

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, December 8, 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
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Accounting
	Larry Gast	Assistant ADOSH Director
	Brett Steurer	Compliance Officer
	Rick Jackson	Compliance Officer
	Brad Harbour	Compliance Officer
	Manuel Saldana	Compliance Officer
	Steve Black	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Alan Roche; Michael Petitti with Aiken Schenk (representing Shortridge Instruments, Inc.); Beverly Shortridge with Shortridge Instruments; Charles Keller with Snell & Wilmer representing Diversified Roofing; Mark Schouten and Robert Cordova with Diversified Roofing; Rob Dalager; and Jason Weber with Snell & Wilmer.

Approval of Minutes of December 1, 2016 Regular Meeting and December 1, 2016 Executive Session Minutes.

Commissioner Orchard moved to approve the Minutes of the December 1, 2016 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner Orchard moved to approve the Minutes of the December 1, 2016 executive session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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. 2C12/13-1253 Babylon A.D. LLC dba Eden Adult Cabaret & Café
2. 2C16/17-0615 Fabrication Suspension Technology, Inc.
3. 2C15/16-0954 ESS Performance Products USA Inc. (A California Corporation) dba ESS Tuning
4. 2C16/17-0266 Goldade Garage, LLC
5. 2C15/16-0267 J.S.L. Family Trucking L.L.C.
6. 2C15/16-0962 M.I.G. Recycling Services, LLC
7. 2C16/17-0274 Palmcrest Properties, LLC, dba Arizona's Best Cabinets
8. 2C16/17-0276 Roman Roofing, Inc.

Chairman Schultz noted that ESS Performance Products USA Inc. had obtained workers' compensation insurance and the proposed penalty had been reduced from \$1,000 to \$500.

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

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 discussed expected media coverage regarding the ADOSH informal conference and settlement process, media coverage regarding wage disputes, Commission plans to post information about Proposition 206, and the preparation of a new edition of ADOSH Advocate.

Mr. Charles provided an update on the Commission's proposed legislation and a legislative proposal regarding presumptions for firefighters and peace officers. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, Mr. Ashley, and Mr. Charles discussed the legislative proposal.

Informal Review of ADOSH's determination, pursuant to Arizona Administrative Code R20-5-621, regarding inspection I4064-1169789 for Shortridge Instruments, Inc. conducted on August 15, 2016.

Chairman Schultz discussed the informal review process outlined in A.A.C. R20-5-619 & R20-5-621 and the responsibilities of the Commission in conducting informal review.

Mr. Gast discussed: (1) ADOSH's inspection (I4064-1169789); (2) the non-serious violations cited by ADOSH; (3) Mr. Roche's request that the Commission review ADOSH's determination; and (4) ADOSH's response to Mr. Roche's request for review, including details regarding the findings from ADOSH's inspection.

Commissioner Orchard and Mr. Gast discussed ADOSH's response to Allegation Item 1 regarding inspection of a chop saw at the worksite.

Commissioner LeMarr, Mr. Jackson, and Mr. Gast discussed sampling procedures.

Vice Chair Hennelly and Mr. Jackson discussed the company's exhaust systems.

Commissioner LeMarr and Mr. Gast discussed abatement of the cited violations.

Chairman Schultz invited Mr. Roche to address the Commission. Mr. Roche discussed ADOSH's inspection, his allegations regarding deficiencies in the inspection, and the presence of THF at the worksite. Chairman Schultz and Mr. Roche discussed exposure to THF at the worksite and the feasibility of using a HEPA filter. Mr. Roche discussed skin exposure to THF and the usage of gloves at the worksite. Chairman Schultz and Mr. Roche discussed the level of exposure to THF at the worksite, responsibility for testing for exposure to THF, the need for signage and gloves at the worksite, and ADOSH's inspection and sampling procedures.

Commissioner LeMarr, Vice Chair Hennelly, and Mr. Jackson discussed ADOSH's sampling procedures.

Chairman Schultz invited a representative of Shortridge Instruments to address the Commission. Mr. Petitti noted his concurrence with ADOSH's inspection findings and recommendations and discussed the level of access Shortridge Instruments provided to ADOSH to conduct the inspection. He requested that the Commission affirm ADOSH's decision.

Mr. Gast discussed the value of private interviews during the investigation process, the information obtained from interviews of company employees, and abatement efforts made by the company.

Vice Chair Hennelly moved to affirm ADOSH's decision on investigation no. I4064-1169789 based on the following: (1) the Commission's review of all positions statements and documentation submitted; (2) the thoroughness of ADOSH's inspection; (3) ADOSH's adherence to standard industrial hygienist protocols; and (4) the voluminous evidence supporting ADOSH's decision. Commissioner LeMarr second the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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 proposed ADOSH citations and proposed penalties.

Diversified Roofing Corporation
2015 W. Mountain View Rd
Phoenix, AZ 85021

Referral
Years in Business: 26
Empl. Covered by inspection: 6

Site Location: 601 W. Fillmore
Phoenix AZ 85021
Inspection No: D4452-1178832
Inspection Date: 09/21/2016

REPEAT-SERIOUS – Citation 1 - Item 1 –

a) 601 W. Fillmore, Phoenix, AZ, Building #3, South Elevation: Five employees engaged in roofing activities on a low slope roof, were not protected from falling approximately 33 feet to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard.

Diversified Roofing Corporation, dba, DRC Construction Services was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(10), which was contained in OSHA Inspection Number 1122749, Citation Number 1, Item Number 1 and was affirmed as a final order on 8/25/2016, with respect to a workplace located at 3034 S Whetstone Pl., Chandler, AZ 85249.

Div. Proposal - \$8,000.00

Formula Amt. - \$8,000.00

REPEAT-SERIOUS – Citation 1 - Item 2 –

a) 601 W. Fillmore, Phoenix, AZ, South Elevation: Employees ascended and descended a 33 foot fixed industrial ladder that was not equipped with safety devices required by the standard.

Diversified Roofing Corporation, dba, DRC Construction Services was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.1051(a) which was contained in OSHA Inspection Number 1127186, Citation Number 1, Item Number 2 and was affirmed as a final order on 8/26/2016, with respect to a workplace located at 10848 W Swayback Pass Peoria, AZ 85383.

Div. Proposal - \$8,000.00

Formula Amt. - \$8,000.00

REPEAT NON-SERIOUS – Citation 2 - Item 1 –

a) 601 W. Fillmore, Phoenix, AZ: A list of the hazardous chemicals known to be present was not maintained at the workplace to protect employees from harmful effects of potential exposure to hazardous chemicals, materials and/or substances.

Diversified Roofing Corporation, dba, DRC Construction Services was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1910.1200(g)(8) which was contained in OSHA Inspection Number 1076663, Citation Number 2, Item Number 1 and was affirmed as a final order on 3/25/16, with respect to a workplace located at 2546 W. Golden Puma Trail, Phoenix, AZ 85085.

Div. Proposal - \$160.00

Formula Amt. - \$160.00

TOTAL PENALTY - \$16,160.00

TOTAL FORMULA AMT. - \$16,160.00

Mr. Gast summarized the citations and proposed penalties and reviewed the photographs.

Commissioner LeMarr, Mr. Harbour, and Mr. Gast discussed unusual circumstances encountered during the inspection and the presence of Mr. Cordova at the inspection.

Chairman Schultz reiterated the limited scope of the Commission's consideration of the citations and proposed penalties and discussed the purpose of the informal and formal settlement processes. He expressed appreciation for Mr. Schouten's participation in the Chairman's' roofers alliance and his safety efforts.

Vice Chair Hennelly and Mr. Gast discussed the height of the parapet walls.

Vice Chair Hennelly, Commissioner LeMarr, and Mr. Gast discussed the permanent ladder installed on the building. Chairman Schultz discussed his efforts to collaborate with the ASU School of Construction to promote safety at the design stage of the construction process.

Chairman Schultz invited a representative of Diversified Roofing Corporation to address the Commission. Mr. Keller discussed the contentious nature of the inspection and the circumstances leading to, and during, the inspection. He provided a photograph taken from the intersection of 7th Avenue and Van Buren and discussed the ability of a person to see workers on the roof of the building from the intersection. He discussed his concerns with the legitimacy of the inspection.

Mr. Cordova discussed his believe that the case involves lack of employer knowledge and unpreventable employee misconduct. He discussed instructions provided to the crew and the crew's conduct. He discussed his knowledge of the use of hazardous chemicals.

Commissioner LeMarr, Mr. Harbour, Mr. Schouten, and Mr. Cordova discuss the ladder, the height of the parapet, how they crew accessed the roof, employee training, and the number of employees on the roof.

Mr. Schouten discussed the company's commitment to safety and participation in the Chairman's roofing alliance. He read and discussed an email received from Bryce Rucker, ADOSH consultation. He discussed efforts to improve safety culture at the company.

Chairman Schultz reiterated the limited scope of the Commission's consideration of the citations and proposed penalties.

Commissioner LeMarr moved to amend the citations and proposed penalties, as follows: (1) the proposed penalty for Citation 1, Item 1 be reduced to \$8,000 and (2) the proposed penalty for Citation 1, Item 2 be reduced to \$1,000 – for a total proposed penalty of \$9,160. He discussed the safe environment at the project, the presence of workers on the roof without fall protection, and the soundness of Citation 1, Item 2. Vice Chair Hennelly seconded the motion.

Commissioner Orchard discussed the company's safety program and partial employee responsibility for Citation 1, Item 1. Commissioner LeMarr withdrew his motion.

Commissioner Orchard moved to amend the citations and proposed penalties, as follows: (1) the proposed penalty for Citation 1, Item 1 be reduced to \$4,000 and (2) the proposed penalty for Citation 1, Item 2 be reduced to \$500 – for a total proposed penalty of \$4,660.00. Commissioner LeMarr seconded the motion. Vice Chair Hennelly discussed the safety efforts of Diversified Roofing, his familiarity with the project, the presence of workers on the roof without fall protection, the circumstances leading the inspection, and use of the ladder. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Mr. Gast discussed prior inspections by ADOSH at the project and commented on the overall safety of the worksite. Commissioner LeMarr, Mr. Gast, and Mr. Harbour discussed the company's inspection history.

Thermal Engineering of Arizona, Inc.
2250 W. Wetmore
Tucson, AZ 85705

Site Location: 2250 W. Wetmore.
Tucson, AZ 85705
Inspection No: T3633-1180465
Inspection Date: 09/29/2016

Complaint
Years in Business: 40
Empl. Covered by inspection: 40

SERIOUS – Citation 1 - Item 1 –

a) Tank fabrication area: The employer did not furnish to each employee employment and a place of employment which were free from recognized hazards that were likely to cause death or serious physical harm to employees in that a jib crane with a marked load rating of 1000 pounds, equipped with a hoist also marked with a load rating of 1000 pounds, was used to lift a stainless steel tank which weighed greater than 1500 pounds.

b) 2250 W. Wetmore Road, Tucson: The employer did not furnish to each employee employment and a place of employment which were free from recognized hazards that were likely to cause death or serious physical harm to employees in that six jib cranes and their accompanying hoists had not been subjected to periodic inspections.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 –

a) Tank fabrication area: Employees entered stainless steel tanks to do MIG and TIG welding, and the employer had not evaluated the spaces to determine if they were permit-required confined spaces.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 3a –

a) 2250 W. Wetmore Road, Tucson: Employees did maintenance work on electrical circuits, machines, and equipment, and the employer had not conducted a periodic inspection of the energy control (lockout/tagout) procedure.

Item 3b –

a) 2250 W. Wetmore Road, Tucson: Employees did maintenance work on electrical circuits, machines, and equipment, and the employer had not trained all employees concerning the energy control program (lockout/tagout).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 4 –

a) Outside, by northwest door: A Yale brand forklift, model number ERCO65RFN365E092, serial number K602649, had a parking brake which did not work.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 – Item 5 –

a) Tank fabrication area: A synthetic web sling used with the jib crane to lift tanks had a tear and had not been removed from service.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 6 –

a) Tank fabrication, east bay: The tank roller platform used to turn tanks had a sprocket wheel and chain drive which was not enclosed.

b) Tank fabrication, west bay: The tank roller platform used to turn tanks had a sprocket wheel and chain drive which was not enclosed.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 7a –

a) East tank fabrication area: Employees did MIG and TIG welding inside stainless steel tanks, and the blower fan used to provide forced-air ventilation to the tanks did not have a flex duct, so that the fan could not be used for forced-air ventilation, and was not available to achieve compliance with the limits prescribed in the Air Contaminants standard.

b) West tank fabrication area: Employees did MIG and TIG welding inside stainless steel tanks, and the duct on the blower fan used to provide forced-air ventilation to the tanks was partially constricted where the duct attached to the fan, and was not available for use as designed to achieve compliance with the limits prescribed in the Air Contaminants standard.

Item 7b –

a) Tank fabrication area: Initial monitoring for chromium (VI) was conducted by the employer in 2006, and the number of hours employees worked in the tank area since the initial monitoring had increased, and the forced air ventilation systems the employer had instituted to decrease exposures were not working as designed, and the employer was unaware of what ventilation was in use at the time of the initial monitoring, and the employer had not conducted additional monitoring to determine if employee(s) had additional exposure(s).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$15,000.00

TOTAL FORMULA AMT. - \$15,000.00

Mr. Gast summarized the citations and proposed penalties and reviewed the photographs. Mr. Black discussed the chemical hazards and confined space issues.

Chairman Schultz, Mr. Gast, and Mr. Black discussed daily inspections of the forklift.

Commissioner LeMarr, Mr. Black, and Mr. Gast discussed whether the forklift was in service, Mr. Black's inspection of the forklift, and the weight of the tanks.

Commissioner Orchard, Vice Chair Hennelly, and Mr. Black discussed abatement efforts.

Vice Chair Hennelly, Mr. Gast, and Mr. Black discussed access to the tank, confined space issues, and the use of chemicals in the tank.

Commissioner LeMarr, Mr. Gast, and Mr. Black discussed the company's ongoing use of the crane and the legal requirements related to abatement.

Commissioner LeMarr moved to amend the citations and proposed penalties, as follows: (1) Citation 1, Item 4 be deleted (because the evidence showed the forklift was parked and the company had logged the defective brake) – for a total penalty of \$12,750. Vice Chair Hennelly seconded the motion.

Mr. Gast discussed evidence regarding the usage of the forklift and the employer's knowledge of the defective brake.

Chairman Schultz discussed whether the forklift was in service and used to lift tanks. He discussed the dangerous circumstances present if the company continued to use the forklift.

Mr. Black noted statements by a foreman that the forklift was in service at the time of the inspection.

Mr. Gast noted that he would like to see the parking brake fixed and requested that Citation 1, Item 4 be approved.

Mr. Porter noted that the Commission could remand Citation 1, Item 4 back to ADOSH if there were questions about whether the forklift was in service at the time of the inspection. He noted that ADOSH could gather further evidence to support the citation.

Commissioner LeMarr stated that he wanted to revise his motion.

Commissioner Orchard discussed the size of the employer.

Chairman Schultz and Mr. Porter discussed the procedure for voting on the pending motion or withdrawing the motion. Commissioner LeMarr, Vice Chair Hennelly, and Mr. Porter discussed the option of remanding Citation 1, Item 4 to ADOSH.

Commissioner LeMarr moved to approve the citations and proposed penalties as presented with the exception of Citation 1, Item 4, which will be remanded to ADOSH to gather additional evidence on whether the forklift was in service.

Mr. Black and Mr. Gast discussed the logistics of gathering additional evidence on Citation 1, Item 4 and the timing of approval of that item.

Mr. Gast discussed the evidence in the file showing that the forklift was ready to be used.

Chairman Schultz discussed whether ADOSH had demonstrated prima facia evidence that the forklift was in service.

Commissioner LeMarr and Vice Chair Hennelly discussed the terms of the revised motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

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 discussed the Commission's new tracking tool for AMS implementation in the Commission and discussed some of the projects identified in the tool. Chairman Schultz, Mr. Ashley, and Commissioner LeMarr discussed efforts to work through challenges and develop solutions for elevator inspections. Mr. Ashley and Mr. Porter discussed efforts by the Collections team to reduce backlog. Commissioner LeMarr, Mr. Ashley, and Mr. Porter discussed the usage of huddle boards on an ongoing basis. Chairman Schultz and Mr. Ashley discussed the importance of recognizing and memorializing successes. Chairman Schultz, Commissioner Orchard, and Mr. Ashley discussed the

involvement of GTO consultants in the training process. Commissioner Orchard, Mr. Ashley, and Chairman Schultz discussed the economic and efficiency impact of the Arizona Management System.

Mr. Ashley discussed a video provided by former employee Ernest Scherb regarding the original dedication of the ICA mural.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meetings scheduled through February 2017.

Ms. Dimas presented two Retirement Resolutions: (1) Landon Coleman for 10 years of state service; and (2) Lawrence Vernon for 33 years of state service.

Ms. Dimas, Mr. Ashley, Mr. Porter, and Commissioner Orchard discussed scheduled Commission holiday parties.

Commissioner Orchard and Mr. Ashley discussed current staffing levels.

Chairman Schultz and Mr. Ashley discussed planning for a Commission meeting in Mohave County.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:31 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary