

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 17, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Michael G. Sanders	Vice Chairman
	David M. Parker	Commissioner (video)
	Joseph M. Hennelly, Jr.	Commissioner (video)
	Clint Bolick	Commissioner
	Laura McGroary	Director
	Andrew Wade	Chief Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Karen Axsom	Labor Director
	William Warren	ADOSH Director
	Billie Gingrass	Compliance Officer
	Erik Anderson	Compliance Officer
	Bryan Williams	Compliance Officer
	Brian Downen	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Stephanie Coulter of The Cavanaugh Law Firm and Jason Weber of Snell & Wilmer.

Approval of Minutes of September 10, 2015 Regular Meeting.

The Commission unanimously approved the Minutes of the September 10, 2015 meeting on motion of Commissioner Parker, second of Vice Chairman 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. 2C13/14-2083 Carlton Court Apartments, LC
 2. 2C14/15-1062 Dual Recovery Solutions L.L.C., DBA Viewpoint Dual Recovery Center
 3. 2C15/16-0077 Goldman's Best Cooking, L.L.C., dba Goldman's Deli

4. 2C14/15-1389 Quality 1st Roofing, Inc.

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

1. HealthSouth Corporation

c. Approval of New Employment Agency License Application.

1. Daniel Stark and Alycia Stark dba STARK TALENT AZ

Chairman Schultz noted that item a.3., Goldman's Best Cooking, L.L.C., dba Goldman's Deli, would be heard separately and Commissioner Parker requested that b.1., HealthSouth Corporation, be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Bolick, second of Vice Chairman Sanders.

Andrew Wade advised that the employer identified in item a.3., Goldman's Best Cooking, L.L.C., dba Goldman's Deli, has obtained workers' compensation insurance and staff is recommending a reduced 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 the employer on motion of Commissioner Parker, second of Commissioner Hennelly.

HealthSouth Corporation –Commissioner Parker provided some background regarding this employer and noted that there have been some legal and financial concerns. He referred to the reduction in the confidence level used for the employer's self-insurance program, from 70% to 50%, and explained what that meant and why it is important. He also noted Moody's negative outlook and suggested possible reasons for that outlook.

Renee Pastor commented on the confidence level and the experience modification rating (e-mod). She predicted it would not be until 2017 that the full impact of recent changes become manifest. Commissioner Parker noted that the experience modification rating has been increasing the last couple of years and that back injury claims are among those with the longest tail. He suggested that the Commission may want to hold off on renewal of self-insurance authority until more data is available to determine whether the experience rating is decreasing and noted that self-insurance authorization will continue until the Commission takes action.

Vice Chairman Sanders explained that he also had concerns and why he wanted this matter on the main agenda. Ms. Pastor responded that she has discussed this with the employer and it appears the employer is committed to lowering the e-mod and she stated the e-mod on the excess policy has already decreased. Vice Chairman Sanders added that the safety program improvements should have an effect by 2017 and there should be a significant result. Ms. Pastor stated that it should and added that the e-mod is based on claim costs for a prior three year period.

Chairman Schultz commented on the impact of total claims filed and frequency on the e-mod and that it appears that frequency has decreased by about 10%. Laura McGrory asked if the recommended amount for the surety bond as security was an increase or decrease from the current bond amount. Ms. Pastor replied that the recommended security amount is less than the current bond which is still in place. Ms. McGrory explained that if the Commission took action today to renew self-insurance authority, that bond would be substituted out with a new bond for a lesser

amount and if no action was taken, the employer's self-insurance authority continues and the higher bond would stay in place. Ms. Pastor noted that the employer has been waiting for approval to reduce the bond amount.

Commissioner Parker commented that other employers in the same industry face the same challenges with employee injuries, especially resulting from patient handling. He noted that the primary concern for HealthSouth is to reduce employee injuries and he is comfortable with renewing self-insurance authority or tabling this matter for the time being.

Chairman Schultz asked if there were any questions or comments. There were no other questions or comments. Commissioner Parker moved to renew HealthSouth Corporation's self-insurance authority with the suggestion that HealthSouth consider requesting ADOSH's consultation services as ADOSH may have other suggestions to reduce employee injuries from patient handling. Commission Bolick seconded the motion. The Commission unanimously granted renewal of self-insurance authority.

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

Academy Roofing Arizona Corp.
 301 W. Deer Valley Rd Ste 1
 Phoenix, AZ 85027

Site Location: 6833 W Bell Rd
 Glendale, AZ 85308
 Inspection No: H1793-1071002
 Inspection Date: 06/16/2015

Planned
 Years in Business: 2
 Empl. Covered by inspection: 15

SERIOUS – Citation 1 - Item 1 – Job Site West Side Drive-Thru Roof: The employer did not provide all employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment for the employees using Carlisle Low VOC PVC Bonding Adhesive 309126. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$450.00 Formula Amt. - \$450.00

SERIOUS – Citation 1 - Item 2 – Job Site West Side Drive-Thru Roof: There was not an emergency eye wash with 15 minute water flush available in the workplace for two employees using Carlisle Low VOC PVC Bonding Adhesive 309126. (29 CFR 1926.50(g)).

Div. Proposal - \$450.00 Formula Amt. - \$450.00

SERIOUS – Citation 1 - Item 3 – Job Site West Side Drive-Thru Roof: Employees using Carlisle Low VOC PVC Bonding Adhesive 309126 were not provided chemical safety glasses as required in section 8 of the Safety Data Sheet for the product. (29 CFR 1926.95(a)).

Div. Proposal - \$600.00 Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 4 – Job Site West Side Drive-Thru Roof: Two employees were engaged in roofing construction on a low-slope roof, at a height of 18 feet from the roof edge to the ground and were not protected from falling. (29 CFR 1926.501(b)(10)).

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

SERIOUS – Citation 1 - Item 5 – Job Site West Side Drive-Thru Roof: Two employees were engaged in roofing construction and exposed to fall hazards and were not provided training to

recognize the hazards of falling or the procedures to be followed to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6 – West Side Drive-Thru Roof: Two employees used an extension ladder to access the jobsite roof that was not extended a full 36 inches above the roof landing. (29 CFR 1926.1053(b)(1)).

Div. Proposal - \$450.00

Formula Amt. - \$450.00

SERIOUS – Citation 1 - Item 7 – West Side Drive-Thru Roof: Two employees used an extension ladder to access a roof landing 18 feet above the ground level and were not trained in procedures to minimize the hazards related to ladder use. (29 CFR 1926.1060(a)).

Div. Proposal - \$450.00

Formula Amt. - \$450.00

TOTAL PENALTY - \$3,900.00

TOTAL FORMULA AMT. - \$3,900.00

William Warren summarized the citation and proposed penalty as listed and commented on some of the mounted photographs. Vice Chairman Sanders asked about the Low VOC PVC and the exposure hazards. Mr. Warren responded to the question. Commissioner Bolick commented on citations for ladders that do not extend a full 36" above the roof landing and asked Mr. Warren to explain the rationale for the requirement and why a violation is classified as serious. Mr. Warren described hazards that exist when a ladder is not fully extended and why a violation is classified as serious. Commissioner Parker noted that VOC stands for Volatile Organic Compounds and although the substance had a low level of VOC's, the employer was still using materials that contain VOC's. He referred to Citation 1 Item 2, and asked about the availability of running water to serve as an eyewash station. Mr. Warren responded to the question.

Chairman Schultz commented on the totality of the circumstances and how it appeared the employer was not concerned with safety. Commissioner Hennelly referred to mounted photograph number 10, and asked about circumstances that would comply with the requirements. Mr. Warren responded to the question. Vice Chairman Sanders asked about prompt abatement for failing to extend a ladder 36" above a landing and the options available to a compliance officer. Mr. Warren responded to the question. Commissioner Parker questioned whether a citation or penalty should be issued when there is evidence of a clear intent to comply with the standard and the infraction was minor. Following further discussion, Vice Chairman Sanders moved to approve the recommended citations and penalties except that Citation 1 Item 6 would be issued with the penalty reduced to zero for a total penalty amount of \$3,450.00. Commissioner Parker seconded the motion. The Commission unanimously approved the citation as amended and assessed the penalty of \$3,450.00.

Arizona Park Holdings, LLC dba Wet N Wild Phoenix
4243 W Pinnacle Peak Rd
Glendale, AZ 85310

Referral

Years in Business: 28

Empl. Covered by inspection: 14

Site Location: 4243 W Pinnacle Peak Rd
Glendale, AZ 85310
Inspection No: V1001-1061630
Inspection Date: 05/07/2015

SERIOUS – Citation 1 - Item 1 – Junior pit: A door that covers the pit opening that was 36 inches x 36 inches and approximately 7 feet deep was left open to allow monitoring of the pit and was not constantly attended nor did the opening have a removable standard railing while the pit cover was open. (29 CFR 1910.23(a)(5)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 2 – Mammoth falls family raft complex: One employee was not trained in the proper use and care of personal fall protection equipment that was used while climbing the conveyor to remove lodged rafts. (29 CFR 1910.132(f)(1)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 3 – Mammoth Falls Family Raft Complex: The employer did not establish an adequate energy control program for the location, or energy control procedures for specific equipment, such as the Mammoth Fall raft conveyor, in order to prevent the unexpected startup or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment. (29 CFR 1910.147(c)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$5,850.00

TOTAL FORMULA AMT. - \$5,850.00

Mr. Warren noted that Wet N Wild has informed ADOSH that it has implemented all of ADOSH's recommendations. He summarized the citations and proposed penalties. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,850.00 on motion of Commissioner Bolick, second of Commissioner Hennelly. Commissioner Bolick thanked Mr. Warren and his team and Wet N Wild for being safety responsive.

Arizona Watertite Systems, Inc.
762 N. Explorer Dr
Gilbert, AZ 85234

Complaint
Years in Business: 29
Empl. Covered by inspection: 6

Site Location: 20401 N. 19th Ave
Phoenix, AZ 85027
Inspection No: A3807-1071493
Inspection Date: 06/18/2015

SERIOUS – Citation 1 - Item 1 – Building 32: Four employees were engaged in the demolition and preparing for installation of roofing materials on a low-slope roof with unprotected sides and edges 20 feet to 24 feet above a lower level and were not protected from falling by a fall protection system or other equivalent means. (29 CFR 1926.501(b)(10)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Building 32 and Building 27: The Foreman and four employees working at heights greater than 20 feet and exposed to falls were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize those hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 –

- a) Building 32: Four employees used a Louisville fiberglass extension ladder, Model L-3022-24, serial number 2886506836, which did not extend 3 feet above the landing surface and a handhold was not provided. (29 CFR 1926.1053(b)(1)).
- b) Building 32: An employee was observed descending a Louisville fiberglass extension ladder, Model L-3022-24, serial number 2886506836, and was carrying an igloo water cooler that could cause him to lose balance and fall. (29 CFR 1926.1053(b)(22)).

- c) Building 27 and 32: Training in the recognition and guidance of unsafe conditions associated with the use of portable ladders was not provided to five employees who were utilizing portable extension ladders. (29 CFR 1926.1060(a)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
TOTAL PENALTY - \$3,750.00	TOTAL FORMULA AMT. - \$3,750.00

Mr. Warren summarized the citation and proposed penalty as listed and described what the mounted photographs depict. Commissioner Parker commented on 29 CFR 1926.1053(b)(1). Vice Chairman Sanders commented on mounted photograph number 9. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,750.00 on motion of Commissioner Hennelly, second of Commissioner Parker.

Metric Roofing, Inc.
3811 W. Lower Buckeye Rd
Phoenix, AZ 85009

Complaint
Years in Business: 22
Empl. Covered by inspection: 4

Site Location: 3244 E. Strawberry Dr
Gilbert, AZ 85297
Inspection No: H1793-1072233
Inspection Date: 06/22/2015

SERIOUS – Citation 1 - Item 1 – Job Site Roof East and West Sides: Four employees were engaged in roofing construction on a steep-slope roof, at a height of approximately 20 feet from the roof edge to the ground and were not protected from falling. (29 CFR 1926.501(b)(11)).

Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Vice Chairman Sanders stated that based on inspection history, it didn't look like the employer is getting the point about fall protection. Mr. Warren responded to the comment.

Commissioner Parker commented on the roofing industry and the use of conventional fall protection and what might help encourage employers to ensure their employees use fall protection when working at heights.

Chairman Schultz commented on circumstances where employees are wearing their harnesses but are not attached to anything and how some employers have prior citations for not using fall protection. Vice Chairman Sanders commented on the potential for fatal accidents and how dismaying it is that some employers just do not seem to recognize that potential.

Commissioner Bolick asked if under the circumstances if the Commission could remove the recommended reduction for size. Chairman Schultz asked if the Commission has that authority and Mr. Wade responded yes, that is within the Commission's authority.

Commissioner Parker commented on ADOSH's outreach and explained the reasoning behind the size adjustment. Commissioner Bolick noted that given the prior citations, this is more of a matter of getting this particular employer's attention. Vice Chairman Sanders added that the employer does not seem to recognize the need for safety.

Ms. McGrory noted there was no training violation, asked if the employees were trained with respect to the residential fall protection standards, and if protective equipment was on site. Mr. Warren responded to the question. Commissioner Parker noted training does nothing if the employer does not enforce the use of fall protection. He recommended that ADOSH review this file with Legal and suggested some components for that review.

Chairman Schultz announced that this matter would be tabled to provide for the additional review.

Pacific Sea Food of Arizona, Inc.	Planned	
2311 E. Jones Ave	Years in Business:	7
Phoenix, AZ 85040	Empl. Covered by inspection:	38
Site Location:	2311 E. Jones Ave	
	Phoenix, AZ 85040	
Inspection No:	H9685-1074207	
Inspection Date:	06/26/2015	

SERIOUS – Citation 1 - Item 1 – South Hallway: The exit door in the south hallway between the processing area and the warehouse was locked from the inside with a keyed deadbolt. (29 CFR 1910.36(d)(1)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 2 – South Hallway: An Employee who was exposed to Corrosive ZEP Brand FS Formula 4089 Chlorinated Detergent and ZEP Brand 940 Liquid Steam Cleaner was not provided with suitable facilities for quick flushing of the eyes within the work area for immediate emergency use. (29 CFR 1910.151(c)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
----------------------------	---------------------------

SERIOUS – Citation 1 - Item 3 –

- a) 2133 E Jones Ave, Phoenix, AZ 85040: The employer did not develop or implement at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met for employees that work with hazardous chemicals such as Corrosive ZEP FS Formula 4089 Chlorinated Detergent and ZEP Brand 940 Liquid Steam Cleaner. (29 CFR 1910.1200(e)(1)).
- b) Processing Area: The employer did not ensure that labels or other forms of warning were legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. (29 CFR 1910.1200(f)(9)).
- c) 2133 E Jones Ave, Phoenix, AZ 85040: Employees were not provided effective information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard that the employees had not been previously trained about was introduced into their work area. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
TOTAL PENALTY - \$6,750.00	TOTAL FORMULA AMT. - \$6,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker asked for additional details concerning the locked door shown in mounted photograph number 1. Brian Downen provided additional details. The Commission unanimously approved issuing the

- b) Parking Garage Level 5: One employee was working at a height of 50 feet 4 inches above a lower level were not trained by a competent person qualified in the areas specified in 29 CFR 1926.503 (a)(2)(i) through (viii). (29 CFR 1926.503(a)(2)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker referred to mounted photographs numbers 1 and 4, the employees identified as "A" and "B," and asked for more details concerning the violation. Billie Gingrass summarized the circumstances. Commissioner Bolick asked about mounted photograph number 8 and Ms. Gingrass explained how the photograph depicts distance.

Chairman Schultz commented that the abatement photos show that it is obvious that the employees still did not have appropriate training on how to use the equipment and explained how serious injuries could result from improperly adjusted harnesses. Commissioner Bolick asked for an explanation of the typical follow-up for these types of citations. Mr. Warren summarized the process. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,000.00 on motion of Commissioner Bolick, second of Vice Chairman Sanders.

Sierra Masonry, LLC
1550 E Dana Ave
Mesa, AZ 85204

Complaint

Years in Business: 3

Empl. Covered by inspection: 10

Site Location: 1025 N 99th Ave
Tolleson, AZ 85353
Inspection No: A3807-1071042
Inspection Date: 06/17/2015

SERIOUS – Citation 1 - Item 1 –

- a) North side of Building: An employee was exposed to atmospheric contamination in that appropriate engineering controls such as a wet-saw attachment was not utilized while cutting masonry block. (29 CFR 1910.134(a)(1)).
- b) A written respiratory protection program was not implemented in that two employees were required to wear a 3M 2810 dual strap N95 Particulate Respirator without the required medical evaluation or fit test. (29 CFR 1910.134(c)(1)).
- c) North side of Building: One employee did not utilize appropriate respiratory protection when dry-cutting masonry block.
(29 CFR 1926.95(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – 1025 N 99th Ave, Tolleson, AZ 85353: A written hazard communication program had not been implemented and maintained for employees who were potentially exposed to hazardous chemicals, materials and/or substances such as silica, crystalline, quartz and Portland cement. (29 CFR 1910.1200(e)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – North Wall: Two employees were working on a fabricated frame scaffold approximately 13 feet 8 inches high above the ground surface below, that was missing guardrail system components such as the toprail and midrail at the north side of the scaffold platform to prevent a fall to a lower level. (29 CFR 1926.451(g)(1)(vi)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 4 – North end of building: Two employees were not trained in the recognition and avoidance of the hazards associated with the use of fabricated frame scaffolds. (29 CFR 1926.454(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker noted a typographical error of juxtaposed numbers in the description of the respirator. He commented on Citation 1 Item 1 and how the employer could have engineered out the hazard and the impact that doing so would have on applying administrative controls or using personal protective equipment. Commission Bolick commented on the adjustment factor for history and Mr. Warren responded to the comment.

The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,500.00 on motion of Commissioner Parker, second of Commissioner Hennelly.

Sombrero Construction L.L.C.

P.O. Box 1209

Cashion, AZ 85329

Site Location: 1755 W Tombstone Tr
Phoenix, AZ 85085

Inspection No: V1001-1072046

Inspection Date: 06/19/2015

Referral

Years in Business: 12

Empl. Covered by inspection: 5

SERIOUS – Citation 1 - Item 1 – North side deck: Two employees were working at a height of approximately 11 feet and were not protected from falling to the ground below. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Garage: One employee was utilizing an 8ft Werner stepladder Model number unknown, as a means of access and egress to the trusses, which was approximately 10ft from the ground level. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

TOTAL PENALTY - \$2,700.00

TOTAL FORMULA AMT. - \$2,700.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker noted prior citations including citations resulting from an inspection in May 2015, commented on employer knowledge of the requirements, and asked about the classification. Ms. McGrory suggested that legal counsel could review the file.

Commissioner Bolick asked about the size adjustment and classification and Mr. Warren responded to the questions.

Following further discussion, Chairman Schultz tabled the matter and directed ADOSH staff to review the file and discuss with Legal.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Schultz asked about the meetings scheduled and Commissioner Bolick stated he would be unable to attend the meeting scheduled for September 23, 2015.

Public Comment.

There was no public comment. Chairman Schultz asked if there was a motion to adjourn. Vice Chairman Sanders moved to adjourn and Commissioner Bolick seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Laura McGrory*, *Acting Director*
Laura McGrory, Director

ATTEST:

Kara Dimas
Kara Dimas, Commission Secretary