# MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Thursday, April 7, 2016 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr. Scott P. LeMarr

Vice Chair Commissioner

Robin S. Orchard

Commissioner

James Ashley

Director

Andrew Wade

Chief Legal Counsel

Renee Pastor

Accounting

Janine Locke Steve Marks Special Services Manager Building Maintenance

Mary Bolitho Edward Holleman William Warren Special Services
Special Services

Phil Murphy Brian Downen ADOSH Director Compliance Officer Compliance Officer

JR Imes
Billie Gingrass

Compliance Officer Compliance Officer

Ana Maldonado Richard Jackson

Compliance Officer Compliance Officer

Kara Dimas

Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Kahtan Al-Hashimi and Steven Broscious from EMR Corporation, Jeremy Bethancourt from LaBlanc Building Company, and Jason Weber of Snell & Wilmer.

#### Approval of Minutes of March 31, 2016 Regular Meeting.

The Commission unanimously approved the Minutes of the March 31, 2016 Regular Session meeting on motion of Commissioner Orchard, 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. 2C13/14-1937 BG Automotive Group LLC, dba B and G Paint Body Shop
- 2. 2C14/15-1825 Corona Trucking LLC

- 3. 2C14/15-2270 Juan Colunga, a single man, dba Los Jilbertos
- 4. 2C15/16-1035 Motorworld LC
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  - 1. Glendale Elementary School District No. 40

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 Vice Chair Hennelly.

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. Ashley commented on activity at the Legislature regarding the budget and SB 1500.

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.

Chairman Schultz announced that this agenda item would be tabled until a future meeting.

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

Janine Locke summarized the Special Services Division's mission and introduced key personnel and described some of their primary functions; Mary Bolitho, Edward Holleman, and Steve Marks. Ms. Locke described some of the services the Division provides, including procurement, mail sorting and delivery, building and grounds maintenance, ordering and maintaining common supplies. Chairman Schultz commented on the volume of contracts and Ms. Locke commented on contracting for goods and services.

Chairman Schultz commented on the volume of mail and Mr. Holleman noted that the Commission receives approximately 10,000 pieces of mail each month. Chairman Schultz noted the Division's role in building and grounds maintenance and the Division's budget.

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

Able Engineering and Component Services, Inc.

Complaint

7706 E. Velocity Way

Years in Business:

Empl. Covered by inspection:

20 25

Mesa, AZ 85212

7706 E. Velocity Way

Mesa, AZ 85212

Inspection No:

Site Location:

U9805-1114348

Inspection Date:

12/28/2015

<u>SERIOUS</u> – Citation 1 - Item 1 – 7706 E. Velocity Way, Mesa, AZ: Blasting Department: Employees exposed to Methylene Chloride working in the Blast Room wore air purifying half mask and full facepiece negative pressure respirators equipped with 3M 6003 Organic Vapor cartridges which are not certified for use in areas containing Methylene Chloride. (29 CFR 1910.134(d)(1)(ii)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

<u>SERIOUS</u> – Citation 1 - Item 2 – 7706 E. Velocity Way, mesa, AZ: Blasting Department: Medical Surveillance was not provided for employees working in the Blast Room exposed to Methylene Chloride at or above the action level on 30 or more days per year. (29 CFR 1910.1052(j)(1)(i)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

<u>SERIOUS</u> – Citation 1 - Item 3 – 7706 E Velocity Way, Mesa, AZ: Plating Break/lunch room: The employer failed to keep lunchroom tables free from cadmium. (29 CFR 1910.1027(j)(4)(i)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$6,750.00

TOTAL FORMULA AMT. - \$6,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Chairman Schultz asked about methylene chloride and Ms. Maldonado summarized how that substance is used and some of the consequences of unprotected exposure. Commissioner LeMarr asked about the filters in the respirators supplied by the employer and Ms. Maldonado explained why the respirators were inadequate. Chairman Schultz commented on the permissible exposure limit and the risks associated with using methylene chloride. Commissioner LeMarr asked for additional details regarding the substance and Ms. Maldonado responded to the question. Chairman Schultz asked if the source of the cadmium had been identified and Ms. Maldonado responded to the question.

Commissioner LeMarr asked about medical surveillance and Mr. Warren summarized some key components and the purpose of medical surveillance. Ms. Maldonado commented on some of the findings from the inspection.

Commissioner Orchard commented on the employer's breakroom, and asked about the air monitoring report. Mr. Warren and Ms. Maldonado commented on the vendor that prepared the report and some of the findings. Commissioner Orchard asked if the vendor had any comment regarding the respirators. Ms. Maldonado described the limited scope of the report.

Commissioner LeMarr asked if the report identified high levels of methylene chloride and Ms. Maldonado responded to the question.

Commissioner Orchard commented on the employer's efforts to comply and Mr. Warren commented on the potential for employees to have a false sense of security when using an inadequate respirator. Chairman Schultz compared the use of the employer-provided respirators with supplied air to protect mucus membrane. Commissioner Orchard and Ms. Maldonado discussed the respirators, monitoring, and the exposure level.

Commissioner Orchard commented on cadmium and the permissible exposure level. She referred to the use of different units of expression and Mr. Jackson and Ms. Maldonado explained how the different expressions refer to the measure of a substance on a surface area. Commissioner Orchard and Commissioner LeMarr commented on the test sample results. Mr. Jackson and Ms. Maldonado commented on a wipe sample versus an air sample.

Commissioner LeMarr asked about the source of the cadmium and Mr. Warren responded to the question. Commissioner LeMarr asked the employer's plans to address the methylene chloride. Ms. Maldonado relayed what the employer had told her. Commissioner LeMarr asked whether the employer was addressing the methylene chloride exposures before the inspection. Ms. Maldonado responded to the question.

Commissioner LeMarr commented on a good faith adjustment. Commissioner Orchard commented on the employer retaining a private consultant and changing the air system. She moved to issue Citation 1, Item 1 with a \$1,000.00 penalty, Item 2 with a \$1,000.00 penalty, and Item 3 with a \$500.00 penalty. Commissioner LeMarr seconded the motion. Chairman Schultz noted that the employer retained a consultant to perform testing but did not seek any recommendation for improvements or any indication of the level of the hazard. He explained that these circumstances do not necessarily show an intent on identifying what is in the best interests of the employees. Vice Chair Hennelly added that a lot of time did go by while the employees were still exposed to the hazard and this weakens the conclusion that the employer was making diligent efforts toward addressing the problem. Commissioner Orchard asked for more details regarding the air monitoring reports. Commissioner LeMarr noted there were two reports. Commissioner Orchard asked if the vendor recommended a new ventilation system. Ms. Maldonado summarized the information presented in the reports. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Vice Chair Hennelly voted against the motion.

Planned

Years in Business:

Empl. Covered by inspection:

15

2

America Roofing LLC

1005 S 30<sup>th</sup> Ave Phoenix, AZ 85009

Site Location:

18413 W Roma Ave

Goodyear, AZ 85395

Inspection No:

W0250-1102438

Inspection Date: 10/29/2015

<u>WILLFUL-SERIOUS</u> — Citation 1 - Item 1 - 18413 W Roma Ave Goodyear, AZ: Two employees were installing tile roofing on a new one story residential home with a low sloped roof at an eve height above 13 feet and were not protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. (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 A.R.S. 23.0492(05)(A) which was contained in OSHA inspection number 317820116, citation number 01, item number 01 and was affirmed as a final order on 02/03/2015, with respect to a workplace located at 19800 N 7th St, Phoenix, AZ 85024.

Div. Proposal - \$44,000.00

Formula Amt. - \$44,000.00

TOTAL PENALTY - \$44,000.00 TOTAL FORMULA AMT. - \$44,000.00

Commissioner LeMarr asked whether there were other citations for America Roofing and commented on addressing all citations collectively. Mr. Warren responded to the question and summarized the citation and proposed penalty as listed. Commissioner LeMarr asked about the use of the word "planned" in describing the inspection and Mr. Imes explained how he and the compliance officer observed workers at heights without fall protection and why an inspection may be described as "program planned." Mr. Warren commented on the lack of prior knowledge of the

identity of the employer. Commissioner LeMarr asked if America Roofing had a representative present during the inspection and Mr. Imes replied that the employer arranged for a safety consultant to be present.

Commissioner LeMarr asked Mr. Wade about a prior citation and Mr. Wade noted the sixmonth statute of limitations and described additional information that staff could supply regarding prior and on-going inspections. Commissioner LeMarr commented that additional information would be helpful. Commissioner Orchard commented on the classification of the present citation in light of the employer's prior statements.

Commissioner LeMarr asked what the safety consultant said during the inspection. Mr. Imes summarized what the safety consultant, the supervisor and the employee said during the inspection. Vice Chair Hennelly asked if the safety consultant was aware of the employees' statements. Mr. Imes and Mr. Warren responded to the question. Commissioner Orchard asked if this was the employer that was incentivizing the employees to use fall protection. Mr. Warren commented on the employer's enforcement.

Commissioner LeMarr commented on the employer's prior statements and his attitude towards compliance. He asked about contested matters and settlement negotiations. Mr. Wade responded to the question. Commissioner LeMarr asked if the employer was aware of this citation. Mr. Warren responded to the question. Commissioner Orchard asked for clarification on the process related to contested citations and settlements. Mr. Warren responded to the question.

Chairman Schultz asked if there was a motion. Commissioner LeMarr noted the time constraints and explained how he would like to address pending citations collectively.

Commissioner Orchard asked for Chairman Schultz' thoughts. Chairman Schultz responded noting that he favored tabling this agenda item pending receipt of additional information. Hearing nothing further, Chairman Schultz stated that in the absence of a motion, this matter would be tabled.

Planned

Years in Business:

Emp. Covered by inspection:

17

5

BMB Arizona Steel Incorporated

dba Arizona Steel Construction and Repair

P.O. Box 784

Waddell, AZ 85355

1305 N 27th Ave Site Location:

Phoenix, AZ 85009

H9685-1104045 Inspection No:

Inspection Date: 11/05/2015

#### SERIOUS – Citation 1 - Item 1 –

- a) South Side of Building: Two employees climbed over the guardrails of a Skyjack Scissor Lift Model SJIII 4632, to gain access to a building's roof while exposed to a fall of 29 feet 6 inches during the transition. (29 CFR 1926.451(g)(1)(vii)).
- b) South Side of Building: A personnel platform attached to a JLG SkyTrak Telehandler, Model 10042, Serial Number 5805, and Identification Number SK050188, did not have guardrails installed along the entry point to the platform exposing two employees to a fall of 20 feet to the ground below. (29 CFR 1926.451(g)(4)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

#### SERIOUS - Citation 1 - Item 2 -

- a) South Side of building: The employer did not request the manufacturer's prior written approval to attach a custom fabricated personnel platform to the carriage of a JLG SkyTrak Telehandler, Model 10042, Serial Number 5805, and Identification Number SK050188 nor did the employer change the capacity, operation, and maintenance instruction plates, tags, or decals on the telehandler. (29 CFR 1926.602(c)(1)(ii)).
- b) South Side of Building: A JLG Skyjack Telehandler, Model 10042, Serial Number 5805, and Identification Number SK050188, was left unattended by the operator and the load, which consisted of a personnel platform with two employees working inside it, was left in the elevated position over 20 feet in the air and the telehandler's wheels were not blocked while it was parked on an incline to prevent movement. (29 CFR 1926.602(c)(1)(vi)). Div. Proposal \$1,000.00

  Formula Amt. \$1,000.00

<u>SERIOUS</u> – Citation 1 - Item 3 – East Side of Building: Two employees installing the gable on a steel building were not protected by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, or fall restraint systems while exposed to a fall of 29 feet 6 inches to the ground below. (29 CFR 1926.760(a)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

<u>SERIOUS</u> – Citation 1 - Item 4 – BMB Arizona Steel Incorporated: The employer did not provide a training program for two employees exposed to a fall hazard of 29 feet 6 inches to enable each employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.761(b)).

Div. Proposal - \$1,000.00 TOTAL PENALTY - \$4,000.00 Formula Amt. - \$1,000.00 TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Chairman Schultz commented about the excellent photographs and how the photographs clearly identify the hazards. Commissioner LeMarr referred to mounted photograph number 5 and the mounted photograph number 12 and asked if the employer abated on the day of the inspection. Mr. Downen explained what the photographs depicted.

Commissioner LeMarr moved to approve the citation and penalty as presented. Commissioner Orchard seconded the motion. The Commission unanimously approved issuing the citation with a total penalty of \$4,000.00.

Echo Mountain Realty, Inc. dba EMR Corporation

Referral

17431 N 25th Ave

Years in Business:

35

Phoenix, AZ 85023

17431 N 25th Ave

Empl. Covered by inspection:

n: 40

Site Location:

17-45111 25111110

Phoenix, AZ 85023

Inspection No:

H1793-1110107

Inspection Date:

12/07/2015

#### SERIOUS - Citation 1 - Item 1 -

a) Production Floor: One pedestal grinder Baldor brand, model number and serial number illegible was not guarded at the rotating spindle end nut. (29 CFR 1910.212(a)(1)).

b) Production Floor: One pedestal grinder Baldor brand, model number and serial number illegible was not anchored to prevent walking or moving. (29 CFR 1910.212(b)). Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00

#### SERIOUS - Citation 1 - Item 2 -

- a) Production Floor: One Alva Allen Industries BT 12 Series and serial number unknown, mechanical power press, pedal mechanism was not guarded to prevent the unintended operation of the machine. (29 CFR 1910.217(b)(4)(i)).
- b) Production Floor: One Alva Allen Industries BT 12 Series and serial number unknown, mechanical power press, was not provided with a nonslip actuation foot pedal. (29 CFR 1910.217(b)(4)(ii)).
- c) Production Floor: One Alva Allen Industries BT 12 Series and serial number unknown, mechanical power press, was not provided with point of operation guards. (29 CFR 1910.217(c)(1)(i)).

  Div. Proposal \$1,250.00 Formula Amt. \$1,250.00

### SERIOUS - Citation 1 - Item 3 -

- a) Production Floor: One Alva Allen Industries BT 12 Series and serial number unknown, mechanical power press, had exposed pulleys that were three to four feet above the floor. (29 CFR 1910.219(d)(1)).
- b) Production Floor: One Alva Allen Industries BT 12 Series and serial number unknown, mechanical power press, had exposed belts that were three to four feet above the floor. (29 CFR 1910.219(e)(1)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked Mr. Warren how the foot pedal could be guarded. Mr. Warren described some methods. Commissioner LeMarr asked if a guard had been removed or if the machine was not supplied with a guard. Mr. Warren responded to the question. Vice Chair Hennelly asked if the injury referenced related to one of the violations. Mr. Warren reviewed the file and replied that it appeared that the injury was sustained on the punch press. Commissioner Orchard asked if the punch press was depicted in mounted photographs numbers 3 and 4. Mr. Warren responded to the question.

Chairman Schultz asked if EMR wanted to share any comments. Mr. Broscious stated that the injury was sustained on the punch press. He explained how the employer acquired the machine and what has been done to remove that machine from service. Mr. Al-Hashimi added that he transported the employee to the hospital and promptly notified ADOSH of the injury. He commented on removing the punch press from service and how the employer immediately removed the grinder, purchased a new one with all of the guards and that machine has been anchored. Mr. Al-Hashimi noted that the employee received medical attention on Friday and was back to work the following Monday.

Commissioner LeMarr complimented the employer for quickly remedying the situation.

Commissioner LeMarr noted that the circumstances were a good example for the application of a quick fix reduction. He moved that Citation 1, Item 1 with a \$500.00 penalty, Item 2 with a \$500.00 penalty, and Item 3 with a \$500.00 penalty be issued, for a total penalty of \$1,500.00. Vice Chair Hennelly seconded the motion. Chairman Schultz commented on the grouping of the items, and thanked the EMR representatives for attending. The Commission unanimously approved issuing the citations with a total penalty of \$1,500.00.

Fyffe Masonry & Plastering, Inc.

Planned

7325 W Frier Dr

Years in Business:

37 9

Glendale, AZ 85303

2415 S. Signal Butte Rd

Empl. Covered by inspection:

Site Location:

Mesa, AZ 85209

Inspection No:

H0333-1109190

Inspection Date:

12/01/2015

<u>SERIOUS</u> – Citation 1 - Item 1 – West side of Project: Two employees were working on a scaffold at approximately 12ft 9in above a lower level that did not have adequate guardrails installed on all open sides and ends to prevent a fall on the north end of the scaffolding. (29 CFR 1926.451(g)(4)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

<u>SERIOUS</u> – Citation 1 - Item 2 – West side of Project: Protruding reinforcing steel (i.e., rebar) which employees could fall onto and were not guarded by appropriate caps, covers, or other equivalent means to protect employees from the hazard of impalement. (29 CFR 1926.701(b)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked if the general contractor was also cited. Mr. Warren responded to the question. Commissioner Orchard noted the abatement regarding the rebar caps compared to fall protection. Mr. Warren provided additional details regarding the circumstances and the photographs. Commissioner LeMarr referred to mounted photograph number 3 noting the mid-rail and the access ladder. Mr. Warren provided additional details regarding the circumstances. Commissioner Orchard asked if railings were acceptable fall protection and Mr. Warren summarized the requirements. Commissioner LeMarr noted that much of the scaffolding was in compliance, but not all of it, and commented on mounted photograph number 2. Mr. Warren described the correction efforts during the inspection.

Commissioner LeMarr commented on the employer's efforts to comply and the availability of a quick fix reduction. He moved to issue Citation 1, Item 1 with a \$1,250.00 penalty and Item 2 with a \$1,250.00 penalty, for a total penalty of \$2,500.00. Vice Chair Hennelly seconded the motion. The Commission unanimously approved issuing the citation and assessed a total penalty of \$2,500.00.

Office Depot, Inc.

Referral

602 S 63<sup>rd</sup> Avenue, Ste 2

Years in Business:

Emp. Covered by inspection:

29 65

Phoenix, AZ 85043

602 S 63rd Avenue, Ste 2

Phoenix, AZ 85043

Inspection No:

Site Location:

A3807-1114248

Inspection Date:

12/28/2015

<u>SERIOUS</u> – Citation 1 - Item 1 – Loading Area: One employee operated an electric pallet jack model number PE-4500, unit number R-8 and was not competent to operate a powered industrial truck safely in that the employer did not ensure completion of the training and evaluation specified by 29 CFR 1910.178(1). (29 CFR 1910.178(1)(1)(i)).

Div. Proposal - \$5,000.00 TOTAL PENALTY - \$5,000.00 Formula Amt. - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner LeMarr referred to mounted photograph number 2 showing how the employee was standing on the machine inappropriately. Commissioner Orchard noted that the employer admitted that the employee was not properly trained. She asked about the penalty. Mr. Warren explained how the compliance officer arrived at the penalty amount. Commissioner LeMarr noted that the employee was in the process of becoming certified. Mr. Warren summarized the certification process and Ms. Gingrass described how the employee operated the equipment. Commissioner LeMarr commented on the employer's operation. Commissioner Orchard commented on ADOSH supplying specific injury information.

Commissioner LeMarr commented on the employer's safety committee and root cause analysis. Mr. Warren commented on how a root cause analysis may progress and that the compliance officer did not consider the employer's root cause analysis in her inspection.

The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,000.00 on motion of Vice Chair Hennelly and second of Commissioner LeMarr.

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 Key Performance Indicators (Scorecard) and summarized the development of state-wide metrics. He commented on the involvement of John Bernard and mentioned some of his books. Mr. Ashley commented on the status of the Claims system improvements and technology upgrades. He provided an update regarding the Special Fund Manager recruitment.

Chairman Schultz and Commissioner Orchard commented on Mr. Bernard's books and Mr. Ashley replied that he would explore obtaining copies.

## Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on the full schedule for the trip to Tucson. Chairman Schultz commented on the Commission's significant outreach to stakeholders throughout the state.

Ms. Dimas explained that the Commission is being presented with a retirement resolution recognizing Patricia Koenig for twenty-six years of state service with the Claims Division as a Claims Specialist.

Ms. Dimas confirmed the meeting schedule through June.

# 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 2:57 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Bv

James Ashley, Director/

ATTEST:

Kara Dimas, Commission Secretary