MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 2675 East Broadway Boulevard
Tucson, Arizona 85716
Thursday, October 12, 2017 – 1:30 p.m.

Present: Robin S. Orchard Acting Chair
          Scott P. LeMarr Commissioner (telephonic)
          Steven J. Krenzel Commissioner (telephonic)
          James Ashley Director
          Jason M. Porter Chief Legal Counsel
          Trevor Laky Legislative Affairs Chief / Public Information Officer
          Renee Pastor Self Insurance (telephonic)
          William Warren ADOSH Director
          Phillip Murphy Assistant ADOSH Director
          George Hall Compliance Officer
          Ruben Rodriguez Compliance Officer
          Michael Martin Compliance Officer
          Gilbert Bracamonte Compliance Officer
          Kara Dimas Commission Secretary

Acting Chair Orchard convened the meeting at 1:30 p.m. Also in attendance were Joseph Capek, Debbie Sellers and Hector Contreras with Petersen-Dean, Inc. dba Petersen Dean; Danny Lopez with Rowley Enterprises, Inc. dba Rowley Construction; and Nicole Whitney with Snell & Wilmer.

Approval of Minutes of October 5, 2017 Regular Meeting.

Acting Chair Orchard postponed approval of the Minutes from the October 5, 2017 regular meeting to the next 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 Requests for Renewal of Self-Insurance Authority.

1. Medtronic, Inc.

Commissioner Krenzel moved to approve the item on the Consent Agenda and Commissioner LeMarr seconded the motion. Acting Chair Orchard, Commissioner LeMarr, 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.
Acting Chair Orchard discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

Mr. Warren requested that the Petersen-Dean, Inc. dba Petersen Dean citation and proposed penalty be removed from the agenda due to errors in the report. He stated that he planned to correct the errors and present the matter to the Commission at a later date.

Discount Tire Co., Inc. dba Discount Tire
2623 S Market Street
Gilbert, AZ 85295

Site Location: 2623 S Market Street
Gilbert, AZ 85295

Inspection No: H9685-1241616
Inspection Date: 06/20/2017

Complaint
Years in Business: 46
Empl. Covered by inspection: 14

SERIOUS – Citation 1 - Item 1 –

  a) North Shop Area Exit Door: The emergency exit door, which was identified by an illuminated exit sign, was locked with a deadbolt lock. (29 CFR 1910.36(d)(1)).

29 CFR 1910.36(g)(4):
  a) First Level Tire Storage Area: Tires projected into the exit route which reduced the width of the exit access to approximately 17 inches wide. (29 CFR 1910.36(g)(4)).

  b) Second Level Tire Storage Area: Tires projected into the exit route which reduced the width of the exit access to approximately 17-1/2 to 22 inches wide in several areas. (29 CFR 1910.36(g)(4)).

  c) First Level East Side Exit Route: Tires projected into the exit route which reduced the width of the exit access to approximately 6 to 19 inches wide in two areas. (29 CFR 1910.36(g)(4)).

  d) East Emergency Exit Door Discharge: Tire rims were stored on the ground just outside the emergency exit door. (29 CFR 1910.36(g)(4)).

  e) Employee Break Room: Tires were being stored on the ground inside the employee break room which completely blocked the exit access. (29 CFR 1910.36(g)(4)).

Div. Proposal - $5,000.00          Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 2 – Employee Break Room: Tires were being stored on the ground inside the employee break room which exposed to employees to trip and fall hazards and unclean eating surfaces. (29 CFR 1910.22(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.

Acting Chair Orchard, Commissioner LeMarr, and Mr. Warren discussed the deadbolt issue identified in Citation 1, Item 1.
Commissioner LeMarr moved to amend the proposed penalties, as follows: (1) reduce the proposed penalty for Citation 1, Item 1 to $2,500.00, for a total proposed penalty of $4,000.00. Commissioner Krenzel seconded the motion. Acting Chair Orchard, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Inventure Foods, Inc.  
3500 S. La Cometa  
Goodyear, AZ 85338  

Referral  
Years in Business: 30  
Empl. Covered by inspection: 12  

Site Location: 3500 S. La Cometa  
Goodyear, AZ 85338  
Inspection No: A3807-1248546  
Inspection Date: 07/20/2017  

REPEAT-SERIOUS – Citation 1 - Item 1 –

a) Packing Line #10: One employee was exposed to an inadequately guarded sprocket and chain drive assembly in that a gap of more than one inch in the guard did not protect an employee from making contact with the drive mechanism. (29 CFR 1910.219(f)(3)).

b) Packing Line #11: One employee was exposed to an inadequately guarded sprocket and chain drive assembly in that a gap of approximately one inch at the top of the guard did not protect the employee from making contact with the drive mechanism. (29 CFR 1910.219(f)(3)).

Inventure Foods, Inc., was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1910.212(a)(1), which was contained in ADOSH inspection number 1161311, citation number 1, item number 2a and was affirmed as a final order on November 1, 2016, with respect to a workplace located at 3500 S La Cometa Rd, Goodyear, AZ 85338.

Div. Proposal - $12,500.00  
Formula Amt. - $12,500.00  

TOTAL PENALTY - $12,500.00  
TOTAL FORMULA AMT. - $12,500.00

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

Commissioner LeMarr and Mr. Warren discussed the June 2017 “in-compliance” inspection, differences between the prior and current violations, and the basis for a “repeat” violation.

Acting Chair Orchard and Mr. Warren discussed the differences and similarities between the 1910-219(f)(3) and 1910.212(f)(1) standard, the basis for the “repeat” violation, and the FOM’s equivalency standard.

Acting Chair Orchard, Commissioner LeMarr, Commissioner Krenzel, and Mr. Warren discussed the scope of the June 2017 and July 2017 inspections, the 2016 inspection, and the likelihood that the June 2017 inspection would have revealed the same issues identified in the July 2017 inspection.

Commissioner LeMarr requested legal advice regarding the citation and proposed penalty and Mr. Porter suggested going into executive session.

Commissioner Krenzel moved to enter executive session and Commissioner LeMarr seconded the motion. Acting Chair Orchard, Commissioner LeMarr, and Commissioner Krenzel voted in favor
of the motion. The motion passed. Acting Chair Orchard announced the Commission would move into executive session.

The Commission returned to regular session at 2:05 p.m.

Commissioner Krenzel noted his support for ADOSH and moved to remand the matter to ADOSH for further consideration. He requested that additional information accompany the next presentation regarding the prior “in compliance” inspection. Commissioner LeMarr seconded the motion. Acting Chair Orchard, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

MV Commercial Construction LLC
9349 Waterstone Blvd
Cincinnati, OH 45249

Site Location: 4320 S Cotton Lane
Goodyear, AZ 85338

Inspection No: Q6169-1234688
Inspection Date: 04/20/2017

Unprogrammed Related
Years in Business: 50
Empl. Covered by inspection: 2

SERIOUS – Citation 1 - Item 1 –

a) 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof, during construction work, was not protected from falling approximately 40 feet 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) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, during construction work, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).

c) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees were not protected from objects or employees falling through skylights. (29 CFR 1926.501(b)(4)(iii)).

d) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, with an approximate 40 feet fall hazard, with covers over a broken skylights that were not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. (29 CFR 1926.502(i)(4)).

Div. Proposal - $3,500.00
Formula Amt. - $3,500.00

SERIOUS – Citation 1 - Item 2 –

a) 4320 S Cotton Ln., Goodyear, AZ: One employee on a roof, during construction work, was not protected from falling approximately 40 feet 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) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, during construction work, were not protected from falling through skylights (8 feet 6 inches long x 4 feet 6 inches wide) approximately 40 feet to the ground below by the
use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(4)(i)).

c) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees were not protected from objects or employees falling through skylights. (29 CFR 1926.501(b)(4)(iii)).

d) 4320 S Cotton Ln., Goodyear, AZ: One employee and multiple subcontractor employees working on a roof, with an approximate 40 feet fall hazard, with covers over a broken skylights that were not color coded or marked with the word "HOLE" or "COVER" to provide warning of the hazard. (29 CFR 1926.502(i)(4)).

Div. Proposal - $3,500.00  Formula Amt. - $3,500.00
TOTAL PENALTY - $7,000.00  TOTAL FORMULA AMT. - $7,000.00

Mr. Warren summarized the citations and proposed penalties and reviewed the photographs. Acting Chair Orchard, Mr. Warren, and Mr. Porter noted that this file was discussed at the last meeting and that clerical errors had been corrected by ADOSH.

Commissioner LeMarr, Mr. Warren, and Mr. Murphy discussed the citations and penalties assessed on other employers at the worksite. Mr. Murphy explained that the penalties for the contractors differed because of the fatality.

Commissioner Krenzel moved to approve the citations and proposed penalties as presented and Commissioner LeMarr seconded the motion. Acting Chair Orchard, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Petersen-Dean, Inc. dba Petersen Dean
2224 W. Shangri-La Road
Phoenix, AZ 85029

Referral
Years in Business: 33
Empl. Covered by inspection: 4

Site Location: 3257 E. Indigo Bay Ct.
   Gilbert, AZ 85234

Inspection No: W0250-1244271
Inspection Date: 07/03/2017

REPEAT-SERIOUS – Citation 1 - Item 1 – 3257 E. Indigo Bay, Mesa, AZ 85205: Two employees engaged in roofing activities on a 4:12 pitched roof were not protected from falling 9ft to the ground below by guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(10)).

Petersen-Dean Inc. was previously cited two times for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(10) which was contained in ADOSH inspection number 1108328, citation number 1, item number 1 and was affirmed as a final order on 5/06/2016, with respect to a workplace located at 1187 N 164th Ave in Goodyear, AZ, 85338 and ADOSH inspection number 1113375, citation number 1, item number 1 and was affirmed as a final order on 5/02/2016, with respect to a workplace located at 1842 N 156th Dr. in Goodyear, AZ 85395.

Div. Proposal - $25,000.00  Formula Amt. - $25,000.00
TOTAL PENALTY - $25,000.00  TOTAL FORMULA AMT. - $25,000.00

Mr. Warren noted this matter had been removed from the Agenda due to errors in the report and would be presented at a future meeting.
Rowley Enterprises, Inc. dba Rowley Construction
1409 S Nassau
Mesa, AZ 85206

Site Location: 25223 N 107 Dr., Lot #74
Phoenix, AZ 85037

Inspection No: S8089-1249132
Inspection Date: 07/20/2017

Referral
Years in Business: 24
Empl. Covered by inspection: 5

SERIOUS – Citation 1 - Item 1 –

a) Roof: Two employees were framing on roof of a two story home at heights greater than 18 feet above the ground below and were not protected from falling to a lower level below by a guardrail system, safety net system, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

b) Second floor windows: Two employees were working near four unprotected wall openings at a height of nine feet above the ground below and not protected by the use of a guardrail system, safety net system, or personal fall arrest system. (29 CFR 1926.501(b)(14)).

Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 – 25223 N 107th Dr. Phoenix, AZ 85037: Two employees were framing from heights more than 18 feet above the ground below and the employees 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

SERIOUS – Citation 1 - Item 3 – 2nd Floor hall: Two employees used the top or top step of an 8 foot fiberglass step ladder, model and serial number unknown, as a step during access to and egress from the roof. (29 CFR 1926.1053(b)(13)).

Div. Proposal - $1,500.00
Formula Amt. - $1,500.00

TOTAL PENALTY - $4,500.00
TOTAL FORMULA AMT. - $4,500.00

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

Commissioner LeMarr and Mr. Warren discussed Citation 1, Item 3, and whether the ladder was replaced at the time of the abatement.

Mr. Lopez discussed his company’s commitment to safety. He stated that the subject employees were subcontractors and had claimed that they were OSHA trained. He indicated that, after the inspection, the employer had attempted to train the subject employees, but they quit before the employer could train them. He suggested that “rogue employees” make it difficult to maintain safety standards. He stated that the employer has interacted with the ADOSH Consultation Division about safety requirements.

Acting Chair Orchard and Mr. Lopez discussed the company’s current training program, whether the subcontractors were trained by their employer, and formal OSHA training.

Commissioner Krenzel moved to approve the citations and proposed penalties as presented and Commissioner LeMarr seconded the motion. Acting Chair Orchard noted that the Commission appreciates the employer’s commitment to safety and quick abatement and suggested taking advantage
of the Consultation Division. Acting Chair Orchard, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed as presented.

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.

Mr. Ashley discussed agency scorecard metrics related to Special Fund voluntary settlements and ALJ Awards. He also discussed a new metric for the Legal Division’s Compliance Unit concerning insurance obtained as a result of the Compliance Unit’s efforts. Mr. Ashley noted that Compliance Unit had exceeded expectations thus far.

Mr. Ashley and Mr. Porter discussed a Gemba walk with GTO representatives focused on the Supplier, Input, Process, Output, Customer (SIPOC) efforts. Mr. Ashley noted that the Commission is developing standard work and best practices to be shared with other agencies. Mr. Porter provided an overview of the SIPOC process and the Commission’s SIPOC training status.

Mr. Ashley discussed the Governor’s initiatives for October: Domestic Violence Awareness and Substance and Opioid Abuse Awareness. He noted that the Commission lit the building purple on October 2, that October 19 will be “wear purple” day, and that the Commission held a training event to raise awareness about the issue. Mr. Ashley stated that, on October 23, the Governor will speak at the Capitol and would welcome the Commissioners to attend the event on the Capitol Lawn.

Acting Chair Orchard and Mr. Ashley discussed an event at Raytheon Missile Systems for their 10-year celebration as a Voluntary Protection Partner. Acting Chair Orchard recounted that it was a great event and discussed Raytheon’s partnership with ADOSH.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed the Commission Meeting dates through November 2017.

Mr. Warren discussed the Phoenix Safety Summit. Acting Chair Orchard, Mr. Ashley, and Mr. Warren discussed methods used to promote ADOSH Safety Summits.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr seconded the motion. Acting Chair Orchard, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary