

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007

Thursday, September 2, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member (telephonic)
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:05 p.m. noting a quorum present. Also present was Teresa Yi of Snell & Wilmer, and by video conference with Mr. Parker was Al Chaffey, Safety Officer for Pima County Sheriff's Department.

Approval of Minutes of August 26, 2010 Meeting

The Commission unanimously approved the Minutes of August 26, 2010 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations and Penalties

Creative Concrete & Masonry, LLC	Planned
3219 E. Camelback Road, #508	Yrs/Business – 5
Phoenix, AZ 85018	Empl. Cov. by Insp. – 10

Site Location: 3870 N. Civic Drive, Prescott Valley, AZ 86314

Inspection #: A7717/314698788

Insp. Date: 06/15/10

SERIOUS – Citation 1, item 1 – Two employees were not trained in the recognition and avoidance of unsafe conditions associated with working in an excavation 6'5" deep on the west wall, 4' deep on the east wall, 4' wide at the base, 10'8" wide at the top and 150' long (1926.21(b)(2)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – A concrete mixer was lacking a guard to completely enclose the belt and pulley (1926.307(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Two employees were working in an excavation 6'5" deep on the west wall, 4' deep on the east wall, 4' wide at the base, 10'8" wide at the top and 150' long which was lacking a protective system to prevent a cave-in or collapse (1926.652(a)(1)).

Div. Proposal - \$ 750.00
TOTAL PENALTY - \$2,250.00

Formula Amt. - \$ 750.00
TOTAL FORMULA AMT. - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and 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 \$2,250.00 on motion of Ms. Oster, second of Ms. Strickler.

Tricon Contracting, Inc.
9755 S. Houghton Road
Tucson, AZ 85747

Complaint
Yrs/Business - 32
Empl. Cov. by Insp. - 5

Site Location: 555 E. Ajo Way, Tucson, AZ 85713
Inspection #: P0775/314667775
Insp. Date: 06/29/10

SERIOUS - Citation 1, item 1 - Employees were working in an excavation that had vertical walls that were 5'9" to 9' deep, 2'7" to 6' wide and 58' long and employees had not been adequately trained in the recognition and avoidance of unsafe conditions relating to excavations (1926.21(b)(2)).

(No inspection history in the past three years).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS - Citation 1, item 2 - Employees were working in an excavation that had vertical walls that were 5'9" to 9' deep, 2'7" to 6'10" wide and 58' long and were not provided with a ladder, ramp or other safe means of access or egress (1926.651(c)(2))

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

SERIOUS - Citation 1, item 3 - Three employees were working in an excavation that had vertical walls that were 5'9" to 9' deep, 2'7" to 6'10" wide and 58' long and were not protected from cave-ins by an adequate protective system (1926.652(a)(1)).

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 Commissioners. 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 Ms. Oster, second of Ms. Strickler.

Cutting Edge Fabrication, L.L.C.
8317 S. Camino de Cafe
Tucson, AZ 85747

Planned
Yrs/Business - 5
Empl. Cov. by Insp. - 3

Site Location: 2121 E. Broadway Blvd., Tucson, AZ 85716
Inspection #: A9339/314538257
Insp. Date: 05/19/10

SERIOUS - Citation 1, item 1 - Two employees were working on top of the canopies that were 30" deep, 12' long and 12' above the ground without fall protection being used (1926.501(b)(1)). (Three inspections with 1 serious and 10 nonserious violations in the past three years).

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 1, item 2 – The horizontal lifeline was not adequately installed to provide a complete fall arrest system in the event of a fall (1926.502(d)(8)).

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 1, item 3 – Employees who were working at heights of 12' above the ground level and exposed to fall hazards were not trained to recognize the hazards of falling and procedures to minimize those hazards 91926.503(a)(1).

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

TOTAL PENALTY - \$9,000.00

TOTAL FORMULA AMT. - \$9,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, Mr. Parker made a motion to assess the recommended penalty. Ms. Oster questioned what type of violations were found in the last three inspections. Mr. Parker withdrew his motion. Mr. Perkins explained what the previous citations had been issued for. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$9,000.00 on motion of Mr. Parker, second of Ms. Strickler.

G.D. and Sons Construction LLC
6527 W. State Avenue
Glendale, AZ 85301

Planned
Yrs/Business – 9
Empl. Cov. by Insp. – 12

Site Location: 3870 N. Civic Drive, Prescott Valley, AZ 86314

Inspection #: A7717/314667908

Insp. Date: 06/15/10

SERIOUS – Citation 1, item 1 – A mortar mixer was lacking a guard over the engine pull starter (1926.300(b)(2)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Two employees were working on a roof 11'6" above the ground level without utilizing a fall protection system to prevent a fall (1926.501(b)(13)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$1,500.00

TOTAL FORMULA AMT. - \$1,500.00

Mr. Perkins summarized the citations and proposed penalty as listed and 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 \$1,500.00 on motion of Ms. Oster, second of Ms. Strickler.

Rock Roofing, LLC
6961 E. 42nd Street
Tucson, AZ 85730

Complaint
Yrs/Business – 10
Empl. Cov. by Insp. – 35

Site Location: 7671 E. Tanque Verde Road, Tucson, AZ 85715

Inspection #: F3875/314698713

Insp. Date: 07/13/10

SERIOUS – Citation 1, item 1 – Employees were installing tiles on the roof of the second story patio at 25' above the ground and were not protected from falling by a guardrail system, safety net system, or personal fall arrest system (1926.501(b)(1)).

(One inspection with one repeat serious, two serious and one nonserious violations in the past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 1, item 2 – Employees were not provided with anchors capable of supporting 5,000 pounds (1926.502(d)(15).

Div. Proposal - \$5,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 1, item 3 – Employees had not received any training by a competent person qualified in the standards contained in subpart M and the nature of fall hazards (1926.503(a)(2)(viii).

Div. Proposal - \$5,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 1, item 2 – The log and summary of recordable work-related injuries and illnesses was not maintained for the establishment (1904.0001(a)(2).

Div. Proposal - \$ 600.00

Formula Amt. - \$ 600.00

TOTAL PENALTY - \$15,600.00

TOTAL FORMULA AMT. - \$15,600.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for Citations 1, items 1, 2 and 3 was for the gravity based penalty with no adjustment factors due to the repeat nature of the violations and hazardous conditions. Following discussion and inspection of photographs of these violations, Mr. Parker made a motion to increase the penalty for Citation 1, item 1 to \$7,000.00 due to the egregious nature of the violation, which was seconded by Ms. Oster. Chairman Delfs stated that the total penalty was \$11,600 and called for the vote, which was unanimous. Mr. Wade pointed out that the proposed penalty was now \$17,600 rather than \$11,600. Chairman Delfs reclarified the motion and called for a revote. The Commission unanimously approved assessing the penalty of \$17,600.

Encore Steel, Inc.
20701 N. Scottsdale Road, Suite 107-444
Scottsdale, AZ 85255

Complaint
Yrs/Business – 6
Empl. Cov. by Insp. – 21

Site Location: 3420 S. 39th Avenue, Phoenix, AZ 85009
Inspection #: I7163/314538331
Insp. Date: 05/26/10

REPEAT SERIOUS – Citation 1, item 1 – An ironworker was not adequately guarded at the point of operation to prevent an employee from having any part of their body in the danger zone during the operating cycle (1910.212(a)(3)(ii) There was another instance of this violation.

ENCORE STEEL WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT ON 5/28/09.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

REPEAT NONSERIOUS – Citation 2, item 1 – One forklift was not equipped with a horn (1910.178(p)(1).

ENCORE STEEL WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT ON 5/27/09.

Div. Proposal - \$100.00

Formula Amt. - \$80.00

REPEAT NONSERIOUS – Citation 2, item 2 – Monthly inspections were not performed on hooks with signed reports on 10 overhead cranes (1910.179(j)(2)(iii)).

ENCORE STEEL INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT ON 5/27/09.

Div. Proposal - \$100.00

Formula Amt. - \$80.00

REPEAT NONSERIOUS – Citation 2, item 3 – Ten pendant controls on 10 overhead cranes were not kept clean and the function labels kept legible (1910.179(l)(3)(iii)(d)).

ENCORE STEEL INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT ON 5/27/09.

Div. Proposal - \$100.00

Formula Amt. - \$80.00

REPEAT NONSERIOUS – Citation 2, item 4 – Chain slings used for lifting materials did not have permanently affixed durable identification tags stating size, grade, rated capacity and reach (1910.184(e)(1)).

ENCORE STEEL INC. WAS CITED FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT ON 5/27/09.

Div. Proposal - \$100.00

Formula Amt. - \$80.00

REPEAT NONSERIOUS – Citation 2, item 5 – Written inspection records were not available for each alloy steel chain sling used with the overhead cranes C-1 through C-10(1910.184(e)(3)(ii)).

ENCORE STEEL INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT ON 5/27/09.

Div. Proposal - \$100.00

Formula Amt. - \$80.00

SERIOUS – Citation 3, item 1 – Employees were operating a forklift without formal training (1910.178(l)(1)(i)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,250.00

TOTAL FORMULA AMT. - \$3,250.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. In addition, Mr. Perkins explained why the Division recommendation for Citation 2, items 1, 2, 3, 4 and 5, was for \$100. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,250.00 on motion of Mr. Parker, second of Ms. Strickler. Mr. Parker requested that ADOSH conduct an abatement inspection within the next several months. Mr. Perkins stated that staff would definitely follow up on this matter.

W. Lay, Inc.
438 W. Watkins Street
Phoenix, AZ 85003

Complaint
Yrs/Business – 4
Empl. Cov. by Insp. – 31

Site Location: 438 W. Watkins Street, Phoenix, AZ 85003
Inspection #: I7163/314667510
Insp. Date: 06/23/10

SERIOUS – Citation 1, item 1 – A written lockout/tagout program was not developed and implemented for maintenance personnel or repair persons to prevent the release of stored energy during the performance of repair work on equipment (i.e. shapers, lathes, mill machines or horizontal boring machines)(1910.147(c)(1).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Employees were operating a forklift without training and evaluation (1910.178(l)(1)(i).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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 3a – A lathe was lacking a chuck guard (1910.212(a)(1). There were three other instances of this violation.

Citation 1, item 3b - A mill machine was lacking a guard at the point of operation (1910.212(a)(3)(ii). There were three other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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 4a – A 12" shaper was lacking a guard installed over the horizontal drive belt and pulleys to prevent accidental contact (1910.219(d)(1).

Citation 1, item 4b - A 12" shaper was lacking a guard installed over the vertical drive belt and pulleys to prevent accidental contact (1910.219(d)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 5 – A 12" shaper was not equipped with a guard to prevent accidental contact with exposed gears (1910.219(f)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 6 – One shaper was lacking a guard to prevent accidental contact with rotating sprockets and chains (1910.219(f)(3).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

Mr. Perkins summarized the citations and proposed penalty as listed and 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 \$7,500.00 on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C10/11-0007	Frank Encinas & Deborah G. Encinas, Husband & Wife, dba Semi Ray Inspection Services, Inc. aka Semiray
2C09/10-2711	Rapid Response Solutions, LLC

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 of \$1,000.00 are recommended against these employers. Mr. Wade provided additional information regarding these employers and responded to questions from the Commission. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #0007 and 2711 on motion of Mr. Parker, second of Ms. Oster. In response to a question from Ms. Oster, Ms. McGrory and Mr. Wade explained the collection process. Ms. Strickler stated that she would get information from the Department of Revenue. Ms. McGrory agreed that the agency could explore alternative methods for collection.

Discussion &/or Action regarding Legislation

Ms. McGrory advised that there is nothing new to discuss.

Announcements and Scheduling of Future Meetings

Chairman Delfs requested that next week's Commission meeting be moved from Wednesday, September 8th to Thursday, September 9th. The Commissioners agreed to this change. Ms. McGrory stated that an agenda item for next week will be assessments for CY 2011 and that a packet of information has been provided. The Commissioners also scheduled a meeting for Wednesday, October 6th. An agenda item for discussion at that meeting will be setting next year's minimum wage.

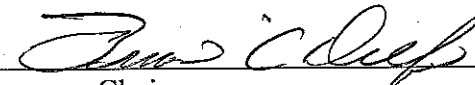
Ms. McGrory advised that staff would be posting a statement on the Commission's website addressing the recent opening of a Federal OSHA office in Arizona. She provided a copy of the statement to the Commissioners and advised that this could be an agenda item for discussion at next week's meeting if any of the Commissioners wanted to discuss or take any action. Chairman Delfs read the statement out loud for the benefit of the members participating telephonically and through video conference.

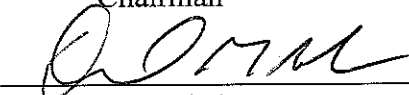
Ms. McGrory also stated that the Fee Schedule, to become effective October 1, 2010, has been posted on the Industrial Commission's website. She further advised that the website will include a corrections page for non-substantive corrections that may need to be made to the fee schedule. As an example, she provided a draft correction that may be posted regarding the pharmaceutical fee schedule and explained why this correction may need to be made. She advised that this topic could be placed on a future agenda for discussion if the Commissioners so wished.

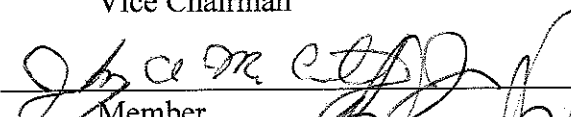
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:45 p.m.

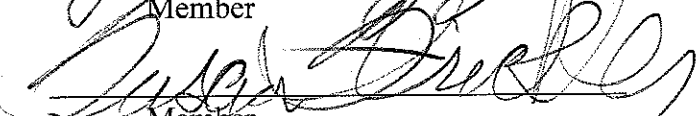
APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

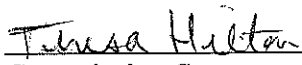
By 
Chairman

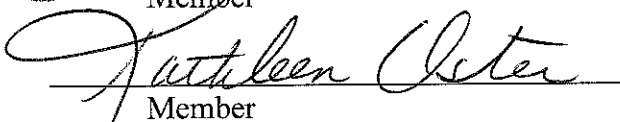
By 
Vice Chairman

By 
Member

By 
Member

ATTEST:


Commission Secretary

By 
Member