MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 7, 2012 – 1:00 p.m.

Present: David Parker
              Chairman
Kathleen Oster
              Vice Chair
John A. McCarthy, Jr.
              Member
Susan Strickler
              Member
Michael G. Sanders
              Member
Laura L. McGrory
              Director
Andrew Wade
              Chief Counsel
William Wright
              Asst. Director, ADOSH
Teresa Hilton
              Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of May 23, 2012 Meeting

Mr. Sanders requested an addition to the Minutes on page three, under “Announcements and Scheduling of Future Meetings” to add the underlined, “In response to a question from Mr. Sanders regarding the Request for Proposal on the website, Darin Perkins announced that the Capitol Police were no longer going to accept after-hours notification of accidents and that he was exploring contracting with an answering service to handle after-hours calls”. The Commission unanimously approved the Minutes of May 23, 2012 as amended on motion of Mr. Sanders, second of Ms. Oster.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

   1. 2C11/12-0312 Dunn’s Horse Productions, LLC
   2. 2C10/11-2112 Gila Valley Mobile Home Service and Accessories, L.L.C.

Chairman Parker asked whether any items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the consent agenda on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that there was nothing new to report. Scot Butler will be here next week to address the Commission.

William Wright provided a summary of changes to the Federal Occupational Safety and Health Standards related to acetylene, hazard communication rules and material safety data sheets. Mr. Wright explained why the Commission is required to adopt the changes and the time-frame for adopting the changes. The Commission discussed communicating the new rules to stakeholders. Following discussion, the Commission unanimously approved the amendments to A.A.C. R20-5-601 and A.A.C. R20-5-602 and directed the Arizona Division of Occupational Safety and Health to file the Notice of Final Rulemaking with the Secretary of State on motion of Ms. Strickler, second of Mr. Sanders.

Discussion & Action of Proposed OSHA Citations & Penalties

Organized Spaces LLC dba Closet Factory
14425 North 79th Street, Suite H
Scottsdale, AZ. 85260

Site Location: 14425 North 79th Street, Suite H, Scottsdale, AZ. 85260
Inspection #: N9589/316509579
Insp. Date: 05/04/12

SERIOUS – Citation 1, Item 1 – The north end of the Mezzanine was approximately nine feet above the floor and not protected with guardrails and toe boards (1910.023(c)(1)).
(No inspection history in the past three years).

Div. Proposal - $750.00
Formula Amt. - $750.00

SERIOUS – Citation 1, Item 2 – The emergency exit was blocked by stored materials and a miter saw table (1910.037(a)(3)).

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 3(a) – The subject saw was not provided with a blade guard (1910.213(c)(1)).

Citation 1, Item 3(b) – The subject saw was not provided with a spreader (1910.213(c)(2)).

Citation 1, Item 3(c) – The subject saw was not provided with anti-kickback fingers or dogs (1910.213(c)(3)).

Div. Proposal - $750.00
Formula Amt. - $750.00

SERIOUS – Citation 1, Item 4 – Two 125 volt receptacles within a receptacle outlet box were damaged rendering the receptacle unusable and exposing interior live parts (1910.303(b)(7)(iv)).

Div. Proposal - $750.00
Formula Amt. - $750.00

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. McCarthy, second of Ms. Oster.

Patriot Disposal Inc. Complaint
943 East Valley Road Yrs/Business – 12
Prescott Valley, AZ 86314 Empl. Cov. by Insp. – 15

Site Location: 943 East Valley Road, Prescott Valley, AZ 86314
Inspection #: N9589/316482116
Insp. Date: 04/23/12

SERIOUS – Citation 1, Item 1 – The employer selected gloves for employees that perform hand-sorting of trash which contain liquids, sharp metal, glass shards and needles. The gloves provided limited cut and puncture protection and no protection from liquids thereby exposing employees’ hands to laceration, puncture and unsanitary liquids (1910.138(b)).

(No inspection history in the past three years).

Div. Proposal - $2,500.00 Formula Amt. - $2,500.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, Item 2(a) – Lavatory facilities were not provided to employees. Employees used a hose bib to wash their hands (1910.141(d)(2)(i)).

Citation 1, Item 2(b) – A means for employees to dry their hands after washing was not provided (1910.141(d)(2)(iv)).

Citation 1, Item 2(c) - No hand soap or similar cleaning agent was provided for employees to wash their hands (1910.141(d)(2)(iii)).

Div. Proposal - $2,500.00 Formula Amt. - $2,500.00

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 3(a) – A front end rotating attachment was added to the subject forklift without the manufacturer’s prior written approval (1910.178(a)(4)).

Citation 1, item 3(b) – The subject forklift equipped with a rotating front end attachment was not marked to identify the attachment and show the approximate weight of the truck and attachment combination at maximum elevation with load laterally centered (1910.178(a)(5)).

Citation 1, item 3(c) – The subject forklift was operated without a seat belt (1910.178(q)(1)). There was another instance of this violation.

Div. Proposal - $2,500.00 Formula Amt. - $2,500.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, Item 4(a) – The employer did not establish a written exposure control plan designed to eliminate or minimize employee exposure to blood or other potentially infectious materials.
(1910.1030(c)(1)(i)).

Citation 1, Item 4(b) – The employer did not make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure (1910.1030(f)(1)(i)).

Citation 1, item 4(c) – The employer did not establish and maintain a sharps injury log where employees have exposure to percutaneous injuries from contaminated sharps (1910.1030(h)(5)).

    Div. Proposal - $2,500.00 Formula Amt. - $2,500.00

SERIOUS – Citation 1, item 5 – The employer did not ensure that employees with occupational exposure participated in a training program (1910.1030(g)(2)(i)).

    Div. Proposal - $2,500.00 Formula Amt. - $2,500.00

NONSERIOUS – Citation 2, item 1 – The employer did not maintain OSHA Forms 300 and 300A for the establishment (1910.029(a)).

    Div. Proposal - $ 500.00 Formula Amt. - $ 500.00

TOTAL PENALTY - $13,000.00 TOTAL FORMULA AMT. - $13,000.00

Chairman Parker stated that this matter is on the agenda because ADOSH has requested the Commission reconsider the action taken at the last Commission meeting where the Commission added Citation 1, item 4(d) for failing to have post-exposure evaluation and follow-up and assessed the recommended penalty of $13,000.00. Upon further review, ADOSH is recommending that citation not be added since the employer did have post-exposure evaluation and follow-up. The Commission unanimously agreed to reconsider the action on motion of Mr. Parker, second of Mr. Sanders. Following discussion, the Commission unanimously assessed the original recommended citations and penalty on motion of Ms. Oster, second of Mr. Sanders.

Discussion &/or Action pursuant to A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2013

Andrew Wade explained the Commission’s role in adopting the maximum average monthly wage for each year. He summarized the data and advised that based on the increase in the Arizona mean wage of 3.04%, staff is recommending the maximum average monthly wage be set at $4,185.78 for 2013. Mr. Wade further advised that the legislature just amended A.R.S. §23-1041 to change the specific index used to adjust the maximum average monthly wage from the “Arizona mean wage . . . coded for all occupations” to the “employment cost index.” The effective date for this new amendment is August 2, 2012. Because the current version of the statute directs the Commission to adopt a new maximum average monthly wage “not later than August 1 of each calendar year,” the Commission must use the current version of the statute (which specifies the Arizona mean wage) to establish the maximum average monthly wage for calendar year 2013.

Discussion followed regarding the need for clarification of the new legislation as to what series in the new index will be used in the future. The Commission also discussed that stakeholder input should be obtained and whether rulemaking may be involved on this issue. Mr. Parker stated that it would also be helpful to hear from Scot Butler regarding the process to clarify this issue. In response to a question from Mr. Sanders, Ms. McGrory gave a brief legislative history and explained how increases to the maximum average monthly wage were accomplished in the past. Ms. Strickler stated she would be more comfortable if stakeholders
were informed that calculation of the 2013 maximum average monthly wage will be based on the current statute (rather than the new one) before action is taken to adopt the new maximum. Mr. Parker suggested tabling consideration of this matter. Following further discussion, Chairman Parker tabled the matter to be put back on the agenda on July 11, 2012.

Announcements and Scheduling of Future Meetings

The Commissioners moved next week’s meeting from Thursday, June 14 to Wednesday, June 13, 2012.

Ms. McGrory advised that Physicians’ Fee Schedule will be an agenda item for the next Commission meeting. She described the materials that are being supplied to the Commissioners.

Ms. McGrory also advised that an additional agenda item for next week will be an update regarding her advisory group on evidence-based medical treatment guidelines.

Ms. Hilton reminded the Commissioners that additional meetings are scheduled for June 28, July 11, 18 (if needed), and 26, 2012. The Commission also scheduled a meeting for Friday, August 10th at the Claims Seminar.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:05 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Laura L. McGrory, Director

ATTEST:

Teresa Hilton, Commission Secretary