

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 6, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner (Telephonic)
	Trevor Laky	Acting Director
	Stacey Rogan	Assistant Chief Legal Counsel
	Renee Pastor	Self Insurance
	Jacqueline Kurth	MRO Manager
	Jessie Atencio	ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Bonnie Smyth and Jerry Smyth; Tracy Kopp (Premier Risk Management); Scot Butler (Unknown); and Michael Fassett (Snell & Wilmer).

Approval of Minutes of May 23, 2019 Regular Meeting and May 23, 2019 Executive Session.

Commissioner LeMarr moved to approve the Minutes of the May 23, 2019 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Vice Chair Hennelly moved to approve the Executive Session Minutes of the May 23, 2019 and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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. 2C-18/19-0466 Good Deal Landscaping LLC \$1000.00
2. 2C-18/19-0648 Joseph & Varja Miller, a married couple, dba Joe's Ribs \$1000.00
3. 2C-18/19-0435 Joseph & Varja Miller, a married couple, dba Diamond Shine Auto Detailing \$1000.00
4. 2C-18/19-0617 AAA Workforce LLC \$1000.00
5. 2C-18/19-0515 TX3 Medical Solutions Inc \$1000.00

6. 2C-NP-18/19-0245 Blue Water Restoration Inc \$1000.00

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

1. Textron, Inc.
2. Viad Corp
3. Weyerhaeuser Company

Chairman Schultz removed item a.4. (AAA Workforce LLC) from the Consent Agenda to the regular agenda.

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

AAA Workforce LLC – Chairman Schultz noted that a.4. (AAA Workforce LLC) was a Nevada based company and wondered about the connection in Arizona. Ms. Rogan explained they have workers in Arizona and one of the workers was injured and uncovered. Commissioner LeMarr confirmed that they did not have coverage in Nevada.

Commissioner LeMarr moved to approve the penalty for AAA Workforce LLC and Commission Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr 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.

Univar USA, LLC	Fatality/Accident	
2801S 27 th Ave	Years in Business:	94
<u>Phoenix, AZ 85009</u>	Empl. Covered by Inspection:	5
Site Location:	2801 S 27 th Ave	
	Phoenix, AZ 85009	
Inspection No:	F5182 -1368962	
Inspection Date:	01/02/2019	

Mr. Atencio summarized ADOSH’s fatality investigation and reviewed the file and photographs. He noted that ADOSH was not recommending any citations.

Chairman Schultz and Mr. Atencio discussed standards and best practices.

Commissioner LeMarr and Mr. Atencio discussed photograph 17, what happened and why the employee would walk down the cylinder, the area taped off for a broken railing, and if repairs were made.

Commissioner LeMarr noted it was a thorough investigation.

Chairman Schultz and Mr. Atencio discussed the extensive PPE and respiratory protection. Mr. Atencio noted they did have an industrial hygiene sampling. They also discussed the fittings and hose.

Chairman Schultz asked if anyone wanted to make any statements.

Mr. Smyth, the son of the victim, asked about the report and if they could ask questions for clarification of what happened. Mr. Smyth and Mr. Atencio discussed the walking down the tanks, the railing and no fall protection requirement. Mr. Atencio explained that rolling stock does not require fall protection under OSHA and the tankers are regulated by DOT, the platform requirement for OSHA standards were in place.

Mr. Smyth asked who the contact would be if he had more questions. Mr. Atencio explained the next step by ADOSH.

Mr. Smyth asked who owned the trailer and the issue they had was the trailer was moved after and restaged and did not know if it was the same trailer or issues with the trailer. Mr. Atencio noted he did not, that ADOSH does not have the authority to order an employer to cease and based on interviews they do not have anything to say it was wrong or not used accordingly, and noted there is a DOT inspection program that has to be inspected monthly and specifics.

Mr. Smyth noted his big concern was who owned the trailer and who maintained it.

Chairman Schultz and Mr. Atencio discussed the prefilling inspection checklist completed in the file.

Commissioner Krenzel noted he could appreciate where the family is coming from and stated that ADOSH has done a thorough job. Mr. Smyth agreed and thanked Mr. Atencio for his work for protecting the workers of Arizona and also noted that as his son he has to do his due diligence.

Mr. Atencio noted that road worthiness all falls under the Department of Transportation and the family could address additional questions to DOT.

Ms. Smyth and Mr. Atencio discussed the investigation which indicated he walked on the tanker.

Commissioner Krenzel noted that Mr. Atencio has done his job according to how to do your job and the Commission has done what they can do, and apologized for not being there in person, and expressed sympathy for the family.

Commissioner LeMarr noted he gave his copy of the summary and photographs to Mr. Smyth with the consent of legal counsel, so they have what the Commissioners have. Ms. Smyth noted she did put in a request for the entire report. Chairman Schultz noted by law we are tasked to determine if there was a safety violation and have the same questions and cannot tell exactly how it happened. He noted there may be additional information in the medical examiner's report. We have done our best to determine whether it was a safety violation, and our inspections have not been able to prove there was a violation. We start with the same questions and try to get as much information as we can. We are here to protect our workers in Arizona and feel for you. It is a horrible tragedy any time we lose a worker.

The Commission took no further action.

Discussion, Action, and Potential Resolution regarding Final Rulemaking to Title 20, Chapter 5, Rule 507 Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walkways, Material Lifts and Dumbwaiters with Automatic Transfer Devices.

Ms. Rogan requested approval to engage in final rulemaking to amend Rule 507 to include the ASME A17.7-2007 standards relating to pneumatic elevators. She noted a change on page 2 of the Economic Impact Statement under Section B relating to the City of Phoenix allowing this technology. She noted that when the packet is submitted to GRRC for approval, the last sentence will be removed.

Chairman Schultz, Ms. Rogan and Mr. Atencio discussed that in 2014 the City of Phoenix wrote a letter noting they will accept pneumatic elevators, but did not clarify if they were going to follow the new ASME standard A17.7. There is a new person in that position and they are not accepting pneumatic elevators because their rule only goes to A17.1. Mr. Atencio noted that we will work with them and have them attend training with the third-party contractor to go over the A17.7 standards.

Chairman Schultz, Ms. Rogan and Mr. Atencio discussed if the rule is adopted that the City of Phoenix will still have the ability to restrict, and will have their own standards granted by ADOSH. Chairman Schultz noted he does not like to have different jurisdictions which have different standards, he wanted everyone to know they can do business throughout Arizona in the same manner and same requirements. He appreciated the City of Phoenix being invited to the training, which is the largest opportunity for the utilization of these types of elevators within the state.

Commissioner LeMarr moved to approve the final rulemaking process relative to Title 20, Chapter 5, Rule 507 Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walkways, Material Lifts and Dumbwaiters with Automatic Transfer Devices. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Laky discussed the next community outreach for either September 12th or 19th for Florence and will be a full day trip. He also mentioned the fourth quarter will be Douglas in October or early November.

Mr. Laky noted the Heat Stress public service announcement will be playing from June to August in Yuma.

Mr. Laky also noted the Claims/ALJ system is up to 991 users.

Ms. Dimas confirmed Commission meeting dates through August 2019.

Ms. Dimas presented a retirement resolution for Allen Shayo, Vice Chief Administrative Law Judge with the ALJ Division. She noted Judge Shayo has eight years of state service.

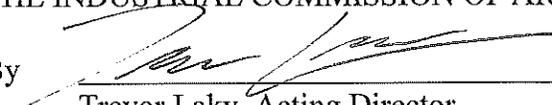
Public Comment.

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 Krenzel voted in favor of the motion and the meeting was adjourned at 1:46 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Trevor Laky, Acting Director

ATTEST:


Kara Dimas, Commission Secretary