

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at the Hyatt, 122 North 2nd Street,
In the Board Room, Second Floor Atrium
Phoenix, Arizona
Friday, August 11, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self-Insurance
	William Warren	ADOSH Director
	Phillip Murphy	ADOSH Assistant Director
	George Hall	Compliance Officer
	Katherine Merems	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Dan Shepherd with Sun Valley Masonry; Joseph Visto, Paul Murray, Darren VandeVoorde, Ralph Woodward and Jim Buhr with Bashas', Inc.; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of July 27, 2017 Regular Meeting and July 27, 2017 Executive Session Minutes.

Commissioner Orchard moved to approve the Minutes of the July 27, 2017 regular session and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Vice Chair Hennelly moved to approve the Minutes of the July 27, 2017 executive session and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

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. 2C16/17-2036 Archers Towing and Recovery, LLC
2. 2C16/17-2039 Clean Livin' Laundry, L.L.C.
3. 2C16/17-2040 Creative Green Landscaping, LLC
4. 2C16/17-2044 GIA Logistics, Inc.
5. 2C16/17-1983 Happy Valley Assisted Living Home
6. 2C16/17-2031 Hendrix & Company, LLC dba Hendrix Salvage
7. 2C16/17-2032 MBCA Trucking LLC

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

1. Banner Health
2. Bashas' Inc.
3. Nordstrom, Inc.
4. Prudential Overall Supply Company

Chairman Schultz removed items a.6. (Hendrix & Company, LLC dba Hendrix Salvage), a.7. (MBCA Trucking LLC), and b.2. (Bashas' Inc.) from the Consent Agenda.

Chairman Schultz noted that Prudential Overall Supply Company has been working with ADOSH Consultation and had reduced its experience modification rating.

Commissioner Krenznel moved to approve the remaining items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Mr. Porter stated that Hendrix & Company, LLC dba Hendrix Salvage and MBCA Trucking LLC, had obtained workers' compensation insurance and recommended a reduced penalty of \$500.00 for each, rather than the staff's previous recommendation of \$1,000.00 civil penalties.

Commissioner Orchard moved to approve issuance of \$500.00 civil penalties to Hendrix & Company, LLC dba Hendrix Salvage and MBCA Trucking LLC. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Bashas' Inc.

Chairman Schultz discussed Bashas' experience modification rating history, reviewed expectations for self-insureds, noted steps taken to improve the company's current rating, and expressed concerns about the company remaining self-insured. Vice Chair Hennelly noted that he shared Chairman Schultz' concerns.

Bashas' Chief Compliance Officer, Ralph Woodward, discussed current statistics related to injuries and workers' compensation claims and the company's current efforts to improve safety, which included engaging in root cause analyses, additional training, proactive coaching programs, and the E-Front training system.

Darren VandeVoorde discussed Bashas' safety culture, the timeframe for improvement, and current statistics related to indemnity claims.

Commissioner Orchard and Mr. VandeVoorde discussed the company's claims costs and working with the ADOSH Consultation unit.

Ms. Pastor noted that the company's experience modification rating is 1.34, not 1.36 and discussed the method by which an experience modification rating is calculated.

Chairman Schultz noted that he was glad that representatives of Bashas' were present at the Commission meeting to discuss company efforts and commitment to safety. He explained that the Commission expects self-insured companies to lead the business community with respect to safety, emphasized that the company was not being singled out, and discussed the Commission's role in approving self-insurance authority.

Commissioner Orchard and Ms. Pastor discussed whether Bashas' security deposit should increase if a company's experience modification rating increases.

Commissioner Orchard moved to approve Bashas' request for renewal of self-insurance authority. Commissioner Krenznel seconded the motion. Vice Chair Hennelly echoed Chairman Schultz's comments and noted his appreciation of Bashas' for attending the Commission meeting. Mr. Woodward thanked ADOSH for its efforts and resources. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

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

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Ameri-Can Systems
4 Blair Dr.
Brampton, Ontario,
International Postal Code: L6T2H5
Country: Canada

Fatality/Accident
Years in Business: 10
Empl. Covered by inspection: 1

Site Location: 1515 S 22nd Avenue
Phoenix, AZ 85009
Inspection No: U9805-1216639
Inspection Date: 03/08/2017

Mr. Warren summarized ADOSH's fatality investigation and reviewed the file. He noted that ADOSH was not recommending any citations.

Commissioner Orchard and Mr. Warren discussed the investigation date, the duration of the investigation, and the amount of time it took to acquire information from the relevant parties.

Chairman Schultz, Mr. Warren, and Vice Chair Hennelly discussed the general duty clause, whether the deceased's actions were common in the industry, hazards associated with realigning a trailer, and whether the Commission could contact trucking companies about the practice.

SERIOUS – Citation 1 - Item 6 – East and south side of the House: Two employees were observed working on the roof-top of a patio applying stucco to the exterior walls of the house at a height that was approximately 8-15 feet above the ground level, and employees had not been trained in the recognition of fall hazards or in procedures to minimize those fall hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
TOTAL PENALTY - \$4,500.00	TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Vice Chair Hennelly, Mr. Warren, and Mr. Hall discussed Photograph No. 7 and the absence of guardrails.

Chairman Schultz, Commissioner Orchard, Mr. Warren, and Mr. Hall discussed abatement, employer knowledge, and citation item grouping.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Ocongi, LLC dba Marksman Pistol Institute II	Referral
1280 W. Prince Road	Years in Business: 7
Tucson, AZ 85705	Empl. Covered by inspection: 4
Site Location: 1280 W. Prince Road	
	Tucson, AZ 85705
Inspection No: L8503-1221395	
Inspection Date: 03/23/2017	

REPEAT-SERIOUS – Citation 1 - Item 1 – 1280 W Prince Rd: Employees who were exposed to lead were required to wear a tight fitting respirator without the implementation of the provisions listed below from the established written respiratory protection program. (29 CFR 1910.134(c)(1)).

- (ii) Medical evaluations of employees required to use respirators;
- (iii) Fit testing procedures for tight-fitting respirators;
- (vii) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations;

Ocongi, LLC DBA Marksman Pistol Institute II was previously cited for a violation of the Occupational Safety and Health Administration standard or it's equivalent standard 29 CFR 1910.134 (C) (1) which was contained in the ADOSH inspection number 1148241, citation number 01, item number 01, issued on 7/20/2016, with respect to a workplace located at 5051 E 29th Street, Tucson, AZ 85711.

Div. Proposal - \$4,000.00	Formula Amt. - \$4,000.00
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REPEAT-SERIOUS – Citation 1 - Item 2 – 1280 W Prince Rd: Employees are exposed to lead while cleaning the gun range and customer services areas without an initial determination to see if any employee may be exposed to lead at or above the action level. (29 CFR 1910.1025(d)(2)).

Ocongi, LLC DBA Marksman Pistol Institute II was previously cited for a violation of the Occupational Safety and Health Administration Standard or it's equivalent standard 29 CFR 1910.1025 (d) (2) which was contained in the ADOSH inspection number 1148241, citation number 01, item number 02, issued on 7/20/2016, with respect to a workplace located at 5051 E 29th Street, Tucson, AZ 85711.

Div. Proposal - \$4,000.00	Formula Amt. - \$4,000.00
TOTAL PENALTY - \$8,000.00	TOTAL FORMULA AMT. - \$8,000.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Chairman Schultz noted his hope that Ms. Merems wear additional protective gear if she revisits the employer's site. Commissioner Orchard, Mr. Warren, and Ms. Merems discussed the employer's efforts concerning air testing and sampling and abatement.

Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, Mr. Warren, and Ms. Merems discussed the employer's facilities, blood testing and requirements, justification for testing and monitoring, and ADOSH consultation assistance.

Vice Chair Hennelly, Mr. Warren, and Ms. Merems discussed the company's owner and management of the subject facilities.

Commissioner Orchard moved to amend the proposed penalties, as follows: (1) reduce the proposed penalty for Citation 1, Item 1 from \$4,000.00 to \$3,000.00; and (2) reduce the proposed penalty for Citation 1, Item 2 from \$4,000.00 to \$3,000.00, for a total penalty of \$6,000.00. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Sun Valley Masonry, Inc.
10828 N. Cave Creek Rd.
Phoenix, AZ 85020

Site Location: 8343 W. Van Buren St
Tolleson, AZ 85353
Inspection No: Q6169-1235264
Inspection Date: 05/23/2017

Complaint
Years in Business: 38
Empl. Covered by inspection: 15

SERIOUS – Citation 1 - Item 1 – 8343 W Van Buren St., Tolleson, AZ: One employee working with injurious corrosive materials (Amerimix, Preblended Mortar Stucco Type S) and a suitable facility for flushing of the eyes was not provided within the work area for immediate emergency use. (29 CFR 1926.50(g)).

Div. Proposal - \$2,500.00	Formula Amt. - \$2,500.00
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SERIOUS – Citation 1 - Item 2 –

- a) 8343 W Van Buren St., Tolleson, AZ: Six employees working from a fabricated frame scaffold, with a working height of approximately 16 feet to the ground below, which was not inspected for visible defects by a competent person prior to each work shift. (29 CFR 1926.451(f)(3)).

- b) 8343 W Van Buren St., Tolleson, AZ: Employees working from a fabricated frame scaffold, and the employees working below were not protected from falling objects such as blocks, tools, a fuel container, and other materials by the use of barricades or toeboards. (29 CFR 1926.451(h)(2)).

Div. Proposal - \$2,500.00
TOTAL PENALTY - \$5,000.00

Formula Amt. - \$2,500.00
TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs.

Chairman Schultz, Commissioner Orchard, Mr. Warren, and Mr. Murphy discussed abatement, insufficient eyewash conditions, eye flushing duration, industry-based requirements, and the absence of a silica-related citation.

Dan Shepherd, Safety Director for Sun Valley Masonry, discussed the company's background, its safety programs, the company's use of wet cutting, the company's number of eyewash stations, the availability of safety glasses, the company's scaffolding practices, and the company's experience modification rating.

Commissioner Orchard commented on the company's prior inspection history and commended the company on its commitment to safety.

Mr. Warren noted that a company foreman stated that the scaffolding had not been inspected on the day of the investigation and that the company did not use toe boards that day.

Chairman Schultz, Mr. Warren, and Mr. Shepherd noted that the inspection was generated by a complaint.

Chairman Schultz and Vice Chair Hennelly thanked Mr. Murphy for his work and bringing the eyewash issue to the Commission.

Commissioner Orchard thanked ADOSH for its work and professionalism. Citing to the company's good faith, dedication to safety, and quick abatement, she moved to amend the proposed penalties, as follows: (1) reduce the proposed penalty for Citation 1, Item 1 from \$2,500.00 to \$750.00; (2) reduce the proposed penalty for Citation 1, Item 2 from \$2,500.00 to \$750.00, for a total penalty of \$1,500.00. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed Governor Ducey's Declaration of Emergency concerning the opioid overdose epidemic and provided current statistics. He noted that the Arizona Department of Health Services has distributed Naloxone to law enforcement agencies around the state, and recounted an incident of a life saved by City of Scottsdale authorities using Naloxone.

Mr. Ashley provided an update on the Proposition 206 Rulemaking and the August 8, 2017 Oral Proceeding. He noted that the Legal Division will make its rulemaking recommendations to the Commission at the next meeting.

Chairman Schultz thanked the Labor Department and the Legal Division for the Proposition 206 FAQs and noted that he had received a number of positive comments about how responsive the Commission has been. Mr. Ashley offered that the FAQs will continue to grow based on feedback and information received.

Chairman Schultz thanked Mr. Ashley for his presentation at the 2017 Claims Seminar.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed the upcoming Commission trip to Payson on August 30-31. He also congratulated Mr. Laky on his successful interaction with the Payson Roundup, which wrote an article concerning the Commission's upcoming visit and promoted Commission outreach.

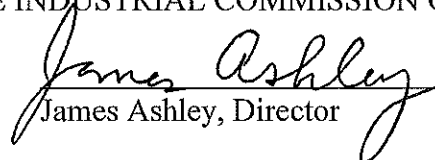
Ms. Dimas presented a retirement resolution for Tommy Sanchez for his outstanding service to the State of Arizona.

Public Comment.

There was no public comment. Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:24 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary