

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at Yuma Main Library Meeting Facilities Level 1
Conference Rooms A and B
2951 South 21st Drive, Yuma, Arizona 85364
Wednesday, March 2, 2016 – 1:30 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	Melinda Poppe	Deputy Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Larry Gast	Assistant ADOSH Director
	Jessie Atencio	Assistant ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:35 p.m. noting a quorum present. Commissioner LeMarr was excused. Also in attendance were Diane Robinson, Abel Almanza, Russell Crossan, Susan Thorpe and Robert Ramirez.

Approval of Minutes of February 25, 2016 Regular Meeting.

Chairman Schultz stated this agenda item would be tabled.

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. 2C14/15-2522 Bike Force, L.L.C.
2. 2C14/15-2158 Harrison's Transport Logistics LLC
3. 2C14/15-2536 Total Corporate Services LLC

Chairman Schultz stated that agenda item a.2., would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Vice Chair Hennelly, second of Commissioner Orchard.

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

Tucson, AZ 85713

Empl. Covered by inspection: 35

Site Location: 690 E. 36th Street
Tucson, AZ 85713
Inspection No: T3633-1094485
Inspection Date: 09/24/2015

Mr. Warren summarized the results of ADOSH's investigation into a workplace fatality and explained his recommendations for non-serious citations. Chairman Schultz commented on the circumstances. Vice Chair Hennelly asked about other investigations into the accident and Mr. Warren responded to the question.

Gorman Roofing Services, Inc.
2229 E University Dr.
Phoenix, AZ 85034

Referral
Years in Business: 16
Empl. Covered by inspection: 16

Site Location: 1735 NW Grand Ave
Phoenix, AZ 85007
Inspection No: H9685-1093169
Inspection Date: 09/15/2015

SERIOUS – Citation 1 - Item 1 –

a) Middle Part of Building: Twelve employees who walked along the roof from the south building to the north building and back, were not protected from tripping in or stepping into uncovered holes located in the roof of the middle portion of the building. (29 CFR 1926.501(b)(4)(ii)).

b) North Building: Twelve employees engaged in roofing activities on a 4:12 pitched roof, with unprotected sides and edges, were not protected from falling 23 feet to the ground below by guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(10)).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 1 - Item 2 – North Building: The employer did not provide a training program for three employees who were exposed to fall hazards over 20 feet to enable the employees to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 – South Building: Twelve employees who climbed over a 30 inch parapet wall to access the middle and north building's roof were not provided with a stairway or ramp. (29 CFR 1926.1051(a)).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Orchard referred to mounted photographs numbers 1 and 3, commented on possible efforts to cover the roof openings, and Mr. Warren provided additional details regarding the requirements for covering the roof openings. Commissioner Orchard asked about compliance regarding the parapet wall and Mr. Warren summarized the hazards and how the employer could comply with the requirements. Chairman Schultz referred to mounted photograph number 18 as clearly demonstrating the problem.

Commissioner Orchard referred to mounted photograph number 11 and what appeared to be a rope or cable and Mr. Warren noted that the employee was carrying a pneumatic nail gun. Chairman Schultz summarized his analysis and noted the seriousness of the situation where an employee was working at the edge of the roof not tied off at an elevation between 23 and 40 feet. Commissioner Orchard acknowledged the analysis and commented that she is inclined to take into consideration the employer having at least provided the fall protection equipment. Chairman Schultz asked for more details regarding employee training and Mr. Warren responded to the question.

Vice Chair Hennelly noted that one of the employees on the roof was the foreman and he was positioned where he could see all the employees and he was not using fall protection. Commissioner Orchard commented on the amount of the penalty compared to the number of employees. Mr. Warren commented on the calculations regarding the gravity based penalty for each of the citations and explained why violations of separate standards are cited. Chairman Schultz noted that the fall protection equipment was not available, there were large roof openings, and the foreman was present.

Commissioner Orchard moved to issue the citations with a total penalty of \$5,000.00, with Item 1 at \$2,000.00, Item 2 at \$1,000.00, and Item 3 at \$2,000.00. There was no second. Vice Chair Hennelly moved to issue the citation with a total penalty of \$7,000.00 with Item 1 at \$3,000.00, Item 2 at \$1,000.00, and Item 3 at \$3,000.00. Commissioner Orchard seconded the motion. The Commission unanimously voted in favor of the motion.

Nations Renovations, LLC, a Texas LLC	Planned	
10991 Petal St., Ste A	Years in Business:	45
Dallas, TX 75238	Empl. Covered by inspection:	5
<hr/>		
Site Location:	1833 N Power Rd	
	Mesa, AZ 85205	
Inspection No:	U5916-1103430	
Inspection Date:	11/30/2015	

SERIOUS – Citation 1 - Item 1 – 1833 N. Power Rd., Mesa AZ, 85205: One employee operating a powered industrial truck was not trained in the safe operation of the equipment. (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 2 – Northwest corner of roof: Employees performing roofing activities at a height of approximately 21 feet and were not protected from falling through a 4 foot by 4 foot roof opening by the use of a guardrail system, safety net system, personal fall arrest system or cover. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 3 – Northwest corner of roof: Employees performing roofing activities were not protected from tripping in or stepping into or through holes in the roof, measuring approximately 8 inches in diameter. (29 CFR 1926.501(b)(4)(ii)).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
----------------------------	---------------------------

NON-SERIOUS – Citation 1 - Item 1 – 10991 Petal Ave, Suite A, Dallas TX, 75238: The employer did not provide the OSHA Injury/Illness Logs that were requested on 11/5/15. (29 CFR 1904.40(a)).

Div. Proposal - \$100.00	Formula Amt. - \$100.00
TOTAL PENALTY - \$3,600.00	TOTAL FORMULA AMT. - \$3,600.00

Mr. Warren summarized the citation and proposed penalty as listed and described the photographs. Commissioner Orchard asked if the employer ever submitted the OSHA log. Mr. Warren replied that the employer has not supplied the log. Commissioner Orchard asked for additional details regarding training, the inspection history, and the reduction. Mr. Warren provided some additional details. Commissioner Orchard referred to the citation for an uncovered 8” hole and whether a cover is required. Mr. Warren summarized the requirements of the standard.

Commissioner Orchard moved to issue the citation with a total penalty of \$3,100.00 with Citation 1, Items 1 and 2 at \$1,250.00 each, Item 3 at \$500.00, and Citation 2, Item 1 remain at \$100.00. Vice Chair Hennelly seconded the motion. The Commission unanimously voted in favor of the motion.

PCA Holdings, GP, LLC dba	Planned	
Parkway Construction & Associates, L.P.	Years in Business:	25
1000 Civic Circle	Empl. Covered by inspection:	2
Lewisville, TX 75067		
Site Location:	1833 N Power Rd	
	Mesa, AZ 85205	
Inspection No:	U5916-1103485	
Inspection Date:	11/03/2015	

SERIOUS – Citation 1 - Item 1 – Northwest corner of roof: Subcontractor employees performed roofing activities at a height of approximately 21 feet and were not protected from falling through a 4 foot by 4 foot roof opening by the use of a guardrail system, safety net system, personal fall arrest system or cover. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 2 – Northwest corner of roof: Subcontractor employees performed roofing activities and were not protected from tripping in or stepping into or through holes in the roof, measuring approximately 8 inches in diameter. (29 CFR 1926.501(b)(4)(ii)).

Div. Proposal - \$1,400.00	Formula Amt. - \$1,400.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 3 – Northeast side of project (decontamination tank): A subcontractor employee entered an excavation that was 5ft. 4in. pitched to 6ft. in depth that was not protected from cave-ins by an adequate protective system. (29 CFR 1926.652(a)(1)).

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 4 – Northeast side of project: Protruding reinforcing steel (i.e., rebar) which subcontractor employees could fall onto or come against, were not guarded by appropriate caps, covers, or other equivalent means to protect employees from the hazard of impalement. (29 CFR 1926.701(b)).

Div. Proposal - \$3,500.00	Formula Amt. - \$3,500.00
----------------------------	---------------------------

TOTAL PENALTY - \$8,400.00	TOTAL FORMULA AMT. - \$8,400.00
----------------------------	---------------------------------

Mr. Warren summarized the citation and proposed penalty. Commissioner Orchard referred to mounted photograph number 7 and the rebar. Mr. Warren summarized the hazard and why the conditions represent a violation. Commissioner Orchard stated she would like to accept the recommendations as presented except having the penalty for Citation 1, Item 2 at \$700.00. Chairman Schultz commented on the safety responsibilities for every employer on the jobsite and the need for

everybody to work together to keep workers safe. Vice Chair Hennelly asked about the classification for the soil and Chairman Schultz commented on the relationship between soil types and the likelihood of a cave in.

Commissioner Orchard commented on the clearly serious hazardous conditions and how fortunate it is that an employee was not injured. She moved to issue the citations with a total penalty of \$7,700.00 with Citation 1, Item 1 at \$1,750.00 and Item 2 at \$700.00, Item 3 at \$1,750.00 and Item 4 at \$3,500.00. Vice Chair Hennelly seconded the motion. The Commission unanimously approved the motion.

Chairman Schultz announced that the next item is Agenda Item 3, Harrison's Transport Logistics LLC and added the additional Item.

Consideration of Harrison's Transport Logistics LLC and Proposed Penalty against and Un-insured Employer.

Mr. Wade advised that staff asked that a.2. Harrison's Transport Logistics LLC, be removed from the Consent Agenda and heard separately because the employer 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 Vice Chair Hennelly, second of Commissioner Orchard.

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.

Ms. Poppe noted that the Governmental Transformation Office had supplied the Commission with positive feedback on the draft agency performance measures. Chairman Schultz commented on the Commission's efforts to develop performance objectives and measures in the pursuit of becoming more accountable and goal oriented.

Ms. Poppe and Mr. Atencio commented on the upcoming first annual Industrial Commission Day at the Capitol, scheduled for March 14, 2016 from 11:00 a.m. to 12:00 noon to honor workers who have been injured or lost their lives while on the job and to honor those employers with outstanding safety programs. Mr. Atencio summarized efforts to publicize the event and noted that the Commission will recognize some employers for their exemplary safety programs and the alliance with the Arizona General Contractors Association and the Arizona Builders Alliance. Mr. Atencio commented on the Fred Brick Award recipient, the very serious injury he sustained, and his inspiring story. He noted that Kids' Chance, a non-profit organization that offers scholarship to children of catastrophically injured workers or workers who were fatally injured, is also involved.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Warren commented on the ADOSH Safety Summit to be held in Marana on April 13 and 14, 2016. Chairman Schultz commented that he will be at the Summit and that the Commission Meeting will be on April 14th in the afternoon at the Tucson Industrial Commission Building.

Public Comment.

Chairman Schultz noted that Russell Crossan had requested the opportunity to comment. Mr. Crossan referred to Senate Bill 1500 and expressed concerns about the elimination of the Boiler Advisory Board and boiler safety. Chairman Schultz replied that SB 1500 has been amended and the bill as now written would extend the Industrial Commission and the Boiler Advisory Board through 2024 and there may be some changes, such as reducing the number of members on the Boiler Advisory Board in line with Governor Ducey's direction to agencies to reduce the size of government and reduce boards and commissions.

Chairman Schultz asked if there were any other public comments. He stated that the Commission was here, and that they want to be open and responsive to ideas and criticism. There was no other comment.

Chairman Schultz asked if there was a motion to adjourn. Vice Chair Hennelly moved to adjourn and Commissioner Orchard 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 Melinda Poppe
Melinda Poppe, Deputy Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary