

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 28, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Accounting
	Larry Gast	Assistant ADOSH Director
	JR Imes	Compliance Officer
	Billie Gingrass	Compliance Officer
	Lorraine Ramirez	Acting Commission Secretary

Chairman Schultz convened the meeting at 1:01 p.m. Also in attendance were Mark Minter with Arizona Builders Alliance; Tim Carroll and Kevin Chamberlain with Maricopa County; Zachary Barnett with OSHA; and Jason Weber with Snell & Wilmer.

Approval of Minutes of July 21, 2016 Regular Meeting.

Chairman Schultz deferred approval of the July 21, 2016 Regular Session Minutes, noting the absence of a quorum of Commissioners who were in attendance at the July 21, 2016 meeting.

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. 2C16/17-0069 JMR Express LLC

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

1. International Paper Company
2. HealthSouth Corporation
3. Prudential Overall Supply, Inc.
4. Textron, Inc.
5. Weyerhaeuser Company

Chairman Shultz removed items (b)(2) (HealthSouth Corporation) and (b)(3) (Prudential Overall Supply, Inc.) from the Consent Agenda.

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

Chairman Schultz commented on HealthSouth's status as a self-insurer and the company's increasing experience modification rate. He explained the meaning of the experience modification rate and its connection to workplace safety. He recommended that HealthSouth use ADOSH's consultation services to address the increase in the company's experience modification rate. Commissioner Orchard asked how the Commission could ensure that HealthSouth took advantage of ADOSH consultation services. Chairman Schultz responded to the question and Ms. Pastor commented on the process of coordinating consultative services with HealthSouth. She explained how HealthSouth could improve its experience modification rate and how a decrease in the rate will benefit the company. Chairman Schultz and Ms. Pastor addressed HealthSouth's 2014 safety program and the reasons why it had not impacted the company's experience modification rate. Chairman Schultz stated that he wanted to request HealthSouth's specific loss information so the Commission could assess the company's progress.

Commissioner Orchard moved to approve the request for renewal of self-insurance authority for HealthSouth and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Chairman Schultz commented on Prudential Overall Supply's decreasing experience modification rate, noting the impact of an effective safety program. He commended Prudential Overall Supply on its progress and safety accomplishments.

Commissioner Orchard moved to approve the request for renewal of self-insurance authority for Prudential Overall Supply and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, 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 legislative proposal requests received from within the Commission.

Mr. Charles commented on interviews (of Jesse Atencio) scheduled with various Yuma media outlets pertaining to heat-related issues, consultation, and other ADOSH topics.

Mr. Charles noted continuing public interest regarding the girder collapse that happened near the 101 Freeway and Bell.

Mr. Charles updated the Commission on efforts to educate stakeholders regarding the new treatment guidelines and the MRO portal. Mr. Schultz reported that Jacquie Kurth had conducted the first of several webinars about the treatment guidelines and 142 people attended.

Mr. Charles reported that the website development project was on track.

Mr. Ashley commented on the progress being made on the new website.

Mr. Charles mentioned his preparations of a "State of the ICA" report and requested input regarding accomplishments of the Commission.

Stakeholder Presentation.

Mr. Ashley introduced Mark Minter from the Arizona Builders Alliance.

Mr. Minter discussed his background in the construction industry and involvement with the Arizona Builders Alliance. He discussed the Alliance and its primary service areas, including government relations, management education, and craft training. He discussed various activities, services, and training programs performed by the Alliance. He discussed "hot" issues facing the construction industry, including tax structure issues and the pending marijuana initiative. Chairman Schultz commented on the pending marijuana initiative. Finally, Mr. Minter discussed safety issues facing the construction industry, including the increased OSHA penalty structure (and its impact on small business), silica regulations, and new federal standards on post-accident drug testing.

Chairman Schultz noted the Commission's interest in applying regulations fairly and receiving input from stakeholders regarding workplace safety. He discussed the Commission's desire to collaborate with industry in fostering safe work places and finding solutions to problems facing the construction industry. Chairman Schultz requested additional information on training programs offered by the Alliance. Mr. Minter responded to the question and Chairman Schultz commented that the Alliance is a significant resource for employers looking for qualified employees. Chairman Schultz commented on the labor shortage in the construction industry and other labor issues facing the industry.

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

Arizona Pizza Management, LLC
dba Hungry Howies #1814
2990 E Northern Ave Ste A101
Phoenix, AZ 85028

Fatality/Accident
Years in Business: 5
Empl. Covered by inspection: 14

Site Location: 1909 E Ray Rd
Chandler, AZ 85225
Inspection No: T9350-1129068
Inspection Date: 03/01/2016

Mr. Gast summarized ADOSH's fatality investigation and reviewed the photographs. He reported that the investigation did not identify any violations and ADOSH was not recommending any citations. Vice Chair Hennelly inquired about the age of the deceased and asked for clarification regarding the circumstances of finding the deceased. Mr. Gast responded to the questions. Chairman Schultz stated that it is good personal risk management for people working alone to make sure someone knows where they are.

No action was taken by the Commission.

ACME Aerospace, Inc.
528 W 21st St Ste 6
Tempe, AZ 85282

Site Location: 528 W 21st St Ste 6
Tempe, AZ 85282
Inspection No: Y8817-1130928
Inspection Date: 04/13/2016

Referral
Years in Business: 30
Empl. Covered by inspection: 79

SERIOUS – Citation 1 - Item 1 – Vertical Calender Machine: One IMC Vertical Calender Model Number 10232-06, S/N 12-06-391, point of operation guard was not adjusted properly to prevent the operator from placing any part of their body into the danger zone during operation. (29 CFR 1910.212(a)(3)(ii)).

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 citations and proposed penalties as listed and reviewed the photographs. Commissioner Orchard asked for clarification regarding “partial” inspections and requested information about the inspection history of the employer. Mr. Gast responded to the questions and reviewed the employer’s inspection history. Commissioner Orchard asked about the employer’s safety program and whether the injured employee was trained to operate the machine. Mr. Gast responded to the questions and noted that the employer apparently did not know they had to adjust the guarding and that they had used the machine in its condition since 2012. Mr. Gast explained ADOSH’s conclusion that the employer had constructive knowledge of the hazard. Commissioner Orchard asked whether the employer was expected to notice a difference of 3/8” and Mr. Gast responded to the question. Commissioner Orchard clarified that the guard was in place, but ineffective as it was too high. Mr. Gast confirmed that the guarding was not effective. Commissioner Orchard inquired about abatement and usage of an Emergency Stop button. Mr. Gast responded to the questions. Mr. Ashley and Mr. Gast commented on photographs showing abatement. Commissioner Orchard requested clarification of the applicable standard and Mr. Gast responded and discussed the height of the guard. Commissioner Orchard asked for clarification regarding “partial” inspections and whether the guarding violation was an anomaly. Mr. Gast discussed the scope of the investigation.

Vice Chair Hennelly asked about the condition of the machine when it was acquired. Mr. Gast responded to the question. Vice Chair Hennelly asked about the method of abatement and whether the guard was lowered or whether an additional guard was added. Mr. Gast responded to the questions. Vice Chair Hennelly asked whether the standard requires the employer to have observed the hazard and taken corrective action. Mr. Gast explained that the employer had constructive knowledge and could have reasonably known of the condition. Vice Chair Hennelly asked about when the condition was abated and Mr. Gast responded to the question. Vice Chair Hennelly asked about the condition of the injured employee. Mr. Gast did not have knowledge of the employee’s condition.

Vice Chair Hennelly moved to approve the citation and proposed penalty as presented. He commented on the circumstances of the violation, abatement, and the injury sustained. The motion was not seconded.

Commissioner Orchard moved to amend the proposed penalty, as follows: Item 1 be reduced to \$2,500.00, for a total penalty of \$2,500.00. She commented on the circumstances of the violation, the employer's safety program and history, and the employee's conduct leading to injury. Vice Chair Hennelly seconded the motion, noting the penalty amount had there not been any injury. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. The motion passed.

Classic Roofing, LLC
2744 W Virginia Ave
Phoenix, AZ 85009

Site Location: 3330 E. Camelback Rd
Phoenix, AZ 85020
Inspection No: W0250-1135607
Inspection Date: 03/29/2016

Planned
Years in Business: 20
Empl. Covered by inspection: 3

REPEAT-SERIOUS – Citation 1 - Item 1 – Three employees were engaged in roofing activities on a low-slope roof with unprotected sides and edges approximately 9 feet above a lower level and were not protected from falling by a guardrail system, safety net system or personal fall arrest system. (29 CFR 1926.501(b)(10)).

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Gast summarized the citation and proposed penalty as listed and reviewed the photographs. Chairman Shultz inquired about the employer's prior serious citation and the circumstances under which a violation is classified as a repeat violation. Mr. Gast responded to the question. Commissioner Orchard and Chairman Schultz commented on the number of people on site that did not correct the hazard. Mr. Gast commented on the actions taken by the general contractor.

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

T Bar H's Desert Horizon Development, Inc.
1505 W Whispering Wind Dr., Ste 100
Phoenix, AZ 85085

Site Location: 3330 E. Camelback Rd
Phoenix, AZ 85020
Inspection No: W0250-1135622
Inspection Date: 03/29/2016

Planned
Years in Business: 25
Empl. Covered by inspection: 5

REPEAT-SERIOUS – Citation 1 - Item 1 – Roof: One employee was working on the roof of a building under construction without the use of a guardrail system, safety net system, or personal fall arrest system to prevent an approximate 9' fall hazard.

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Gast summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner Orchard asked whether the employee was wearing a harness and Mr. Gast responded that he was not. Commissioner Orchard asked if the foreman on the ground was wearing a harness and Mr. Gast responded that he was.

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

Hambicki's Truck & Container Sales, Inc. 2630 W Broadway Rd Phoenix, AZ 85041	Complaint Years in Business: 37 Empl. Covered by inspection: 31
Site Location: 2630 W Broadway Rd Phoenix, AZ 85041	
Inspection No: L7648-1137839	
Inspection Date: 04/06/2016	

SERIOUS – Citation 1 - Item 1 –

a) 2630 W Broadway Rd, Phoenix AZ 85041: One Caterpillar forklift, model V180 and serial number 17V722, was not taken out of service for the unsafe condition of a leaking brake system.

b) 2630 W Broadway Rd, Phoenix AZ 85041: One Caterpillar forklift, model V180 and serial number 17V722, was not taken out of service for the unsafe condition of a missing seat belt. (29 CFR 1910.178(p)(1)).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
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SERIOUS – Citation 1 - Item 2 – Shop: One KRRAS Guillotine Shear, model unknown, serial number unknown, did not have a point-of-operation guard to prevent the operator from placing any part of their body into the danger zone during operation. (29 CFR 1910.212(a)(3)).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
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SERIOUS – Citation 1 – Item 3 – Outside on Southeast corner of building: Oxygen cylinders were stored in the same location as fuel-gas cylinders and were not separated by a noncombustible barrier at least 5 feet high having a fire-resistance rating of at least one half hour. (29 CFR 1910.253(b)(4)(iii)).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
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TOTAL PENALTY - \$3,500.00	TOTAL FORMULA AMT. - \$3,500.00
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Mr. Gast summarized the citations and proposed penalties as listed and reviewed the photographs. Vice Chair Hennelly inquired about abatement efforts. Mr. Gast responded to the question. Vice Chair Hennelly asked whether the conditions will be abated. Mr. Gast noted that the citations had not yet been issued and that the employer is not required to abate until after a citation is issued. He discussed an employer's legal obligation to provide proof of abatement.

Commissioner Orchard inquired about the lack of guarding on the guillotine shear. Mr. Gast responded that the machine was not guarded. Chairman Schultz commented on the condition of the forklift in photograph 1.

Commissioner Orchard moved to amend the proposed penalties, as follows: Item 2 be increased to \$2,500.00 (no size and history discount), for a total penalty of \$4,750.00. Commissioner Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Orchard voted in favor of the motion. The motion passed.

La Paz County, Facilities Maintenance
1108 Joshua Ave Ste 207
Parker, AZ 85344

Planned
Years in Business: 33
Empl. Covered by inspection: 4

Site Location: 1108 Joshua Ave
Parker, AZ 85344
Inspection No: H9685-1134324
Inspection Date: 03/14/2016

SERIOUS – Citation 1 - Item 1 – Warehouse Storage Area: An open-sided floor was not guarded with standard railings or equivalent to protect two employees from falling over 8 feet to the lower level. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 –

a) Maintenance Shop: A Forney 5 inch wire wheel brush was used on a 6 inch Dayton bench grinder, model 4Z672C, and safety guards were not provided to cover the spindle end, nut, and flange projections to protect one employee from the hazardous rotating parts.

Maintenance Shop: A Central Machinery Drill Press, model T-583 and serial number 10816065, was not provided with a chuck guard to protect one employee from the hazardous rotating part. (29 CFR 1910.212(a)(1)).

b) Maintenance Shop: One employee who operated a Craftsman Contractor 10 inch Belt Drive Table Saw, Model 113.298843 and Serial Number 94264P0372, to rip wood was exposed to the machine's unguarded rotating pulley, belt, and shaft. (29 CFR 1910.213(a)(9)).

c) Maintenance Shop: One employee used a Craftsman Contractor 10 inch Belt Drive Table Saw, Model 113.298843 and Serial Number 94264P0372, to rip wood without the saw blade guard. (29 CFR 1910.213(c)(1)).

d) Maintenance Shop: One employee used a Craftsman Contractor 10 inch Belt Drive Table Saw, Model 113.298843 and Serial Number 94264P0372, to rip wood without a spreader to prevent material from squeezing the saw or being thrown back on the operator. (29 CFR 1910.213(c)(2)).

e) Maintenance Shop: One employee used a Craftsman Contractor 10 inch Belt Drive Table Saw, Model 113.298843 and Serial Number 94264P0372, to rip wood and the saw did not have non kickback fingers or dogs so located as to oppose the thrust or tendency of the saw to pick up the material or to throw it back toward the operator. (29 CFR 1910.213(c)(3)).

f) Maintenance Shop: A guard was not provided on a Delta sander, model 31-460 and serial number 9639, to prevent the operator's hands or fingers from coming into contact with a nip point created by the installation of a three inch sanding belt on a four inch pulley. (29 CFR 1910.213(p)(4)).

- g) Maintenance Shop: A Forney brand abrasive wheel, model unknown, was used on a 6 inch Dayton bench grinder, model 4Z672C, and a tongue guard was not installed. (29 CFR 1910.215(a)(1)).
- h) Maintenance Shop: A Forney brand abrasive wheel was used on a 6 inch Dayton bench grinder, model 4Z672C, and safety guards were not provided to cover the spindle end, nut, and flange projections. (29 CFR 1910.215(a)(2))
- i) Maintenance Room: The horizontal drive shaft on the sanding disc side of a Delta sander, model 31-460 and serial number 9639, was not protected by any means provided in the standard to prevent an employee from accidentally contacting the rotating part. (29 CFR 1910.219(c)(2)(i)).
- j) Maintenance Room: The pulley on the sanding disc side of a Delta sander, model 31-460 and serial number 9639, was not guarded to prevent an employee from accidentally contacting the rotating part. (29 CFR 1910.219(d)(1)).
- k) Maintenance Room: The vertical belt on the sanding disc side of a Delta sander, model 31-460 and serial number 9639, was not guarded to prevent an employee from accidentally getting caught in the in-running nip point between the rotating belt and pulley. (29 CFR 1910.219(e)(3)(i)).
- l) Maintenance Shop: One employee used a Forney 4 inch by 5/8 inch metal grinding wheel, catalog number 71993, on a Makita handheld portable 4 inch disc grinder, model N9501B, without the use of a safety guard. (29 CFR 1910.243(c)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 – Item 3 –

- a) 1108 Joshua Ave, Parker, AZ 85344: One employee was not trained in and familiar with the safety-related work practices required by 1910.331 through 1910.335 that pertained to isolating electrical energy while replacing light ballasts inside the County administration buildings. (29 CFR 1910.332(b)(1)).
- b) While an employee was exposed to contact with parts of fixed electric equipment or circuits which were deenergized, the circuits energizing the parts were not locked out or tagged or both in accordance with the requirements of this paragraph (b) of 29 CFR 1910.333(b)(2); (29 CFR 1910.333(b)(2)).
- c) 1108 Joshua Ave, Parker, AZ 85344: The employer did not maintain written procedures on how to properly deenergize and test the isolation of electrical energy before one employee replaced light ballasts inside the County administration building while exposed to contact with parts of fixed electric equipment and circuits. (29 CFR 1910.333(b)(2)(i)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$6,750.00

TOTAL FORMULA AMT. - \$6,750.00

Mr. Gast summarized the citations and proposed penalties as listed and reviewed the photographs. Vice Chair Hennelly asked about size reduction discount is applied and Mr. Gast answered the question. Vice Chair Hennelly asked if there was an explanation given by La Paz County for the violations. Mr. Gast was not aware of an explanation. Chairman Schultz asked

whether the conditions had been abated. Mr. Gast responded that there had not been any abatement efforts.

Commissioner Orchard moved to amend the proposed citations, as follows: Item 2 be increased to \$2,250.00 (no size and history discount), for a total penalty of \$7,000.00. Commissioner Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Orchard voted in favor of the motion. The motion passed.

Chairman Schultz and Mr. Ashley noted that La Paz should be encouraged to participate in the PEP Program.

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 discussed the State's Vision Statement prepared by the Governor's Office. He mentioned that a video relating to the Vision Statement was being prepared and that a Commission employee would be participating in the video.

Mr. Ashley reported on meetings with the Government Transformation Office regarding the Arizona Management System. He noted that the Commission will be looking for additional areas that need transformation and improvement.

Mr. Ashley provided an update on the website and fillable forms project.

Mr. Ashley reported on progress being made in the Special Fund Division and discussed the Division's accomplishments and Scorecard metrics. Chairman Schultz commended the Division on its efforts.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced the next quarterly trip to Flagstaff on October 5 and 6. A Commission Meeting will be held on October 6.

Mr. Ashley announced that the Arizona Subcontractors Association will be addressing the Commission on September 29.

Mr. Ashley reported on Karen Axson's retirement and announced that Steve Welker has been promoted as her replacement.

Ms. Ramirez confirmed the next meeting date on August 12, 2016, to be held at the 2016 Claims Seminar.

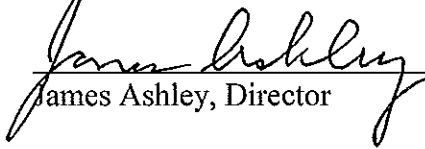
Public Comment.

Chairman Schultz invited public comment. Mr. Carroll indicated that he was impressed with changes within the Commission. He commented on ADOSH's consultation efforts. Chairman Schultz stated that he would love to see Maricopa County in the PEP Program and stated that he would be happy to meet with County officials regarding the program. Mr. Chamberlain stated that he has enjoyed viewing the Commission meeting process.

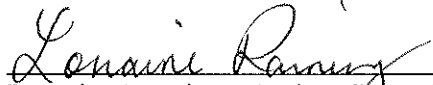
Vice Chair Hennelly moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 3:03 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Lorraine Ramirez, Acting Commission Secretary