

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, April 9, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair (telephonic)
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Steven Black	ADOSH Compliance Officer
	Brandon Stowell	ADOSH Compliance Officer
	Stephanie Caler	ADOSH Compliance Officer
	Kathleen McLeod	Claims Manager
	Jacqueline Kurth	Claims Dept.
	Melinda Poppe	Chief Administrative Law Judge
	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; Jeff Homer of General Dynamics; Stephanie Coulter of The Cavanagh Law Firm; and Jason Weber of Snell and Wilmer.

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. 2C13/14-1650 Ammon M. Sprau II, ASM & Jennifer Melvin, ASW, dba AZ Spa Repair
2. 2C11/12-0462 Carlos Express Mufflers, LLC dba America Mufflers
3. 2C13/14-1482 David Van Horn & Marlene Van Horn, H/W, dba The Gun Shop
4. 2C11/12-1401 GJA Automotive Services, LLC dba Pete Kelley's Automotive
5. 2C13/14-1487 Lexmos, Inc. dba Phoenix Metal Finishing and Polishing

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| 6. | 2C13/14-0406 | Put Back Construction, Inc. |
| 7. | 2C11/12-2422 | Steps-Serving The Exceptional Populations, LLC |
| 8. | 2C13/14-0711 | Sun Valley Desert Services, LLC |
| 9. | 2C13/14-0124 | Team Verdone, LLC |
| 10. | 2C13/14-0715 | Thompson Peek Senior Care Home, LLC |
| 11. | 2C13/14-1115 | Yuma's Personal Touch Landscaping, L.L.C. |

Chairman Parker stated that agenda item a (2) would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of ADOSH Discrimination Complaints

#14-3633-06 Juan Jose Dominguez v. Southwest Environmental, Inc. dba Southwest Environmental Testing - Bill Warren and Steve Black presented a summary of Mr. Dominguez's complaint, the employer's response, and the Division's investigation of the matter and responded to questions from the Commissioners. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of protected activity and the adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Ms. Strickler.

#14-3633-11 Darrell Wayne Wright v. New SWVMG, L.L.C. dba Southern Arizona Veterinary Specialty and Emergency Center - Bill Warren and Steve Black presented a summary of Mr. Wright's complaint, the employer's response, and the Division's investigation of the matter and responded to questions from the Commissioners. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of protected activity and the adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Scot Butler advised that the Legislature has approved a state budget, although there are rumors that the Governor may line item veto some items. He stated that the approved budget has no changes to the Commission's appropriation. Mr. Butler stated that the expectations are that the legislative session should be finishing by the end of April. He summarized activity on other bills of interest to the Commission. He recommended that the Commission provide the Governor's Office with a position statement regarding SB 1181 and respond to any questions the Governor's Office may have. He commented on the draft amendment to SB 1307 and explained how a conditional repeal provision would likely operate. He recommended the Commission not take any position until the amendment is in final form. He did communicate to the HomeBuilders' that the amendment appears to be a positive step.

Discussion &/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4)

b) Wet Batch area: The employer did not establish an audiometric testing program for employees that were exposed to noise levels in excess of an 8-hour time weighted average of 85 dBA. (1910.95(g)(1)).

c) Wet Batch area: The employer did not institute a training program for employees exposed to noise levels above an 8-hour time weighted average of 85 dBA. (1910.95(k)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Production floor: Employees were not wearing the provided seat belt on forklifts used within the facility. (1910.132(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Shipping, receiving and production areas: The employer did not train the employees in the safe operation of the forklifts being used in the workplace. (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – Packaging area: The employer did not have the plexi-glass guard on the front of a Dura-Pack packaging machine to prevent injury to employees at the point of operation. (1910.212(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Bill Warren and Brandon Stowell summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. Sanders, second of Ms. Oster.

America Roofing LLC

PO Box 6546

Phoenix, AZ 85009

Site Location: 4440 W. Goldmine Mountain Dr., Queen Creek, AZ 85142

Inspection #: T9350-317588002

Insp. Date: 01/21/2014

Complaint

Yrs/Business – 15

Empl. Cov. by Insp. – 2

REPEAT SERIOUS – Citation 1 - Item 1 – Two employees conducted roofing work on a residential structure roof with the eave edge at a height greater than 15' and a pitch of 4:12 without being protected by the use of any combination of personal fall protection system, catch platforms, scaffold platforms, eave barriers, roof jack systems, safety monitoring systems or parapets at least twenty-four inches high. (A.R. S. § 23-492.05(A)).

America Roofing LLC was previously cited for a violation of this occupational safety and health standard or its equivalent A.R.S. 23-492.05(a), which was contained in ADOSH inspection number F3189-316653187, citation 1, item 1, with final order date of 4/22/13 with respect to a workplace located at 3324 N. Morning Star Ct., buckeye, AZ 85326.

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 2 - Item 1 – (Lot 65): Two 8” x 14” vent holes in the roof were not guarded by either a standard railing or floor hole covers. (A.R.S. § 23-492.03(H)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 2 - Item 2 – Two employees were working at heights above 15 feet and a fall protection plan had not been implemented which reduced or eliminated fall hazards for employees engaged in residential construction. (A.R.S. § 23-492.07(A)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

Discussion & Action regarding ADOSH Citations & Penalties and Proposed Citations & Penalties involving America Roofing LLC. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation

Bill Warren stated this inspection resulted from a complaint and he provided information regarding the previous citation that forms the basis for a repeat. He stated Legal has reviewed the file and Citation 1 is being classified as a repeat serious. Mr. Wade stated that it may be appropriate to move into Executive Session to obtain legal advice and to discuss potential approaches with this matter and two other citations currently in litigation with this employer. The Commission unanimously voted to go into Executive Session on motion of Ms. Strickler, second of Mr. Sanders. Executive Session Minutes are kept separately.

Upon return to General Session, the Commission unanimously approved staff's recommendation to issue the citations and assessed the recommended penalty of \$6,000.00 on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action regarding Request for Lump Sum Commutation

Michael Hutchinson – Kathy McLeod and Jacquie Kurth presented this lump sum petition with a recommendation for approval. Ms. McLeod and Ms. Kurth explained the reasons for staff's recommendation and responded to questions from the Commissioners. Mr. Parker stated he was impressed that Mr. Hutchinson was back to work and that his business plan sounds good. Following discussion, the Commission unanimously approved the lump sum commutation on motion of Mr. Sanders, second of Ms. Oster.

Discussion and/or Action regarding the consideration of candidates, salary, and appointment of Administrative Law Judge(s). The Commission may vote to discuss this matter in executive session pursuant to A.R.S. §38-431.03(A)(1), (A)(2), and (A)(3)

Ms. McGrory stated that Melinda Poppe has spoken with the first three candidates selected by the Commission and all have declined the appointment at the salary authorized by the Commission. Ms. Poppe discussed the salary topic with the candidates, and Ms. McGrory suggested that a discussion regarding the salaries would be appropriate for Executive Session. The Commission unanimously voted to go into Executive Session on motion of Ms. Strickler, second of Ms. Oster. Executive Session Minutes are kept separately.

Upon return to General Session, the Commission unanimously agreed to offer the salary discussed in Executive Session on motion of Mr. Sanders, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

Ms. McGrory reminded the Commissioners that the annual Fee Schedule Hearing will be held next week and stated that the two comments that have been received to date have been provided in their packets.

Chairman Parker confirmed the meeting dates that have been scheduled, April 17, 23, May 7, 15 and 22, and the Commissioners agreed to also schedule meetings for June 4, 19, 26, and July 2, 17 and 24, 2014.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:36 p.m.

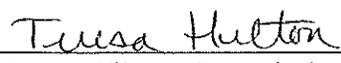
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary