

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, November 17, 2016 – 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
	Jonathan Hauer	Acting Chief Legal Counsel
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Chris Brandon	Compliance Officer
	Glenn Saavedra	Compliance Officer
	Michael Mosesso	Chief Administrative Law Judge
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Paul Hildebrand and Jaci Hale with Marana Aerospace Solutions, Inc.; Clifford Hauser with Cholla Amateur Radio Base, LLC; Patricia Gaydos and Zachary Barnett with OSHA; and Jason Weber with Snell & Wilmer.

Approval of Minutes of November 10, 2016 Regular Meeting.

Commissioner Orchard moved to approve the Minutes of the November 10, 2016 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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. 2C15/16-0095 Barraza Drywall and Sons, LLC
 2. 2C16/17-0379 Lee's Foodland Market, LLC
 3. 2C15/16-1045 River of Love Adult Care Home LLC

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Medtronic, Inc.

Commissioner LeMarr moved to approve the items on the Consent Agenda 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.

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. Ashley discussed Propositions 205 and 206 and the outcome of the election. Chairman Schultz and Mr. Ashley discussed staffing levels in the Labor Department in light of the passage of Proposition 206. Mr. Ashley discussed interactions with legislative staff regarding Proposition 206. Chairman Schultz and Mr. Ashley discussed Proposition 206 posting and compliance issues.

Stakeholder Presentation.

Mr. Ashley introduced Ms. Gaydos, OSHA Region IX Federal Agency Program Officer. Ms. Gaydos addressed the Commission. She noted that ADOSH is performing at a high level, discussed OSHA's support for ADOSH's public-sector initiatives, stated that she appreciated continued cooperation between the Commission and OSHA, and discussed ADOSH staffing levels.

Mr. Barnett noted improvement in the process and stated that he looked forward to meeting with the Commissioners. He discussed the quarterly meeting, as well as appreciation for Chairman Schultz' attendance at the meeting, and noted that the ICA is moving ADOSH in a positive direction that was innovative and inspiring.

Chairman Schultz and Ms. Gaydos discussed Region IX's size. Ms. Gaydos noted that all of the states within Region IX have state plans.

Commissioner LeMarr, Mr. Ashley, Ms. Gaydos, and Mr. Barnett discussed ADOSH staffing.

Mr. Barnett discussed metrics from the quarterly meeting and stated that ADOSH is on good footing right now.

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 proposed ADOSH citations and proposed penalties.

Cholla Amateur Radio Base, LLC	Fatality/Accident	
8741 N Holly Brook Ave	Years in Business:	2
Tucson, AZ 85742	Empl. Covered by inspection:	1
Site Location:	GATR # 116	
	Mount Lemmon, AZ 85619	
Inspection No:	B7667-1154126	
Inspection Date:	06/09/2016	

Mr. Warren summarized ADOSH's fatality investigation and reviewed the photographs. He reported that there was no employment relationship in the subject incident and therefore ADOSH was not recommending any citations.

Commissioner LeMarr, Mr. Saavedra, and Mr. Warren discussed available safety measures.

Chairman Schultz offered Mr. Hauser his condolences.

Mr. Hauser addressed the Commission. Commissioner LeMarr and Mr. Hauser discussed available safety measures, training, and whether the organization would be employing someone to carry out the subject function in the future.

Mertens Heavy Equipment Repair LLC 4385 N Baker Dr <u>Kingman, AZ 86409</u>	Fatality/Accident Years in Business: 17 Empl. Covered by inspection: 4
Site Location: 4331 Route 66 Kingman, AZ 86409	
Inspection No: Y8817-1165855	
Inspection Date: 07/29/2016	

SERIOUS – Citation 1 - Item 1 – Equipment Yard: An energy control program was not established for the location, or energy control procedures for specific equipment in order to prevent the unexpected start up or energization of equipment during service and maintenance of a Towner Disk Plow, model number unknown, serial number 755-2240 182. (29 CFR 1910.147(c)(1)).

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

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

Commissioner Orchard and Mr. Warren discussed blocking and accident prevention.

Commissioner LeMarr and Mr. Warren discussed photograph 5, stored energy, and the possibility of an equipment fault.

Chairman Schultz, Vice Chair Hennelly, and Mr. Warren discussed equipment controls.

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

Marana Aerospace Solutions, Inc. 24641 E Pinal Air Park Rd <u>Marana, AZ 85653</u>	Referral Years in Business: 5 Empl. Covered by inspection: 311
Site Location: 24641 E Pinal Air Park Rd Marana, AZ 85653	
Inspection No: W6968-1180669	
Inspection Date: 09/26/2016	

SERIOUS – Citation 1 - Item 1 – End of life (EOL) Area: An effective energy control program that include employee training and periodic inspections had not been established to prevent the release of stored energy. A Boeing 747 jet landing gear strut assembly was not properly secured before removal causing serious injury, broken wrist, injured shoulder, and a lacerated spleen to an employee. (29 CFR 1910.147(c)(1)).

Div. Proposal - \$5,000.00
TOTAL PENALTY - \$5,000.00

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

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

Commissioner LeMarr, Vice Chair Hennelly, and Mr. Warren discussed the subject jet's maintenance manual.

Commissioner LeMarr and Mr. Warren discussed photographs 2 and 4.

Chairman Schultz invited a representative from Marana Aerospace Solutions to address the Commission. Mr. Hildebrand discussed the equipment being used and the circumstances leading to the incident.

Commissioner LeMarr, Mr. Warren, and Mr. Hildebrand discussed the mechanics of the incident and the company's lock-out/tag-out procedures.

Vice Chair Hennelly and Mr. Warren discussed the requirements of an appropriate stored-energy program.

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

Score Aerospace, LLC
6451 S Ash Ave
6452 S Ash Ave
Tempe, AZ 85283

Planned
Years in Business: 1/4
Empl. Covered by inspection: 14

Site Location: 6451 S Ash Ave
6452 S Ash Ave
Tempe, AZ 85283
Inspection No: J7272-1176963
Inspection Date: 09/13/2016

SERIOUS – Citation 1 - Item 1 –

29 CFR 1910.133(a)(1): The employer did not ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation: Fluorescent Permeation Inspection (FPI): One employee was not provided appropriate eye protection when there was a hazard from contact with chemicals, acids or caustic liquids such as Ardox 633A. (29 CFR 1910.133(a)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 2 –

29 CFR 1910.178(q)(6): Powered industrial trucks were altered so that the relative positions of the various parts were different from what they were when originally received from the manufacturer, by

the addition of extra parts not provided by the manufacturer, or by the elimination of any parts without the manufacturer's approval.

Production Floor: A modification was made to the forks of a Mitsubishi forklift model FGC25LP, serial number AFA2B-06026610, where a 1.25" by 1.5" hole near the tip of the left fork was made. (29 CFR 1910.178(q)(6)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 –

29 CFR 1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by.

a) Production Floor: One Amada Bandsaw, model and serial number unknown, did not have a safety guard installed to enclose the non-working portion of the blade. (29 CFR 1910.212(a)(1)).

29 CFR 1910.212(b): Machine(s) designed for fixed location(s) were not securely anchored to prevent walking or moving.

a) Production Floor: A Dayton bench grinder model 42123G, serial number unknown, was not securely anchored to prevent walking or moving. (29 CFR 1910.212(b)).

b) Production Floor: A Baldor bench grinder model and serial number unknown, was not securely anchored to prevent walking or moving. (29 CFR 1910.212(b)).

c) Production Floor: An unknown make bench grinder model and serial number unknown, directly next to instances a and b was not securely anchored to prevent walking or moving. ((29 CFR 1910.212(b)).

29 CFR 1910.215(a)(2): Abrasive wheel(s) used on grinding machinery were not provided with safety guard(s) which covered the spindle end, nut, flange projections.

a) Maintenance shop department: A Baldor bench grinder model and serial number unknown equipped with buffing wheels, did not have a safety guard installed on either side of the buffer to cover the spindle end, nut, and flange projections. (29 CFR 1910.215(a)(2)).

29 CFR 1910.215(a)(4): Work rest(s) on grinding machinery were not adjusted closely to the wheel with a maximum opening of one eighth inch.

a) Production Floor: One Dayton bench grinder-buffer, Model number 42123G, Serial number unknown, did not have the work rest adjusted so that it was within one-eighth inch of the abrasive wheel, as the work rest was positioned a half inch away from the abrasive wheel. (29 CFR 1910.215(a)(4)).

29 CFR 1910.215(b)(9): Guard for abrasive wheel machine where the operator stands in front of the machine was not constructed so that the peripheral protecting member could be adjusted to the constantly decreasing diameter of the wheel.

a) Production Floor: One Dayton bench grinder-buffer, Model number 42123G, Serial number unknown, did not have a peripheral protecting member, tongue guard, which could be adjusted within 1/4" of the constantly decreasing diameter of the abrasive wheel. (29 CFR 1910.215(b)(9)).

b) Maintenance Shop: One red bench grinder make, model and serial number unknown did not have a peripheral protecting member, tongue guard, which could be adjusted within 1/4" of the constantly decreasing diameter of the abrasive wheel. (29 CFR 1910.215(b)(9)).

29 CFR 1910.219(e)(3)(i): Vertical or inclined belt(s) were not enclosed by guard(s) conforming to the requirements specified at 29 CFR 1910.219(m) and (o).

Machine Tooling Shop: The employer did not ensure that the vertical drive belt and pulleys, that were within 7' of the floor, from the electric motor to the belt-driven Promach 5 axis grinder, model #

UNOSET, serial #796226, did not have a fully enclosed guard installed to cover both runs of the belt and each pulley. (29 CFR 1910.219(e)(3)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 –

29 CFR 1910.303(b)(2): Listed or labeled electrical equipment was not used or installed in accordance with instructions included in the listing or labeling.

a) Production Floor: A metal receptacle box was being used to create a receptacle drop down box, which is not in accordance with the manufacturer's specifications. (29 CFR 1910.303(b)(2)).

29 CFR 1910.303(g)(2)(i): Except as elsewhere required or permitted by Subpart S of Part 1910, live parts of electric equipment operating at 50 volts or more were not guarded against accidental contact by use of approved cabinets or other forms of approved enclosures or by any of the means identified in paragraphs (A), (B), (C), and (D) of 29 CFR 1910.303(g)(2)(i).

a) Production Floor: A SquareD Panelboard (A2) model number NQOD442L225 was not effectively closed in that slot 41 was missing a circuit breaker or circuit breaker cover. (29 CFR 1910.303(g)(2)(i)).

b) Production Floor: A SquareD Panelboard (D) model number NQOD442L225 was not effectively closed in that slot 10 was missing a circuit breaker or circuit breaker cover. (29 CFR 1910.303(g)(2)(i)).

c) Production Floor: A SquareD Panelboard (G) model number NQOD442L225 was not effectively closed in that slot 42 was missing a circuit breaker or circuit breaker cover. (29 CFR 1910.303(g)(2)(i)).

29 CFR 1910.305(d)(2): Panelboard enclosures. Panelboards shall be mounted in cabinets, cutout boxes, or enclosures designed for the purpose and shall be dead front.

a) Production Floor: A SquareD Panelboard (C) model number NQOD442L225 was not mounted in cabinets, cutout boxes, or enclosures designed for the purpose and shall be dead front. (29 CFR 1910.305(d)(2)).

29 CFR 1910.305(g)(1)(iv)(D): Flexible electrical cord or cable was attached to the building surfaces.

a) Fluorescent Permeation Inspection (FPI): One black, two-part, 6' electrical cord, that provided electricity to a water pump, was attached to the building surface by zip tie connectors affixed to metal electrical conduit pipes. (29 CFR 1910.305(g)(1)(iv)(D)).

b) Fluorescent Permeation Inspection (FPI): One red 6' electrical extension cord, that provided electricity to an Ultra Violet (UV) light, was attached to the building surface by zip tie connectors affixed to metal compressed air pipes. (29 CFR 1910.305(g)(1)(iv)(D)).

29 CFR 1910.305(g)(2)(iii): Flexible cords and cables shall be connected to devices and fittings so that strain relief is provided that will prevent pull from being directly transmitted to joints or terminal screws.

a) Machine Tooling Shop: A black 5' wire, that provided power to a Promach 5 axis grinder, model # UNOSET, serial #796226, had exposed wires where the outer insulation had separated from the base due to tension in the joint of the wire. (29 CFR 1910.305(g)(2)(iii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$2,850.00

TOTAL FORMULA AMT. - \$2,850.00

Mr. Warren summarized the citations and proposed penalties as listed.

Commissioner Orchard, Mr. Brandon, and Mr. Warren discussed the company's age and how the inspection came about.

Commissioner Orchard, Vice Chair Hennelly, Mr. Warren, and Mr. Brandon discussed the company's status.

Commissioner LeMarr, Mr. Brandon, and Mr. Warren discussed whether the company was in active production in the subject facility, whether machinery was properly secured to the floor, and ADOSH's advice concerning hazard avoidance.

Commissioner Orchard noted that it would have cost the company more than the proposed penalty to hire a safety consultant to provide the same information that Mr. Brandon provided during the inspection.

Chairman Schultz complimented Mr. Brandon on the inspection.

Commissioner LeMarr and Mr. Brandon discussed whether the employer had knowledge of facility upgrade requirements.

Commissioner LeMarr moved to approve the citations 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.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge position, discussion regarding interview questions, selection for second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to obtain legal advice and to discuss the candidates, the interview questions, and the salary.

Chairman Schultz asked if the Commission would like to move into executive session to discuss the candidates for the Administrative Law Judge position. Commissioner Orchard moved the Commission to enter executive session 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 announced the Commission would move into executive session.

The Commission returned to regular session at 2:37 p.m.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Mr. Ashley discussed interviewing out-of-town candidates.

Commissioner LeMarr moved to have the ALJ screening staff conduct second interviews with Candidates 3 and 5.

Commissioner Orchard moved to have the ALJ screening staff conduct second interviews with Candidates 2, 3, and 5. Commissioner LeMarr seconded. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Vice Chair Hennelly, Commissioner LeMarr, Mr. Ashley, and Judge Mosesso discussed the interview timeline, the availability of the applicants, and next steps.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley discussed speaking at the Arizona Multi-Housing Association's Maintenance Mania events in Tucson and Phoenix.

Mr. Ashley discussed the Sub-Contractors Association alliance signing. Chairman Schultz commented on the group's progress. Mr. Ashley added that Jessie Atencio is now working with the Homebuilders Association and working towards an alliance.

Mr. Ashley discussed Arizona's injured worker rate and a related graph. He commented that the number of injuries per 100,000 workers is going down and stabilizing. Chairman Schultz, Commissioner Orchard, and Mr. Ashley discussed the positive trend, indicators for 2016, and best practices.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley provided a flyer for the State Comp Partners holiday party. Commissioner Orchard noted that she serves on the SCP Board of Directors.

Chairman Schultz asked Ms. Dimas to send a schedule of meeting dates for first quarter 2017.

Mr. Ashley clarified the preparation date on the Commissioner's per diem form.

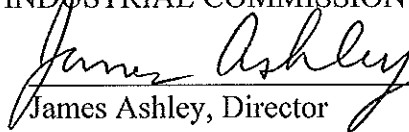
Public Comment.

Judge Mosesso thanked the Commissioners for the opportunity to present the ALJ applications. Chairman Schultz and Commissioner Orchard thanked Judge Mosesso for his expertise and insight. Mr. Ashley discussed Tucson's Arizona Management System deployment and huddle boards. 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 2:52 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary