

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, August 20, 2009 – 1:00 p.m.

|          |                       |                       |
|----------|-----------------------|-----------------------|
| Present: | Brian Delfs           | Chairman (telephonic) |
|          | Marcia Weeks          | Vice Chairman         |
|          | Louis W. Lujano, Sr.  | Member                |
|          | John A. McCarthy, Jr. | Member                |
|          | David Parker          | Member                |
|          | Laura McGrory         | Director              |
|          | Andrew Wade           | Chief Legal Counsel   |
|          | Darin Perkins         | Director, ADOSH       |
|          | Teresa Hilton         | Commission Secretary  |

Vice Chairman Weeks convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Jen Jones of Snell & Wilmer, Cathy Vines of SCF Arizona and Jeff Homer of General Dynamics.

Approval of Minutes of August 14, 2009 Meeting

The Commission approved the Minutes of the August 14, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy. Mrs. Weeks abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

Charles Court Construction, Inc.  
11036 N. 23<sup>rd</sup> Avenue, #1  
Phoenix, AZ 85029

Planned  
Yrs/Business – 36  
Empl. Cov. by Insp. – 2

Site Location: 1400 E. 6<sup>th</sup> Avenue, Tucson, AZ 85719  
Inspection #: F3875/313397879  
Insp. Date: 05/12/09

**SERIOUS** – Citation 1, item 1 – Employees working on the roof 30' above ground level were working along the unprotected edges caulking the cup of the roof on the inside of the 12" parapet wall without fall protection. (1926.501(b)(1))

(One inspection with 4 nonserious violations in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

**SERIOUS** – Citation 1, item 2 – Employees working on the roof 30' above ground level were not adequately trained to recognize the hazards of falling or the procedures to be followed to minimize those fall hazards. (1926.503(c))

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission approved issuing the citations and increased the penalty for each item to the gravity-based penalty of \$2,500.00 with no adjustment factors for a total penalty of \$5,000.00 based on the egregious nature of the violations, employees working 30' above ground level, and no fall protection on motion of Mr. Lujano, second of Mrs. Weeks. Mr. Delfs and Mr. Parker voted nay.

Escobar Lath and Plastering, Inc.  
2626 N. Estralla Avenue  
Tucson, AZ 85705

Planned  
Yrs/Business - 3  
Empl. Cov. by Insp. - 5

Site Location: 2752 N. Bell Hollow Place, Tucson, AZ 85745  
Inspection #: P0775/313398125  
Insp. Date: 05/14/09

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a - Employees were working on tubular welded frame scaffold that was approximately 7' to 10' high, 10' to 60' long and 2' to 3' wide and the base plates were not set on mudsills. (1926.451(c)(2))

Citation 1, item 1b - Employees were working on a tubular welded frame scaffold that was 10' high, 10' long and 3' wide and were using the cross braces as a means of access and egress. (1926.451(e)(9)(iv))

Citation 1, item 1c - Employees working underneath and around the tubular welded frame scaffolds that were approximately 7' to 10' high, 10' to 60' long and 2' to 3' wide were not protected by toeboards or other barriers to keep items such as plastering tools and mud buckets from falling from above. (1926.451(h)(1))

Citation 1, item 1d - Employees were working on a tubular welded frame scaffold that was approximately 10' high, 10' long and 3' wide and lacked cross or horizontal braces on the inside of the scaffold. (1926.452(c)(2))

Citation 1, item 1e - Employees were plastering the exterior walls of the building on top of a scaffold approximately 8' high, 60' long and 3' wide that was not fully planked between the uprights and the guardrail supports. (1926.451(b)(1))

Citation 1, item 1f - Employees working on a tubular welded frame scaffold approximately 8' high, 60' long and 3' wide were not provided with a safe means of access such as a ladder. (1926.451(e)(1))

Citation 1, item 1g - Scaffolds and scaffold components were not inspected for visual defects by a competent person before each work shift and after any occurrence which could affect a scaffold's structural integrity. (1926.451(f)(3))  
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - Employees were working on a tubular welded frame scaffold that was approximately 10' high, 10' long and 3' wide that was missing the end-rails to protect the employees from falling to the lower level below. (1926.451(g)(4)(i))

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - Employees plastering the exterior wall of the building on top of the scaffold which was approximately 10' high, 10' long and 3' wide were not trained by a qualified person to recognize those hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards. (1926.454(a)) There were three other instances of this violation.

Div. Proposal - \$ 750.00  
TOTAL DIV. PROP. - \$2,250.00

Formula Amt. - \$ 750.00  
TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,250.00 on motion of Mr. McCarthy, second of Mr. Parker.

Jarcon Construction, Inc.  
7017 E. Calle Ozito  
Tucson, AZ 85710

Planned  
Yrs/Business - 16  
Empl. Cov. by Insp. - 5

Site Location: 180 W. Valencia Road, Tucson, AZ 85706  
Insp. #: P0775/313344715  
Insp. Date: 05/11/09

SERIOUS - Citation 1, item 1 - An employee was not trained in the safe operation of the forklift. (1910.178(l)(1)(i))  
(No inspection history in the past three years).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS - Citation 1, item 2 - The employees were operating a mortar mixer that was missing a guard on the rope starter pulley of the engine. (1926.300(b)(2))

Div. Proposal - \$600.00

Formula Amt. - \$600.00

GROUPED SERIOUS - The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 3a - Employees were working on a tubular welded frame scaffold that was 9' to 10' high, 8' long and 8' wide that was not fully planked or decked between the uprights and the guardrail supports. (1926.451(b)(1))

Citation 1, item 3b - Employees were working on a tubular welded horse frame scaffold that was 9' to 10' high, 8' long and 8' wide plastering the columns of the building and using planks that were 12' long, extending 24" over the scaffold supports. (1926.451(b)(5)(ii))

Citation 1, item 3c - Employees were working on a tubular welded horse frame scaffold that was 9' to 10' high, 8' long and 8' wide that had the base plates set on loose gravel instead of mudsills or other adequate firm foundation. (1926.451(c)(2))

Citation 1, item 3d - Employees were working on a tubular welded horse frame scaffold that was 9' to 10' high, 8' long and 8' wide and were not provided a safe means of access to the working platform. (1926.451(c)(1))

Citation 1, item 3e - Employees were working on a tubular welded horse frame scaffold that was 9' to 10' high, 8' long and 8' wide that was erected without the supervision and direction of a competent person qualified in scaffold erection. (1926.451(f)(7))

Citation 1, item 3f - An employee was working on a tubular welded horse frame scaffold that was 9' to 10' high, 8' long and 8' wide, standing on a plastic orange bucket that was placed on top of the plank to increase his work level by 15 inches. (1926.451(f)(14))

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – Employees were working on a tubular welded horse frame scaffold that was 9' to 10' high, 8' long and 8' wide which did not have guardrails installed along all open sides to prevent employees from falling to the lower level below. (1926.451(g)(4)(i))  
Div. Proposal - \$750.00 Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – Employees working on a tubular welded horse frame scaffold 9' to 10' high, 8' long and 8' wide were not trained by a qualified person to recognize the hazards associated with the type of scaffold being used and how to control or minimize those hazards. (1926.454(a))  
Div. Proposal - \$ 750.00 Formula Amt. - \$ 750.00  
TOTAL DIV. PROP. - \$3,450.00 TOTAL FORMULA AMT - \$3,450.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,450.00 on motion of Mr. Parker, second of Mr. McCarthy.

Santa Cruz County, Maintenance Yard  
2150 N. Congress Drive  
Nogales, AZ 85621  
Planned  
Yrs/Business – 110  
Empl. Cov. by Insp. – 7  
Site Location: 1270 N. Hohokam Drive, Nogales, AZ 85621  
Inspection #: P0775/313531808  
Insp. Date: 05/18/09

SERIOUS – Citation 1, item 1 – Six (6) fiberglass skylight openings measuring approximately 3' wide and 8' long were not guarded by standard skylight screens or a fixed standard railing on all open sides to prevent the employees from falling approximately 20' to 25' to the lower level below. (1910.23(a)(4)).  
(No inspection history in the past three years).  
Div. Proposal - \$2,250.00 Formula Amt. - \$2,250.00

SERIOUS – Citation 1, item 2 – A bench grinder did not have the work rest for the operator to use to support off-hand grinding activities. (1910.215(a)(4))  
Div. Proposal - \$100.00 Formula Amt. - \$100.00

SERIOUS – Citation 1, item 3 – Employees were using an angle grinder with a 7 ½" diameter abrasive wheel that did not have a safety guard installed. (1910.243(c)(3))  
Div. Proposal - \$1,800.00 Formula Amt. - \$1,800.00  
TOTAL DIV. PROP. - \$4,150.00 TOTAL FORMULA AMT - \$4,150.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,150.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Sprayfoam Southwest, Inc.  
2318 S. Industrial Park Avenue  
Tempe, AZ 85282  
Planned  
Yrs/Business – 38  
Empl. Cov. by Insp. – 5  
Site Location: 851 E. Lemon Street, Tempe, AZ 85281  
Inspection #: R0738/313572976  
Insp. Date: 06/02/09

GROUPED SERIOUS – The alleged violations that follow have been grouped because they

involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 1a – The employer did not ensure that the top rail of a wire rope guardrail system was installed as required in that the top rail was placed at a height of 36.5". (1926.502(b)(1))

Citation 1, item 1b - The employer did not ensure that anchorage points used for a personal fall arrest system for employees working at the edge of the roof 24' above the ground were capable of supporting 5,000 pounds for each employee. (1926.502(d)(15))

(One inspection with one serious and two nonserious violations in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – One employee working at heights greater than 6' and exposed to falls did not receive fall protection training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (1926.503(a)(2)(viii))

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL DIV. PROP. - \$3,000.00

TOTAL FORMULA AMT - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Lujano, second of Mr. Parker.

Domestic, LLC dba Moldworx, LLC  
1815 W. 1<sup>st</sup> Avenue, #120  
Mesa, AZ 85202

Planned  
Yrs/Business – 14  
Empl. Cov. by Insp. – 10

Site Location: 1815 W. 1<sup>st</sup> Avenue, #120, Mesa, AZ 85202

Inspection #: Q7984/313580953

Insp. Date: 06/09/09

SERIOUS – Citation 1, item 1 – The employer had not developed and implemented a written lockout/tagout program and procedures for maintenance personnel or repair persons to prevent the release of stored energy during the performance of major and minor repair work. (1910.147(c)(1))

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Employees were operating a forklift without formal training and certification. (1910.178(1)(i)(i))

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – A bench grinder was lacking a guard to cover the spindle end, nut and flange projections. There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – An air compressor was lacking a guard to completely enclose the horizontal belt and pulleys. (1910.219(e)(1)(i))

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$3,000.00

TOTAL FORMULA AMT - \$3,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to

questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action regarding the Review and Setting of Fees to be Charged under A.R.S. §23-908 by Physicians, Physical Therapists or Occupational Therapists Attending Injured Employees, and for Prescription Medicines Required to Treat an Injured Employee, which Schedule of Fees will be Effective October 1, 2009.

Laura McGrory summarized the supplemental staff document that had previously been provided to the Commissioners. She advised that Part A is a review of comments received and staff recommendations and Part B consists of recommended changes. Ms. McGrory gave an explanation of the recommendations and responded to questions from the Commissioners. Following discussion, the Commission unanimously accepted the recommended changes to the Fee Schedule on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Operations of the Industrial Commission

Mrs. Weeks suggested that the photos presented with the OSHA proposed penalty files be made available to the Commissioners before the meeting so that those Commissioners who participate by telephone would be able to examine the photographs. Ms. McGrory stated that she would explore how best to accomplish that.

Discussion &/or Action regarding Legislation

Ms. McGrory stated there was nothing new to report.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Mr. Wade stated that discovery is ongoing.

Announcements

Ms. McGrory stated that she has provided the Commissioners with a list of possible agency slogans to be used on the redesigned web site for their consideration.

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, August 27, 2009.

Chairman Delfs stated that the fee schedule update involved a great amount of work for the interested community and agency staff and congratulated Ms. McGrory, Mr. Etchechury and Ms. Hilton for their hard work.

There being no further business to come before the Commission and no public comment, Vice Chairman Weeks adjourned the meeting at 2:05 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *James C. Phelps*  
Chairman

By *Marion Weeks*  
Vice Chairman

By *James W. Higgins, Sr.*  
Member

ATTEST:

By *John A. McCall Jr.*  
Member

*Teresa Hulston*  
Commission Secretary

By *[Signature]*  
Member