

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, February 11, 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
	Andrew Wade	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Larry Gast	Assistant ADOSH Director
	Billie Gingrass	Compliance Officer
	Valli Goss	Legal
	Rebecca Schaar	Legal
	Yvonne Borunda	Legal
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Lydia Terrazas, Commission Intern, and Jason Weber of Snell & Wilmer.

Approval of Minutes of February 4, 2016 Regular Meeting.

The Commission unanimously approved the Regular Minutes of the February 4, 2016 meeting on motion of Commissioner LeMarr, second of Vice Chair 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. 2C14/15-2372 Tellez Restaurant Investments #6 L.L.C., dba Mariscos Vuelve A La Vida
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. City of Glendale

2. City of Mesa
3. City of Scottsdale
4. City of Tempe

Chairman Schultz 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 Vice Chair Hennelly, second of Commissioner LeMarr.

Discussion and/or Action regarding Legislation. This agenda item may include discussion and/or action regarding the Sunset Review of the Industrial Commission of Arizona, and related Boards, Committees or Councils.

Bob Charles provided an update regarding SB1500. He noted the Bill contains a provision to continue the Commission and the vote on the Bill in the Senate Commerce and Workforce Development Committee this week was 8 to 0 with 1 not voting due to a conflict of interest. He read the list of supporters that signed in to show support for the Bill. He commented on the process to address boiler safety standards, a certification process for inspections, and enforcement. Chairman Schultz commented on the showing of support, noting the difference between affirmative support for a bill and not opposing a bill.

Mr. Charles commented on a potential amendment to SB1500.

Commissioner LeMarr asked if there was any conversation with stakeholders about the provision that would require the Commission contract with the Office of Administrative Hearing (OAH) for the hearing process in ADOSH matters. Mr. Ashley and Mr. Charles responded to the question and commented on numerous scheduled meetings with stakeholders.

Mr. Charles summarized the anticipated process for SB1500 at the Legislature and commented on SB1420.

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 commented on the website improvement project, a media request related to SB1500, and some media requests for records related to ongoing inspections. Commissioner LeMarr asked about the public records requests and Mr. Charles responded to the question.

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

Taylor's Demolition and Recycling Corporation, Inc.  
 5901 E. Pima St  
 Tucson, AZ 85712

Fatality/Accident	
Years in Business:	25
Empl. Covered by inspection:	4

Site Location:	314 E. Grant Road Tucson, AZ 85705
Inspection No:	1090980
Inspection Date:	08/21/2015

SERIOUS – Citation 1 - Item 1 – a) Jobsite, 314 E. Grant Road, Tucson: Employees were not trained in the recognition and avoidance of unsafe conditions and the regulations applicable to demolition hazards resulting in the death of one employee and the serious injury of another employee. (29 CFR 1926.21(b)(2)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 2 – a) Jobsite, 314 E. Grant Road, Tucson: Three employees were working in an area where demolition was taking place where the center wall of the building had weakened and collapsed resulting in the death of one employee and the serious injury of another employee. (29 CFR 1926.859(a)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 3 – a) Jobsite, 314 E. Grant Road, Tucson: On-going inspections of the demolition project for hazards such as weakened walls or loosened materials were not conducted by a competent person resulting in the death of one employee and the serious injury of another employee. (29 CFR 1926.859(g)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$21,000.00

TOTAL FORMULA AMT. - \$21,000.00

Mr. Gast summarized ADOSH's investigation into a workplace fatality and explained his recommendation for citations. Commissioner LeMarr noted that there was no adjustment for size and Mr. Gast explained why there are no reductions when a violation causes or contributes to a death. Vice Chair Hennelly asked for additional details regarding the operator of the equipment and ownership of the corporation. He noted the scope of the employer's primary business and that the volatile conditions are within that scope. Chairman Schultz commented on the number of years the employer has been in business. Mr. Gast explained how the employer could have used a spotter. Commissioner LeMarr ask if the equipment operator knew that the back end of backhoe had hit the wall and Mr. Gast responded to the question. Commissioner Orchard asked about the prior history report and Mr. Gast responded to the question.

Vice Chair Hennelly moved to approve the citations and penalty as recommended and Commissioner Orchard seconded the motion. The Commission unanimously approved issuing the citation and assessed the penalty of \$21,000.00.

Corrections Corporation of America  
1100 N. Bowling Rd  
Florence, AZ 85232

Complaint  
Years in Business: 17  
Empl. Covered by inspection: 2

Site Location: 1100 N. Bowling Road  
Florence, AZ 85232  
Inspection No: 1095384  
Inspection Date: 09/28/2015

SERIOUS – Citation 1 - Item 1 – Control Bubble: Employees who remain to operate the pod's control panel for evacuation of the inmates do not have adequate procedures to evacuate in the event of emergency. (29 CFR 1910.38(c)(3)).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00



Commissioner Orchard asked how long the paint buckets were on the sides of the spray booth and Chairman Schultz noted that the paint had just been delivered. He commented on his initial favorable impression of the employer having a designated safety officer and how that impressed was tempered when he read the list of non-serious violations. He explained that the employer does have someone with the title of safety compliance officer, but it is obvious that the employer does not have a comprehensive safety program in place given how basic items such as MSDS labeling and respiratory protection programs are in a spray painting operation. He added that the employer is fairly new in business, has designated a safety compliance officer, and has some room for improvements in their processes.

Commissioner LeMarr moved to issue Item 1 as a serious with a \$1,000.00 penalty and classify Item 2 as a non-serious with a \$400.00 penalty, for a total penalty of \$1,400.00. Commissioner Orchard seconded the motion. The Commission unanimously approved issuing the citation and assessed a penalty of \$1,400.00.

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 presented an update regarding the Government Transformation Training held last week and stated it was a good full day workshop and will lead to good improvements.

Ms. Poppe summarized the Key Performance Indicators project and described efforts to develop a matrix for true performance measures for different agency functions. She described the process for better service and providing for break through opportunities. Chairman Schultz commented on the project and noted that it is not just about creating a matrix and will include exploring out of the box opportunities. Ms. Poppe provided an update on the claims system update and the Administrative Law Judge portal.

Commissioner LeMarr asked about the vendor selection process and Ms. Poppe explained the intent to retain a consultant with experience in working with other Industrial Boards and Commissions and she described some expectations for such a consultant. Chairman Schultz commented on the claims system update project and exploring breakthrough opportunities. He provided some sample concepts to keep in mind.

Chairman Schultz commented on discussions at the OSHSPA (Occupational Safety and Health State Plan Association) Conference about benchmarking and being able to use tools to most effectively direct the activities of the consultation and compliance programs and would like to make sure that they look for opportunities to produce the kind of information to help improve the efforts in the ADOSH programs.

Presentation and Discussion regarding the operations of the Industrial Commission's Legal Division.

Andrew Wade introduced his management team; Yvonne Borunda, Rebecca Schaar and Valli Goss. Mr. Wade reviewed the organization chart, described the units within Legal and reviewed the collections to date and the collections options available. Commissioner LeMarr asked if the collection amounts were the amount collected by Legal after ADOSH's collection efforts and Mr. Wade responded to the question. Mr. Wade reviewed some data related to the Legal Division's operations.

Chairman Schultz commented on collections performed by the Attorney General and Commissioner LeMarr asked for additional details. Ms. Schaar replied to the question and Mr. Wade explained how some money collected is destined for the state's general fund and others for the Special Fund.

Commissioner Orchard commented on the reported collections for February and Mr. Wade described the sources for some large amounts that were collected.

Chairman Schultz commented on trends and asked about referrals to outside counsel and Mr. Wade responded to the question. Vice Chair Hennelly and Mr. Wade commented on the Attorney General's outside counsel contract.

Chairman Schultz thanked Mr. Wade, Ms. Goss, Ms. Borunda, and Ms. Schaar for the presentation and that he appreciated all of their efforts.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on the Commission meeting scheduled for March 2 in Yuma. He mentioned that Governor Ducey was recently in Yuma and communicated the need and desire for state agencies reach out to communities around the state. Mr. Ashley stated it was great timing for the Commission to go to Yuma in March, Tucson in April and other places this summer. Mr. Ashley stated the Governor has issued an executive order continuing the rulemaking moratorium.

Mr. Ashley announced that Jenny Mandeville in ADOSH consultation received a distinction, the 2015 Howard Pyle Award from the Arizona Chapter of the National Safety Council. Mr. Warren added that this award is the most prestigious safety award in Arizona.

Mr. Warren commented on the OSHSPA Conference that was held here in Phoenix and the positive feedback received from the state plan partners. He noted that the Federal OSHA group extended a great deal of gratitude and appreciation as well. Chairman Schultz added that ADOSH did a terrific job in hosting the OSHSPA conference and doing so created an opportunity to showcase Arizona's programs, and the conference was a huge success. Mr. Ashley noted that the conference was Tweeted, Arizona was proud to host the OSHSPA conference, and the consultation program is one of the great features of the ADOSH program.

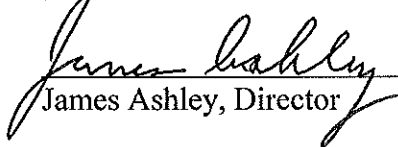
Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:36 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary