

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 27, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Accounting
	Sylvia Simpson	Chief Financial Officer
	Steve Welker	Labor Director
	William Warren	ADOSH Director
	J.R. Imes	Compliance Officer
	Wendi Fraser	Compliance Officer
	Phil Murphy	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Chris John and Brian Segal with John's Refrigeration; Frank Prewitt with Erickson Construction; Pablo Valverde and Don Zimmerman with Metric Roofing; Zackary Barnett with OSHA; and Jason Weber with Snell & Wilmer.

Approval of Minutes of October 13, 2016 Regular Meeting.

Because a quorum of Commissioners who were present at the October 13, 2016 regular session meeting were not present, the agenda item for approval of the Minutes of the October 13, 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. 2C15/16-0749 Catarina's Care Home LLC
- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. DG Retail. LLC
 2. Parker-Hannifin Corporation

3. Salt River Project Agricultural Improvement and Power District and The Salt River Valley Water Users' Association (SRP)
4. Southwest Gas Corporation

Commissioner LeMarr moved to approve the items on the Consent Agenda and Commissioner Orchard seconded the motion. Chairman Schultz, 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. Charles announced the VPP recertification of Maricopa Integrated Health System and the SHARP certification of Vantage West. Mr. Charles and Chairman Schultz discussed the VPP certification of Maricopa Integrated Health System.

Mr. Charles, Chairman Schultz, and Mr. Ashley discussed Governor Ducey's Executive Order regarding substance abuse and opioid abuse. Chairman Schultz discussed the use of evidence-based medicine guidelines for the treatment of chronic pain and the use of opioids. Mr. Ashley discussed the benefits of the Executive Order.

Mr. Charles announced partnerships between ADOSH and the cities of Prescott and Chandler regarding PEPP presentations.

Mr. Charles updated the Commission on legislative issues, including efforts to work with the Governor's office on the Commission's legislative proposals.

At Chairman Schultz' invitation, Mr. Warren explained the PEPP program available to public-sector partners. Chairman Schultz and Mr. Warren discussed injury and fatality rates in the private and public sectors. Chairman Schultz noted that the Commission's focus is on areas where there are opportunities to improve the safety for employees throughout the state.

Discussion and Action regarding Arizona Minimum Wage Rate for 2017.

Commissioner Orchard moved to adopt the amount of \$8.15 as the Arizona minimum wage for calendar year 2017 pursuant to A.R.S. § 23-363. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner LeMarr, Mr. Ashley, and Chairman Schultz discussed the potential impact of Proposition 206 on Arizona's minimum wage law.

Field Operation Manual Inspection Scope (General Duty Clause) Discussion.

Mr. Warren discussed the general duty clause in the context of the ADOSH inspection and citation process. He discussed A.R.S. § 23-403, when the general duty clause can be used, limitations of the general duty clause, classifications of violations cited under the general duty clause, and the elements of a generally duty clause violation.

Commissioner Orchard and Mr. Warren discussed the visibility of the skylights.

Chairman Schultz and Mr. Warren discussed the higher/lesser classification and the calculation of the proposed penalty.

Chairman Schultz invited Mr. John to address the Commission. Mr. John discussed the company's fall protection meetings, the visibility of the skylights, the blue outline around the skylight, and the experience of the injured worker. Mr. John and Mr. Warren discuss the citations, proposed penalties, and grouping. Mr. John discussed the company's safety training, availability of fall protection equipment, and the continuing nature of the hazard.

Commissioner LeMarr and Mr. John discussed his company's prior work at the property, the visibility of the skylights, and the circumstances leading to the accident. Mr. Warren commented on the applicable standard, employer knowledge, and the various options for protecting a skylight.

Commissioner Orchard, Mr. Warren, and Mr. John discussed whether the injured worker was alone at the time of the accident. Commissioner Orchard and Mr. Warren discussed the expectation for assessing potential hazards on a roof and to ensure adequate guarding of skylights. Commissioner Orchard and Mr. Warren discussed the difference between an ADOSH violation and tort liability on the part of the owner.

Commissioner Orchard and Mr. John discussed why the incident was not timely reported. Mr. Warren discussed the availability of 24-hour reporting.

Mr. John and Mr. Warren discussed the citation issued to the building owner and the requirement for abatement.

Commissioner Orchard and Mr. John discussed the status of the injured employee.

Mr. John requested a reduction to the proposed penalties and Chairman Schultz explained the limited role of the Commission in the citation process. Chairman Schultz discussed the process that follows the issuance of a citation.

Commissioner Orchard and Mr. Warren discussed the nature of the citations and the company's fall protection program.

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

Commissioner LeMarr and Commissioner Orchard requested that ADOSH perform a follow-up inspection of the roof.

Casa Grande Car Wash, L.L.C.
1565 N Trekell Road
Casa Grande, AZ 85222

Site Location: 1565 N Trekell Road
Casa Grande, AZ 85222
Inspection No: E5149-1171174
Inspection Date: 08/19/2016

Complaint
Years in Business: 9
Empl. Covered by inspection: 6

SERIOUS – Citation 1 - Item 1 – Equipment room: Employees were handling, dispensing and using injurious corrosive chemicals such as Sodium Hydroxide soap solutions for the use in the service operations, and the automated car wash area without splash proof protection such as safety goggles/or face shields and rubber gloves. (29 CFR 1910.132(d)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Equipment Room/Car Wash: Employees were handling, dispensing and using injurious corrosive chemicals such as Sodium Hydroxide soap solutions for use in the self service operations and automated car wash area without the benefit of an emergency eye-wash station. (29 CFR 1910.151(c)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

(a) Equipment room: Approximately nine (9) electrical panels had their covers removed that included pump station controllers, air compressor panels, circuit relays, and high pressure sprayer controls that varied in voltage. (29 CFR 1910.303(b)(1)).

(b) Vacuum Area: Vacuums had live exposed wiring protruding out of the vacuums. (29 CFR 1910.303(b)(1)).

(c) Vacuum Area: Approximately five (5) outdoor boxes had live wires protruding out from missing covers, missing knock outs, and one was seen with a missing cover. (29 CFR 1910.303(b)(1)).

(d) Drying Area: An extension cord used for a submersible pump (Model# and Serial# Unknown) had insulation damage. (29 CFR 1910.303(b)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 4 – Automated Wash Bay: A large sprocket and chain pulley system used for the car wash conveyor system was missing a guard at the car wash exit point. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$5,250.00

TOTAL FORMULA AMT. - \$5,250.00

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

Commissioner Orchard and Mr. Warren discussed the grouping of the items and the need for an eyewash station at the carwash.

Commissioner LeMarr and Mr. Warren discussed the frequency of complaints involving car washes and the frequency of car wash inspections.

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

Erickson Framing AZ LLC
250 N Beck Ave
Chandler, AZ 85226

Referral
Years in Business: 2.5
Empl. Covered by inspection: 3

G.D. and Sons Construction LLC
6527 W State Ave
Glendale, AZ 85301

Referral
Years in Business: 15
Empl. Covered by inspection: 20

Site Location: 1350 E Bethany Home Rd
Phoenix, AZ 85014
Inspection No: S8089-1169479
Inspection Date: 08/10/2016

SERIOUS – Citation 1 - Item 1 – Building five roof truss: One employee working from the roof trusses above the third floor, installing roof trusses was not protected from falling approximately 30 feet to the ground below by guardrail system, safety net system, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 – Building five roof trusses: One employee working at a height of approximately 30 feet above the ground below was utilizing personal fall arrest systems and components which had been subjected to impact loading. (29 CFR 1926.502(d)(19)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Building five Roof trusses: Two employees of were engaged in the installation of wood truss materials approximately thirty feet above the ground below with 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 - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

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

Commissioner LeMarr, Commissioner Orchard, and Mr. Warren discussed the adequacy of the fall protection equipment and the circumstances leading to the incident.

Commissioner Orchard requested that the citation be referred back to ADOSH so that ADOSH can provide more complete information. Chairman Schultz and Commissioner LeMarr discussed the information they would like to see from ADOSH.

Commissioner Orchard moved to refer the citation and proposed penalties back to ADOSH for further consideration. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Gentry Estates, LLC
7907 E. Portobella Ave
Mesa, AZ 85212

Referral
Years in Business: 5
Covered by inspection: 1

Site Location: 10136 E Southern Ave
Mesa, AZ 85212
Inspection No: W0250-1163190
Inspection Date: 07/15/2016

Commissioner LeMarr, Commissioner Orchard, Mr. Warren, and Ms. Fraser discuss the lock-out/tag-out procedure for the hopper, the circumstances leading to the incident, and adequacy of the company's safety procedures.

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

Metric Roofing, Inc.	Referral	
3811 W Lower Buckeye Rd	Years in Business:	45
Phoenix, AZ 85009	Covered by inspection:	2
Site Location:	12615 N 144 th Ave	
	Surprise, AZ 85379	
Inspection No:	H9685-1173362	
Inspection Date:	08/29/2016	

REPEAT-SERIOUS – Citation 1 - Item 1 –

a)12615 N. 144th Avenue, Surprise, AZ 85379: Two employees engaged in roofing activities on a steep sloped roof, were not protected from falling over 9 feet to the ground below by guardrail systems with toe boards, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(11)).

Metric Roofing, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(11), which was contained in OSHA inspection number 1121713, citation number 1, item number 1 and was affirmed as a final order on 6/15/2016, with respect to a workplace located at 3103 E Cat Balue Dr, Phoenix, AZ 85050.

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

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

Commissioner Orchard and Mr. Warren discussed the usage of harnesses.

Commissioner LeMarr, Mr. Warren, and Mr. Valverde discussed the red object appearing in Photograph 2.

Chairman Schultz invited a representative from Metric Roofing to make a statement. Mr. Valverde discussed the company's training program, plans to improve the training program, participation in the Chairman's roofer alliance, challenges faced by the roofing industry with employee attitudes and culture, the company's written safety policies, the company's enforcement efforts, discipline of the offending employee, incentives for encouraging employee safety, and the impact that training is having throughout the industry.

Mr. Warren expressed appreciation for Mr. Valverde's involvement in the Chairman's roofer alliance, restated the grounds for the citation, and discussed the company's training program.

Commissioner LeMarr and Mr. Valverde discussed changing the safety culture in the roofing industry, the shortage of workers in the Phoenix market, whether Metric contacts prior employers before hiring new workers, and efforts to ensure that new hires understand and use fall protection.

Commissioner Orchard and Chairman Schultz discussed the “repeat serious” classification of the citation and Mr. Valverde’s contributions to the roofing industry.

Mr. Zimmerman discussed the dramatic improvement in safety in the roofing industry in the last four years, Mr. Valverde’s efforts to improve safety in the industry, and reasons why an employee may need to disconnect fall protection.

Chairman Schultz discussed the company’s safety training program, employer knowledge, and the presence of the foreman on the roof. Mr. Warren explained the reason for the “repeat serious” citation.

Commissioner Orchard moved amend the proposed penalty as follows: the proposed penalty for Citation 1, Item 1 be reduced (by 50%) to \$3,750.00, due to prompt abatement and a robust safety program. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of 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 use of online services, including fillable forms. Chairman Schultz commented on the usage of fillable forms.

Commissioner LeMarr, Mr. Ashley, and Mr. Warren discussed whether the filing of a notice of injury by an employer online fulfills the reporting requirement for ADOSH and how an employer can fulfill its ADOSH reporting requirements.

Mr. Ashley discussed the public’s usage of the new website.

Mr. Ashley and Chairman Schultz discussed efforts by the Commission to perform statistical analysis to better understand the injury rates in the Arizona workforce and reasons for fluctuations in injury rates over time. Mr. Ashley, Commissioner Orchard, Commissioner LeMarr, and Chairman Schultz discuss the injury rate trends.

Mr. Ashley commented on the Governor’s recent Executive Order.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed the Commission meetings scheduled in November.

Mr. Ashley announced that the November 10 Commission meeting will have a short agenda to permit the Commissioner’s to participate in a GEMBA walk around the agency to view the Divisions’ huddle boards.

Mr. Warren announced ADOSH’s Second Annual Safety Summit scheduled for November 2-3. Mr. Warren and Commissioner Orchard discussed the large number of people who have registered to attend.

Public Comment.

Chairman Schultz invited Mr. Barnett to make a public comment. Mr. Barnett noted his appreciation for the leadership of Chairman Schultz, Director Ashley, and Director Warren. He noted movement in the right direction and his desire to continue discussions with the Commissioners. Chairman Schultz noted his willingness to continue discussions with Mr. Barnett.

Commissioner Orchard moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:35 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary