

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, March 25, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman (video)
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner
	Laura McGrory	Director
	Valli Goss	Assistant Chief Counsel
	William Warren	ADOSH Director
	Wendi Frasier	Compliance Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:01 p.m. noting a quorum present. Vice Chair Susan Strickler was excused. Also in attendance were Scot Butler, the Commission's lobbyist, Katherine Callaway from the City of Scottsdale, Ruby Williams, Frances Bracamonte, Allie Mathews and Maria Robinson from the City of Tucson, and Jason Weber of Snell & Wilmer.

Approval of Minutes of March 19, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes of the March 19, 2015 Regular Session meeting on motion of Commissioner Sanders, second of Commissioner Hennelly.

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. 2C14/15-0142 AZ Perfect Care, LLC, dba Rachel's Assisted Living Home Care
2. 2C14/15-0366 Camel Towing, LLC
3. 2C14/15-1805 Christopher McCurdy & Brandy McCurdy, h/w, dba Scottsdale Muffler & Automotive
4. 2C14/15-1884 Dr. Daniel H. Yohannes, DDS, PC, dba Canyon Hills Family Dentistry
5. 2C14/15-1253 Kerley Trading Post, Inc. dba Van's Trading Co.

6. 2C13/14-1885 PNL Agency, LLC, dba Credit Recovery Group
7. 2C13/14-1860 Sierra Construction Management & Development, LLC
8. 2C13/14-1924 Sharp Western Development, L.L.C.
9. 2C13/14-0999 Terrace Event Rental, LLC
10. 2C14/15-1642 Tucson Seat Cover Co.

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

1. City of Peoria
2. City of Phoenix
3. City of Scottsdale
4. City of Tempe
5. City of Tucson
6. Walgreen Co.

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the Consent Agenda on motion of Commissioner Hennelly, second of Commissioner Sanders.

Discussion and/or Action regarding Legislation.

Scot Butler summarized recent activity at the Legislature and commented on some bills of interest to the Commission, including HBs 2213, 2297, 2331, 2335, 2346, and 2438, and SB 1290. He added there was a new striker amendment, HB 2439, regarding the bad faith issues. Mr. Butler noted the bill passed the Senate Appropriations Committee, and explained how the bill as written adversely impacts the Commission, including its ability to initiate pattern and practice or bad faith investigations regarding denied claims. He noted that staff has drafted proposed amendments to address these concerns. Mr. Butler recommended the Commission oppose the bill as written and take a neutral position if the bill is amended to language drafted by staff. Mr. Butler responded to questions. After further discussion, Chairman Parker moved the Commission oppose the bill as it passed the Senate Appropriations Committee, but take a neutral position if the bill is amended as discussed. Commissioner Sanders seconded the motion and the Commission unanimously approved the motion.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Ms. McGrory stated there are two matters pending and will probably continue to be pending until the Legislative Session is over.

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

99 Cents Only Stores LLC  
 5010 W Indian School Rd  
 Phoenix, AZ 85031

Unprogrammed Related  
 Years in Business: 42+  
 Empl. covered by inspection: 29

Site Location: 5010 W Indian School Rd  
 Phoenix, AZ 85031  
 Inspection No: F3189-1040749  
 Inspection Date: 2/18/2015

SERIOUS – Citation 1 - Item 1 – Warehouse: The exit access was not 28 inches wide in several areas of the warehouse where employees and management walkthrough daily to perform their daily job duties. (29 CFR 1910.36(g)(2)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 2 – Warehouse: Employer did not train two employees in the safe operation of a Yale Motorized Lift Truck Forklift model number MPB040-EN24T2748, serial number B827N58720M. (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

NON-SERIOUS – Citation 2 - Item 1 – The employer did not provide the OSHA 300 Logs and 300A Summaries for 2012 and 2013 and Logs Only For 2014, 2015 within four hours of the request. (29 CFR 1904.40(a)).

Div. Proposal - \$200.00

Formula Amt. - \$0

TOTAL PENALTY - \$3,800.00

TOTAL FORMULA AMT. - \$3,600.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Sanders asked for additional details regarding the cart shown in the photographs and Mr. Warren provided additional information. Chairman Parker asked about the weight and stacking of the roller carts. He suggested ADOSH follow up with this employer to ensure that it is complying with the standards. Mr. Warren stated that ADOSH will follow up with the employer. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,800.00 on motion of Commissioner Sanders, second of Commissioner Hennelly.

R. E. Darling Co., Inc.  
3749 N. Romero Road  
Tucson, AZ 85705

Planned

Years in Business:

67

Empl. covered by inspection:

105

Site Location: 3749 N. Romero Road  
Tucson, AZ 85705

Inspection No: T3633-1002053

Inspection Date: 10/20/2014

SERIOUS – Citation 1 - Item 1 – Building 3761: The rubber buffing room had accumulations of explosive rubber dust exceeding one-quarter inch on surfaces including lights, buffing equipment, ventilation ducts, and structural steel. (29 CFR 1910.22(a)(1)).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1 - Item 2 – Mill Room: Rubber Mill #277, unknown model and serial number, had two, ten-inch diameter holes in the guard around the rotating unions for the water pipes to the rollers, and did not adequately protect the operator from rotating parts. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

TOTAL PENALTY - \$2,750.00

TOTAL FORMULA AMT. - \$2,750.00

Mr. Warren summarized the citation and proposed penalty as listed. He noted that ADOSH sent some of the rubberized powder to a laboratory in Salt Lake City and the laboratory determined the powder was explosive material. Chairman Parker commented on the good faith reduction and the appearance of the facility. Mr. Warren responded to the comment and

provided some more details regarding what the Compliance Officer noticed at the facility. Chairman Parker commended ADOSH for having the rubber dust analyzed and asked about employer knowledge. Mr. Warren responded to the question. Chairman Parker commented on the employer's program, the immediate abatement of some items, and suggested the possibility of reclassifying Citation 1, Item 1 as a non-serious citation.

Commissioner Sanders asked for more details about the mounting holes, asked whether a cooling grate was bolted on to help cool the motor, and commented on the pin shown in mounted photograph number 6. Mr. Warren responded to the questions.

Following discussion on whether Citation I, item 1, should be classified as a non-serious citation, Chairman Parker suggested that Citation 1, Item 1 be classified as a non-serious, with a reduced penalty. Ms. McGrory explained the criteria for classifying a citation as a serious or non-serious, noting that the hazard involved the exposure to explosive dust. Chairman Parker then suggested that Citation 1, item 1, be classified as a serious citation because of the explosive dust condition, but with a greater reduction in penalty than that proposed by staff. He explained his reasoning and also noted the difference between this situation and other situations involving the hazard of explosive dust.

Following further discussion, Chairman Parker moved to approve staff's recommendation with the amendment of Citation 1, Item 1 to include a 35% good faith reduction for a total penalty of \$2,250.00 for both Citation 1, items 1 and 2. Commissioner Hennelly seconded the motion. The Commission unanimously approved the motion.

Discussion and Action regarding Resolution Honoring Fallen Arizona Employees.

Ms. McGrory stated that April 28, 2015 is the National Workers' Memorial Day. She presented the Commissioners with a draft Resolution for their consideration, which recognizes this Day and honors fallen and injured Arizona Employees. Chairman Parker commented on Workers' Memorial Day and how this Day provides the Commission with the opportunity to remember the impact of workplace injuries on employees and employers, and also serves as a reminder that we can always find ways to improve safety and rehabilitation of injured workers. The Commission unanimously adopted the Resolution on motion of Commissioner Sanders, second of Commissioner Hennelly.

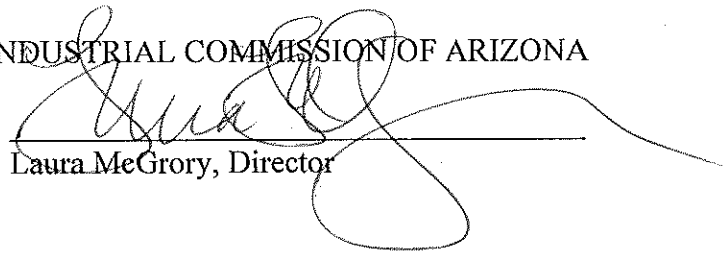
Announcements, Scheduling of Future Meetings and Retirement Resolutions.

The Commission reviewed the meeting schedule and there were no changes.

There being no further business to come before the Commission and no announcements, future scheduling of meetings, or public comment, the meeting was adjourned at 1:49 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
Laura McGrory, Director

ATTEST:

  
Kara Dimas, Commission Secretary