

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, August 5, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Manager, Self Insurance
	Randall Maruca	Director, Labor Department
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Financial Officer
	Jeri McAnerny	Tax Accountant
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Vice Chairman Weeks was not able to attend. Also in attendance was Jen Jones of Snell & Wilmer.

Approval of Minutes of July 29, 2009 Meeting

The Commission unanimously approved the Minutes of the July 29, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy.

Chairman Delfs explained that the order of agenda items has been changed to have the proposed OSHA penalties considered earlier in the meeting since many times there are interested parties that are here for those discussions.

Discussion & Action of Proposed OSHA Citations and Penalties

Sun West Builders, Inc.
916 E. Baseline Road, Suite 134
Mesa, AZ 85204

Unprogram Related
Yrs/Business – 10
Empl. Cov. by Insp. – 7

Site Location: 2625 S. 19th Avenue, Phoenix, AZ 85009
Inspection #: A7717/313573115
Insp. Date: 06/02/09

SERIOUS – Citation 1, item 1 – Two employees were working on a roof top 19'8" above the ground level without an adequate fall protection system installed to prevent a fall. (1926.501(b)(13))

(One inspection with two serious violations in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

Darin Perkins summarized the citation and proposed penalty as listed. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Mr. Lujano commented that there was a difference in the proposed penalty amount between this employer's fall protection violation and the proposed penalty amount for the next employer for a fall protection violation. Mr. Perkins explained that the gravity-based penalties were the same, but that due to adjustment factors for size and history, the proposed penalties were different. He explained the adjustment factors and responded to additional questions from Mr. Lujano.

Wellborn & Sons Construction, Inc.
P.O. Box 3245
Cottonwood, AZ 86326

Planned -
Yrs/Business - 8
Empl. Cov. by Insp. - 6

Site Location: 7401 E. Civic Circle, Prescott Valley, AZ 86314
Inspection #: S2603/313587479
Insp. Date: 06/18/09

SERIOUS - Citation 1, item 1 - Two employees were working in an aerial lift approximately 25' above ground level without utilizing a full body harness and lanyard attached to the boom basket. 1926.453(b)(2)(v)

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - Employees were not trained in the recognition of hazards associated with working from an aerial lift. (1926.454(a))

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 photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. Parker, second of Mr. Lujano.

West Coast Iron and Erection, Inc.
5511 E. Broadway
Spokane Valley, WA 99212

Planned
Yrs/Business - 5
Empl. Cov. by Insp. - 2

Site Location: Stockton Hill Road & Airway Avenue, Kingman, AZ 86401
Insp. #: Y5457/313532053
Insp. Date: 05/20/09

SERIOUS - Citation 1, item 1 - Two employees were working 20' above the ground without utilizing a fall protection system. (1926.760(a)(1))

(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 photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,250.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Mr. Parker noted that all three of the prior case files related to fall protection and wondered if a press release or story to the media should be issued by the agency. Mr. Perkins explained ADOSH's fall protection emphasis program and the efforts by ADOSH to address fall protection. Mr. Parker stated that he would be interested in having further discussion and looking into the educational opportunities the agency could be involved in. Chairman Delfs agreed and suggested that when the next annual report is prepared a press release with the number of violations relating to fall protection and to other areas of violation could be sent out. Director McGrory stated that fall protection is an issue that has and will continue to be addressed. She described upcoming efforts to organize employer and labor work groups to

address safety issues, which would include fall protection. Mr. Lujano expressed an interest in seeing the agency approach its' responsibilities in a consistent manner, which would include trench safety. Mr. Delfs agreed that these are all good points and the agency should look into what more can be done.

Green-Tech Assets, LLC
2250 W. Broadway Road, #109
Mesa, AZ 85202

Complaint
Yrs/Business – 9
Empl. Cov. by Insp. – 10

Site Location: 2250 W. Broadway Road, #109, Mesa, AZ 85202
Inspection #: S2603/313344475
Insp. Date: 05/07/09

SERIOUS – Citation 1, item 1 – Employees were operating a forklift without formal training and certification. (1910.178(1)(L)(i))
(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 photographs 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 Mr. Lujano.

Professional Medical Transport, Inc.
dba PMT Ambulance
7432 E. Camelback Road
Scottsdale, AZ 85251

Complaint
Yrs/Business – 4
Empl. Cov. by Insp. – 6

Site Location: 7432 E. Camelback Road, Scottsdale, AZ 85251
Inspection #: U9805/313595084
Insp. Date: 07/13/09

SERIOUS – Citation 1, item 1 – The employer failed to clean, launder or dispose of employee's required uniforms used as personal protective equipment. (1910.1030(d)(3)(iv))
(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

Darin Perkins stated that he is holding consideration of this file for clarification of issues.

Santa Cruz County, Tubac
Maintenance Shop & Yard
2150 N. Congress Drive
Nogales, AZ 85621

Planned
Yrs/Business – 110
Empl. Cov. by Insp. – 9

Site Location: 50 Bridge Road, Tubac, AZ 85646
Inspection #: P0775/313531931
Insp. Date: 05/18/09

SERIOUS – Citation 1, item 1 – The employer had a portable air compressor that did not have the drive belt fully enclosed and the pulleys guarded. (1910.219(d)(1))
(No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

Darin Perkins summarized the citation and proposed penalty as listed. In response to a question from Mr. Parker regarding the adjustment factor for good faith, Mr. Perkins advised that the Compliance Officer, in this particular case, considered the 15% reduction appropriate because the employer immediately removed the equipment from service and the County has an adequate overall safety and health program. Following discussion and inspection of photographs

of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,500.00 on motion of Mr. Lujano, second of Mr. Parker.

Discussion & Action of Request for Renewal of Self Insurance Authority

Chevron U.S.A., Inc. – Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit report ratings. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the excellent financial strength of the parent company, Chevron Corporation, with total worldwide assets now standing at \$161.2 billion, the receipt of a clean audit report and acceptable credit ratings. Following discussion, the Commission approved renewal of self-insurance authority and signed a Resolution to that effect on motion of Mr. Parker, second of Mr. McCarthy. Citing personal reasons, Mr. Lujano recused himself and did not participate in the discussion or action

Discussion & Action of Proposed Youth Employment Penalties

CL 0809-0062 New Frontier Natural Foods V, Inc. dba New Frontier Natural Marketplace – Randall Maruca advised that this involved a 15 year old youth whose neck became stiff and strained as a result of moving stock in and out of a store freezer and storage area. The Division proposed penalty was for \$1,000.00 for hours violations and prohibited employment (working in connection with warehousing). Mr. Maruca summarized the statute that prohibits youth from working in connection with warehousing and the statutory definition of warehousing. He also explained the Labor Department's position on whether this youth's employment would be considered warehousing. He provided photographs of the work areas in question. Mr. Maruca responded to questions from the Commissioners and explained that the proposed penalty included \$200.00 for the hours violation, \$300.00 for the prohibited employment violation, and \$500.00 for the injury, for a total of \$1,000.00. Following further discussion on the nature and scope of "warehousing", the Commission unanimously assessed a total penalty of \$500.00 on motion of Mr. Lujano, second of Mr. Parker.

CL 0910-0003 Comfort Master, Inc. dba Collins Comfort Masters – Mr. Maruca advised that this matter involved a 15 year old youth who sustained a laceration to his left hand as a result of the operation of a power-driven metal grinder. The Department's investigation confirmed that the youth was working in, about, and in connection with a power-driven grinder and was also involved in warehousing. Mr. Maruca produced photographs of the grinder and the work areas and explained that the youth was working in a yard with forklifts in the area. Mr. McCarthy made a motion to assess the recommended penalty of \$800.00, which was seconded by Mr. Lujano. Mr. Parker asked whether the statutory definition of warehousing would be clear to the employer and questioned whether the youth was working in warehousing. Mr. Maruca agreed that some factual situations may present a gray area and stated that the operation of the power grinder was, in itself, a prohibited employment for this youth. Following additional discussion on what constitutes "warehousing" and what steps the agency can take to ensure that this term is understood by employers, Mr. Parker recommended that the motion be clarified to state that the penalty is based upon the use of the power-driven metal grinder but language regarding warehousing be removed. He also asked staff to work on language to clarify the warehousing standard and bring this back to the Commission in the future. The Commission unanimously assessed the recommended penalty of \$800.00 for the prohibited employment using the grinder.

Ms. McGrory asked for clarification of the motion on the prior case file and the penalty of \$500.00. The Commissioners stated that the motion was to simply reduce the total penalty amount by half without a change to the stated violations.

Discussion &/or Action regarding Legislation

Ms. McGrory stated there was nothing new to report.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory explained that the recently enacted budget requires the agency to eliminate 15 positions. She continues to work on this and stated that the positions to be eliminated are currently vacant.

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

Mr. Wade stated that there is nothing new to report.

Announcements

Mr. Parker stated that Mark Norton did a stellar job last week as the key note speaker at the annual joint conference of the Arizona chapters of the Public Risk Management Association and the Risk and Insurance Management Society and represented the agency well. Chairman Delfs stated that Mr. Norton is a great asset to the Commission.

Ms. Hilton reminded the Commissioners that the next meeting will be held on Friday, August 14, 2009 at the Wigwam Resort.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:50 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Thomas C. Delfs*
Chairman

By _____
Vice Chairman

By *Louise W. Higgins, Sr.*
Member

ATTEST:

By *J. Cameron Cretz*
Member

Teresa Hilton
Commission Secretary

By *D. Orin*
Member