

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
The Wigwam Resort
Kiva East Room
Held at 300 E. Wigwam Blvd., Litchfield Park, Arizona
Friday, August 12, 2011 – 11:30 a.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Darin Perkins	Acting Director
	Andrew Wade	Chief Legal Counsel
	Harriet Turney	Chief Administrative Law Judge
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 12:02 p.m. noting a quorum present. Also present was Eda Barolli of Snell & Wilmer.

Approval of Minutes of July 28, 2011 Meeting

The Commission unanimously approved the Minutes of July 28, 2011 on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of ADOSH Discrimination Complaint

#11-51 Guisel Cunningham v City of Bisbee - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Cunningham. In her complaint, Ms. Cunningham stated that she was harassed and ultimately laid off after she brought up being exposed to mold in the workplace, and filed a workers' compensation claim resulting in six months of medical leave because of the mold. In response to the complaint, the employer presented its position with respect to Ms. Cunningham's separation from employment.

Mr. Perkins presented a history of Ms. Cunningham's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations and Penalties

Ms. Turney stated that she may hear these matters and asked to be excused and left the meeting room.

Sprayfoam Southwest, Inc.
2318 S. Industrial Park Avenue
Tempe, AZ 85282

Referral
Yrs/Business - 40
Empl. Cov. by Insp. - 5

Site Location: 2929 Grand Avenue, Phoenix, AZ 85017
Inspection #: F3189/315584755
Insp. Date: 05/16/11

SERIOUS - Citation 1, Item 1 - One employee was not protected from falling through a 46" x 70" skylight opening, 30' to the concrete below, by a guardrail system, use of personal fall arrest system or by a cover secured over the hole (1926.501(b)(4)(i)).

(4 inspections with three nonserious and three serious violations in the past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS - Citation 1, Item 2 - An employee working at heights greater than 6' and exposed to falls was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize those hazards (1926.503(a)(2)(viii)).

Div. Proposal - \$ 5,000.00

Formula Amt. - \$ 5,000.00

TOTAL PENALTY - \$10,000.00

TOTAL FORMULA AMT. - \$10,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal was for the gravity-based penalties with no adjustment factors since the violations directly related to the serious injury. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$10,000.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Mr. Parker asked if education and publicizing the need for proper safety around skylights would help reduce these type of accidents. Mr. Perkins explained the Division's past efforts including articles in its newsletter and a press release.

Bud's Drapery Den, Inc.
4766 E. Speedway Blvd.
Tucson, AZ 85712

Planned
Yrs/Business - 39
Empl. Cov. by Insp. - 31

Site Location: 5815 S. 25th Street, Phoenix, AZ 85040
Inspection #: L3419/315697359
Insp. Date: 07/13/11

SERIOUS - Citation 1, Item 1 - PVC piping was used for the above ground transportation and distribution of compressed air at 125 psi (R205.628).

(No inspection history in the past three years).

Div. Proposal - \$300.00

Formula Amt. - \$300.00

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 - A 10" radial arm saw was not equipped with a self adjusting lower blade guard (1910.213(h)(1)).

Citation 1, Item 2b - A 10" radial arm saw was installed in a manner that did not allow the

cutting head to return to the starting position when released by the operator (1910.213(h)(4)).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, Item 3 – The horizontal drive belt and pulleys for a metal cutting bandsaw were not enclosed with a guard to prevent contact with rotating components (1910.219(d)(1)).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, Item 4 – The power supply for a stamper operating at 50 volts or more was not provided with a dead front cover to prevent accidental contact with energized electrical components (1910.303(g)(2)(i)).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

NONSERIOUS – 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(1)(a)(2)).

Div. Proposal - \$ 350.00

Formula Amt. - \$ 350.00

TOTAL PENALTY - \$3,275.00

TOTAL FORMULA AMT. - \$3,275.00

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 \$3,275.00 on motion of Mr. Parker, second of Ms. Oster.

Green Acres Farm, LLC
16121 W. Eddie Albert Way
Goodyear, AZ 85338

Complaint
Yrs/Business – 13
Empl. Cov. by Insp. – 7

Site Location: 26305 S. 29th Avenue, Buckeye, AZ 85326

Inspection #: N9589/315441980

Insp. Date: 03/21/11

SERIOUS – Citation 1, Item 1 – The exposed horizontal shaft between the motor and water pump approximately 2' above the work platform was not protected by stationary casings enclosing shafting completely (1910.219(c)(2)(i)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 2 – Vertical belts on the dry auger conveyor 5'5" above the ground were not enclosed by guards (1910.219(e)(3)(i)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 3 – Sprocket wheels and chains on a rotary kiln motor 3' above the ground were not guarded (1910.219(f)(3)).

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. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of

NONSERIOUS – 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(1)(a)(2)).

Div. Proposal - \$ 500.00	Formula Amt. - \$ 500.00
TOTAL PENALTY - \$2,750.00	TOTAL FORMULA AMT. - \$2,750.00

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 \$2,750.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding the FY 2010 Federal Annual Monitoring and Evaluation Report on the Arizona Division of Occupational Safety and Health

Mr. Perkins had provided the Commissioners with the final version of the report and his response letter and stated that this is an agenda item so that he can answer any questions the Commissioners may have. Mr. Parker stated that he was pleased that Mr. Perkins and ADOSH were able to address and correct many of the findings from the prior year's report. Mr. Parker also stated that he was pleased that Mr. Perkins was able to get federal OSHA to correct some of the errors found within the earlier draft report. He also noted that some of the findings in the final report were not substantive issues. Mr. Parker and Mr. Delfs stated that they were impressed with Mr. Perkins' written response to the evaluation.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-1921	AMG Enterprizes, L.L.C. dba Old Chicago Deli
2C10/11-1892	Brodie's Tavern, L.L.C.

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), he recommended civil penalties of \$1,000.00 be assessed against each of these employers. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #1921 and 1892 on motion of Mr. Parker, second of Ms. Strickler.

Ms. Turney returned to the meeting room. Mr. Perkins stated that he had a session to teach, asked to be excused, and left the meeting room.

Executive Session pursuant to A.R.S. §§38-431.03(A)(1) and (2) for discussion and consideration of applicants for Administrative Law Judge position of the Industrial Commission. The names of the applicants are confidential pursuant to A.A.C. R2-5-202

The Commission unanimously voted to go into Executive Session on motion of Mr. McCarthy, second of Ms. Oster. Executive Session Minutes are kept separately.

General Session – Discussion and Action regarding Appointment of Administrative Law Judge

Upon return to General Session, Mr. Parker made a motion to offer the position to candidate #3 and in the event #3 does not accept, to offer the position to candidate #2, which was

seconded by Ms. Strickler. Mr. Delfs, Mr. Parker, Mr. McCarthy and Ms. Strickler voted in favor of the motion. Ms. Oster abstained.

Discussion &/or Action regarding Legislation

Mr. Wade advised that there was nothing new to report.

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

Mr. Wade advised that there was nothing new to report.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, August 25th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:10 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Darin Perkins, Acting Director

ATTEST:



Teresa Hilton, Commission Secretary