

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, December 15, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Jason M. Porter	Acting Director
	Stephen Ball	Acting Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Jacqueline Kurth	MRO Manager
	Chris Brandon	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Robert Stolz and Paul (Pat) Terry with Arizona Department of Transportation; Dewayne Boerner with Electric Service & Control Systems; and Jason Weber with Snell & Wilmer.

Approval of Minutes of December 8, 2016 Regular Meeting.

Commissioner LeMarr moved to approve the Minutes of the December 8, 2016 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr 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 Requests for Renewal of Self-Insurance Authority.

1. Dignity Health

Vice Chair Hennelly moved to approve the item on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr 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 the status of legislative proposals. Ms. Pastor and Mr. Charles discussed clarification of the goals of ICA proposals. Commissioner LeMarr, Mr. Porter, Mr.

Charles, and Chairman Schultz discussed workers' compensation insurance requirements for limited liability companies. Mr. Charles discussed ongoing discussions regarding proposed legislative changes to presumption language for firefighters and peace officers.

Mr. Charles discussed media coverage regarding implementation of Proposition 206 and the recent court challenge to the constitutionality of Proposition 206.

Commissioner LeMarr moved to enter executive session for the purpose of obtaining legal advice from the Commission's attorneys regarding the pending legal challenge to Proposition 206. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed. Chairman Schultz announced the Commission would move into executive session.

The Commission returned to regular session at 1:31 p.m.

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.

Electric Service & Control Systems, Inc.
6033 N 57th Ave
Glendale, AZ 85301

Fatality/Accident
Years in Business: 15
Empl. Covered by inspection: 2

Site Location: 7225 W Sherman St
Phoenix, AZ 85043
Inspection No: J7272-1181043
Inspection Date: 10/03/2016

SERIOUS – Citation 1 - Item 1 – 7225 W Sherman St, Phoenix, AZ 85043: Employees were not provided electrically insulated personal protective equipment (PPE) such as rubber gloves with leather glove outer protectors and electrically insulated sleeves to employees working on electrically energized equipment. (29 CFR 1926.28(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – 7225 W Sherman St, Phoenix, AZ 85043: An employee was pulling a ground wire through the service entrance section (SES) to connect an existing switchgear's ground to provide grounding for new switchgear to be installed at the facility and the employee was not protected against electrical shock by deenergizing and grounding the circuits or effectively guarding the circuits by insulation or other means. 29 CFR 1926.416(a)(1).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$7,750.00

TOTAL FORMULA AMT. - \$7,750.00

Mr. Warren discussed ADOSH's fatality investigation, summarized the citation and proposed penalties as listed, and discussed the photographs. Commissioner LeMarr and Mr. Brandon discussed his investigative conclusions and the circumstances leading to the fatality.

Chairman Schultz offered Mr. Boerner the opportunity to address the Commission. Mr. Boerner discussed company shut down procedures. Commissioner LeMarr and Mr. Boerner discussed the reason why the circuit did not get shut down prior to the fatality.

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

Arizona Department of Transportation, State of Arizona 1444 W. Grant Rd. Tucson, AZ 85745	Referral Years in Business: 90 +/- Empl. Covered by inspection: 9
Site Location: 1444 W. Grant Rd. Tucson, AZ 85745	
Inspection No: W6968-1181193	
Inspection Date: 10/03/2016	

SERIOUS – Citation 1 - Item 1 –

a) Woodshop: A table saw, Model-Rockwell/Delta-1, Series 34-396, SN #1584548 was not properly guarded, causing the partial amputation of an employee’s middle finger and a laceration to the ring finger. (29 CFR 1910.213(c)(1)).

b) Woodshop: A table saw, Model-Rockwell/Delta-1, Series 34-396, SN#1584548 was not properly guarded with a spreader, causing the partial amputation of an employee’s middle finger and a laceration to the ring finger. (29 CFR 1910.213(c)(2)).

c) Woodshop: A table saw, Model Rockwell/Delta 1, Series 34-396, SN#1584548 was not properly guarded with nonkickback finders or dogs, causing the partial amputation of an employee’s middle finger and a laceration to the ring finger. (29 CFR 1910.213(c)(3)).

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 commented on the grouping of the violations.

Chairman Schultz offered an ADOT representative the opportunity to address the Commission. Mr. Stolz discussed ADOT’s focus on machine guarding and agency-wide efforts to improve safety. Chairman Schultz commented on the ADOSH settlement process.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Vice Chair Hennelly seconded the motion. Vice Chair Hennelly commented on ADOT’s efforts to improve safety and the dynamics of assessing penalties against state agencies. Chairman Schultz and Mr. Warren discussed the settlement process and the expectation of working cooperatively with ADOT to improve employee safety. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

McKenna Construction Inc. 2801 E Rim Club Dr Payson, AZ 85541	Referral Years in Business: 19 Empl. Covered by inspection: 4
Site Location: 13820 W Camelback Rd Litchfield Park, AZ 85340	
Inspection No: H9685-1180919	
Inspection Date: 09/30/2016	

REPEAT-SERIOUS – Citation 1 - Item 1 – 13820 Camelback Rd in Litchfield Park, AZ 85340: One employee operating an Ingersoll Rand telehandler, with model number VR-843C, and serial number 189271, was not trained in the safe operation of the telehandler. (29 CFR 1910.178(l)(1)(i)).

McKenna Construction Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.602(d), which was contained in OSHA inspection number 1067209, citation number 1, item number 5 and was affirmed as a final order on 4/08/2016, with respect to a workplace located at 20677 E Maya Rd, Queen Creek, AZ 85142.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

REPEAT-SERIOUS – Citation 1 - Item 2 –

a) 13820 Camelback Rd in Litchfield Park, AZ 85340: Two employees framing the roof of a commercial building were not protected from falling 23 feet 6 inches to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

b) 13820 Camelback Rd in Litchfield Park, AZ 85340: One employee transitioned from a workbasket onto a commercial building roof and was not protected from falling 23 feet 6 inches to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

McKenna Construction Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(1), which was contained in OSHA inspection number 1067209, citation number 1, item number 1 and was affirmed as a final order on 04/08/2016, with respect to a workplace located at 20677 E Maya Rd. Queen Creek, AZ 85142.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2 - Item 1 – Kitchen: Two employees used an extension ladder, brand and model unknown, to access the roof of a commercial building and the ladder side rails did not extend at least three feet above the landing surface exposing employees to a fall of 16 feet 10 inches to the ground below. (29 CFR 1926.1053(b)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2 - Item 2 – 13820 Camelback Rd in Litchfield Park, AZ 85340: Additions which affected the capacity of an Ingersoll Rand telehandler, with model number VR-843C, and serial number 189271, were made without the manufacturer's written approval and the plates, tags and decals were not changed accordingly. (29 CFR 1926.602(c)(1)(ii)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

TOTAL PENALTY - \$5,800.00

TOTAL FORMULA AMT. - \$5,800.00

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

Commissioner LeMarr and Mr. Warren discussed ADOSH's process of documenting evidence of measurements and the ownership and condition of the lift. Chairman Schultz and Commissioner LeMarr discussed positioning and usage of the extension ladder. Mr. Warren discussed the applicable standards.

SERIOUS – Citation 1 - Item 2 – Building trusses: Two employees were engaged in the installation of wood trusses and roof sheeting approximately sixteen feet above the concrete floor below and were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,500.00	Formula Amt. - \$1,500.00
TOTAL PENALTY - \$6,500.00	TOTAL FORMULA AMT. - \$6,500.00

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

Chairman Schultz and Mr. Warren discussed the employees' injuries.

Commissioner LeMarr and Mr. Warren discussed the photographs and who took certain photographs.

Vice Chair Hennelly and Mr. Warren discussed citations issued to the general contractor.

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

Chairman Schultz, Mr. Warren, and Mr. LeMarr discuss the electrocutions presented during the meeting and the use of high-voltage powerlines.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meetings scheduled for January 12, 19, and 26, 2017.

Mr. Warren, Commissioner LeMarr, and Mr. Porter discussed upcoming employee departures and whether pay disparity is contributing to employee attrition. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Mr. Warren discussed the impact of employee attrition and employee training.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 2:12 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By Jason Porter
Jason M. Porter, Acting Director

ATTEST:
Kara Dimas
Kara Dimas, Commission Secretary