

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Auditorium

Phoenix, Arizona 85007

Thursday, November 13, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (telephone/video conference)
	Susan Strickler	Vice Chair
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (telephone/video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Valli Goss	Assistant Chief Counsel
	Sylvia Simpson	Chief Financial Officer
	William Warren	ADOSH Director
	Randy Austin	Chief Boiler Inspector
	Collen Krueree	OSHA Compliance
	Chris Brandon	OSHA Compliance
	Kathleen McLeod	Claims Manager
	Kara Dimas	Commission Secretary

Vice Chair Strickler convened the Commission meeting at 1:00 p.m. noting a quorum present and explained that the Commission meeting will be recessed after the Legislative Stakeholders' Meeting and the Commission meeting will move to the third floor Commissioners' Conference Room for consideration of the remaining agenda items. Also in attendance were Joshua Bossa, Jose Reyes, and Carolyn Singer from the Commission's Claims Division, Steve Haver from Safirst Corp., Carol Clark from Pleasant Valley Fire District Board and Jason Weber from Snell and Wilmer. A list of attendees who chose to sign in for the Legislative Stakeholders' Meeting is attached.

Legislative Stakeholders' Meeting.

Vice Chair Strickler welcomed interested parties to the Commission's 2014 Stakeholders' Meeting and advised that at this time the Commission has not taken any action to have legislation introduced on its behalf in the upcoming legislative session. She explained that the purpose of the meeting is to provide stakeholders with an additional opportunity to comment on issues or to recommend the introduction of legislation regarding any aspect of the Industrial Commission's operations. Ms. Strickler stated that information can be provided to the Commission after the Meeting, preferably before the legislative session begins.

There were no requests to speak. Vice Chair Strickler announced that the Stakeholders Meeting was completed at 1:05 p.m., Vice Chair Strickler recessed the Commission meeting to move the remainder of the Commission meeting to Conference Room 308.

The Commission meeting reconvened at 1:09 p.m. in Conference Room 308.

Chairman Parker chaired the remainder of the meeting.

Approval of Minutes of November 6, 2014 Meeting.

The Commission unanimously approved the Minutes of the November 6, 2014 Regular Session on motion of Mr. Sanders, second of Ms. Strickler.

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. 2C13/14-1576 Arizona Business Operations and Consulting, LLC
2. 2C14/15-0335 U.S. Pest, Inc.

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

1. DG Retail, LLC
2. Parker-Hannifin Corporation
3. Ruan Transportation Management Systems, Inc.

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 Ms. Strickler, second of Mr. Hennelly.

Discussion and Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Kathleen McLeod requested that employees Joshua Bossa, Jose Reyes, Carolyn Singer be appointed as Special Assistants and explained their responsibilities. Mr. Sanders asked how long the Commission has been appointing Special Assistants and Ms. McLeod responded to the question. Mr. Parker asked about the types of orders the Special Assistants sign and the review or appeal process and Ms. McLeod responded to Mr. Parker's question. Mr. Sanders described the information he would like supplied with future requests for appointments. The Commission unanimously appointed Joshua Bossa, Jose Reyes, and Carolyn Singer as Special Assistants on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and/or Action regarding Legislation.

Ms. McGrory stated that there was nothing new to report.

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.

Ms. McGrory stated that Commission staff did not have anything new to report and that there was a request to speak by Steve Haver from Safirst Corp. Mr. Haver addressed the Commission stating that he supports the Commission keeping its 18(e) status, that he is an advocate for Subpart M, and he suggested that ADOSH begin enforcing subpart M. Mr. Parker responded that ADOSH is under a mandate to enforce the Arizona state-specific residential fall protection standards unless federal OSHA publishes a notice in the *Federal Register* rejecting the state plan supplement. Mr. Parker noted that until federal OSHA publishes such a notice, ADOSH cannot enforce Subpart M. He commented that he appreciates Mr. Haver attending the meeting.

Discussion and Action and Potential Resolution Regarding Proposed Rulemaking Amendments to A.A.C. R20-5-401 et. seq., Arizona Boilers and Lined Hot Water Heaters.

Mr. Warren and Randy Austin provided a summary of the background for the proposed rulemaking to amend the Boiler and Lined Hot Water Heater rules. Mr. Sanders had several questions and requested clarification on some of the proposed amendments. Ms. McGrory noted that, consistent with the Commission's prior discussion, the Commission's proposed budget for fiscal year 2016 included a request for an additional boiler inspector position, in anticipation of this rule package. She explained her expectations regarding this request and explained that the Commission will likely have to re-address the proposed rule amendment, which increases the number of inspections required to be performed. Mr. Sanders asked about the requirements in other states regarding the frequency of inspections. Mr. Austin replied that some states have annual or by-annual inspections. The Commission discussed the hazards with boilers and noted the last boiler-related fatality was in 2000.

Mr. Sanders also asked about rule 411 and the hydrostatic tests and who is responsible for the test. Mr. Austin responded that the owners are responsible for the costs and repairs, and that used boilers have to be tested and repaired prior to installation. Mr. Sanders also asked about rule 407 that requires an authorized inspector to notify the owner or user if an authorized inspector identifies an immediate danger and why that inspector cannot order the problem be corrected or shut down the boiler or other vessel. Mr. Austin explained the limits of the authority of an authorized inspector and that the Arizona Chief Boiler Inspector is the one who is authorized to shut down a boiler, Mr. Sanders asked about the Special Inspector certification under rule 420. Mr. Austin described the test process and how there is now a national examination administered by a private vendor. Mr. Sanders asked about the hearing and review process under rule 420. Ms. McGrory commented that the process is consistent with other administrative review processes and described the process. Following further discussion, the Commission unanimously directed staff to proceed with a notice of proposed rulemaking on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Discrimination Complaint.

14-6444-08 Rebecca Orahood vs. Pleasant Valley Fire District

Mr. Warren and Collen Krueree presented a summary of Ms. Orahood's complaint, the employer's response, and the Division's investigation of the matter and recommended that the Commission pursue the matter. Mr. Parker explained why ADOSH considered Ms. Orahood an

employee rather than a volunteer for purposes of her discrimination complaint and why her complaint is considered timely.

Mr. Sanders commented on some of the exhibits and explained why he disagreed with ADOSH's recommendation. Mr. Wade explained that if the Commission wants to obtain legal advice or discuss the strengths and weakness of evidence related to this contemplated or pending litigation with counsel, it would be appropriate to do so in executive session. Mr. Parker asked Mr. Sanders if there was something he could discuss in public or whether the Commission should move into executive session. Mr. Sanders explained that based on his review of the exhibits that he had seen so far, he was drawing a different conclusion. Mr. Sanders expressed his concern with staff's recommendation and he would request that all of the exhibits be provided to all of the Commissioners and that the Commission move into executive session at a later time after there has been an opportunity to review all of the exhibits. Mr. Parker stated that there were enough issues that the Commission would need an executive session today. Mr. Sanders made a motion that the Commission move into executive session and stated that he already made a suggestion that it be tabled and brought back at another time. Ms. Strickler seconded the motion. Mr. Wade asked for clarification regarding the motion to move into executive session-is the purpose of the executive session to consult with its attorney and to discuss and consider contemplated or pending litigation. Ms. Strickler replied yes. Mr. Sanders added that before the Commission discusses this matter that the Commissioners be provided the exhibits, have an opportunity to review the exhibits, and then return this matter to a future agenda. Ms. Strickler asked Mr. Sanders if he was withdrawing his motion and Mr. Sanders replied that he was. Mr. Parker noted that there was no vote on the motion and Mr. Sanders could withdraw his motion. Ms. Strickler then made a motion to move into executive session so that the Commissioners could discuss this matter with legal counsel, and to discuss whether this matter should be tabled. Ms. McGrory explained that the Commission cannot move into executive session to discuss whether the matter should be tabled, but could to obtain legal advice and discuss contemplated litigation. Ms. Strickler moved the Commission enter into executive session to discuss this matter further with legal counsel. Mr. Hennelly seconded the motion. The Commission unanimously voted to go into Executive Session to consult with its attorneys. Executive Session Minutes are kept separately.

Upon return to General Session, Mr. Parker asked if there was a member from the public present who wished to address the Commission on this item. Ms. McGrory stated that there is a request to speak from Carol Clark, who is the Fire Board Vice-Chair of the Pleasant Valley Fire District. Mr. Parker asked Ms. Clark if she would like to address the Commission or if she was just here to observe. Ms. Clark stated she is Vice-Chair on the Pleasant Valley District Board and she offered to answer questions. She stated that she would like the Commissioners to review the operational flowchart that should have been provided in the exhibits. She described the Fire Board's role the Fire Chief's role. She commented on the Fire District's budget and the safety matters Ms. Orahood brought up at the Board meeting. Mr. Parker thanked her for coming to the meeting.

Mr. Parker said there are two options: continue this matter to another date to provide additional time for Commissioners to review the exhibit materials or take action on the matter today. Mr. Parker commented that he would like to see if it could be resolved today, and if not then the Commission could move this matter to a future agenda. He also explained that when he read the materials he believed that there were some things which happened that were irregular, but he believed the termination would have occurred anyway, either at the same Board meeting or at

the next Board meeting. Mr. Parker made a motion not to pursue. The Commission unanimously voted to not to pursue the complaint on motion of Mr. Parker, second of Ms. Strickler.

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

Mr. Warren requested that the Dorsett Trucking and West Coast Netting together in that they are both related.

Dorsett Trucking, Incorporated
5377 N. Black Canyon Highway
Phoenix, AZ 85015

Fatality/Accident
Years in Business: 26
Empl. Covered by Inspection: 1

Site Location: 5377 N. Black Canyon Highway
Phoenix, AZ 85015
Inspection No: J7272-317783447
Inspection Date: 7/08/2014

West Coast Netting, Inc.
5075 Flightline Dr.
Kingman, AZ 86401

Unprogrammed Related
Years in Business: 60
Empl. Covered by Inspection: 43

Site Location: 5075 Flightline Dr.
Kingman, AZ 86401
Inspection No: J7272-317783413
Inspection Date: 7/08/2014

SERIOUS – Citation 1 - Item 1 –

- a) Production and Warehouse Areas: A Class IV Nissan forklift, model and serial number unknown, was missing the data plate which provided information about forklift such as model and serial number and lifting capacity. (1910.178(a)(6)).
- b) Installation Sites & Manufacturing Facility: The employer did not perform an evaluation at least once every three years for each powered industrial truck operator that drives a Class IV, V, or VII forklift. (1910.178(l)(4)(iii)).
- c) Production and Warehouse Areas: One Class IV Nissan forklift, model and serial number unknown, was not taken out of service for the unsafe condition of a missing seat belt. (1910.178(p)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 –

- a) Pole Yard: An employee was not trained on ramps and other sloped surfaces that could affect the vehicle's stability of a Caterpillar telescopic material handler "rough terrain forklift: model RT-100, serial number IGJ01185, (1910.178(l)(3)(ii)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$8,250.00

TOTAL FORMULA AMT. - \$8,250.00

Mr. Warren stated that Dorsett Trucking, Incorporated and West Coast Netting, Inc. agenda items are related to the same investigation into a fatality. Mr. Warren summarized the investigation into the fatality and explained why ADOSH did not recommend a citation for Dorsett Trucking. He summarized the recommended citation against West Coast Netting, Inc. with a proposed penalty of \$8,250.00. Mr. Parker wanted to clarify that Item 1 is a different forklift than the forklift involved in the fatal accident and Item 2 is related to the operation of this forklift. Mr. Warren confirmed that it was a different forklift. The Commission unanimously approved the citation and assessed the recommended penalty of \$8,250.00 on West Coast Netting, Inc. on motion of Mr. Sanders, second of Mr. Hennelly.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

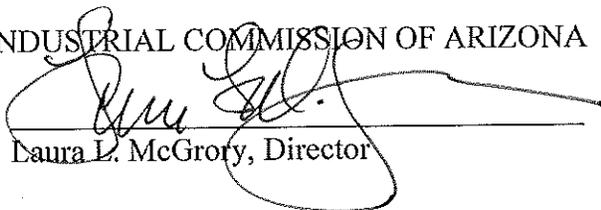
Mr. Wade announced that Valli Goss is the new Assistant Chief Counsel in the Legal Division.

Chairman Parker confirmed the dates scheduled for future Commission meetings.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary

THE INDUSTRIAL COMMISSION OF ARIZONA
800 West Washington Street
Phoenix, Arizona 85007

ATTENDEES ARE INVITED TO SIGN IN

Date: Thursday, November 13, 2014
Time: 1:00 p.m.
Location: Conference Room 308

PLEASE PRINT

NAME	REPRESENTING
STEVE HANSON	SNFIRST CORP.
RANDALL AUSTIN	ADOSH, BOILER SAFETY SECTION
Tom Carroll	Maricopa County
Randy Wright	Albertsons
Don Gipsy	County Healthcare
Kathy McLeod	Claims
Carolyn Singer	Claims
Jan Payne	Claims
Josh Bossa	claims
Jason Weber	SNH & Wilmer
Eileen Muro	Palo Verde Park & Rec

ANYONE WISHING TO ADDRESS THE COMMISSION, PLEASE
FILL OUT A "REQUEST TO SPEAK" FORM

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NAME	REPRESENTING
Jason Weber	SNell & Wilmer
Ivan Insua	SRP
BRENDA HUBBELL	ARIZONA
Tom Carroll	Maricopa County

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