MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 23, 2017 – 1:30 p.m.

Present: Dale L. Schultz, Chairman
          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
          Sylvia Simpson, Chief Financial Officer
          Steven Welker, Labor Director
          William Warren, ADOSH Director
          Brian Downen, Compliance Officer
          Anthony Leyva, Compliance Officer
          Manuel Saldana, Compliance Officer
          Kara Dimas, Commission Secretary

Chairman Schultz convened the meeting at 1:30 p.m. Also in attendance were Rick Mauldin with The GEO Group, Inc.; Maria Rodriguez with Bodega Latina Corporation dba El Super; Brandan Dodds with the City of Scottsdale; and Jason Weber and Clawson Williams with Snell & Wilmer.

Approval of Minutes of January 26, 2017, February 9, 2017 Regular Meetings and January 26, 2017 Executive Session Minutes.

Commissioner LeMarr moved to approve the Minutes of the January 26, 2017 regular session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner Orchard moved to approve the Minutes of the February 9, 2017 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the January 26, 2017 executive session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, 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. 2C16/17-0608 B2 Salon, P.L.L.C.
2. 2C16/17-0626 Latrikunda Transport Services, LLC
3. 2C16/17-1151 Marchingapparel.com, LLC
4. 2C16/17-0628 Maxim Cycle Services, L.L.C.
5. 2C16/17-0635 Rahman Hanic, a single man, dba 7 Brothers Transportation
6. 2C16/17-0611 Randall Gould & Teresia Gould, husband & wife, dba Chicken on the Run
7. 2C15/16-2623 Tarrangas Towing LLC

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

1. City of Yuma
2. Pima County
3. Washington Elementary School District No. 6

Commissioner LeMarr moved to approve the items on the Consent Agenda and Commissioner Orchard seconded the motion. Chairman Schultz, 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 provided an update on legislative activity. Commissioner LeMarr and Mr. Charles discussed the time remaining in the current legislative session.

Mr. Charles discussed ongoing dialogue with the Arizona Daily Star concerning ADOSH inquiries.

Chairman Schultz and Mr. Ashley discussed the broad support for pending legislation.

Discussion & Action regarding Proposed Youth Employment Penalty.

A-2-Z Roofing Supply Co., DBA A-2-Z Roofing
3392 Bank Street
Kingman, AZ 86409

Case No.: CL-1617-0173
Recommended Penalty: $300.00

Violation: Allowing a person under the age of eighteen (18) years to work in, about or in connection with roofing operations. Allowing a person under the age of sixteen (16) years to work in, about, or in connection with construction, work from a ladder and a place more than five feet in height.

Mr. Welker summarized the Labor Department’s investigation and reviewed photographs.

Commissioner LeMarr, Mr. Warren, and Mr. Welker discussed the origin of the complaint and a corresponding ADOSH citation.
Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Commissioner Orchard seconded the motion. Chairman Schultz, 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.

Commissioner Orchard moved to go into executive session to obtain legal advice regarding whether a quorum existed to vote on the City of Scottsdale matters listed on the Agenda. Mr. Porter discussed the purpose for the executive session. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

The Commission returned to regular session at 1:58 p.m.

Chairman Schultz noted the Commission would postpone discussion of the City of Scottsdale citations for lack of a quorum. He then discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

Mr. Porter clarified that there was a quorum present for the remaining ADOSH matters in the Agenda and that the City of Scottsdale matters were being postponed because a Commissioner had recused from the subject matters.

Bodega Latina Corporation dba El Super
7502 W Thomas Rd
Phoenix, AZ 85033

Site Location: 7502 W Thomas Rd
Phoenix, AZ 85033

Inspection No: T1999-1190390

Inspection Date: 11/10/2016

Referral
Years in Business: 22
Empl. Covered by inspection: 18

SERIOUS – Citation 1 - Item 1 – Butcher Shop: One employee was injured while operating a Hobart Vertical Band Saw machine (model number and serial number unknown) without special hand tools to prevent the operator from placing hands in the danger zone. (29 CFR 1910.212(a)(3)(iii)).
Div. Proposal - $5,000.00
Formula Amt. - $2,250.00

SERIOUS – Citation 1 - Item 2 – Butcher Shop Area: A 120-volt electrical outlet was lacking a faceplate or cover. (29 CFR 1910.305(b)(2)).
Div. Proposal - $2,250.00
Formula Amt. - $2,250.00
TOTAL PENALTY - $7,250.00
TOTAL FORMULA AMT. - $4,500.00

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

Commissioner LeMarr, Mr. Saldana, and Mr. Warren discussed the interview of the injured worker, the push plate tool, and the location of the tool depicted in the photographs.

Commissioner LeMarr, Mr. Warren, and Mr. Saldana discussed abatement of Citation 1, Item 2.
Commissioner Orchard and Mr. Saldana discussed the employer’s training program and lack of training on the subject tool.

Chairman Schultz and Mr. Warren discussed the higher/lesser classifications and analysis. Chairman Schultz discussed the calculations of the proposed penalties.

Ms. Rodriguez discussed her understanding of the injured employee’s recorded interview, the employee’s questionable employment history with the company and experience as a meat cutter, the employer’s training program, use of a safety video, and the location of the push plate tool.

Chairman Schultz commented on abatement and efforts of the employer to reduce the potential for future injuries. Ms. Rodriguez commented on the employer’s efforts to improve training on the push plate tool. Mr. Warren and Chairman Schultz discussed the absence of a training violation.

Commissioner LeMarr and Ms. Rodriguez discussed the employer’s use of E-Verify and the injured employee’s employment history with the company.

Commissioner Orchard and Ms. Rodriguez discussed her position was with the company.

Commissioner Orchard moved to amend the citation and proposed penalties as follows: (1) reduce the penalty for Citation 1, Item 2 to $500.00 (due to immediate abatement), for a total penalty of $5,500.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

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**The GEO Group, Inc.**

915 E. Diversion Dam Road  
Florence, AZ 85132

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**Referral**

**Years in Business:** 84  
**Empl. Covered by inspection:** 1

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**Site Location:**  
915 E. Diversion Dam Road  
Florence, AZ 85132

**Inspection No:** F3875-1192632  
**Inspection Date:** 11/16/2016

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**SERIOUS** – Citation 1 - Item 1 - Building 3, Baker Pod: Employee replaced a fluorescent light fixture on the ceiling of a shower area made contact with live electrical wires that had not been de-energized shocking himself, and the employer had not established lockout/tagout procedures and trained the employee to ensure that the equipment would be isolated and rendered inoperative. (29 CFR 1910.147(c)(1)).

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

Mr. Warren clarified that the subject employer has 109 employees in Arizona and over 20,000 employees internationally. He summarized the citation and proposed penalty and reviewed the photographs.

Commissioner LeMarr and Mr. Warren discussed the subject employee’s role and employment status, his normal duties, the duties assigned for the subject project, and circumstances leading to the injury.

Mr. Mauldin clarified that the subject facility was Arizona State Prison Florence West as opposed to the facility listed on the proposed citation. He discussed the classification of the injured
employee as a correctional officer and the employee’s job assignment and responsibilities. He noted how grateful he was that the employee was not seriously hurt. He discussed the employer’s lock out/tag procedure and discussed which employees have received training to date.

Chairman Schultz and Mr. Mauldin discussed the relationship between GEO and the prison. Chairman Schultz discussed the effectiveness of the employer’s training, noting that the employee did request that the power be turned off.

Commissioner Orchard and Mr. Warren discussed the nature of the injury, subsequent treatment, the applicability of the reduction factors, and recordkeeping requirements in the FOM.

Chairman Schultz and Mr. Warren discussed the company’s timely report of injury, lack of adequate training, and applicable standards.

Chairman Schultz and Mr. Mauldin discussed the employee’s hospital stay, admission status, and his current employment status.

Commissioner Orchard and Mr. Warren discussed relevant training standards for the subject task.

Commissioner LeMarr moved to approve the citations and proposed penalties as presented and Commissioner Orchard seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

SA Recycling of Arizona, LLC
1525 W. Miracle Mile
Tucson, AZ 85705

| Site Location:  | 1525 W. Miracle Mile |
| Tucson, AZ 85705 |
| Inspection No:  | W6968-1193047 |
| Inspection Date: | 11/22/2016 |

Complaint
Years in Business: 4
Empl. Covered by inspection: 25

SERIOUS – Citation 1 - Item 1 –

a) 1525 W. Miracle Mile, Tucson: A metal bailer (unknown model/serial number) had a working platform that had an access point, a gate that was 5' 4" off the ground that was not secured to prevent employees from falling.  (29 CFR 1910.23(e)(3)(iv)).

b) 1525 W. Miracle Mile, Tucson: A metal bailer (unknown model/serial number) had a working platform that had an access point, a gate that was 12 feet off the ground that was not secured to prevent employees from falling.  (29 CFR 1910.23(e)(3)(iv)).

Div. Proposal - $3,500.00  Formula Amt. - $3,500.00

SERIOUS – Citation 1 - Item 2 – 1525 W. Miracle Mile, Fabrication shop: Employees used compressed air over 30 p.s.i. to clean parts and concrete working area.  (29 CFR 1910.242(b)).

Div. Proposal - $1,400.00  Formula Amt. - $1,400.00

SERIOUS – Citation 1 - Item 3 – Fabrication shop: A Ryobi right angle portable grinder (unknown model/serial number) did not have a guard.  (29 CFR 1910.243(c)(3)).

Div. Proposal - $1,750.00  Formula Amt. - $1,750.00
Mr. Warren summarized the citation and proposed penalties and reviewed the photographs. Commissioner LeMarr commented on the observed pressure noted in Citation 1, Item 2.

Commissioner Orchard, Commissioner LeMarr, and Mr. Warren discussed employee complaints and subsequent findings.

Commissioner LeMarr moved to approve the citations and proposed penalties as presented and Commissioner Orchard seconded the motion. Commissioner Orchard and Mr. Warren discussed abatement. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Field Operation Manual Inspection Scope (Walkaround Inspection) Discussion.

Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Mr. Warren discussed postponing this item until all Commissioners are present. Commissioner LeMarr made a motion to postpone this item for a later meeting and Commissioner Orchard seconded. Chairman Schultz, 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 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed an initiative by Governor Ducey to eliminate or amend existing regulations and an internet portal, redtape.az.gov, where the stakeholders can submit suggestions. Chairman Schultz and Mr. Ashley discussed the Special Fund’s vocational rehabilitation program, the process for making legislative and rule changes, and the need to revisit old and outdated regulations. Mr. Ashley and Mr. Porter discussed whether rulemaking would be necessary to alter the vocational rehabilitation program. Chairman Schultz emphasized that the Commission should continue to prioritize important projects.

Chairman Schultz and Mr. Ashley discussed the Commission’s Arizona Management System accomplishments and mentoring of other agencies.

Mr. Ashley discussed the ALJ hiring process.

Mr. Ashley discussed plans for a second Gemba walk for the Commissioners on March 9, 2017.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through March 2017, including a Commission meeting scheduled for March 31, 2017, in Kingman, Arizona. Commissioner LeMarr and Mr. Ashley asked Mr. Warren to bring ADOSH files that arose in the Kingman area.

Mr. Warren noted that Ruben Rodriguez has been part of Tucson Compliance division for 10 years and has transferred to the Tucson Consultation division.

Commissioner LeMarr, Mr. Ashley and Mr. Warren discussed ADOSH’s staffing levels.
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:56 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary