

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 4, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	William Warren	ADOSH Director
	Billie Gingrass	Compliance Officer
	Sean Campbell	Legal
	Kara Dimas	Commission Secretary

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

Approval of Minutes of January 28, 2016 Regular Meeting.

The Commission unanimously approved the Regular Minutes of the January 28, 2016 meeting on motion of Commissioner LeMarr, second of Vice Chair 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. 2C15/16-1248 American Mustang Landscaping, L.L.C.
 2. 2C13/14-1124 Excel Pump & Well Service, L.L.C.
 3. 2C15/16-1417 Family Glass Shop, L.L.C. fka Precision 1 Auto Glass, L.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 Vice Chair Hennelly, second of Commissioner LeMarr.

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.

Mr. Ashley referred to Senate Bill 1500, noted that bill is being referred to as the Omnibus bill, and asked that the Commission consider voting on a non-binding resolution in support of SB1500. Bob Charles commented on activity regarding the bill and described support in the Senate and in the House. Chairman Schultz commented that the bill shows only one House Representative as a sponsor. Mr. Charles responded to the comment.

The Commission, Mr. Ashley and Mr. Charles discussed the amendments. Mr. Charles noted that the bill includes a provision to continue the Industrial Commission through 2024. Mr. Ashley added that the bill also modifies the director appointment process. Mr. Charles summarized a provision that impacts the Arizona Division of Occupational Safety and Health (ADOSH) noting that ADOSH will be required to contract with the Office of Administrative Hearings (OAH) to adjudicate contested matters.

Chairman Schultz asked for input from staff and William Warren, Melinda Poppe, and Andrew Wade commented on aspects of the bill.

Mr. Charles commented on a provision that allows ADOSH to consider substance abuse testing during an investigation, prohibits ADOSH employees from discouraging anyone from being represented by an attorney, and requires ADOSH employees to make sure, if audio recording an interview, that the subject of the interview is aware of their rights and aware that they can receive a copy of the recording. Commissioner LeMarr commented on the importance of the provision regarding considering the results of substance abuse testing and noted that the provision does not specify the discretionary power. Mr. Warren contrasted test results that evidence drug use with the concept of impairment.

Commissioner Orchard commented on the drug testing provision and added that she wanted to make sure the language in the bill does not create any confusion. Mr. Warren commented on the compliance officers' primary focus during inspections and added that the bill, as written, allows the compliance officer the option of taking into consideration whether the use of drugs may be an issue. Chairman Schultz stated that he is hopeful that this type of provision will encourage employers to perform more drug testing. He explained that drug testing can have a dramatic impact in reducing injuries when employers begin requiring testing and the provision in the bill may encourage employers to perform testing.

Commissioner LeMarr asked if there was any other legislation or amendments being considered. Mr. Ashley replied that some amendments can be expected and any action taken today with the non-binding resolution would only apply to the bill as written, and he and Mr. Charles will work to ensure that any amendments do not create anything detrimental to the Industrial Commission and also do not threaten Arizona's state OSHA plan authority. Mr. Charles added that if amendments are proposed, he or Mr. Ashley will notify the Commissioners and whether to support or oppose the amendment can be addressed.

Chairman Schultz asked if Mr. Charles wanted to propose specific language for a non-binding resolution. Mr. Charles noted the result of the Committee of Reference hearing in August

where there was not necessarily a lot of support for the agency, and SB1500 is a vote of support. He recommends the Commission support this legislation and he explained why taking a formal position will be helpful. Mr. Ashley commented on a non-binding resolution where the Commission takes the position that it supports SB1500, the Omnibus, as written. Commissioner Orchard moved a non-binding resolution to support SB1500 as written and Commissioner LeMarr seconded the motion. The Commission unanimously approved the motion.

Chairman Schultz thanked Mr. Ashley and Mr. Charles for monitoring the legislation so closely, noting how there can be a lot of activity in a short time when the Legislature is in session.

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 commented on the Voluntary Partnership Program (VPP) for Palo Verde with Arizona Public Service (APS) and issuing a press release. Commissioner LeMarr requested that Mr. Charles supply the Commissioners with every press release.

Chairman Schultz asked Mr. Warren to supply the Commissioners with information about upcoming VPP presentations, and added that he agreed with Mr. Charles about the wonderful opportunity to share positive actions such as APS and the VPP.

Discussion and Action regarding Final Rulemaking to amend Arizona Administrative Code R20-5-601, and adopt Federal Occupational Safety and Health standards extending the deadline for employers to ensure that crane operators are certified by three years, until November 10, 2017 and adding a new subpart to provide protections to employees working in confined spaces in construction.

Mr. Warren summarized the rulemaking in process and described the next steps. He explained that the oral proceeding, or public hearing, was held on December 14, 2015 and the written comment period closed at 5:00 pm the same day. He noted that the Industrial Commission has not received any oral or written comments. Commissioner Orchard asked about the definition of confined space and Mr. Warren responded to the question. Commissioner LeMarr asked whether a mechanical room could be considered a confined space and Mr. Warren responded to the question. Chairman Schultz commented on extending the time for crane operator certification. Commissioner Orchard asked a follow up question regarding the definition of a confined space and Mr. Warren commented on a potential impact on the current rulemaking process.

Commissioner LeMarr moved to adopt the new standards and direct staff to file the notice of final rulemaking with the Attorney General and, if approved, with the Secretary of State. Vice Chair Hennelly seconded the motion. The Commission unanimously approved the motion.

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

T3 Engineered Products, Inc. DBA
Triangle Industrial Corporation
2560 N. Coyote Drive #108
Tucson, AZ 85745

Complaint
Years in Business: 8
Empl. Covered by inspection: 10

Site Location: 2560 N. Coyote Drive #108
 Tucson, AZ 85745
 Inspection No: F3875-1102256
 Inspection Date: 10/15/2015

SERIOUS – Citation 1 - Item 1 – Chrome Plating Area: Employees working in close proximity could potentially fall into open plating tanks that were approximately 3 feet wide and 25 feet deep and were not protected with guard covers. (29 CFR 1910.22(c)).
 Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – Chrome plating area: Overhead gantry cranes (Model and Serial Numbers Unknown) were not inspected for defects on a daily basis. (29 CFR 1910.179(j)(2)).
 Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 – Chrome plating area: The nylon straps that were in use and available for use were damaged, worn and in poor condition and were not removed from service. (29 CFR 1910.184(c)(1)).
 Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4 – Chrome Plating Area: Steel chains used for lifting were not provided with identification stating the size, grade and rated capacity. (29 CFR 1910.184(e)(1)).
 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 reviewed the photographs. Commissioner LeMarr referred to mounted photograph number 4 and asked about the maximum lifting capacity for chains. Mr. Warren responded to the question. Commission LeMarr also asked about mounted photographs number 3 and 4 and Mr. Warren responded to the question. Commissioner Orchard asked about fraying on nylon straps and Mr. Warren responded to the question.

Vice Chair Hennelly moved to approve the citations and penalty as recommended and Commissioner LeMarr seconded the motion. The Commission unanimously approved issuing the citation and assessed the penalty of \$4,250.00.

Mr. Warren asked the Commission address the next three inspections together noting that the employer is Genaro’s Framing Construction LLC.

Genaro’s Framing Construction LLC 9133 W Marshall Ave Glendale, AZ 85301 <hr/> Site Location: 26157 N 96 th Dr Peoria, AZ 85383 Inspection No: S8089-1101130 Inspection Date: 10/22/2015	Planned Years in Business: 10 Empl. Covered by inspection: 5
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REPEAT-SERIOUS – Citation 1 - Item 1 – Roof: Three employees working from the roof were not protected from falling approximately 10 foot 1 inch to a lower level below by guardrail system, safety net system, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13), which was contained in OSHA inspection number 1065299, citation number 1, item number 1 and was affirmed as a final order on 8/14/2015, with respect to a workplace located at 2909 E Branham Ln Lot 50 phoenix AZ 85042.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(1), which was contained in OSHA inspection number 1044478, citation number 1, item number 1 and was affirmed as a final order on 7/10/2015, with respect to a workplace located at Lot-23 Camelback 148 Ave Litchfield Park, AZ 85340.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

REPEAT-SERIOUS – Citation 1 - Item 2 – Roof: Three employees had been utilizing an 8 foot Werner fiberglass step ladder; model number NXT1A08 serial number unknown, to access and exit the roof of a single level house and were exposed to a 10 foot 1 inch fall to a lower level. (29 CFR 1926.1053(b)(4)).

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.1053(b)(4), which was contained in OSHA inspection number 1065299, citation number 1, item number 1 and was affirmed as a final order on 8/14/2015, with respect to a workplace located at 2909 E Branham Ln Lot 50 phoenix AZ 85042.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 1 – Roof: One employee working at heights greater than 6 feet and exposed to falls was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Genaro's Framing Construction LLC
9133 W Marshall Ave
Glendale, AZ 85301

Programmed Related
Years in Business: 10
Covered by inspection: 7

Site Location: 9365 W Donald Dr
Peoria, AZ 85383
Inspection No: W0250-1095980
Inspection Date: 10/01/2015

REPEAT-SERIOUS – Citation 1 - Item 1 – Roof: Two employees engaged in framing activities on a low-slope roof with unprotected sides and edges approximately 13 feet above a lower level were not protected from falling by a guardrail system, safety net system or personal fall arrest system. (29 CFR 1926.501(b)(13)).

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(B)13, which was contained in OSHA inspection number 1065299, citation number 1, item number 1 and was affirmed as a final order on 8/14/2015, with respect to a workplace located at 2909 E Branham Ln lot 50 Phoenix, AZ 85042.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(B)01, which was contained in OSHA inspection number 1044478, citation number 1, item number 1 and was affirmed as a final order on 7/10/2015, with respect to a workplace located at Lot-23 Camelback 148th Ave Litchfield Park, AZ 85340.

Div. Proposal - \$2,000.00
TOTAL PENALTY - \$2,000.00

Formula Amt. - \$2,000.00
TOTAL FORMULA AMT. - \$2,000.00

Genaro's Framing Construction LLC
9133 W Marshall Ave
Glendale, AZ 85301

Programmed Planned
Years in Business: 10
Covered by inspection: 3

Site Location: 20615 W Minnezona Ave
Buckeye, AZ 85396
Inspection No: W0250-1106899
Inspection Date: 11/18/2015

REPEAT-SERIOUS – Citation 1 - Item 1 – Roof: Two employees were engaged in framing activities on a low-slope roof with unprotected sides and edges approximately 10 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)(13)).

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(13), which was contained in OSHA inspection number 1085599, citation number 1, item number 1, and was affirmed as a final order on 10/9/2015, with respect to a workplace located at 22646 E Duncan St Queen Creek, AZ 85142.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(1), which was contained in OSHA inspection number 1084863, citation number 1, item number 1, and was affirmed as a final order on 10/7/2015 with respect to a workplace located at 4176 N 182nd Ln Goodyear, AZ 85395.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(13), which was contained in OSHA inspection number 1065299, citation number 1, item number 1 and was affirmed as a final order on 8/24/2015, with respect to a workplace located at 7542 W Carter Rd Laveen, AZ 85339.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(1), which was contained in OSHA inspection number 1044478, citation number 1, item number 1 and was affirmed as a final order on 8/24/2015, with respect to a workplace located at Palm Valley Lot 23 148th Ave and Pasadena Ave Litchfield Park, AZ 85340.

Div. Proposal - \$5,000.00
TOTAL PENALTY - \$5,000.00

Formula Amt. - \$5,000.00
TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citations and proposed penalties and reviewed the photographs for all three inspections. Commissioner LeMarr asked Mr. Warren if he had any insight into the employer's attitude toward compliance given the multiple violations. Mr. Warren commented on

the industry and why he recommends the repeat classifications rather than willful. Vice Chair Hennelly asked if there was any type of follow up or ongoing conversation with this employer and what the employer is doing to remedy the problem. Mr. Warren responded to the questions. Chairman Schultz commented on the repeat classification versus willful. Mr. Ashley asked Mr. Warren to clarify whether the prior inspection history included inspections that were in compliance and Mr. Warren explained what information is presented in the prior inspection history.

Commissioner Orchard moved to approve all the citations and penalties as presented and Vice Chair Hennelly seconded the motion. The Commission unanimously approved issuing the citations and assessed the penalties as recommended.

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.

Melinda Poppe provided an update on the Claims system and described target timeframes. She noted that she is coordinating the project with the Claims Division, MIS, and outside vendors. Ms. Poppe described her efforts to learn from the experiences of other jurisdictions who have recently revised their systems. Chairman Schultz asked about stakeholder input and Ms. Poppe responded to the question. Chairman Schultz commented on including functions that tie into accident and injury reporting, and providing for any possible benchmarking and the ability to include cause analysis. Ms. Poppe added that she is working with a work group from the IAIABC (International Association of Industrial Accident Boards and Commissions) regarding data collecting and defining data to benchmark access states. Chairman Schultz commented on the scope of the project, the importance of reaching out to other jurisdictions and the industry, and asked about the timetable. Ms. Poppe commented on the timetable.

Ms. Poppe commented on the Medical Resource Office reviewing vendor proposals for the evidence based medicine treatment guidelines peer review process.

Mr. Ashley commented on part of the 2016 initiatives and explained he is developing a community event to recognize and acknowledge those who have died at the workplace and their families and communities. Ms. Poppe commented on expanding the theme of a memorial to include not only fatalities, but to include injured workers and their families. Chairman Schultz stated it was an excellent idea and suggested that staff explore whether other organizations would be interested in participating. Mr. Ashley noted that Jessie Atencio has done a very good job with including other groups and organizations and he will be working on expanding participation.

Ms. Poppe stated the Commission's leadership team will be attending a Government Transformation Office Leadership Workshop to help identify business processes to improve efficiency and customer service and reduce or save resources. Chairman Schultz that it was a terrific idea. Mr. Ashley invited Commissioners interested in attending.

Update and Discussion of Filling Leadership Vacancies in the Divisions.

Mr. Ashley updated the leadership changes noting that Melinda Poppe is now the Deputy Director, Michael Mosesso is the new Chief Administrative Law Judge, and Molly Jones is the new Claims Manager. He commented on internal and external recruitment for a Special Fund Manager.

Discussion of Future Out of Town Commission Meetings.

Mr. Ashley confirmed the meeting scheduled for March in Yuma and noted that Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard plan on attending that meeting. He described his efforts to coordinate the scheduling of other meetings with the City of Yuma and Yuma County. Mr. Ashley confirmed the meeting in April scheduled in conjunction with the Safety Summit in Marana.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on an invitation to tour the Safeway/Albertson Corporate Office.

Mr. Warren mentioned that ADOSH is hosting the national Occupational Safety and Health State Plan Association's winter meeting on February 9 and 10, 2016 at the Crown Plaza Hotel here in Phoenix.

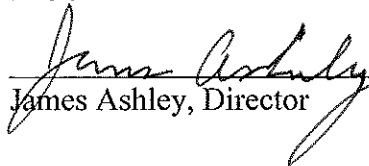
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:37 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary