

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, May 4, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self-Insurance
	William Warren	ADOSH Director
	Christopher Brandon	Compliance Officer
	Manuel Saldana	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Fred Carr and Evan Bowers with Alliance Lumber; David Daugherty with Competitive Engineering; Terry Fox with Arizona Association of Lawyers for Injured Workers (“AALIW”); David Rose and David Rose with the French Quarry; and Clawson Williams with Snell & Wilmer.

Approval of Minutes of April 27, 2017 Regular Meeting Minutes.

The agenda item for approval of the Minutes of the April 27, 2017 was moved to the agenda of the next regular session meeting.

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. 2C16/17-1222 Alpha Psychiatric Associates PLLC
2. 2C16/17-1580 Carniceria Y Marisqueria Las Playitas LLC, dba Carniceria Las Playitas
3. 2C16/17-1697 EZ Medical Transportation, LLC
4. 2C16/17-1614 Mytrans LLC, dba Adina Adult Care Home #2

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

1. Heartland Express, Inc.
2. Honeywell International, Inc.

Chairman Schultz noted that Honeywell International's experience modification rating was the lowest he had seen. He and Ms. Pastor discussed Heartland Express, Inc.'s experience modification rating. Chairman Schultz removed item b.1. (Heartland Express, Inc.) from the Consent Agenda.

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

Heartland Express, Inc.: Chairman Schultz discussed the company's experience modification rating and recommended that the company utilize the ADOSH consultation program.

Commissioner Orchard moved to approve Heartland Express, Inc.'s request for renewal of self-insurance authority and to direct the company to work with the ADOSH Consultation Division to improve its experience modification rating. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, 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.

Alliance Lumber SW, LLC dba Alliance Crates & Pallets	Referral
1350 N. VIP Blvd.	Years in Business: 7
<u>Casa Grande, AZ 85122</u>	Empl. Covered by inspection: 23
Site Location: 1350 N. VIP Blvd.	
	Casa Grande, AZ 85122
Inspection No: W6968-1199566	
Inspection Date: 12/19/2016	

SERIOUS – Citation 1 - Item 1 – Pallet Department: The Baker Band Resaw (Model BBR-0, Serial #05-3593) had a flexible duct to the dust collection system that was not secured and when the employee went to re-install the duct, without shutting the machine down, came in contact with the saw blade amputating the tip of his right index finger and cutting his middle finger. (29 CFR 1910.147(c)(1)).

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

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

Chairman Schultz, Commissioner LeMarr, Mr. Warren, and Mr. Carr discussed abatement of the hazard.

Commissioner Orchard and Mr. Warren discussed the adjustment factors and whether the employer was inspected in the previous three years.

Vice Chair Hennelly and Mr. Warren discussed the injury's severity, adjustment factors, information provided concerning the nature of the subject injury, and the propriety of the citation.

Mr. Carr discussed the company's lockout/tagout program, safety meetings, and prior consultation with ADOSH. Mr. Carr noted that the injured employee's personal protection gear (a glove) contributed to the injury. He discussed the cause of the accident. He indicated that the citation and penalty were unreasonable in light of the company's safety record.

Chairman Schultz and Mr. Carr discussed abatement. Chairman Schultz noted that the company was not cited for training, personal protective equipment, or respiratory issues and that it appeared that the company was doing "so many things right." Mr. Carr said that the ADOSH Consultation Division made no recommendations concerning the saw and related the injury to the employee's actions.

Commissioner Krenzel and Mr. Carr discussed the saw, when it was installed, and how frequently it was operated.

Chairman Schultz and Mr. Carr the company's other locations.

Mr. Warren noted that the company had a good safety program, but that this issue had not been addressed.

Commissioner Orchard and Mr. Warren discussed the prior ADOSH Consultation visits and whether ADOSH Consultation would have had an opportunity to witness the subject hose coming loose. Mr. Warren noted the Compliance Officer had complimented the subject company's management team.

Commissioner Krenzel moved to reduce the proposed penalty on Citation 1, Item 1 to \$4,500.00, noting that the company had operated the saw for a long time and had taken measures to prevent such an injury. There was no second.

Commissioner LeMarr discussed the company's excellent safety culture. He moved to reduce the proposed penalty on Citation 1, Item 1 to \$500.00. Commissioner Krenzel seconded the motion. Vice Chair Hennelly and Commissioner Orchard voiced their disagreement with the amount of the proposed reduction. Commissioner LeMarr withdrew his motion.

Vice Chair Hennelly moved to reduce the penalty on Citation 1, Item 1 to \$2,500.00 based on the company's prompt abatement. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Competitive Engineering, Inc.
3371 E. Hemisphere Loop
Tucson, AZ 85706

Planned
Years in Business: 26
Empl. Covered by inspection: 48

SERIOUS – Citation 1 - Item 1 –

- a) Fabrication room: A hearing conservation program with all corresponding elements was not implemented where employee noise exposure exceeded 85 decibels measured on the A scale with a dose exceeding 50%. (29 CFR 1910.95(c)(1)).
- b) Fabrication room: Employees required to wear hearing protection in the fabrication room were not monitored to determine the decibel level of noise exposure throughout their workday. (29 CFR 1910.95(d)(1)).
- c) Fabrication room: An audiometric testing program was not implemented where employees were exposed to noise levels in excess of 85 decibels as a time-weighted average of their 8 hour work shift. (29 CFR 1910.95(g)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

- a) Fabrication room: A written respiratory protection program was not established and implemented for employees required to wear a Moldex model 2300N95 filtering facepiece respirator, that included a medical evaluation, fit testing, procedures for proper use, procedures for cleaning, training and procedures for evaluating the effectiveness of the program. (29 CFR 1910.134(c)(1)).
- b) Fabrication area: A medical evaluation was not provided to determine employees' ability to use an employer required Moldex model 2300N95 filtering facepiece respirator, while working with hazardous substances such as crystalline silica. (29 CFR 1910.134(e)(1)).
- c) Fabrication area: Employees were not fit tested prior to required, initial use of a Moldex model 2300N95 filtering facepiece respirator, when working with hazardous substances such as crystalline silica. (29 CFR 1910.134(f)(2)).
- d) Fabrication areas: Employees who were required to wear a Moldex model 2300N95 filtering facepiece respirator, were not trained on respiratory protection elements outlined in section (i)-(vii). (29 CFR 1910.134(k)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 –

- a) Fabrication area: One Skilsaw model F012SD7720, serial number 405909292, was not equipped with a guard below the base plate or shoe that instantly returned to the covering position because the lower guard had been fixed in an open position with a block of wood. (29 CFR 1910.243(a)(1)(i)).
- b) Fabrication area: A Makita electric angle grinder model GA7911, 6,000 rpm, serial number 285870E, was equipped with a GranQuartz Diarex 5" x 2" Assassin Black Silicon Carbide Grinding Wheel part #696323, grit size C80, and was being used to grind granite and other stone countertops without a safety guard to prevent/protect the operator from the hazards created by impalement and flying debris should the abrasive wheel disintegrate during the operating cycle. (29 CFR 1910.243(c)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 –

- a) Fabrication area: An employee was exposed to an airborne concentration of crystalline silica, respirable fraction, in excess of the calculated 8-hour time weighted average of 0.53 milligrams per cubic meter of air (mg/m³) of air based on an alpha-Quartz concentration of 16.7%, sampled during normal production, the employee's exposure was 0.86 (mg/m³). (29 CFR 1910.1000(c)).
- b) Fabrication area: An employee was exposed to an airborne concentration of crystalline silica, respirable fraction, in excess of the calculated 8-hour time weighted average of 0.53 milligrams per cubic meter of air (mg/m³) of air based on an alpha-Quartz concentration of 16.7%, sampled during normal production, the employee's exposure was 0.86 (mg/m³) and feasible administrative or engineering controls were not implemented to achieve compliance with the permissible exposure limit (PEL). (29 CFR 1910.1000(e)).
- c) Fabrication area: Employees used compressed air to blow crystalline silica dust from their work clothes prior to exiting production areas, which increased particles in the air, and thereby increased their exposure to respirable crystalline silica dust. (29 CFR 1910.141(a)(3)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 5 –

- a) Fabrication area: A written hazard communication program had not been developed and implemented at the job site for employees who were exposed in the workplace to hazardous substances such as respirable crystalline silica dust. (29 CFR 1910.1200(e)(1)).
- b) Fabrication area: The employer did not furnish information and training to employees who were exposed in the workplace to hazardous substances such as respirable crystalline silica dust. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$6,250.00

TOTAL FORMULA AMT. - \$6,250.00

Mr. Warren summarized the citations and proposed penalties and reviewed the photographs. Mr. Brandon discussed his inspection and report.

Commissioner LeMarr discussed the company's operations, the nature of crystalline silica, existing silica standards, and the ubiquity of products that contain crystalline silica. Mr. Brandon discussed the wet method for processing the subject materials, improper respirator usage, and his concerns about the irreversible effects of crystalline silica exposure.

Chairman Schultz, Commissioner LeMarr, and Mr. Brandon discussed the compressed air measurements and dust removal.

Mr. Rose noted that the company appreciated the ADOSH inspection. He described efforts to reduce dust in the dry room, the increase in the popularity of quartz products, and the resulting dust. He discussed the company's efforts to reduce dust and incorporate safety meetings and practices.

Commissioner LeMarr and Mr. Rose discussed the new federal Silica standards and wet room processing.

Chairman Schultz and Mr. Rose discussed the addition of the new air-handling units.

Commissioner Orchard moved to amend the proposed penalties, as follows: (1) reduce the proposed penalties for Citation 1, Items 1-5 by \$250.00 each, for a total proposed penalty of \$5,000.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Magnum Steel, LLC	Referral
17765 W Gelding Dr	Years in Business: 3
<u>Surprise, AZ 85388</u>	Empl. Covered by inspection: 4
Site Location: 17097 N 73 rd Ave	
Glendale, AZ 85308	
Inspection No: T1999-1206981	
Inspection Date: 2/01/2017	

SERIOUS – Citation 1 - Item 1 –

- a) South side of building: Canopy Roof: One Magnum Steel, LLC employee was wearing a personal fall arrest system that was rigged in such a way that the employee could contact the ground in the event of a fall as the total estimated fall distance did not exceed the fall arrest distance of the lanyard and the employee's personal fall arrest system. (29 CFR 1926.502(d)(16)(iii)).
- b) South side of building: Canopy roof: One Magnum Steel, LLC employee was exposed to a fall of 15 feet 5 inches while connected to the positioning ring located on the side of the body harness at waist height. (29 CFR 1926.502(d)(17)).

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

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

Commissioner LeMarr, Commissioner Orchard, Mr. Warren, and Mr. Saldana discussed the nature of the injury and the injured employee's position. Commissioner Orchard noted that employer had provided the appropriate fall protection and that the employees had been using fall protection.

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 LeMarr, and Commissioner Krenznel voted in favor of the motion. Commissioner Orchard voted against. 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.

Chairman Schultz and Mr. Ashley discussed spending authority for the new claims system. Mr. Ashley noted the platform on which the system will be based. He stated that the Legal Division case management system will also be based on the same platform and Chairman Schultz noted the benefits of building a unified system. Mr. Porter and Mr. Ashley discussed the importance of the system to the Legal Division.

Mr. Ashley noted that Ms. Kurth offered a webinar for the ALJ Division regarding the Treatment Guidelines. He noted that the webinar was recorded for future reference.

Mr. Ashley noted that the Commission's AMS deployment is being showcased and that the Commission hosted visitors from the State Land Department. Chairman Schultz and Mr. Ashley noted the progress that the Commission has made and Chairman Schultz noted the Commissioners' interest in another Gemba walk.

Chairman Schultz, Commissioner LeMarr, and Mr. Ashley discussed the newly-hired ALJs.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed future Commission meeting dates through July 2017. Commissioner Orchard, Vice Chair Hennelly, Commissioner Krenzel, and Commissioner LeMarr discussed their availability for the proposed meeting dates.

Mr. Ashley discussed possible out-of-town Commission meetings in Gila County (in August) and Tucson (in the fourth quarter).

Ms. Dimas noted that a group Commission photo will be taken on May 11.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting adjourned at 2:26 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary