

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308

Phoenix, Arizona 85007

Thursday, January 19, 2017 – 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
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Phil Murphy	Compliance Officer
	Afshan Peimani	Staff Attorney
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Diane Anderson with Berger Transfer & Storage, Inc.; Greg Folger with Jones, Skelton & Hochuli, P.L.C. (representing Arizona Mills Mall, LLC); Crystal Hemphill with Border Precast, Inc.; and Jason Weber with Snell & Wilmer.

Approval of Minutes of December 15, 2016 Regular Meeting and December 15, 2016 Executive Session.

Vice Chair Hennelly moved to approve the Minutes of the December 15, 2016 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. Commissioner Orchard abstained. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the December 15, 2016 executive session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. Commissioner Orchard abstained. 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. 2C15/16-2404 Alliance Towing, LLC
2. 2C16/17-0606 Ashton Gardens Assisted Living LLC
3. 2C16/17-0622 James H. Dottling, Ltd., dba Thunderbird Connection
4. 2C16/17-0632 Poolsmart Electric, LLC
5. 2C16/17-2075 Protire, LLC
6. 2C16/17-0607 Seferino Contreras Hernandez, dba Aztec Wrought Iron and Mfg.
7. 2C15/16-1447 Tempe Powersports and Marine, LLC

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

1. City of Scottsdale
2. Maricopa County
3. Valley School Pool for Workers' Compensation
4. Walgreen Co.

Chairman Schultz discussed the self-insurance applicants' experience modification factors. Commissioner LeMarr recused himself from voting on item 3.b.2 (Maricopa County) and moved to approve the Consent Agenda with the exception of item 3.b.2. 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.

Chairman Schultz and Commissioner LeMarr discussed Commissioner LeMarr's recusal. Vice Chair Hennelly moved to approve item 3.b.2 and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr abstained. 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 Proposition 206, the related FAQs, and recent media requests.

Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Mr. Charles discussed new legislative bills, including ongoing discussions about modifying statutory language regarding presumptions for public safety officers.

Chairman Schultz and Mr. Charles discussed the Commission's legislative proposals and the proliferation of new bills.

Discussion and Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B).

Renee Pastor discussed establishing an updated discount rate for use in lump sum commutations under A.R.S. § 23-1067. She stated that the Administration Division recommends setting the discount rate at 0.17% for calculating fixed period and permanent lump sum settlements. If adopted, the rate would replace the existing 0.07% discount rate and remain in effect until the Commission calculates a new rate.

Chairman Schultz and Ms. Pastor discussed current life tables and discussed updating A.A.C. R20-5-121 to be more current.

Commissioner LeMarr moved to approve the recommended discount rate. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and Action regarding Final Rulemaking to amend Arizona Administrative Code to A.A.C. R20-5-601 and A.A.C. R20-5-602 adopting Federal Occupational Safety and Health standards updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection. _____

Mr. Warren summarized the pending rulemaking and related procedure.

Commissioner Orchard and Mr. Warren discussed whether the rulemaking would incorporate updated equipment.

Vice Chair Hennelly moved to direct ADOSH to prepare and file a notice of final rulemaking with the Office of the Attorney General and, if the Attorney General approves, to file the notice of final rulemaking with the Arizona Secretary of State. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Discussion and Action regarding Final Rulemaking to amend Arizona Administrative Code to A.A.C. R20-5-601 and A.A.C. R20-5-602 adopting Federal Occupational Safety and Health standards updating OSHA Standards for Occupational Exposure to Respirable Crystalline Silica. _____

Mr. Warren summarized the pending rulemaking, the public comment in opposition, and related procedure.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Mr. Warren discussed the costs of the proposed rulemaking. Commissioner LeMarr, Commissioner Orchard, and Vice Chair Hennelly discussed their concerns with the proposed rulemaking.

Vice Chair Hennelly moved to direct ADOSH to prepare and file a notice of final rulemaking with the Office of the Attorney General and, if the Attorney General approves, to file the notice of final rulemaking with the Arizona Secretary of State. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr voted against the motion. The motion passed.

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

Arizona Mills Mall, LLC	Fatality/Accident	
5000 S Arizona Mills Cir., Ste 551	Years in Business:	39
<u>Tempe, AZ 85282</u>	Empl. Covered by inspection:	15
Site Location:	5000 S Arizona Mills Cir., Ste 551	
	Tempe, AZ 85282	
Inspection No:	Q6169-1163049	
Inspection Date:	06/28/2016	

Mr. Warren summarized the subject fatality investigation. He stated that the investigation did not identify any violations and ADOSH did not recommend any citations. Chairman Schultz discussed the subject incident and ADOSH's skylight recommendation.

The Commission took no action.

Berger Transfer & Storage, Inc.
602 S 54th Ave
Phoenix, AZ 85043

Fatality/Accident
Years in Business: 68
Empl. Covered by inspection: 10

Site Location: 602 S 54th Ave
Phoenix, AZ 85043
Inspection No: H0333-1183007
Inspection Date: 10/11/2016

SERIOUS – Citation 1 - Item 1 – North side loading dock #3: One employee received fatal injuries when he was standing between the loading dock and the semi-tractor trailer truck that was backing up. (A.R.S. 23-403.A.).

Div. Proposal - \$7,000.00	Formula Amt. - \$7,000.00
TOTAL PENALTY - \$7,000.00	TOTAL FORMULA AMT. - \$7,000.00

Mr. Warren discussed the subject fatality investigation, citation, and proposed penalty, and related photographs.

Commissioner LeMarr and Mr. Warren discussed the loading dock level and size of the subject load.

Vice Chair Hennelly and Mr. Warren discussed industry practice concerning raising trailer level and pallet design.

Chairman Schultz and Mr. Warren discussed the penalty calculation.

Chairman Schultz discussed the Commission's process for considering ADOSH citations and proposed penalties.

Ms. Anderson briefly addressed the Commission and welcomed questions.

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

Equestrian Veterinary Services, P.C.
34804 N 3rd Ave
Phoenix, AZ 85086

Fatality/Accident
Years in Business: 25
Empl. Covered by inspection: 2

Site Location: 34804 N 3rd Ave
Phoenix, AZ 85086
Inspection No: Q6169-1171232
Inspection Date: 08/09/2016

Mr. Warren summarized the subject fatality investigation. He stated that the investigation did not identify any violations and ADOSH did not recommend any citations.

Ms. Hemphill addressed the commission and discussed training, the involvement of a general contractor, and her company's role in the project.

Mr. Warren and Ms. Hemphill discussed the training required for the subject activity.

Commissioner Orchard and Ms. Hemphill discussed Ms. Hemphill's role with the subject employer.

Commissioner Orchard and Mr. Warren discussed excavation training.

Commissioner LeMarr and Mr. Warren discussed the citation items and grouping.

Chairman Schultz, Mr. Warren, and Ms. Hemphill discussed multi-employer issues.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented 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.

Chairman Schultz asked Mr. Warren to discuss training issues and opportunities for consultation in subsequent meetings with the company.

Chairman Schultz, Vice Chair Hennelly, and Mr. Warren discussed training and consultation opportunities.

Commissioner LeMarr and Mr. Warren discussed the liability of the creating employer.

Thermal Engineering of Arizona, Inc.	Complaint	
2250 W. Wetmore	Years in Business:	40
<u>Tucson, AZ 85705</u>	Empl. Covered by inspection:	40
Site Location:	2250 W. Wetmore	
	Tucson, AZ 85705	
Inspection No:	T3633-1180465	
Inspection Date:	09/29/2016	

SERIOUS – Citation 1 - Item 4 – Outside, by northwest door: A Yale brand forklift, model number ERCO65RFN365E092, serial number K602649, had a parking brake which did not work. (29 CFR 1910.178(p)(1)).

Div. Proposal - \$2,500.00	Formula Amt. - \$2,500.00
TOTAL PENALTY - \$2,500.00	TOTAL FORMULA AMT. - \$2,500.00

Mr. Warren noted that the Commission had asked ADOSH to further investigate and review Item 4 as it pertained to forklift use and he summarized ADOSH's findings.

Commissioner LeMarr and Mr. Warren discussed the review methodology and content.

Vice Chair Hennelly and Mr. Warren discussed access to the subject forklift.

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

Chairman Schultz, Commissioner LeMarr, and Mr. Warren discussed abatement of the subject condition.

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Taylor & Associates, PLLC and C. Kieslich

Ms. Peimani discussed the Petition for Attorney's Fees and staff's recommendation.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, Mr. Porter, and Ms. Peimani discussed the nature of the firm's work, the reasonableness of the firm's request, staff's recommendation, and the timing of payments.

Commissioner Orchard moved to award attorney's fees of \$2,000.00, less the \$200.00 the firm had already been paid, payable in \$50.00 monthly payments. Commissioner LeMarr seconded the motion. Commissioner LeMarr and Mr. Porter discussed the number of monthly payments and the ultimate resolution. 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 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley and Chairman Schultz discussed the Governor's State of the State Address, childcare in the workplace, the OSHA review board, the elevator review board, opioid-related issues, work-release programs, and recidivism prevention.

Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Mr. Ashley discussed scorecard measures, breakthrough goals, and the planned updated claims system.

Chairman Schultz and Mr. Ashley discussed providing an update on online form usage at the next meeting. Mr. Ashley commented on online portal usage.

Mr. Ashley and Chairman Schultz discussed the Arizona Management System. Chairman Schultz and Mr. Ashley discussed scheduling another Gemba walk for the Commissioners.

Mr. Ashley discussed the Proposition 206 FAQs.

Chairman Schultz commented that improvements and accomplishments are being accomplished with existing staff. Mr. Ashley noted that the process is not about staff working longer and harder, but working more efficiently and effectively.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meetings on January 26 and February 9, 16 and 23, 2017. She noted that Commissioner Orchard will not be in attendance at the February 16 meeting. Vice Chair Hennelly stated that he will be attending the January 26, 2017 meeting remotely.

Mr. Ashley noted that Arizona Self-Insurers Association will be hosting their annual breakfast at the State Capitol on January 25, 2017.

Mr. Ashley discussed holding the next community outreach Commission meeting in Mohave County on March 23 and 24, 2017. Vice Chair Hennelly noted that he will be unavailable on March 24, 2017.

Chairman Schultz and Mr. Ashley discussed holding the second-quarter outreach Commission meeting in Tucson.

Public Comment.

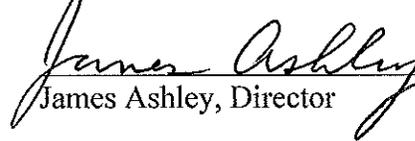
Ms. Hemphill noted that she was pleased with the Proposition 206 FAQs. Mr. Ashley, Mr. Porter, and Ms. Hemphill discussed a question about calculating earned paid sick time for salaried employees.

There was no other 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 3:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary