

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, May 21, 2009 – 1:00 p.m.

Present:	Joe Gosiger	Vice Chairman (telephonic)
	Louis W. Lujano, Sr.	Member
	Marcia Weeks	Member
	John A. McCarthy, Jr.	Member
	Laura McGrory	Director
	Noreen Thorsen	Claims Manager
	Renee Pastor	Self Insurance Manager
	Randall Maruca	Director, Labor Dept.
	Darin Perkins	Director, ADOSH
	Glenn Hurd	Accountant
	Teresa Hilton	Commission Secretary

Commissioner Lujano convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist, Jen Jones of Snell & Wilmer, John Soza of CST Risk Management, Cesar Calvillo of R & O Construction and Dan Skeeahan of Kimley-Horn and Associates.

Approval of Minutes of May 6, 2009 Meeting

The Commission unanimously approved the Minutes of the May 6, 2009 meeting on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion & Action regarding Appointment of Physician pursuant to A.R.S. §23-901.03

John B. Sullivan, M.D. – Ms. Thorsen advised that Dr. Sullivan has been certified by the Arizona Board of Medical Examiners as required in A.R.S. §23-901.03 with regard to occupational disease evaluations and examinations. She provided copies of his Curriculum Vitae as well as confirmation of his license from the Arizona State Board of Medical Examiners. Ms. Thorsen requested that the Commission approve the appointment of Dr. Sullivan pursuant to A.R.S. §23-901.03 so that he may take part in an occupational disease consultation currently pending. Following discussion, the Commission unanimously approved the appointment on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion & Action of Requests for Renewal of Self Insurance Authorization

Pinnacle West Capital Corporation - Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit report ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability and profitability, large size with assets exceeding \$11.6 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. McCarthy, second of Mr. Gosiger.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C07/08-2174	Charles D. Essex, Jr. & Judy A. Essex Husband & Wife dba Charles Essex Racing
2C08/09-1251	Gulf Pacific Inc.
2C08/09-1795	Old School Recycling, LLC

Laura McGrory advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Ms. McGrory recommended civil penalties of \$1,000.00 be assessed against employers #2174 and 1251. Ms. McGrory further recommended a civil penalty of \$5,000.00 be assessed against employer #1795 since this is their second civil penalty. The Commission unanimously assessed the recommended penalty of \$1,000.00 against employers #2174 and 1251 and the recommended penalty of \$5,000.00 against employer #1795 on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion & Action of Proposed Youth Employment Penalty

CL 0809-0056 Piedra Fria Incorporated dba Cold Stone Creamery – Randy Maruca advised that this involved a public complaint. The Department's investigation confirmed that the 15 year old worked in excess of the hours allowed by statute. Following discussion, the Commission unanimously assessed the recommended penalty of \$200.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

Discussion & Action of Applications for New Employment Agency Licenses

Lisa Stefan on behalf of Mojo Associates, LLC  
Ginger M. Korljan on behalf of Career Direction, LLC – Mr. Maruca advised that these applicants are both career counseling services and have been investigated by the Department as required by the Revised Statutes and Rules governing Private Employment Agencies. The Employment Advisory Council has recommended approval of these licenses. Following discussion, the Commission unanimously approved the licenses and signed Resolution to that effect on motion of Mr. McCarthy, second of Mr. Gosiger.

Discussion & Action of Proposed OSHA Citations and Penalties

Palo Verde Signs, Inc.  
3302 E. Palo Verde  
Tucson, AZ 85713

Complaint  
Yrs/Business – 29  
Empl. Cov. by Insp. – 3

Site Location: 4220 E. 22<sup>nd</sup> Street, Tucson, AZ 85711-5337  
Inspection #: A9339/313088189  
Insp. Date: 03/12/09

**SERIOUS** – Citation 1, item 1 – The owner and an employee were working installing a sign from a man basket of a lift truck at a height of 13'8" above ground level without the use of a harness and lanyard to prevent a fall.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

**SERIOUS** – Citation 1, item 2 – The employer did not implement a training program for his employees that were exposed to fall hazards.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Remos Construction, LLC  
375 S. 4<sup>th</sup> Street  
Globe, AZ 85501

Complaint  
Yrs/Business – 15  
Empl. Cov. by Insp. – 4

Site Location: 1441 N. Broad Street, Globe, AZ 85501  
Inspection #: Y5457/313088478  
Insp. Date: 03/18/09

SERIOUS – Citation 1, item 1 – The employer did not ensure that all reinforcing steel (rebar) was adequately capped or covered to prevent the possibility of impalement.  
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The prime contractor did not ensure that four employees working on an elevated surface 25' above the lower level were protected from falling by the use of a fall protection system.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

Arizona Grain Inc.  
601 E. Main Avenue  
Casa Grande, AZ 85222

Accident  
Yrs/Business – 36  
Empl. Cov. by Insp. – 10

Site Location: 38501 W. Cowtown Road, Maricopa, AZ 85239  
Inspection #: J9925/312881337  
Insp. Date: 12/29/08

SERIOUS – Citation 1, item 1 – The double casing elevator legs and head section were not repaired/constructed in a manner that would minimize the effect of a fire or explosion.  
(One inspection in the past three years with 4 nonserious violations).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1, item 2 – A maintenance employee performed welding on a bucket elevator which contained or had the potential to contain an explosive atmosphere.

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 3 – A maintenance employee performed welding on the bucket elevator conveyor system without suitably protecting the system to prevent sparks from travelling to combustible dusts.

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 4 – The employer did not have a written housekeeping program that established the frequency and methods best to reduce accumulations of fugitive grain dust.

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 5 – There were grain dust accumulations greater than 1/8 inch on the ledges in the truck load/unload area.

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 6 – Two pedestal fans located in the truck load/unload area were not rated as at least Class II Division II for the combustible dust potential in that area.

Div. Proposal - \$ 1,250.00  
TOTAL DIV. PROP. - \$23,750.00

Formula Amt. - \$ 1,250.00  
TOTAL FORMULA AMT - \$23,750.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$23,750.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Contractors' Abatement Services Inc.  
600 W. Grant Street  
Phoenix, AZ 85003

Unprogram Related  
Yrs/Business – 23  
Empl. Cov. by Insp. – 11

Site Location: 800 E. Southern Avenue, Tempe, AZ 85282  
Inspection #: Q8339/313125627  
Insp. Date: 03/18/09

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness or injury.

Citation 1, item 1a – Two power strips listed for indoor use only and not for wet areas were found connected one to another for use in construction activities not as intended by the manufacturer.

Citation 1, item 1b - Extension cords were unidentifiable as to durability and rating for the extent in which they were in use.

Citation 1, item 1c - Flex cords tied together and laying on the ground had the jackets pulled away from the plug head at either end including at the equipment end. There was another instance of this violation.

Citation 1, item 1d - The temporary flood light used to illuminate the asbestos work area under wet methods was defective and duct taped together.

Citation 1, item 1e - Temporary lighting was used in the mezzanine during asbestos removal with wet methods and was not weatherproof.

Citation 1, item 1f - Employees were removing asbestos containing drywall utilizing wet methods with plastic sheeting on the floor. Employees were using temporary lighting and power tools while working on metal ladders which were standing in puddles of water.

(Two inspections in the past three years with one serious violation).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – The employer did not ensure that during the course of demolition, the asbestos containing drywall did not accumulate on the working/walking surfaces of the scaffold.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 3 – Employees working on the mezzanine at a height of 12' and greater above a lower level were dumping debris through an opening in the wall and were not protected from a fall.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 4 – The abatement contractor removed protective bars beneath the skylights in the mezzanine mechanical room.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 5 – Beverage containers were located inside the regulated area where employees were removing asbestos containing drywall. There was another instance of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 6 – No daily monitoring was conducted to identify the air borne asbestos exposures.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 7 – Employees were removing asbestos-containing drywall waste and dropping the material to the ground faster than the employees could clean up.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 8 – Employees were removing asbestos containing floor and mastic with hand tools and dry sweeping the debris. The floor tile debris was disposed of with the regulated materials.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness or injury.

Citation 1, item 9a – Employees were utilizing a pressure washer and a hydro blast water spray system to remove friable asbestos insulating material from support columns without sufficient training.

Citation 1, item 9b – Employees were utilizing a hydro blast water spray system to remove friable asbestos. Water was leaking out of the containment and employees did not provide a secondary containment to capture spray water from the TSI removal.

Citation 1, item 9c – Employees were combining the hydro blasted TSI friable asbestos with the bulk drywall for disposal in waste bins. Asbestos debris was containerized in one large waste bin with a plastic liner. Waste was mixed with general construction debris capable of cutting the plastic liner.

Div. Proposal - \$ 1,500.00

Formula Amt. - \$ 1,500.00

TOTAL DIV. PROP. - \$13,500.00

TOTAL FORMULA AMT - \$13,500.00

Darin Perkins summarized the citations and proposed penalty as listed. He advised that this file and the next two are related and involve a renovation project and asbestos. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$13,500.00 on motion of Mr. McCarthy, second of Mr. Gosiger.

Consolidated Demolition Inc.  
P.O. Box 1418  
Tolleson, AZ 85353

Unprogram Related  
Yrs/Business – 1  
Empl. Cov. by Insp. – 13

Site Location: 800 E. Southern Avenue, Tempe, AZ 85282  
Inspection #: Q8339/313125619

Insp. Date: 03/18/09

SERIOUS – Citation 1, item 1 – The employer did not keep the work site free from salvage lumber with protruding nails. Stacked plywood and scrap lumber exposed employees working in the passageways and vicinity to protruding nail hazards. There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The employer failed to conduct a Negative Exposure Assessment to determine if the activities related to carpet removal exposed employees to airborne asbestos hazards.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Ninyo & Moore, Geotechnical Consultants Inc.  
3001 S. 35<sup>th</sup> Street, Suite 6  
Phoenix, AZ 85034

Unprogram Related  
Yrs/Business – 20  
Empl. Cov. by Insp. – 1

Site Location: 800 E. Southern Avenue, Tempe, AZ 85282

Inspection #: Q8339/313125635

Insp. Date: 03/18/09

SERIOUS – Citation 1, item 1 – Employees acting as the competent person and trained in the asbestos standards failed to conduct negative exposure assessments.

(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,750.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

R & O Construction Company  
933 Wall Avenue  
Ogden, UT 84404

Referral  
Yrs/Business – 29  
Empl. Cov. by Insp. – 1

Site Location: 800 E. Southern Avenue, Tempe, AZ 85282

Inspection #: Q8339/313125601

Insp. Date: 03/18/09

SERIOUS – Citation 1, item 1 – The employer did not exercise general supervisory authority to ascertain whether the asbestos contractor was in compliance with the standards.

(One inspection with one serious and one nonserious violation in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and increased the penalty to the gravity-based penalty of \$2,500.00 on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Lujano stated that the employer had been in business for 29 years and had overall responsibility as the general contractor. Mrs. Weeks stated that she believed that the consultants also had more responsibility for the violations. Ms.

McGrory asked if the general contractor should be cited for the same violations as the subcontractors under the multi-employer worksite doctrine. Mr. Perkins responded no and explained why ADOSH was proposing one citation.

Stinger Welding, Inc.  
P. O. Box 280  
Coolidge, AZ 85228

Complaint  
Yrs/Business – 13  
Empl. Cov. by Insp. – 130

Site Location: 4248 N. Highway 87, Coolidge, AZ 85228  
Inspection #: T3633/313160343  
Insp. Date: 04/15/09

SERIOUS – Citation 1, item 1 – Employees were not protected from being crushed between the moving carriage of the burn table machine and the steel columns of the protective structure located along the west side of the machine.

(One inspection with one serious and one nonserious violation in the past three years, deleted at informal conference).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,750.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Valley Pallet, Inc.  
3252 E. Gila Ridge Road  
Yuma, AZ 85364

Planned  
Yrs/Business – 5  
Empl. Cov. by Insp. – 35

Site Location: 3251 E. Gila Ridge Road, Yuma, AZ 85364  
Inspection #: N5645/313125668  
Insp. Date: 03/16/09

SERIOUS – Citation 1, item 1 – An employee operating a pneumatic nail gun had an eight-hour time-weighted average sound level exposure of 97.0dBA, and the employer had not instituted a hearing conservation program. There were two other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion and inspection of photos of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,250.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Pinnacle Millwork Inc.  
4055 W. Fairmont Avenue  
Phoenix, AZ 85019

Complaint  
Yrs/Business – 5  
Empl. Cov. by Insp. – 5

Site Location: 4055 W. Fairmont Avenue, Phoenix, AZ 85019  
Inspection #: Y5457/313160160  
Insp. Date: 04/07/09

SERIOUS – Citation 1, item 1 – An edge sander did not have an on/off switch installed that would prevent automatic restart upon restoration of power after power failure. There were two other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from

accident.

Citation 1, item 2a – A table saw was lacking a hood guard. There were two other instances of this violation

Citation 1, item 2b - A table saw was lacking a spreader to prevent material from being thrown back onto the operator. There were two other instances of this violation.

Citation 1, item 2c - A table saw was lacking non-kickback fingers or dogs. There were two other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – A shaper was lacking a guard to prevent accidental contact with the rotating parts. There were two other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – An edge sander was lacking a guard at each nip point where the sanding belt ran onto a pulley to prevent the operator's hands or fingers from coming into contact with the nip points.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – Approximately 300' of schedule 40 PVC was used for the transportation of compressed air at various pressures.

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL DIV. PROP. - \$3,150.00

TOTAL FORMULA AMT - \$3,150.00

Darin Perkins summarized the citations and proposed penalty as listed. Following discussion and inspection of photos of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,150.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

#### Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated there was nothing new to report.

#### Discussion &/or Action regarding Legislation

Scot Butler discussed the Senate and House Appropriations Committees' proposed budgets with respect to the agency and responded to questions from the Commissioners. He described his and Ms. McGrory's continued discussions with the OSPB and the Governor's staff.

Mr. Butler also gave an update on legislation and advised that the Senate is continuing to concentrate on the budget and has no bills assigned. HB2146 passed out of the Banking & Insurance Committee and the House. Two other bills are still active, HB2198 and HB2422. Mr. Butler and Ms. McGrory explained the amendments and proposed changes to the bills. With regard to 2198, he recommended that staff get a draft that incorporates all of the proposed changes before reevaluating whether the Commission would take a neutral position on the bill.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body



regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Ms. McGrory updated the Commissioners on the status of the amicus brief.

Announcements

Ms. McGrory stated that David Parkers' confirmation hearing was held this week and should be voted on by the full Senate in the next couple of weeks.

Ms. McGrory reminded the Commissioners that the next meeting will be held on Thursday, May 28, 2009 in the Commission's Auditorium and will begin with the Physicians' and Pharmaceutical Fee Schedule hearing. She offered to provide an analysis of the proposed fee changes

Ms. McGrory stated that the Commissioners have been invited to the VPP ceremony for Fluor Co. to be held in Tucson on May 27<sup>th</sup>.

The Commissioners scheduled future meetings on Wednesday, June 10<sup>th</sup>, Wednesday, June 17<sup>th</sup>, and Thursday, June 25<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Commissioner Lujano adjourned the meeting at 2:35 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Thomas C. Duff* signed in error  
Chairman

By \_\_\_\_\_  
Vice Chairman

By *Luis W. Lujano, Sr.*  
Member

ATTEST:

By *Barbara Duff*  
Member

*Teresa Hilton*  
Commission Secretary

By *John Mc Coy*  
Member