

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 14, 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
	Renee Pastor	Self-Insurance (telephonic)
	William Warren	ADOSH Director
	Phil Murphy	ADOSH Assistant Director
	Steven Welker	Labor Director
	Brian Downen	Compliance Officer
	Steven Black	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Ralph Poulsen with ALS Environmental; Charles Keller representing S&H Steel Co., Inc.; Brad Wyeth, Reed Sherwood, Larry McKinney; and Darren Sherwood with S&H Steel Co., Inc.; Dianne McCallister with Public Policy Partners; Jessica Aceves and Amelia Esber with Snell & Wilmer; and Ted Stacy.

Approval of Minutes of August 31, 2017 Regular Meeting.

Vice Chair Hennelly moved to approve the Minutes of the August 31, 2017 regular session meeting. Commissioner LeMarr 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.

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. 2C17/18-0163 AZ Move for Less LLC DBA Arizona Move For Less

- b) Fabrication West: A guard was not installed on 18 inches of the unused portion of the blade on a Hyd-Mech horizontal pivot band saw, model S-20 and serial number 60299199, to protect the operator and other employees in the area from the hazardous moving blade. (29 CFR 1910.212(a)(1)).
- c) Fabrication West: A guard was not installed on 5 inches of the unused portion of the blade on a Hyd-Mech double miter band saw, model DM-6 and serial number 10022, to protect the operator and other employees in the area from the hazardous moving blade. (29 CFR 1910.212(a)(1)).
- d) Parts East: Protective covers were not provided on the foot treadles for a Geka Hydracrop Ironworker, model 165/S and serial number 788, to prevent unintended machine actuation due to falling objects, moving objects, or by employees in the area from accidentally stepping on the two foot treadles that were in front of the machine. (29 CFR 1910.212(a)(1)).

29 CFR 1910.212(a)(3)(ii):

- a) Fabrication East: A complete guard was not installed on a Mittler Bros. Ultimate Variable Speed Tubing Notcher machine to protect the operator and other employees in the area from the hazardous rotating spindle. (29 CFR 1910.212(a)(3)(ii)).
- b) Parts East: The punch point of operation on a Geka Hydracrop Ironworker, model 165/S and serial number 788, was not guarded to protect the operator and other employees in the area from the hazardous caught-in and struck-by hazard when the machine was in operation. (29 CFR 1910.212(a)(3)(ii)).
- c) Parts East: The punch point of operation on a Geka Hydracrop Ironworker, model 110/AD and serial number unknown, was not guarded to protect the operator and other employees in the area from the hazardous caught-in and struck-by hazard when the machine was in operation. (29 CFR 1910.212(a)(3)(ii)).
- d) Parts East: The non-operator side of the shear portion of a Geka Hydracrop Ironworker, model 110/AD and serial number unknown, was not guarded to protect employees in the area from accidental contact with the cutting portion of the machine. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

SERIOUS – Citation 1 - Item 8 –

- a) Fabrication West: Compressed air used for cleaning production equipment and work tables during the metal fabrication process was not reduced to less than 30 P.S.I. as the air being used from the compressor was non-regulated and set to approximately 105 P.S.I. and the air gun outlet was not fitted with a relief device that dropped the pressure to less than 30 P.S.I. if the flow was dead-ended or obstructed. (29 CFR 1910.242(b)).
- b) Painting Area: Compressed air used for cleaning metal before painting was not reduced to less than 30 P.S.I. as the air cleaning attachment used from the compressor non-regulated was set at approximately 60 P.S.I. and the source outlet was not fitted with a relief device that dropped the pressure to less than 30 P.S.I. if the flow was dead-ended or obstructed. (29 CFR 1910.242(b)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 9 –

- a) Fabrication West: Several circuit breakers inside a General Electric circuit breaker panelboard, catalog number FP818133, were not legibly marked to indicate the purpose for each circuit disconnect. (29 CFR 1910.303(f)(2)).
- b) Parts East: Several circuit breakers inside a General Electric circuit breaker panelboard, number FN 2(illegible), were not legibly marked to indicate the purpose for each circuit disconnect. (29 CFR 1910.303(f)(2)).
- c) Fabrication West: Several circuit breakers inside a General Electric circuit breaker panelboard, number unknown, were not legibly marked to indicate the purpose for each circuit disconnect. (29 CFR 1910.303(f)(2)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 10 –

- a) Fabrication East: A knockout was missing on the side of a pole mounted outlet box which exposed employees to live electrical parts. (29 CFR 1910.305(b)(1)(ii)).
- b) Parts East: Filler plates were not installed in two areas inside a General Electric circuit breaker panelboard, number FN 255537, when breakers were removed which exposed employees to live electrical parts. (29 CFR 1910.305(b)(1)(ii)).
- c) Parts East: Filler plates were not installed inside a General Electric circuit breaker panelboard, number FN 2(illegible), when breakers were removed which exposed employees to live electrical parts. (29 CFR 1910.305(b)(1)(ii)).
- d) Fabrication West: Filler plates were not installed inside a General Electric circuit breaker panelboard, number unknown, when breakers were removed which exposed employees to live electrical parts. (29 CFR 1910.305(b)(1)(ii)).
- e) Fabrication West: A damaged electrical box had an opening between the conduit and the opening for the conduit. (29 CFR 1910.305(b)(1)(ii)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 11 –

- a) Parts East: One employee who removed and installed circuit breaker equipment and was responsible for electrical maintenance at the facility was not trained in and familiar with the safety-related work practices required by 1910.331 through 1910.335 that pertained to their respective job assignments. (29 CFR 1910.332(b)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$34,600.00

TOTAL FORMULA AMT. - \$25,300.00

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

Commissioner LeMarr and Mr. Downen discussed the weight of the steel girder and the origin of the inspection photographs related to Citation 1– Item 2.

Commissioner Orchard and Mr. Warren discussed the hazards associated with using above-ground PVC piping to move compressed air.

Commissioner Orchard, Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed Citation 1– Item 5, the company’s training records, and forklift retraining requirements.

Commissioner Orchard and Mr. Warren discussed the violations related to the fatality.

Mr. Keller addressed the Commission on behalf of S&H Steel, noting that the fatality was a tragic accident. He discussed his retention by S&H Steel, arrangements for the follow-up inspection on April 7, 2017, and his communications with ADOSH. He criticized communications he received from ADOSH, stating that he was unaware that the follow-up inspection would be comprehensive. He related his conversations with Mr. Downen and Mr. Warren about the propriety of conducting a comprehensive inspection. He stated that he ultimately allowed the comprehensive investigation while preserving the company’s rights to object to the legality of the inspection. He discussed Citation 1– Item 2, related photographs, and his understanding of the decedent’s actions. He discussed Citation 1-Item 5, the forklift operator’s distress following the fatality, and the forklift operator’s inability to be interviewed. He noted that the forklift operator does have a forklift training card from March 8, 2017, and has 30 years of experience as a forklift operator. Finally, Mr. Keller discussed the closing conference and Mr. Downen’s inability to discuss grouping of violation at that time. He reserved the company’s rights to discuss the citation and grouping at a formal settlement conference.

Chairman Schultz, Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed the inspection as it related to the forklift operator’s training, the existence of training records, and employees who were unwilling to participate in the inspection. Mr. Warren noted that he stood by the inspection, that it was his decision to conduct a comprehensive inspection, and that the decision was based on observations made during the initial inspection. He discussed Photograph No. 6. Mr. Downen discussed the police report, police response to the incident, and the resulting delay before ADOSH was able to initially investigate the accident. He noted that, while waiting to conduct the initial inspection, he and the other investigators noticed other safety violations in plain sight, which he related to Mr. Warren and which provided the basis for expanding the inspection. Mr. Warren discussed his open line of communication with Mr. Keller and indicated that he wished he had been able to respond to Mr. Keller sooner.

Commissioner LeMarr and Mr. McKinney discussed forklift training and why Mr. McKinney was unaware of the forklift driver’s certification. Mr. McKinney explained that he was distressed due to the accident and was unable to find it.

Chairman Schultz stated that he appreciated Mr. McKinney’s honesty, noted that other operators were not trained, and wondered why with 30 years of experience the subject operator tolerated the risks associated with the activity. He thanked Mr. Keller for his involvement and cooperation and discussed ADOSH duties. Chairman Schultz discussed the proposed penalties and grouping.

Commissioner Orchard discussed the general duty violation (Citation 1–Item 2).

Mr. Warren summarized the citation and proposed penalties and reviewed the photographs. Mr. Black commented on the medical waste and the waste materials used.

Commissioner Orchard, Chairman Schultz, Mr. Warren, and Mr. Black discussed whether environmental companies typically handle medical waste, the variety of samples received for testing, the difficulty of controlling intake, a past incident involving a syringe, and blood-borne pathogen standards.

Commissioner LeMarr, Mr. Warren, and Mr. Black discussed silica exposure levels and the company's sampling efforts.

Chairman Schultz and Mr. Black discussed why alternative fuel samples relate to blood-borne pathogens.

Vice Chair Hennelly and Mr. Black discussed abatement and the existence of a written exposure control plan.

Mr. Poulsen complimented Mr. Black on the inspection and provided information concerning the company's fuel testing and related samples. He discussed the company's respirator policy and use of high-capacity vacuum cleaners for dust control. Mr. Poulsen indicated that his company has since resolved the reported concerns and improved the dust collection systems. He discussed the company's devotion to safety. He explained that the company encountered medical waste in a project that took place four years ago. He noted that the project involved sterilized bags, one of which contained several syringes. According to Mr. Poulsen, the company did not process that sample. He stated the company's analysts are trained and have appropriate safety gear.

Commissioner Orchard, Mr. Poulsen, and Mr. Warren discussed whether the complaint arose out of the syringe incident that took place four years prior.

Chairman Schultz and Mr. Poulsen discussed whether the company had installed an eye wash station.

Chairman Schultz noted that he appreciated Mr. Poulsen's abatement efforts and good faith attempts at improving the company's safety policy and procedure.

Commissioner Orchard noted the company's strong safety program, quick and effective abatement, and attempts to educate others in the industry with regard to the hazard. Based on the company's good faith and abatement, she moved to amend the proposed penalties, as follows: (1) the proposed penalty for Citation 1–Item 1 be reduced from \$1,875.00 to \$1,000.00; (2) the proposed penalty for Citation 1–Item 2 be reduced from \$1,875.00 to \$1,000.00; and (3) the proposed penalty for Citation 1–Item 3 be reduced from \$1,875.00 to \$1,000.00; for a total penalty of \$3,000.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion & Action regarding Proposed Youth Employment Penalty.

CL1718-0062 - Ray Ahrns, DBA AHRNS Contracting – Mr. Welker summarized the Labor Department's investigation, which included findings of numerous A.R.S. § 23-231(a)(5) violations.

Mr. Welker noted an update in the calculation of the penalty and recommended that the total penalty be reduced to \$600.00.

Commissioner Orchard and Mr. Welker discussed the fact that the youth began working for the company at age 15, but that the company was not cited for hiring a 15-year-old.

Commissioner LeMarr moved to approve the citation and proposed penalties of \$600.00. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Mr. Porter clarified the name of the business as Ray Ahrns dba Ahrns Contracting.

CL1617-0387 - Castle Rock Homes LLC – Mr. Welker summarized the Labor Department’s investigation following the receipt of a work-injury report that a 16 year-old was injured when he dropped a circular saw that he had been operating. The investigation produced evidence that the youth was working in a prohibited employment. He explained that the Labor Department found violations of A.R.S. § 23-231(a)(13). Mr. Welker recommended a penalty of \$600.00.

Chairman Schultz, Commissioner Orchard, Commissioner LeMarr, Mr. Warren, and Mr. Welker discussed Labor Department’s notifications to ADOSH arising out of youth labor investigations and the seriousness of the subject injury.

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

Mr. Welker noted he will follow up to see if ADOSH has been notified.

CL1617-0226 - Steve Seidel Plumbing Inc. – Mr. Welker summarized the Labor Department’s investigation following the receipt of a work-injury report that a 17 year-old youth was injured while operating a battery-powered band saw. The investigation produced evidence that the youth was working in a prohibited employment. He explained that the Labor Department found violations of A.R.S. § 23-231(a)(13). Mr. Welker recommended a penalty of \$600.00.

Commissioner Krenznel moved to approve the citation and proposed penalties as presented. 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.

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 provided an industry update and noted that CopperPoint acquired Pacific Comp Insurance Company and will be expanding into California.

Mr. Ashley discussed Governor Ducey's initiatives for the month of October concerning domestic violence awareness and opioid addiction awareness. Chairman Schultz, Commissioner Orchard, Commissioner Krenzel, Mr. Ashley, Mr. Laky, and Ms. Dimas discussed "Lighting Arizona Purple," which will take place on October 2, statewide Wear Purple Day on October 19, and other events and programming related to the initiative. Mr. Ashley discussed "Addiction, The Elephant in the Room," an opioid addiction awareness event that will take place on October 23.

Mr. Ashley discussed an article about the heroin epidemic. Chairman Schultz noted that he believes Ohio implemented a prescription-reporting system that has achieved a significant reduction in issued opioid prescriptions and fatalities from overdoses. Chairman Schultz and Mr. Ashley discussed a pending review of cost data to ascertain the impact of Arizona's efforts to control the use of opioids in the treatment of Arizona industrial injuries.

Mr. Ashley discussed the Goal Council 4 recidivism breakthrough project. He noted that America Roofing has already hired an individual from the project and two more will be starting soon. Mr. Ashley noted that Mr. Atencio is coordinating OSHA 10-hour classes. Chairman Schultz noted that the numbers are small but significant and expressed that it is very fortunate to have America Roofing leading the project. He indicated that he would like to work with the Home Builders Association to try to spread the concept and get more employers involved. Mr. Ashley related that one employer had lost 15 employees to Florida and Texas construction jobs following the recent hurricanes that impacted both states.

Mr. Ashley noted that at the Commissioners will have a Gemba walk through the agency the following Thursday, following a short Commission meeting.

Mr. Ashley discussed prospective tuition and training reimbursement policies. He said that professional development and education will help claims adjusters, appraisers, examiners, and investigators receive additional professional training and be compensated by the agency. Mr. Ashley indicated that tuition reimbursement for degree programs is designed to support career path progression within the state. He noted that the new policies are a response to the employee engagement survey, which provides an opportunity for the Commission to respond to employee requests for professional and career development. He discussed development of an employee recognition fund and efforts to raise money for that fund. He suggested that the fund will allow Commission divisions to celebrate individual successes.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley reminded the Commissioners that the AMS Science Fair will take place in the Tucson office on Friday, October 13. The event will coincide with the Raytheon tour and Tucson trip on October 11 and 12.

Mr. Warren noted that Mr. Atencio will be concluding a two-day Safety Summit in Tucson and recognized the Summit's success. He said that, on November 15 and 16, Consultation will lead a two-day Leadership Summit at the Ramada Inn by Metro Center.

Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, Commissioner Krenzel, Mr. Ashley, Mr. Porter, and Ms. Dimas discussed Commission meeting dates through December 2017. They noted an October 12 meeting in Tucson, a November 16 Stakeholder Meeting in the Auditorium, and planning for a November 30 Public Hearing related to the Treatment Guidelines.

Mr. Porter noted that a proposal regarding Full and Final Settlement will be presented to the Commission on October 5. He noted that the December 7 or 14 meeting will include an item related to streamlining the treatment guidelines pursuant to Section 5 of Senate Bill 1332.

Chairman Schultz, Mr. Ashley, and Mr. Porter discussed the September 15 deadline for comments concerning streamlining the authorization process.

Ms. Dimas confirmed October 5 for the Commissioner's group photograph.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn 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 and the meeting was adjourned at 2:46 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley
James Ashley, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary