

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.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Renee Pastor	Accounting
	Janine Locke	Special Services Manager
	Steve Marks	Building Maintenance
	Mary Bolitho	Special Services
	Edward Holleman	Special Services
	William Warren	ADOSH Director
	Phil Murphy	Compliance Officer
	Brian Downen	Compliance Officer
	JR Imes	Compliance Officer
	Billie Gingrass	Compliance Officer
	Ana Maldonado	Compliance Officer
	Richard Jackson	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 Broschious 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.
7706 E. Velocity Way
Mesa, AZ 85212

Complaint
Years in Business: 20
Empl. Covered by inspection: 25

Site Location: 7706 E. Velocity Way
Mesa, AZ 85212
Inspection No: U9805-1114348
Inspection Date: 12/28/2015

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.

America Roofing LLC	Planned	
1005 S 30 th Ave	Years in Business:	15
Phoenix, AZ 85009	Empl. Covered by inspection:	2
Site Location:	18413 W Roma Ave	
	Goodyear, AZ 85395	
Inspection No:	W0250-1102438	
Inspection Date:	10/29/2015	

WILLFUL-SERIOUS – 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 eave 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

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

SERIOUS – 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

SERIOUS – 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 Formula Amt. - \$1,000.00
TOTAL PENALTY - \$4,000.00 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
17431 N 25th Ave
Phoenix, AZ 85023

Site Location: 17431 N 25th Ave
Phoenix, AZ 85023
Inspection No: H1793-1110107
Inspection Date: 12/07/2015

Referral
Years in Business: 35
Empl. Covered by inspection: 40

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. Broschious 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
Glendale, AZ 85303	Empl. Covered by inspection:	9
Site Location:	2415 S. Signal Butte Rd	
	Mesa, AZ 85209	
Inspection No:	H0333-1109190	
Inspection Date:	12/01/2015	

SERIOUS – 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
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SERIOUS – 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
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TOTAL PENALTY - \$3,500.00	TOTAL FORMULA AMT. - \$3,500.00
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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 rd Avenue, Ste 2	Years in Business:	29
Phoenix, AZ 85043	Emp. Covered by inspection:	65
Site Location:	602 S 63rd Avenue, Ste 2	
	Phoenix, AZ 85043	
Inspection No:	A3807-1114248	
Inspection Date:	12/28/2015	

SERIOUS – 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(l). (29 CFR 1910.178(l)(1)(i)).

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

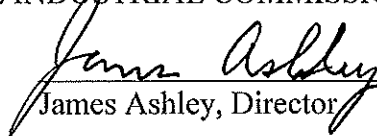
Ms. Dimas confirmed the meeting schedule through June.

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

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary