

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, September 18, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting Department
	William Warren	ADOSH Director
	Steven Black	Compliance Officer
	Bryce Rucker	Compliance Officer
	Collen Krueree	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Tressi Cordaro of Jackson Lewis (video conference), Jason Weber of Snell & Wilmer, and Stephanie Coulter of The Cavanagh Law Firm.

Approval of the Executive Session Minutes 1 and 2 from August 28, 2014, and Regular Minutes of September 11, 2014 Meeting.

The Commission unanimously approved the Minutes of Executive Session # 1 from August 28, 2014 on motion of Mr. Sanders, second of Ms. Strickler. The Commission unanimously approved the Minutes of Executive Session #2 from August 28, 2014 on motion of Ms. Strickler, second of Mr. Hennelly. The Commission unanimously approved the Minutes of September 11, 2014 Regular Session on motion of Mr. Sanders, second of Ms. Strickler.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
  1. 2C13/14-0906 AK Custom Silver, LLC, dba Frontier Trophy Buckles
  2. 2C14/15-0199 Growers Market, Inc. dba Quality Growers
  3. 2C13/14-1639 Tool Exchange, Inc.
  4. 2C13/14-0038 Western Mesquite Mines, Inc. (A California Corporation)
  5. 2C13/14-1816 Willtran, Inc. (An Idaho Corporation)
  
- b. Approval of Requests for Renewal of Self-Insurance Authority.
  1. Purcell Tire & Rubber Company

2. Pilot Travel Centers, LLC
3. Southwest Gas Corporation

Chairman Parker stated that agenda item a. 3. would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Strickler, second of Mr. Sanders.

Andrew Wade advised that item a. 3. Tool Exchange, Inc. has obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against Tool Exchange, Inc. on motion of Mr. Sanders, second of Ms. Strickler.

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. Parker suggested that the Commission move into executive session to discuss the status of the response with the attorney representing the Industrial Commission in Washington D.C., Ms. Tressi Cordaro.

The Commission unanimously voted to go into Executive Session to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation on motion of Mr. Hennelly, second of Mr. Sanders. Executive Session Minutes are kept separately.

Upon return to General Session, Mr. Parker continued with the remaining items on the agenda.

#### Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Discrimination Complaints

#14-2603-10 Cruz Garcia vs. VIP Building Services LLC – William Warren presented a summary of Mr. Garcia's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Parker noted a typo in the report in the chronology and described the correct information. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find a causal link between protected activity and any adverse action. Mr. Warren and Bryce Rucker responded to questions from the Commissioners. Mr. Sanders asked about the ownership of the fall protection harness and if the investigator was able to inspect the equipment. Mr. Rucker described the information he had on the harness and what happened to the harness. Mr. Sanders also asked about preserving evidence and photographing evidence. Mr. Rucker responded to question and explained how a discrimination complaint could trigger a safety inspection and what would be involved in such an inspection. Mr. Parker followed up to Mr. Sanders' question regarding different statements and the assignment of equipment. The



SERIOUS – Citation 1 - Item 2 – Shop north wall: The eye wash station was not clean, maintained and supplied with a 15 minute continuous flush. (1910.151(c)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Shop and outside storage areas: One employee operating a Toyota Powered Industrial Truck (forklift) (model 02-FGC28 and serial number 3FOC3011128) had not been formally trained, evaluated and certified. (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 –

- a) Shop and outside storage areas: A written hazard communication program had not been developed, implemented, and maintained for an employee who was exposed in the workplace to hazardous chemicals, such as sulfuric acid 73-98% and hydrofluoric acid 5-10%. (1910.1200(e)(1)).
- b) Shop and outside storage areas: Safety Data Sheets were not maintained in the workplace for hazardous chemical substances and/or materials such as sulfuric acid 73-98% and hydrofluoric acid 5-10%. (1910.1200(g)(8)).
- c) Shop and outside storage areas: Information and training was not furnished to an employee who was exposed in the workplace to hazardous chemicals such as sulfuric acid 73-98% and hydrofluoric acid 5-10%. (1910.1200(h)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker mentioned that requirement for eyewash around battery maintenance is probably the least understood safety requirement and the requirement for continuous eyewash might be a good topic for an upcoming ADOSH Advocate. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,000.00 on motion of Mr. Sanders, second of Mr. Hennelly.

J.R. McDade Installations, LLC

1102 N 21<sup>st</sup> Avenue

Phoenix, AZ 85009

REFERRAL

Years in Business:

42

Empl. Covered by Inspection:

25

Site Location: 1102 N 21<sup>st</sup> Avenue  
Phoenix, AZ 85009

Inspection No: A7746-317783264

Inspection Date: 6/18/2014

SERIOUS – Citation 1 - Item 1 –

- a) A written respiratory protection program had not been established or implemented by the employer to protect employees from respiratory hazards in the workplace. (1910.134(c)(1)).



Announcements and Scheduling of Future Meetings.

Mr. Parker inquired if there were any changes needed to the future meeting schedule and it appeared that no changes were needed at this time. The next meeting is scheduled for September 24, 2014.

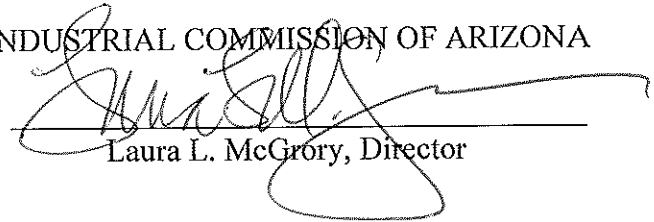
Mr. Warren introduced Collen Krueree the new whistleblower investigator for ADOSH, Collen's former military career was in military intelligence.

Ms. McGrory presented a retirement resolution for signature for Joseph Moore for 16 years of state service with the Administrative Law Judge Division.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Kara Dimas, Commission Secretary