

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 27, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Kathleen Oster	Member (telephonically)
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Kara Dimas	Acting Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Mr. Parker and Mr. McCarthy were not able to attend. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of October 13, 2011 Meeting

There not being a quorum to approve the Minutes of the October 13, 2011 meeting since Ms. Oster was not present at the meeting, approval of the Minutes was tabled until the next meeting.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
- 2C10/11-0471 Arturo Estrada & Clarisa Estrada, H/W
dba A & L Auto Care, aka A & L Auto
Care & Towing
 - 2C10/11-1973 Car Crafters of Scottsdale, Inc.
 - 2C10/11-2166 F & F Restaurant Group, Inc.
dba Rock Taco Cantina
 - 2C11/12-0064 Fernando Vidales & Barbara Raya, H/W
dba R & R Pallets
 - 2C10/11-1965 Island Nameplate, Inc. dba Desert Decal
 - 2C11/12-0436 Modesto Carlos Solis & Maria S. Carlos, H/W
aka Modesto Carlos & Maria S. Carlos,
dba Phoenix Pallets
 - 2C11/12-0055 Oscar Pallets, Inc.

Chairman Delfs asked if any of the listed items needed to be removed from the consent agenda. Andrew Wade requested that items 3 and 4 be addressed separately. The Commission unanimously assessed civil penalties of \$1,000.00 against 1, 2, 5, 6, and 7 on the above listed employers on motion of Ms. Strickler, second of Ms. Oster.

Mr. Wade stated that employers 3 and 4 obtained workers' compensation insurance prior to today's meeting and recommended that the civil penalty be reduced from \$1,000.00 to \$500.00 for each of these employers. The Commission unanimously assessed civil penalties of \$500.00 against employers 3 and 4 on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action of ADOSH Discrimination Complaint

#11-25 Thomas Frizzell v. Cammate Systems - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Frizzell. In his complaint, Mr. Frizzell alleges that he was laid-off because he brought up safety and health issues. In response to the complaint, the employer presented its position with respect to Mr. Frizzell's termination.

Mr. Perkins presented a history of Mr. Frizzell'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 Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations and Penalties

Pinnacle Roofing & Painting, Inc.
1954 E. Deer Valley Road
Phoenix, AZ 85024

Fatality
Yrs/Business - 10
Empl. Cov. by Insp. - 5

Site Location: 6220 E. Broadway Road, Mesa, AZ 85206

Inspection #: Y5457/315847129

Insp. Date: 08/15/11

SERIOUS - Citation 1 - Item 1 - Five employees were walking on a parapet wall 32' above ground level without fall protection (1926.0501(b)(1)).

(One inspection in the past three years)

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1 - Item 2 - The employer did not ensure that the fall protection system was designed, installed and used in compliance with the requirements of this subpart (1926.502(a)(2)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1 - Item 3 - Five employees were working on a concrete tiled roof 29' above the lower level, and had not received adequate training to recognize the hazards of falling and the procedures to follow to minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

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 4a - Five employees were using a 40' orange extension ladder to access the upper level roof and the side rails did not extend at least 3' above the upper landing (1926.1053(b)(1)). There was another instance of this violation.

Citation 1 - Item 4b – A 40' orange extension ladder was not secured to prevent accidental displacement (1926.1053(b)(8)). There were three other instances of this violation.

Div. Proposal - \$ 1,500.00

Formula Amt. - \$ 1,500.00

SERIOUS – Citation 1 - Item 5 – The employer did not provide fall protection for three employees working on a low-sloped roof, 29 feet above the ground (1926.501(b)(10)).

Div. Proposal - \$ 1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$18,500.00

TOTAL FORMULA AMT. - \$18,500.00

Darin Perkins summarized the citations and proposed penalty as listed. The Division proposal for Items 2 and 3 was for the gravity based penalty with no adjustment factors since the violations directly related to the fatality. Mr. Perkins stated that an additional citation, Citation 1, Item 5, is being added to address the violation for failing to provide fall protection for the other employees that were on the roof. He explained the violation and responded to questions from the Commissioners.

Ms. McGrory asked Mr. Perkins to explain the difference between the requirements under the roofing standard, which is the standard that applies to this case and the requirements under the residential fall protection standards. Mr. Perkins explained the requirements under the roofing standards compared with the residential fall protection standards.

Following discussion, the Commission added the citation for failing to provide fall protection to all employees on the roof which results in an additional penalty of \$1,500.00 making the total \$18,500.00, unanimously approved issuing the citations, and assessed the recommended penalty of \$18,500.00 on motion of Ms. Oster, second of Ms. Strickler.

Association Maintenance Services, LLC
6635 W. Happy Valley Road, Ste. A 104-436
Glendale, AZ 85310

Complaint
Yrs/Business – 8
Empl. Cov. by Insp. – 2

Site Location: 11035 N. 23rd Drive, Ste. 9, Phoenix, AZ 85310

Inspection #: F3189/315912113

Insp. Date: 09/01/11

SERIOUS – Citation 1 - Item 1 – An employee was exposed to excessive ambient heat from working outdoors and was not provided training about the symptoms and prevention of heat-related illness (23.403(A)).

(No inspection history in the past three years)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 – Potable drinking water was not available to an employee while the employee was working outdoors in extreme heat performing landscape maintenance services (1910.141(b)(1)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

NONSERIOUS – Citation 2 - Item 1 – The employer did not keep a record for 2008, 2009, and 2010 of all Work-Related Injuries and Illnesses on the OSHA 300 Log, and did not keep a record of the Summary of Work Related Injuries and Illnesses (1904.29(a)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$5,300.00

TOTAL FORMULA AMT. - \$5,300.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Ms. Oster asked if the Compliance Officers verify workers' compensation insurance coverage when they are performing an inspection. Mr. Perkins and Ms. McGrory summarized the process. Ms. Oster stated that verifying coverage as part of the inspection process may be a helpful component of the Commission's compliance efforts. Ms. McGrory stated that staff will perform an internal review of the process. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,300.00 on motion of Ms. Strickler, second of Ms. Oster.

Robrad Tool & Engineering, Inc.
564 E. Juanita
Mesa, AZ 85204

Planned
Yrs/Business - 36
Empl. Cov. by Insp. - 45

Site Location: 564 E. Juanita, Mesa, AZ 85204
Inspection #: N9589/315978320
Insp. Date: 09/15/11

SERIOUS - Citation 1 - Item 1 - The existing mezzanine(s) constructed along the south side of the building did not include guard railing along exposed edges approximately 10' above the floor. Mezzanines were used to store materials and installation of mechanical equipment (1910.23(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 permitted to prepare and consume food and beverage in work areas where metal is machined and metal cutting fluids are handled, thereby exposing employees to toxic materials including but not limited to stainless steel particulate (e.g. chromium, nickel, zinc, etc.) and cutting fluids (1910.141(g)(2)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 3 - The front door guard interlock switch was rendered inoperable thereby allowing machine operation without the guard/door in closed position (1910.212(a)(1)). There were two other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 4 - The abrasive wheel located on the left side of the machine was not provided with safety guards for the spindle end, nut or flange projections (1910.215(a)(2)).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS - Citation 1 - Item 5 - The horizontal rotating shaft associated with the drive belt and pulley system was not guarded (1910.219(e)(3)(1)). There was another instance of this violation.

Div. Proposal - \$700.00

Formula Amt. - \$700.00

SERIOUS - Citation 1 - Item 6 - A 125 volt fan had been rewired such that the three speed motor feature was bypassed. The remaining bypassed conductors were live when plugged into a receptacle and the live conductors were not guarded (1910.303(g)(2)(i)).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

NONSERIOUS - Citation 2 - Item 1 - The OSHA Form 300 Log of Work-Related Injuries and Illness and OSHA Form 300A Summary of Work-Related Injuries and Illnesses were not

maintained by the establishment (1904.29(a)).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$6,450.00

TOTAL FORMULA AMT. - \$6,450.00

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 \$6,450.00 on motion of Ms. Strickler, second of Ms. Oster.

DW Acquisition, Inc. dba Door Works

Planned

16060 N. 81st Street

Yrs/Business - 1.5

Scottsdale, AZ 85260

Empl. Cov. by Insp. - 20

Site Location: 16060 N. 81st Street, Scottsdale, AZ 85260

Inspection #: N9589/315978205

Insp. Date: 09/14/11

SERIOUS - Citation 1 - Item 1 - The exit route was obstructed by electrical power cables lying on the floor in front of the exit doorway (1910.37(a)(3)). There was another instance of this violation.

(No inspection history in the past three years).

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 2a - The exposed blade of the circular hand-fed rip saw was not guarded (1910.213(c)(1)). There was another instance of this violation.

Citation 1 - Item 2b - The circular hand-fed rip saw was not furnished with a spreader (1910.213(c)(2)).

Citation 1 - Item 2c - The circular hand-fed rip saw did not have non-kickback fingers or dogs (1910.213(c)(3)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 - The sides of the lower portion of the exposed blade on a radial arm saw were not guarded (1910.213(h)(1)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 4 - The power control enclosure had been removed thereby exposing live electrical parts directly below the on/off buttons (1910.303(g)(2)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$4,750.00

TOTAL FORMULA AMT. - \$4,750.00

Darin Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,750.00 on motion of Ms. Oster, second of Ms. Strickler.

Doughton Rose, L.L.C.
dba Grand Canyon Harley-Davidson
P.O. Box 16183
Bellemont, AZ 86015

Complaint
Yrs/Business - 10
Empl. Cov. by Insp. - 13

Site Location: I-40 Exit 185, Bellemont, AZ 86015
Inspection #: I7163/315978312
Insp. Date: 08/31/11

SERIOUS - Citation 1 - Item 1 - One employee was operating a forklift without training and evaluation (1910.178(l)(1)(i)).

(No inspection history in the past three years)

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 2 - An abrasive wheel bench grinder was lacking a guard to cover the spindle end, nut and flange projection (1910.215(a)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 - One abrasive wheel bench grinder was lacking a tool work rest (1910.215(a)(4)).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

NONSERIOUS - Citation 2 - Item 1 - A non-exempt employer, having more than 10 employees, did not keep an OSHA injury and illness record (1904.0001(a)(2)).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$3,100.00

TOTAL FORMULA AMT. - \$3,100.00

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 \$3,100.00 on motion of Ms. Oster, second of Ms. Strickler.

Arizona Sunshine Ranches, Inc. dba Tanque Verde Ranch
14301 E. Speedway Road
Tucson, AZ 85748

Planned
Yrs/Business - 66
Empl. Cov. by Insp. - 95

Site Location: 14301 E. Speedway Road, Tucson, AZ 85748
Inspection #: T3633/315912089
Insp. Date: 09/01/11

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 - A 10" table saw used for ripping did not have a blade guard installed (1910.213(c)(1)).

Citation 1 - Item 1b - A 10" table saw used for ripping did not have a spreader (1910.213(c)(2)).

Citation 1 - Item 1c - A 10" table saw used for ripping did not have non-kickback fingers (1910.213(c)(3)).

(No inspection history in the past three years.)

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 2a – A radial arm saw did not have a lower blade guard installed (1910.213(h)(1)).

Citation 1 – Item 2b – A radial arm saw did not retract to the starting position when released (1910.213(h)(4)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – A 6” stand grinder did not have work rests installed on either wheel (1910.215(a)(4)).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1 - Item 4 – The circuit breaker panel mounted on the north wall of the

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,850.00

TOTAL FORMULA AMT. - \$3,850.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Ms. Oster asked about the penalty adjustment factor based on the size of an employer. Mr. Perkins described the size reduction rates and noted he was not certain as to the precise cut-off point for the different percent reductions. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,850.00 and directed Mr. Perkins to verify the correct adjustment factor for size, and if the correct adjustment factor was not applied, to correct the penalty amount, issue the citation, and inform the Commission at the next meeting what the range is, on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action regarding Residential Fall Protection

Laura McGrory stated for information purposes that the Commission has received a CASPA (Complaint Against State Program Administration) related to residential fall protection and copies of the Commission's response have already been provided to the Commissioners. She noted the portion of the response that states Arizona has the lowest construction fatal work injury rate compared to 39 states surveyed. She explained the data and that staff had obtained the data based upon by a request by Ms. Strickler. She provided each of the Commissioners with the 2009 Census of Fatal Occupational Injuries specific to Arizona as well as a spreadsheet of the data for all of the states that were included in the BLS report. Mr. Delfs noted the data was from 2009 and asked Mr. Perkins when the fall-off in construction became noticeable. Mr. Perkins responded to the question. Mr. Perkins described staff's efforts to compile the data for the last ten years.

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

Ms. McGrory stated there was nothing new to report.

Discussion &/or Action regarding Legislation

Ms. McGrory stated there was nothing new to report.

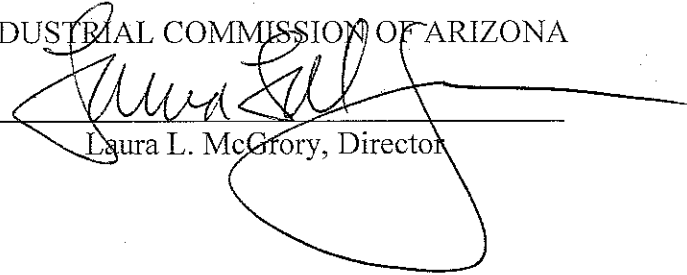
Announcements and Scheduling of Future Meetings

Ms. Dimas reminded the Commissioners that the next Commission meeting is scheduled for Thursday, November 10th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:42 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

A large, stylized handwritten signature in black ink, appearing to read 'Laura L. McGrory', is written over a horizontal line. The signature is highly cursive and loops around the line.

Laura L. McGrory, Director

ATTEST:

Kara Dimas
Kara Dimas, Acting Commission Secretary