

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 30, 2020 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Janine Locke	Legal Division
	Jessie Atencio	ADOSH Director
	Yvonne Borunda	Acting Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Todd Nessler, Todd Baum, Dave Buckman and Dan Shepherd (Sun Valley Masonry); Brett Barratt (NCCI); Baron Glasgow and Scot Butler (AZ Naturopathic Medical Assn.); Bianca Buono (12 News); Shanlie Blair (Snell & Wilmer).

Approval of Minutes of January 9, 2020 Regular Meeting Minutes.

Commission Krenzel moved to approve the Minutes of the January 9, 2020 regular session meeting and Commission LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

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. 2CLP19/20-0110 ESSI Builders LLC dba Sprinkler Doctors \$1000
 2. 2CRP19/20-0030 Cal-Pro Roofing LLC \$1000
 3. 2CSP19/20/0098 H B Automotive Services LLC \$1000

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. City of Surprise

2. Medtronic, Inc.

Mr. Testini advised that H B Automotive Services LLC retained insurance.

Commissioner LeMarr moved to approve the items on the Consent Agenda as amended with the removal of HB Automotive Services LLC and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and Action regarding Establishment of Discount Rate for Calculating Lump Sum Commutations under A.A.C. R20-5-121(B).

Ms. Simpson discussed lump sum commutations and the process for updating the discount rate to be used in calculating the present value of an award under A.A.C. R20-5-121 and R20-5-122. Staff recommended setting the discount rate at 1.18% for calculating fixed period and permanent lump sum commutations, effective immediately, which is slightly more than prior years, using the 2003 Life Tables.

Commissioner Krenznel moved to approve staff recommendation to use a 1.18% discount rate in the calculation for lump sum commutations under A.A.C. R20-5-121 and R20-5-122, effective immediately. Commission LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Safety Committee Update and Topic Discussion.

The weekly and safety huddle boards were outlined.

Ms. Locke provided information on the weekly safety huddle meeting and safety huddle boards for the divisions. Ms. Locke described what kind of information is on the huddle boards.

Chairman Schultz explained for the audience what the committee has accomplished.

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

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Pacific Avenue Growers, Inc.
2198 S. Pacific Ave
Yuma, AZ 85365

Site Location: County 12 and 5E
Yuma, AZ 85367
Inspection No: E5149 -1438928
Inspection Date: 10/18/2019

Fatality/Accident
Years in Business: 49
Empl. Covered by Inspection: 20

SERIOUS – Citation 1 - Item 1 –

- a) Citrus Field, County 12 and 5E, Yuma, AZ 85367: A workplace hazard assessment of the citrus fields had not been conducted to determine the hazards present that would require the use of proper personal protective equipment such as nets, suits, gloves, etc. A.R.S. 23-403.A Div. Proposal - \$4,000.00 Formula Amt. - \$4,000.00

NON-SERIOUS – Citation 2 - Item 1 –

- a) Pacific Avenue Growers, Inc., 2198 S Pacific Ave, Yuma, AZ 85367: A work-related fatality was not reported to ADOSH within the required 8 hours. 29 CFR 1904.39(a)(1)
Div. Proposal - \$800.00 Formula Amt. - \$800.00
TOTAL PENALTY - \$4,800.00 TOTAL FORMULA AMT. - \$4,800.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Vice Chair Hennelly noted that the employer had knowledge of the bee issues and asked if they were slow to get the PPE on site. Mr. Atencio noted that the foreman and field manager had submitted paperwork into the company to buy PPE. No information was provided to ADOSH as to the status of the request.

Chairman Schultz and Mr. Atencio discussed abatement.

Vice Chair Hennelly moved to approve the citations and proposed penalties as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Sun Valley Masonry, Inc. 10828 N. Cave Creek Rd Phoenix, AZ 85020	Fatality/Accident Years in Business: 40 Empl. Covered by Inspection: 4
Site Location: 6860 S. Power Rd Gilbert, AZ 85295	
Inspection No: R2410 -1437702	
Inspection Date: 10/15/2019	

NON-SERIOUS – Citation 1 - Item 1 –

- a) Concrete Platform Hopper: Two employees were not trained in the correct procedure to safely unstick the paddles of a Multiquip Essick model EM120SMH11 concrete mixer. 29 CFR 1926.21(b)(2)
Div. Proposal - \$400.00 Formula Amt. - \$400.00
TOTAL PENALTY - \$400.00 TOTAL FORMULA AMT. - \$400.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Commissioner LeMarr questioned that since Sun Valley is an old and large company with a robust safety program, how was it determined that they were not trained in the correct procedure? Jessie commented that after interviews with employees it was determined there was no training provided for the procedure of clearing a stuck mixer.

Commissioner Krenzel and Mr. Atencio noted that the unit came with tires and there were no manufacturing instructions that precluded removing the tires, but it is ADOSH's belief that the stand broke.

Chairman Schultz noted there were representatives from the company in attendance. Todd Baum, President of Sun Valley commented that he knew the employee personally and at one time worked side by side with him. Mr. Baum takes pride in the safety program and makes safety a top priority. Mr. Baum visited every job site to update the safety program and explained to them how to deal with the newly presented hazard and reinforced the safety culture. A placard had been added to the mixers in English and Spanish about how to fix a clogged mixer. The safety director is continually training due to this incident.

Commissioner LeMarr, Chairman Shultz and Mr. Baum discussed if there were modifications to the equipment. Mr. Baum commented that there are welders on the job and how the mixer did not break but instead it tipped over.

Chairman Schultz commented on how safety is viewed as your typical hazards in the industry but that in a blink of an eye things can change.

Mr. Atencio commented that the company does have certified welders.

Commissioner Krenzel inquired on the postings that were placed onto the mixers, are the warnings of what could happen or the proper way of using equipment. Mr. Shepard provided a picture and written instructions that have been posted on the mixers.

Commissioner Krenzel moved to amend the citation and proposed penalty accepting Commissioner LeMarr's amendment for a 25% good faith reduction.

Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Waddell Growers, LLC dba Waddell General Partnership	Fatality/Accident	
9653 W Harrison St	Years in Business:	30
<u>Tolleson, AZ 85353</u>	Empl. Covered by Inspection:	2
Site Location:	West of Jackrabbit Trail and South of Broadway Rd Buckeye, AZ 85326	
Inspection No:	E7721 -1420690	
Inspection Date:	08/05/2019	

NON-SERIOUS – Citation 1 - Item 1 –

a) Jackrabbit Trail and Harrison St. in Buckeye, AZ 85326: A fatality of an employee was not reported within 8 hours. 29 CFR 1904.39(a)(1)

Div. Proposal - \$400.00	Formula Amt. - \$400.00
TOTAL PENALTY - \$400.00	TOTAL FORMULA AMT. - \$400.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Commissioner LeMarr, Vice Chair Hennelly and Mr. Atencio discussed the inspection date and incident date and when ADOSH was notified. Safety discussions were held daily with employees.

Chairman Schultz commented about PSA's the ICA has conducted in Yuma and suggested that Channel 12 could help get the message out.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Ball Metal Beverage Container Corp. 4455 N Cotton Lane <u>Goodyear, AZ 85395</u>	Complaint Years in Business: 140 Empl. Covered by Inspection: 41
Site Location: 4455 N Cotton Lane Goodyear, AZ 85395	
Inspection No: K6582 -1435728	
Inspection Date: 10/03/2019	

SERIOUS – Citation 1 - Item 1 –

- a) 4455 N Cotton Ln., Goodyear, AZ 85395: Employees utilized the fall protection lanyard and re-connected directly onto itself when servicing the Palletizer, BW Container Systems serial number F1844192. 29 CFR 1910.132(c)
Div. Proposal - \$2,500.00 Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 –

- a) 4455 N Cotton Ln., Goodyear, AZ 85395: Employees had restricted access to an eyewash station when setting up a forklift to re-charge due to the installed barricades in the dunnage area. 29 CFR 1910.151(c)
Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00
TOTAL PENALTY - \$4,000.00 TOTAL FORMULA AMT. - \$4,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr wanted clarification on whether tying to a particular ring that welded to the bar on the forklift would have qualified as a proper anchor point. Mr. Atencio and Commissioner Lemarr discussed the requirement for a connection point. Commissioner LeMarr wanted to know if the eye wash station obstruction had been alleviated. Mr. Atencio commented that the compliance officer had spoken to them about this, but no confirmation has been received.

Chairman Schultz asked Mr. Atencio to go over the lesser/lesser probability determination on item #2.

Chairman Schultz noted that there was no representative from the employer present.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2020. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley thanked the Commissioners for attending the VPP celebration for the agency receiving the VPP Star status as well as the Good Government award from the Governor's office.

Mr. Ashley noted a few AMS scorecard items and updates including Indemnity payments, the Special Fund division's audit goal, and the Legal division's IRE goal.

Mr. Ashley noted the ADOSH Safety Consultation visit goal is above the glide path target, and the new abatement time goal to make sure all hazards, all non-imminent, and other hazards are abated quickly and receiving abatement proof from employers is being conducted ahead of the goal.

Mr. Ashley noted that for professional development opportunities for employees, we have 106 employees who have taken professional development programs exceeding the fiscal year-to-date goal of 98.

Mr. Ashley also noted that the website refresh program just rolled out the Claims Division and the next one will be ADOSH internal pages.

Mr. Ashley discussed the plans for the February 13, 2020 outreach meeting in Flagstaff.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Schultz discussed with the Commissioners if there were conflicts for any future meetings.

Public Comment.

Ms. Buono, reporter from Channel 12, addressed the Commissioners regarding Independent Medical Examinations (IMEs). Ms. Buono asked if the Industrial Commission ensures that IMEs are independent, and questioned whether parties involved in hearings should be allowed to choose which doctor conducts an IME. Ms. Buono commented that Mr. Laky has been very helpful in answering her questions.

Chairman Schultz responded that the IMEs are not reviewed by the Commissioners and how they are conducted is outside our scope. Chairman Schultz asked Mr. Laky to work with the different departments of the agency to gather answers for Ms. Buono.

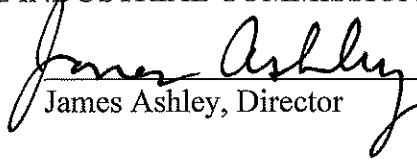
Ms. Buono asked, if it was found that there was something going on with the IMEs and that they are not truly independent would that issue be brought up to their attention?

Chairman Schultz commented that they would refer to the statutes and applicable case law.

Vice Chair Hennelly moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:19 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Yvonne Borunda, Acting Commission Secretary