

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at the Hyatt, 122 North 2nd Street,
Second Floor Conference Room
Phoenix, Arizona
Thursday, August 12, 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 Data Analyst
	William Warren	ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Jackson Moll with Home Builders Association of Central Arizona; Vince Cosends with Bold Framing; Louis Amaral; and Jason Weber with Snell & Wilmer.

Approval of Minutes of July 21, 2016 Regular Meeting and Executive Session, and the Minutes from July 28, 2016 Regular Meeting.

Commissioner LeMarr moved to approve the Minutes of the July 21, 2016 Regular Session and Executive Session meetings and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. Commissioner Orchard abstained. The motion passed.

Commissioner Orchard moved to approve the Minutes of the July 28, 2016 Regular Session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

Mr. Porter noted that the date in the caption of the Minutes of the July 21, 2016 Executive Session meetings was incorrect and should be updated to July 21, 2016, as indicated in the first paragraph. Chairman Schultz stated that the caption would be corrected to reflect the proper date.

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 Proposed Civil Penalties Against Uninsured Employers.

1. 2C15/16-0148 Agencia Llantera LLC, dba Nueva Agencia Llantera, aka Agencia Llantera
2. 2C14/15-1395 Tree of Life Community Church of Arizona, Inc.

Commissioner LeMarr moved to approve the items on the Consent Agenda and 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.

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 recent media coverage related to Arizona's Voluntary Protection Program (VPP) and Quemetco Metals Limited's recent VPP certification. He noted the upcoming VPP certifications for McCarthy Building Companies and Mesquite Power.

Mr. Charles reported on recent inquiries regarding amusement ride safety.

Mr. Charles discussed recent media coverage related to the Yuma prison case involving Jacob Harvey and the Magistrate Judge's recent recommendation in the matter.

Mr. Charles reported on media inquiries from Tucson related to ADOSH's processes – from inspection to citation.

Mr. Charles discussed the Commission's new approach to using Twitter to interact directly with media.

Mr. Charles reported on the legislative proposal process.

Discussion and Action and Potential Resolution regarding Proposed Rulemaking to A.A.C. R20-5-629 adopting Federal Occupational Safety and Health standards in Recordkeeping Improving Tracking of Workplace Injuries and Illnesses.

Mr. Warren summarized the proposed rulemaking related to A.A.C. R20-5-629 (to incorporate by reference the updated federal standards in OSHA's final rule titled "Improve Tracking of Workplace Injuries and Illnesses"). He recommended that the Commission direct ADOSH to initiate the rulemaking process.

Commissioner Orchard requested clarification regarding the language of the proposed amendments and Mr. Warren responded. Chairman Schultz asked for clarification about where injury information would be posted and about the scope of posted injury information. Mr. Warren answered the questions. Chairman Schultz requested clarification about the requirement that employers inform employees of their right to report work related injuries and illnesses. Mr. Warren discussed current whistleblower standards and posting requirements.

Commissioner Orchard asked whether ADOSH needed to adopt the updated OSHA standard by reference or whether it could incorporate the language of the new standard within its rules. Mr. Warren discussed Arizona's history of adopting OSHA standards by reference and discussed the Commission's ability to adopt by reference or develop its own standards.

Commissioner Orchard moved to proceed with the proposed rulemaking to A.A.C. R20-5-620 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.

Discussion and Action and Potential Resolution regarding Proposed Rulemaking to A.A.C. R20-5-601 and A.A.C. R20-5-602 to adopt Federal Occupational Safety and Health standards updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection.

Mr. Warren summarized the proposed rulemaking related to A.A.C. R20-5-601 and R20-5-602 (to incorporate by reference the updated federal standards in OSHA's final rule titled "Updating OSHA Standards Based on National Consensus Standards Eye and Face Protection"). He recommended that the Commission direct ADOSH to initiate the rulemaking process.

Commissioner LeMarr asked whether the updated standard pertains to respiratory protection worn on the face. Mr. Warren responded to the question. Commissioner Orchard asked whether the updated standard would require employers to buy new equipment. Mr. Warren explained that the updated standard incorporates the latest ANSI/ISEA Z-84.1-2010 standard, but that the rule would permit employers to use eye and face protection compliant with earlier versions of the ANSI/ISEA standard. Chairman Schultz noted that the rule change could potentially benefit employers.

Vice Chair Hennelly moved to proceed with the proposed rulemaking to A.A.C. R20-5-601 and R20-5-602 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.

Discussion and Action and Potential Resolution regarding Proposed Rulemaking to A.A.C. R20-5-601 and A.A.C. R20-5-602 to adopt Federal Occupational Safety and Health standards updating OSHA Standards for Occupational Exposure to Respirable Crystalline Silica.

Mr. Warren summarized the proposed rulemaking related to A.A.C. R20-5-601 and R20-5-602 (to incorporate by reference the updated federal standards in OSHA's final rule titled "Occupational Exposure to Respirable Crystalline Silica"). He recommended that the Commission direct ADOSH to initiate the rulemaking process.

Commissioner LeMarr discussed his concerns with the proposed rulemaking. He discussed his background in the construction industry and his participation in a silica-related small-business/OSHA advisory committee in 1996. He discussed the lengthiness of the rulemaking process, his concerns with identifying a proper solution, and the difficulty in even identifying a problem. He discussed statistics, concluding that the updated silica standard is a solution looking for a problem. He discussed the presence of silica in the everyday world around us and the impact that the updated standard will have on the construction industry, in particular. He noted that the updated standard will cost jobs, negatively impact employers, and increase housing costs. He stated that prior silica exposure levels and requirements, if complied with, are effective. He concluded by noting his commitment to the health, safety, and welfare of Arizona workers, but reiterated his serious concerns with the updated standard.

Chairman Schultz invited Mr. Moll to address the Commission. Mr. Moll recognized the Commission's obligation to adopt the updated standard or a standard that is "as effective as" the

updated standard. He stated that the updated standard will damage Arizona's construction industry and Arizona's economy and would do very little to further enhance worker safety. He noted the updated standard will be unfair for employers because it is not clear, concise, or understandable to those in the regulated community. He discussed pending litigation regarding the updated standards. He discussed the economic burden of the updated standard, noting that the construction industry has estimated the cost to be \$5 billion per year. He commented on existing confusion and problems related to methods of compliance with the updated standard. He noted that the prior standard and exposure limits were working, pointing out that, between 1968 and 2007, fatalities from silica were reduced 93%. He stated that the costs and burdens associated with the updated standard appear to be unnecessary. He emphasized the Home Builders Association of Central Arizona's goal to create safe job sites, but stated that the Association's members need to be able to afford to do their jobs and be able to understand the rules that govern their conduct.

Mr. Warren explained the Commission's obligation to adopt standards "as effective as" standards promulgated by OSHA and the potential consequences of not adopting the updated standard. He discussed the pending litigation regarding the updated standard. Mr. Moll commented on the Commission's limited discretion in adopting the updated silica standard and explained his purpose in addressing the Commission. He expressed the Home Builders Association's support of Arizona's State Plan. Chairman Schultz asked for an update on the status of the pending litigation. Mr. Moll responded to the question and described the four issues involved in the case. Commissioner LeMarr discussed the pending lawsuit and asked whether the Home Builders Association will join in the litigation. Mr. Moll responded to the question. Mr. Warren commented on collaboration between Mr. Moll and ADOSH's consultation group on the confined space in construction industry standard and noted that he expects the same type of collaboration to occur in the context of the updated silica standard.

Commissioner Orchard asked Mr. Moll if he had an alternative proposal that would allow the Commission to advance a standard that is at least as effective as the OSHA standard. Mr. Moll noted that he does not have a solution for Arizona, due to the requirements of federal law. He noted that solutions would need to be pursued at the federal level. Mr. Warren discussed the process necessary to develop an alternative approach to the silica issue and noted that the components of any alternative approach would need to closely track the OSHA standard. He mentioned that federal standards control in Arizona on federal and tribal land and explained the benefits of adopting the same federal standards in Arizona.

Mr. Moll commented on the costs associated with the updated standard outside of any costs associated with the decreased permissible exposure limit, including costs associated with mandatory medical evaluations and maintenance of medical records. He noted that Arizona could take steps to somewhat mitigate the burden of the updated standard by identifying engineering controls for constructions tasks not identified in Table 1 of the federal standard.

Chairman Schultz noted that, after the adoption of the new standard, the Commission will create another workgroup, similar to the Chairman's Roofer Group, to work with Stakeholders to address issues pertaining to the updated standard.

Commissioner LeMarr commented on the high costs associated with the updated standard, including costs associated with decreased worker productivity. He reiterated that he does not believe a problem exists today that justifies the updated standard.

Vice Chair Hennelly asked if the Commission had obtained permission from the Governor's office to engage in rulemaking. Mr. Warren responded to the question. Vice Chair Hennelly asked about industry opposition and comments during OSHA's rulemaking process. Mr. Warren responded to the question and commented on OSHA's rulemaking process. Vice Chair Hennelly expressed concern with the limited discretion of the Commission if it wanted to retain the State Plan. He noted that the Commission faced a Hobson's choice.

Vice Chair Hennelly, Mr. Ashley, and Mr. Moll commented on the origins of the pending silica litigation. Mr. Ashley noted that the parties involved in the approval process for the rulemaking are cognizant of the detrimental impact associated with the updated standard, but also recognize the federal mandate to adopt a standard as effective as the OSHA standard. Commissioner Orchard inquired about the timing for adopting the updated standard. Mr. Warren responded to the question.

Chairman Schultz noted that the Commission was faced with a Hobson's choice, but recommended action that will maintain the greatest element of control over how the updated standard is implemented in Arizona.

Vice Chair Hennelly moved to proceed with the proposed rulemaking to A.A.C. R20-5-601 and R20-5-602. He referenced the federal mandate, but expressed reluctance and reservations with the updated standard. Commissioner Orchard seconded the motion and reiterated the Vice Chair Hennelly's sentiment. Vice Chair Hennelly thanked Commissioner LeMarr and Mr. Moll for their work and comments. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr voted against the motion. The motion passed.

Commissioner LeMarr reiterated his opposition to the updated standard and explained that he does not believe in passing bad law. He indicated he was satisfied that the Commission had chosen in its majority to proceed with the rulemaking. Chairman Schultz invited Commissioner LeMarr to join him and any other Commissioner as they establish an industry working group on the silica standard.

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

Bold Framing, Inc.
5128 E Ingram St
Mesa, AZ 85205

Planned
Years in Business: 22
Empl. Covered by inspection: 9

Site Location: 4075 S Arizona Ave
Mesa, AZ 85205
Inspection No: S8089-1137013
Inspection Date: 03/31/2016

REPEAT-SERIOUS – Citation 1 - Item 1 – Roof: Four employees were working on the roof of a building where the guardrail installation had not been completed, and the employees were not protected by use of a guardrail system, safety net system, or personal fall arrest system to preclude an approximate 15 foot 3 inch fall hazard. (29 CFR 1926.501(b)(1)).

Bold Framing Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(1), which was contained in OSHA inspection

number 1042711, citation number 1, item number 1 and was affirmed as a final order on 6/23/2015, with respect to a workplace located at 2469 E Florence Blvd Casa Grande, AZ 85122.

Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for clarification regarding the circumstances of the violation. Mr. Warren answered the question and reviewed the photographs.

Chairman Schultz invited Mr. Cosends to address the Commission. Mr. Cosends discussed the timeline involving a prior violation and inquired about the reasons for a repeat violation. Mr. Warren explained the timeline and answer the question.

Commissioner LeMarr asked Mr. Cosends about the company's fall protection program. Mr. Cosends responded to the question. Mr. Warren clarified that the company was not cited for an inadequate fall protection program. He discussed the categorization of the citation as a higher/lesser and the calculation of the proposed penalty. Commissioner LeMarr thanked Mr. Cosends for abating the hazard promptly. Mr. Warren commented that Bold Construction had cooperated with the inspection.

Commissioner Orchard asked for clarification regarding the area of the roof with inadequate guarding. Mr. Cosends explained the circumstances leading to the violation, training provided to the employees, and disciplinary actions taken by the company. Commissioner Orchard commented on the company's training program.

Commissioner LeMarr moved to amend the citation and proposed penalty, as follows: Item 1 be reclassified as Non-Serious and the proposed penalty be reduced to \$1,000.00. Commissioner LeMarr stated that he thought Bold Framing had a sincere desire to provide a safe work environment and that the violation was the result of a momentary lapse. Vice Chair Hennelly seconded the motion. Chairman Schultz asked Mr. Cosends if there was anyone on the job site that he would view as management who had knowledge of the hazard. Mr. Cosends responded that a foreman had knowledge of the condition. Mr. Warren commented on the duration of time that the hazard existed. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

City of Holbrook, Parks and Cemetery Department
465 1st Ave
Holbrook, AZ 86025

Site Location: 626 Hunt Park Rd
Holbrook, AZ 86025
Inspection No: S8089-1142203
Inspection Date: 04/21/2016

Complaint
Years in Business: 135
Empl. Covered by inspection: 4

SERIOUS – Citation 1 - Item 1 – Dividing wall at new racquetball courts: One employee working on a scaffold 5 feet wide, 10 feet long and 16 feet 4 inches high, was not protected from falling 16 feet 4 inches to the surface below by guardrails or other fall protection devices to prevent a fall. (29 CFR 1926.451(g)(1)).

Div. Proposal - \$1,500.00	Formula Amt. - \$1,500.00
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c) Star 5 Machine: Employees were exposed to accidental contact with moving chains and sprockets as the guard to enclose the parts was not affixed to the machine. (29 CFR 1910.219(f)(3)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
TOTAL PENALTY - \$4,500.00	TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs. Commissioner Orchard inquired about abatement. Mr. Warren responded to the question. Commissioner LeMarr commented that the company probably did not raise the entire conveyor belt. Mr. Warren stated that he understood the employer would be developing guarding for the rolling parts of the conveyor belt.

Commissioner Orchard noted the presence of many guarding hazards, but stated she was willing to consider a small reduction due to abatement. Mr. Warren described the worksite environment.

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

ZyTech Building Systems (USA) L.P.
8205 N 67th Ave
Glendale, AZ 85302

Referral
Years in Business: 3
Empl. Covered by inspection: 38

Site Location: 8205 N 67th Ave
Glendale, AZ 85302
Inspection No: D4452-1133434
Inspection Date: 03/18/2016

SERIOUS – Citation 1 - Item 1 – Truss shop: One MiTek Finish Roller, model number unknown, serial number unknown, was not guarded to prevent employees from entering an inflowing material conveyance area with automated mechanical rollers. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
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SERIOUS – Citation 1 - Item 2 –

a) One MiTek Finish Roller, model number unknown, serial number unknown, was not turned off or shut down using established procedures during servicing or maintenance. (29 CFR 1910.147(d)(2)).

b) Truss shop: One MiTek Finish Roller, model number unknown, serial number unknown, did not have lockout or tagout devices affixed during servicing or maintenance. (29 CFR 1910.147(d)(4)(i)).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
TOTAL PENALTY - \$6,250.00	TOTAL FORMULA AMT. - \$6,250.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs. Commissioner LeMarr inquired about injury history at the facility. Mr. Warren responded to the question and discussed the company's OSHA 300 log.

Commissioner Orchard asked for clarification on the adjustment factors. Mr. Warren discussed the Field Operations Manual and the adjustment factors. Commissioner Orchard complemented ADOSH on the quality of the investigation photographs.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented. 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 reported on the Commission's collaboration with the Government Transformation Office regarding the Arizona Management System. He reported on the Commission's efforts to implement the Arizona Management System and refine the Commission's Scorecard metrics. Chairman Schultz commented on the Commission's efforts and use of huddle boards.

Mr. Ashley provided an update on the website and fillable forms project.

Commissioner Orchard commended Commission employees and leadership on their efforts.

Chairman Schultz and Mr. Ashley commented on the Claims Seminar and complimented those involved in its planning. Mr. Ashley noted that the Claims Seminar had become a tradition for many attendees.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced stakeholder presentations that have been scheduled for future meetings.

Mr. Ashley discussed a planned meeting with Ernie Scherb – who was the manager of the Administrative Division 30 years ago.

Ms. Dimas confirmed meeting dates through October 2016.

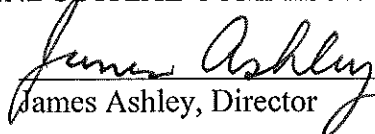
Mr. Warren announced that ADOSH Consultation will be holding a Safety Summit in Phoenix on November 2-3.

Public Comment.

There was no public comment. Commissioner LeMarr moved to adjourn and Vice Chair Hennelly 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 2:41 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:

Kara Dimas

Kara Dimas, Commission Secretary