

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, May 6, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman (video)
	Susan Strickler	Vice Chair
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner
	Dale L. Schultz	Commissioner
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Scot Butler, the Commission's lobbyist, and Jason Weber of Snell & Wilmer.

Approval of Minutes of April 23, 2015 and April 30, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes as amended for the April 23, 2015 Regular Session meeting on motion of Commissioner Sanders, second of Commissioner Schultz.

The Commission unanimously approved the Minutes of the April 30, 2015 Regular Session meeting on motion of Vice Chair Strickler, second of Commissioner 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. 2C14/15-2037 Jamrock Café & Grill, L.L.C.
2. 2C13/14-1834 Silverview, LLC dba Silver View RV Resort

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

1. Costco Wholesale Corporation

2. Empire Southwest, LLC
3. The Salvation Army USA, Western Territory

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 Commissioner Sanders, second of Commissioner Schultz. Chairman Parker noted that Costco had reduced its experience modification (e-mod) and Commissioner Schultz commented on how quickly Costco did so.

Discussion and/or Action regarding Legislation.

Scot Butler presented his end-of-session report and noted that all of the actions from the Legislature are now final. He stated that there are reports that the first quarter tax collections are higher than projected. Chairman Parker noted that Moody's rating agency just upgraded the State's credit rating based upon budget actions and other factors and that was good to see. Commissioner Sanders asked if the increased revenue is projected to sustain through the next quarter or two. Mr. Butler explained some difficulties with projecting corporate tax collections and how those tax revenues may fluctuate.

Chairman Parker announced that item 7 was next.

Discussion and/or Action Regarding Sunset Review of the Industrial Commission of Arizona, OSHA Review Board, OSHA Advisory Committee, Boiler Advisory Board and Employment Advisory Council.

Laura McGrory stated that the Commission has been notified of the sunset review and that the review will include the Industrial Commission, the OSHA Review Board, OSHA Advisory Committee, Boiler Advisory Board, and Employment Advisory Council. She described what will be involved with the review and preparation of a report for the Committee of Reference. She explained that even though the review of OSHA Review Board will be included, the OSHA Review Board is independent from the Commission and she forwarded the sunset review information to the Board's legal counsel. Ms. McGrory explained the time frame to complete a draft report to the Committee of Reference.

Mr. Butler described the structure of the Committee of Reference and his recommendations regarding briefing the staff analysts. He commented on the standard ten-year sunset review cycle and explained why some state agencies have been reviewed on shorter cycles.

Commissioner Schultz asked whether it would be helpful for the Commissioners to brief any members of the Committee or the Committee Chairs and Mr. Butler described some circumstances where that might be helpful.

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

Ms. McGrory stated she has been attempting to obtain an update from the Governor's office regarding the status of the three pending requests. Chairman Parker noted that Federal OSHA just adopted final rules regarding confined space and the Commission may need to initiate the process with those rules. Commissioner Schultz asked about the processing of requests within the Governor's office and Ms. McGrory responded to the question.



will follow up and Mr. Warren explained that Fox Valley does not own the building and commented on its obligations after it has completed its work.

Chairman Parker commented that construction may be complete, there may no longer be any exposure, but that does not necessarily mean that the employer abated. Mr. Warren agreed, and added that the employer purchased extension ladders. Chairman Parker noted that Items 1 and 2 are both CFR1926.501(b) violations, but the obligation to protect against falls, in general, is separate from protecting employees against skylight hazards. He referred to Items 4 and 5, explained why he thought those pertained to the same hazard, and suggested the violations be grouped for purposes of the penalty with two instances verses two separate citations. Mr. Warren explained why the compliance officer had written the two violations as separate citations. Chairman Parker commented further regarding the circumstances.

Commissioner Schultz agreed and commented on the circumstances. Chairman Parker commented on grouping Items 4 and 5 with a total penalty of \$6,000.00. Chairman Parker asked if there were other questions or discussion, and hearing none, he moved approval with the following adjustment, group Items 4 and 5 as a single serious with two instances and a total penalty of \$6,000.00. Commissioner Schultz seconded the motion. The Commission unanimously approved issuing the revised citation with a total penalty of \$6,000.00.

PMA Photometals of Arizona, Inc.  
3040 N 27<sup>th</sup> Ave  
Phoenix, AZ 85017

Complaint  
Years in Business: 32  
Empl. Covered by inspection: 65

Site Location: 3040 N 27th Ave  
Phoenix, AZ 85017  
Inspection No: J7272-1048198  
Inspection Date: 3/23/2015

SERIOUS – Citation 1 - Item 1 –

- a) Etch building: A written respiratory protection program was not established and implemented for employees using a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, with a Sperian S-Series air purifying multi-contaminant cartridge, model 100800, that included procedures, medical evaluation, fit testing, procedures for proper use, procedures for cleaning, training and procedures for evaluating the effectiveness of the program. (29 CFR 1910.134(c)(1)).
- b) Etch building: Employees using a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, with a Sperian S-Series air purifying multi-contaminant cartridge, model 100800, did not have a change schedule implemented to inform them when changing of air purifying cartridges was required prior to reaching the end of the cartridge's service life. (29 CFR 1910.134(d)(3)(iii)(B)(2)).
- c) Etch building: A medical evaluation was not provided to determine an employee's ability to use a Honeywell Survivair ValueAir Plus half facepiece air purifying respirator, model 302500, while working with hazardous chemicals such as Pitt-Guard Direct-To-Rust epoxy mastic coating. (29 CFR 1910.134(e)(1)).



stable. Mr. Warren commented on why he did not want to do anything that might be viewed as setting a precedent. Chairman Parker presented an analogy with rebar in an isolated location and citing as a technical violation. Mr. Warren commented on the gravity based penalty. Vice Chair Strickler noted that she appreciates Mr. Warren's concern, however, this decision is on the Commission side, not necessarily on the compliance side, that ADOSH would continue to cite this type of violation and would not be worried about setting a precedence and ADOSH should continue to do exactly what they are doing. She explained why this particular set of circumstances does not set a precedent. Commissioner Sanders said he appreciated the comments by Vice Chair Strickler.

Chairman Parker asked Ms. McGrory if she had any concerns. She stated that Vice Chair Strickler has articulated it correctly, and noted that simply because the Commission feels more comfortable with re-classifying this particular set of circumstances to a non-serious, doing so in this particular instance will not change how ADOSH enforces this type of violation. Mr. Warren commented on the good faith reduction as presented in the FOM. Chairman Parker and Mr. Warren discussed the different percentages and how they are applied. Chairman Parker asked if there was any reduction for prompt abatement. Mr. Wade commented on the quick fix penalty reduction and the differences between how federal OSHA and ADOSH apply that reduction. Chairman Parker summarized the application of the good faith penalty reduction.

Chairman Parker asked Mr. Warren to describe the hazard in Item 1. Mr. Warren responded to the question.

Chairman Parker stated he would like to have Item 4 classified as non-serious. He asked Mr. Warren for his recommendation on the penalty if the citation is classified as non-serious. Mr. Warren responded to the question by noting the range allowed by statute. Chairman Parker asked what he recommended for this specific citation and Mr. Warren stated he would leave the penalty amount the same. Mr. Warren responded to Ms. McGrory's question regarding the gravity based penalty for a non-serious citation. Chairman Parker explained he was asking whether it would be appropriate for this citation to have no penalty or a minimal penalty. Mr. Wade added that if Item 4 is issued with no monetary penalty, the total would be \$3,850.00.

Commissioner Sanders moved to approve the recommendation with Item 4 reclassified as non-serious with no monetary penalty so that the total amount of the penalty is \$3,850.00. Vice Chair Strickler seconded the motion and the Commission unanimously voted in favor of the motion.

Commissioner Schultz complimented Mr. Warren on the quality of the photographs.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory stated that today was Arizona State Employee Recognition Day and that the Commission will be having formal ceremonies next week which will recognize Commission employees for their tenure with the state, and also recognize the employee of the year and supervisor of the year. Commissioner Sanders asked for the starting times for ceremonies. Ms. McGrory said the formal ceremony is scheduled for Tuesday at 2:00 p.m. for the Phoenix office and the Tucson office ceremony is scheduled for Wednesday at 1:00 p.m. Commissioner Sanders stated that he may be able to attend the Phoenix ceremony.

Commissioner Sanders asked about a group photograph and suggested the McCall mural would make a good backdrop. The Commissioners discussed their availability.

Chairman Parker mentioned the Commission meeting scheduled for June 18 and Ms. McGrory asked if the Commission wanted to schedule the apportionment hearing for June 18. Chairman Parker stated he has held that date open to attend in person and as long as that date works for the other Commissioners, the apportionment hearing would be scheduled for June 18. There were no comments.

Commissioner Sanders asked about the upcoming VPP events and Chairman Parker responded noting that if more than two Commissioners were going to attend, they need to let Ms. McGrory or Ms. Dimas know so that it can be noticed.

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 2:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura McGrory, Director

ATTEST:

  
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Kara Dimas, Commission Secretary