

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 2675 East Broadway Boulevard
Conference Room
Tucson, Arizona 85716
Thursday, May 15, 2014 – 10:30 a.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair (telephonic)
	Kathleen Oster	Member (telephonic)
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Jessie Atencio	ADOSH Assistant Director
	Javier De Echavarri	Compliance Officer
	Michael Hawthorne	Chief Financial Officer, (telephonic)
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 10:30 a.m. noting a quorum present.

Approval of Minutes of May 7, 2014 Meeting

The Commission unanimously approved the Minutes of the May 7, 2014 Commission Meeting on motion of Mr. Hennelly, second of Mr. Sanders.

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. 2C13/14-1478 BMB Arizona Steel Incorporated, DBA Arizona Steel Construction and Repair
2. 2C13/14-0925 Iron Pig, L.L.C. DBA Waldo's BBQ
3. 2C12/13-2275 John Rothweiler & Beth Rothweiler, husband and wife, & Brent Mills, a single man, DAB Dance life USA
4. 2C12/13-1889 Mesa, Dental Studio, LLC
5. 2C13/14-0921 Unity Group Homes, L.L.C.

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

1. MTD Southwest, Inc.
2. The Salvation Army, Western Territory and Affiliates

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the consent agenda on motion of Mr. Sanders, second of Mr. Hennelly.

Discussion and/or Action regarding Legislation

Ms. McGrory stated there was nothing to report at this time.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation

Mr. Wade stated there was nothing new to report at this time.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Proposed Citations and Penalties

CJ's Bathtub Refinishing & Repair, LLC
 23003 N 105th Ave
 Peoria, AZ 85383

Fatality/Accident
 Yrs/Business - 5
 Empl. Cov. By Insp. - 1

Site Location: 16826 N Boswell Blvd, Sun City, AZ 85351
 Inspection No: L3419-317695104
 Inspection Date: 03/18/2014

Mr. Warren summarized the investigation into the death of the business' owner, the only worker in the business. Mr. Warren stated that the medical examiner has not released the autopsy report and, as a result, the cause of death is not known. Several of the Commissioners expressed concerns regarding the chemicals used in bathtub refinishing and asked about the need for industry outreach. Mr. Warren referred to a recent OSHA –NIOSH Hazard Alert regarding the use of methylene chloride. Following further discussion, Mr. Warren stated he would explore incorporating the OSHA – NIOSH Hazard Alert into ADOSH's outreach efforts.

Guerrero Packing, A Custom Harvest Company
 P.O. Box 3722
 Somerton, AZ 85350

Fatality/Accident
 Yrs/Business - 2
 Empl. Cov. By Insp. - 25

Site Location: Thomas Ranch lot #SNE CO 17th St between Ave F & G, Somerton, AZ 85350
 Inspection No: N7988-317449759
 Inspection Date: 11/27/2013

SERIOUS – Citation 1 - Item 1 – Thomas Ranch Lot #SNE 17th St., Somerton, AZ: An employee operated a John Deer Tractor (Model 6233 #PAR3984) with a flatbed trailer attached and a load stacked in such manner that it obstructed the operator’s view to the rear, and did not ensure the path to travel to the rear was clear. (A.R.S. § 23-403(A))

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Hilltown Packing Co., Inc.
9 Harris Pl
Salinas, CA 93901

Fatality/Accident
Yrs/Business - 25
Empl. Cov. By Insp. - 25

Site Location: Thomas Ranch Lot #SNE CO 17th St between Ave F & G, Somerton, AZ 85350
Inspection No: N7988-317449767
Inspection Date: 11/27/2013

SERIOUS – Citation 1 - Item 1 – Thomas Ranch Lot #SNE 17th St., Somerton, AZ: An employee operated a John Deer Tractor (Model 6233 #PAR3984) with a flatbed trailer attached and a load stacked in such manner that it obstructed the operator’s view to the rear, and did not ensure the path to travel to the rear was clear. (A.R.S. § 23-403(A))

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Mr. Warren stated that both the Guerrero Packing and Hilltown Packing agenda items are related to the same investigation into the death of a farm worker. Mr. Warren explained how Guerrero and Hilltown had been using farm tractors connected to flatbed trailers to back up those trailers under circumstances where the tractor operator could not see behind the trailers while backing because the trailers were laden with boxes of produce that obstructed the view to the rear, the vehicle had no mirrors, and no other method of guidance or employee warning. In response to a question from Mr. Parker concerning the fatal accident, Mr. Warren explained that a Hilltown employee operated the farm tractor and flat-bed trailer and had backed up about 100 feet without being able to see behind the trailer. Two female workers, one a Guerrero employee and one a Hilltown employee, on break were standing near a dirt road talking when the trailer approached. The Guerrero employee pushed the Hilltown worker out of the way but was struck by the trailer, causing her death. Mr. Warren explained that on the day of the accident and the day before both employers had their own employees operating farm tractors while the operators’ view to the rear was obstructed exposing each employer’s own employees to the hazard of being run over or struck by the trailers. Mr. Warren described staff’s recommendation and explained their reasoning.

Mr. Warren responded to questions from Mr. Parker regarding which employer’s employee was operating the farm tractor at the time of the accident, the employer of the employee who was killed, and the location of the other employees. Mr. Sanders followed with questions regarding the operator, training, and whether the farm tractors had back up alarms. Mr. De Echavarri responded to the questions and explained the use of spotters for the harvesters.

Mr. Sanders commented on ADOSH including this type of hazard in its educational outreach efforts. Mr. De Echavarri stated that each employer had a supervisor on site and both were aware that there were no back up alarms on the tractors, that the operators were backing blind several times a day for a couple of days, and that they were not using other means to make sure it was clear to

safely back the equipment. During these operations, employees of the same employer as the driver were working in the area. He also explained his findings in surveying the industry to ascertain whether it was common to back vehicles with an obstructed view to the rear when there were other employees in the area and confirmed that backing blind and without checking to ensure it was clear was not a common practice.

Ms. McGrory responded to questions from Mr. Parker regarding the agriculture standards.

Mr. Parker described the elements of a general duty citation and the use of common sense recognition of a hazard in the context of a willful violation and how any reasonable person knows to be able to see in the direction one is moving.

The Commission discussed prior citations issued to Guerrero Packing and discussed whether any reduction factors could be applied to the citation regarding Guerrero Packing.

Following further discussion for Hilltown Packing, Mr. Parker moved that Citation 1 Item 1 be classified as a Willful Serious violation of A.R.S. § 23-403(A) and that the penalty be \$70,000.00 with no reduction factors because the violation caused or contributed to the death of the employer's own employee. Mr. Sanders seconded the motion and the Commission unanimously approved issuing the Citation with a \$70,000.00 penalty.

Following further discussion for Guerrero Packing, Mr. Parker moved that Citation 1, Item 1 be classified as a Wilful Serious with a 20% reduction for size for a total penalty of \$56,000.00. Mr. Hennelly seconded the motion and the Commission unanimously approved issuing the Citation as a Wilful Serious violation of A.R.S. § 23-403(A) with a \$56,000.00 penalty.

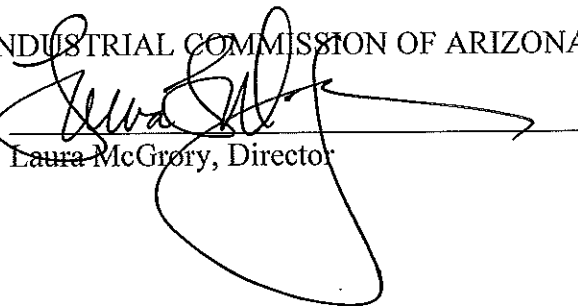
Announcements and Scheduling of Future Meetings

Secretary Dimas reminded the Commissioners that the next meeting is scheduled for May 22, June 4, June 19, and June 26, 2014 and read the list of tentative meeting scheduled through August 2014. Meetings were scheduled for July 2, July 17, and July 24, 2014. Mr. Parker confirmed the dates for the Claims Seminar on August 14 and 15, 2014 and asked if any of the Seminar topics are related to workplace safety. Ms. McGrory responded to the question. Mr. Warren noted the ADOSH Flagstaff Regional Safety Summit is scheduled for July 22 and 23, 2014.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 11:33 a.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary

RESOLUTION OF AUTHORIZATION
of
THE INDUSTRIAL COMMISSION OF ARIZONA

WHEREAS, effective October 1, 1990 the Industrial Commission of Arizona authorized INERTIA DYNAMICS CORP. to self-insure its obligations under the Arizona Workers' Compensation Act, A.R.S. § 23-901 *et seq.* for its employees in the State of Arizona, such authority having been authorized to the present;

WHEREAS on October 1, 1990 and May 2000, as a result of a name change, successor entities of RYOBI OUTDOOR PRODUCTS requested and were granted authority to self-insure their obligations under the Arizona Workers' Compensation Act, A.R.S. § 23-901 *et seq.*, for their and their subsidiaries employees. On May 31, 2000 MTD PRODUCTS, INC. acquired RYOBI PRODUCTS, CORP. As a result of a name change, successor entity MTD SOUTHWEST, INC. requested and were granted authority to self-insure their obligations under the Arizona Workers' Compensation Act, A.R.S. § 23-901 *et seq.*, for its employees.

WHEREAS, on March 1, 2014 MTD SOUTHWEST, INC. requested renewal of authorization to self-insure its obligations under the Arizona Workers' Compensation Act;

WHEREAS, the Industrial Commission of Arizona reviewed such request and supporting documents at a public meeting on May 15, 2014 and determined that MTD SOUTHWEST, INC. has satisfied all requirements necessary under the aforementioned statute and applicable rules to continue as a self-insured employer;

WHEREAS, MTD PRODUCTS, INC. has completed and filed a parental guaranty for its subsidiary MTD SOUTHWEST, INC.; and

WHEREAS, MTD SOUTHWEST, INC. has filed a security deposit in the amount of \$100,000.

This self-insurance authority is effective for extraterritorial purposes (reciprocity) the same as a workers' compensation insurance policy under A.R.S. § 23-904 as amended by Laws 2013, Chapter 34

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of Arizona, that MTD SOUTHWEST, INC. is authorized to continue to self-insure its obligations under the Arizona Workers' Compensation Act, A.R.S. §23-901 *et seq.*, for its employees in the State of Arizona.

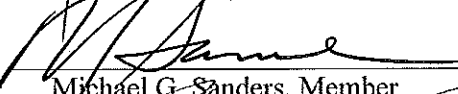
APPROVED this 15th day of May 2014

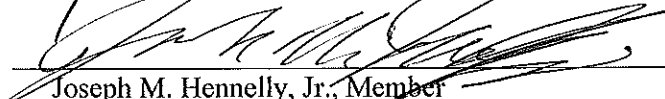
THE INDUSTRIAL COMMISSION OF ARIZONA

By: 
David Parker, Chairman

By: 
Susan Strickler, Vice Chair

By: 
Kathleen Oster, Member

By: 
Michael G. Sanders, Member

By: 
Joseph M. Hennelly, Jr., Member

ATTEST:


Kara Dimas, Secretary

RESOLUTION OF AUTHORIZATION
of
THE INDUSTRIAL COMMISSION OF ARIZONA

WHEREAS, effective January 1, 1993 the Industrial Commission of Arizona authorized THE SALVATION ARMY-USA-WESTERN HEADQUARTERS to self-insure its obligations under the Arizona Workers' Compensation Act, A.R.S. § 23-901 *et seq.* for its employees and the employees of its subsidiaries included under its self-insurance program in the State of Arizona.

WHEREAS, as a result of a name change from THE SALVATION ARMY-USA-WESTERN to THE SALVATION ARMY-WESTERN TERRITORY AND AFFILIATES, between 1993 and 2008, THE SALVATION ARMY-WESTERN TERRITORY AND AFFILIATES requested and was granted authority to self-insure its obligations under the Arizona Workers Compensation Act for its employees and the employees of its subsidiaries included under its self-insurance program in the State of Arizona, such authority having been renewed and authorized to the present;

WHEREAS, on March 1, 2014 THE SALVATION ARMY-WESTERN TERRITORY AND AFFILIATES requested renewal of authorization to self-insure its obligations under the Arizona Workers' Compensation Act; and

WHEREAS, the Industrial Commission of Arizona reviewed such request and supporting documents at a public meeting on May 15, 2014; and determined that THE SALVATION ARMY-WESTERN TERRITORY AND AFFILIATES has satisfied all requirements necessary under the aforementioned statute and applicable rules to continue as a self-insured employer;

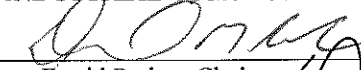
WHEREAS, THE SALVATION ARMY-WESTERN TERRITORY AND AFFILIATES has filed a security deposit in the amount of \$446,986;


This self-insurance authority is effective for extraterritorial purposes (reciprocity) the same as a workers' compensation insurance policy under A.R.S. § 23-904 as amended by Laws 2013, Chapter 34.

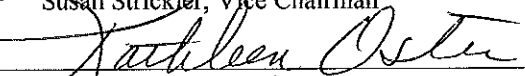
NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of Arizona, that THE SALVATION ARMY-WESTERN TERRITORY AND AFFILIATES is authorized to continue to self-insure its obligations under the Arizona Workers' Compensation Act, A.R.S. §23-901 *et seq.*, for its employees included under its self-insurance program in the State of Arizona.


APPROVED this 15th day of May 2014

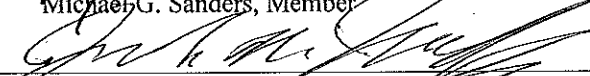
THE INDUSTRIAL COMMISSION OF ARIZONA

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By: 
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ATTEST:


Kara Dimas, Secretary