

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, June 22, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member (telephonic)
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Bill Wright	Asst. Director, ADOSH
	Jesus Maeda	Compliance Officer, ADOSH
	Noreen Thorsen	Claims Manager
	Danielle Borunda	Claims
	Frank Lopez	Claims
	Sean Whitley	Claims
	Mike Hawthorne	Chief Financial Officer
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Kamen Kovatchev	Accounting
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Ms. Oster was not able to attend. Also in attendance were Julie Walker and Chris Ochoa of Emergency Restoration Experts and Eda Barolli of Snell & Wilmer.

Approval of Minutes of June 16, 2011 Meeting

The Commission unanimously approved the Minutes of June 16, 2011 on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations and Penalties

Emergency Restoration Experts, Inc.
3045 N. Colorado Street, Ste. 3
Chandler, AZ 85225

Complaint
Yrs/Business – 11
Empl. Cov. by Insp. – 50

Site Location: 3045 N. Colorado Street, Ste. 3, Chandler, AZ 85225
Inspection #: Q8339/315489112
Insp. Date: 04/05/11

GROUPED SERIOUS – Citation 1, item 1a – The employer deducts the cost of vaccinations from the employees pay (1910.1030(f)(1)(ii)(A)).

Item 1b – The employer did not allow employees to complete the required vaccination series during normal working hours. Employees are required to use personal time to schedule and complete their vaccinations (1910.1030(f)(1)(ii)(B)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 2, item 1 – The employer did not provide Bloodborne Pathogens training for employees performing bio-hazard clean-up hired after September 2005 (1910.1030(g)(2)(i))

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 2, item 2 – Employees who stated that they participated in the 2005 training were not provided annual refresher training, especially those who work with bio-hazards associated with crime scene clean-up (1910.1030(g)(2)(ii)(C)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

Jesus Maeda summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Chairman Delfs offered the employer representatives in attendance the opportunity to address the Commission. Julie Walker, Office Manager, stated that when management became aware that employees did not finish their shots, the employer told the employees that the employees would have to pay for the shots and the company would reimburse them. She stated that the employees do have time during working hours to complete the series of vaccinations. She added that the employer is making changes and beefing up their bloodborne pathogen training and plan. Chairman Delfs explained that ADOSH could offer them assistance with their program and training. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$7,500.00 on motion of Ms. Strickler, second of Mr. McCarthy.

Joseph Painting Company, Inc. dba JPCI Services
4702 E. Virginia Street
Mesa, AZ 85215

Referral
Yrs/Business – 17
Empl. Cov. by Insp. – 6

Site Location: 2800 E. Southern Avenue, Tempe, AZ 85282
Inspection #: N9589/315489260
Insp. Date: 04/15/11

REPEAT SERIOUS – Citation 1, item 1 – Personal fall arrest systems were not inspected prior to each use for wear, damage, and other deterioration, and/or defective components were not removed from service. DBI Sala confined space tripods used as personal fall arrest anchors were modified and put into service without approval from the manufacturer. The employer removed the safety chains connecting the base of each leg on all confined space tripods which likely decreased tripod designed load rating and stability (1926.502(d)(21)).

JPCI Services was previously cited for a violation of this OSHA standard which was contained in ADOSH inspection A7717/314738063, citation 1, item 1 issued on 11/03/10 at workplaces located at Dobson Rd. & Rockwell St. and Price Rd & the Loop 101 entrance, Chandler, AZ.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 2, item 1 – JPCI Services confined space entry permit required the Entry Supervisor (competent person) to verify acceptable entry conditions prior to each separate sewer system confined space entry. JPCI Services designated competent person allowed employees to sign his name to confined space permits without personally inspecting the jobsite, materials, and equipment to verify acceptable confined space entry conditions (1926.20(b)(2)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2, item 2 – Where entry was conducted into an active sewer system and

engineering controls (i.e. forced air ventilation) were instituted, continuous monitoring was not instituted to account for changing conditions and/or ventilation system failure (1926.800(j)(1)(i)(B)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2, item 3 – The authorized entrant remained within the confined space when the ventilation system stopped function. An unauthorized employee entered the space to perform rescue prior to institution of the ventilation system and testing for air contaminants and declared safe by the competent person (1926.800(k)(8)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$9,000.00

TOTAL FORMULA AMT. - \$9,000.00

Bill Wright advised that he was withdrawing consideration of this file to allow the Legal Department to review the file.

Hi-Tech Fabrication, Inc.

P.O. Box 19422

Phoenix, AZ 85005

Planned

Yrs/Business – 25

Empl. Cov. by Insp. – 5

Site Location: 5031 E. Washington Street, Phoenix, AZ 85034

Inspection #: N4762/315442327

Insp. Date: 03/28/11

REPEAT SERIOUS – Citation 1, item 1 – An employee's personal fall arrest system, in an aerial lift, was rigged in such a way that the employee could contact the ground in the event of a fall (1926.502(d)(16)(iii)).

Hi-Tech Fabrication, Inc. was previously cited for a violation of this Occupational Safety and Health standard or its equivalent 1926.502(d)(16)(iii) which was contained in ADOSH inspection number R0738/314948886, Citation 1, item 2 issued on 12/07/10.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2, Item 1 - One employee was operating an aerial lift and was not trained in the procedures to minimize fall hazards. The employee was using a 6' shock-absorbing lanyard while working at elevations below 18 ½' (1926.503(a)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Wright 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 \$3,000.00 on motion of Mr. Parker, second of Ms. Strickler.

Sunnyside Unified School District Foundation Inc.

2238 E. Ginter Road

Tucson, AZ 85706

Complaint

Yrs/Business – 22

Empl. Cov. by Insp. – 10

Site Location: 2238 E. Ginter Road, Tucson, AZ 85706

Inspection #: P3875/315553115

Insp. Date: 04/26/11

SERIOUS – Citation 1, item 1 – The vehicle lift located in the middle of the walking area was missing half of the metal door, exposing employees to a trip and fall hazard (1910.23(a)(5))

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1, item 2 – Employees who change and service the batteries on the buses were not provided with an eye-wash station for quick drenching or flushing of the eyes (1910.151(c)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,050.00

TOTAL FORMULA AMT. - \$4,050.00

Mr. Wright stated that he is pulling this file from consideration to assure the name of the employer is correct.

Discussion & Action of Resolution Appointing Special Assistants to the Industrial Commission

Danielle Borunda

Frank Lopez

Sean Whitley

Johnny Villegas

Ms. Thorsen introduced Ms. Borunda, Mr. Lopez and Mr. Whitley to the Commissioners and advised that Ms. Villegas was not able to be in attendance. She explained that she is requesting approval for these employees to be able to issue awards and orders. The Commission unanimously appointed each of the above listed employees as special assistants on motion of Ms. Strickler, second of Mr. Parker.

Discussion & Action of Requests for Renewal of Self-Insurance Authority

Fedex Express – Renee Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings. She stated that this and the two following self-insured employers have the same parent company with the same financial information. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the large size of its parent company with worldwide assets of just over \$24.2 billion, a clean audit report, and acceptable bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority with the requirement that prior to the next renewal period the company submit a plan to address the high experience modification ratings or participate in the ADOSH safety consultation program on motion of Mr. Parker, second of Mr. McCarthy.

Fedex Freight, Inc. – Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings. Ms. Pastor advised that Administration is recommending continuance of workers' compensation self-insurance authority based on the large size of its parent company with worldwide assets of just over \$24.2 billion, a clean audit report, and acceptable bond and credit ratings. The Commission unanimously granted continuance of self-insurance authority on motion of Ms. Strickler, second of Mr. McCarthy.

Fedex Ground Package System, Inc. – Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings. Ms. Pastor

advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the large size of its parent company with worldwide assets of just over \$24.2 billion, a clean audit report, and acceptable bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Strickler, second of Mr. Parker.

Discussion and/or Action regarding United Food & Commercial Workers Local 99, et. al, v. Jan Brewer, in her capacity as Governor of the State of Arizona, et al., U.S. District Court case number 2:11-cv-921-PHX-SRB. 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 this is a continuing agenda item and there was nothing new to report.

Discussion & Action regarding 2011-2012 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory advised that the transcript of the hearing has been received and will be provided to the Commissioners upon their request. She stated she will provide a memorandum next week reviewing the issues and recommending action for consideration at the July 7th meeting.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that Mr. Butler will provide an update to the Commission at the meeting on July 7th.

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

Ms. McGrory advised that the Claims system upgrade is on schedule to go live next Monday. The system will be down Thursday and Friday and should be fully operational on Monday. Notice that the system will down has been placed on the agency's web site, sent out via e-mail, sent via a separate notice to insurance carriers, and also posted in the Phoenix and Tucson buildings.

In response to a question from Mr. Parker, she advised that staff will have a fiscal year end budget report available shortly.

Announcements and Scheduling of Future Meetings

Mr. Parker thanked Mr. Wade for representing the Commission and assisting him in accepting the Hon. John R. Sticht Excellence in Disabilities Accessibility Award from the State Bar Association.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, July 7th.

There being no further business to come before the Commission and no further public comment, Chairman Delfs adjourned the meeting at 1:35 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary