

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Flagstaff City Hall, Council Chambers
211 W. Aspen Avenue, Flagstaff, Arizona 86001
Thursday, October 13, 2016 – 1:30 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	William Warren	ADOSH Director
	Renee Pastor	Accounting (Telephonic)
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:30 p.m. Also in attendance were Zachary Barnett with OSHA; Stuart Kent, Glenn Jones, and Laura Krause with the City of Peoria; and Dean Coughenour, Michael DuPuy, and Mayor Jerry Nabours with the City of Flagstaff.

Approval of Minutes of September 15, 2016 and September 29, 2016 Regular Meetings.

Commissioner Orchard moved to approve the Minutes of the September 15, 2016 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

The agenda item for approval of the Minutes of the September 29, 2016 regular session meeting 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. 2C15/16-1640 Parker Consulting, LLC
 2. 2C15/16-1041 RACC LLC, dba Razinn Assisted Care Campus

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Dole Food Company, Inc.
 2. Knight Transportation
 3. Mayo Clinic

4. Pilot Travel Centers
5. QuikTrip Corporation
6. Walmart Associates, Inc.

Chairman Shultz removed item (b)(6) (*i.e.*, Walmart Associates, Inc.) from the Consent Agenda. He commended Mayo Clinic on its experience modification rating.

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

Walmart Associates, Inc.: Chairman Schultz discussed improvements in Walmart's experience modification rating and the company's efforts to improve workplace safety.

Commissioner Orchard moved to approve the request for renewal of self-insurance authority for Walmart Associates, Inc. and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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. Charles reported on Commission efforts to further publicize the work being performed by ADOSH.

Mr. Charles discussed recent media inquiries regarding a legislative proposal to revise presumption language for firefighters and peace officers.

Mr. Charles reported on Commission efforts to create website content to provide additional information to the public.

Mr. Charles reported on efforts by the Governor's Office and the Commission to improve agency services through technological solutions.

Mr. Charles discussed the use of a "Tweet Sheet" by the Governor's Office to help message the work being performed by state government.

Mr. Charles and Chairman Schultz discussed Commission efforts to identify and repeal/revise outdated rules.

Mr. Charles updated the Commission on legislative issues, including potential legislation to revise the presumption language for firefighters and peace officers and potential legislation regarding workers' compensation fraud.

Mr. Charles discussed ongoing inquiries regarding the new Treatment Guidelines and the Official Disability Guidelines.

Stakeholder Presentation.

Chairman Schultz invited Mr. Barnett to address the Commission. Mr. Barnett discussed complaints his office has received regarding changes made by the Commissioners to ADOSH

citations. He discussed the Commission's role in providing oversight of ADOSH and in reviewing citations and proposed penalties. He discussed OSHA's appreciation of the Commission and its efforts to maintain the integrity of ADOSH and contribute to the safety and welfare of Arizona workers.

Mr. Barnett discussed his review of the complaints and OSHA's concerns with the Commission's actions. He discussed OSHA's view of the role of the Commission in reviewing ADOSH citations and proposed penalties. He discussed the Commission's responsibility to ensure ADOSH remains "as effective as" Federal OSHA. He offered to continue to work with the Commission to ensure an effective ADOSH program continues.

Commissioner Orchard and Mr. Barnett discussed considerations in analyzing whether ADOSH is "as effective as" Federal OSHA. Mr. Barnett stated that OSHA does not consider declining injury rates in analyzing whether a State Plan is "as effective as" Federal OSHA. He discussed the role of higher penalties in encouraging compliance and deterring unwanted behavior.

Vice Chair Hennelly and Mr. Barnett discussed the Commission's role in considering penalty reductions based on abatement. Mr. Barnett discussed permissible penalty adjustments outlined in the Field Operations Manual ("FOM"). He explained his view that quick fix abatement should not lead to reclassification of a citation or a substantial penalty reduction.

Vice Chair Hennelly and Mr. Barnett discussed the nature of Arizona's open meeting laws and the ability of employers to comment during Commission meetings. Mr. Barnett discussed his concerns about the nature of the presentations being made by employers and attorneys during Commission meetings. He also discussed concerns that not all employers cited by ADOSH have the ability to comment at public meetings. Vice Chair Hennelly commented on Mr. Barnett's concerns.

Mr. Barnett proposed further education regarding the FOM and offered his assistance. Chairman Schultz and Mr. Ashley discussed ongoing FOM presentations being given during Commission meetings. Chairman Schultz noted his intent to maintain the ADOSH State Plan "as effective as" Federal OSHA. He discussed the Commission efforts to effectively oversee the ADOSH program. Chairman Schultz and Mr. Barnett discussed efforts to ensure that the reasons for changes to citations and proposed penalties are sound. Mr. Barnett suggested that the Commission consider sending certain cases back to ADOSH (where there are weaknesses in a case), rather than dismissing a citation, to give ADOSH a chance to re-assess the citation and proposed penalties.

Commissioner Orchard and Mr. Barnett discussed OSHA's vague interpretation of "as effective as" and criteria relevant to the analysis. Mr. Barnett discussed the "as effective as" analysis in the context of residential fall protection and recent increases to the OSHA penalty structure.

Field Operation Manual Inspection Scope (Enforcement Program Scheduling) Discussion.

Mr. Warren discussed Enforcement Program Scheduling in Arizona under the FOM, including the criteria for inspection priority. He discussed programmed inspections, including targeted inspections based on emphasis on a certain industries or hazards. He explained how programmed inspections allow ADOSH to effectively allocate resources and promote effective employee protection. He discussed how voluntary compliance programs like VPP, SHARP, and

PEPP help ADOSH allocate limited resources more effectively. He discussed the importance and impact of ADOSH's compliance program.

Chairman Schultz and Mr. Ashley discussed Arizona employers' success in decreasing injured worker claims. Chairman Schultz discussed the Commission's plans to implement a new information management system that will help the Commission effectively use resources.

Commissioner Orchard and Mr. Warren discussed whether reductions in injuries and fatalities should be part of the "as effective as" analysis. Mr. Warren discussed ADOSH's strategic plan and why Arizona is one of the safest states in the country. Commissioner Orchard highlighted the extensive and effective efforts of the ADOSH Consultation Division and of the Commission in improving workplace safety. She commended Mr. Warren and the ADOSH team for their work.

Chairman Schultz reiterated the Commission's focus on developing connections with employers to build safety culture in Arizona businesses and reduce workplace injuries. He emphasized the Commission's commitment to making Arizona a safe place to live and work and a great place for employers to do business. He explained that the focus should be on preventing injuries and fatalities in the first instance.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Canam Group Inc. 22253 W Southern Ave Buckeye, AZ 85326	Referral Years in Business: 3 Empl. Covered by inspection: 70
Site Location: 22253 W Southern Ave Buckeye, AZ 85326	
Inspection No: Y8817-1154470	
Inspection Date: 07/29/2016	

SERIOUS – Citation 1 - Item 1 – Prep Area: The point of operation guard was not adjusted properly on the Scotchman Ironworker model number D08514-20, serial number 1033M1004, as to prevent the operator from having any part of his body in the danger zone during the operating cycle. (29 CFR 1910.217(c)(2)(i)(a)).

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 as listed and reviewed the photographs.

Commissioner Orchard and Mr. Warren discussed the size of the business, length of operation, abatement, evidence of employer knowledge, the company's safety program, and safety training.

Chairman Schultz and Mr. Warren commented on post-injury training provided by the company, the need for engineering controls, and the circumstances leading to the injury.

Vice Chair Hennelly and Mr. Warren discussed the point of operation guard and its adjustment. Mr. Warren clarified that there was only one citation.

Chairman Schultz invited the City to address the Commission. Ms. Krause, the City's Human Resources Director, introduced Mr. Kent and Mr. Jones. Ms. Krause discussed the inspections and the City's interactions with ADOSH. She discussed the City's commitment to employee safety and abatement efforts.

Chairman Schultz, Vice Chair Hennelly, Mr. Warren, and Mr. Kent discussed abatement efforts made by the City.

Commissioner Orchard moved to amend the proposed penalties (for the Fleet division), as follows: the proposed penalties for Citation 1, Items 1-3 each be reduced to \$900.00, for a total proposed penalty of \$2,700.00. Commissioner Orchard noted the City's overall safety culture, its dedication to safety, and the City's budgetary constraints. Vice Chair Hennelly seconded the motion.

Vice Chair Hennelly discussed Mr. Barnett's earlier comments, the nature of the process in Arizona, and the need for the Commission to exercise its discretion in a fashion consistent with the mandate that the ADOSH program be "at least as effective" as Federal OSHA. He explained his reasons for seconding Commissioner Orchard's motion.

Chairman Schultz commented on the City's prompt abatement efforts, the costs of those efforts, and the City's safety culture.

Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Peoria Municipal Development Authority, Inc. dba City of Peoria, Public Works Division (Custodial) 8401 W Monroe St Peoria, AZ 85345	Planned Years in Business: 62 Empl. Covered by inspection: 18
Site Location:	8401 W Monroe St Peoria, AZ 85345
Inspection No:	A3807-1158462
Inspection Date:	06/28/2016

SERIOUS – Citation 1 - Item 1 – 8401 W Monroe St Peoria, AZ 85345: Two employees were exposed to injurious corrosive chemicals such as Wallop foam cleaner and were not provided facilities within the work area for quick drenching or flushing of the eyes and body for immediate emergency use. (29 CFR 1910.151(c)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 –

a) 8401 W Monroe St Peoria, AZ 85345: A written hazard communication program had not been implemented and maintained for two employees who were potentially exposed in the workplace to such hazardous chemicals as Blue Magic Carpet Stain and Spot Lifter and Waxie Orange Plus cleaners. (29 CFR 1910.1200(e)(1)).

b) Custodial Closet: A copy of the safety data sheets for hazardous chemicals, substances and/or materials, such as 3M Carpet Protection and Drummond Whallop foam cleaner was not readily accessible to the employees in their work area during each shift. (29 CFR 1910.1200(g)(8)).

c) Custodial Closet: Employees who were potentially exposed in the workplace to such hazardous chemicals, substances and/or materials as Drummond Whallop a corrosive foam cleaner did not receive effective training and information on the hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
TOTAL PENALTY - \$4,500.00	TOTAL FORMULA AMT. - \$4,500.00

The Commission discussed the City of Peoria citations and proposed penalties together. See above.

For the reasons discussed above, Commissioner Orchard moved to amend the proposed penalties (for the Custodial division), as follows: the proposed penalties for Citation 1, Items 1-2 each be reduced to \$1,125.00, for a total proposed penalty of \$2,250.00. Vice Chair Hennelly seconded the motion and noted his previous comments. Chairman Schultz noted his previous comments. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Mr. Ashley thanked the representatives from the City of Peoria for travelling to Flagstaff to participate in the meeting.

Safeway Inc. 1115 W Alameda Dr Tempe, AZ 85282	Complaint Years in Business: 60 Empl. Covered by inspection: 98
Site Location: 1115 W Alameda Dr Tempe, AZ 85282	
Inspection No: W0250-1165651	
Inspection Date: 07/29/2016	

REPEAT-SERIOUS – Citation 1 - Item 1 – Shipping area: The exit was not free or unobstructed, as wooden pallets stacked approximately 10 feet high had blocked access to the exit door. (29 CFR 1910.37(a)(3)).

Safeway Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1910.37 (a)(3) which was contained in OSHA inspection number 1104341, citation number 1, item number 3/a and was affirmed as a final order on 5-19-2016 with respect to a workplace located at 10773 N Scottsdale Rd Scottsdale, AZ 85254.

Div. Proposal - \$12,500.00	Formula Amt. - \$12,500.00
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SERIOUS – Citation 2 - Item 1 – Warehouse: Where vision was obstructed the employees were not instructed by management to sound the horn and slow down when coming to cross isles or at the end of the isle. (29 CFR 1910.178(n)(4)).

Div. Proposal - \$2,500.00	Formula Amt. - \$2,500.00
TOTAL PENALTY - \$15,000.00	TOTAL FORMULA AMT. - \$15,000.00

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

Vice Chair Hennelly and Mr. Warren discussed the company's prior citations and the reason for the "repeat" designation. Mr. Warren described the applicable standards for repeat violations in Arizona.

Commissioner Orchard and Mr. Warren discussed employer knowledge and abatement.

Vice Chair Hennelly, Commissioner Orchard, and Mr. Warren discussed the size of the company and how size impacts penalty adjustments.

Vice Chair Hennelly moved to approve the citations and proposed penalties as presented and Chairman Schultz seconded the motion.

Commissioner Orchard discussed her inclination to reduce the penalties slightly due to abatement. Vice Chair Hennelly responded to Commissioner Orchard's comments. Commissioner Orchard and Mr. Porter discussed voting on a motion where there is a disagreement with only one aspect of the motion.

Commissioner Orchard alternatively moved to amend the proposed penalties, as follows: (1) the proposed penalty for Citation 1, Item 1 be reduced to \$11,500.00, for a total proposed penalty of \$14,000.00. The motion failed for lack of a second.

Chairman Schultz and Vice Chair Hennelly voted in favor of Vice Chair Hennelly's motion to approve the citations and proposed penalties as presented. Commissioner Orchard voted against the motion. The motion passed.

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 updated the Commission on the agency's Scorecard metrics.

Chairman Schultz and Mr. Ashley discussed efforts to schedule a Commissioner GEMBA walk to view the agency's huddle boards.

Mr. Ashley reported on discussions with the Arizona Department of Insurance regarding NCCP's rate filing, authorized workers' compensation insurers on the Commission website, and fraud investigations.

Chairman Schultz praised the Commission for its efforts in implementing Arizona Management System.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meetings scheduled for December 1 and 8. Ms. Dimas, Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard discussed the possibility of a Commission meeting on December 15.

Mr. Ashley announced that, prior to the Commission meeting on October 20, there will be a presentation for the Commissioners from MIS regarding the new website. He announced a legislature stakeholder presentation scheduled for November 3.

Mr. Warren announced ADOSH's Second Annual Safety Summit scheduled for November 2-3 at the Radisson Hotel in Phoenix.

Public Comment.

Flagstaff Mayor Jerry Nabours thanked the Commission for visiting Flagstaff. He discussed the City of Flagstaff's safety efforts and his prior work on Commission matters.

There was no other public comment.

Vice Chair Hennelly moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:31 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary