

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, May 27, 2021 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner (Telephonic)
Steven J. Krenzel	Commissioner (Telephonic)
James Ashley	Director (Telephonic)
Stephen Ball	Senior Staff Attorney (Telephonic)
Jason M. Porter	Deputy Director (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Sylvia Simpson	Chief Financial Officer (Telephonic)
Renee Pastor	Self Insurance (Telephonic)
Jessie Atencio	ADOSH Director (Telephonic)
Steve Black	ADOSH Compliance (Telephonic)
Anna Maria Stonerock	ADOSH Admin (Telephonic)
Kara Dimas	Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:02 p.m. Also in attendance on the telephone, confirmed by roll call were Cassie Reed, Suzy Braden, Lynne Lee, Lee Bazemore and Robert Duffy (Encompass Health); John Tindall (McGriff); Monica Welch, Adrian Aranda, Mayra Alexandre and Barbara Goodrich (City of Yuma); Debbie Baker and Tom Elliott (Valley Schools); Nate Little (Morex Investment LLC, DBA Arizona Beaman Drilling); Stephen Culp and Renee Williams (Faribault Foods); Brett Barratt (NCCI); and Savannah Scharnhorst (Snell & Wilmer).

Public Hearing to accept comments and other information regarding the assessment under A.R.S. § 23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment.

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Chairman Schultz introduced the agenda item, noting that the Commission had published a Notice of Public Hearing on April 29, 2021. He stated that public comments would be accepted through the close of business today. Chairman Schultz indicated that a written report regarding the one-half percent assessment under A.R.S. § 23-1065(F) had been submitted into the record by staff. The Commission will take action at a later date.

Ms. Simpson summarized the written report and discussed § 23-1065(F), the Commission's prior assessment history, and whether current circumstances would permit an assessment under § 23-1065(F) for calendar year 2022.

Chairman Schultz thanked Ms. Simpson for her report noting the Special Fund was in good shape financially in terms of consideration for the assessment. Chairman Schultz invited questions and/or public comment. Hearing none that concluded the public hearing with written comments accepted through the close of business.

Approval of Minutes of May 20, 2021 Regular Meeting.

Commissioner Krenznel moved to approve the Minutes of the May 20, 2021 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenznel voted in favor of the motion. Commissioner LeMarr 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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CNP20/21-054 Carefree Manor Assisted Living \$1,000

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

1. City of Yuma
2. Encompass Health Corporation
3. Textron, Inc.
4. Valley Schools Workers' Compensation Group

Vice Chair Hennelly requested that the City of Yuma and Encompass Health Corporation be moved to the regular agenda to hear more about the experience modification.

Chairman Schultz commented that Valley Schools Workers' Compensation Group has an excellent .87 experience modification factor for a large group with many entities which is a significant achievement.

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 LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Approval of Requests for Renewal of Self-Insurance Authority.

1. City of Yuma

Vice Chair Hennelly requested to hear more information with respect to the experience modification factor ("e-mod").

Ms. Pastor noted the e-mod is lower than prior years, but will increase in 2020. Developing the rates it was discovered that the prior rates were undervalued but the e-mod shows the losses are heavier than the payroll. Additionally, the e-mod is affected by the safety department of the City.

Mr. Duffy noted that for the past several years the e-mod had been going down, but some incidents drove 2020 up. The City of Yuma has concentrated on reducing injuries for public safety, specifically for hand to hand combat instances through training. The City of Yuma completed 56 facility inspections in 2020 looking for safety hazards and an additional 38 behavior-based inspections. Lastly, the City of Yuma has implemented a near miss accident reporting program, a nurse triage support system, a very active safety committee and a wellness program.

Chairman Schultz thanked Mr. Duffy for putting together the PowerPoint listing all of the programs they have implemented with the police force. He appreciated being reminded that the City was the first to sign up for the PEPP program and understands that occasionally claims increase the e-mod and therefore the e-mod is not necessarily reflective of the actual experience. He requested more information on the actual number and frequency of injuries.

Mr. Duffy commented that they are working with Ashton Management Group through Tristar to identify whether the police injuries were sustained during training or in the field.

Ms. Pastor reviewed the claims from 2017 to 2020.

Chairman Schultz was impressed with all of the efforts that the City is employing, and it sounds like the safety committee is ready to hopefully become more and more involved and figure out some of the keys to reducing the injury rate.

Ms. Pastor noted that the losses did come down in 2020 compared to the prior year and there was a decrease in the number of open claim files.

Vice Chair Hennelly moved to approve the self-insurance renewal for the City of Yuma and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passes.

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

##### 2. Encompass Health Corporation

Ms. Pastor noted the e-mod increased in 2020 because of some larger losses in 2019 and an increase in claims filed in 2020, however the majority of their losses occurred in 2017 and prior years.

Ms. Lee thanked everyone for allowing her to acquaint everyone with Encompass Health Corporation and hear more about their commitment to safety for their employees. Encompass Health Corporation operates over 130 in-patient rehabilitation hospitals in over 30 states. She described the safe patient handling program to lessen the risk of healthcare workers being injured and what they did to roll that out to all of their states, and they call it the safe patient mobility program. Also, the "STOP" programs for Stop, Think, Organize and Position before they move patients to keep employees and patients safe, and other activities are planned for their employees. They have also participated in the past with ADOSH Consultation programs with good results. They also worked with employees to make sure they received prompt attention and care needed for COVID.

Chairman Schultz suggested a stretching and strengthening program for employees that would work well with their STOP program.

Commissioner Krenzel moved to approve the self-insurance renewal for Encompass Health Corporation 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.

Chairman Schultz thanked Encompass Health for sharing their programs with the Commission and wished them luck in dealing with the toughest of tough patients.

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.

Grajeda and P. Alvarez – Mr. Ball noted this was a request for attorney’s fees pursuant to §23-1069 and discussed the analysis of the Petition for Attorney Fees submitted by Mr. Grajeda regarding his representation of Mr. Alvarez. Mr. Ball discussed the benefits resulting from the representation by Mr. Grajeda and was recommending that the fee agreement be enforced for 25% of the benefits which will be paid by the carrier.

Commissioner LeMarr moved to adopt the Findings and Award granting attorney’s fees and to allow electronic signatures of the Award and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel 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.

Morex Investments, LLC dba Arizona Beeman Drilling	Fatality/Accident	
15563 E US Hwy 60	Years in Business:	20
<u>Gold Canyon, AZ 85118</u>	Empl. Covered by Inspection:	3
Site Location:	5340 W Miller	
	Maricopa, AZ 85139	
Inspection No:	T3633 - 1505899	
Inspection Date:	12/09/2020	

SERIOUS – Citation 1 - Item 1 –

a) Gardner DM 2500 drill rig: An employee was exposed to a rotating moving part, Cat Head that lacked a guard to prevent accidental contact. 29 CFR 1926.300(b)(2)	
Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
<b>TOTAL PENALTY - \$3,000.00</b>	<b>TOTAL FORMULA AMT. - \$3,000.00</b>

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalty, and reviewed the photographs. Compliance Officer Black was also available for questions.

Vice Chair Hennelly, Mr. Atencio and Mr. Black discussed how long the employee was with the company.

Chairman Schultz asked about photograph #2, he was having difficulty understanding how this happened, specifically how the helper got drawn into the cathead, what the injuries were and how long was he trapped. Mr. Atencio noted there was a limited number of employees working on the rig, there were no witness to what happened, but based on industry tactics the biggest risk is entanglement and being pulled in.

Chairman Schultz thought this machine might need a kill switch close to the cathead. Mr. Atencio noted there is information on IADC (International Association of Drilling Contractors) that talks about the person operating the cathead should have some way of alerting or sounding if something goes wrong. Mr. Black added that his understanding was the machine was not designed with any control mechanism where the helper was using the cathead would have any control over turning on or off, that was at the driller's station and he was not aware of any warning system in place during the inspection.

Chairman Schultz checked if Mr. Little would like to comment.

Mr. Little commented the employee was there approximately 18 months and was working to become a beginner operator and knew the ins and outs of the machine and could run the rig by himself if necessary.

Chairman Schultz asked Mr. Little if he had any idea how the employee got pulled in. Mr. Little did not know, and the driller did not want to talk about it and left the company. They do not have the exact answers and are not sure if he tripped or what happened, but they wish they knew. They discussed the time of the incident and visibility.

Chairman Schultz appreciated Mr. Little answering questions, these accidents hurt the work family. Mr. Little indicated that it did, and they shut down for a while.

Chairman Schultz discussed with Mr. Little if there were plans for guarding, but the rig would be useless with guarding since it is not designed that way, so they have taken it out of service.

Chairman Schultz noted the Commission is focused on trying to figure out how to make things safer for the future.

Mr. Atencio and Mr. Little discussed the cathead and Mr. Atencio will follow up with Mr. Little to provide some guidance.

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

Chairman Schultz thanked Mr. Little for joining the meeting.

Faribault Foods, Inc.  
8755 S Rita Rd  
Tucson, AZ 85747

Site Location: 8755 S Rita Rd  
Tucson, AZ 85747  
Inspection No: T3633 - 1524891

Planned  
Years in Business: 15  
Empl. Covered by Inspection: 145

Inspection Date: 4/13/2021

SERIOUS – Citation 1 - Item 1 –

- a) Wastewater area: The process pit, which was approximately five feet in diameter and ten feet deep, had the cover removed and did not have another fall protection method in place. 29 CFR 1910.28(b)(3)(i)  
Div. Proposal - \$1,300.00 Formula Amt. - \$1,300.00

SERIOUS – Citation 1 - Item 2 –

- a) Bean room: An employee was exposed to the dry bean hopper metering belt that was lacking a guard.  
b) Hydro bay 2: The ingoing nip points created by the roller wheels for the bean dewatering reel were not guarded.  
c) Maintenance area: An employee used a Dake Johnson brand horizontal band saw, model #JH10 and serial number #202093, without the unused portion of the blade guarded. 29 CFR 1910.212(a)(1)  
Div. Proposal - \$1,625.00 Formula Amt. - \$1,625.00

SERIOUS – Citation 1 - Item 3 –

- a) Maintenance area: A Milwaukee brand bench grinder, model #5051 and serial numbers unknown, did not have the right and left side work rests adjusted to 1/8" between the rotating stones. 29 CFR 1910.215(a)(4)  
Div. Proposal - \$100.00 Formula Amt. - \$1,300.00

SERIOUS – Citation 1 - Item 4a –

- a) Can manufacturing area: The shaft powering the turning plate following the Mectra 1009 machine, model and serial numbers unknown, was not guarded to prevent accidental contact by an employee.  
b) Can manufacturing area: The shaft powering the turning plate following the Mectra 1010 machine, model and serial numbers unknown, was not guarded to prevent accidental contact by an employee.  
c) Canning area: The motor shaft for the Line #1 Bean Granular Discharge conveyor belt was not guarded to prevent accidental contact by an employee.  
d) Canning area: The motor shaft for the M401 motor was not guarded to prevent accidental contact by an employee.  
e) Canning area: The motor shaft for M423 motor was not guarded to protect accidental contact by an employee. 29 CFR 1910.219(c)(2)(i)  
Div. Proposal - \$1,300.00 Formula Amt. - \$1,300.00

SERIOUS – Citation 1 - Item 4b –

- a) Can transfer line: The horizontal belt motor was not adequately guarded as it had a hole allowing employee exposure when running. 29 CFR 1910.219(e)(1)(i)  
Div. Proposal - \$0.00 Formula Amt. - \$1,300.00  
TOTAL PENALTY - \$4,325.00 TOTAL FORMULA AMT. - \$6,825.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs. Compliance Officer Black was also available for questions.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Culp commented that most of the issues on the report have been repaired. The open pit and wastewater technicians were immediately retrained Band saw blade covers were ordered and installed within a few days. The covers for the exposed sides of the beam metering belt have been put back in place. The guards on the wheels of the grinder have been reinstalled and adjusted and the shafts have repair work orders for guarding for everything for the shafts and conveyors, and they are in the process of fabricating and installing guards. The company has started a respiratory program. The stand platforms and pillar have removed the grading for now and are currently not being used.

Chairman Schultz thanked Mr. Culp for sharing the abatement information and explained the Commission appreciates employers who make investments in correcting problems and correct the problems as quickly as possible to create a safer workplace.,

Mr. Culp asked if it is possible to request the fines be removed or lessened further since they have fixed most of the items.

Chairman Schultz explained that the key to that is to send evidence of the abatement as quickly as possible after the inspection, even before you receive the citation but that after the approval of a citation the company will have an opportunity to work with Mr. Atencio and his team in terms of the citation and penalty. Mr. Atencio requested that Mr. Culp bring in any information to support what was done like receipts or retraining.

Commissioner Krenzel moved to amend the citation and proposed penalties, in light of the abatement efforts mentioned, to include a 25% Good Faith discount for a total of \$3,243.00. Commissioner LeMarr 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. Ashley updated the Commissioners with the AMS scorecard metrics for the fiscal year-to-date with the Administrative Law Judge Division's four metrics: Approved Settlements, Awards, Cases Referred to Mediation/Settlement Conferences and Full and Final Settlements.

Chairman Schultz commented that it was going to take time for the stakeholders to get comfortable with the mediation process as an alternative to hearings, but the progress is commendable toward the goal of providing alternatives to or reduce litigation. What a great job.

Ms. Baker wanted to give kudos for a few Commission employees:

Director Ashley is the best Director she has had the privilege to work with in the 49 years she has been in the work comp business. She jumped on board with full and final settlements and has done quite a few and is very grateful for the opportunity and that Mr. Ashley is the Director. Renee Pastor is brilliant and amazing and helps the self-insured community so much. Gaetano Testini as Chief Counsel is doing such a wonderful job and he is a joy to work with. Ruby Tate as

Claims Manager is doing a fabulous job. Chairman Schultz and the Commissioners have made a positive difference to the Industrial Commission. Ms. Baker also gives kudos to Jessie Atencio.

As a stakeholder, she is grateful to have all of the ICA team and thank them for their dedication, knowledge, compassion, and understanding.

Chairman Schultz thanked Ms. Baker for her thoughts and agreed with the incredible job the whole Industrial Commission team does under the leadership of Mr. Ashley. What has been beneficial is to have metrics to prove the accomplishments by measuring productivity; the ICA has wonderful people accomplishing amazing things and it is very much a team effort.

Ms. Dimas confirmed Commission meeting dates through July 2021. Commissioner LeMarr and Commissioner Krenzel would not be available on June 10, 2021 so that meeting was cancelled.


Public Comment.

Mr. Ashley thanked Ms. Baker for her kind and very thoughtful words. He will pass along her comments.

There was no additional public comment.

Commissioner Krenzel 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 2:58 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  \_\_\_\_\_  
James Ashley, Director

ATTEST:

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Kara Dimas, Commission Secretary