

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 25, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	David M. Parker	Commissioner (video)
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner (video)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Brian Downen	Compliance Officer
	Phillip Murphy	Compliance Officer
	Kathleen McLeod	Claims Manager
	Jacque Kurth	Claims
	David Sosa	Special Fund Manager
	Karen Axsom	Labor Director
	Melinda Poppe	Chief Administrative Law Judge
	Michael Hempel	Chief Information Officer
	Yvonne Borunda	Legal
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner Clint Bolick was not able to attend the meeting. Also in attendance were Jason Weber and Christina Jutzi of Snell & Wilmer.

Approval of Minutes of June 18, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes of the June 18, 2015 Regular Session meeting on motion of Commissioner Parker, second of Commissioner 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. 2C14/15-1069 Action Illustrated, LLC, aka DRT Artworks
2. 2C14/15-0823 Cherry on Top, LLC, dba Baskin Robbins
3. 2C14/15-2529 Janak Roods, LLC, dba Lotus Market

4. 2C14/15-2267 Laveen Nails and Day Spa JP, L.L.C., dba Laveen Nails & Day Spa
5. 2C14/15-0299 Lost Dutchman Pool Service, L.L.C.
6. 2C14/15-0849 Spa Fly, LLC
7. 2C14/15-0407 Valley Hospice of Arizona, Incorporated

Chairman Schultz 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 Commissioner Sanders, second of Commissioner Parker.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Laura McGrory stated there is nothing new to report.

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

Aspen Construction, Inc. 2317 E. Lone Cactus Dr. Phoenix, AZ 85024	Site Location: 401 E. Jefferson St. Phoenix, AZ 85004 Inspection No: Q6169-1017632 Inspection Date: 1/07/2015	Fatality/Accident Years in Business: 31 Empl. Covered by inspection: 2
--	--	--

William Warren summarized ADOSH's investigation into a fatal accident. He noted that the employer would be cited for one non-serious violation. The Commission discussed the circumstances of the accident, including whether the surface of the scissor lift had a slippery surface, training and work procedures.

J.A. Framing, LLC 4427 N 58 th Ave. Phoenix, AZ 85031	Site Location: 15368 W Corrine Dr. Surprise, AZ 85379 Inspection No: H9685-1044366 Inspection Date: 3/04/2015	Planned Years in Business: 6.5 Empl. Covered by inspection: 5
--	--	---

SERIOUS – Citation 1 - Item 1 – Potable water was not provided at the worksite for employees who were engaged in residential framing construction. (29 CFR 1926.51(a)(1)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
--------------------------	-------------------------

SERIOUS – Citation 1 - Item 2 – South Side of House: Two employees engaged in residential construction 6 feet or more above a lower level were not protected by guardrail systems, safety net system, or personal fall arrest system, nor were employees provided with an alternative fall protection measure while exposed to a fall of 10 feet 2 inches to the ground below. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$1,250.00	Formula Amt. - \$1,250.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 3 – South Side of House: Two workers engaged in residential framing construction exposed to a fall of 10 feet 2 inches to the ground below, were not provided training to enable each employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 – South Side of House: One employee used the top step of an 8 foot Werner stepladder to access the top plate of a house. (29 CFR 1926.1053(b)(13)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 5 – South side of House: The employer permitted an employee to perform signal person activities without ensuring the person met the qualification requirements. (29 CFR 1926.1428(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,750.00

TOTAL FORMULA AMT. - \$5,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Sanders asked about the time of the inspection and who was responsible for providing water for employees. Mr. Warren responded to the questions. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,750.00 on motion of Commissioner Sanders, second of Commissioner Hennelly.

Red Mountain Roofing LLC
4735 E. Virginia St Bldg 3
Mesa, AZ 85215

Complaint

Years in Business: 5

Empl. Covered by inspection: 6

Site Location: 925 N. College Ave
Tempe, AZ 85281

Inspection No: H1793-1050137

Inspection Date: 3/31/2015

REPEAT SERIOUS – Citation 1 - Item 1 – Roof: Three Employees engaged in roofing construction on a steep roof, at a height of 17 feet from the roof edge to the ground, were not protected from falling by the use of guardrail systems, with toeboards, safety net systems, or personal fall arrest systems to prevent a fall to the ground below. (29 CFR 1926.501(b)(11))

Red Mountain Roofing LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(11), which was contained in OSHA inspection number 317857167, citation number 1, item number 1 and was affirmed as a final order on 12/16/2014, with respect to a workplace located at 1700 N 7th Ave Phoenix, AZ 85007.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

REPEAT SERIOUS – Citation 2 - Item 1 – East roof eave: Three employees used an extension ladder to access the jobsite roof that was not extended a full 36 inches above the edge of the roof. (29 CFR 1926.1053(b)(1)).

Red Mountain Roofing LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.1053(b)(1), which was contained in OSHA inspection number 317857167, citation number 1, item number 2a and was affirmed as a final order on 12/16/2014, with respect to a workplace located at 1700 N 7th Ave Phoenix, AZ 85007.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 5 – Tank Shop: 10-ton Whiting overhead gantry crane, serial number 7518 (east hoist) did not meet manufacturers recommendations because it did not have the required safety latch on lifting hook. (29 CFR 1910.179(h)(4)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 6 – Tank Shop: Employees operated two overhead gantry cranes, one Whiting 5-ton model unknown serial number 7519 and one Whiting 10-ton model unknown serial number 7518, with unsafe conditions disclosed during the annual inspection not having been corrected first. (29 CFR 1910.179(l)(3)(i)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$8,700.00

TOTAL FORMULA AMT. - \$8,700.00

Mr. Warren summarized the citation and proposed penalty as listed. Mr. Warren noted that there were two different sized tanks and the compliance officer was not able to photograph the 71” tank and he explained why. Commissioner Sanders asked Mr. Warren to read 1910.23(c)(1) and Mr. Warren read the section to the Commission. Commissioner Sanders noted that the 51” tank was 3” out of compliance and asked for more details concerning the 71” tank. Mr. Warren responded with additional details concerning the 71” tank. Commissioner Sanders referred to mounted photo number one and described his view of the hazard. Chairman Schultz asked whether the citation would be classified as a serious with the same penalty for one instance or two. Mr. Warren responded that the classification and penalty would be the same. Commissioner Sanders commented that it did not appear this tank would have taken long to build and move compared with time it would take to build scaffolding or to take other measures.

Commissioner Parker noted he agreed with Commissioner Sanders and commented on an education opportunity. He asked why the respiratory protection citation is classified as a serious violation when other recent violations were non-serious. Mr. Warren responded to the question. Commissioner Parker returned to Citation 1, Item 1 and commented on potential recognition of the hazard by industry.

Commissioner Hennelly referred to Citation 1, Item 1 and described his comfort level with citing for the 51” tank and the 71” tank. He added that he shared Commissioner Sanders’ and Commissioner Parkers’ concerns.

Commissioner Sanders asked if there was a way to split Citation 1 and make the 51” tank a non-serious and leave the 71” tank as a serious. Commissioner Parker suggested an alternative to remove the reference to the 51” and let the citation stand on the 71”. Commissioner Sanders clarified the suggestion that the penalty amount would stay the same but the citation would be just for the 71” tank. Commissioner Parker stated it would be an alternative that would eliminate the greatest discomfort. Commissioner Sanders agreed with Commissioner Parker.

Chairman Schultz asked Mr. Warren if he had any comments. Mr. Warren commented on the requirements of the standard. Chairman Schultz asked Mr. Wade if there were any concerns with the Commission taking action to revise the citation. Mr. Wade responded to the question. Commissioner Sanders asked if citation for the 51” tank could be classified as a non-serious to communicate that the condition is considered a violation. Mr. Warren commented on the circumstances of having both a serious and a non-serious violation of the same standard. Ms. McGrory stated that the narrative for Citation 1 Item 1 could be revised to still identify both tanks

but note that the 51" tank is considered as a non-serious violation. Commissioner Sanders stated if there were no other comments he would move staff's recommendation with amending the narrative as described by Ms. McGrory. Commissioner Parker stated he would support a standard working surface of 48 ¼" without a guardrail any day, and explained why there was a difference with these specific circumstances. Commissioner Hennelly asked if there was a mechanism to emphasize the 71" tank and not the 51" tank. The Commission discussed where the welder would be positioned during the welding process.

Chairman Schultz referred to Commissioner Sanders' motion with the change in the narrative and the penalty to stand as issued. Chairman Schultz asked if there was a second. Commissioner Parker asked for the specific revision to the narrative. Mr. Warren suggested that the narrative read to the effect that the CEO was aware of employees working without fall protection at 4 feet while welding on the tops of the 2000 gallon tanks that are 51" in height and 4000 gallon tanks that are 71" in height without fall protection, explain that the smaller tank is considered to be a non-serious and that the condition of greater concern was the 71" high tank. Commissioner Parker suggested amending the motion to include rephrasing to employees were working on top of water tanks approximately 71" above the concrete surface (as well as tanks 51" above the concrete surface) so that ADOSH is citing for the 71" high tank and noting that the employees also worked on a 51" high tank. Chairman Schultz agreed with that language and asked if any of the Commissioners had comments regarding the revised language. Following discussion, the Commission unanimously approved issuing the citation as amended and assessed the recommended penalty of \$8,700.00 on motion of Commissioner Parker, second of Commissioner Hennelly.

Discussion and Action of Request for Lump Sum Commutation. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(2) and (A)(3) to discuss or consider records exempt by law from public inspection or to consult with its attorneys of legal advice.

Louis H. Grenzebach – Kathleen McLeod presented this lump sum petition with a recommendation for approval. Ms. McLeod responded to questions. The Commission unanimously approved the lump sum commutation on motion of Commissioner Sanders, second of Commissioner Parker.

Discussion and/or Action Regarding Sunset Review of the Industrial Commission of Arizona, OSHA Review Board, OSHA Advisory Committee, Boiler Advisory Board and Employment Advisory Council.

Ms. McGrory commented on the draft Sunset Factor Analysis Report. The Commissioners discussed the draft and suggested edits and revisions. At the conclusion of the discussion, Ms. McGrory confirmed that staff will revise the report and will submit the report to the Legislative Committee of Reference by July 13, 2015.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory noted that Governor Ducey's Executive Order 2015-01 required agencies provide an update regarding electronic reporting and payment no later than July 1. She explained that a report has been submitted to the Office of the Arizona Governor and copies of the report would be distributed to the Commissioners.

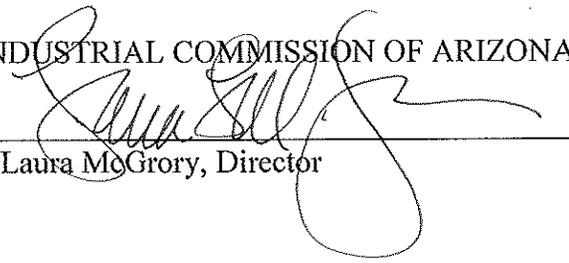
Ms. McGrory announced that she will be on vacation next week and Andrew Wade will be Acting Director.

The Commission reviewed the meeting schedule through August.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner Sanders moved to adjourn and Commissioner Parker seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 5:04 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary