

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, July 24, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Chris Anderson	Legal Counsel
	William Warren	Director, ADOSH
	Steven Black	Industrial Hygiene CO
	Jeff Wilson	Safety CO
	Brandon Stowell	Safety CO
	Ron Harnsberger	Safety CO
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Mary Grace McNear of Guthrie; Holly Tully of Guthrie; Rick Meyer of Guthrie; Alexandra Wright; Donovan Hemway; Riley Jorgenson; Hugh Jorgan; Jeff Horner of General Dynamics; John Krecek of JFK Electrical; Tony Ward of JFK Electrical; and Andrea Lewis of Snell and Wilmer.

Chairman Parker welcomed Joseph Hennelly, newly appointed Commissioner, to his first meeting.

Approval of Minutes of July 10, 2013 Meeting

The Commission approved the Minutes of the July 10, 2013 meeting on motion of Ms. Strickler, second of Ms. Oster with a vote of four to zero. Mr. Hennelly did not take part in the vote.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C13/14-0001 19th Street Builders, L.L.C.
2. 2C12/13-1427 Envision Security Inc.
3. 2C12/13-0899 Freedom Refined L.L.C.
4. 2C12/13-0375 GF Fine Metal Products LLC
dba Goodman Fabrications
5. 2C12/13-2308 Hi Tech Roofing, L.L.C.
6. 2C12/13-0165 Lift-Truck Service Co. Inc.

7. 2C13/14-0002 Lockman Pool LLC dba Mohave County Pools & Spas
8. 2C12/13-2307 Now Hiring Telemarketers, L.L.C.
9. 2C12/13-1761 Pineview Adult Care Home LLC
10. 2C11/12-1903 Robtoria LLC dba Grasshopper Junction Mini Market and Deli
11. 2C12/13-1764 Royal Dining Group, Inc.
12. 2C12/13-0766 Ruiz's Pool Plastering, LLC

Chairman Parker stated that agenda item a (3) would be removed from the consent agenda. The Commission unanimously approved the remaining consent agenda items on motion of Mr. Sanders, second of Ms. Strickler. Andrew Wade advised that with regard to item a (3) Freedom Refined L.L.C., the employer has obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 be assessed against this employer. The Commission unanimously assessed the recommended penalty of \$500.00 against employer a (3) on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action regarding ADOSH Discrimination Complaint. The Commission may vote to hold an Executive Session under A.R.S. §38-431.03(A)(3) and (4) for the purpose of obtaining legal advice from the Commission's attorneys and to consider the Commission's position and instruct its attorneys regarding pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.

#12-70 Donovan Hemway vs. Metropolitan Domestic Water Improvement District – Bill Warren and Steven Black presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter. Mr. Warren recommended that the Commission decline to pursue the matter and explained the reasons for this recommendation. The Commissioners discussed the investigation and the information presented. Mr. Sanders described his review of the investigation file and provided his opinions as to what the evidence establishes. The Commissioners also discussed the ADOSH whistle blower act regarding protected activity and discrimination.

Mr. Parker invited Mr. Hemway to address the Commission. Mr. Hemway thanked the Commission for the time and consideration that has been put into investigating his complaint and stated he is willing to answer any questions. He stated that he followed the employer's and EAP's instructions and that the employer was dishonest. He stated he was concerned about the safety of his co-workers.

The Commission unanimously voted to go into Executive Session on motion of Mr. Sanders, second of Ms. Strickler.

Chairman Parker announced a short break, and the Executive Session began at 2:49 p.m. Executive Session Minutes are kept separately.

Upon return to General Session, the Commission unanimously voted to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster.

Vice Chair Strickler left the meeting at 3:25 p.m. Chairman Parker noted there was still a quorum present and stated that Agenda item number 6, consideration of applications for renewal of self-insurance authority, would be held until the next meeting.

Discussion & Action of Proposed OSHA Citations & Penalties

JFK Electrical Contracting Enterprises, Inc.
1439 W. San Angelo St.
Gilbert, AZ 85233

Fatality/Accident
Yrs/Business - 25
Empl. Cov. by Insp. - 5

Site Location: 7300 W. Detroit St., Chandler, AZ 85226
Inspection #: R1538-317023059
Insp. Date: 03/07/2013

WILLFUL SERIOUS - Citation 1 - Item 1 - A mobile scaffold (Genie scissor lift, model GS3268, serial number GS68-40242) was driven into a hole causing the lift to tip over. (1926.452(w)(6)(i)).

Div. Proposal - \$42,000.00

Formula Amt. - \$42,000.00

WILLFUL SERIOUS - Citation 2 - Item 1 - Two employees working from a mobile scaffold had not received training from a qualified person in the hazards associated with working on mobile scaffolding. (1926.454(a)).

Div. Proposal - \$42,000.00

Formula Amt. - \$42,000.00

TOTAL PENALTY - \$84,000.00

TOTAL FORMULA AMT. - \$84,000.00

Bill Warren and Brandon Stowell summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. In response to a question from Chairman Parker, Mr. Warren explained why the classification for these violations was willful. John Krecek addressed the Commission and stated that in 25 years the company has never had a major accident, has a good safety program, and an experience modification rating of less than 1. Mr. Krecek stated this was operator error and the injured employee should not have been in the area. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$84,000.00 on motion of Ms. Oster, second of Mr. Sanders.

Guthrie General, Inc.
6677 W. Thunderbird Rd., Ste. C140
Glendale, AZ 85306

Unprogrammed Related
Yrs/Business - 24
Empl. Cov. by Insp. - 1

Site Location: 7300 W. Detroit St., Chandler, AZ 85226
Inspection #: R1538-317023067
Insp. Date: 03/07/2013

WILLFUL SERIOUS - Citation 1 - Item 1 - A mobile scaffold (Genie scissor lift, model GS3268, serial number GS68-40242) was driven into a hole causing the lift to tip over. (1926.452(w)(6)(i)).

Div. Proposal - \$21,000.00

Formula Amt. - \$21,000.00

Bill Warren and Brandon Stowell summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. They explained that this case file and the previous involved the multi-employer doctrine situation. The Commission unanimously

approved issuing the citations and assessed the recommended penalty of \$21,000.00 on motion of Mr. Sanders, second of Ms. Oster.

Alpine Valley Bread Company
300 W. Southern Ave.
Mesa, AZ 85210

Complaint
Yrs/Business - 18
Empl. Cov. by Insp. - 18

Site Location: 300 W. Southern Ave., Mesa, AZ 85210
Inspection #: N4762-316993062
Insp. Date: 02/21/2013

SERIOUS - Citation 1 - Item 1 - Vertically-installed portions of the compressed air lines, approximately 25' lengths of 1-1/2" copper tube, were not supported vertically with due consideration of vibration caused by the ball valves being operated or incidental contact occurring. (A.R.S. § 23-403(A)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 2 -

- (a) The employer did not evaluate if the space inside the Baxter Revolving Tray Ovens was a permit-required confined space. (1910.146(c)(1)).
 - (b) A danger sign identifying a Permit-Required Confined Space and the hazard was not posted on the Baxter Revolving Oven Tray Ovens. (1910.146(c)(2)).
 - (c) The employer did not develop and implement a written permit space entry program for their employees to enter Permit-Required Confined Spaces, such as the Baxter Revolving Tray Ovens. (1910.146(c)(4)).
 - (d) Employees were not provided with Permit-Required Confined Space training for the safe performance of their assigned duties while working on the Baxter Revolving Tray Ovens. (1910.146(g)(1)).
- Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 3 -

- (a) The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or servicing on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury, such as the Baxter Revolving Tray Ovens. (1910.147(c)(1)).
 - (b) The employer did not lock the main shutoff valves in the closed position when employees entered the Baxter Revolving Tray Ovens, or when the ovens were not in service. (1910.263(l)(3)(iii)(b)).
- Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 4 - The electrical equipment (i.e., junction boxes) and wiring methods used were not intrinsically safe, or approved for use in a Class I, Division 2, flammable gas area, or in a Class II, Division 2, combustible dust area. (1910.307(c)).

Div. Proposal - \$1,750.00
TOTAL PENALTY - \$7,000.00

Formula Amt. - \$1,750.00
TOTAL FORMULA AMT. - \$7,000.00

Bill Warren and Ron Harnsberger summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Chairman Parker explained the general duty clause. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$7,000.00 on motion of Mr. Sanders, second of Ms. Oster.

Interstate Systems Installation AZ, Incorporated
5802 S. 25th St.
Phoenix, AZ 85040

Complaint
Yrs/Business - 3
Empl. Cov. by Insp. - 6

Site Location: 5802 S. 25th St., Phoenix, AZ 85040
Inspection #: H1793-317075943
Insp. Date: 04/17/2013

SERIOUS - Citation 1 - Item 1 - The exit door at the northwest side of the warehouse was blocked by office chairs, furniture and equipment. (1910.37(a)(3)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1 - Item 2 - The measured average air velocity over the open face of the Spray Systems Inc. spray booth (model # unknown and serial # 2005-1087/8255) was 76 linear feet per minute. (1910.107(b)(5)(i)).

Div. Proposal - \$1,050.00

Formula Amt. - \$1,050.00

SERIOUS - Citation 1 - Item 3 - One Triangle Engineering floor fan, model # TPC-36 and serial number unknown, was missing the rear cover guard exposing the pulleys, belt and fan blades. (1910.219(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 4 -

(a) - A written hazard communication program had not been developed, implemented, and maintained for employees who handled hazardous chemicals and/or substances such as Cardinal Industrial Finishes - 340HP Urethane Catalyst. (1910.1200(e)(1)).

(b) - A material safety data sheet (MSDS) was not available for employees who handled hazardous chemicals and/or substances such as Cardinal Industrial Finishes - 340HP Urethane Catalyst. (1910.1200(g)(1)).

(c) - Effective information and training was not provided for employees who handled hazardous chemicals and/or substances such as Cardinal Industrial Finishes - 340HP Urethane Catalyst. (1910.1200(h)).

Div. Proposal - \$1,050.00
TOTAL PENALTY - \$4,350.00

Formula Amt. - \$1,050.00
TOTAL FORMULA AMT. - \$4,350.00

Bill Warren advised that this case file had been previously presented to the Commissioners at which time there were questions including whether the blocked exit door was isolated and whether other exits were blocked, also how often the spray booth was used, when it was last used, and whether chemicals were stored there. Mr. Warren advised that the blocked

exit door was isolated and used as a storage area and that other exits were not blocked. The spray booth is used approximately one hour per week and paint and chemicals are stored outside the booth. Mr. Warren 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 \$4,350.00 on motion of Ms. Oster, second of Mr. Sanders.

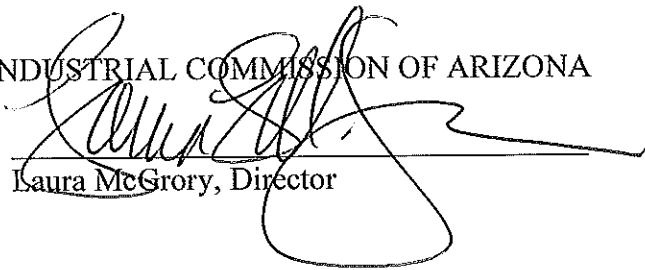
Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Friday, August 9, 2013 at 11:30 a.m. at the Wigwam Resort.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 4:05 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laura McGrory, Director

ATTEST:


Teresa Hilton, Commission Secretary