

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, September 29, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Suzanne Marwil	Legal Counsel
	Stephen Ball	Legal Counsel
	Bill Cooper	Safety Consultation Supervisor
	Jesus Maeda	I.H. Consultation Supervisor
	Renee Pastor	Self Insurance Manager
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:12 p.m. noting a quorum present. Vice Chairman Parker was not able to attend. Also present was Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Approval of Minutes of September 9, 2010 Meeting

The Commission unanimously approved the Minutes of September 9, 2010 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations and Penalties

Veolia ES Technical Solutions, L.L.C. 5736 W. Jefferson Street Phoenix, AZ 85043	Accident Yrs/Business – 11 Empl. Cov. by Insp. – 50
Site Location: 5736 W. Jefferson Street, Phoenix, AZ 85043	
Inspection #: A7717/314424342	
Insp. Date: 04/06/10	

SERIOUS – Citation 1, item 1 – One employee was working from the cork screw auger approximately 6' above ground, which was lacking a fall protection system (1910.23(c)(1).

(No inspection history in the past three years

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 2 – The written Lockout/Tagout (LO/TO) program policies and procedures were not fully implemented or followed by employees (1910.147(c)(4)(i).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 3 – A periodic inspection was not performed of the energy control procedures that included a review between the inspector and each authorized employee, a review

between the inspector, authorized employee and each affected employee, and identification of the machine or equipment with a date including employees in the inspection (1910.147(c)(6)(i).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – A 4 1/2" portable hand grinder was lacking a guard (1910.243(c)(1).

Div. Proposal - \$ 1,250.00

Formula Amt. - \$ 1,250.00

TOTAL PENALTY - \$12,500.00

TOTAL FORMULA AMT. - \$12,500.00

Bill Cooper summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for items 1 and 2 was for the gravity-based penalties with no adjustment factors since the violations directly related to the serious injury. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$12,500.00 on motion of Mr. McCarthy, second of Ms. Oster.

Copperstate Plastics, Inc.

4444 S. 34th Street

Phoenix, AZ 85040

Site Location: 4444 S. 34th Street, Phoenix, AZ 85040

Inspection #: A7717/314698796

Insp. Date: 07/07/10

Complaint

Yrs/Business – 30

Empl. Cov. by Insp. – 22

SERIOUS – Citation 1, item 1 – A table saw was lacking a hood guard to prevent accidental contact with the rotating blade (1910)(212(a)(1). There were three other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Four direct rivet machines were lacking a point of operation guard (1910.212(a)(3)(ii).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – One employee was not adequately instructed on the safe operation of a full revolution punch press (1910.217(f)(2).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – A full revolution punch press vertical drive belt was not fully enclosed and pulleys guarded (1910.219(d)(1).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Cooper summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He advised that there was an inspection at this facility in February of 2010. Chairman Delfs questioned whether the lack of guarding was noted at that time. Mr. Cooper responded that it did not appear so because the prior inspection was a partial inspection. Ms. McGrory stated that she would ask Mr. Perkins to review the prior inspection file to determine why the lack of guarding was not previously cited. Ms. Oster made a motion to assess the recommended penalty of \$3,000.00. Mr. McCarthy seconded the motion and the Commission unanimously approved issuing the citations and assessed the recommended penalty

Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00.

Border Construction Specialties, LLC
4502 E. University Drive
Phoenix, AZ 85034

Planned
Yrs/Business – 3
Empl. Cov. by Insp. – 8

Site Location: 3643 E. Anne Street, Phoenix, AZ 85040
Inspection #: N9589/314820119
Insp. Date: 08/17/10

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 1a – The circular handfed rip saw was not guarded by an automatically adjusting hood which completely enclosed that portion of the saw above the table and above the material being cut (1910.213(c)(1)).

Citation 1, item 1b - The circular handfed rip saw was not furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator (1910.213(c)(2)).

Citation 1, item 1c - The circular handfed rip saw did not have non-kickback fingers or dogs designed to provide adequate holding power for all thickness of materials being cut (1910.213(c)(3)).

(No inspection history in the past three years).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1, item 2 – The angular exposure of the grinding wheel periphery and sides for the safety guard on the cutting-off machine exceeded 150 degrees. Sides of the metal guard were damaged, causing the guard to become stuck in the upright position, thereby exposing employees to the unguarded abrasive saw wheel (1910.215(b)(5)).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

SERIOUS – Citation 1, item 3 – Four unused openings in the circuit breaker panel were not closed or guarded to prohibit accidental employee contact with live electrical parts (1910.303(g)(2)(i))

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

TOTAL PENALTY - \$4,125.00

TOTAL FORMULA AMT. - \$4,125.00

Jesus Maeda summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Ms. Oster questioned the good faith adjustment for the first two citations. Mr. Maeda advised that the company did have safety programs in place, even though they were not complete. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,125.00 on motion of Mr. McCarthy, second of Ms. Oster.

Paranetics Technology, Inc.
2301 N. Main Street
San Luis, AZ 85349

Complaint
Mos/Business - 4
Empl. Cov. by Insp. - 57

Site Location: 10793 County 20-1/2 Street South, Somerton, AZ 85353
Inspection #: F3875/31738261
Insp. Date: 07/29/10

SERIOUS - Citation 1, item 1 - Forklift operators were operating the forklift without the use of the seatbelt (1910.132(a)).

(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1, item 2 - Employees were allowed to operate the forklift without being adequately trained and evaluated in the safe operation of the forklift (1910.178(l)(1)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

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 - The spindle guard had been removed from the bench grinder, exposing the nut and flange and more than 75% of the wheel diameter (1910.215(a)(2)).

Citation 1, item 3b - The work rest on the bench grinder was not installed (1910.215(a)(4)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1, item 4 - The 7 1/4" circular hand saw had the guard tied up with wire, exposing the blade (1910.243(a)(1)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1, item 5 - A yellow extension cord was not used in a continuous length. The yellow cord was spliced and connected to a black cord that was supplying power to the sewing machine (1910.305(g)(2)(ii)). There were four other instances of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 2, item 1 - The employer had more than 10 employees during the previous calendar year and was not maintaining the OSHA injury and illness records (1904.0001(a)(2)).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$5,500.00

TOTAL FORMULA AMT. - \$5,500.00

Mr. Maeda 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 \$5,500.00 on motion of Ms. Oster, second of Mr. McCarthy.

Service Brass Foundry, LLC
2501 W. Jackson Street
Phoenix, AZ 85009

Planned
Yrs/Business – 13
Empl. Cov. by Insp. – 23

Site Location: 2501 W. Jackson Street, Phoenix, AZ 85009
Inspection #: Q8339/314458696
Insp. Date: 05/12/10

SERIOUS – Citation 1, item 1 – The guardrail for the overhead catwalk did not have a midrail (1910.23(e)(1)). 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 – Employees performing furnace tending operations and employees pouring molten metal into sand casting molds were not wearing face shields to protect them from molten metal splashes (1910.133(a)(1)).

Div. Proposal - \$1,050.00

Formula Amt. - \$1,050.00

SERIOUS – Citation 1, item 3 – Employees clean the trench beneath the steel grating used for sand collection and recovery and the space has not been evaluated to determine if it is a permit required confined space (1910.146(c)(1)). There were two other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – No documented inspections of the wire ropes exposed to the excessive temperatures are conducted and documented (1910.179(m)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – The employer did not determine if employees were exposed to lead at or above the action level (1910.1025(d)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 6 – Training on skin and eye irritation from the potential lead hazards in the workplace was not provided to employees (1910.1025(l)(1)(ii)).

Div. Proposal - \$ 450.00

Formula Amt. - \$ 450.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Maeda 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 \$4,500.00 on motion of Mr. McCarthy second of Ms. Oster.

Discussion & Action regarding Adoption of Final Rulemaking amending A.A.C. R20-5-602 (Standards for General Industry) which incorporate by reference amendments to 29 CFR 1910 Subpart H, as published in Federal Register 74 FR 40450-40455, August 11, 2009 and which became a final order when published in the Federal Register 74 FR 57883-57884, November 10, 2009

Mr. Cooper stated that in order to conform to the Federal OSHA standards, he is presenting a Resolution to adopt final rulemaking amendments that includes adding language for guidance of proper storage and transportation of acetylene cylinders, identifying appropriate discharge flow rates from cylinders, avoidance of potential damage to small cylinder valves and

appropriate handling of leaking acetylene tanks. The Commission unanimously approved the adoption of the final rulemaking on motion of Ms. Oster, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler provided an update of the 2010 primary Arizona General Election Legislative races and ballot propositions and discussed the make-up of the House and Senate. He summarized the budget and revenue projections for the State. He and Ms. McGrory summarized the legislative issues of interest to the Commission and the agency's strategy for addressing these issues.

Discussion & Action regarding Requests for Renewal of Self Insurance Authority. The Committee may move into Executive Session under A.R.S. §§38-431.03(A)(2) to discuss records exempt by law from public inspection. 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

Mayo Clinic - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. 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 of the company with assets of just over \$8.9 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Ms. Oster, second of Mr. McCarthy.

Nordstrom, Inc. - Renee Pastor presented staff's renewal report along with current Fitch, Moody's, 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 of the company with total assets of \$5.6 billion, a clean audit report and stable credit ratings. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster.

Pilot Travel Centers, LLC - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the consistent record of profitability of the company with assets of just over \$2.1 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster.

Schuck and Sons Construction Company, Inc. - The Commissioners agreed that an Executive Session was not necessary since they had reviewed the confidential financial information. Ms. Pastor presented staff's renewal report along with current Dunn and Bradstreet credit ratings. She stated that the Commission hired an outside claims auditor to review the claims reserves of the company. Based on that audit, the company was required to post a letter of credit in the amount of \$932,498. Ms. Pastor explained the history of the letter of credit and where the company currently stands regarding the required statutory deposit. She stated that the Dunn and Bradstreet rating was good, but precarious. She responded to questions from the Commissioners.

While expressing serious concerns about the financial stability of the company, Ms. Pastor recommended that the Commission consider renewal of workers' compensation self-insurance authority contingent upon monthly updates from the company regarding the financial status of the company and monthly updates regarding the status of the letter of credit and/or replacement statutory deposit. The Commissioners expressed serious reservations regarding the financial stability of the company and discussed other alternatives to renewal. Chairman Delfs tabled consideration of self-insurance renewal and requested that Ms. Pastor bring the matter back before the Commission with three options for their consideration.

Target Corporation dba Target Stores, 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 overall financial stability and continued profitability of the company with total assets of just over \$44.5 billion, a clean audit report and acceptable credit ratings. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Petition for Attorneys' Fees.

Brian A. Weekley, Taylor and Associates, P.L.L.C., v Rodney Miller - Andy Wade advised that Brian Weekley of the firm Taylor and Associates has petitioned the Industrial Commission to set attorney' fees with respect to work that he performed for Mr. Miller in connection with his industrial injury claims. Mr. Wade gave a history of the claim and the work performed by Mr. Weekley on behalf of Mr. Miller. Mr. Miller terminated the attorney/client relationship and hired a new attorney. Attorney fees in the amount of \$1,493.39 have been paid to date, and it is estimated that Mr. Weekley spent 18 hours on the case.

Mr. Wade presented several options to the Commission. After reviewing those options, Mr. Wade stated that his recommendation is to issue an award granting attorneys' fees in the amount of \$756.61. Following discussion, the Commission unanimously awarded additional attorneys' fees in the amount of \$756.61 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

- 2C09/10-2914 China Chan, Inc, dba China Chan Restaurant
- 2C10/11-0025 Jakob Menke, a single man, dba Performance Motor Sports, Inc.
- 2C10/11-0281 Matthew J. Bossert, a single man, dba Pitboss Inc aka I F Motor Sports
- 2C10/11-0524 Rosati's of Gold Canyon, Inc.
- 2C10/11-0523 Townsend Enterprises, L.L.C. aka Steve's Sports Bar and Grill dba The Lounge

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 are recommended against each of these employers. With regard to employer #0025, since they have recently obtained coverage, Mr. Wade recommended a penalty of \$500.00. He further recommended civil penalties of \$1,000.00 be assessed against employers #2914 and 0281 and civil penalties of \$5,000.00 be assessed against employers #0524 and 0523. He provided additional information regarding these employers and responded to questions from

the Commission.

The Commission unanimously assessed civil penalties of \$500.00 against employer #0025; \$1,000.00 against employers #2914 and 0281; and \$5,000.00 against employers #0524 and 0523 on motion of Mr. McCarthy, second of Ms. Strickler.

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

Ms. McGrory stated that Federal OSHA has published the enhanced FAME reports for state plans and that the agency will be filing its formal response within 30 days. The Arizona report will be a future agenda item for discussion.

She advised that the agency's budget report and strategic plan will be filed this Friday. She also advised that the Special Fund financial reports were timely filed with GAO this year. Ms. McGrory stated that the Network Work Group will be meeting on October 6th.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, October 6th.

Mr. Wade introduced new staff attorney, Stephen Ball, and stated that the Legal Division is looking at a slight restructuring of the agency's collections unit.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:43 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By Brian C. Delfs
Chairman

By _____
Vice Chairman

By James J. [Signature]
Member

ATTEST:

By Kathleen [Signature]
Member

Teresa Hilton
Commission Secretary

By [Signature]
Member