

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, April 9, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman (video)
	Susan Strickler	Vice Chair
	Joseph M. Hennelly, Jr.	Commissioner (video)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Steven Black	Compliance Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Valli Goss	Assistant Chief Counsel
	Kathryn Harris	Staff Attorney
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner Sanders was unable to join the meeting. Also in attendance were Scot Butler, the Commission's lobbyist, Jeff Gray of R&R Partners Government & Public Affairs, Jason Weber of Snell & Wilmer, and new Arizona Division of Occupational Safety and Health (ADOSH) employees who were introduced by William Warren under Agenda item 9.

Approval of Minutes of March 25, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes of the March 25, 2015 Regular Session meeting on motion of Vice Chair Strickler, second of Commission Hennelly.

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. 2C14/15-2280 Acefam, LLC, dba Leyva's Towing & Auto Repair
2. 2C14/15-1716 Safety Taxi, L.L.C.
3. 2C14/15-2281 The Cedar Sanctuary, L.L.C.
4. 2C14/15-0723 William Shane Fisher, a single man, dba Pine Meadows Ranch

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

1. City of Yuma
2. Glendale Elementary School District No. 40
3. Maricopa County Community College District
4. The Roman Catholic Church – Diocese of Tucson
5. Valley Schools Workers' Compensation Pool

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the Consent Agenda on motion of Vice Chair Strickler, second of Commissioner Hennelly.

Discussion and/or Action regarding Legislation.

Scot Butler summarized recent activity at the Legislature and stated the Legislature adjourned on April 3, 2015 and that he anticipates providing the Commission with a full report by the beginning of May. He commented on some of the bills of interest to the Commission, including HB's 2297, 2438, and 2334.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Ms. McGrory stated the two ADOSH requests at the Governor's office are still pending.

Discussion and Action Regarding Initiation of Rulemaking to Adopt Process for the use of Evidence Based Medical Treatment Guidelines to Treat Injured Workers under A.R.S. §23-1062.03.

Ms. McGrory noted that the Governor's Office approved the Commission's request for an exemption from Executive Order 2015-01 on March 6, 2015, and the Commission may now consider whether to proceed with the rulemaking process to adopt a process for the use of evidence based medical treatment guidelines. She explained that some individuals had previously commented that the Commission could implement the process that was adopted last December without going through the rulemaking process. Ms. McGrory added that staff had informed the Governor's office that the Commission would first consider whether rulemaking is necessary to implement the process and this agenda item is limited to that purpose.

Kathryn Harris explained that she has determined the process developed by the Director's advisory committee for the use of evidence based medical treatment guidelines and adopted by the Commission falls squarely within the definition of a rule as defined in A.R.S. §41-1007(9). She added that she has discussed this informally with staff at the Governor's Regulatory Review Council and was told the Commission would need to move forward by rulemaking to implement the process. Ms. Harris noted that she has explored whether there was any other avenue to implement the process that the Committee developed other than going through the rulemaking process but has not identified any.

Vice Chair Strickler noted that implementing the process through a pilot program is something that has been discussed. Ms. McGrory explained that the idea of a pilot program had been raised, but none of those who have suggested a pilot program have presented any specifics with respect to this option. She explained that if the Commission is going to require parties to

follow a process, then the Commission will be required to go through the rulemaking process. If a pilot program is created, then all participants in the program will have to voluntarily agree to participate in the program. Vice Chair Strickler explained that a pilot program would help work out any bugs in the process before locking everything down in rules. She stated that the option of a pilot program has not been communicated so that there could be more discussion. Ms. McGrory explained the discussions that she has had regarding a pilot program where individuals were invited to provide information about a pilot program. She explained that, to date, no-one had presented any proposals for a pilot program. She also explained that she shared the concerns about locking in the process through rulemaking and explained that staff recognized the value of a pilot program. She explained that Commission staff would be open to discussions about a pilot program if something is presented. Vice Chair Strickler commented that stakeholders may not have known that a pilot program was even on the table. Vice Chair Strickler also explained that she is not sure if a pilot program is feasible but did not know there was an option of talking to people about a pilot program. She presented some ideas on how to get the discussion started. Ms. McGrory noted that if the process is mandated or required, then it cannot be implemented as a pilot because every participant would need to willingly participate in the process.

Chairman Parker explained his personal thought is that it would be difficult to implement the process with a pilot, but if there is a way to do it, he would like to consider it as it provides flexibility and a chance to work out bugs before anything is locked in through rulemaking. He commented on the need to include not just employers and insurance carriers who want to be involved in a pilot, but also treating physicians and injured workers. He is not sure how to do that, but if there is a way, he would like to consider it.

Chairman Parker asked Jeff Gray if he wanted to address the Commission. Mr. Gray explained that it was helpful to hear the legal analysis and the guidance received from GRRC. He explained the biggest concern of his clients' members is locking in by rule the secondary dispute resolution process. He explained that the process creates a different process than what is in statute, and the difficulty in amending a rule as compared to amending a statute.

Ms. McGrory added that staff can defer presenting a notice of proposed rulemaking to the Commission to provide stakeholders who are interested in exploring a pilot an opportunity to develop a proposal for a viable pilot program. She explained that there is still a lot of work that needs to be done by the Commission to implement the process, whether it is done under a pilot program or by rule, which includes building, testing, and implementing an electronic management system, and procuring vendors to conduct the peer review.

Chairman Parker asked about the potential of the Commission moving forward with the rulemaking process while stakeholders work on a proposed pilot program, and if the proposed pilot program appeared to be appropriate, the Commission could move forward with the pilot program and just stop the rulemaking process. Ms. McGrory responded that the Commission could consider that approach and she described the potential impact on implementing the process.

Chairman Parker stated that he wanted to implement a process for the use of evidence based medicine treatment guidelines as soon as reasonably possible and commented on the benefits of such a process. He asked Mr. Gray if he could estimate how much time he would need to determine whether a pilot program might be proposed. Mr. Gray commented on some anticipated opportunities to talk with some who might be interested in a pilot program and added that he expected to have at least an initial conversation with them within the next week or two.

b) South warehouse door: The south warehouse door was not marked by a sign reading Exit. (29 CFR 1910.37(b)(2)).

c) An Emergency Action Plan was not kept in writing at the workplace and was not made available to the employees. (29 CFR 1910.38(b)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 3 –

a) Parts Wash and Degreaser Sink: The employer did not ensure the appropriate personal protective equipment (PPE) was used when an employee was using the Formula 50 General Purpose Cleaner while cleaning a tool. (29 CFR 1910.132(a)).

b) The employer did not adequately perform a workplace hazard assessment and written certification to verify the selection and use of the required personal protective equipment when working with corrosive chemicals such as Formula 50, General Purpose Cleaner. (29 CFR 1910.132(d)(1)(i)).

c) A written hazard communication program had not been developed, implemented and maintained for employees who were potentially exposed in the workplace to hazardous chemicals, materials and/or substances such as Formula 50, General Purpose Cleaner which was used for cleaning tools. (29 CFR 1910.1200(e)(1)).

d) The employer did not furnish information and training to an employee who was exposed in the workplace to hazardous chemicals such as such as Formula 50, General Purpose Cleaner which was used for cleaning tools. (29 CFR 1910.1200(h)).

Div. Proposal - \$1,350.00

Formula Amt. - \$1,350.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citations and proposed penalty as listed. Chairman Parker commented on the hazards of using PVC pipe for the transportation or distribution of compressed air. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,450.00 on motion of Commissioner Hennelly, second of Vice Chair Strickler.

Best Block, LLC
9311 N. Casa Grande Highway
Tucson, AZ 85743

Planned
Years in Business: 2.5
Empl. covered by inspection: 18

Site Location: 9311 N. Casa Grande Highway
Tucson, AZ 85743
Inspection No: T3633-1010188
Inspection Date: 11/24/2014

WILLFUL SERIOUS – Citation 1 - Item 1 –

a) Number 1 block line: The cement hopper was not adequately guarded to protect employees from crushing and pinch point hazards. (29 CFR 1910.212(a)(1)).

- b) Number 1 block line: Sprocket wheels and chains which powered the block conveyors between the block machine to the rack loader and between the rack unloader to the block machine were not guarded. (29 CFR 1910.219(f)(3)).
Div. Proposal - \$35,000.00 Formula Amt. - \$35,000.00

SERIOUS – Citation 2 - Item 1 –

- a) Block line #1: The cooling fan for the hydraulic pump which was mounted between five and six feet above the floor had a section missing from the guard. (29 CFR 1910.212(a)(5)).
- b) Kiln equipment room: Drive pulleys for the ventilation fans for kilns 1, 2, 3, 5, 6, 7, and 8 had pulleys and belts which were between five and seven feet above the floor, and the pulleys were not guarded with an adequate guard. (29 CFR 1910.219(d)(1)).
Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00

SERIOUS – Citation 2 - Item 2 –

- a) Block line #1: The motor shaft for the hydraulic pump was not completely guarded. (1910.219(c)(2)(i)).
Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00

SERIOUS – Citation 2 - Item 3 – Batch control room: The equipment control panel for the #1 mixer was not closed to prevent accidental contact with live electrical parts. (29 CFR 1910.305(d)(2)).

Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00
TOTAL PENALTY - \$38,750.00 TOTAL FORMULA AMT. - \$38,750.00

Mr. Warren summarized the citations and proposed penalty as listed. Chairman Parker asked about the evidence that supports the designation as willful. Mr. Warren responded to the question. Chairman Parker asked Mr. Wade to summarize the elements for a willful designation. Mr. Wade commented on the availability of an executive session and summarized how ADOSH may apply the elements in a case such as this one. Chairman Parker asked about the knowledge element and Mr. Wade and Ms. McGrory responded to the question.

Vice Chair Strickler noted Mr. Warren mentioned an engineer having identified hazards and asked if ADOSH has a copy of the engineer's report. Mr. Black responded that he did not request a copy of that report. Vice Chair Strickler explained that without the report, ADOSH may not know what the engineer told the employer. Mr. Black responded that he was told that the engineer visited the facility specifically to look at safety compliance, including machine guarding, and that there were two different times, approximately a year apart, when the consulting company visited the facility and made lists of machine guarding issues. He added that the plant operations manager and the regional safety director were aware that the consultant had prepared the list of machine guarding issues.

Chairman Parker asked if the citations related to the same issues - the same types of machines - that had been identified in the report two and half years before. Mr. Black explained how the employer had addressed some but not all of the machine guarding issues. Chairman Parker commented that it appeared the employer's efforts to address the safety hazards had languished for years.

Chairman Parker thanked Mr. Black and asked if any of the Commissioners desired a more detailed discussion. Hearing none, he asked if there were other questions, discussion, or a motion.

Vice Chair Strickler asked about requesting a copy of the engineer reports. Chairman Parker stated he would leave that to Mr. Warren or counsel and he explained that he thought ADOSH could still make that request if the employer were to contest the citation.

Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$38,750.00 on motion of Vice Chair Strickler, second of Commissioner Hennelly.

Chairman Parker acknowledged the new compliance officers and commented on how the Commissioners may request explanations or additional information from Mr. Warren or the compliance officers.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Warren introduced new ADOSH consultation and compliance officers. He complimented Jenny Mandeville and noted she is the instructor for the initial training program.

The Commission reviewed the meeting schedule through May. The Commission confirmed dates for June 11, 18, and 25, 2015.

Ms. McGrory asked if one of the Commissioners would be available to speak during the ADOSH Workers' Memorial Day ceremony scheduled to begin at 8:00 am on April 28, 2015. Commissioner Hennelly stated that he would be available.

There being no further business to come before the Commission and no announcements, future scheduling of meetings, or public comment, the meeting was adjourned at 1:54 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary