

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, April 10, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Jessie Atencio	Acting Director, ADOSH
	J.R. Imes	ADOSH Compliance Officer
	Pat Ireland	ADOSH Compliance Officer
	Melinda Poppe	Claims Manager
	Jacqueline Kurth	Claims
	Renee Pastor	Self Insurance Manager
	Harriet Turney	Chief Administrative Law Judge
	Michael Hawthorne	Chief Financial Officer
	Kamen Kovatchev	Self Insurance
	Teresa Hilton	Commission Secretary

Vice Chairman Oster convened the Commission meeting at 1:13 p.m. noting a quorum present. Chairman Parker had not yet joined the meeting through video conference. John McCarthy was not able to attend. Also in attendance were Don Church; Scot Butler, the agency's lobbyist, and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of April 3, 2013 Meeting

The Commission unanimously approved the Minutes of the April 3, 2013 General Session on motion of Mr. Sanders, second of Ms. Strickler.

The Commission unanimously approved the Minutes of the April 3, 2013 Executive Session on motion of Mr. Sanders, second of Ms. Strickler.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C11/12-2297 COMMUNITY CAB, L.L.C.
2. 2C12/13-0171 NICHOLS TOWING & RECYCLING, L.L.C.
3. 2C11/12-1806 NUNTHAPORN, L.L.C. DBA
NUNTHAPORN THAI CUISINE
4. 2C12/13-1001 OTR, L.L.C.

Vice Chairman Oster 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 Ms. Strickler, second of Mr. Sanders.

Chairman Parker joined the meeting at 1:20 p.m. and took over as Chair.

Discussion & Action of Proposed OSHA Citations & Penalties

JRT Hunt, Inc.
1107 W. Geneva Dr.
Tempe, AZ 85282

Planned
Yrs/Business - 12
Empl. Cov. by Insp. - 35

Site Location: 1107 W. Geneva Dr., Tempe, AZ 85282
Inspection #: F3189-0152/316914894
Insp. Date: 2/6/2013

SERIOUS – Citation 1 - Item 1 – Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by rotating parts: (1910.0212(a)(1)).

- a) Shipping Area: One W.F. Wells & Sons, Inc. vertical band saw, model A-7, serial number 745283, did not have the unused portion of the blade guarded to prevent injury upon contact.
- b) Shipping Area: One Wells horizontal band saw, model number 850, serial number 2186, did not have the unused portion of the blade guarded to prevent injury upon contact.
- c) De-burr Area: One Dayton Electric 6" buffer, model number 4U99A, serial number unknown, did not have a safety guard installed on either wheel side to cover the spindle end, nut and flange projections.
- d) De-burr Area: One buffer, make, model and serial number unknown, did not have a safety guard installed on either wheel side to cover the spindle ends, nuts and flange projections.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s): (1910.212(a)(3)(ii)).

- a) Manual Milling Area: Two Bridgeport milling machines, model numbers and serial numbers unknown, were lacking guards at the point of operation to prevent the operator from placing any part of the body into the danger zone during milling operations.
- b) Manual Milling Area: Two Select milling machines, model number VB/VS, one serial number 19449 and the other serial number 19466, were lacking guards at the point of operations to prevent the operator from placing any part of the body into the danger zone during milling operations.
- c) Manual Milling Area: One Manford milling machine, model number and serial number unknown, was lacking a guard at the point of operation to prevent the operator from placing any part of the body into the danger zone during milling operations.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Vertical drive belt(s) were not fully enclosed and pulley(s) guarded: (1910.219(d)(1) & 1910.219(e)(3)(i)).

a) Shipping Area: One W.F. Wells & Sons, Inc. vertical band saw, model A-7, serial number 745283, did not have the vertical drive belt guarded and the pulleys completely enclosed to prevent accidental contact with rotating parts, pinch parts an in-going nip points.

b) Shipping Area: One Wells horizontal band saw, model number 850, serial number 2186, did not have the inclined drive belt guarded and the pulleys completely enclosed to prevent accidental contact with rotating parts, pinch parts and in-going nip

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Jessie Atencio summarized the citations and proposed penalty as listed and responded to questions from the Commission. Ms. Strickler made a motion to assess the recommended penalty of \$3,750.00 which was seconded by Ms. Oster. Mr. Sanders questioned whether the compliance officer had determined whether the machines had come with guards and whether they had been removed. Mr. Atencio stated he was not aware if that question had been asked. Mr. Sanders stated that ADOSH should ask those questions in the future. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00.

Pinal Feeding Co.
38351 W. Cowtown Road
Maricopa, AZ 85239

Complaint
Yrs/Business – 53
Empl. Cov. by Insp. – 25

Site Location: 38351 W. Cowtown Road, Maricopa, AZ 85239
Inspection #: T3633-0854/316892975
Insp. Date: 01/17/2013

GROUPED SERIOUS – Citation 1 - Item 1(a) - Pit south of feed mixer: The ladderway floor opening to the pit, which was 11 feet above the pit floor, was not guarded by a standard rail on the south side. (1910.23(a)(2)).

Citation 1 - Item 1(b) – Flake bin driver on elevated platform: The platform around the top flake bin grinder, which was approximately 20 feet above the ground had a hole in the floor mesh which was approximately 1 foot wide by 2 feet long. (1910.23(a)(8)). There was another instance of this violation.

Item 1(c) – Cotton seed receiving area: The receiving pit grate was removed and replaced by a chute for unloading cotton seed from the trucks, and the gap at either end of the chute between the chute and the receiving pit edge was up to 14 inches wide. (1910.272(k)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 – Open sided floors(s) or platforms(s) 4 feet or more above the adjacent floor or ground level were not guarded by standard railings (or the equivalent as specified in 29 CFR 1910.23(e)(3)(i) through (v)), on all open sides:

- (a) Corn gluten feeder bin: A platform by the corn gluten feeder bin, which was 5 feet 4 inches above the ground, was not guarded by a standard rail on all sides of the platform.
- (b) Ground hay bin driver pit: The floor level for the lower section of the hay bin drier, which was 5 feet 5 inches above the pit floor, was not guarded by a standard rail.
- (c) Hay grinder: the railing system for the hay grinder pit, which was approximately 8 feet above the pit floor, had an 8-foot section of mid-rail missing.
- (d) Flake bin driver on elevated platform: The platform around the top flake bin grinder, which was approximately 20 feet above the ground, was missing a section of railing for approximately 32 inches on the east inside edge, and was missing a section of railing for approximately 4 feet on the west inside edge.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

GROUPED SERIOUS – Citation 1 - Item 3(a) – Feed mill: A roller mill operator had an 8-hour time-weighted average (8-hour TWA) sound level exposure of 92.5 (80 dB measurement threshold), and the employer had not instituted a hearing conservation program. (1910.95(c)(1)).

Item 3(b) – Roller mills: The roller mill operator had an 8-hour time-weighted average sound level exposure of 92.3 dBA (90 dB measurement threshold), which exceeds the sound limit listed in Table G-16 of the standard. The company did not ensure that employees working in this area used hearing protection devices to reduce their exposure levels to those allowed by the table. (1910.0095(i)(2)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 - Machine Guarding was not provided to protect operator(s) and other employees from hazard(s) created by rotating parts: (1910.212(a)(1)):

- (a) Feed mill area: Side guards on each of the eight feed mills were inadequate in that there were gaps in the guards that exposed the ends of the grinding wheels.
- (b) Feed mill area: The auger for the corn steamer was not guarded on the top, which was approximately 5 feet 6 inches above the work platform.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 5 – Exposed part(s) of horizontal shafting were not protected by stationary casing(s) enclosing shafting completely or by trough(s) enclosing sides and top or sides and bottom of shafting: (1910.219(c)(2)(i)).

- (a) Boiler area: The motor shaft for the hydraulic pump by the boilers was not guarded.
- (b) Fat tanks: Motor and gearbox shafts for two fat pumps were not guarded.
- (c) Feed mill: The drive shaft for the feed mixer, which was approximately four feet long, was not guarded.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

GROUPED SERIOUS – Citation 1 - Item 6(a) – Corn gluten area: The corn gluten feeder did not have the guard on the back side of the belt drive. (1910.219(d)(1)) & (e)(1)(i)). There were four other instances of this violation.

Item 6(b) – Feed mill: Chain drives on each of the eight corn mills did not have guards installed on the back side of the chain drives. (1910.219(f)(3)). There were three other instances of this violation.

Div. Proposal - \$ 2,500.00
TOTAL PENALTY - \$10,000.00

Formula Amt. - \$ 2,500.00
TOTAL FORMULA AMT. - \$10,000.00

Mr. Atencio summarized the citations and proposed penalty as listed and responded to questions from the Commission. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$10,000.00 on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action regarding Application for Lump Sum Commutation

Zola Shaul #20061-180518 – Melinda Poppe advised that the Commission had previously tabled consideration of the lump sum commutation application pending receipt of additional information to determine whether the financial betterment standard could be satisfied. She advised that regarding the Social Security Disability potential offset, the applicant contacted her local Social Security office and was told that a lump sum commutation award should include language reflecting the value of the award over her life expectancy to avoid potential problems with the monthly Social Security Disability benefit. Regarding financial counseling, Ms. Shaul confirmed that she completed a court mandated financial course and has been provided with financial counseling in relationship to her previous bankruptcy. Regarding her husband's medical expenses, Ms. Shaul clarified her husband's medical condition. Ms. Poppe recommended approval of the lump sum commutation and advised that she has added language to the Commission's Special Findings and Award for lump sum commutations to address the Social Security Disability offset concern. She recommended that the language could be added to unscheduled and scheduled awards. Following discussion, the Commission unanimously approved the lump sum commutation request on motion of Mr. Sanders, second of Ms. Oster.

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

City of Chandler – Renee Pastor presented staff's renewal report along with current Fitch, Moody's, Standard and Poor's, and Experian bond and credit ratings and responded to questions from the Commissioners. She advised that the City is requesting renewal authority and authorization under A.A.C. 20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities. The City has an internal service fund and anticipates establishing a trust fund before the end of the fiscal year. The Commissioners discussed the alternative to the posting of other securities and agreed that the City must have trust fund in place prior to the next renewal request. Ms. Pastor recommended renewal of the City's workers' compensation self-insurance authority based on their financial stability; receipt of a clean audit report; and good bond ratings and acceptable credit ratings. Following discussion, the Commission unanimously approved renewal of self-insurance authority and approved the request under A.A.C. 20-5-1114 on motion of Ms. Oster, second of Mr. Sanders.

City of Prescott - Ms. Pastor presented staff's renewal report along with current Moody's, Standard & Poor's, Fitch and Experian bond and credit ratings. She advised that the City currently has an internal service fund and is in the process of setting up a trust. She recommended renewal of the City's workers' compensation self-insurance authority based on its stable financial condition in economic turbulence; protections afforded it as a governmental

entity; a clean audit report and acceptable bond and credit ratings. Following discussion, the Commission unanimously granted continuance of self-insurance authority on motion of Mr. Sanders, second of Ms. Oster.

City of Tempe - Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor's, and Experian bond and credit ratings. She advised that the City has not yet established a trust fund or appointed a board. She recommended renewal of the City's workers' compensation self-insurance authority based on the City's stable financial condition during economic turbulence; protections afforded it as a governmental entity; a clean audit report and acceptable bond ratings and credit scores. The Commission unanimously granted renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Chairman Parker recused himself from consideration of the next self-insurance renewal. Vice Chair Oster took over chairmanship of the meeting for this agenda item.

Glendale Elementary School District No. 40 - Ms. Pastor presented staff's renewal report along with current Standard & Poor's and Experian credit ratings. She stated that the City has an internal service fund and a trust fund established. She recommended renewal of the City's workers' compensation self-insurance authority based on the District's financial stability and a clean audit report. The Commission approved continuance of self-insurance authority on motion of Ms. Strickler, second of Mr. Sanders. Mr. Parker did not take part in the discussion or the vote.

Chairman Parker resumed chairmanship of the meeting.

Pima County - Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor's, and Experian bond and credit ratings and advised that the County has requested authorization under A.A.C. 20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities. She stated that the County has informed the Commission that it has a fully funded workers' compensation trust fund. She recommended renewal of the County's workers' compensation self-insurance authority based on its stable financial condition; clean audit reports; acceptable credit ratings and acceptable bond; COP ratings and approval under A.A.C. R20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities. Following discussion, the Commission unanimously granted continuance of self-insurance authority on motion of Ms. Strickler, second of Ms. Oster.

Tucson Unified School District No. 1 - Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor's, and Experian bond and credit ratings. She advised that the District has a guarantee bond as a security deposit and has a trust established. She recommended renewal of the District's workers' compensation self-insurance authority based on its satisfactory financial condition; protections afforded it as a governmental agency; a clean audit report and acceptable bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting will be held on April 17, 2013 and will begin with the annual Fee Schedule hearing in the Auditorium at 10:00 a.m.

The Commissioners confirmed the future meeting dates of May 1, 2013, May 8, 2013, May 23, 2013 and June 6, 2013. The meeting tentatively scheduled for June 12, 2013 was changed to June 13, 2013.

Executive Session pursuant to A.R.S. §§38-431.03(A)(1) for discussion and consideration of applicant for Administrative Law Judge position of the Industrial Commission

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

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

Ms. Turney advised that having reviewed the resumes and conducted two interviews, she has made a recommendation for one candidate based on experience, the interview, and her judgment that the candidate would make a good transition into the ALJ position. Mr. Sanders agreed that the candidate would make a good ALJ and moved to make the appointment which was seconded by Ms. Oster and approved unanimously.

Discussion &/or Action regarding Legislation

Scot Butler provided an updated report of current legislative activity, including SB 1148, SB 1310, and HB 2485, and responded to questions from the Commissioners. He explained the concerns with HB 2485 since the language is not clear whether it applies to voluntary employer audits only. Discussion followed regarding the intent of the legislation. The Commission unanimously agreed that the position of the Commission is that it is concerned about the lack of clarity in the bill, and without clarifying language, it is difficult to know the impact on the regulatory scheme or whether it could be detrimental to work place safety on motion of Mr. Sanders, second of Ms. Strickler.

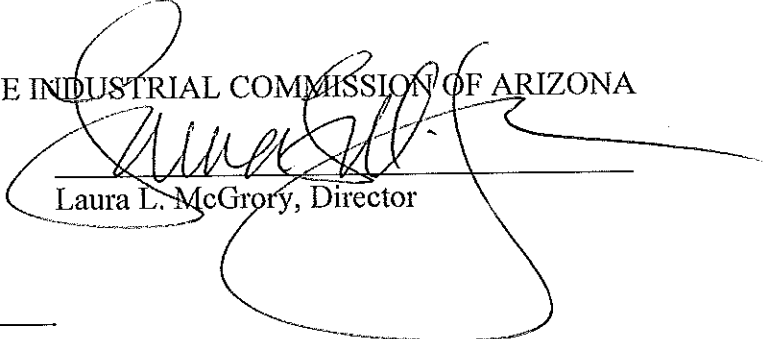
Public Comment

Mr. Sanders introduced Don Church to the Commissioners and provided some information about him.

There being no further business to come before the Commission, the meeting was adjourned at 3:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary