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

Present:  
David Parker  
Chairman (video conference)  
Kathleen Oster  
Vice Chair  
John A. McCarthy, Jr.  
Member  
Michael G. Sanders  
Member (telephonic)  
Andrew Wade  
Chief Counsel (Acting Director)  
Darin Perkins  
Director, ADOSH  
Renee Pastor  
Self Insurance Manager  
Kamen Kovatchev  
Self Insurance  
Teresa Hilton  
Commission Secretary

Chairman Parker convened the Commission meeting at 1:03 p.m. noting a quorum present. Susan Strickler was not able to attend. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of July 26, 2012 Meeting

The Commission unanimously approved the Minutes of the July 26, 2012 General Session on motion of Mr. McCarthy, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the July 26, 2012 Executive Session on motion of Ms. Oster, second of Mr. Sanders.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C11/12-1092  Colmed Collection Services, L.L.C.
2. 2C11/12-0406  Comfort-N-Home, Inc.
3. 2C11/12-2770  Desert Dog Hummer Adventures, Inc.
4. 2C11/12-0925  Maria Cecilia Torres Lara, a Single Woman, dba MCL Cleaning Services
5. 2C10/11-0914  Ron Self & Stacy Self, Husband & Wife, dba S.R.S. Yardcare
6. 2C11/12-2809  Royal Enterprises, Inc. dba Big Tiger Fuel and Fleet
7. 2C11/12-0797  Sun Water Company, LLC

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. Oster.
Discussion & Action of Proposed OSHA Citations & Penalties

Mark A. Golden and Jane Doe Golden                                Complaint
dba Mark A. Golden Construction                                      Yrs/Business – 20
PO Box 11234                                                        Empl. Cov. by Insp. – 4
Fort Mohave, AZ. 86427                                              
Site Location: 5623 S. Desert Lane Drive, Fort Mohave, AZ. 86426
Inspection #: R1538/316509629                                        
Insp. Date: 05/08/12                                                  

SERIOUS – Citation 1 - Item 1 – Employees were not instructed in the recognition and avoidance of unsafe conditions and the regulations applicable to their work environment, such as but not limited to, excavation hazards, protective systems, benching and sloping, adequate access and egress (i.e., ladder, ramp, stairs) and the hazards associated with working in an unprotected excavation (1926.021(b)(2)).

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

SERIOUS – Citation 1 - Item 2 – Three employees were not protected from falling into an 8’ wide 12’ long hole 10’ to the dirt below, by use of a cover secured over the hole, or by use of a standard railing or other barrier (1926.501(b)(4)(ii)).

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

SERIOUS – Citation 1 - Item 3 – The employer failed to ensure that a competent person conducted a daily inspection of the excavation (1926.651(k)(1)).

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

SERIOUS – Citation 1 - Item 4 – Two employees had been working in a 10’ deep excavation that was up to 8’ wide at the bottom, and 12’ in length, that did not have an adequate protective system installed or other equivalent means to preclude a cave-in or collapse (1926.652(a)(1)).

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

TOTAL PENALTY - $3,000.00                                   TOTAL FORMULA AMT. - $3,000.00

Darin 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 $3,000.00 on motion of Ms. Oster, second of Mr. McCarthy.

Salt River Project – Coronado                                          Complaint
Generating Station                                                   Yrs/Business – 110
P.O. Box 1018                                                        Empl. Cov. by Insp. – 25
St. Johns, AZ. 85936                                                  
Site Location: 11 miles north of St. Johns, AZ on HW 181, St. Johns, AZ. 85936
Inspection #: Q8339/316482447                                         
Insp. Date: 04/25/12                                                   

SERIOUS – Citation 1 - Item 1a – A hazard assessment based on the job function or duty assignments for employees working within the well fields was not completed based on exposures to rodent infestation (1910.132(d)(1)).
SERIOUS – Citation 1 - Item 1b – The employer did not select and employees were not required to wear personal protective equipment necessary to protect against Hantavirus (1910.132(d)(1)(i)).
Div. Proposal - $4,500.00
Formula Amt. - $4,500.00

SERIOUS – Citation 1 - Item 2 – Rodent infestation and excrement was allowed to build up harboring a potential for Hantavirus (1910.141(a)(3)(i)).
Div. Proposal - $4,500.00
Formula Amt. - $4,500.00

SERIOUS – Citation 1 - Item 3 – Preventive maintenance was not performed in the well fields to minimize rodent entry or harborage of field mice, and an effective extermination program was not instituted (1910.141(a)(5)).
Div. Proposal - $4,500.00
Formula Amt. - $4,500.00
TOTAL PENALTY - $13,500.00
TOTAL FORMULA AMT. - $13,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He explained that ADOSH learned of the issues after an employee’s death was attributed to Hantavirus. Mr. Perkins stated that he was not aware of any formal conclusion that the Hantavirus was contracted at work. Mr. McCarthy questioned whether there should be an adjustment factor for good faith since the employer responded to the hazard immediately. Mr. Perkins replied that the employer did make good abatement efforts but should have remedied the problems long before. Ms. Oster asked if the workers’ compensation claim had been accepted by SRP and, if so, whether the penalty should be different. Mr. Perkins replied that he did not know if a workers’ compensation claim had been accepted. Mr. Wade described some options available to the Commission. Mr. Sanders asked if SRP had cleaned up all of their facilities statewide. Mr. Perkins responded to the question. Mr. Sanders also questioned whether the Hantavirus could survive at all temperature variations, latitudes and altitudes. In response to Mr. Sanders’ question, Mr. Parker presented some background information concerning the Hantavirus. He stated that he was struggling with the penalty since the employer did take corrective action immediately and also commented on whether there should be a good faith adjustment. Following further discussion, the Commission unanimously approved issuing the citations and decreased the penalty for each by adding a good-faith adjustment factor of 25% for penalties of $3,250.00 for each citation and a total penalty of $9,750.00. The Commission also directed staff to ascertain if a workers’ compensation claim had been accepted and, if so, to place the matter back on the agenda so the Commission can reconsider the matter all on motion of Mr. Parker, second of Mr. Sanders. The Commission also directed staff to follow-up on Mr. Sanders question regarding whether SRP had cleaned up all of the sites statewide.

Victoria Plastering, L.L.C.
4849 W. Calle Don Miguel
Tucson, AZ 85757
Site Location: 2475 E. Water Street, Tucson, AZ 85719
Inspection #: P0775/316569763
Ins. Date: 06/19/12

Planned
Yrs/Business – 2
Empl. Cov. by Insp. – 3

SERIOUS – Citation 1 - Item 1a – Two employees were working on a tubular welded frame scaffold that was approximately 11.6 feet high, 110 feet long and three feet wide that was not fully planked or decked between the guardrail supports (1926.451(b)(1)).
SERIOUS - Citation 1 - Item 1b – Two employees were working on a tubular welded frame scaffold that was approximately 11.6 feet high, 110 feet long and three feet wide that did not have adequate mud sills (1926.451(c)(2)).

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

SERIOUS - Citation 1 - Item 2 – Two employees were working on a tubular welded frame scaffold that was approximately 11.6 feet high, 110 feet long and three feet wide that was not inspected before each work shift by a competent person for visible defects such as those found at the job-site that included missing guardrails, mud sills and inadequate planking (1926.451(f)(3)).

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

SERIOUS - Citation 1 - Item 3 – Two employees were working on a tubular welded frame scaffold that was 11.6 feet high, 110 feet long and three feet wide that was lacking guardrails on two ten foot long sections to prevent the employee from falling to the lower level below (1926.451(g)(4)(i)).

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

SERIOUS - Citation 1 - Item 4 – Two employees who were working on a tubular welded frame scaffold that was 11.6 feet high, 110 feet long and three feet wide had not been trained by a qualified person to recognize the hazards associated with the type of scaffold and how to control or minimize those hazards (1926.454(a)).

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

TOTAL PENALTY - $3,000.00  TOTAL FORMULA AMT. - $3,000.00

Darin Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of $3,000.00 on motion of Ms. Oster, second of Mr. McCarthy.

Discussion & Action of Applications for Renewal of Self Insurance Authority

Chairman Parker recused himself from the next agenda item. Vice Chair Oster took over chairmanship of the meeting for this item only.

Arizona Municipal Risk Retention Pool - Renee Pastor presented staff’s renewal report along with current Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers’ compensation self-insurance authority based on the Pool’s solid financial position, total assets of $75.3 million, ability to successfully manage the workers’ compensation program for its member cities and towns, the receipt of a clean audit report and an acceptable credit rating. Following discussion, the Commission approved continuance of self-insurance authority on motion of Mr. McCarthy, second of Mr. Sanders with a vote of three in favor and none against.

Central Arizona Water Conservation District – Renee Pastor presented staff’s renewal report along with current Standard and Poor’s and Dunn and Bradstreet bond and credit ratings. Administration is recommending renewal of workers’ compensation self-insurance authority based on the District’s profitability and stability; a clean audit report; and acceptable bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. McCarthy.
UNS Energy Corporation - Renee Pastor presented staff’s renewal report along with current Fitch, Moody’s, Standard & Poor’s, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers’ compensation self-insurance authority based on their financial stability and profitability, large size with assets exceeding $3.9 billion, a clean audit report, and acceptable credit ratings. Chairman Parker stated that they have a good program and Dave Baker should be recognized for the amazing job he is doing. The Commission unanimously granted continuance of self-insurance authority on motion of Ms. Oster, second of Mr. Sanders.

The Wendy’s Company – Renee Pastor presented staff’s renewal report along with current Moody’s, Standard & Poor’s, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers’ compensation self-insurance authority based on the company’s financial stability with worldwide assets of just over $4.3 billion, a clean audit report and acceptable credit ratings. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Mr. McCarthy.

Ms. Pastor advised that she is exploring whether to use Experian rather than Dunn and Bradstreet ratings in the future.

Announcements and Scheduling of Future Meetings

Meetings are scheduled for August 10, 22, September 5, 19 and 26. The August 10th meeting will be held at 11:30 a.m. at the Wigwam Resort during 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

Andrew Wade, Acting Director

ATTEST:

Teresa Hilton, Commission Secretary