

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Wednesday, March 3, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Marcia Weeks	Vice 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
	Gary Norem	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present were Scott Butler, the agency's lobbyist, Teresa Yi of Snell & Wilmer, and Lisa Fain of Ballard Spahr.

Approval of Minutes of February 25, 2010 Meeting

The Commission approved the Minutes of February 25, 2010 on motion of Mr. Lujano, second of Mr. McCarthy. Mrs. Weeks and Mr. Parker abstained.

Discussion &/or Action regarding Legislation

Scot Butler advised that there was nothing new to report on the budget and that there may be a Special Session called for next Monday or Tuesday. He provided a summary of proposed legislation of interest to the Commission. HB 2228 has passed out of the House and SB 1070 has passed out of the Senate. HB 2639 and HCR 2043 are being held on the floor of the House. SB 1214 has passed out of committee and is being further analyzed in Rules.

Discussion & Action of Proposed OSHA Citations and Penalties

AMF Bowling Centers, Inc. dba AMF Inca Lanes	Accident
1250 W. 16 <sup>th</sup> Street	Yrs/Business – 12
Yuma, AZ 85364	Empl. Cov. by Insp. – 4
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Site Location: 1250 W. 16 <sup>th</sup> Street, Yuma, AZ 85364	
Inspection #: P0775/314019969	
Insp. Date: 11/24/09	

**SERIOUS** – Citation 1, item 1 – The six skylights on the roof did not have guardrails, screens or other means to prevent employees from falling through (1910.23(a)(4)).  
(No inspection history in the past three years).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation was for the gravity-based penalty with no adjustment factors because the violation caused or contributed to serious bodily injury. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$2,500.00 on motion of Mr. Lujano, second of Mrs. Weeks.

Innova Environmental Engineering, LLC  
2141 N. Alvernon Way  
Tucson, AZ 85712

Complaint  
Yrs/Business - 3  
Empl. Cov. by Insp. - 13

Site Location: NE Corner of La Canada Drive & Magee Road, Tucson, AZ 85704  
Inspection #: T3633/314168220  
Insp. Date: 1/25/10

WILLFUL SERIOUS - Citation 1, item 1 - Substation feeder electric lines which were installed in conduit and encased in concrete crossed the excavation and were not protected or supported as necessary to safeguard employees (1926.651(b)(4).  
(No inspection history in the past three years).

Div. Proposal - \$21,000.00

Formula Amt. - \$21,000.00

WILLFUL SERIOUS - Citation 1, item 2 - The competent person was on site and observed that the excavation did not have adequate protective systems against collapse, had underground installations which had not been protected, supported or removed as necessary to safeguard employees, and he allowed employees to work in the excavation (1926.651(k)(2).

Div. Proposal - \$21,000.00

Formula Amt. - \$21,000.00

WILLFUL SERIOUS - Citation 1, item 3 - Employees worked in an excavation which was approximately 11' deep with vertical sides which were not protected from cave-ins by any adequate protective system (1926.652(a)(1).

Div. Proposal - \$21,000.00

Formula Amt. - \$21,000.00

NON SERIOUS WILLFUL - Citation 2, item 1 - Employees removed transite asbestos water line and had not been trained as required by the ADOSH Construction Asbestos standard (1926.1101(k)(9)(iv)(A)

Div. Proposal - \$ 5,000.00

Formula Amt. - \$ 5,000.00

TOTAL DIV. PROP. - \$68,000.00

TOTAL FORMULA AMT. - \$68,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Lujano made a motion to assess the recommended penalty of \$68,000.00 which was seconded by Mr. McCarthy. Mr. Parker questioned whether the employer had a permit to work with asbestos. Mr. Perkins responded that information was not in the file and staff will contact the county regarding whether the employer had obtained the proper permit. Chairman Delfs asked whether the "willful" classifications were reviewed by the Legal Division. Mr. Perkins responded that Legal had not reviewed the file, but that ADOSH was satisfied that the willful classifications were justified. The Commissioners and staff further discussed the elements of a willful classification.

Following further discussion and inspection of photographs of these violations, Mr. Lujano and Mr. McCarthy amended the motion and second to add a nonserious citation with no recommended penalty resulting from the employer's failure to tell the employees they were

working with asbestos. Following further discussion, the motion and second were again amended to state that the citations are being approved contingent upon Legal's review of the willful classification. The Commission unanimously approved the amended motion.

Younger Brothers Construction Company, Inc.  
8525 N. 75<sup>th</sup> Avenue  
Peoria, AZ 85346

Planned  
Yrs/Business – 34  
Empl. Cov. by Insp. – 9

Site Location: 21010 W. Western Drive, Lot 106, Buckeye, AZ 85326  
Inspection #: Y5457/314068123  
Insp. Date: 12/10/09

SERIOUS – Citation 1, item 1 – Six employees were working on a roof 9' or more above ground level and were not protected by guardrail systems, safety net systems, personal fall arrest systems, nor an alternative fall protection measure (1926.501(b)(13).

(No inspection history in the past three years).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1, item 2 – A training program was not implemented that instructed each employee in the recognition and avoidance of fall hazards associated with working at elevated heights of 6' or more above the ground without the use of a fall protection system (1926.503(a)(1)

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

TOTAL DIV. PROP. - \$2,750.00

TOTAL FORMULA AMT. - \$2,750.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. In response to a question from Mr. Parker, he agreed that the adjustment factor for good faith should be removed since the company does not have a training program in place. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the amended recommended penalty of \$1,750.00 for each violation for a total penalty of \$3,500.00 on motion of Mr. Parker, second of Mr. Lujano.

#### Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-1207 Apodaca Floor Systems, LLC  
2C09/10-0991 Nizhoni Roofing, Inc.

Mr. Wade 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), civil penalties have been recommended. Mr. Wade recommended civil penalties of \$1,000.00 be assessed against employers #1207 and 0991. Mr. Wade responded to questions from the Commissioners regarding the compliance history of these employers.

The Commission unanimously approved civil penalties of \$1,000.00 be assessed against employers #1207 and 0991 on motion of Mr. McCarthy, second of Mr. Parker.

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

Ms. McGrory stated there was nothing new to report.

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 was nothing new to report and gave Mrs. Weeks the updated information he had provided to the Commissioners at last week's meeting.


Announcements and Scheduling of Future Meetings

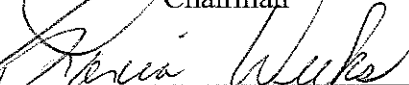
Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, March 18<sup>th</sup>.


There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:40 p.m.

APPROVED:

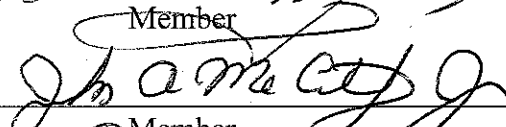
THE INDUSTRIAL COMMISSION OF ARIZONA

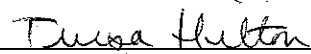
By   
Chairman

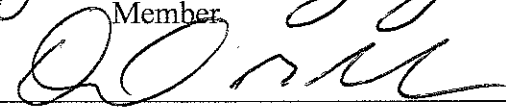
By   
Vice Chairman

By   
Member

ATTEST:

By   
Member

  
Commission Secretary

By   
Member