

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 29, 2016 – 1:00 p.m.

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| Present: | Dale L. Schultz | Chairman |
| | Joseph M. Hennelly, Jr. | Vice Chair (Telephonic) |
| | 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 |
| | Renee Pastor | Accounting |
| | William Warren | ADOSH Director |
| | Ana Maldonado | Compliance Officer |
| | Rick Jackson | Compliance Officer |
| | Christopher Brandon | Compliance Officer |
| | Scott Huckfeldt | Compliance Officer |
| | Ruben Rodriguez | Compliance Officer |
| | George Hall | Compliance Officer |
| | Kara Dimas | Commission Secretary |

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Julie Pace with Cavanagh Law Firm on behalf of the American Sub-Contractors Association of Arizona; Carol Floco (Executive Director) with the American Sub-Contractors Association of Arizona; Dennis Tsonis with Lovitt & Touche; Scott Petre with Banker Insulation; Michael McCrery with 3-G Construction Company; Tracy McCall, Branch Muller, and Mark Sherman with Shamrock Foods Co.; Jim Buhr (CFO, CIO), Darren VandeVoorde (Director of Safety and Health), Joseph Wisto (Corporate Controller), and Paul Murray (Accounting and Analytics) with Bashas' Inc.; Mark Cannon with Augspurgen Komm Engineering; Pat Thurman; Cathleen Thurman; John J. Egbert of Jennings Strouss on behalf of Grubb & Ellis RE; Rhett Pent and Joe Shannon with Big Surf; Jason Krantz and Erick Rasmussen with Apex Refrigeration; Jason Weber with Snell & Wilmer; Sharon Powers; and Jeremy Bethancourt with Leblanc Building Company.

Approval of Minutes of September 15, 2016 Regular Meeting.

At Commissioner Orchard's request, this agenda item will be heard at the Commission's October 13, 2016 Regular 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.

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

1. Bashas', Inc.
2. Marriott International, Inc.
3. Nordstrom, Inc.
4. Phoenix Newspapers, Inc.

Chairman Shultz removed items (a)(1), (a)(2), and (a)(4) (*i.e.*, Bashas', Inc., Marriott International, Inc., and Phoenix Newspapers, Inc.) from the Consent Agenda.

Commissioner LeMarr moved to approve the remaining items on the Consent Agenda and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Bashas', Inc.: Chairman Schultz discussed Bashas' increasing experience modification rating. He invited representatives of Bashas' to address the Commission. Mr. Buhr discussed efforts by the company to improve the experience modification rating. He reported that data pertaining to incidents and claims are trending in the right direction. Mr. VandeVoorde discussed the company's efforts to improve workplace safety and change the culture.

Chairman Schultz discussed the role of culture in successful safety programs, the Commission's expectations related to the experience modification rating, the amount of funds Bashas' has tied up in security as a result of its experience modification rating, and the availability of the ADOSH Consultation Division to assist with safety-related issues.

Commissioner Orchard moved to approve the request for renewal of self-insurance authority for Bashas' 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.

Marriott International, Inc.: Chairman Schultz discussed Marriott's decreasing experience modification rating, noting that it is possible for large employers to improve their experience modification rating by implementing appropriate safety practices.

Commissioner LeMarr moved to approve the request for renewal of self-insurance authority for Marriott International, Inc. and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Phoenix Newspapers, Inc.: Chairman Schultz discussed Phoenix Newspaper's increasing experience modification rating.

Commissioner Orchard moved to approve the request for renewal of self-insurance authority for Phoenix Newspapers, contingent upon Phoenix Newspapers working with the ADOSH Consultation Division to improve the company's safety program. Commissioner LeMarr seconded the motion.

Chairman Schultz, Commissioner Orchard, Commissioner LeMarr, and Ms. Pastor discussed notifying Phoenix Newspapers of the condition on approval of self-insured authority. Ms. Pastor discussed recent changes in the company.

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 discussed a recent records requests from the Arizona Republic, recent media coverage relating to wage issues, and social media coverage relating to the Commission's involvement in ASU Safety Days. Chairman Schultz discussed the formation of a formal alliance with ASU's design program focused on making safety an integral part of the design process.

Mr. Charles updated the Commission on minimum wage, the Consumer Price Index, and Proposition 206 related to minimum wage. He noted strong interest from the media on wage issues.

Mr. Charles discussed media coverage regarding the Employee Rights Seminar, at which Jesse Atencio and Chuck Keller presented.

Mr. Charles discussed social media posts by the Arizona Chamber of Commerce and Industry and Axiom Public Affairs relating to the Commission's efforts.

Mr. Charles discussed Richard Smith's interest in the recent girder collapse, media requests relating to a recent fatality in Tucson, recent requests related to safety and education in school settings, and media coverage relating to active shooter training. Chairman Schultz noted that the Commission recently provided active shooter training.

Mr. Charles reported on plans to meet with legislative staff to discuss the Treatment Guidelines and proposed legislation regarding presumptions for firefighters and police officers. Chairman Schultz explained the purpose and history of the Treatment Guidelines and adoption of the Official Disability Guidelines (ODG). He noted that, effective October 1, 2016, ODG would apply to the management of chronic pain and the use of opioids in all stages of pain management. He discussed overuse of opioids in Arizona and efforts to address the epidemic.

Mr. Charles provided an update on the Commission's legislative proposals.

Stakeholder Presentation.

Mr. Ashley and Ms. Pace introduced the panel from the American Sub-Contractors Association of Arizona (ASA) – Ms. Floco, Mr. Petre, Mr. McCrery, and Mr. Tsonis.

Ms. Floco discussed ASA, its history in Arizona, and its purpose. She discussed ASA's relationship with ADOSH, participation in the new alliance program, and partnership with the Western OSHA Education Center at ASU. She discussed ASA's member demographics. Chairman Schultz commented on the importance of the new alliance program.

Ms. Pace discussed ASA's partnership with ADOSH and the Residential Construction Forum. Mr. McCrery introduced himself and discussed 3-G Construction. He discussed his working relationship with ADOSH and the three tiers of building a business: safety, quality, and production. He discussed the Residential Construction Forum and its impact on safety practices. He discussed involvement in the ASA of Arizona Member Partnership Program. He discussed challenges facing

the construction industry, including labor shortages, addressing companies who disregard safety, and employee misconduct.

Ms. Pace discussed the member demographics of ASA and efforts to reach employers and employees in various sub-contractor trades. Chairman Schultz discussed the importance of self-regulation and building a safety culture. He discussed the Chairman's roofers group and efforts to jointly develop a training and certification program for the roofing trade. Mr. Ashley announced the upcoming Commission meeting in Flagstaff and invited any ASA roofing members in Coconino County to participate in the roofers' group meeting on October 13.

Mr. Petre introduced himself, discussed Banker Insulation, and commented on the resources offered by ASA. Mr. Tsonis introduced himself, discussed Lovitt & Touche, and outlined his involvement in the Partners in Construction group of the ASA. He discussed the member benefits associated with ASA.

Ms. Pace discussed ASA efforts to raise the bar for workplace safety. Chairman Schultz and Ms. Pace commented on Mr. Tsonis' involvement with ASA and commended ASA on its inclusivity.

FOM Inspection Scope (Employer Knowledge) Discussion.

Mr. Warren provided a brief presentation regarding employer knowledge in the context of the inspection and citation process. He reviewed A.R.S. § 23-401(9) & (12) and discussed the concepts of "actual" and "constructive" knowledge. He explained that the term "employer" can include supervisory personnel. He explained how knowledge of the existence of a condition is different from knowledge that the condition constitutes a violation of an applicable standard. He discussed employer knowledge requirements in the context of citation severity. He discussed examples of actual and constructive knowledge. He reviewed a flowchart that ADOSH compliance officers use to evaluate and analyze employer knowledge.

Commissioner LeMarr inquired about ignorance as an employer defense. Mr. Warren explained that ignorance of the law is not generally a defense for an employer. He commented further on actual and constructive knowledge.

Informal Review of ADOSH's determination, pursuant to Arizona Administrative Code R20-5-621, regarding inspection E5149-1144149 conducted on April 12, 2016.

Mr. Warren discussed: (1) ADOSH's inspection (E5149-1144149); (2) Mr. Thurman's request that the Commission review ADOSH's determination; (3) Federal OSHA's review of the investigation (in response to a Complaint Against State Plan Administration ("CASPA")); and (4) ADOSH's re-inspection of the Newmark Grubb Frank Knight worksite (performed at the request of Federal OSHA). Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard commented on the materials they had reviewed, including the parties' position statements, the ADOSH investigation file, and correspondence regarding Federal OSHA's review of the investigation.

Commissioner LeMarr asked about the timing of the re-inspection and Mr. Warren responded to the question. Chairman Schultz asked about the circumstances and scope of the re-inspection. Mr. Rodriguez and Mr. Warren responded to the question.

Commissioner LeMarr praised ADOSH on the timing of the investigation. He commented on the frequency that ADOSH needs to obtain a warrant to conduct an inspection. He asked if there was

an agreement to limit the scope of the inspection in order to obviate the need for a warrant. Mr. Rodriguez responded to the question and explained that he was directed to conduct a standard inspection without any limitations.

Commissioner Orchard inquired about the number of ADOSH representatives that inspected the worksite. Mr. Warren responded to the question.

Chairman Schultz discussed the review process outlined in A.A.C. R20-5-619 & R20-5-621. He invited Mr. Thurman to address the Commission. Mr. Thurman discussed the circumstances of the investigation and his concerns about the inspection. He presented a binder of additional materials to the Commission. Chairman Schultz inquired about statements provided by Mr. Thurman's co-workers and Mr. Thurman responded. Mr. Thurman and Chairman Schultz discussed the timing of the issuance of the ADOSH decision. Chairman Schultz asked about the individuals involved in the inspection. Mr. Thurman responded to the questions. Chairman Schultz and Mr. Thurman discussed the scope of the Commission's review. Mr. Thurman discussed the CASPA submitted to Federal OSHA. Mr. Warren noted that Mr. Thurman had recorded Mr. Gast without his permission. Commissioner LeMarr asked about the allegation that an NLRB representative fell off a ladder. Mr. Thurman responded to the question. Chairman Schultz and Mr. Thurman discussed: (1) whether employees were required to enter into confined spaces; (2) whether he was aware of, and followed, confined space procedures; (3) whether employees were required to use ladders depicted in the photographs; (4) the scope of Mr. Thurman's employment; (5) a memorandum prepared by Mr. Thurman identifying hazards at the worksite; and (6) allegations that employees were denied paramedic coverage.

Chairman Schultz invited Mr. Egbert to address the Commission. Mr. Egbert indicated that he did not have anything to add beyond what was in his position paper.

Commissioner Orchard moved to affirm ADOSH's decision that no citation was warranted on investigation no. E5149-1144149 based on the following: (1) the Commission's review all positions statements submitted; (2) the re-inspection conducted by ADOSH; and (3) Federal OSHA's review of the inspection and its findings. Commissioner LeMarr second the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

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

AMAZON.COM.AZDC LLC
5050 W Mohave St
Phoenix, AZ 85043

Fatality/Accident
Years in Business: 6
Empl. Covered by inspection: 2,500

Site Location: 5050 W Mohave St
Phoenix, AZ 85043
Inspection No: S8089-1156402
Inspection Date: 06/21/2016

Mr. Warren summarized ADOSH's fatality investigation. He reported that the investigation did not identify any violations and ADOSH was not recommending any citations. Chairman Schultz and Mr. Warren discussed whether ADOSH could issue a citation at a later time after it received the Coroner's report. Commissioner LeMarr and Mr. Warren discussed why the deceased was on the catwalk at the time of the accident.

No action was taken by the Commission.

David Macias dba Big Daves Towing &
Roadside Service
127B W. 4th St.
Benson, AZ 85602

Fatality/Accident
Years in Business: 18
Empl. Covered by inspection: 6

Site Location: I-10 WB MP 296
Benson, AZ 85602
Inspection No: E5149-1155481
Inspection Date: 06/05/2016

SERIOUS – Citation 1 - Item 1 – Office: The employer failed to report the work-related fatality within 8 hours of its occurrence. (29 CFR 1904.39(a)(1)).

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

Mr. Warren discussed the ADOSH's fatality investigation, summarized the citation and proposed penalty as listed, and discussed the photographs. Commissioner Orchard, Mr. Warren, and Mr. Hall discussed the timing of the employer's fatality report. Chairman Schultz commented on the length of the deceased's employment and availability of safety equipment. Commissioner LeMarr and Mr. Hall discussed the reasons why the employer did not timely report the fatality.

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

Apex Refrigeration & Boiler, Co.
2801 W Willetta St
Phoenix, AZ 85009

Unprogrammed Related
Years in Business: 18
Empl. Covered by inspection: 3

Inspection No: U9805-1151586
Inspection Date: 04/04/2016
Site Location: 2228 N Black Canyon Hwy
Phoenix, AZ 85009

SERIOUS – Citation 1 - Item 1 – 2228 N. Black Canyon Hwy, Phoenix, AZ, Condenser #9: The employer did not have specific written procedural steps for isolating condenser #9 to control hazardous energy. (29 CFR 1910.147(c)(4)(ii)(B)).

Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 –

a) 2228 N. Black Canyon Hwy, Phoenix, AZ, Between Building D (Ammonia Pit) and Building E (Case Dock), Condenser #9: The employer failed to relieve or disconnect any stored or residual energy (pressure) from condenser # 9. (29 CFR 1910.147(d)(5)(i)).

b) 2228 N. Black Canyon Hwy, Phoenix, AZ, Between Building D (Ammonia Pit) and Building E (Case Dock), Condenser #9: The employer failed to verify the isolation of the north circuit on condenser # 9 to prevent pressure build up and release of ammonia. (29 CFR 1910.147(d)(6)).

Div. Proposal - \$3,000.00
TOTAL PENALTY - \$4,500.00

Formula Amt. - \$3,000.00
TOTAL FORMULA AMT. - \$4,500.00

Due to overlapping issues, discussion related to the Apex Refrigeration & Boiler citation and proposed penalties were conducted in conjunction with the Shamrock Foods Company citation and proposed penalty. *See* below.

Shamrock Foods Company dba Shamrock Farms
2228 N Black Canyon Hwy
Phoenix, AZ 85009

Referral
Years in Business: 94
Empl. Covered by inspection: 10

Site Location: 2228 N Black Canyon Hwy
Phoenix, AZ 85009

Inspection No: U9805-1142577

Inspection Date: 04/04/2016

SERIOUS – Citation 1 - Item 1 –

a) 2228 N. Black Canyon Hwy, Phoenix, AZ: Between Building D (Ammonia Pit) and Building E (Case Dock): The employer did not have procedures for emergency evacuation specifically for an ammonia release. The employer failed to "properly" train employees on their roles during a spill/release discovery and notification resulted in their exposure to ammonia and delay in alerting the emergency coordinator per their plan and a delay in incident assessment. (29 CFR 1910.38(c)(2)).

b) 2228 N. Black Canyon Hwy, Phoenix, AZ: Between Building D (Ammonia Pit) and Building E (Case Dock): Employer did not sufficiently train employees in methods and observation that may be used to detect the presence or release of anhydrous ammonia. (29 CFR 1910.1200(h)(3)(i)).

Div. Proposal - \$4,500.00
TOTAL PENALTY - \$4,500.00

Formula Amt. - \$4,500.00
TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citations and proposed penalties as listed (for both Apex Refrigeration and Shamrock Foods). Commissioner LeMarr, Ms. Maldonado, and Mr. Rasmussen discussed the relationship between Apex Refrigeration and Shamrock Foods and the scope of work performed by Apex Refrigeration. Commissioner LeMarr and Ms. Maldonado discussed who had responsibility for the lock-out/tag-out procedure.

Chairman Schultz and Mr. Warren discussed the proposed penalties (and discounts) for both Apex Refrigeration and Shamrock Foods. Commissioner Orchard and Ms. Maldonado discussed abatement. Chairman Schultz and Ms. Maldonado discussed the number of condensers at the worksite. Commissioner LeMarr and Ms. Maldonado discussed evidence of abatement.

Chairman Schultz, Commissioner LeMarr, and Mr. Rasmussen discussed the process for isolating a condenser, how the condenser system operates, the process for replacing a condenser, and the circumstances leading to the incident. Ms. Maldonado discussed her investigation and the circumstances leading to the incident. Mr. Warren discussed the scope of the citations for both Apex Refrigeration and Shamrock Foods. Commissioner Orchard, Ms. Maldonado, and Mr. Rasmussen discussed Apex Refrigeration's written standard operating procedures.

Chairman Schultz invited representatives of Shamrock Foods to address the Commission. Mr. Muller and Ms. Maldonado discussed the reasons for the Shamrock Foods' citations and the effectiveness of Shamrock Foods' prior hazardous communications plan. Mr. Warren and Chairman

Schultz commented on the scope of issues before the Commission. Mr. Muller discussed Shamrock Foods' investigation of the incident and the evacuation, the citations, and training that was scheduled (but not completed) at the time of the incident.

Mr. Warren explained the reasons for the serious citation. Mr. Sherman discussed the evacuation process, the procedure employed by the company, and Shamrock Foods' commitment prevent a repeat similar incident. He asked that the Commission reevaluate the severity of the citation. Mr. Muller reported on the condition of the injured employee. Chairman Schultz commented on the importance of immediate remediation. Ms. Maldonado further commented on the findings from her investigation.

Commissioner Orchard, Mr. Muller, and Ms. Maldonado discussed Shamrock Foods' methods of detecting the presence of hazardous chemicals and specific employees' response to the incident. Commissioner Orchard, Mr. Muller, Ms. Maldonado, and Mr. Warren discussed abatement. Mr. McCall and Mr. Rasmussen discussed Shamrock Foods' and Apex Refrigeration's participation in an ammonia council.

Mr. Rasmussen requested that the Commission consolidate citations against Apex Refrigeration and stated reasons for his request. He discussed Apex Refrigeration's new written safety program. Mr. Warren noted that two of the violations had been grouped.

Commissioner LeMarr moved to amend the Apex Refrigeration citation and proposed penalties, as follows: (1) Citation 1, Item 1 be changed from "Serious" to "Non-Serious" and the proposed penalty be reduced to \$100.00 (due to the uniqueness of the machinery involved and the company's safety procedures and training); (2) Citation 1, Item 2 remain "Serious" with a reduced penalty of \$2,000.00 (due to the nature of the equipment failure and efforts to employ a lock-out/tag-out procedure). Commissioner Orchard seconded. Commissioner Orchard emphasized the importance of written safety procedures for incidents involving equipment failure. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner LeMarr noted the complexity and difficulty of the investigation and thanked Ms. Maldonado for her efforts. He commented on Shamrock Foods' emergency evacuation procedure.

Commissioner LeMarr moved to amend the Shamrock Foods' citation and proposed penalty, as follows: Citation 1, Item 1 be changed from "Serious" to "Non-Serious" and the proposed penalty be reduced to \$2,500.00 (due to Shamrock Foods' evacuation plan and abatement). Commissioner Orchard seconded the motion. Vice Chair Hennelly indicated that he was not comfortable changing the citation to "Non-serious" and stated his reasons. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Vice Chair Hennelly opposed the motion. The motion passed.

Coffman Specialties, Inc.
9685 Via Excelencia, Ste 200
San Diego, CA 92126

Site Location: Bell Rd and Grand Ave
Surprise, AZ 85378
Inspection No: A3807-1154740
Inspection Date: 06/09/2016

Unprogrammed Related
Years in Business: 25
Empl. Covered by inspection: 43

SERIOUS – Citation 1 - Item 1 – Center span: The employer did not prevent overturning and collapse of the precast structural girders in that the girders were not adequately supported until the permanent connections were completed. (29 CFR 1926.704(a)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

The Coffman Specialties agenda item was postponed to a future Commission meeting.

Inland Oceans Operations, LLC (FN)
 dba Big Surf Waterpark
 1500 N McClintock Rd
 Tempe, AZ 85281

Complaint

Years in Business: 47

Empl. Covered by inspection: 2

Site Location: 1500 N McClintock Rd
 Tempe, AZ 85281

Inspection No: J7272-1151964

Inspection Date: 05/31/2016

SERIOUS – Citation 1 - Item 1 – Chlorine Storage Building: A Dayton Model 9K602D electric-powered overhead (underhung) chain hoist attached to a Chester Model PT Trolley, Serial Number PTG-0456, did not have an annual maintenance inspection performed within the past 12 months. (A.R.S. 23-403.A.).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 – Chlorine Storage Building: The employer did not complete a compilation of written process safety information, including information pertaining to the hazards of the highly hazardous 1-ton (2,000 pound) cylinder of Chlorine gas used to disinfect water at a large outdoor swimming pool, information pertaining to the technology of the chlorination process, and information pertaining to the equipment involved in the chlorination process before conducting the process hazard analysis. (29 CFR 1910.119(d)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 3 – Chlorine Room and First Aid Office: A written respiratory protection program was not established and implemented for maintenance staff employees using a variety of respirators (a North brand Model 6000, Full Face respirator equipped with chemical cartridge, a North brand 5-minute emergency escape breathing apparatus, and a MSA brand SCBA Ultra Airmask) that included procedures, medical surveillance, fit testing, procedures for proper use, procedures for cleaning, training, and a procedure for evaluating the effectiveness of the program. (29 CFR 1910.134(c)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 4 – Waterpark Facilities: The employer did not establish an energy control program for the location, or energy control procedures for specific equipment in order to prevent the unexpected release of potential energy that could cause injury to a maintenance employee using the equipment. (29 CFR 1910.147(c)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 5 – Facility: The employer did not develop or implement a written hazard communication program in accordance with 29 CFR 1910.1200(e)(1) that would describe or include at least the following:

- 1) Requirement for labeling of containers of hazardous chemicals;
- 2) Material safety data sheet availability;
- 3) Training of employees;
- 4) A complete list of hazardous chemicals known to be in the workplace;
- 5) Methods to inform employees of the hazards on non-routine tasks; and
- 6) Methods to inform other employer(s) of material safety data sheet availability; the labeling system; and any precautionary measures to protect employees.

Employees were exposed to hazardous chemicals, including but not limited to: Chlorine gas, Cyanuric Acid, Sodium Hydroxide, and Soda Ash. (29 CFR 1910.1200(e)(1)).

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| Div. Proposal - \$1,750.00 | Formula Amt. - \$1,750.00 |
| TOTAL PENALTY - \$8,750.00 | TOTAL FORMULA AMT. - \$8,750.00 |

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs. Christopher Brandon commented on his inspection. Commissioner Orchard and Mr. Brandon discussed the photograph references to the "Non-serious" citations. Commissioner Orchard and Mr. Brandon discussed abatement and Photograph 11.

Commissioner LeMarr and Mr. Brandon discussed the condition of the hoist. Chairman Schultz, Mr. Brandon, and Mr. Jackson discussed the threshold quantity value of 1,500 pounds and the applicable Process Safety Management standard. Chairman Schultz and Mr. Brandon further discussed the use of the hoist. Commissioner Orchard and Mr. Brandon discussed the basis of Citation 1, Item 1. Vice Chair Hennelly, Mr. Brandon, and Mr. Pent discussed Inland Oceans' written safety program and efforts to improve and implement new procedures and checklists. Mr. Pent discussed attempts to enforce the use of personal protective equipment and efforts to obtain adequate training.

Commissioner Orchard moved to amend the proposed penalties, as follows: (1) Citation 1, Item 1 be reduced to \$875.00; (2) Citation 1, Item 2 be reduced to \$875.00; (3) Citation 1, Item 3 be reduced to \$875.00; (4) Citation 1, Item 4 be reduced to \$875.00; and (5) Citation 1, Item 5 be reduced to \$875.00, for a total penalty of \$4,375.00. Commissioner Orchard commented on Inland Oceans' efforts and the availability of protective equipment and MDS binders. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Chairman Schultz discussed the ADOSH Consultation Division and encouraged Inland Oceans' to seek assistance from the Division. Mr. Pent committed to making safety improvements at the worksite. Mr. Ashley referred Inland Oceans to the Commission website for information about the ADOSH consultation program.

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| Jet Pipe Industries Co. 21605 N Central Ave <u>Phoenix, AZ 85024</u> | Referral Years in Business: 15 Empl. Covered by inspection: 19 |
| Site Location: 21605 N Central Ave Phoenix, AZ 85024 | |
| Inspection No: H0333-1152836 | |
| Inspection Date: 06/07/2016 | |

SERIOUS – Citation 1 - Item 1 – Outside Shop: One employee was injured while operating a Hyd-Mech V 18 Vertical Band Saw machine (model number V 18 serial number J0305136) without special

hand tools to prevent the operator from placing hands in the danger zone. (29 CFR 1910.212(a)(3)(iii)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

NON-SERIOUS – Citation 2 - Item 1 – 21605 N Central Ave, Phoenix, AZ, 85024: The employer did not report the in-patient hospitalization of an employee, to ADOSH within 24hrs of the injury and reported the injury two days later. (29 CFR 1904.39(a)(2)).

Div. Proposal - \$300.00

Formula Amt. - \$300.00

TOTAL PENALTY - \$5,300.00

TOTAL FORMULA AMT. - \$5,300.00

Mr. Warren summarized the citations and proposed penalties as listed and reviewed the photographs. Chairman Schultz commended ADOSH on the photographs. Commissioner LeMarr commented on the rash of investigations involving machinery that is not properly guarded. Mr. Warren noted the new OSHA record keeping requirement as a reason for the increase in reported injuries.

Commissioner Orchard, Mr. Huckfeldt, and Mr. Warren discussed abatement. Commissioner LeMarr and Mr. Huckfeldt discussed the manufacturer specifications for the machine.

Commissioner Orchard moved amend the citation and proposed penalties as follows: delete Citation 2, Item 1 (due to the Memorial Day Holiday), for a total penalty of \$5,000.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

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.

Mr. Ashley updated the Commission on the Arizona Management System and the Governor's Goal Councils. He discussed Goal Council 4's emphasis on reducing recidivism and Goal Council 3's emphasis on reducing drug and alcohol abuse, including prescription drugs. He emphasized the dangers of opioid abuse and discussed the Commission's new Treatment Guidelines as a mechanism for reducing opioid and prescription drug abuse. Chairman Schultz, Commissioner LeMarr and Mr. Ashley discussed the State's efforts to reduce opioid and prescription drug abuse, as well as efforts of special interest groups who oppose the State's efforts. Vice Chair Hennelly mentioned his participation in the State Bar for Workers' Compensation Seminar and the IAIABC Conference and discussed the strong emphasis at the conferences on the Treatment Guidelines. Mr. Ashley highlighted the importance of combating misinformation regarding the Treatment Guidelines and noted Governor Ducey's interest in addressing the problem of opioid abuse in Arizona.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commission on the upcoming trip to Flagstaff.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Orchard 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 4:12 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary