

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, May 26, 2016 – 1:00 p.m.

Present:	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	Melinda Poppe	Deputy Director
	Jason M. Porter	Chief Legal Counsel
	Stephen Ball	Staff Attorney
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Larry Gast	Assistant ADOSH Director
	Billie Gingrass	Compliance Officer
	Brian Downen	Compliance Officer
	Anthony Leyva	Compliance Officer
	JR Imes	Compliance Officer
	Kara Dimas	Commission Secretary

Vice Chair Hennelly convened the Commission meeting at 1:00 p.m., noting a quorum present. Chairman Schultz was excused. Also in attendance were Jeffrey Dunn, Merrily Pearson, and Pat Altenberger with All City Towing; Dawn Helms with CRM of America, LLC; Gina Ruegsegger and Dave Sherwood with Younger Brothers Construction Company, Inc., Greg Saxe with Reseco Insurance Advisors, LLC and Julie Pace representing Younger Brothers Construction Company, Inc.; and Jason Weber of Snell & Wilmer. William Warren, ADOSH Director, joined the meeting while in progress.

Vice Chair Hennelly welcomed Mr. Porter as the Commission's new Chief Legal Counsel.

Approval of Minutes of May 19, 2016 Regular and Executive Session Meeting.

Commissioner Orchard moved to approve the Minutes of the May 19, 2016 Regular Session meeting and Commissioner LeMarr seconded the motion. Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion.

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.

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- a. Approval of Proposed Civil Penalties Against Uninsured Employers.



attachment and its usage in the industry. He requested additional information about the strapping depicted in mounted photograph number 2 and how the forklift tines fit into the man basket. Mr. Gast responded to the questions. Commissioner LeMarr commented on the construction of the man basket and the wheel lift attachment. Mr. Gast commented on the construction and use of the man basket, noting that All City Towing planned to retire the man basket. Commissioner LeMarr commented that he was glad ACT Towing had decided to retire the man basket and asked about standard railing height. Mr. Gast responded to the question.

Vice Chair Hennelly invited representatives from All City Towing to comment. Mr. Dunn, the company's General Manager, commented on the company's background, safety record, and safety program. He commented on the usage and manufacture of the man basket, noting the company had stopped using the man basket and had contracted with a lighting service provider to change the lights. Mr. Dunn noted that the company provided ADOSH access to their facility and employees and produced all requested documentation. He noted that the Company had registered for classes sponsored by ADOSH for overhead work. Finally, Mr. Dunn commented on the design, cost, and use of the wheel lift attachment, noting that the wheel lift is industry standard for moving vehicles within a yard. He explained a formula for safe towing capacity using the wheel lift attachment and provided examples.

Mr. Gast commented on All City Towing's safety and training program. He noted his recommendation that the company have the forklift manual available at the work site. He commented on the forklift's capacity, but explained the forklift manufacturer's use restrictions. He explained that the applicable ADOSH standard states that a forklift cannot be modified without permission of the engineer or manufacturer. Mr. Dunn responded, noting that the company would be happy to look into hiring an engineer to evaluate usage of the wheel lift attachment.

Vice Chair Hennelly invited further questions. Commissioner Orchard asked Mr. Gast if ADOSH consultative program could assist the company in lieu of hiring an engineer. Mr. Gast responded that ADOSH has no engineers on staff, but may be able to assist with a referral.

Vice Chair Hennelly invited further questions or a motion to approve or change the recommendation.

Commissioner LeMarr moved to amend the Citation from a Serious to Non-Serious, noting a quick fix abatement, a good safety program, and the company's attempts to engage in the consultation process. He proposed to change the fine on Item 1 from \$1,750.00 to \$500.00. He proposed to delete Item 2. Commissioner LeMarr asked the company to contact the forklift manufacturer regarding relevant engineering information for the forklift.

Vice Chair Hennelly recapped the pending motion and Commissioner Orchard seconded the motion. Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion.

CRM of America, LLC  
11400 E Pecos Rd  
Mesa, AZ 85212

Site Location: 11400 E Pecos Rd  
Mesa, AZ 85212  
Inspection No: H1793-1125857  
Inspection Date: 02/18/2016

Referral  
Years in Business: 13  
Empl. Covered by inspection: 18

SERIOUS – Citation 1 - Item 1 – Yard Area: Machine guarding was not provided on the SSI 2 Shredder Machine Conveyor, model and serial numbers unknown to protect the employees working in the yard area from hazards such as those created by point of operation, ingoing nip points on the in-running and off-running sides of the belt conveyor. (29 CFR 1910.212(a)(1))

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Gast summarized the citation and proposed penalty and reviewed the mounted photographs. Commissioner LeMarr asked if the company had a lock-out/tag-out procedure in place if a machine gets jammed. Mr. Gast responded to the question. Commissioner LeMarr asked about the circumstances of the injury. Mr. Gast responded to the question and reviewed the applicable standards.

Commissioner Orchard asked about adjustment of the gravity-based penalty. Mr. Gast explained ADOSH policy regarding adjustment factors for cases involving serious injuries. Commissioner Orchard asked whether ADOSH saw any abatement after the injury. Mr. Gast responded to the question and explained the basis for the \$5,000 proposed penalty.

Vice Chair Hennelly invited representatives from CRM to comment. Ms. Helms, CRM's Plant Manager, commented about the company's use of barrier guarding and electronic sensors. Commissioner LeMarr asked if CRM provided abatement photographs to ADOSH. Ms. Helms responded to the question. Commissioner LeMarr recommended that companies submit abatement evidence to ADOSH for consideration. Vice Chair Hennelly asked when the abatement occurred. Ms. Helms responded to the question. Vice Chair Hennelly and Ms. Helms clarified that the abatement occurred after the injury and subsequent ADOSH inspection.

Vice Chair Hennelly invited further questions or comments or a motion to approve or amend. Commissioner Orchard moved to amend the proposed Citation. She proposed to leave Item 1 as Serious and proposed to decrease the penalty from \$5,000.00 to \$2,000.00. Commissioner LeMarr seconded the motion. Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion.

Younger Brothers Construction Company, Inc.  
8525 N 75<sup>th</sup> Ave  
Peoria, AZ 85345

Referral  
Years in Business: 40  
Empl. Covered by inspection: 10

Inspection No: Y8817-1130294  
Inspection Date: 03/03/2016  
Site Location: 3935 E Rough Rider Rd  
Phoenix, AZ 85050

SERIOUS – Citation 1 - Item 1 – Building 22: Two employee were working approximately 10 feet above the ground without the use of guardrail systems, safety net or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
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SERIOUS – Citation 1 - Item 2 – Building 22: A Younger Brother Construction employee used an 8-foot fiberglass step ladder (Manufacturer, model and serial number unknown) in the closed position to access the work area at the top of the garage wall. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$1,400.00	Formula Amt. - \$1,400.00
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TOTAL PENALTY - \$3,150.00

TOTAL FORMULA AMT. - \$3,150.00

Mr. Gast distributed a correctly-numbered set of photographs. He summarized the citation and proposed penalty and reviewed the mounted photographs. He noted a typographical error on the Gravity-Based Penalty for Item 2, indicating that it should be \$2,000.00 instead of \$2,500.00.

Commissioner LeMarr asked whether the person depicted in mounted photograph numbers 2 and 7 were the same person and whether there were only two people at the job site. Mr. Gast responded to the questions. Mr. Gast also noted that the general contractor was inspected but not cited. Commissioner LeMarr commented on the size of the project and asked how many Younger Brothers employees were at the job site. Mr. Gast responded to the question.

Commissioner Orchard asked about abatement. Mr. Gast responded and commented on abatement, construction methods, and safety procedures. Vice Chair Hennelly commented on ADOSH's decision use a "medium" probability of injury in Item 2. Commissioner Orchard noted that ADOSH had been generous is using a "medium" probability of injury. Vice Chair Hennelly agreed. Commissioner Orchard commented on past cases involving harnessed employees. Mr. Gast responded and discussed the classification of hazards by ADOSH Compliance Officers.

Vice Chair Hennelly invited representatives from Younger Brothers to comment. Ms. Pace addressed circumstances of the cited violations and the ADOSH investigation. She provided various documents to the Commissioners, including safety and training-related records, discipline records, and select case law. She discussed the "employee misconduct" defense and the provided documents.

Commissioner LeMarr requested clarification about the number of employees who attended the safety meeting on the morning of the inspection and how many were at the job site at the time of the inspection. He also asked a question about the documents provided by Ms. Pace. Mr. Gast noted that the ADOSH report incorrectly stated that there were 10 employees on site at the time of inspection. He clarified that only 5 employees were present at the time. Ms. Pace explained that the records she provided pertain to the two involved employees, but that Younger Brothers has additional records pertaining to other employees.

Commissioner Orchard commented on the evidence provided by Ms. Pace.

Mr. Gast commented on the difference between a hearing and a Commission meeting. He additionally commented on the presence of an on-site foreman at the time of the inspection and how ADOSH is looking for employers who are able to achieve full compliance even when management is not present. Mr. Gast discussed the circumstances of the violations and the effectiveness of the company's safety rules and oversight.

Ms. Pace responded to Mr. Gast's comments and further discussed the "employee misconduct" defense.

Vice Chair Hennelly reminded everyone that the Commission meeting is not a hearing and that it is unusual to have this sort of presentation and response. He noted the Commissioners should typically follow their process and further presentation and response should be conducted at the next level.

Mr. Gast responded to Ms. Pace's comments, noting the circumstances involved multiple employees, on-site management, and same-day training. Ms. Pace responded to Mr. Gast's

comments, noting that having on-site management is desirable and the Commission should consider the unintended consequences of its decisions.

Mr. Warren commented on the “employee misconduct” defense and ADOSH’s burden in presenting cases to the Commissioners. Commissioner Orchard asked for clarification on whether ADOSH considers the “isolated occurrence” defense. Mr. Warren responded to the question.

Commissioner Orchard commented on the evidence presented, noting that she believes Younger Brothers does everything they can to prevent violations. She commented on Ms. Pace’s statement that the violation exists because a supervisor was on site. Mr. Gast responded that ADOSH would have still recommended a citation even if there had not been a foreman on site because there were two employees involved. Commissioner Orchard noted that it was problematic that the presence of a foreman on site made the case against Younger Brothers stronger.

Vice Chair Hennelly noted options of getting legal advice in executive session or entertaining a motion.

Commissioner LeMarr recognized the company’s good safety record and training, but discussed his concerns with the usage of improper equipment. Commissioner LeMarr moved to amend the proposed Citation, noting that there had been a showing of abatement and good training on Item 1. He proposed to change the Item 1 penalty from \$1,750.00 to \$500.00, but proposed to leave Item 2 as is - for a total penalty of \$1,900.00. Vice Chair Hennelly seconded the motion.

Commissioner Orchard asked whether there was evidence of ladder training and asked if it was in the packet provided by Ms. Pace. Mr. Gast and Ms. Pace responded to the questions. Commissioner Orchard asked whether Younger Brothers had proper equipment on site. Mr. Sherwood responded to the question, noting that employees typically have access to multiple ladders. Commissioner Orchard asked whether ADOSH observed other ladders on site. Mr. Gast did not have that information.

Vice Chair Hennelly recapped Commissioner LeMarr’s pending motion. Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. Commissioner Orchard voted against the motion. Vice Chair Hennelly noted that the motion did not pass.<sup>1</sup>

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.

Ms. Poppe discussed progress on redesigning the Commission website and use of fillable forms. She anticipates the updated website with fillable forms will be ready for launch in July 2016.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas discussed Commissioner photographs to be taken at the June 9, 2016 meeting.

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<sup>1</sup> During the June 9, 2016 Commission Meeting, the Commissioners voted to amend these Minutes of Meeting to clarify that Commissioner LeMarr’s motion to amend the proposed Younger Brothers Citation passed by a vote of 2-1. The Commissioners specifically voted in favor of deleting the word “not” from the sentence “Vice Chair Hennelly noted that the motion did not pass.” See June 9, 2016 Minutes of Meeting for further information.

Public Comment.

There was no public comment. Commissioner LeMarr moved to adjourn and Commissioner Orchard seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:33 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By Melinda K. Poppe  
Melinda K. Poppe, Deputy Director

ATTEST:

Kara Dimas  
Kara Dimas, Commission Secretary