

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 30, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair (video)
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner (telephonic)
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Renee Pastor	Accounting
	Molly Jones	Claims Manager
	William Warren	ADOSH Director
	Brian Downen	Compliance Officer
	Phil Murphy	Compliance Officer
	Chris Brandon	Compliance Officer
	Erik Anderson	Compliance Officer
	John McGregor	Compliance Officer
	Pat Ireland	Compliance Officer
	Brad Harper	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Shawn Flowers and Scott Hess with Berry Plastics Corp.; Jim Nimmo and Brad Carmody with A Company; Jason Harris and John Leyva with Cruz & Associates; Daniel Axinicailleco, relative of deceased worker; Marc Mattfolk and Lynn Bradburn with 75th Avenue Car Wash LP, and Jason Weber with Snell & Wilmer.

Approval of Minutes of June 23, 2016 Regular Meeting.

Vice Chair Hennelly moved to approve the Minutes of the June 23, 2016 Regular Session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Orchard 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. 2C15/16-1927 Pacific American Transport Holdings, LLC, aka Path Transportation
2. 2C14/15-2007 Palm Oasis Assisted Living, LLC, dba Magnificent Cedar
3. 2C15/16-0009 Preferred Care LLC

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

1. Honeywell International, Inc.
2. Viad Corp

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

Discussion and Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Ms. Jones explained the proposed resolution to appoint Christine Dorame as a Special Assistant to the Commission and explained the role of a Special Assistant.

Commissioner LeMarr moved to approve the appointment of Ms. Dorame and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Orchard voted in favor of the motion. The motion passed.

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

Diamond House Painting LLC dba D H Painting	Fatality/Accident	
3018 N Dakota St	Years in Business:	7
Chandler, AZ 85225	Empl. Covered by inspection:	4
Site Location:	4816 N Woodmere Fairway	
	Scottsdale, AZ 85251	
Inspection No:	J7272-1121714	
Inspection Date:	01/26/2016	

SERIOUS – Citation 1 - Item 1 –

a) 4816 N Woodmere Fairway, Scottsdale, AZ 85251, Building # 4: A 4-tier fabricated frame scaffold, 58'-9" in length and 32' in height, was being utilized by employees as a platform to paint a building's exterior had not been inspected by a competent person prior to the work shift. (29 CFR 1926.451(f)(3)).

b) 4816 N Woodmere Fairway, Scottsdale, AZ 85251, Building # 4: Three employees used a scaffold that measured 58'-9" in length and 32' in height to paint the exterior of a building and the scaffold was erected less than 10 feet from an uninsulated energized power line operating at a voltage of 12.47 kilovolts (kV), where the closest distance between the power line and the scaffold's attached ladder was 2.63 feet. (29 CFR 1926.451(f)(6)).

c) 4816 N Woodmere Fairway, Scottsdale, AZ 85251, Building #4: Three employees painted the exterior of a building from a fabricated frame scaffold and they were not trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffold being used and understand the procedure to control or minimize those hazards, such as electrical hazards and working near energized power lines. (29 CFR 1926.454(a)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 2 – 4816 N Woodmere Fairway, Scottsdale, AZ 85251, Building 4: Three employees performed painting of a building on a scaffold that measured 23 inches from the face of the work and had no guardrail systems erected along the front edge and/or no personal fall arrest systems were used to protect employees from falling. (29 CFR 1926.451(b)(3)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$8,750.00

TOTAL FORMULA AMT. - \$8,750.00

Mr. Warren summarized the proposed citation and penalties as listed and reviewed the photographs. Commissioner Orchard asked whether the scaffolding provided adequate fall protection and whether the deceased could have survived had he not fallen. Mr. Warren and Mr. Brandon responded to the questions and discussed the circumstances of the incident. Mr. Warren discussed standards related to working near power lines and commented on whether an employee/employer relationship existed between the deceased and Diamond House Painting.

Chairman Schultz's invited further questions or comments. Mr. Harris asked if the City of Scottsdale approved the scaffolding to be erected so close to powerlines. Chairman Schultz responded to the question, noting that it was not within the Commission's purview to address that issue.

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

75th Avenue Carwash LP
1625 N 75th Ave
Phoenix, AZ 85035

Planned
Years in Business: 7 mos.
Empl. Covered by inspection: 9

Site Location: 1625 N 75th Ave
Phoenix, AZ 85035
Inspection No: Q6169-1126081
Inspection Date: 02/18/2016

SERIOUS – Citation 1 - Item 1 –

a) 1625 N 75th Ave., Phoenix AZ: Employees working with injurious corrosive materials, (Pressure Poly Glaze, Steel Image Apollo 8, and Bug Blaster) and suitable facilities for flushing of the eyes was not provided within the work area for immediate emergency use. (29 CFR 1910.151(c)).

b) 1625 N 75th Ave., Phoenix AZ: A written hazard communication program had not been developed for employees who were potentially exposed in the workplace to hazardous chemicals,

materials and/or substances such as Pressure Poly Glaze, Steel Image Apollo 8, and Bug Blaster. (29 CFR 1910.1200(e)(1)).

c) 1625 N 75th Ave., Phoenix AZ: The employer did not furnish information and training to the employees who were potentially exposed in the workplace to hazardous chemicals such as Pressure Poly Glaze, Steel Image Apollo 8, and Bug Blaster. (29 CFR 1910.1200(h)(1)).

d) 1625 N 75th Ave., Phoenix AZ: Copies of safety data sheets for hazardous chemicals, substances, and/or materials, such as Pressure Poly Glaze, Steel Image Apollo 8, and Bug Blaster and other various types of cleaning products were not readily accessible to employees when they were in their work area(s). (29 CFR 1910.1200(g)(8)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 – 1625 N 75th Ave., Phoenix AZ: Two employees using compressed air for cleaning purposes that was not reduced to less than 30 psi. (29 CFR 1910.242(b)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – 1625 N 75th Ave., Phoenix AZ: One employee used a UniMac dryer with a revolving drum that was not guarded by an enclosure interlocked with the drive mechanism so that the drum could not revolve unless the enclosure was in place. (29 CFR 1910.212(a)(4)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Mr. Warren summarized the proposed citations and penalties as listed and the photographs. Commissioner LeMarr noted that he accompanied Mr. Murphy on the inspection and commented on the inspection and grouping of citations. He commented on the short length of time the employer had been operating and the employer's efforts to clean up the site. He recommended that the employer work with ADOSH's consultation division.

Commissioner Orchard asked about the minimum penalty for a lower/lesser violation. Mr. Warren responded to the question and explained the penalty calculation. Commissioner Orchard noted the presence of an abatement photograph. Mr. Warren and Mr. Murphy commented on evidence of abatement. Commissioner Orchard asked whether the cover shown in Photograph # 10 was adequate abatement. Commissioner LeMarr explained that the cover had a broken hinge and it was not attached at the time of inspection. He noted that Photograph # 10 was taken after the cover was placed over the tumbler by the Compliance Officer.

Chairman Schultz commented on the grouping of citations and the timing of abatement. He invited comment from the public or a motion. Commissioner LeMarr moved to amend the proposed citations, as follows: Item 3 be reduced to \$500.00, for a total penalty of \$3,000.00. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Orchard voted in favor of the motion. The motion passed.

A Company Portable Restrooms, Inc. (FN)
dba A Company
1475 N McQueen Rd
Gilbert, AZ 85233

Referral
Years in Business: 43
Empl. Covered by inspection: 23

Site Location: 1475 N McQueen Rd

Gilbert, AZ 85233
Inspection No: T9350-1127567
Inspection Date: 02/24/2016

SERIOUS – Citation 1 - Item 1 – Fill Station Platform: A working platform which was approximately 48 inches or greater above the ground and did not consist of a standard railing to prevent a fall to the lower level below. (29 CFR 1910.23(e)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 –

a) 1475 N McQueen Rd Gilbert, AZ 85233: The employer did not adequately perform a workplace hazard assessment with a written certification to verify the selection and use of the Honeywell N99 half-face respirator. (29 CFR 1910.132(d)(2)).

b) 1475 N McQueen Rd Gilbert, AZ 85233: One employee who was required to wear a half-face respirator and was not provided a medical evaluation prior to performing work to determine the employee's ability to use a respirator. (29 CFR 1910.134(e)(1)).

c) 1475 N McQueen Rd Gilbert, AZ 85233: One employee was not fit tested when using a North Honeywell 7190 Series Half Mask for cleaning up a chemical spill. (29 CFR 1910.134(f)(2)).

d) 1475 N McQueen Rd Gilbert, AZ 85233: Two employees were not provided training prior to being required to use a tight-fitting respirator such as Honeywell North Half Mask Air-Purifying Respirator Model number 7190N99. (29 CFR 1910.134(k)(3)).

e) 1475 N McQueen Rd Gilbert, AZ 85233: Four employees were required to use a respirator when cleaning up a spill of Satellite Fresh Form 5000, which contained formaldehyde and the employer did not implement a respiratory protection program in accordance with 29 CFR 1910.134. (29 CFR 1910.1048(g)(2)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1750.00

SERIOUS – Citation 1 - Item 3 –

a) 1475 N McQueen Rd Gilbert, AZ 85233: One employee that used Satellite Fresh Form 5000 which contains formaldehyde was not monitored to determine exposure levels in the workplace. (29 CFR 1910.1048(d)(1)(i)).

b) 1475 N McQueen Rd Gilbert, AZ 85233: The employer did not provide an appropriate respirator to employees when exposed to formaldehyde during emergency operations. (29 CFR 1910.1048(g)(1)(iv)).

c) 1475 N McQueen Rd Gilbert, AZ 85233: On or about February 22, 2016 a chemical spill of Satellite Fresh Form 5000, which contains about 30-50% formaldehyde, occurred in the workplace and the employer did not ensure that employees were wearing suitable protective equipment and trained in proper methods for cleanup. (29 CFR 1910.1048(j)(3)).

d) 1475 N McQueen Rd Gilbert, AZ 85233: The employer stored and handled several 55 gallon drums of Satellite Fresh Form 5000 which contains formaldehyde and the employer did not ensure

appropriate procedures were adopted to minimize injury and loss of life in the event of an emergency. (29 CFR 1910.1048(k)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 4 –

a) 1475 N McQueen Rd Gilbert, AZ 85233: A written hazard communication program had not been maintained for employees who were exposed in the workplace to hazardous chemicals, materials and/or substances such as ChemStation 8569 Urinal Cleaner, Chem Station 90144 Floor Cleaner, and Satellite Fresh Form 5000 Deodorizer. (29 CFR 1910.1200(e)(1)).

b) 1475 N McQueen Rd Gilbert, AZ 85233: Two employees, who worked in the Yard Area as Utility workers and worked with such chemicals as ChemStation 8569 Urinal Cleaner, ChemStation 90144 Floor Cleaner, and Satellite Fresh Form 5000 Deodorizer, had not been provided training to address the new label elements and new Safety Data Sheets (SDS) format for chemicals in the workplace. (29 CFR 1910.1200(h)(3)(iv)).

Div. Proposal - \$1,050.00

Formula Amt. - \$1,050.00

TOTAL PENALTY - \$6,300.00

TOTAL FORMULA AMT. - \$6,300.00

Mr. Warren summarized the proposed citation and penalties as listed. Mr. Anderson reviewed the photographs. Mr. Warren and Mr. Anderson discussed the circumstances of the chemical spill. Commissioner Orchard asked for clarification of the penalty on Item 4. Mr. Warren explained the penalty calculation and categorization. Mr. Warren and Mr. Anderson commented on the chemicals in use and the safety data sheets. Commissioner Orchard asked for clarification about what should have happened after the chemical spill. Commissioner LeMarr asked whether an industrial shower was necessary and whether one was present. Mr. Anderson responded to the questions and referenced Photograph # 16. He commented on the various causes of the accident, including the lack of a hazardous communications program and proper protective equipment. He commented on public usage of the chemicals.

Vice Chair Hennelly asked whether appropriate respirators were available at the site. Mr. Anderson responded to the question and discussed the types of respirators on site.

Chairman Schultz invited representatives of A Company to comment. Mr. Nimmo reported that the injured employee is ok and has been released back to work with no restrictions. Mr. Nimmo explained the purpose of the dock and abatement actions taken by the company. He commented on respirator training provided to the injured employee and other safety training offered by the company. Commissioner LeMarr asked whether abatement information had been provided to ADOSH. Mr. Nimmo commented further on the company's abatement efforts and showed current photographs of the site. Commissioner LeMarr, Mr. Anderson, and Mr. Nimmo discussed the abatement photographs.

Commissioner LeMarr asked about the size discount in the proposed penalties. Mr. Warren responded to the question. Commissioner Orchard asked whether adequate evidence of abatement had been presented for every cited condition. Commissioner LeMarr, Mr. Anderson, and Mr. Nimmo further discussed the company's abatement and training efforts.

Commissioner Orchard moved to amend the proposed citations, as follows: Item 1 be reduced to \$500.00; Item 2 be reduced to \$1,000.00, Item 3 be reduced to \$1,000.00; and Item 4 be

Commissioner Orchard moved to amend the proposed citations, as follows: Item 1 be reduced to \$3,000.00, for a total penalty of \$3,000.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Orchard voted in favor of the motion. The motion passed.

Commissioner Orchard and Mr. Warren commented on the importance and timing of abatement.

Discussion and/or Action pursuant to A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2017.

Mr. Porter provided a brief historical summary of the Commission's duty to annually adopt a maximum average monthly wage, explained how the maximum average monthly wage is used in the workers' compensation system, and discussed the calculation of the maximum average monthly wage. Mr. Porter recommended the Commission adopt the sum of \$4,521.92 as the maximum average monthly wage for calendar year 2017.

Commissioner LeMarr requested clarification on applying the maximum average monthly wage. Mr. Porter responded to the question. Chairman Shultz commented on the application of the maximum average monthly wage.

Commissioner LeMarr moved to set the maximum average monthly wage at \$4,521.92 for calendar year 2017. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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.

Ms. Poppe reported on the Commission's scorecard goals and plans to submit the goals to the Governor's office for approval. Chairman Schultz asked whether any of the goals had changed. Ms. Poppe responded to the question. She discussed the decision to eliminate the goal related to the timing of administrative hearings (based on stakeholder feedback) and a proposal to add a goal to reduce the amount of time it takes Special Fund to make indemnity payments in no insurance cases.

Ms. Poppe discussed the Commission's participation in the first round of Arizona Management System Training and the subject of the training. She noted that the Commission may be one of the first agencies to implement the new Arizona Management System. Chairman Schultz commented on benefits of the training. Mr. Ashley noted that it is a privilege for the agency to be selected to participate with other large agencies in the training.

Chairman Schultz asked about the Commission's performance on its 2016 goals and objectives. Mr. Ashley stated he would provide a scorecard update at the next meeting.

Chairman Schultz recommended that the Commission's performance metrics be published and shared with the community. Mr. Ashley noted that the State scorecard, which includes certain metrics related to the Commission, will be publicly available and will be published on a website being developed by the Governor's office.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed plans for the Sub-Contractors Association of Arizona to present to the Commissioners either on July 21 or 28.

Mr. Ashley reported on Federal OSHA's approval of the transition of all ADOSH cases to the Office of Administrative Hearings. He discussed transition plans, including plans to hold stakeholder meetings about the transition. He indicated that the goal is to make the transition as seamless as possible for staff and stakeholders. He also reported on the transition of the OSHA Review Board to the Commission.

Mr. Ashley discussed plans for the July 13-14 trip to Prescott for a Commission meeting.

Mr. Warren reported that the ADOSH Advisory Committee will be meeting in Flagstaff on July 5 and the Northern Arizona Safety Summit will be held in Flagstaff on July 6 and 7. Chairman Schultz indicated he would be participating in both meetings.

Commissioner LeMarr invited Chairman Shultz to report on Commission efforts to collaborate with representatives from Arizona's roofing industry regarding fall protection and fall awareness. Chairman Schultz discussed the formation of a working group with major providers of roofing services in the residential and commercial sectors. He discussed efforts to create an alliance with roofing companies where members would adopt consistent safety procedures and develop ways to reduce hazards in the roofing industry. He thanked Mr. Warren and Mr. Atencio for their efforts in bringing the alliance to fruition and thanked Commissioner LeMarr for his participation. Commissioner LeMarr noted that Mr. Warren and Mr. Atencio have gone out of their way to try to build a bridge with the roofing industry that their efforts should have a positive effect.

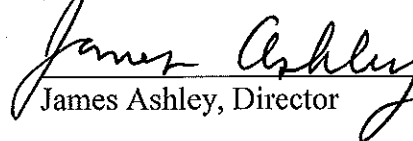
Ms. Dimas confirmed meeting dates in July.

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 and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary