MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, September 24, 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
Laura McGregor       Director
Andrew Wade           Chief Counsel
Sylvia Simpson        Chief Financial Officer
Renee Pastor          Accounting Department
William Warren        ADOSH Director
Bruce Hanna           Compliance Officer
Sean Campbell         Legal Division
Kara Dimas            Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Spencer Ryan and Keith Ryan of Fuels, LLC, Jason Weber of Snell & Wilmer, and Stephanie Coulter of The Cavanagh Law Firm.

Approval of Minutes of September 18, 2014 Regular Meeting and Executive Session.

The Commission unanimously approved the Minutes of the September 18, 2014 Regular Session on motion of Mr. Sanders, second of Mr. Hennelly. The Commission unanimously approved the September 18, 2014 Minutes of Executive Session on motion of Ms. Strickler, second of Mr. Sanders.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C13/14-0724 A-1 Advantage, Inc. dba A-1 Advantage Garage Door
2. 2C13/14-1841 Advance Auto Center, L.L.C. dba Advance Auto Repair
3. 2C13/14-1243 Atlacat, L.L.C
4. 2C13/14-1153 Empire 1st Kirby Company, LLC
5. 2C13/14-1375 Lovecare Co.

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

1. Freeport-McMoran Inc.
2. Quiktrip Corporation
3. Van Tuyl Group, Inc.
Chairman Parker stated that agenda items 3b(2) would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Hennelly, second of Mr. Sanders.

Vice-Chair Strickler took over chair of the meeting for the following agenda item only.

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

**Quiktrip Corporation** – Chairman Parker recused himself from consideration of this agenda item. The Commission approved renewal of self-insurance authority on motion of Mr. Sanders, second of Mr. Hennelly with a vote of three in favor of the motion and none against. Mr. Parker did not participate in the vote.

Chairman Parker resumed chair of the meeting.

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 that the Commission’s attorneys are working on the final draft of the response to Federal OSHA. He explained that if there was a need for discussion or recommended revision other than what has been communicated, that it would be appropriate to move into executive session and if the Commission is comfortable with the draft, the Commission can direct counsel in regular session. Mr. Hennelly moved to direct counsel to prepare the document in final form, subject to correction of typographical, format, and other non-substantive changes, and submit it to the appropriate entity. Mr. Sanders seconded the motion. Mr. Parker thanked counsel for all of their hard work and for doing a very nice job. Ms. Stickler added that the draft is very comprehensive. The Commission unanimously voted in favor of the motion.


Ms. McGrory provided a brief summary of the guidance statement that the Commission adopted regarding the interpretation and enforcement of the infeasibility and greater hazard provisions of 29 CFR 1926.501(b)(13), the Residential Fall Protection Standards found in Subpart M. She explained how the subsequent legislative action taken with respect to adopting Senate Bill 1441, as it was amended by 1307, nullified that guidance document and it could no longer serve as guidance because it was supplanted by that legislation. She recommended the Commission take formal action to repeal the guidance statement that was adopted and published in the Arizona Register on December 30, 2011. Mr. Parker commented on the guidance statement and noted that the stakeholders involved devoted a lot of time on it, but to avoid confusion now, the Commission does need to take action. Ms. McGrory responded to Mr. Parker’s questions about the
recommendation. Ms. McGrory noted that the Commission has communicated to federal OSHA that ADOSH will enforce and implement Subpart M as written if the conditional repeal provision of SB 1307 is triggered. Mr. Parker made a motion to adopt staff’s recommendation to formally rescind ADOSH guidance document 2011-11. Ms. Strickler seconded the motion. The Commission unanimously voted in favor of the motion.


Mr. Warren explained that Federal OSHA has amended rules relating to cranes and derrick in construction and the electric power generation, transmission, and distribution in both construction and general industry and ADOSH recommends that the Commission proceed with a notice of proposed rulemaking to adopt these amended rules. Mr. Wade stated that the second paragraph of the draft resolution has been removed and he explained why. Mr. Sanders moved the recommendation, directing staff to proceed with a notice of proposed rulemaking, and Mr. Hennelly seconded the motion. The Commission unanimously voted in favor of the motion.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Fuels, L.L.C.  
308 S LeBaron  
Mesa, AZ 85210  
Fatality/Accident  
Years in Business: 7  
Empl. Covered by inspection: 7  

Site Location: 203 S. 23rd St  
Phoenix, AZ 85034  

Inspection No: L3419-317693679  
Inspection Date: 4/23/2014

SERIOUS – Citation 1 - Item 1 – Loading and unloading area: A Harbor Freight Pacific Hydrostar 212 cc gasoline powered 3” full trash pump model 69746 that was being used to transfer combustible liquid (off-spec diesel fuel) ignited the fuel that had leaked from the hose coupler fitting and transfer hose onto the hot pump motor starting a fire. (1910.106(b)(6)).

Div. Proposal - $5,000.00  
Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 2 – Loading and unloading area: An above ground horizontal storage tank designated as tank #7 used for the storage of off-spec diesel fuel was not equipped with a piping system and sufficient number of valves (safety and/or backflow type) to control properly the flow of diesel fuel that was being transferred from the storage tank into a tanker trailer via a mobile gasoline powered pump. (1910.106(c)(6)).

Div. Proposal - $5,000.00  
Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 3 – Loading and unloading area: Transfer lines used for loading used motor oil from above ground storage tanks and the loading of diesel fuel from an above ground horizontal tank were not equipped with self-closing valves capable of being manually held open by the operator for shutting off the flow when the tanker trailer was full or after filling to a preset amount. (1910.106(f)(3)(iii)).
Mr. Parker addressed the representatives from Fuels, LLC and summarized the current proceeding. Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Warren and Mr. Hanna responded to questions from Mr. Sanders regarding the plant operator and whether ADOSH considered him part of management. Mr. Sanders asked for details concerning the accident such as why the plant operator did not shut the pump off rather than trying to reconnect the fittings, why the PTO pumps on the truck was not used, and the proximity of other tanks and the extent of the damage. Mr. Hanna responded to the questions. Mr. Warren responded to Mr. Parker’s question about whether the injured workers were employees of Fuels LLC. Mr. Hanna responded to Mr. Parker’s questions regarding training. Mr. Sanders asked about the use of the water pumps and who purchased the pump. Mr. Hanna replied that the information established the operations manager purchased the pump. Mr. Sanders explained that it appeared that management purchased the pump with the intention of using it improperly and there may be more of an issue than a serious violation. Mr. Sanders asked if Legal had reviewed the file for a possible willful, and Mr. Wade responded to the question. Mr. Parker asked if the representative from Fuels, LLC if they wanted to say anything and one of the representatives replied that they had no comment. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of $11,500.00 on motion of Mr. Sanders, second of Mr. Hennelly.

Arizona Hay Press, LLC
5601 W Buckeye Rd
Phoenix, AZ 85043

Complaint

Site Location: 38315 S Harquahala Valley Rd
Tonopah, AZ 85354

Years in Business: 4

Inspection No: T9350-317783215

Inspection Date: 6/26/2014

Empl. Covered by inspection: 7

SERIOUS – Citation 1 - Item 1 – Warehouse Floor: One floor hole that was 26 inches in diameter, 8 inches deep, was not properly guarded by a floor hole cover or standard railing, to prevent employees from accidentally walking or driving a forklift into the open hole. (1910.23(a)(8)).

Div. Proposal - $750.00

Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 2 – Warehouse area: The employer made a metal fabricated work platform to lift employees to an elevated height (approximately 20 feet) on the Caterpillar Telehandlers Model number TL642, Serial number TBK01335, without prior written approval from the manufacturer. (1910.178(a)(4)).

Div. Proposal - $750.00

Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 3 - 38315 S Harquahala Rd Tonopah, AZ 85354: One employee operated a Hyster Powered Industrial Truck Model number H180H, Serial number C007002685H, and was not trained in the safe operation of the powered industrial truck. (1910.178(i)(1)(i)).

Div. Proposal - $750.00

Formula Amt. - $750.00
SERIOUS – Citation 1 - Item 4 – North side of warehouse: Hyster Lift Truck Model H180H, Serial number C007002685H was not taken out of service for the unsafe condition that the air brake coupler was broken. (1910.178(p)(1)).

Div. Proposal - $750.00

Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 5 – Warehouse: The Hay Press, Model number unknown, Serial number unknown, did not have a guard to prevent employees from accidental contact with the guillotine blade. (1910.212(a)(1)).

Div. Proposal - $750.00

Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 6 – Warehouse: Compressed air used for cleaning the Hay Press machine and employees clothes was not reduced to less than 30 psi. (1910.242(b)).

Div. Proposal - $750.00

Formula Amt. - $750.00

TOTAL PENALTY - $4,500.00

TOTAL FORMULA AMT. - $4,500.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Sanders asked for additional details concerning the bailing process. Mr. Warrant responded to the question. Ms. Stickler also asked about the process and Mr. Warren responded to the question. Mr. Parker had questions regarding the fabricated work platform and commented on obtaining approval from a manufacturer. Mr. Warren responded to the question and comment. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of $4,500.00 on motion of Ms. Strickler, second of Mr. Hnelly.

Discussion and Action of New Employment Agency License Application.

Gary Recchion dba Recchion and Associates – Ms. McGrory presented the information provided by the Labor Department as required by the statutes and rules governing Private Employment Agencies. The Employment Advisory Council has recommended approval of this application for a license. Mr. Parker asked if this agency license application could have been addressed as part of the Consent Agenda and Ms. McGrory responded to the question. The Commission unanimously approved the application on motion of Ms. Strickler, second of Mr. Sanders.

Announcements and Scheduling of Future Meetings.

Ms. McGrory stated the Commissioner should have received their copy of the Final Special Fund Actuarial Report and a copy of the 2016 Budget submitted and a cover memo from Sylva Simpson.

Due to audio difficulties, Vice-Chair Strickler took over chair of the meeting for the remaining items.

Ms. Strickler 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 October 8, 2014.

Ms. McGrory added there is no meeting scheduled for next week and explained why.
There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By
Laura L. McGrory, Director

ATTEST:

Kara Dimas, Commission Secretary