

Approved February 27, 2008

**Occupational Health & Safety Review Commission
MINUTES OF THE November 15, 2006 MEETING**

The meeting of the New Mexico Occupational Health & Safety Review Commission was held on November 15, 2006, starting at 8:40 A.M. at the New Mexico Regulation & Licensing Department, 2550 Cerrillos Road, Room 2, Santa Fe, NM.

Item #1: Call to Order

Chair Dunphy called the meeting to order at 8:40 A.M.

Item #2: Roll Call

Members Present:

Mr. John Dunphy, Chair
Mr. Filo Sedillo
Mr. Martin Dominguez

Others Present:

Corliss Thalley, AGO
Sally Worthington, NMED
Kathryn Becker, OGC, NMED
Jerry Dickinson, OGC, NMED
Robert Genoway, NMED OHSB
Butch Tongate, NMED OHSB
Ken Barnett, K. Barnett & Son, Clovis NM
Kameron Barnett, K. Barnett & Son, Clovis NM
Jackie Freeman, K. Barnett & Son, Clovis NM
Julie Pace, Ogletree Deakins, Nash, Smoak & Stewart, P.C.
David Selden, Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (telephonically)
Denise Kopan, Kathy Townsend Court Reporters

Item #3: Approval of Agenda

ACTION: Mr. Sedillo made a motion to approve the Agenda as presented. Mr. Dominguez seconded. Motion carried unanimously.

Item #4 In the matter of NMED v. K. Barnett and Son, Inc., OSHA 05-066; pending motions:

- (a) **Respondent's Motion to Dismiss Citation and to Disqualify New Mexico Attorney General's Office From Serving As Counsel to the Commission in This Matter**

- (b) Respondent's Motion to Dismiss Due to Inapplicability of the Cited Standard
- (c) Respondent's Motion to Strike Complainant's Brief Regarding Jurisdiction

ACTION: Chair Dunphy requested a motion to change Item #4 in the agenda. Letter (a) under item #4 will remain the same. Letter (c) will become (b), letter (b) will become (c) and (d) would be added as Motion in Limine. Mr. Sedillo moved the changes and Mr. Dominguez seconded. The motion carried unanimously.

Motion (a): Respondent's Motion to Dismiss Citation and to Disqualify New Mexico Attorney General's Office From Serving As Counsel to the Commission In This Matter.

ACTION: Mr. Dominguez made a motion to go into executive session to discuss the motion (a) and Mr. Sedillo seconded. The motion carried unanimously. After returning from executive session, Mr. Dominguez made a motion to reject the motion to disqualify the AG's office from serving as counsel to the commission in this matter and Mr. Sedillo seconded. The motion carried unanimously.

Motion (b): Respondent's Motion to Strike Complainant's Brief Regarding Jurisdiction.

ACTION: Mr. Dominguez made a motion to go into executive session to discuss the motion (b) and Mr. Sedillo asked a question. After discussion, Mr. Dominguez amended his motion to go into executive session to discuss the motion (b) and motion (d), Respondent's Motion in Limine. Mr. Sedillo seconded the motion. The motion carried unanimously. After returning from executive session, Mr. Sedillo made a motion to deny the respondent's motion to strike complainant's brief regarding jurisdiction. Mr. Dominguez seconded the motion. The motion carried unanimously. Mr. Sedillo made a motion to deny (d), the motion in limine. Mr. Dominguez seconded. The motion carried unanimously.

Motion (c): Respondent's Motion to Dismiss Due to Inapplicability of the Cited Standard.

ACTION: Chair Dunphy stated that the commission will issue a written ruling at a later time.

Item #5 Evidentiary hearing continuation and possible decision in the matter of NMED v. K. Barnett and Son, Inc., OSHA 05-066.

The evidentiary hearing in this matter concluded at 7:04 P.M.

Item #6 Other Business

None at this time.

Item #7 Next Meeting

To be announced at a later time.

Item #8 Adjournment

The meeting adjourned at 7:04 P.M.



John Dunphy, OSHA Chair