

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Wednesday, January 29, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Chris Brandon	Compliance Officer
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, Commission lobbyist; Matthew D. Saxe, PLC; Ben Goldstein of Arizona Trial Lawyers; and Andrea Lewis of Snell and Wilmer.

Discussion &/or Action regarding Legislation

Scot Butler presented a summary of proposed legislation of interest to the Commission including SB 2040, HB 2455 and HB 1181 and responded to questions from the Commissioners. The Commission unanimously voted to oppose HB 1181 as introduced on motion of Ms. Oster, second of Ms. Strickler.

Approval of Minutes of January 9 and January 22, 2014 Meetings

The Commission unanimously approved the Minutes of January 22, 2014 on motion of Ms. Strickler, second of Ms. Oster.

Mr. Sanders made a motion to approve the Minutes of January 9, 2014 as amended. He withdrew the motion for discussion. Mr. Sanders explained the reason for his amendments. Ms. Strickler and Ms. Oster explained that they were uncomfortable with Mr. Sander's amendments because they reviewed the video of the recent seminar referred to by Mr. Sanders, and the statement Mr. Sanders states that he heard was not made by an ICA administrative law judge. Following further discussion, the Commission unanimously approved the original draft Minutes on motion of Mr. Sanders, second of Ms. Strickler.

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. 2C12/13-2088 Alliance Protection, Inc.
2. 2C13/14-0056 Ammon M. Sprau II, a single man, dba  
AZ Spa Repair
3. 2C13/14-0941 Black Toad Enterprises, LLC dba  
Big O Tires
4. 2C13/14-0179 Desert Garden Assisted Living, Inc.
5. 2C12/13-0300 GG Express Trucking LLC
6. 2C12/13-1998 Cary Schweitzer, a single man, dba  
Canyons End Motel & Restaurant
7. 2C12/13-0648 Karla Martin, a single woman, dba  
Desert Sun Mobile Drug & Alcohol Testing
8. 2C13/14-0028 Kid's Playland & Preschool, Inc.
9. 2C12/13-0321 MV Builder LLC
10. 2C13/14-0455 Mitch Distributing, LLC
11. 2C13/14-0620 Power and Physique Systems, LLC
12. 2C12/13-1922 Secreto LLC dba Secreto Cantina
13. 2C12/13-2080 Tenant Land Management, Inc.

Chairman Parker stated that agenda items a (1), (6), (12), and (13) would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Oster, second of Mr. Sanders.

Andrew Wade advised that with regard to items a (1) Alliance Protection, Inc.; a (6) Cary Schweitzer, a single man, dba Canyons End Motel & Restaurant; a (12) Secreto LLC dba Secreto Cantina; and a (13) Tenant Land Management, Inc., the employers have obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 be assessed against each of these four employers. The Commission unanimously assessed the recommended penalty of \$500.00 against employers a (1), (6), (12), and (13) on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of OSHA Proposed Citations & Penalties

Chapman Ford, L.L.C.  
7100 E. McDowell Rd.  
Scottsdale, AZ 85257

Complaint  
Yrs/Business – 2  
Empl. Cov. by Insp. – 105

Site Location: 7100 E. McDowell Rd., Scottsdale, AZ 85257

Inspection #: J7272-317322915

Insp. Date: 09/18/2013

SERIOUS – Citation 1 - Item 1

a) – Quick Lane Service Line: A Rotary automotive lift, model SPO12N510, serial number BVR07H0009, was not removed from service when the lift's safety latch system was not operating properly and self-closing lift controls were overridden. (23-403.A).

b) – Quick Lane Service Line: Employees had not been provided training on how to safely operate, maintain and inspect automotive lifts prior to employees using the vehicle lift, in order to recognize and avoid unsafe conditions such as malfunctioning parts and inoperable safety devices (23-403-A).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

Bill Warren stated this file had been presented to the Commission previously at which time it was tabled for review for a possible willful classification. Mr. Warren summarized the citations and proposed penalty as listed. Mr. Sanders stated that the legal analysis was very helpful. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,000.00 on motion of Mr. Sanders, second of Ms. Oster. Mr. Parker stated he was still struggling with the fact that the employer continued to use the lift and did not take it out of service.

El Tortillero LLC dba Alejandro's Tortilla Factory  
5330 S. 12<sup>th</sup> Avenue  
Tucson, AZ 85706

Complaint  
Yrs/Business – 32  
Empl. Cov. by Insp. – 30

Site Location: 5330 S. 12<sup>th</sup> Avenue, Tucson, AZ 85706

Inspection #: T3633-317464758

Insp. Date: 12/13/2013

SERIOUS – Citation 1 - Item 1 – Employees repaired equipment including exhaust fans and tortilla producing equipment, and the employer had not established lockout/tagout procedures and trained employees to ensure that the equipment would be isolated and rendered inoperative prior to the start of work. (1910.147(c)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 -

a) Tortilla line #1: A panel guard on the front end of the oven was removed, so that vertical drive belts were not enclosed and pulleys fully guarded. (1910.219(d)(1) & (e)(3)(i)).

b) Flour tortilla prep area: Dough cutter #1 had an access panel on the lower section of the machine removed, so that gears were not completely enclosed. (1910.219(f)(1)).

c) Tortilla line #3: The guard on the side of the tortilla roller was removed, so that sprocket wheels and chains were not enclosed. (1910.219(f)(3)). There was one other instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Tortilla production area: The roof-mounted exhaust fan ducted to the two hoods over the two middle tortilla ovens was not operating. (1910.1000(e)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Bill Warren summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. Sanders, second of Ms. Oster.

Speedy Gonzalez Construction, Inc.  
6735 W. Frier Dr.  
Glendale, AZ 85303

Referral  
Yrs/Business - 13  
Empl. Cov. by Insp. - 4

Site Location: W. Elliot Road and Cambridge Street, Gilbert, AZ 85233  
Inspection #: Q6169-317365047  
Insp. Date: 10/18/2013

REPEAT SERIOUS - Citation 1 - Item 1 - Northwest corner of W. Elliot Rd and Cambridge St.: One employee was working in an excavation which was approximately 9' deep, 5' wide and 5' long without a safe means of egress installed or other equivalent means provided (i.e., ladder, ramp). (1926.651(c)(2)).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS - Citation 2 - Item 1 - Northwest corner of W. Elliot Rd and Cambridge St.: The employer did not train one employee on the hazards associated with excavation work. (1926.21(b)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS - Citation 2 - Item 2 - Northwest corner of W. Elliot Rd and Cambridge St.: One employee was working in a 9' 6" deep excavation that was approximately 2' to 5' wide at the top and bottom and 5' in length which did not have the spoil pile two feet back from the edge of the excavation. (1926.651(j)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$8,000.00

TOTAL FORMULA AMT. - \$8,000.00

Bill Warren stated this file had been presented to the Commission previously at which time it was tabled for additional review for a possible willful classification and whether there should also be a citation for the trench not being properly shored. He advised staff has reviewed the file and the repeat serious classification is being recommended. With regard to a possible citation for the trench not being properly shored, he explained the circumstances and why he was not recommending a citation related to the shoring. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,000.00 on motion of Ms. Oster, second of Ms. Strickler.

Staker & Parson Companies Inc.  
2350 S. 1900  
West Ogden, UT 84401

Referral  
Yrs/Business - 5  
Empl. Cov. by Insp. - 4

Site Location: 5400 W. Massingale Rd., Tucson, AZ 85743  
Inspection #: L8491-317402782  
Insp. Date: 10/29/2013

SERIOUS - Citation 1 - Item 1 - Ina Road Plant: Employees were not trained in the proper use and limitations of fall protection equipment. (1910.132(f)(1)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS - Citation 1 - Item 2 - Ina Road facility: An eyewash station installed next to a bulk container for corrosive concrete remover, Bio-Shine, was not operational. (1910.151(c)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

TOTAL PENALTY - \$3,600.00

TOTAL FORMULA AMT. - \$3,600.00

Bill Warren summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,600.00 on motion of Mr. Sanders, second of Ms. Strickler.

Announcements and Scheduling of Future Meetings

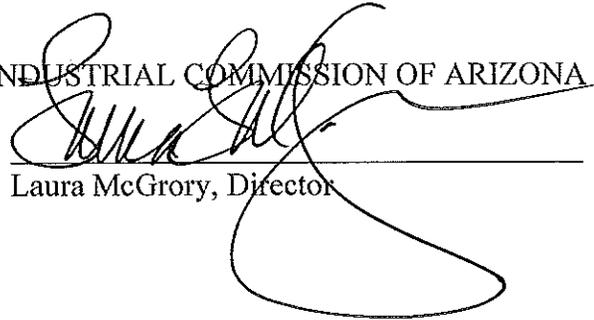
Ms. McGrory stated that Chairman Parker had his confirmation hearing this morning and congratulated him on a unanimous approval vote. Mr. Parker stated that he gave a brief presentation and spoke of the importance of the Industrial Commission.

Tentative dates for meetings in February and March were reviewed. Mr. Sanders offered to make Thursday the primary meeting date by changing his schedule. The tentative meeting scheduled for March 5 was changed to March 6. Secretary Hilton reminded the Commissioners that the next meeting is scheduled for February 12, 2014.

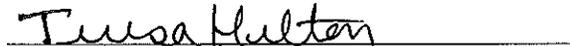
There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:15 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura McGrory, Director

ATTEST:

  
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Teresa Hilton, Commission Secretary