

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 6, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member (telephonic)
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Michael Hawthorne	Chief Financial Officer
	Jeri McAnerny	Tax Accountant
	Kamen Kovatchev	Self Insurance and Tax Acct.
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:01 p.m. noting a quorum present. Also present was Teresa Yi of Snell & Wilmer.

Approval of Minutes of December 16, 2010 Meeting

The Commission unanimously approved the Minutes of the December 16, 2010 General Session on motion of Mr. Parker, second of Ms. Strickler. The Commission unanimously approved the Minutes of the December 16, 2010 Executive Session on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of ADOSH Discrimination Complaint

#11-01 Raymond Casillas v Innova Environmental Engineering, LLC - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Casillas. In his complaint, Mr. Casillas alleged that he was terminated in retaliation for talking to an ADOSH inspector. The employer stated that Mr. Casillas was laid off because of lack of work, for not showing up for work, and for poor job performance.

Mr. Perkins presented a history of Mr. Casillas' employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was no evidence to support a connection between the termination and any protected activity. The Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations and Penalties

Knochel Bros., Inc. – This case involved a fatality and was presented for discussion only as the Division was not recommending the issuance of any citations. Mr. Perkins summarized the facts

of the accident stating that one employee was marking and putting in grade stakes for a grading and clearing project. Another employee was operating a grader and backed into the victim.

Reliable Staffing Solutions of Pima, L.L.C. – This case involved a fatality and was presented for discussion only as the Division was not recommending the issuance of any citations. Mr. Perkins summarized the facts of the accident stating that a residential care giver who came to provide care to an elderly gentleman was discovered by a neighbor at the bottom of a stairway with fatal head injuries. It appears that the victim tripped and hit her head on the bottom step.

Evergreen Turf, Inc.
11407 E. Germann Road
Chandler, AZ 85286

Fatality
Yrs/Business – 11
Empl. Cov. by Insp. – 1

Site Location: 4208 E. Lamar Road, Paradise Valley, AZ 85253
Inspection #: N4762/314948506
Insp. Date: 09/20/10

SERIOUS – Citation 1, item 1 – One employee was operating a 3 wheeled forklift while not wearing a seatbelt (1910.132(a)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – One employee was operating a 3 wheeled forklift without being adequately trained in the safe operation of this type of powered industrial truck (1910.178(l)(1)(i)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL PENALTY - \$14,000.00

TOTAL FORMULA AMT. - \$14,000.00

Mr. Perkins summarized the citations 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 since these violations directly related to the fatality. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$14,000.00 on motion of Ms. Oster, second of Mr. Parker.

Mike Chavez Drywall, LLC
7570 W. Illinois St.
Tucson, AZ 85735

Planned
Yrs/Business – 16
Empl. Cov. by Insp. – 2

Site Location: 4071 E. Broadway Blvd., Tucson, AZ 85711
Inspection #: P0775/314948571
Insp. Date: 09/20/10

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 – Employees were installing the framing for the metal siding while working from a mobile scaffold that was 12' high, 5' wide and 10' long that was not fully planked between the uprights and the guardrail supports (1926.451(b)(1)).

Citation 1, item 1b - Employees were working on top of a mobile scaffold 12' high, 5' wide and 10' long that did not have the screwjack castor wheels resting on an adequate firm foundation

(1926.451(c)(2)(i)).

Citation 1, item 1c - Employees were working on top of a mobile scaffold approximately 12' high, 5' wide and 10' long that did not have the locking pins secured through the frame supports (1926.451(f)(4)).

Citation 1, item 1d - Employees were working on a mobile scaffold approximately 12' high, 5' wide and 10' long which was erected without the supervision and direction of a competent person (1926.451(f)(7)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - Employees were installing the framing for the metal siding while working from a mobile scaffold 12' high, 5' wide and 10' long that lacked adequate guardrails (1926.451(g)(4)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - Employees were installing the framing for the metal siding while working from a mobile scaffold that was 12' high, 5' wide and 10' long and had not been trained by a person qualified to recognize those hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards (1926.454(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 4 - Employees working on top of the building at a height of 16' were not utilizing any fall protection (1926.760(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 5 - Employees working on top of a building at a height of 16' and exposed to fall hazards were not provided training in the recognition of fall hazards, use of fall protection systems and procedures to prevent fall hazards (1926.761(b)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

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. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Mr. Parker, second of Ms. Strickler.

First Quality Masonry
922 Port Drive
Gilbert, AZ 85233

Unprogramed Related
Yrs/Business - 3
Empl. Cov. by Insp. - 2

Site Location: Old Pinal Courthouse, Butt Street, Florence, AZ 85232

Inspection #: A9339/314856972

Insp. Date: 09/02/10

SERIOUS - Citation 1, item 1 - The gas-powered mortar mixer had rotating blades that were not guarded (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 – The foreman elevated the aerial lift basket by extending the boom to the roof of the building 35-40' above ground, and did not wear any fall protection until the aerial lift man basket was in position at the chimney on the roof (1926.453(b)(2)(v)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – The foreman working from the S-65 aerial lift was not provided any training as to when fall protection was required or the hazards and procedures to control or minimize those hazards (1926.454(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – An employee was allowed to work while standing on the sill of a gable window at 35-40' above ground without the use of any fall protection system (1926.501(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – An employee working along the window sill and exposed to a fall hazard was not provided any training as to when fall protection was required, the hazards and the procedures to control or minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Consideration of this case file was tabled since the name of the company was not correct on the agenda.

Orion Press, Inc.
1224 W. Melinda Lane
Phoenix, AZ 85027

Complaint
Yrs/Business – 36
Empl. Cov. by Insp. – 15

Site Location: 1224 W. Melinda Lane, Phoenix, AZ 85027

Inspection #: A7717/315063107

Insp. Date: 10/21/10

SERIOUS – Citation 1, item 1 – A written lockout/tagout program and procedures for maintenance personnel or employees was not developed and implemented (1910.147(c)(1)). (No inspection history in the past three years).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

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 2a – One employee was operating a forklift without formal training and certification (1910.178(l)(1)(i)). There was another instance of this violation.

Citation 1, item 2b - One employee was operating a forklift which was lacking a seat belt installed (1910.178(p)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Four printing presses did not have the in-going nip points guarded between the rollers (1910.212(a)(1))

Div. Proposal - \$750.00

Formula Amt. - \$750.00

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 – The vertical drive belts on a press attachment were not fully enclosed (1910.219(d)(1)&(e)(3)(i). There was another instance of this violation

Citation 1, item 4b - The chains and sprockets on two collators were not guarded (1910.219(f)(3).

Citation 1, item 4c - A collator was not equipped with a guard to prevent accidental contact with exposed gears (1910.219(f)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – A 480 volt main electric panel on a UV press was not guarded against accidental contact because the panel door was left open (1910.303(g)(2)(i).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,600.00

TOTAL FORMULA AMT. - \$3,600.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,600.00 on motion of Ms. Oster, second of Mr. Parker.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Arizona Municipal Risk Retention Pool - Ms. 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 pool's solid financial position, total assets of \$69 million, ability to successfully manage the workers' compensation program for its member cities and towns, the receipt of a clean audit report and acceptable bond and credit ratings.

The Commissioners and staff discussed changing the annual renewal date which would allow staff to use more current financial information in evaluating an employer's financial condition. Implications such as possible gaps in the terms of security bonds and letters of credit were addressed. The Commission unanimously granted continuance of self-insurance authority on motion of Mr. Parker, second of Ms. Oster.

Arizona School Alliance for Workers' Compensation, Inc. – Ms. Strickler recused herself. Ms. 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 alliance's consistent record of profitability and growth, large size with total assets of just under \$38.1 million, a clean audit report and an acceptable credit rating. Following discussion, the Commission approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Parker. Ms. Strickler did not participate in the discussion or the vote.

Coca-Cola Refreshments USA, Inc. - Ms. Pastor presented staff's renewal report along

with current Moody's, Fitch, and Dunn and Bradstreet bond and 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 company's return to profitability, large size with total assets of just over \$16.4 billion, a clean audit report and acceptable credit ratings. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Ms. Oster, second of Ms. Strickler.

Macy's, Inc. - Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and 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 company's return to profitability, good credit ratings, large size with assets of \$21.3 billion and a clean audit report. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-0835	Heal Medical Transportation, L.L.C.
2C10/11-0251	Jamie Adam Aldrete, a single man, dba Corner Stone Landscape Management
2C10/11-1026	Sun Horizon Specialized, LLC
2C10/11-0569	The Brow Lady USA, LLC
2C10/11-0117	Tucson Heart Group, P.L.C.
2C10/11-0112	VVBREC, L.L.C. dba Territorial Town Inn
2C10/11-0850	West-Hay, Inc. dba Old Corral Bar aka The Old Corral Bar

Andrew 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 employers #0835, 0251, 0569, 0117, 0112 and 0850. He further recommended a civil penalty of \$5,000.00 be assessed against employer #1026 since this would be the second civil penalty within five years for this employer. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #0835, 0251, 0569, 0117, 0112 and 0850 and tabled consideration of any civil penalty against employer #1026 for two weeks to allow staff to obtain additional information on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action regarding Legislation

Ms. McGrory provided a copy of the budget hearing schedule that she received from the Joint Legislative Budget Committee and advised that the Commission is not currently scheduled for a hearing. Ms. McGrory also provided a copy of a letter that she wrote to Majority Leader Tobin in follow-up to a recent meeting with him. She explained the information provided to Majority Leader Tobin.

Ms. McGrory updated the Commissioners regarding additional meetings with legislative staff members and stake holders.

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

Ms. McGrory gave a brief description of the agency's revenue picture and stated that she is expecting to receive additional updated revenue/expenditure information, which she will provide to the Commissioners when she receives it.

Announcements and Scheduling of Future Meetings

Ms. McGrory advised that Mr. Perkins has appointed Jessie Atencio as Assistant Director of the ADOSH Tucson office.

She also advised that at next week's meeting, Chief Judge Turney will present her recommendations for filling an Administrative Law Judge position.

Ms. McGrory stated that she has asked Mr. Perkins to issue a safety alert and put information on the agency's web site regarding forklift safety, in particular bringing attention to the issue of training for three wheeled fork lifts.

Ms. Pastor introduced Kamen Kovatchev to the Commissioners and advised that he will be working on self insurance and taxes. She also introduced Jeri McAnerny, tax accountant.

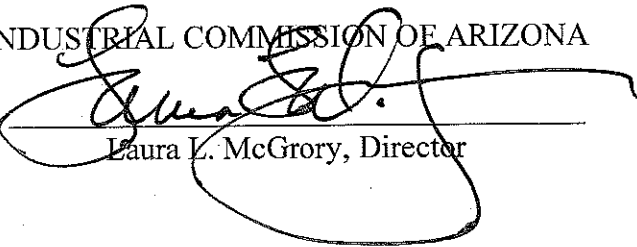
Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, January 12th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:20 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary