

*Approved August 19, 2009*

**Occupational Health & Safety Review Commission  
MINUTES OF THE May 26, 2009 MEETING**

The meeting of the New Mexico Occupational Health & Safety Review Commission was held on May 26, 2009, starting at 9:32 A.M. at the State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, NM.

**Item #1:** Call to Order

Chair Dunphy called the meeting to order at 9:32 A.M.

**Item #2:** Roll Call

Members Present:

Mr. John Dunphy, Chair  
Mr. Martin Dominguez

Others Present:

Adrian Terry, AGO  
Sally Worthington, NMED  
Robert Genoway, NMED OHSB  
Butch Tongate, NMED OHSB  
Bill Grantham, NMED OGC  
Kathryn Becker, NMED OGC  
Jerry Dickinson, NMED OGC  
Larry Lehman, Lucky Rental Tool  
Jesus Salazar  
Duwayne Roybal, NMED OHSB  
Carol Walker, NMED OHSB  
Gerald Metter, NMED OHSB  
Ken Harrigan, Modrall Sperling Law Firm  
Juan Fernandez, NM Dream Builders  
Edmundo Tovor Ruiz  
Tim Briggs, Miller Stratfort Law Firm

**Item #3:** Approval of Agenda

**ACTION: Mr. Dominguez made a motion to approve the Agenda. Chair Dunphy seconded. Motion carried unanimously.**

**Item #4:** Approval of the September 25, 2008 Meeting Minutes

**ACTION: Mr. Dominguez made a motion to approve the minutes. Chair Dunphy seconded. Motion carried unanimously.**

**Item #5: Adoption of OHSRC Open Meetings Act 2009 Resolution**

**ACTION: Mr. Dominguez made a motion to approve Item #5 of the Agenda, Adoption of OHSRC Open Meetings Act 2009 Resolution. Chair Dunphy seconded. Motion carried unanimously.**

**Item #6 Discussion of Hearing Officer's Report and possible final decision in the matter of Lucky Rental Tool, OSHA 08-074**

**ACTION: Mr. Dominguez stated for the record that he wanted to note that he had the opportunity to read the transcript from the hearing and he made a motion to dismiss the Lucky Rental Tool Company LLC case. Motion carried unanimously.**

**Item #7 Hearing and possible decision on summary judgment motion in the matter of A.S. Horner, OSHA 08-060**

**ACTION: Each party had ten minutes for oral argument. Ken Harrigan, representing A.S. Horner and Kathryn Becker, representing OHSB made their presentations. Both parties were allowed rebuttal.**

**Mr. Dominguez made a motion to go into Executive Session pursuant to Section 10-15-1(H)(3) NMSA 1978 of the Open Meetings Act to discuss the motion for summary judgment in the matter of NMED v. A.S. Horner, OSHA 08-060. The motion carried unanimously.**

**The Commission came out of Executive Session. Mr. Dominguez certified that the only matters discussed were those involving NMED v. A.S. Horner, OSHA 08-060, pursuant to Section 10-15-1(H)(3), NMSA 1978 of the Open Meetings Act.**

**ACTION: Mr. Dominguez made a motion to grant the Summary Judgment Motion as filed by A.S. Horner. The motion carried unanimously. Mr. Harrigan will prepare the Order and submit to Adrian Terry for review and then Chair Dunphy will sign and issue.**

**Item #8 Discussion of scheduling of hearing date in the matter of NM Dream Builders, OSHA 08-033**

**ACTION: Bill Grantham, representing OHSB, requested that the hearing be set no earlier than the week of July 13<sup>th</sup> at the Commission's convenience. Juan Fernandez, the owner of Northern New Mexico Dream Builders, was in agreement and wants to schedule a hearing. The hearing clerk will set a hearing after getting together with the Commission and counsel after July 13<sup>th</sup>.**

Item #9 Evidentiary hearing and possible decision in the matter of NMED v. United Drilling, Inc., OSHA 08-024

**ACTION:** Chair Dunphy stated that early in the morning the Commission received a joint motion to continue the evidentiary hearing on the merits for New Mexico Occupational Safety and Health Bureau against United Drilling, Inc., OSHA case number 08-24 and that he would grant that motion. We will find out when all the parties can attend and have the hearing at that time.

Item #10 Other Business

**ACTION:** Mr. Dominguez made a motion to accept the Hearing Officer's Report in the matter of Lucky Rental Tool, OSHA 08-074. The motion carried unanimously.

Item #11 Next Meeting

**ACTION:** The next meeting will be subject to the availability of all the parties involved and the Administrator will coordinate that.

Item #12 Adjournment

**ACTION:** Mr. Dominguez made a motion to adjourn. Chair Dunphy seconded the motion. Motion carried unanimously.

The meeting adjourned at 10:25 A.M.

  
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John Dunphy, OHSRC Chair