

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, December 10, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Commissioner
	Clint Bolick	Commissioner
	Scott P. LeMarr	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Phil Murphy	Compliance Officer
	Billie Gingrass	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner Robin S. Orchard was excused. Also in attendance was Jason Weber of Snell & Wilmer.

Approval of Minutes of December 3, 2015 Regular Meeting.

The Commission unanimously approved the Regular Minutes of the December 3, 2015 meeting on motion of Commissioner LeMarr, 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. 2C14/15-2264 Sunil Enterprises, LTD., dba Kidz Choice Preschool
  2. 2C15/16-1009 The Rockin Star Ranch, L.L.C.
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. Scottsdale Healthcare dba HonorHealth
  2. Ruan Transportation Management Systems, Inc.

Chairman Schultz stated that agenda item a.1., would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Bolick, second of Commissioner LeMarr.

Andrew Wade advised that a.1. Sunil Enterprises, LTD., dba Kidz Choice Preschool, has obtained workers' compensation insurance and staff is recommending a reduced penalty of \$500.00, instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against the employer on motion of Commissioner LeMarr, second of Commissioner Bolick.

Discussion and/or Action regarding Legislation. This agenda item may include discussion and/or action regarding the Sunset Review of the Industrial Commission of Arizona, and related Boards, Committees or Councils.

---

James Ashley updated the Commission regarding meetings that he had with various Legislators, Legislative staff and stakeholders. He commented on scheduling industry specific presentations regarding legislation and other topics of interest to stakeholders for Commission meetings, possibly starting in January.

Chairman Schultz noted that in meeting with some legislators and stakeholders there appears to be strong support to maintain Arizona's OSHA plan as a state run program. He commented on outreach efforts to both industry and labor and added that he and Mr. Ashley will prepare a summary of issues that are raised and comments regarding legislation and they will supply the Commissioners with that summary.

Commissioner LeMarr suggested the summary include both favorable and unfavorable comments. Commissioner Bolick thanked Chairman Schultz and Director Ashley for being proactive.

Chairman Schultz commented on the role of the Commission's PIO / Legislative Liaison during the legislative process.

Discussion and Action regarding Final Rulemaking to amend Arizona Administrative Code R20-5-601, The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926, and 602, The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910, to incorporate by reference amendments to the Federal OSHA standards regarding head protection, cranes and derricks - standards for underground construction and demolition, cranes and derricks - digger derrick exemption, and electrical power generation, transmission, and distribution.

---

Mr. Warren summarized the rulemaking in process and described the next steps. Commissioner Bolick asked if the public comment process has been completed. Mr. Warren replied that the oral proceeding, or public hearing, was held on November 30, 2015 and the written comment period closed at 5:00 pm the same day. Commissioner LeMarr asked if this rulemaking was being done to comply with Federal OSHA requirements. Mr. Warren summarized why ADOSH recommend the adoption of the revisions to federal standards.

Chairman Schultz commented on the information ADOSH supplied and the summary of the economic small business and consumer impact.

Commissioner Hennelly moved to direct staff to submit the notice of final rulemaking to the Attorney General and if the Attorney General approves the notice of final rulemaking, that staff then file the notice of final rulemaking with the office of the Secretary of State. Commissioner LeMarr seconded the motion. The Commissioners unanimously approved the motion.

Discussion and Action regarding Final Rulemaking to amend Arizona Administrative Code R20-5-629, The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904, to incorporate by reference revisions to the Federal OSHA regulations regarding recordkeeping and reporting.

---

Mr. Warren advised that the Commission approved the proposed rulemaking, to incorporate by reference revisions to the Federal OSHA regulations regarding recordkeeping and reporting. He commented on some of the new requirements. He requested a motion to direct staff to prepare and submit a final notice of rulemaking to the office of the Attorney General and once approved, then to file the notice of final rulemaking with the Arizona Secretary of State.

Commissioner Bolick asked about the impact on small business and consumers, noting that federal OSHA estimates cost savings. He also asked about the paperwork reductions. Mr. Warren summarized some of the impact and noted that the new revisions provide for electronic filing which will reduce paperwork.

Chairman Schultz asked how many Arizona employers will be effected by the change and if more reports are filed, whether this will impact ADOSH operations. Mr. Warren replied to the questions and noted that there has already been an increase in reporting. Chairman Schultz asked if the increase has been significant and whether the increased reports have commanded additional resources. Mr. Warren stated that he anticipates about a 35% increase in self-reporting. Chairman Schultz referred to the summary of the economic impact statement and noted there was nothing mentioned about the impact on ADOSH administration.

Commissioner Hennelly asked about outreach and education efforts for the business community for this type of change. Mr. Warren summarized some of the outreach efforts.

Mr. Ashley added that there will be an aggressive plan to help ramp up the media efforts to communicate these types of matters to stakeholders.

Commissioner Hennelly moved to direct staff to prepare and submit a notice of final rulemaking with the office of the Attorney General and once approved, that staff will then file the notice of final rulemaking with the Office of the Secretary of State. Commissioner Bolick seconded the motion.

Mr. Warren and Mr. Wade commented on the resolutions. Commissioner LeMarr commented on the revisions to the draft resolutions. Mr. Wade added that the revised resolutions are more self-contained.

Chairman Schultz called for a vote and the Commission unanimously approved the motion.

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

---

Hardrock Concrete Placement Co., Inc.  
4839 W Brill St  
Phoenix, AZ 85043

Fatality/Accident  
Years in Business: 25  
Empl. Covered by inspection: 15

Site Location: 6401 W Marana Center Blvd.  
Marana, AZ 85653  
Inspection No: E5149-1073523  
Inspection Date: 06/22/2015

Mr. Warren summarized ADOSH's investigation into a fatal accident and noted that the investigation did not identify any violations and ADOSH was not recommending any citations.

Interstate Wreck Rebuilders, Inc.  
3215 W Lincoln St.  
Phoenix, AZ 85009

Complaint  
Years in Business: 31  
Empl. Covered by inspection: 50

Site Location: 3215 W. Lincoln St.  
Phoenix, AZ 85009  
Inspection No: Q6169-1070934  
Inspection Date: 06/16/2015

SERIOUS – Citation 1 - Item 1 –

- a) Parts Building: One employee utilized a portable 'A' frame metal step ladder (model and serial number unknown) in the closed position. (29 CFR 1910.26(c)(3)(vii)).
- b) Parts Building: One employee accessed the roof at an approximate height of 13 feet from ground level without the use of adequate personal protective equipment (i.e., personal fall arrest system). (29 CFR 1910.132.(a)).  
Div. Proposal - \$1,250.00  
Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

- a) Sand Blasting Area: One employee conducting sand blasting operations in an enclosure where a continuous inward flow of air was not maintained at all openings. (29 CFR 1910.94(a)(3)(i)).
- b) Sandblasting Area: One employee conducting sandblasting operations where the access opening was not baffled thereby allowing visible abrasive material and/or dust to escape. (29 CFR 1910.94(a)(3)(i)(a)).
- c) Sandblasting Area: One employee conducting sandblasting operations opened the sandblasting enclosure without running an exhaust system to remove the dusty air within the enclosure. (29 CFR 1910.94(a)(3)(i)(c)).
- d) Sandblasting Area: An employee using a Bullard Nova 2000 Supplied Air Respirator system and the employer did not ensure Grade D breathing air was provided as part of a supplied air respiratory protection system. (29 CFR 1910.94(a)(6)).
- e) Sandblasting Area: Abrasive blasting dust had accumulated on the ground and concrete slab outside of the abrasive blasting enclosure. (29 CFR 1910.94(a)(7)).  
Div. Proposal - \$1,000.00  
Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 3215 W Lincoln St., Phoenix, AZ: The employer did not establish and implement a written respiratory protection program for an employee using a Nova 2000 blast hood and a half mask respirator. (29 CFR 1910.94(a)(5)(iv))
- b) 3215 W Lincoln St., Phoenix, AZ: One employee wearing a Nova 2000 blast hood and a half mask respirator and had not been medically evaluated to determine the employee's ability to use the respirator. (29 CFR 1910.134(e)(1).
- c) Sandblasting Area: One employee stored a half mask respirator in a manner that did not protect it from dust and extreme temperatures. (29 CFR 1910.134(h)(2)(i)).
- d) Sandblasting Area: One employee using a Bullard Nova 2000 Supplied Air Respirator system with breathing air supplied from an oil lubricated compressor and the system did not have a high-temperature or carbon monoxide alarm. (29 CFR 1910.134(i)(7).
- e) Sandblasting Area: One employee wearing a Nova 2000 blast hood and a half mask respirator and had not been provided proper training on how improper fit, usage, maintenance and storage can compromise the protective effect of the respirator. (29 CFR 1910.134(k)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4 -

- a) 3215 W Lincoln St., Phoenix, AZ: The employer made modifications and additions (i.e., put holes in both forks) to a Caterpillar Forklift, Model DP40, Chassis number unknown, without prior written approval from the manufacturer. (29 CFR 1910.178(a)(4)).
- b) 3215 W Lincoln St., Phoenix, AZ: The employer made modifications and additions (i.e., put holes in both forks and jib attachment) to a Hyster Forklift, Model H80XL, Serial number F005D02631L, without prior written approval from the manufacturer. (29 CFR 1910.178(a)(5)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$4,250.00

TOTAL FORMULA AMT. - \$4,250.00

Mr. Warren summarized the citation and proposed penalty as listed and the attached photographs. Commissioner Bolick referred to citation number 1 and asked about grouping the violations. Phil Murphy responded to the question.

Commissioner LeMarr asked for more details about citation number 3. Mr. Murphy commented on a written program and what the employer said during the inspection. Commissioner LeMarr asked about the employer's knowledge regarding use of the equipment and Mr. Murphy responded to the question.

Commissioner LeMarr referred to the photograph of an employee and asked if he had been properly fitted. Mr. Murphy and Mr. Warren responded to the question. Commissioner LeMarr asked whether the employer was using silica sand for the sand blasting and Mr. Murphy replied that it was not silica sand.

Mr. Warren referred to mounted photograph number 28 and commented on the holes in the forklift tines. Chairman Schultz commented on the use of a forklift to tow a load. Commissioner LeMarr commented on the availability of specific attachments for specific forklifts for specific jobs.

The Commission unanimously approved staff recommendation with a total penalty of \$4,250.00 on motion of Commissioner LeMarr, second of Commissioner Bolick.

Chairman Schultz thanked Mr. Murphy for making it an educational opportunity for the employer to improve safety for his employees.

Scott Roofing Company  
3601 N. 36<sup>th</sup> Ave  
Phoenix, AZ 85019

Site Location: 1212 E. Rocky Slope Dr.  
Phoenix, AZ 85019  
Inspection No: T9350-1089031  
Inspection Date: 09/01/2015

Complaint

Years in Business: 30  
Empl. Covered by inspection: 3

REPEAT-SERIOUS – Citation 1 - Item 1 – West side roof: Two employees engaged in roofing construction activities on a steep slope roof with a 5:12 pitch, at a height of approximately 11 feet, were not protected from falling by the use of guardrail system with toe boards, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(11)).

Scott Roofing Company was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(11), which was contained in OSHA inspection number 1041090, citation number 1, item number 1 and was affirmed as a final order on 08/24/2015, with respect to a workplace located at 6628 E Northridge St, Mesa, AZ 85215. (29 CFR 1910.132(a)).

Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for clarification regarding mounted photograph number 1. Mr. Warren described what was shown in the photograph. Commissioner Bolick asked about abatement photograph. Mr. Warren responded to the question. Commissioner LeMarr asked if the photograph was taken before or after the inspection. Mr. Warren responded to the question.

Mr. Ashley asked if the compliance officer had taken into account that there was same day abatement. Mr. Warren responded that no discount for prompt abatement was applied because the violation is deemed a repeat violation.

Commissioner Bolick commented on multiple repeat offenders and the fact that the equipment was there and was not used. He added that these circumstances may support more of a willful action to have the equipment and not use it.

Chairman Schultz asked when hard hats are required. Mr. Warren summarized the requirements.

Commissioner LeMarr commented on the repeat nature of the violations and that he has sympathy for the employer who is likely not happy with employees for not following the requirements.

Chairman Schultz commented on the presence of some elements of a fall protection plan, and noted that there are other things the employer could be doing for fall protection that are not part of the fall protection plan.

The Commission unanimously approved staff recommendation with a total penalty of \$3,000.00 on motion of Commissioner LeMarr, second of Commissioner Hennelly.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced ADOSH will return for a follow up Division presentation, scheduled for January 7, 2016, that ADOSH is working on scheduling a ride-a-long inspection for Commissioner LeMarr, and that the vacancy resulting from the retirement of Katherine Gosiger is in the process of being filled.

Commissioner LeMarr noted that he will be attending the Special Fund Investment Committee meeting scheduled for December 14, 2015.

Chairman Schultz noted he is planning on attending the next Arizona Self Insurers Association meeting, invited other Commissioners to attend if their schedules permit, and added that Melinda Poppe is scheduled to speak at that meeting. He explained that if more than two will be at such a meeting they will have to post a notice for those occasions.

Commissioner Bolick noted he will not be attending the next meeting.

Chairman Schultz noted for future meetings he will be working with Ms. Dimas to schedule and attempt to get one meeting a quarter that will be somewhere other than Phoenix so the Commission can better serve constituents across the state.

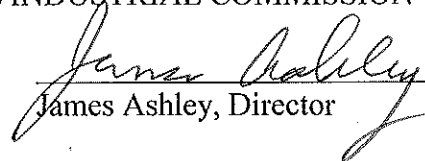
Ms. Dimas confirmed the meetings for January.

Public Comment.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner LeMarr moved to adjourn and Commissioner Bolick seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 1:58 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary