MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308

Phoenix, Arizona 85007

Thursday, February 25, 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 Melinda Poppe Chief Legal Counsel

Bob Charles

Deputy Director

Legislative Affairs Chief / Public Information Officer

Karen Axsom

Labor Director

Larry Gast

Assistant ADOSH Director

Billie Gingrass

Compliance Officer

Christopher Brandon

Compliance Officer

Steven Ripple

Discrimination Investigator Discrimination Investigator

Jesse Perez Kara Dimas

Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Ellen McKitterick of Mountain State's Employers Council representing Sun Valley Solar, Ray Byrne and Bill Cooper representing America Roofing LLC, Lydia Terrazas, Commission Intern, and Jason Weber of Snell & Wilmer

Approval of Minutes of February 11, 2016 Regular Meeting.

The Commission unanimously approved the Regular Minutes of the February 11, 2016 meeting on motion of Vice Chair Hennelly, second of Commissioner LeMarr.

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.

- Approval of Proposed Civil Penalties Against Uninsured Employers. a.
 - 2C15/16-1399 A.S.I. Med Trans, L.L.C. 1.
 - 2. 2C15/16-1247 Iron Horse Welding Work, L.L.C.

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 Commissioner LeMarr, second of Commissioner Orchard.

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.

Mr. Charles commented on SB 1500 and explained that the bill is scheduled to be heard in the Senate Committee of the Whole today, and he summarized recent adopted amendments and proposed amendments. He noted that the Boiler Advisory Board and Boiler Act Statutes have been extended to 2024 and the Industrial Commission will no longer be responsible for or conducting inspections. He added that the Commission will be responsible for assuring that private-sector boiler inspectors are properly certified and the bill has an effective date of July 1, 2017. Mr. Charles explained why there is a delayed effective date and noted that the Boiler Advisory Board will have five members, instead of twelve, with staggered terms.

Mr. Ashley added that the boiler-related provisions have moved forward with the involvement of the Boiler Advisory Board and the Chairman of the Boiler Advisory Board agrees with the provisions. Commissioner LeMarr asked about cost savings and Mr. Ashley replied that the cost savings to the Commission would be between \$200,000 to \$250,000 per year.

Mr. Charles commented on other bills of interest to the Commission and added there is a slim possibility that there will be further amendments to SB 1500 in the House

Chairman Schultz asked about the Bill that includes provisions related to Commissioner salary and appointment of the Director. Mr. Charles replied that the bill has passed the Senate and now moves to the House.

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 announced the scheduling of the Industrial Commission Day at the Capitol for March 14, 2016 and described efforts underway to ensure a successful event.

<u>Discussion & Action regarding Proposed Youth Employment Penalty.</u>

CL – 1516-0253: Material Delivery, Inc., dba MDI Rock – Karen Axsom summarized the Labor Department's investigation following the receipt of a work injury report stating that a 17 year old youth was injured while lifting a hydraulic tank using a power-driven hoist. The investigation produced evidence that the youth was working in a prohibited employment. She explained the findings regarding numerous violations of Arizona law regarding A.R.S. § 23-231(a)(7). Ms. Axsom recommended a penalty of \$600.00. Commissioner Orchard asked if the employer knew the worker was 17 and Ms. Axsom responded to the question. The Commission assessed the proposed penalty of \$600.00 on motion of Commissioner Orchard, second of Vice Chair Hennelly.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2865-19 - Sun Valley Solar Solutions, LLC

Larry Gast presented a summary of the complaint, the employer's response, and the results of the ADOSH investigation. Mr. Gast recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support pursuit.

Commissioner Orchard asked for clarification for the date the complaint was filed. Mr. Gast provided additional details regarding receipt of the complaint.

Chairman Schultz acknowledged that Ellen McKitterick had requested the opportunity to speak and invited her to address the Commission. Ms. McKitterick stated she was with the Mountain States Employers Council and represents Sun Valley Solar. She presented a brief summary of the employer's position.

Chairman Schultz asked if there were questions for Ms. McKitterick, Mr. Gast, or Mr. Ripple. There were no questions. Commissioner Orchard moved the Commission not pursue the complaint further and Commissioner LeMarr seconded the motion. The Commission unanimously voted in favor of the motion.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2865-19 - Sun Valley Solar Solutions, LLC

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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

Planned

Years in Business:

Empl. Covered by inspection:

16

America Roofing LLC

1005 S 30th Ave

Surprise, AZ 85374

Site Location: 26157 N 96th Dr

Peoria, AZ 85383

Inspection No:

A3807-1104816

Inspection Date:

11/10/2015

<u>REPEAT-SERIOUS</u> – Citation 1 - Item 1 – Lot 6: Four employees were installing roof materials on a low slope 4:12 pitch roof at a height of up to 18 feet 6 inches above lower levels and were not protected from falling by guardrail systems, safety nets or personal fall arrest systems. (29 CFR 1926.501(b)(10)).

America Roofing LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard ARS 23-492(05)(a) which was contained in OSHA inspection number 317820116, citation number 1, item number 1 and was affirmed as a final order on 2/03/2015, with respect to a workplace located at 19800 N 7th St, Phoenix, AZ 85024.

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

<u>SERIOUS</u> – Citation 2 - Item 1 – Lot 6: One employee did not receive fall protection retraining when the employee demonstrated inadequacies in knowledge and skill in that the employee believed it acceptable to work on a roof without fall protection if positioned 6 feet or more from the roof's edge. (29 CFR 1926.503(c)(3)).

Div. Proposal - \$1,250.00 TOTAL PENALTY - \$4,250.00 Formula Amt. - \$1,250.00 TOTAL FORMULA AMT. - \$4,250.00

Mr. Gast summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner LeMarr asked for additional details regarding the circumstances that prompted the inspection. Mr. Gast responded to the question. Commission LeMarr referred to the prior history report and commented on the inspection history. Mr. Gast explained how a worksite may be selected for an inspection. Commissioner Orchard asked why the results of the November inspection were not on the prior history list. Mr. Gast and Ms. Gingrass explained the citation related to that inspection was probably still in contest. Mr. Cooper stated the willful citation is being contested and there were also two other files that will be coming to the Commissioners and Mr. Byrne stated there was a pre-hearing scheduled for the next day.

Mr. Byrne described improvements he is implementing and summarized some of the costs incurred with training and inspections that the employer performs. He also mentioned challenges encountered in ensuring employee compliance. Chairman Schultz asked Mr. Byrne to elaborate on the root problem noting the piece work method of compensation and the disincentive that may provide to employees to comply with safety requirements. Mr. Byrne summarized financial incentives he has implemented to encourage compliance with the requirements. Chairman Schultz noted that the fall protection emphasis program addresses fall protection and does not single out the roofing trades. He added the emphasis program is a result of very significant injuries and fatalities from falls and the implementation and enforcement is extremely important.

Commissioner Orchard complemented Mr. Byrne for his efforts to improve compliance. She asked Mr. Gast if ADOSH consultation services are available to an employer with open cases. Mr. Gast summarized the role of the compliance officer in an open matter.

Vice Chair Hennelly followed up on the consultation question and noted that other trades such as framers and painters have the same fall protection issues. He commented on the shortage of labor in some skilled trades, noted that he appreciates the challenges in ensuring compliance, and added that there is still an issue with employees on the roof without fall protection. Vice Chair Hennelly asked for additional details concerning the employer's safety program and the presence of unidentified employees on the roof. Mr. Byrne provided additional details and explained that he was going to investigate the unidentified employees. Vice Chair Hennelly asked for more details regarding the circumstances related to ADOSH being notified about the employees working on the roof without fall protection and Ms. Gingrass explained how ADOSH was notified of workers exposed to a potential fall hazard on the subject worksite. Vice Chair Hennelly asked if there were signs on the worksite that referred to America Roofing performing work on the roof and Ms. Gingrass explained that she did not see any such sign.

Commissioner LeMarr asked about the employer's process in testing employees regarding their knowledge of the requirements and Mr. Byrne described the process.

Commissioner LeMarr moved to issue Citation 1, Item 1 as recommended with a \$1,500.00 penalty. He added that he does not support the recommendation for a citation related to training and his motion is only for Citation 1, Item 1. Commissioner Orchard seconded the motion. Chairman Schultz noted that Citation 1, Item 1 is classified as a repeat serious and the employer is subject to additional penalties in the future and encouraged the employer to apply his best efforts to fix the problems. The Commission unanimously approved the motion.

CDC Pools, Inc.

Complaint

2364 S. Airport Blvd Ste 1

Years in Business:

Empl. Covered by inspection:

19 40

Chandler, AZ 85286

2364 S. Airport Blvd Ste 1

Chandler, AZ 85286

Inspection No:

Site Location:

J7272-1102590

Inspection Date:

10/30/2015

SERIOUS – Citation 1 - Item 1 –

- a) 12337 W Sheridan St, Avondale, AZ 85392: A written respiratory protection program was not established and implemented for employees using a 3M 6000 series half facepiece respirator, equipped with an organic vapor/acid gas cartridge #60923 that included a medical evaluation, fit testing, procedures for proper use, procedures for cleaning, training and procedures for evaluating the effectiveness of the program. (29 CFR 1910.134(c)(1)).
- b) 12337 W Sheridan St, Avondale, AZ 85392: A medical evaluation was not provided to determine an employees' ability to use a 3M 6000 series half facepiece respirator equipped with cartridge 60923, while working with hazardous chemicals such as muriatic acid. (29 CFR 1910.134(e)(1)).
- c) 12337 W Sheridan St, Avondale, AZ 85392: Employees were not fit tested prior to required, initial use of a 3M 6000 series half facepiece respirator equipped with cartridge 60923 when working with hazardous chemicals such as muriatic acid. (29 CFR 1910.134(f)(2)).
- d) 12337 W Sheridan St, Avondale, AZ 85392: Employees who were required to wear a 3M 6000 series half facepiece respirator equipped with cartridge 60923 were not trained on respiratory protection elements outlined in section (i)-(vii).

(29 CFR 1910.134(k)(1)). Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

<u>SERIOUS</u> – Citation 1 - Item 2 – 12337 W Sheridan St, Avondale, AZ 85392: An emergency eyewash station providing 15 minutes of continuous water flow was not available to employees who work with corrosive chemicals such as Muriatic acid and Liquid Chlorinizor. (29 CFR 1910.151(c)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 -

a) Various jobsites: Employees performing surface-supplied air diving did not receive training necessary to safely perform underwater polishing of customers' pools. (29 CFR 1910.410(a)(1)).

- b) Various jobsites: Employees who performed surface-supplied air diving were not trained in cardiopulmonary resuscitation and first aid. (29 CFR 1910.410(a)(3)).
- c) Various jobsites: A safe practices manual was not developed and maintained for employees performing underwater, surface-supplied air diving when polishing customer's pools. (29 CFR 1910.420(a)).
- d) Various jobsites: A "The Air Line" air compressor model AL-E160, serial number 061500002249, was not tested for air purity every six months by means of samples taken at the connection to the distribution system. (29 CFR 1910.430(b)(4)).

 Div. Proposal \$1,250.00

 Formula Amt. \$1,250.00

SERIOUS - Citation 1 - Item 4 -

- a) 12337 W Sheridan St, Avondale, AZ 85392: A written hazard communication program had not been developed and implemented at the job site for employees who were potentially exposed in the workplace to hazardous chemicals, materials, and/or substances such as Muriatic acid and Liquid Chlorinizor. (29 CFR 1910.1200(e)(1)).
- b) 12337 W Sheridan St, Avondale, AZ 85392: A container with gasoline, which was used to power portable generators, was not labeled or marked with the identity of the chemical contained therein. (29 CFR 1910.1200(f)(5)(i)).
- c) 12337 W Sheridan St, Avondale, AZ 85392: The employer did not furnish information and training to employees who were exposed in the workplace to hazardous chemicals such as muriatic acid. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Mr. Gast summarized the citations and proposed penalties. Commissioner LeMarr noted the employer has been in business 19 years and asked about the inspection history. Mr. Brandon and Mr. Gast responded to the question. Commissioner Orchard asked about the scope of a prior inspection and Mr. Gast and Mr. Brandon responded to the question. Commissioner Orchard asked for more details concerning the emergency eyewash station standard and Mr. Brandon summarized the requirements. Commissioner LeMarr asked for additional details concerning the muriatic acid and Mr. Brandon described the use of the acid on the day of the inspection.

Commissioner Orchard asked for more information about the findings regarding a written hazard communication program and Mr. Brandon summarized the circumstances. Commissioner Orchard commented on not having a program versus having an insufficient program. Mr. Brandon and Mr. Gast summarized the requirements. Chairman Schultz added that the citation related to the hazard communication program was grouped with other items.

Commissioner LeMarr summarized his view of the circumstances including the presence of muriatic acid in a box in a truck, and asked for details regarding training. Mr. Brandon and Mr. Gast responded to the question. Vice Chair Hennelly asked if the citation related to the mere presence of muriatic acid or if the employees used the acid. Mr. Brandon described the use of the

acid. Commissioner Orchard commented on the grouping and common sense approach to the investigation.

Commissioner LeMarr moved to issue Citation 1, Item 1 with a \$1,250.00 penalty, not issue Citation 1, Item 2, issue Citation 1, Item 3 with a \$1,250.00 penalty, and issue Citation 1, Item 4 with a \$500.00 penalty. Commissioner Orchard seconded the motion. Chairman Schultz commented that the compliance officer performed an excellent inspection and given the number of employees and years the employer has been in business cuts both ways, noting that the employer has been doing this type of work long enough that the hazards encountered in the work should be well understood and it did not appear that the employees are informed as to the hazards that they are presented with in their daily work, or that appropriate training is being conducted. He explained that the motion is satisfactory but this employer needs a wake-up call and, with hope, will learn from this process and will do a better job protecting their employees. Vice Chair Hennelly concurred with Chairman Schultz. Commissioner LeMarr added that the \$3,000.00 penalty resulting from one small pool remodel is going to get the employer's attention. The Commission unanimously approved the motion with a total penalty of \$3,000.00.

Safeway Inc.

17049 W Bell Rd Surprise, AZ 85374

Complaint

Years in Business:

89

Empl. Covered by inspection:

102

Site Location:

10773 N Scottsdale Rd

Scottsdale, AZ 85284

Inspection No:

W0250-1104341

Inspection Date:

1/06/2015

<u>SERIOUS</u> – Citation 1 - Item 1 – Warehouse area, Southeast Corner: The mezzanine over the Fresh Produce Prep area was used for storage and the area was not marked with the floor's rated capacity. (29 CFR 1910.22(d)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Produce Area: An employee was lifted with a Yale model number MSW025SEN24TVO72 Serial number A895NO2007E Electric Pallet Jack and the employee was not protected from falling by standard railings or an equivalent means to prevent a fall to the floor below. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS - Citation 1 - Item 3 -

- a) Warehouse: The means of access to an exit route path between the warehouse manager's office and the stored goods area was partially blocked by boxes. (29 CFR 1910.37(a)(3)).
- b) Warehouse area: Employees needed to travel by a charging station for two electric pallet jacks to exit the building. (29 CFR 1910.37(a)(2)).

 Div. Proposal \$2,000.00

 Formula Amt. \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 4 – Produce Area: Certification of training was not provided for one employee who operated a Yale model #MSW025SEN24TVO72 Serial # A895NO2007E Electric Pallet Jack, to load and unload goods from delivery trucks, and stack commodities in the warehouse. (29 CFR 1910.178(l)(6)).

Div. Proposal - \$1,500.00 TOTAL PENALTY - \$7,500.00

Mr. Gast summarized the citations and proposed penalties. Commissioner LeMarr asked for details regarding the original complaint and Mr. Gast responded to the question. Commissioner Orchard commented on the employer's prompt abatement. Commissioner Orchard moved to issue the citations as recommended with each penalty at 50% of the recommended penalty amount for each Item. She explained that the reduced penalties results from the employer's prompt abatement efforts and the total penalty would be \$3,750.00. Commissioner LeMarr seconded the motion. The Commission unanimously approved issuing the citations and assessed the penalties with a total of \$3,750.00.

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.

Ms. Poppe presented an update of the draft Score Card and Performance Indicators and she summarized recent coordination with the Government Transformation Office. Ms. Poppe described the components of the Score Card and summarized Commission goals. She added that there are three metrics that apply to all state agencies and she described those metrics.

She commented on the Industrial Commission Day at the Capitol scheduled for March 14, 2016 from 11:00 a.m. to 12:00 p.m.

Ms. Poppe presented an update regarding the claims system, and noted that the scope of work has been provided to vendors.

Presentation and Discussion regarding the operations of the Industrial Commission's Management Information Systems (MIS) Division.

Chairman Schultz announced that this item will be rescheduled to a future meeting.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced that the Senate Committee of the Whole had just approved SB1500 and he explained that the bill will now move to the House and he summarized the process. He commented on an upcoming tour that is part of the Commission's corporate business outreach program.

Ms. Dimas presented the Commission with two retirement resolutions: Cathryne Happel with 14 years of State service and David Sosa with 31 years of State service.

The Commission reviewed the meeting schedule through May.

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 3:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary