

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at Yavapai County Superior Court  
Jury Assembly Room  
120 S. Cortez, Room 306, Prescott, Arizona 86303  
Thursday, July 14, 2016 – 1:30 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	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
	Larry Gast	Assistant ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:30 p.m. Also in attendance were Dustin Sonn with Hale's Roofing and Lori Burkeen with the City of Prescott.

Approval of Minutes of June 30, 2016 Regular Meeting.

Commissioner Orchard moved to approve the Minutes of the June 30, 2016 Regular Session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard 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. 2C15/16-2464 Desert Devils National Team Training Center, L.L.C.
2. 2C15/16-2468 Jaemi Corp. dba Moon Valley Custom Cleaners, aka Ultra Cleaners
3. 2C15/16-3470 K C Management, Inc.
4. 2C15/16-2473 Leonardo's Landscaping LLC
5. 2C15/16-2478 Taiko International Logistics, LLC
6. 2C15/16-0051 Val Grecu & Rosalia Grecu, Husband and Wife, dba Sunset Vista First

Vice Chair Hennelly moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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 reported on the Commission's interactions with the media, including announcements related to GE Healthcare achieving VPP status, the Prescott Commission meeting, and the roofers working group. He also reported on recent media inquiries, including questions about the ADOSH citation process and the impact of recently-enacted, and potential, legislation. Commissioner Orchard asked about the media inquiry relating to ADOSH's citation procedure. Mr. Charles responded to the question.

Mr. Charles discussed the Commission's efforts to use social media tags to increase traffic on the Commission's Facebook and Twitter pages.

Mr. Charles mentioned Prescott Valley Chamber's plans to publish an article about the Commission.

Mr. Charles mentioned the upcoming tour of the Palo Verde Nuclear Generating Station scheduled for July 19.

Mr. Charles updated the Commission on the website development project. Mr. Ashley commented on the website development project, highlighting the desire to create a high-quality product.

Mr. Charles reported on efforts to gather proposals for legislative changes from Commission employees.

Discussion and Action regarding the Appointment of Members to the Boiler Advisory Board.

Mr. Gast provided a background of the Boiler Advisory Board and recent legislative changes to the Board. He discussed the process of soliciting and vetting potential Board members and proposed five candidates for appointment, including Dean McCook (McCook Boiler & Pump), Ivan Insua (SRP), Raymond Choi (Travelers Risk Control), Richard Walton (Maroney's Cleaners), and John Soldinski (Emerson Boiler). Mr. Porter commented on the term of new Board members. Mr. Ashley mentioned the effective date of certain new legislation from Senate Bill 1500 and commented on the Board and Commission's duty to implement required changes.

Chairman Schultz discussed the qualifications and experience of the proposed candidates.

Commissioner LeMarr moved to appoint the five proposed candidates to the Boiler Advisory Board 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.



Commissioner LeMarr asked about the number of fall-related injuries within the company in the past 36 month. Mr. Sonn indicated there were none, but mentioned two fall issues in 1992 and 1997.

Chairman Schultz asked about Mr. Sonn's role with the company. Mr. Sonn responded to the question and discussed the circumstances of his employment.

Commissioner Orchard asked whether a serious violation would impact a company's ability to acquire contracts. Chairman Schultz responded to the question. Mr. Hale commented on the impact of a serious violation.

Mr. Ashley asked about the classification of violations on the other Hale's Roofing inspection (that were not before the Commission). Mr. Gast responded that ADOSH had issued a citation that included two serious violations based on the inspection of the second Hale's Roofing worksite in Sedona.

Commissioner LeMarr moved to amend the proposed citations, as follows: delete Item 1; change Item 2 to a Non-Serious violation; and delete Item 3 (as Item 3 appeared to be a duplicate of a violation included in the citation issued for the second Hale's Roofing worksite), for a total penalty of \$1,250.00. Commissioner Orchard seconded the motion. She asked that Mr. Sonn recommend that the company purchase fall protection equipment for all employees. Mr. Sonn responded that a rail system had already been ordered.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Lifetree Manufacturing, LLC  
2401 W. 1st St.  
Tempe, AZ 85281

Site Location: 2401 W. 1st St.  
Tempe, AZ 85281  
Inspection No: D4452-1134106  
Inspection Date: 03/22/2016

Referral  
Years in Business: 4  
Empl. Covered by inspection: 43

SERIOUS – Citation 1 - Item 1 –

a) 2401 W 1st St, Tempe, AZ: The employer did not establish an adequate energy control program for the location, or energy control procedures for specific equipment, such as the AMS Automatic Auger Filler, serial number A-500146, in order to prevent the unexpected startup or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment. (29 CFR 1910.147(c)(4)(i)).

b) 2401 W 1st St, Tempe, AZ: The employer did not provide training to ensure that the purpose and function of the energy control program are understood by employees and that the knowledge and skills required for the safe application, usage, and removal of the energy controls for equipment such as the AMS Automatic Auger Filler, serial number A-500146 are acquired by employees. (29 CFR 1910.147(c)(7)(i)).

c) Red Room, AMS Automatic Auger Filler, serial number A-500146: A lock or tag was not affixed on cord and plug connected equipment by an authorized employee, identifying that energy source(s) have been isolated during routine cleaning activities. (29 CFR 1910.147(d)(4)(i)).

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 proposed citation and penalty as listed. Commissioner LeMarr commented on the prior ADOSH inspection at the site, the history of the safety hazard, and the employer's failure to timely abate the issue. Mr. Gast reviewed the prior inspection and citation. He commented on the employer's abatement actions after the first citation. Commissioner LeMarr asked whether the employer had a current lock-out/tag-out program. Mr. Gast responded to the question.

Commissioner Orchard asked for clarification on whether a guarding issue existed. Mr. Gast responded that the issue was related to use of guard rails, not machine guarding.

Chairman Schultz commented on the company's failure, despite multiple opportunities, to abate a dangerous condition or provide appropriate training. He commended on the serious injury suffered as a result of the employer's failure to take appropriate action. Mr. Gast explained that many employers are not knowledgeable about, and do not follow, their own lock-out/tag-out policies. He discussed the circumstances that led to the injury.

Commissioner LeMarr moved to issue the citation as recommended, for a total penalty of \$5,000.00. Vice Chair Hennelly seconded the motion. Commissioner Orchard asked about information on the 2014 inspection. Mr. Gast responded to the question. Commissioner Orchard noted that a more detailed timeline would have been helpful.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

Macy's Corporate Services, Inc.  
dba Macy's Logistics & Operation  
16575 W Commerce Drive  
Goodyear, AZ 85338

Referral	
Years in Business:	8
Empl. Covered by inspection:	14

Site Location:	16575 W Commerce Drive Goodyear, AZ 85338
Inspection No:	D4452-1132708
Inspection Date:	03/16/2016

SERIOUS – Citation 1 - Item 1 – Shipping Department: A Rigid Belt Loader, #C-BLT-2013B was conveying product to the shipping department at Dock #35, with an ingoing nip point that was not adequately guarded between the belt and the shaft. (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 proposed citation and penalty. Commissioner LeMarr commented on the photographs, highlighting the warning "Caution, Pinch Point, Keep Hands Clear" and use of a barrier strap. He commented on the circumstances leading to injury and the adequacy of training. He asked whether the company trained employees on proper usage of the conveyer system and whether employees commonly overreach the passive rollers. Mr. Gast discussed the company's

safety program and training, but noted that he did not know whether the company had training on how to properly use of the conveyer system.

Commissioner LeMarr stated that the yellow line painted on the floor at the end of the conveyer in Photograph 5 suggested that parcels should have been picked up from the end of the conveyer. He noted that it would be inappropriate to pick up parcels from the side of the conveyer. Mr. Gast noted that pulling parcels from the side of the conveyer exposed the employees to a nip point.

Commissioner Orchard commented on ADOSH's prompt response time post injury. Chairman Schultz asked for clarification on the meaning of "floor manager" in the report. Mr. Gast responded to the question and discussed the floor manager's experience with the company.

Commissioner Orchard asked if the 3/8" gap in Photograph 7 would be obvious during an inspection. Mr. Gast commended on the size of the gap and adequacy of the warning sign. Chairman Schultz noted that a warning is not a substitute for adequate guarding. He wondered why a yellow line was not painted on the floor on the side of the conveyer.

Commissioner Orchard asked whether the Commission's decision on the proposed citation should be postponed to permit abatement and gathering of further information. Mr. Gast and Commissioner LeMarr responded and discussed the nature of the violations. Commissioner Orchard noted that she was prepared to move forward on the proposed citation.

Commissioner LeMarr moved to amend the proposed citation, as follows: Item 1 be reduced to \$2,500.00, for a total penalty of \$2,500.00. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

R Squared Electric, LLC dba Reynolds Electric  
8621 N 27<sup>th</sup> Ave  
Phoenix, AZ 85051

Site Location: 2080 W Chandler Blvd  
Chandler, AZ 85224  
Inspection No: T9350-1144591  
Inspection Date: 05/03/2016

Referral  
Years in Business: 8  
Empl. Covered by inspection: 4

SERIOUS – Citation 1 - Item 1 – 2080 W Chandler Blvd, SES: The employer did not ensure that two employees were wearing appropriate personal protective equipment when working on an energized 480 volt service section. (29 CFR 1926.28(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

a) 2080 W Chandler Blvd, SES: Two employees were exposed to live electrical equipment that was not free from recognized hazards that are likely to cause death or serious physical harm to employees when inspecting and testing electrical equipment. (29 CFR 1926.403(b)(1)).

b) 2080 W Chandler Blvd, SES: Two employees were removing feeder cables from a 400 amp fuse breaker and were not protected against electrical shock by de-energizing the entire service section. (29 CFR 1926.416(a)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 3 – 2080 W Chandler Blvd, SES: One employee was exposed to 480 volts when the Challenger Electrical Service Entrance Section was not de-energized and the employer did not utilize tags or locks to identify de-energized circuits. (29 CFR 1926.417(b)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

Mr. Gast summarized the proposed citation and penalties as listed. Commissioner LeMarr asked what personal protective equipment (PPE) would protect against arc electrocution. Mr. Gast discussed available PPE. Commissioner LeMarr commented on the circumstances leading to injury and the apparent lack of communication between the workers.

Chairman Schultz discussed his experience related to protecting employees from arc flash hazards. He noted that the employer did not have a reasonable safety program to protect workers from high-energy hazards. He noted the presence of gloves and locks that were not used. Commissioner LeMarr asked about the circumstances leading to injury and why the workers did not de-energize all the panels. Mr. Gast responded to the question and discussed the employer's inadequate safety program and training. Commissioner LeMarr and Mr. Gast commented that the workers were cutting corners and commented further on the circumstances leading to injury. Mr. Gast noted that the incident could have resulted in a fatality and further summarized the proposed citation and penalties.

Commissioner Orchard commented on what appeared to be a significant breakdown in safety protocol, but noted that the employer had provided some PPE that was not used. Chairman Schultz noted that the PPE was minimal and not appropriate for the exposure. Mr. Gast noted that the foreman did not require the workers to wear PPE.

Commissioner Orchard moved to amend the proposed citations, as follows: Item 1 be reduced to \$500.00 (because PPE was provided by the employer), for a total penalty of \$6,750.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. The motion passed.

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 reported on the website development and fillable forms projects.

Mr. Ashley provided an update on the transition of ADOSH cases to the Office of Administrative Hearings and the transition of the OSHA Review Board to the Commission. He discussed plans for another stakeholder meeting at the Office of Administrative Hearings on July 22, 2016, to discuss the transition.

Mr. Ashley reported on the status of rulemaking related to self-insurance pools.

Mr. Ashley reported on the Commission's agency scorecard performance. Mr. Ashley and Chairman Schultz expressed appreciation for Division efforts to meet agency goals.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley noted the tour at Palo Verde Nuclear Generating Station on July 19, the Claims Seminar on August 11 and 12 in Phoenix, the State Bar Workers' Compensation CLE on September 21 through 23 in Flagstaff, and the IAIABC Summit on September 26 through 29 in Portland, Maine.

Mr. Ashley provided an update regarding stakeholder presentations to the Commission, including a planned presentation from the Arizona Subcontractors' Association.

Chairman Schultz provided an update on the roofers working group, including efforts to find solutions to existing compliance problems in the industry and efforts to build an alliance to better protect roofing professionals. He discussed plans to execute an alliance agreement at the next meeting on August 9. He thanked Commissioner LeMarr for his assistance with the group. He commented that he would like to get additional contractors to join the alliance and to share accomplishments with general contractors and other subcontracting groups.

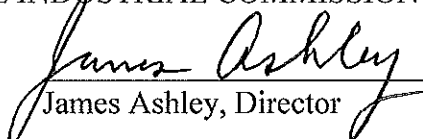
Ms. Dimas confirmed meeting dates in July and August.

Public Comment.

There was no public comment. Commissioner LeMarr moved to adjourn and Commissioner Orchard 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 3:06 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary