

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held in the Palm Room
at the Wigwam Resort
300 East Wigwam Boulevard, Litchfield Park, Arizona
Friday, August 14, 2015 – 11:00 a.m.

Present:	Dale L. Schultz	Chairman
	David M. Parker	Commissioner
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner
	Clint Bolick	Commissioner
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 11:30 a.m. noting a quorum present. Also in attendance was Jason Weber of Snell and Wilmer, Rick Jorgic from Waddell Landscape, LLC, and Amanda Caldwell and Melody Goodwin representing Modesto Noriz.

Approval of Minutes of August 6, 2015 Regular Meeting and Executive Session Minutes.

Commissioner Parker described changes to the draft August 6, 2015 regular meeting Minutes; on page 2 the words "Super Fund" should be "Superfund" and, on page 9, changing the last sentence in the 4th paragraph to read "Commissioner Parker commented on difficulties created when regulatory standards refer to outdated industry standards while protective equipment that is currently available meets the new industry standards, not obsolete standards incorporated by reference." The Commission unanimously approved the Minutes of the August 6, 2015 regular session, as amended, on motion of Commissioner Parker, second of Commissioner Hennelly.

The Commission unanimously approved the August 6, 2015 executive session Minutes on motion of Commissioner Parker, 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. 2C14/15-0588 Fatema LLC dba El Paisano Market, aka El Paisano Mercado
 2. 2C14/15-2152 Ronald Williams & Courtney Williams, H&W, dba Classic Colorworks

3. 2CSP-15/16-0039 Stetson Village Family Dentistry, P.L.C.

Chairman Schultz 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 Parker

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

Chairman Schultz stated he would like to move into executive session to discuss the Modesto Noriz vs. Waddell Landscape, LLC discrimination complaint. Commissioner Sanders moved the Commission enter into executive session to obtain legal advice and to discuss contemplated litigation related to discrimination complaint number 14-2919-07, Modesto Noriz vs. Waddell Landscape, LLC. Commissioner Parker seconded the motion. The Commission unanimously voted in favor of the motion. Executive session minutes are kept separately.

The Commission returned to regular session at 11:44 a.m.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

14-2919-07 Modesto Noriz vs. Waddell Landscape, LLC

William Warren presented a summary of Mr. Noriz's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren summarized the evidence supporting the elements such as protected activity and adverse action and he recommended that the Commission pursue the matter. Commissioner Parker noted the recordings and texts stand for themselves and asked about the employer's response to requests for documents. Mr. Warren responded to the question. Commissioner Parker asked for additional details related to the interview with the employee's former supervisor. Mr. Warren responded to Mr. Parker's question. Chairman Schultz asked if there were any other questions and hearing none, he asked Mr. Rick Jorgic if he would like to address the Commission.

Mr. Jorgic stated he listened to the comments and noted that he did not know anyone at the table. Chairman Schulz introduced himself and asked the Commissioners and Commission staff to introduce themselves. Mr. Jorgic presented Waddell Landscape's position. Chairman Schultz asked if there were any questions for Mr. Jorgic. Commissioner Sanders replied that he would have some questions, but wanted to hear from Mr. Noriz attorney if she had any comments.

Chairman Schultz invited Ms. Amanda Caldwell to comment on this matter. Ms. Caldwell noted that she is an attorney with Community Legal Services and represents Mr. Noriz. She thanked the Commission for the opportunity address the Commission. She described her client's position.

Chairman Schultz asked if there were questions for Ms. Caldwell and or if Ms. Goodwin had anything to add. Ms. Melody Goodwin replied that she was just observing.

Chairman Schultz asked Commissioner Sanders if he had any questions. Commissioner Sanders asked for more information about the records that ADOSH had requested and asked Mr. Jorgic about some records that he mentioned. Mr. Jorgic replied that he had provided records to

Div. Proposal - \$1,250.00
TOTAL PENALTY - \$3,750.00

Formula Amt. - \$1,250.00
TOTAL FORMULA AMT. - \$3,750.00

Mr. Warren summarized the citation and proposed penalty as listed and described the photographs. Commissioner Parker referred to the penalty policy, noted the unsafe practice of using a forklift in excess of rated capacity, and explained why the violation in Citation 1 Item 2 should be \$7,000.00 without any penalty reduction. Commissioner Bolick agreed. Chairman Schultz added that he had a similar view and believed the load was definitely a proximate cause, he commented on the role the locked exit door may have played in the fatality, and that the user-modified forklift tine did not appear safe.

Commissioner Sanders referred to mounted photograph number 5, asked about the weight of the bundles and what would be a more appropriate method of moving the bundles. Mr. Warren responded to the questions. Commissioner Sanders commented on how different elements may contribute to an accident and that this fatality was avoidable.

Commissioner Parker asked if this would be an appropriate matter for a legal review. He commented on the multiemployer worksite doctrine, how Avanti had control of the worksite, the worker operating the forklift was an Avanti employee, the load clearly exceeded the rated capacity of the forklift, and the unsafe condition was well within Avanti's knowledge or ability to know. Chairman Schultz commented on what appeared to be a consensus and that he would entertain a motion to include an amended penalty.

Mr. Wade explained that the Commission has the discretion to assess a penalty of up to \$7,000.00 for a serious violation and described ADOSH's modification to the federal Field Operations Manual (FOM) that removes the application of any of the reduction factors if a violation causes or contributes to a fatality or serious injury or illness.

Commissioner Parker explained that the violation in Citation 1 Item 2 is clearly a direct cause of the fatality and it would be appropriate for a \$7,000.00 gravity based penalty with no reduction. He explained why he did not consider Citation 1 Items 1 and 3 to rise to the same level regarding causation. Commissioner Bolick moved to approve the citations with a \$1,250.00 penalty for Item 1, \$7,000.00 for Item 2 because the violation was a direct cause of the fatality, and a \$1,250.00 penalty for Item 3, for a total penalty of \$9,500.00. Commissioner Parker seconded the motion. The Commission unanimously voted in favor of the motion.

Airbagit.com Suspension LLC
260 S Hibbert
Mesa, AZ 85210

Site Location: 260 S Hibbert
Mesa, AZ 85210
Inspection No: V1001-1063445
Inspection Date: 05/18/2015

Complaint
Years in Business: 17
Empl. Covered by inspection: 25

SERIOUS – Citation 1 - Item 1 – The employer did not establish an energy control program for the location, or energy control procedures for specific equipment 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)(1)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

SERIOUS – Citation 1 - Item 2 – Two employees who operated a YALE powered industrial truck Model number GLC040DENVAE092 Serial number N593241 were not certified by the employer that they had been trained and evaluated in the safe operation of the equipment. (29 CFR 1910.178(l)(6)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 – Machine shop area: One SHARP variable speed vertical milling machine Model number LMV Serial number 30428198 was used to manufacture parts and was not guarded. (29 CFR 1910.212(a)(3)(ii)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

TOTAL PENALTY - \$2,600.00

TOTAL FORMULA AMT. - \$2,600.00

Mr. Warren summarized the citation and proposed penalty as listed. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$2,600.00 on motion of Commissioner Sanders, second of Commissioner Bolick.

J & F Sand Gravel and Construction, L.L.C.
11262 S 14E
Yuma, AZ 85367

Complaint

Years in Business: 35

Empl. Covered by inspection: 5

Site Location: 11262 S 14E
Yuma, AZ 85367

Inspection No: F3875-1058694

Inspection Date: 04/15/2015

SERIOUS – Citation 1 - Item 1 – Corner of 16th Street and Sunridge Dr., Yuma, Az.: Employees conducted work in an excavation that measured 11 feet 8 inches deep, 3 feet wide at the bottom, 10 feet wide at the top and 300 feet long, without training. (29 CFR 1926.21(b)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – 16th Street and Sunridge Dr., Yuma, AZ: The employees conducted work in the excavation that measured 11 feet 8 inches deep, three feet wide at the bottom, ten feet wide at the top and 300 feet long, and were not provided a safe means of egress out of the excavation. (29 CFR 1926.651(c)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – 16th Street and Sunridge Dr., Yuma, AZ: At least a manual and visual inspection were not completed by a competent person for employees who were working in the excavation that measured 11 feet 8 inches deep, three feet wide at the bottom, ten feet wide at the top and 300 feet long. (29 CFR 1926.651(k)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Job-site: Employees conducted work in the excavation that measured 11 feet 8 inches deep, 3 feet wide at the bottom, 11 feet wide at the top and 300 feet long, without a protective system installed. (29 CFR 1926.652(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed, explained that this inspection resulted from a complaint, and noted that many of the photographs were provided by the Complainant. Commissioner Sanders asked Mr. Warren to summarize soil classifications. Mr.

Warren summarized Type A, B, and C soil. Chairman Schultz commented on the Complainant's photographs. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,000.00 on motion of Commissioner Sanders, second of Commissioner Hennelly.

Discussion and Action Regarding Selection of Vice Chair of the Industrial Commission.

Chairman Schultz asked if there were any nominations for Vice Chairman. Commissioner Parker nominated Commissioner Michael Sanders. Commissioner Hennelly seconded the motion. Commissioner Sanders agreed that he would be willing to serve, and the Commission unanimously selected Commissioner Sanders as Vice Chairman.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory announced that the Committee of Reference has scheduled hearings on the Commission's Sunset Review for August 25, 2015 beginning at 10:00 a.m. She explained that the first hearing will relate to the Boiler Advisory Board, and the second hearing will include the Industrial Commission, the OSHA Advisory Committee, and the Employment Advisory Council. She added that she will forward a copy of the agendas to the Commissioners and noted that there are live feeds on the Legislature's website for those who may be interested in viewing the hearings from a remote location.

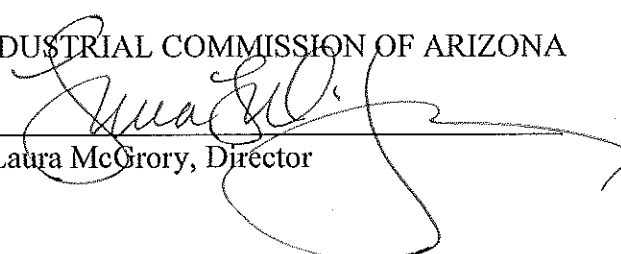
Ms. McGrory explained that the Commission is being presented with a retirement resolution recognizing William Garton, ADOSH safety consultant, for 20 years of State service.

Public Comment.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Vice Chairman Sanders moved to adjourn and Commissioner Bolick seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 12:58 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary