

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, August 26, 2010 – 1:00 p.m.

Present:	Brian Delfs David Parker John McCarthy, Jr. Kathleen Oster Susan Strickler	Chairman (telephonic) Vice Chairman (video conference) Member Member Member (telephonic)
	Laura McGrory Andrew Wade Darin Perkins Renee Pastor Kara Dimas	Director Chief Legal Counsel Director, ADOSH Self Insurance Manager Acting Commission Secretary

Vice Chairman Parker convened the Commission meeting at 1:05 p.m. noting a quorum present. Also present was Jason Weber of Snell & Wilmer and Scot Butler, the agency's lobbyist.

Approval of Minutes of August 18, 2010 Meeting

The Commission unanimously approved the Minutes of August 18, 2010 on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Concrete Structures Inc. 8079 W. Olive Avenue <u>Peoria, Arizona 85345</u>	Unprogram Related Yrs/Business – 27 Empl. Cov. by Insp. – 62
Site Location: 6 th Street and Euclid, Tucson, Arizona 85716	
Inspection #: A9339/314538182	
Insp. Date: 05/07/10	

SERIOUS – Citation 1, item 1 – The employer had removed the wire rope perimeter cables used for fall protection to allow a forklift access to the 4th floor 48' above the ground and two contractor employees entered the area to clean up debris (1926.501(b)(1).
(6 inspections with two nonserious violations in the past three years).

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
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SERIOUS – Citation 1, item 2 – There were 41 rebar extensions, 6" high protruding vertically from the north side of the bridge/walkway (1926.701(b). There was another instance of this violation.

Div. Proposal - \$3,500.00	Formula Amt. - \$3,500.00
TOTAL PENALTY - \$5,250.00	TOTAL FORMULA AMT. - \$5,250.00

Mr. Perkins summarized the citations and proposed penalty as listed and stated that the employer had corrected the violations while the inspectors were still on site. The Commissioners had questions regarding any reduction in penalty since the violations were corrected onsite and why the rebar was not capped properly if they already had the equipment onsite. Mr. Perkins responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,250.00 on motion of Mr. McCarthy, second of Ms. Oster.

MGC Pure Chemicals America Inc.
6560 S. Mountain Road
Mesa, AZ 85212

Complaint
Yrs/Business - 15
Empl. Cov. by Insp. - 49

Site Location: 6560 S. Mountain Road, Mesa, Arizona 85212
Inspection #: K4591/314424698
Insp. Date: 04/28/10

SERIOUS - Citation 1, item 1 - Two MGC employees conducted emergency response operations for a 200 gallon spill of 36.5-36.9% hydrochloric acid solution without meeting the training requirements (1910.120(e)(1)(i)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 2 - Two MGC employees cleaned up a 200 gallon spill of 36.5-36.89% fuming hydrochloric acid solution without respiratory protection (1910.132(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 3 - Two MGC employees cleaned up a 200 gallon spill of 36.5-36.9% fuming hydrochloric acid and the employer failed to train them on emergency respiratory protection when faced with an immediate respiratory hazard (1910.132(f)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned the Hazard Communication Program and if they have enough hazardous chemical onsite to fall under the Process Safety Rules. Ms. Oster asked if they have a collection bind for any possible spills. Mr. Delfs asked if the driver was an employee or a contract driver and if he was exposed. Mr. Delfs had concerns about an employer handling hazardous chemicals with 50 employees who does not have proper training programs in place. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 but that amount not be reduced upon further conferences, on motion of Mr. Delfs, second of Mr. McCarthy.

W Property Management, LLC dba Cobble Creek Apartments
8546 N. 59th Avenue
Glendale, Arizona 85032

Complaint
Yrs/Business – 4 months
Empl. Cov. by Insp. – 3

Site Location: 8546 N. 59th Avenue, Glendale, Arizona 85032
Inspection #: A7717/314698481
Insp. Date: 06/29/10

SERIOUS – Citation 1, item 1 – A The vertical drive belt on a key machine was not fully enclosed (1910.219(d)(1)).

(No inspection history in the past three years).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS – Citation 1, item 2 – One employee was exposed to 240 volt electrical panel with exposed wires that had been deenergized but was not locked out or tagged out during repairs (1910.333(b)(2)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS – Citation 1, item 3 – Workplace written lockout/tagout procedures were not maintained and available for review (1910.333(b)(2)(i)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$2,250.00

TOTAL FORMULA AMT. - \$2,250.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioner Parker regarding the condition of the breakers in the photo, if they were taken during or after the inspection. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Commission Policy Regarding ADOSH Citations Requiring Commission Review and Approval

Mr. Perkins also presented to the Commission information regarding the number of ADOSH citations that have been presented to the Commission since the beginning of January. Currently the Commission reviews any citations which total an excess of \$1,000.00 in penalties. ADOSH is also audited quarterly by the federal OSHA and one of the criteria that they are rated poorly is citation lapse time. This may be one avenue to address that problem by bringing fewer files to the Commission. In order to help alleviate some of the lapse time requirements and the ADOSH backlog of cases pending review, ADOSH is hoping to increase the review penalty amount from \$1,000.00 to \$2,500.00 or \$5,000.00 for files that are presented to the Commission. Ms. McGrory gave the background as to why the citations were presented to the Commission and the distrust of the newly formed Arizona OSHA by the legislature and they wanted more Commission involvement. Following questions from the Commissioners who want to ensure that they review all fatality citations and serious injuries so they can keep track of the programs that need more emphasis training, like trenching, plastic piping and other issues that are causing the serious injuries and fatalities. The Commission unanimously approved that in the future ADOSH be required to bring any cases that involve fines in excess of \$2,500.00 as well as anything that involves a fatality and at least annual and possibly semi annually receive a report that shows any trends or anything else that ADOSH is seeing related to injuries on motion of Mr. Delfs, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler presented the possible legislation for the 2011 session including review of the budget and revenue, the SCF transition and other issues. He also updated on the primary election and political ramifications for the next session following the election on Tuesday. There is no action required; just updates from the off session, the legislature will start back in September.

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 ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability and profitability, with total assets of just over \$164.6 billion, a clean audit report and acceptable credit ratings. Following discussion, the Commission approved continuance of self insurance authority on motion of Ms. Oster, second of Mr. McCarthy and unanimously approved.

Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (SPR) - Renee Pastor presented staff's renewal report along with current Moody's, and Dunn and Bradstreet credit ratings. They are not rated by Fitch. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability and profitability, with total assets of just over \$10.1 billion, a clean audit report. Mr. Parker asked if this was one company or two and which one we were approving. Ms. Pastor stated this was one legal entity. Following discussion, the Commission approved continuance of self insurance authority on motion of Mr. McCarthy, second of Ms. Oster and unanimously approved.

Walgreen Co.- Renee Pastor presented staff's renewal report along with current Moody's, and Dunn and Bradstreet credit ratings. They are not rated by Fitch. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the financial stability and profitability, with total assets of just over \$25.1 billion, a clean audit report and acceptable credit ratings. Following discussion, the Commission approved continuance of self insurance authority on motion of Ms. Oster, second of Mr. McCarthy and unanimously approved.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-1305	Capital Contractors Supply Inc.
2C10/11-0075	Global Tool Supply Inc. dba AE Industrial aka Global Supply
2C10/11-0233	Jim Jones & Patti Jones, Husband & Wife dba Jim & Patti Jones II
2C10/11-0150	Oasis At Wild Horse Ranch, LLC
2C09/10-2747	Ritter Law Group, L.L.C.

Mr. Wade advised that with regard to the above listed employers, a compliance investigation confirmed that they 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 of \$1,000.00 are recommended against each of these employers with the exception of employer #2747. With regard to this employer, they have recently obtained

coverage and staff recommends a lesser penalty of \$500.00 for this employer. He provided additional information regarding these employers and responded to questions from the Commission. Following further discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #1305, 0075, 0233, and 0150 and a reduced penalty of \$500.00 for employer #2747 on motion of Mr. McCarthy, second of Mr. Parker.

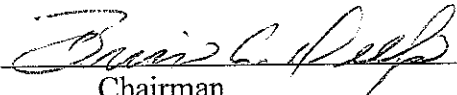
Announcements and Scheduling of Future Meetings

The meeting dates were confirmed for September, 2, September 8 and September 29. Mr. McCarthy will be telephonic on September 2, and Mr. Parker will not be available on September 29. October dates will be scheduled at the next meeting.

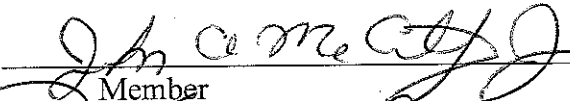
There being no further business to come before the Commission and no public comment, Vice Chairman Parker adjourned the meeting at 2:40 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By 
Chairman

By 
Vice Chairman

By 
Member

By 
Member

By 
Member

ATTEST:


Acting Commission Secretary