

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, October 16, 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
	Karen Axsom	Director, Labor Dept.
	William Warren	Director, ADOSH
	Brandon Stowell	Compliance Officer
	Bryce Rucker	Compliance Officer
	Marshall Krotenberg	Compliance Officer
	Michael Hawthorne	Chief Financial Officer
	Michael Dodd	Asst. Controller
	Kamen Kovatchev	Self-Insurance
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:03 p.m. noting a quorum present. Also in attendance were Rachel Brockway of HMA Public Relations; Matt Saxe of Lang Baker & Klain PLC; Howard Fischer of Capital Media Services; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of October 10, 2013 Meeting

The Commission approved the Minutes of October 10, 2013 on motion of Mr. Sanders, second of Ms. Oster with a vote of 4-0. Ms. Strickler did not participate in the vote.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C12/13-1539 Cornwell's Truck Repair (CTR), LLC,  
dba Cornwells Truck Repair
2. 2C13/14-0260 Seat Covers Unlimited, Inc.

b. Approval of Requests for Renewal of Self-Insurance Authority

1. Chevron U.S.A., Inc.
2. City of Mesa
3. DG Retail, LLC
4. Kiewit Corporation
5. Textron, Inc.
6. UNS Energy Corp.

Chairman Parker asked if any items needed to be removed from the consent agenda. Hearing none, the Commission unanimously approved the consent agenda items on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action regarding Arizona Minimum Wage Rate for 2014

Karen Axsom explained that A.R.S. § 23-363(B) directs that the minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living and that the increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. She provided a computation of the proposed increase in the Arizona minimum wage to become effective January 1, 2014. Ms. Axsom explained that the Consumer Price Index as of August 2013 was 1.5 percent higher compared to August 2012. She explained that this results in an increase of 11.7¢ per hour and the statute directs the wage increase be rounded to the nearest multiple of five cents which means the increase will be \$0.10 per hour. Adding \$0.10 to the 2013 Arizona minimum wage of \$7.80 results in the amount of \$7.90. In accordance with the requirements of the statute, she stated that the Labor Department recommends the Commission approve a new rate of \$7.90 per hour effective January 1, 2014. The Commission unanimously approved the Arizona minimum wage of \$7.90 effective January 1, 2014 for calendar year 2014 on motion of Mr. Sanders, second of Ms. Strickler.

Discussion & Action of ADOSH Discrimination Complaint

#13-2603-06 Dalyn Kepler vs. SDB, Inc. - Bill Warren and Bryce Rucker presented a summary of Mr. Kepler's complaint, the employer's response, and the Division's investigation of the matter and responded to questions from the Commissioners. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of any protected activity and adverse action. The Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations & Penalties

City of Phoenix, Fire Department  
150 S. 12<sup>th</sup> St.  
Phoenix, AZ 85034

Fatality/Accident  
Yrs/Business – 127  
Empl. Cov. by Insp. – 50

Site Location: 39<sup>th</sup> Ave. Miami St., Phoenix, AZ 85009  
Inspection #: R1538-317154078  
Insp. Date: 05/21/2013

WILLFUL SERIOUS – Citation 1 - Item 1 – On May 28, 2013, one firefighter was killed when he was struck and caught between two fire fighting vehicles while one of the vehicles was backing-up without a spotter. (23-403(A)).

Div. Proposal - \$70,000.00

Formula Amt. - \$70,000.00

WILLFUL SERIOUS – Citation 1 - Item 2 – On May 18, 2013, Firefighter Bradley Harper was killed in the line of duty as a result of a willful violation of A.R.S. 23-403(A). (A.R.S. § 23-418.01).

Div. Proposal - \$25,000.00

Formula Amt. - \$25,000.00

TOTAL PENALTY - \$95,000.00

TOTAL FORMULA AMT. - \$95,000.00

Bill Warren and Brandon Stowell summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Discussion followed regarding the incident, the identification of the recognized hazard, whether the practice of backing up without a spotter is common in the industry and whether the citation should be classified as “serious” or “willful serious.” Mr. Sanders questioned the history of back-up accidents and whether the City of Phoenix had knowledge that its policy requiring a spotter was being disregarded. Following further discussion, Chairman Parker stated that Citation 1 – Item 1 would be considered separately from Citation 1 – Item 2. The Commission approved issuing Citation 1 – Item 1 as a willful serious and assessed the recommended penalty of \$70,000.00 on motion of Mr. Oster, second of Ms. Strickler with a vote of 4 – 1. Mr. Sanders voted nay.

Moving to Citation 1 - Item 2, Chairman Parker read the elements of the statute, A.R.S. § 23-418.01, and stated that he interprets the imposition of the additional \$25,000 penalty as mandatory if the elements apply. After discussion, Ms. Strickler made a motion to approve issuing Citation 1 – Item 2 with the recommended penalty of \$25,000.00 which was seconded by Mr. Hennelly. Ms. Strickler then restated the motion to clarify that the Commission finds that under A.R.S. § 23-418.01, the citation has been found as willful, that the violation did result in the death of an employee, that a workers’ compensation claim was filed and benefits have been paid, and that the citation and violation did not result from the deceased’s disobedience to specific instructions given regarding the job conditions. Mr. Hennelly seconded the restated motion, which was unanimously approved.

Scott Roofing Company  
3601 N. 36<sup>th</sup> Ave.  
Phoenix, AZ 85019

Planned  
Yrs/Business - 29  
Empl. Cov. by Insp. - 3

Site Location: 2811 N. 7<sup>th</sup> Avenue, Phoenix, AZ 85007  
Inspection #: J7272-317289445  
Insp. Date: 09/06/2013

SERIOUS - Citation 1 - Item 1 - An employee was working on an aluminum extension ladder at a height of approximately 21'-0" where he was in close proximity to a power line and was not protected against electrical shock by deenergizing and grounding the circuits or effectively guarding the circuits by insulation or other means. (1926.416(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 2 - Two employees were observed working on top of a Dodge 3500 box truck with unprotected sides where they were exposed to a fall of approximately 10'-2". (1926.501(b)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 -

(a) An employee used an 8' step ladder, model and serial number unknown, to gain access to the top of a Dodge 3500 box truck where the ladder had been leaned against the truck and was not in an open position, which is not the designed use of a step ladder. (1926.1053(b)(4)).

(b) An aluminum extension ladder, model number and serial number unknown, was being utilized on top of a Dodge 3500 box truck, which was an other-than stable surface. (1926.1053(b)(6)).

(c) An employee used a 24' aluminum extension ladder, model and serial number unknown, where either the employee or the ladder could contact an energized 120-240 service drop power-line. (1926.1053(b)(12)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Bill Warren and Brandon Stowell summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Ms. Oster, second of Ms. Strickler with a vote of 4 to 1. Mr. Sanders was opposed.

San Tan Brewing Company, Inc.  
8 S Marcos Place  
Chandler, AZ 85225

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

Site Location: 8 S. Marcos Place, Chandler, AZ 85225  
Inspection #: U9805-317221919  
Insp. Date: 07/09/2013

SERIOUS - Citation 1 - Item 1 -

(a) The employer failed to provide a place of employment that was kept clean and orderly or in a sanitary condition.

(b) Empty 55 gallon grain drums and chemicals are stored adjacent to the milling room exit and were obstructing a pathway to the only exit door. (1910.22(a)(1)). There was one other instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – The employer did not evaluate the workplace for hazards which would require the use of personal protective equipment. (1910.132(d)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 – An eye wash station was not readily available for quick drenching or flushing in the event of accidental contact with corrosive material (i.e., Cir-Q-Lat containing sodium hydroxide). (1910.151(c)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 –

(a) The employer did not establish, implement and maintain a written hazard communication program for employees in the workplace to hazardous chemical, substances and/or material such as Dioxychlor, Cir-Q-Late (sodium hydroxide mix) and Ultra Niter (mixture of nitric acid and phosphoric acid). (1910.1200(e)(1)).

(b) The employer did not ensure that the container labeled “acid” which contained Ultra Niter was labeled with the appropriate hazard markings. (1910.1200(f)(5)(ii)).

(c) The employer did not furnish information and training to employees who are potentially exposed in the workplace to hazardous chemicals, substances and/or materials such as Dioxychlor, Cir-Q-Late (sodium hydroxide mix) and Ultra Niter (mixture of nitric acid and phosphoric acid). (1910.1200(h)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$4,750.00

TOTAL FORMULA AMT. - \$4,750.00

Bill Warren 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 \$4,750.00 on motion of Ms. Strickler, second of Mr. Sanders.

Terros, Inc.  
3003 N. Central Avenue, #200  
Phoenix, AZ 85012

Complaint  
Yrs/Business – 29  
Empl. Cov. by Insp. – 32

Site Location: 3864 N. 27<sup>th</sup> Avenue, Phoenix, AZ 85017

Inspection #: A7746-317221612

Insp. Date: 06/26/2013

SERIOUS – Citation 1 - Item 1 – The presence, location and quantity of asbestos containing materials (ACM) or presumed asbestos containing materials (PACM) had not been determined

by the property owner prior to the initiation of construction and renovation activities. (1926.1101(k)(2)(i)).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

Bill Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,500.00 on motion of Mr. Sanders, second of Ms. Oster.

Consolidated Engineering & Construction, LLC  
2537 W. Missouri Ave.  
Phoenix, AZ 85017-2740

Referral  
Yrs/Business - 10  
Empl. Cov. by Insp. - 6

Site Location: 18864 E. Germann Rd., Queen Creek, AZ 85142

Inspection #: N4762-317221877

Insp. Date: 07/05/2013

SERIOUS – Citation 1 - Item 1 – Gymnasium Roof Area: Five employees climbed up and down the guardrail system of a Skyjack scissor lift, Model SJIII 4632, Serial number unknown, which is prohibited by the manufacturer, to gain access to and from the roof which was approximately 50” above the platform of the scissor lift, while elevated at 26’ above the concrete floor. (1926.451(e)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – Gymnasium Roof Area: An employee had climbed up and down the guardrail system of a Skyjack scissor lift, Model SJIII 4632, Serial Number unknown, which is prohibited by the manufacturer, to gain access to and from the roof which was approximately 50” above the platform of the scissor lift, while elevated 26’ above the concrete floor, without being trained in the hazards associated with the type of scaffold being used and understanding the procedures to control or minimize those hazards. (1926.454(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Northwest corner of Gymnasium Roof Area: An employee was walking on an endwall rafter beam beyond the leading edge of the metal decking, approximately 29’ above the gymnasium floor, and was not protected from falling by a guardrail system, safety net system, personal fall arrest system, positioning device system or fall restraint system resulting in the fall of one employee who suffered serious injuries. (1926.760(a)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 4 – Gymnasium Roof: Five employees were working in an area where the employer had verbally designated the entire 81’ by 106’ gymnasium roof as a Controlled Decking Zone, but there were no signs or control lines posted identifying the area as a Controlled Decking Zone, and some of the boundaries of the CDZ were more than 90’ from a leading edge. (1926.760(c)(3)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$8,750.00

TOTAL FORMULA AMT. - \$8,750.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, Chairman Parker stated that

consideration of these citations would be held pending review by staff whether any of the violations should be classified as "willful" violations.

R&R Products, Inc.  
3334 E. Milber Street  
Tucson, AZ 85225

Planned  
Yrs/Business - 42  
Empl. Cov. by Insp. - 221

Site Location: 3334 E. Milber Street, Tucson AZ 85225  
Inspection #: T3633-317260784  
Insp. Date: 08/15/2013

SERIOUS - Citation 1 - Item 1 -

(a) Blade bending room: The paint spray booth was not protected with approved automatic sprinklers or other adequate for protection system. (1910.107(b)(5)(iv)).

(b) Blade bending room: Materials including the stock paints were stored along the sites of the paint spray booth, so that a clear space of not less than 3 feet was not maintained. (1910.107(b)(9)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 2 -

(a) CNC Department: Energy control procedures were not utilized in that the back guard was removed from the Mazak brand CNC mill, R&R machine #2, to repair a coolant leak, and the machine was not locked out. (1910.147(c)(4)(i)). There was one other instance of this violation.

(b) Maintenance employees used lockout/tagout, and the employer did not conduct an annual inspection of the energy control procedures to ensure that the requirements of the standard were being followed. (1910.147(c)(6)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 3 - Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by point of operation, ingoing nip points, and rotating parts. (1910.212(a)(1)). There were eight instances of this violation.

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

TOTAL PENALTY - \$7,000.00

TOTAL FORMULA AMT. - \$7,000.00

Bill Warren 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 \$7,000.00 on motion of Mr. Sanders, second of Ms. Oster.

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

Laura McGrory stated there was nothing new to report.

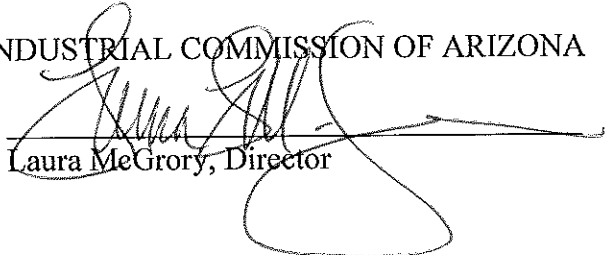
Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners of the dates that are scheduled for Commission meetings through the end of the year: October 30, November 6, 14, and 20, and December 4, 12 and 18 and discussed next year's Commission meeting schedule. Mr. Parker stated he would draft a proposed schedule for the first quarter of 2014.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 3:24 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
\_\_\_\_\_  
Laura McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Teresa Hilton, Commission Secretary