MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 11, 2016 – 1:00 p.m.

Present: Dale L. Schultz
Joseph M. Hennelly, Jr.
Scott P. LeMarr
Robin S. Orchard
James Ashley
Andrew Wade
Melinda Poppe
Bob Charles
Renee Pastor
William Warren
Larry Gast
Billie Gingrass
Valli Goss
Rebecca Schaar
Yvonne Borunda
Kara Dimas
Chairman
Vice Chair
Commissioner
Commissioner
Director
Chief Legal Counsel
Deputy Director
Legislative Affairs Chief / Public Information Officer
Accounting
ADOOSH Director
Assistant ADOOSH Director
Compliance Officer
Legal
Legal
Legal
Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Lydia Terrazas, Commission Intern, and Jason Weber of Snell & Wilmer.

Approval of Minutes of February 4, 2016 Regular Meeting.

The Commission unanimously approved the Regular Minutes of the February 4, 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. 2C14/15-2372 Tellez Restaurant Investments #6 L.L.C., dba Mariscos Vuelve A La Vida

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

   1. City of Glendale
2. City of Mesa
3. City of Scottsdale
4. City of Tempe

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.

Bob Charles provided an update regarding SB1500. He noted the Bill contains a provision to continue the Commission and the vote on the Bill in the Senate Commerce and Workforce Development Committee this week was 8 to 0 with 1 not voting due to a conflict of interest. He read the list of supporters that signed in to show support for the Bill. He commented on the process to address boiler safety standards, a certification process for inspections, and enforcement. Chairman Schultz commented on the showing of support, noting the difference between affirmative support for a bill and not opposing a bill.

Mr. Charles commented on a potential amendment to SB1500.

Commissioner LeMarr asked if there was any conversation with stakeholders about the provision that would require the Commission contract with the Office of Administrative Hearing (OAH) for the hearing process in ADOSH matters. Mr. Ashley and Mr. Charles responded to the question and commented on numerous scheduled meetings with stakeholders.

Mr. Charles summarized the anticipated process for SB1500 at the Legislature and commented on SB1420.

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 website improvement project, a media request related to SB1500, and some media requests for records related to ongoing inspections. Commissioner LeMarr asked about the public records requests and Mr. Charles responded to the question.

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

| Taylors Demolition and Recycling Corporation, Inc. 5901 E. Pima St Tucson, AZ 85712 | Fatality/Accident |
| Site Location: 314 E. Grant Road Tucson, AZ 85705 | Years in Business: 25 |
| Inspection No: 1090980 | Empl. Covered by inspection: 4 |
| Inspection Date: 08/21/2015 |                      |
SERIOUS – Citation 1 - Item 1 – a) Jobsite, 314 E. Grant Road, Tucson: Employees were not trained in the recognition and avoidance of unsafe conditions and the regulations applicable to demolition hazards resulting in the death of one employee and the serious injury of another employee. (29 CFR 1926.21(b)(2)).
   Div. Proposal - $7,000.00  Formula Amt. - $7,000.00

SERIOUS – Citation 1 - Item 2 – a) Jobsite, 314 E. Grant Road, Tucson: Three employees were working in an area where demolition was taking place where the center wall of the building had weakened and collapsed resulting in the death of one employee and the serious injury of another employee. (29 CFR 1926.859(a)).
   Div. Proposal - $7,000.00  Formula Amt. - $7,000.00

SERIOUS – Citation 1 - Item 3 – a) Jobsite, 314 E. Grant Road, Tucson: On-going inspections of the demolition project for hazards such as weakened walls or loosened materials were not conducted by a competent person resulting in the death of one employee and the serious injury of another employee. (29 CFR 1926.859(g)).
   Div. Proposal - $7,000.00  Formula Amt. - $7,000.00
   TOTAL PENALTY - $21,000.00  TOTAL FORMULA AMT. - $21,000.00

Mr. Gast summarized ADOSH’s investigation into a workplace fatality and explained his recommendation for citations. Commissioner LeMarr noted that there was no adjustment for size and Mr. Gast explained why there are no reductions when a violation causes or contributes to a death. Vice Chair Hennelly asked for additional details regarding the operator of the equipment and ownership of the corporation. He noted the scope of the employer’s primary business and that the volatile conditions are within that scope. Chairman Schultz commented on the number of years the employer has been in business. Mr. Gast explained how the employer could have used a spotter. Commissioner LeMarr asked if the equipment operator knew that the back end of backhoe had hit the wall and Mr. Gast responded to the question. Commissioner Orchard asked about the prior history report and Mr. Gast responded to the question.

Vice Chair Hennelly moved to approve the citations and penalty as recommended and Commissioner Orchard seconded the motion. The Commission unanimously approved issuing the citation and assessed the penalty of $21,000.00.

Corrections Corporation of America
1100 N. Bowling Rd
Florence, AZ 85232

Site Location: 1100 N. Bowling Road
Florence, AZ 85232
Inspection No: 1095384
Inspection Date: 09/28/2015

Correction Corporation of America
Complaint
1100 N. Bowling Rd
Florence, AZ 85232

Years in Business: 17
Emp. Covered by inspection: 2

SERIOUS – Citation 1 - Item 1 – Control Bubble: Employees who remain to operate the pod’s control panel for evacuation of the inmates do not have adequate procedures to evacuate in the event of emergency. (29 CFR 1910.38(c)(3)).
   Div. Proposal - $4,500.00  Formula Amt. - $4,500.00
   TOTAL PENALTY - $4,500.00  TOTAL FORMULA AMT. - $4,500.00
Mr. Gast summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner LeMarr clarified the Citation was for not having an adequate evacuation plan rather than actions related to a fire. Mr. Gast responded to the question.

Commissioner Orchard commented on the property owner’s role with respect to an evacuation plan and Mr. Gast responded to the comment. Vice Chair Hennelly asked for clarification regarding the mention of a previous incident and Mr. Gast responded. Commissioner LeMarr and Mr. Gast discussed additional details regarding the citation.

Chairman Schultz commented on the use of keys in a correctional facility and the benefits of a separate ventilation system. Commissioner LeMarr noted that additional details would be helpful and Mr. Gast responded.

Vice Chair Hennelly commented on the circumstances and asked for additional details regarding what happened during the incident versus what was discovered during the inspection. Mr. Gast responded.

Commissioner Orchard moved to issue the citation with a $3,500.00 penalty. She explained why she moved a penalty of $3,500.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr voted against the motion.

Silent-Aire USA, Inc.
1145 W Gary Ave
Gilbert, AZ 85233

Site Location: 1145 W Gary Ave
Gilbert, AZ 85233
Inspection No: A4031-1100409
Inspection Date: 10/15/2015

Complaint
Years in Business: 3
Empl. Covered by inspection: 75

SERIOUS – Citation 1 - Item 1 – a) Spray booth area: A clear space of not less than 3 feet on all sides of the spray booth area was not kept free from 5 gallon paint buckets and ladders stored behind the spray booth. (29 CFR 1910.107(b)(9)).
Div. Proposal - $1,400.00
Formula Amt. - $1,400.00

SERIOUS – Citation 1 - Item 2 – Spray booth area: An employee was using the top or top step of an 8’ fiberglass step ladder, model and serial number unknown, as a step during access to paint the heating, ventilation, air conditioning (HVAC) unit. (29 CFR 1926.1053(b)(13)).
Div. Proposal - $1,400.00
Formula Amt. - $1,400.00
TOTAL PENALTY - $2,800.00
TOTAL FORMULA AMT. - $2,800.00

Mr. Gast summarized the citation and proposed penalty as listed. Commissioner Orchard commented on quick abatement and the presence of a designated safety officer. She referred to Citation 1, Item 2 and the presence of warnings on stepladders about standing on the top step. Vice Chair Hennelly added that the employee at issue acknowledged that he knew he was not supposed to stand or step on top of the ladder and did it anyway. He commented on training and the employer’s efforts to comply with safety standards.
Commissioner Orchard asked how long the paint buckets were on the sides of the spray booth and Chairman Schultz noted that the paint had just been delivered. He commented on his initial favorable impression of the employer having a designated safety officer and how that impressed was tempered when he read the list of non-serious violations. He explained that the employer does have someone with the title of safety compliance officer, but it is obvious that the employer does not have a comprehensive safety program in place given how basic items such as MSDS labeling and respiratory protection programs are in a spray painting operation. He added that the employer is fairly new in business, has designated a safety compliance officer, and has some room for improvements in their processes.

Commissioner LeMarr moved to issue Item 1 as a serious with a $1,000.00 penalty and classify Item 2 as a non-serious with a $400.00 penalty, for a total penalty of $1,400.00. Commissioner Orchard seconded the motion. The Commission unanimously approved issuing the citation and assessed a penalty of $1,400.00.

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.

Mr. Ashley presented an update regarding the Government Transformation Training held last week and stated it was a good full day workshop and will lead to good improvements.

Ms. Poppe summarized the Key Performance Indicators project and described efforts to develop a matrix for true performance measures for different agency functions. She described the process for better service and providing for breakthrough opportunities. Chairman Schultz commented on the project and noted that it is not just about creating a matrix and will include exploring out of the box opportunities. Ms. Poppe provided an update on the claims system update and the Administrative Law Judge portal.

Commissioner LeMarr asked about the vendor selection process and Ms. Poppe explained the intent to retain a consultant with experience in working with other Industrial Boards and Commissions and she described some expectations for such a consultant. Chairman Schultz commented on the claims system update project and exploring breakthrough opportunities. He provided some sample concepts to keep in mind.

Chairman Schultz commented on discussions at the OSHSPA (Occupational Safety and Health State Plan Association) Conference about benchmarking and being able to use tools to most effectively direct the activities of the consultation and compliance programs and would like to make sure that they look for opportunities to produce the kind of information to help improve the efforts in the ADOSH programs.

Presentation and Discussion regarding the operations of the Industrial Commission’s Legal Division.

Andrew Wade introduced his management team; Yvonne Borunda, Rebecca Schaar and Vali Goss. Mr. Wade reviewed the organization chart, described the units within Legal and reviewed the collections to date and the collections options available. Commissioner LeMarr asked if the collection amounts were the amount collected by Legal after ADOSH’s collection efforts and Mr. Wade responded to the question. Mr. Wade reviewed some data related to the Legal Division’s operations.
Chairman Schultz commented on collections performed by the Attorney General and Commissioner LeMarr asked for additional details. Ms. Schaar replied to the question and Mr. Wade explained how some money collected is destined for the state’s general fund and others for the Special Fund.

Commissioner Orchard commented on the reported collections for February and Mr. Wade described the sources for some large amounts that were collected.

Chairman Schultz commented on trends and asked about referrals to outside counsel and Mr. Wade responded to the question. Vice Chair Hennelly and Mr. Wade commented on the Attorney General’s outside counsel contract.

Chairman Schultz thanked Mr. Wade, Ms. Goss, Ms. Borunda, and Ms. Schaar for the presentation and that he appreciated all of their efforts.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented on the Commission meeting scheduled for March 2 in Yuma. He mentioned that Governor Ducey was recently in Yuma and communicated the need and desire for state agencies reach out to communities around the state. Mr. Ashley stated it was great timing for the Commission to go to Yuma in March, Tucson in April and other places this summer. Mr. Ashley stated the Governor has issued an executive order continuing the rulemaking moratorium.

Mr. Ashley announced that Jenny Mandeville in ADOSH consultation received a distinction, the 2015 Howard Pyle Award from the Arizona Chapter of the National Safety Council. Mr. Warren added that this award is the most prestigious safety award in Arizona.

Mr. Warren commented on the OSHSPA Conference that was held here in Phoenix and the positive feedback received from the state plan partners. He noted that the Federal OSHA group extended a great deal of gratitude and appreciation as well. Chairman Schultz added that ADOSH did a terrific job in hosting the OSHSPA conference and doing so created an opportunity to showcase Arizona’s programs, and the conference was a huge success. Mr. Ashley noted that the conference was Tweeted, Arizona was proud to host the OSHSPA conference, and the consultation program is one of the great features of the ADOSH program.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:36 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

ATTEST:

Kara Dimas, Commission Secretary

By James Ashley, Director