

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 5, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance
	William Warren	ADOSH Director
	Phillip Murphy	Assistant ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Keith Shay with Hawkeye Electric, Inc.; James Murphy and Cody Phela with Willmeng Construction, Inc.; Christopher J. Knueven and William Burke with Miller-Valentine for MV Commercial Construction LLC; Charles Keller with Snell & Wilmer representing Sprayfoam Southwest, Inc.; RJ and Rick Radobenko with Sprayfoam Southwest, Inc.; Rich Wilson, Nancy Wilson, and Michele Gryniewicz with Trademark Construction Co., Inc.; Robert Scoglio with OSHA; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of September 21, 2017 Regular Meeting.

Commissioner Orchard moved to approve the Minutes of the September 21, 2017 regular meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. 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. 2C16/17-2100 Orenccios Tucson LLC, dba Orenccios Ristorante-Terrazza
2. 2C15/16-1645 Royal Shuttle LLC

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. DG Retail, LLC
2. Parker-Hannifin Corporation

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

Discussion and Action of Application for Self-Insurance Authority.

1. Trademark Construction Co., Inc.

Chairman Schultz asked Mr. Wilson, Ms. Wilson, and Ms. Gryniewicz if they would like to make any comments. Mr. Wilson thanked Ms. Pastor for working with them and introduced Ms. Gryniewicz.

Chairman Schultz thanked Trademark Construction for joining the meeting and noted his understanding that the company was considering entering the VPP program.

Ms. Gryniewicz discussed a Yuma company that will act as Trademark Construction's VPP mentor and related her hope that Trademark Construction will have the opportunity to mentor another company.

Chairman Schultz discussed a Commission visit to Yuma that focused on workplace safety in the agricultural industry. He indicated that he looked forward to visiting with Trademark Construction in Yuma. He discussed Commission partnerships with roofing contractors, stucco contractors, the Arizona Home Builders Association, the Sub-Contractors Association and an alliance with the Arizona State University Del Webb School of Construction.

Commissioner LeMarr moved to approve self-insurance authority to Trademark Construction Co., Inc., and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding the Setting of Assessments under A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) for Calendar Year 2018.

Ms. Simpson discussed the Commission's authority to levy assessments pursuant to A.R.S. §§ 23-961(G), 23-1065(A), and 23-1065(F) and the current assessment rates. She then reviewed the staff memorandum and recommendations.

Chairman Schultz explained the purposes for assessments and how they are used.

Ms. Simpson related staff's recommendation that § 23-961(G) assessment rate be decreased from 2.25% (in CY 2017) to 1.75% in CY 2018. Ms. Simpson related staff's recommendation that the Commission continue the §§ 23-1065(A) and 1065(F) assessments at 0% for CY 2018.

Chairman Schultz noted that the current and proposed assessment rates are the lowest they have been in 20 years and that he attributes this to hard work from the Commission's lean principles. He

noted that the Special Fund earned 10.8% on investments for the last fiscal year and about 12.5% during the last calendar year. Chairman Schultz stated that investment performance was one of the reasons he was comfortable with staff recommendations.

Mr. Ashley discussed analysis and findings by the National Council on Compensation Insurance.

Commissioner Orchard moved to approve 1.75% as the CY 2018 assessment rate under § 23-961(G); 0% as the CY 2018 assessment rate under § 23-1065(A); and 0% as the CY 2018 assessment rate under § 23-1065(F). Commissioner LeMarr seconded the motion. Commissioner Orchard complimented the Commission, stating that is an extremely well-run division of Arizona government. Chairman Schultz, Commissioner Krenznel, and Ms. Simpson further discussed the Special Fund's investment performance. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel in favor of the motion. The motion passed.

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.

Mr. Warren discussed the connection between the citations and proposed penalties on the meeting Agenda and the safety issues present at the common worksite. He reviewed a schematic of the worksite and identified the general contractors and subcontractors present on the worksite.

Sprayfoam Southwest, Inc. dba Roofing Southwest 2401 E Magnolia St. Phoenix, AZ 85034	Fatality/Accident Years in Business: 47 Empl. Covered by inspection: 6
<u>SITE LOCATION:</u> 4320 S Cotton Lane Goodyear, AZ 85338	
Inspection No:	Q6169-1228095
Inspection Date:	04/20/2017

REPEAT SERIOUS – Citation 1 - Item 1 – 4320 S Cotton Ln., Goodyear, AZ: Six employees doing roofing work were 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)(10)).

The Sprayfoam Southwest, Inc. dba Roofing Southwest was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(10), which was contained in OSHA inspection number 1193305 citation number 1, item number 1 and was affirmed as a final order on 2/21/2017, with respect to a workplace located at 1640 N Peart Rd, Casa Grande, AZ.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 2 - Item 1 –

- a) 4320 S Cotton Ln., Goodyear, AZ: Six employees working on a roof 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)).

Mr. Warren discussed ADOSH's fatality investigation, summarized the citations and proposed penalties as listed, and discussed the photographs and history.

Commissioner Orchard, Mr. Warren, Chairman Schultz, and Mr. Murphy discussed the subject building and a prior citation that involved the building.

Commissioner Orchard and Mr. Warren discussed the bases for, and differences between, the citations. Chairman Schultz and Mr. Warren discussed the purpose for labeling covered broken skylights.

Mr. Keller noted that, given the admonition, he did not have a lot to say and reserved the employer's right to contest the citations and proposed penalties. He noted one issue that Mr. Radobenko would like to discuss.

Mr. Radobenko discussed his concerns with being labeled a "repeat" offender, including his recollection of a prior conversation with Gilbert Bracamonte. Mr. Warren stated that he was unaware of the referenced conversation, discussed the basis for issuing a repeat violation, and reviewed the history of the prior violations.

Mr. Keller discussed ADOSH's interpretation of the flagging standards and raised concerns about outreach concerning this issue. He recommended that ADOSH engage in better outreach concerning the issue. He suggested that the grouped violations in Citation 2, Item 2 be reduced to a single violation.

Chairman Schultz thanked Mr. Keller for his comments and discussed the distinction between a warning line and a fall protection system that is required to hold weight.

Chairman Schultz, Mr. Keller, Mr. Warren discussed the distinction between visual and physical barriers, and the nature of fall protection violations. Chairman Schultz noted that additional discussions can occur during the formal settlement and hearing process.

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

Comfort Systems USA (Southwest), Inc.
6875 W Galveston St.
Chandler, AZ 85226

Unprogrammed Related
Years in Business: 64
Empl. Covered by inspection: 6

Site Location: 4320 S Cotton Lane
Goodyear, AZ 85338

Inspection No: Q6169-1235032

Inspection Date: 04/26/2017

SERIOUS – Citation 1 - Item 1 –

- a) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, 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)).

- b) 4320 S Cotton Ln., Goodyear, AZ: Two employees operating scissor lifts were not protected from objects or employees falling through skylights. (29 CFR 1926.501(b)(4)(iii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: One employee performed HVAC work on a roof, with an approximate 40 feet fall hazard, in the area between the roof edge and the warning line. (29 CFR 1926.502(f)(3)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, with a cover over a broken skylight that was 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 - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 –

- a) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not flagged at no more than 6-foot intervals with high-visibility material. (29 CFR 1926.502(f)(2)(i)).
- b) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not rigged or supported in such a way that its lowest point (including sag) was not less than 34 inches from the walking/working surface and its highest point no more than 39 inches from the walking/working surface. (29 CFR 1926.502(f)(2)(ii)).
- c) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system in which was not made from rope, wire or chain having a tensile strength of at least 500 pounds. (29 CFR 1926.502(f)(2)(iv)).
- d) 4320 S Cotton Ln., Goodyear, AZ: Six employees doing HVAC work on a roof, with an approximate 40 feet fall hazard, utilized a warning line system, that was not attached at each stanchion, in which pulling on one section of the line between stanchions allowed slack being taken up in adjacent sections. (29 CFR 1926.502(f)(2)(v)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 3 – 4320 S Cotton Ln., Goodyear, AZ: Two employees working at heights greater than 6 feet and exposed to falls 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 - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$6,750.00

TOTAL FORMULA AMT. - \$6,750.00

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

Vice Chair Hennelly, Commissioner Krenznel, and Mr. Warren discussed the various employers' responsibility for abating the hazards, the employers' roles on the worksite, and the employers' roles in exposing employees to hazards.

Mr. Porter suggested that motions not include Citation 1, Item 3, as that violation had been removed by ADOSH.

Commissioner Orchard discussed amendments needed on the ADOSH report and whether a good faith discount should apply. Mr. Warren noted that the subject company's VPP site was located in Ohio and would not be considered in this matter.

Commissioner Orchard, Mr. Knueven, and Mr. Burke discussed whether the safety hazards at the worksite would have been discovered had the project been located in Ohio. Mr. Knueven discussed the events leading to the fatality.

Mr. Warren and Mr. Murphy noted that this was Mr. Ritter's first project with skylights and discussed ADOSH's observations.

Commissioner Orchard requested that ADOSH review its report, "clean up the paperwork," and resubmit the matter at a subsequent meeting for the Commission's review. Mr. Warren noted that October 20, 2017, is the deadline to issue. Mr. Ashley discussed possible meeting dates at which the matter could be reviewed.

Chairman Schultz and Mr. Porter discussed a motion to remand the matter to ADOSH.

Commissioner LeMarr moved to remand the matter to ADOSH for correction and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Willmeng Construction, Inc.
2048 N 44th St., Ste. 200
Phoenix, AZ 85008

Unprogrammed Related
Years in Business: 40
Empl. Covered by inspection: 3

Site Location: 4320 S Cotton Lane
Goodyear, AZ 85338
Inspection No: Q6169-1229424
Inspection Date: 04/20/2017

SERIOUS – Citation 1 - Item 1 –

29 CFR 1926.501(b)(1):

- a) 4320 S Cotton Ln., Goodyear, AZ: Three employees on a roof, during construction work, were 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 working on the roof, 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)).

29 CFR 1926.501(b)(4)(i):

- a) 4320 S Cotton Ln., Goodyear, AZ: Three employees 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

Commissioner LeMarr and Mr. Knueven discussed the reasons for the presence of two general contractors at the worksite.

Mr. Warren and Mr. Murphy discussed Willmeng Construction's representations that both it and MV Commercial Construction functioned as general contractors on the project..

Mr. Phelan discussed Willmeng Construction and its safety history.

Mr. Burke discussed the presence of personal protective equipment (PPE) on the roof and both companies' progressive approach to safety.

Mr. Porter and Mr. Warren discussed methods for calculating the penalty for Citation 1, Item 1. Chairman Schultz and Mr. Warren discussed better representing the calculation in the report.

Commissioner Orchard and Mr. Murphy discussed the grouping of violations.

Commissioner Krenzel, Mr. Warren and Mr. Murphy discussed the \$7,000 proposed penalty and the reasons it was not applied to MV Commercial Construction.

Chairman Schultz, Vice Chair Hennelly, and Mr. Murphy discussed the contents of a safety meeting held before the incident.

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

Commissioner Orchard and Mr. Warren discussed outreach concerning skylight hazards. Commissioner Orchard directed Mr. Warren to move forward with the outreach.

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 noted an upcoming Commission visit to Raytheon Missile Systems in Tucson for its 10-year VPP celebration. He discussed additional stakeholder meetings planned for the Tucson trip and plans for the Governor's Transformation Office AMS Science Fair.

Mr. Ashley discussed a Commission meeting visit from the Carpenter's Union on September 21, 2017. He discussed the information that they provided and stated that there were no pending complaints included in the information. He recounted his conversation with the President of the Union in which he provided information concerning filing wage complaints, noted that the Compliance Unit of the Legal Division would be looking into workers' compensation coverage issues, and explained that the Union had raised issues that we offered to facilitate as a referral to the appropriate jurisdiction. He also noted that there has not been a response to our offer to meet directly with Union leadership to discuss their concerns.

Mr. Ashley and Mr. Warren discussed ADOSH citations issued with penalties under \$2,500 and provided reports to the Commission. Commissioner Orchard, Chairman Schultz, and Mr. Warren reviewed ADOSH's recent inspection activity.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through November 2017.

Mr. Ashley discussed Governor Ducey's domestic violence awareness initiatives and "Wear Purple" day, which will take place October 19, 2017.

Mr. Warren noted that the next ADOSH Safety Summit will take place October 19, 2017, in Yuma and that the two-day Phoenix Safety Summit will be held at the Thunderbird School of Management.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion and the meeting was adjourned at 2:51 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary