation Division recertifications.

Mr. Charles discussed his plans to prepare a comprehensive report about the ADOSH Consultation Division and its work with stakeholders in the State.

Mr. Charles discussed his involvement at a Chairman's Roofing Working Group meeting and social media posts related to the meeting. He highlighted Commission's efforts to collaborate with stakeholders to find solutions to existing problems. Chairman Schultz read Mr. Charles' social media tweets and commented on the purpose of the Chairman's Roofing Work Group. Mr. Charles explained ADOSH Consultation Division's Voluntary Protection Program ("VPP").

Mr. Charles reported that the Labor Department will be developing additional information and resources for employers that will be posted to the website.

Mr. Charles provided an update on the State of the ICA Report being prepared.

Mr. Charles reported that the new website will be launched at the end of the week. Chairman Schultz and Mr. Ashley commented on the new website.

#### Stakeholder Presentation.

Garrick Taylor, Senior Vice President of Government Relations and Communications from the Arizona Chamber of Commerce and Industry, addressed the Commission. Mr. Taylor explained the purposes and activities of the Chamber. He specifically discussed two ballot measures of concern to the Chamber: (1) Proposition 205 (marijuana initiative) and (2) Proposition 206 (wage initiative). He outlined the Chamber's concerns with, and strong opposition of, the ballot measures.

Chairman Schultz noted the Commission's support of the Chamber's efforts to defeat Proposition 205. Chairman Schultz also commented that the Commission is very comfortable with the current process for establishing Arizona's minimum wage.

#### FOM Inspection Scope (Comprehensive vs. Partial) Discussion.

Mr. Warren discussed a Summary Sheet regarding the ADOSH penalty process and structure. Chairman Schultz and Commissioner LeMarr inquired about formal adoption of a quick fix reduction. Mr. Ashley explained why the Commission had opted out of the federal quick fix approach. He explained that the Commission has the discretion to apply quick fix reductions, but is not constrained to a 15% reduction. Mr. Warren noted that quick fix reductions are considered by compliance officers, similar to reductions due to history, good faith, and size. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Mr. Ashley commented on the quick fix approach under the Arizona state plan and the option of adopting a more formal quick fix reduction approach. Chairman Schultz requested that a more-comprehensive discussion of options related to the quick fix reduction be discussed at a subsequent Commission meeting.

Mr. Warren discussed the categorization and order of the violations in a citation. He explained how ADOSH analyzes whether a violation is classified as serious or non-serious, including the evaluation of "likely outcome" from a hazard. Chairman Schultz asked for clarification in the context of an electrical hazard and Mr. Warren answered the question. Commissioner LeMarr asked about penalties for non-serious violations and Mr. Warren answered the question. Commissioner LeMarr asked how frequently non-serious violations result in a penalty and Mr. Warren answered the question. Commissioner LeMarr asked for an example of a "Willful Non-Serious" violation and Mr. Warren provided an example in the context of a willful refusal to keep OSHA 300 logs. Commissioner Orchard asked if Arizona's approach to non-serious penalties is in line with Federal OSHA's approach. Mr. Warren explained that Arizona's approach was essentially the same as Federal OSHA's approach.

Mr. Warren provided an overview the accident terms (such as could a person by "struck by," "caught in," "fall from," "engulfed," etc.) evaluated by compliance officers during an investigation. He provided an overview of when ADOSH will conduct an inspection, including in cases of: (1) imminent danger; (2) catastrophe and fatal accident; (3) employee complaints and referrals; (4)

programmed high-hazard inspections; and (5) follow-up inspections. Chairman Schultz and Mr. Warren commented on circumstances in which a fatality would not lead to an investigation (like an automobile accident). Commissioner LeMarr asked about the frequency of follow-up inspections and Mr. Warren answered the question. Commissioner LeMarr and Mr. Warren discussed the frequency of abatement and ADOSH's efforts to encourage prompt abatement. Finally, Mr. Warren discussed how inspections are conducted based on how an inspection is classified.

Commissioner LeMarr inquired about the scope of investigation based on a complaint or referral related to a specific sub-contractor. Mr. Warren explained the multiple-employer rule and permissible scope of an investigation. Vice Chair Hennelly asked how the penalty structure was developed. Mr. Warren provided a brief history of the penalty structure. He explained that ADOSH is evaluating changes to Arizona's penalty structure based on recent changes in the Federal OSHA penalty structure. Mr. Ashley noted that the penalty structure federal mandate is one of the items on the Commission's legislative proposal list.

Chairman Schultz, Commissioner LeMarr, and Mr. Warren commented on the national OSHA updates circulated by ADOSH.

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

<p>AZ RV Salvage, LLC dba AZ RV Salvage          2600 S 7<sup>th</sup> Ave          Phoenix, AZ 85001</p> <hr/> <p>Site Location: 2600 S 7th Ave          Phoenix, AZ 85001</p> <p>Inspection No: H1793-1143224          Inspection Date: 04/26/2016</p>	<p>Fatality/Accident          Years in Business: 2 mos.          Empl. Covered by inspection: 4</p>
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Mr. Warren summarized ADOSH's fatality investigation. He reported that the investigation did not identify any violations and ADOSH was not recommending any citations or penalties. Commissioner Orchard asked when ADOSH was notified of the fatality. Mr. Warren responded to the question.

No action was taken by the Commission.

<p>Sunflower Farmers Markets, LLC          dba Sprouts Farmers Market #29          23269 N Scottsdale Rd          Scottsdale, AZ 85255</p> <hr/> <p>Site Location: 23269 N Scottsdale Rd          Scottsdale, AZ 85255</p> <p>Inspection No: Y8817-1141206          Inspection Date: 04/19/2016</p>	<p>Fatality/Accident          Years in Business: 14          Empl. Covered by inspection: 90</p>
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Mr. Warren summarized ADOSH's fatality investigation and reviewed the photographs. He reported that the investigation did not identify any violations and ADOSH was not recommending any citations or penalties. Commissioner LeMarr asked whether a commercial license was required to operate the vehicle. Mr. Warren answered the question. Commissioner Orchard commended ADOSH for its quick response time and asked whether employers know ADOSH's citation/penalty





SERIOUS – Citation 1 - Item 2 –

a) 938 S. Picacho St., Coolidge, Arizona: Employees were permitted to begin demolition work prior to an engineering survey conducted by a competent person. (29 CFR 1926.850(a)).

b) 938 S. Picacho St., Coolidge, Arizona: The electrical power lines had not been shut off prior to the start of the demolition project for employees. (29 CFR 1926.850(c)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,750.00	TOTAL FORMULA AMT. - \$5,750.00

Mr. Warren summarized the citations and proposed penalties and reviewed the photographs. Commissioner LeMarr asked about the location of the scissor lift in Photograph 5. Mr. Saavedra discussed the location of the lift, the circumstances of the incident, and the resulting injury.

Chairman Schultz discussed the citations and proposed penalties with Mr. Broer and invited him to address the Commission. Mr. Broer discussed the company's injury history and the effect the injury had on the company. He described the project, Ranbro's involvement in the project, the circumstances leading to the injury, and the employee involved in the incident. Commissioner Orchard asked about abatement. Mr. Broer discussed training offered by the company, a new safety plan being developed, and weekly safety meetings. Commissioner Orchard asked Mr. Broer about his role with the company and if they had someone on staff responsible for overseeing safety. Mr. Broer stated he was the owner and he was responsible for safety. Commissioner Orchard asked about the status of the employee and his injuries and Mr. Broer responded to the questions.

Commissioner Orchard asked about the company's training program at the time of the incident. Mr. Saavedra and Mr. Warren responded to the question.

Commissioner Orchard moved to amend the proposed penalties as follows: the proposed penalty for Citation 1, Item 2 be reduced to \$3,000.00, due to the employer improving the training program and committing to the injured employee, for a total penalty of \$3,750.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Thorobred Chevrolet, Inc.  
2121 N. Arizona Ave  
Chandler, AZ 85225

Site Location: 2121 N. Arizona Ave  
Chandler, AZ 85225  
Inspection No: H9685-1139390  
Inspection Date: 04/11/2016

Referral  
Years in Business: 32  
Empl. Covered by inspection: 151

SERIOUS – Citation 1 - Item 1 –

a) 2121 N Arizona Ave, Chandler, AZ 85225: An orange colored personnel platform, manufacturer, model and serial number unknown, was attached to a Yale forklift, model number GLP030BFN0AE084P8 and serial number A8810N03977V, without first obtaining prior written approval from Yale or a Registered Professional Engineer to use the above mentioned Yale forklift and personnel platform in combination. (29 CFR 1910.178(a)(4)).

b) 2121 N Arizona Ave, Chandler, AZ 85225: One powered industrial truck operator was not evaluated prior to operating a Yale forklift model number GLP030BFN0AE084P8 and serial number A8810N03977V. (29 CFR 1910.178(l)(2)(ii)).

c) 2121 N. Arizona Ave, Chandler, AZ 85225: Two employees who operated a Yale brand forklift, model GLP030BFN0AE084P8 and serial number A8810N03977V, had not received performance evaluation within the past three years. (29 CFR 1910.178(l)(4)(iii)).

d) South Parking Lot: A Yale brand forklift, model GLP030BFN0AE084P8 and serial number A8810N03977V, was left unattended by the operator and the load, which consisted of a man cage with one employee working inside, was left in the elevated position. (29 CFR 1910.178(m)(5)(iii)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 –

a) Body Shop Electrical Room: Breaker Panel EA and EB were not legibly marked to indicate the purpose for each circuit disconnect. (29 CFR 1910.303(f)(2)).

b) Body Shop Electrical Room: Breaker Panel EA was missing a filler plate on line 23 on the operator's left side. (29 CFR 1910.305(b)(1)(ii)).

c) 2121 N. Arizona Ave, Chandler, AZ 8225: Two employees assigned to work on troubleshooting an electrical malfunction with energized light poles were exposed to contact with parts of fixed electric equipment and circuits however, the power supplying means was not locked out or tagged out. (29 CFR 1910.333(b)(2)).

d) 2121 N Arizona Ave, Chandler AZ 85225: Written procedures were not developed by the employer that addressed the procedures for deenergization of circuits and equipment, the application of lockout/tagout devices, or the procedures to verify the deenergization of the circuits and equipment while one employee worked on evaluating light sensor switches. (29 CFR 1910.333(b)(2)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 3—

a) 2121 N. Arizona Ave, Chandler, AZ 8225: Two employees were not trained prior to being assigned work involving the servicing of lights with energized or deenergized electrical equipment and circuits. (29 CFR 1910.332(b)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$5,250.00

TOTAL FORMULA AMT. - \$5,250.00

Mr. Warren summarized the citations and proposed penalties as listed and Mr. Downen reviewed the photographs. Commissioner LeMarr and Mr. Downen discussed the fall arrest gear that was not used. Chairman Schultz discussed the reason why it was critical to obtain approval from an engineer or the manufacturer of the forklift before using a lift platform. Chairman Schultz and Mr. Warren asked for clarification regarding the construction of the platform and Mr. Downen responded to the question.

Commissioner LeMarr asked for clarification about markings on the electrical control panel box in Photograph 7. Mr. Downen discussed the investigation and markings. Commissioner Orchard asked about abatement and Mr. Downen discussed the company's abatement efforts.



Chairman Schultz discussed the citations and proposed penalties with Mr. Simonson and invited him to address the Commission. Mr. Simonson, regional manager of Thorobred Chevrolet, discussed the company's usage and origins of the platform. He faulted the employee for poor judgment and discussed the company's forklift and safety training (provided by KPA). He discussed the history of the company and injury history. He noted safety equipment that was available, but not used. He discussed the electrical panel box, the company's approach to safety, and abatement efforts.

Mr. Warren and Mr. Downen noted that, at the time of the inspection and interviews, testing equipment and training policies regarding lockout/tagout and electrical safety were not available. Chairman Schultz asked about KPA and Mr. Downen responded to the question. Mr. Simonson training provided by KPA. Mr. Downen discussed the KPA training program regarding forklift training.

Commissioner Orchard commented on the company's commitment to safety and relationship with KPA. She recommended that Mr. Simonson have some discussions with KPA to address certain safety issues. She noted her inclination to reduce penalty amounts when there is significant abatement and a commitment to safety,

Commissioner LeMarr moved to accept the citations and proposed penalties as presented. Vice Chair Hennelly seconded. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

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Mr. Ashley provided an update on Arizona Management System ("AMS") training and staff efforts to implement AMS, including development of huddle boards and weekly GEMBA walks. He discussed a presentation made to staff related to AMS. Mr. Porter commented on the Legal Division huddle boards and the goal of eliminating the backlog of files in the Collections and Compliance Units. Commissioner LeMarr asked for clarification about plans to improve the agency's collections efforts and Mr. Porter responded to the question. Chairman Schultz noted that videos regarding AMS could be made available to the Commissioners.

Mr. Ashley discussed Goal Council 5 and related efforts. He announced the retirement of one of the ALJ vehicles as a part of the statewide fleet services project.

Mr. Ashley provided an update on the rulemaking related to aggregate and excessive insurance for self-insurance pools and noted that the new rule was effective on September 7. He noted that staff is working on ways promote the use of insurance pools.

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

Mr. Ashley commented on the upcoming Flagstaff trip on October 12 and 13. He noted there will a Chairman's Roofer Group meeting on the morning of October 13 in Flagstaff.

Mr. Ashley discussed upcoming stakeholder presentations and an upcoming presentation from ADOSH regarding the topic of employer knowledge. The September 29 meeting will feature

a presentation from the Arizona Sub-Contractors Association. Commissioner Orchard discussed a lunch and viewing of AMS videos.

Mr. Warren discussed the 2016 Safety Summit.

Mr. Warren noted the OSHSPA Conference scheduled for the week of September 19 in North Carolina.

Ms. Dimas confirmed Commission meeting dates through October 2016.

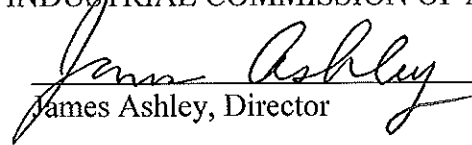
Public Comment.

Chairman Schultz, Vice-Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, Mr. Ashley, Mr. Warren, and Mr. Porter discussed providing employers with a copy of ADOSH's citation and proposed penalty packet in advance of Commission meetings. The Commission recommended making the citation and proposed penalty packets available to employers at Commission meetings.

Commissioner Orchard moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:26 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary