

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Wednesday, September 2, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	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
	Renee Pastor	Manager, Self Insurance
	Randall Maruca	Director, Labor Dept.
	Glenn Hurd	Financial Officer
	Jeri McAnerny	Tax Accountant
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:03 p.m. noting a quorum present. Also in attendance was Jen Jones of Snell & Wilmer.

Approval of Minutes of August 27, 2009 Meeting

The Commission unanimously approved the Minutes of the August 27, 2009 meeting on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion & Action of Proposed OSHA Citations and Penalties

Bowles Contracting, Inc. dba Wall Tech	Planned
3310 W. Bell Road, #104	Yrs/Business – 12
Phoenix, AZ 85053	Empl. Cov. by Insp. – 8
Site Location: 21365 S. Ellsworth, Queen Creek, AZ 85242	
Inspection #: A7717/313615312	
Insp. Date: 07/09/09	

REPEAT SERIOUS – Citation 1, item 1 – Two employees were walking on a roof 20' above the ground without a fall protection system installed to prevent a fall (1926.501(b)(1). (One inspection in the past three years with 3 serious and 1 nonserious violations).

WALL TECH WAS PREVIOUSLY CITED FOR VIOLATION OF THIS STANDARD OR IT'S EQUIVALENT STANDARD (1926.501(b)(1), CONTAINED IN ADOSH INSPECTION #313125999, CITATION 1, ITEM 2 ISSUED ON 6/12/09.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

REPEAT NONSERIOUS – Citation 2, item 1 – One employee was working on a tubular welded frame scaffold 17'6" high, 3' wide and 10' long which the platform was installed with more than one inch wide between each plank (1926.451(b)(1)(i).

WALL TECH WAS PREVIOUSLY CITED FOR VIOLATION OF THIS STANDARD OR ITS EQUIVALENT STANDARD (1926.4511(b)(1), CONTAINED IN ADOHS INSPECTION #313125999, CITATION 2, ITEM 1 ISSUED ON 6/12/09.

Div. Proposal - \$200.00

Formula Amt. - \$200.00

SERIOUS – Citation 3, item 1 – Two employees were working from a tubular welded frame scaffold 24' high, 3' wide and 20' long that did not have endrails installed to prevent a fall hazard (1926.451(g)(4)(i).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL DIV. PROP. - \$3,200.00

TOTAL FORMULA AMT - \$3,200.00

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 assessed the recommended penalty of \$3,200.00 on motion of Mr. Parker, second of Mrs. Weeks. Mr. Lujano voted nay. Mr. Lujano commented that he thought the penalty should be higher.

Santa Fe Diversified, L.L.C.
125 E. Congress
Tucson, AZ 85701

Planned
Yrs/Business – 3
Empl. Cov. by Insp. – 6

Site Location: 300 E. Congress, Tucson, AZ 85701

Inspection #: F3875/313587602

Insp. Date: 06/09/09

SERIOUS – Citation 1, item 1 – Employees were working on a steel welded frame rolling scaffold measuring 15' high, 5' wide and 7' long that did not have any guardrails installed along the open sides and ends of the platform (1926.451(g)(4)(i).
(One inspection in the past three years with no violations).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Employees working on a mobile scaffold 15' high, 5' wide and 7' long were not trained by a qualified competent person on scaffold erection, disassembling, moving, inspecting and maintaining (1926.454(b).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$1,500.00

TOTAL FORMULA AMT - \$1,500.00

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 unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mrs. Weeks.

Cochise County, Facilities Management
1415 E. Melody Lane
Bisbee, AZ 85603

Planned
Yrs/Business – 128
Empl. Cov. by Insp. – 20

Site Location: 1415 E. Melody Lane, Bldg D, Bisbee, AZ 85034

Insp. #: F3875/313555179

Insp. Date: 05/17/09

SERIOUS – Citation 1, item 1 – A unisaw had a 10" blade that was not guarded by an automatic

adjusting hood that would completely enclose that portion of the saw blade that was above the table and that portion of the saw above the material being cut (1910.213(c)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – The electrical panel to the water heater had the cover removed, leaving the electrical wiring and fuses exposed, and subjecting employees to an electrical shock (1910.305(b)(2)(i)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL DIV. PROP. - \$3,750.00

TOTAL FORMULA AMT - \$3,750.00

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 \$3,750.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Cochise County, International Airport

1415 E. Melody Lane

Bisbee, AZ 85603

Planned

Yrs/Business – 128

Empl. Cov. by Insp. – 2

Site Location: 6940 Air Terminal, Douglas, AZ 85607

Insp. #: F3875/313580748

Insp. Date: 05/27/09

SERIOUS – Citation 1, item 1 – Energized electrical equipment located inside the panel box was not guarded against accidental contact by an approved enclosure (1910.303(g)(2)(i)).

(No inspection history in the past 3 years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$1,875.00 on motion of Mr. Lujano, second of Mrs. Weeks.

Craftsmen In Wood Mfg., Co.

5441 W. Hadley

Phoenix, AZ 85043

Planned

Yrs/Business – 30

Empl. Cov. by Insp. – 64

Site Location: 5441 W. Hadley, Phoenix, AZ 85043

Insp. #: I7163/313615460

Insp. Date: 07/24/09

SERIOUS – Citation 1, item 1 – A table saw was lacking a hood guard (1910.213(c)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – The cutting head for a wood shaper was not fully enclosed with an adjustable guard designed so as to keep the operator's hands away from the cutting edge (1910.213(m)(1)).

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 unanimously approved issuing the citations and assessed the recommended penalty of \$2,500.00 on motion of Mrs. Weeks, second of Mr. McCarthy.

Flex Enterprises Inc. dba Flex
1517 S. Black Canyon Hwy
Phoenix, AZ 85009

Complaint
Yrs/Business – 20
Empl. Cov. by Insp. – 4

Site Location: 1517 S. Black Canyon Hwy, Phoenix, AZ 85009

Insp. #: Y8053/313615676

Insp. Date: 07/30/09

SERIOUS – Citation 1, item 1 – A 110/220 volt electrical panel was lacking two blankout covers (1910.305(b)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – A written Exposure Control Plan had not been developed, implemented and maintained for employees who are potentially exposed in the workplace to potentially infectious materials 91910.1030(c)(1)(i).

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 unanimously approved issuing the citations and assessed the recommended penalty of \$2,500.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Group 1 Marine, L.L.C.
648-B Lake Havasu Blvd.
Lake Havasu City, AZ 86103

Planned
Yrs/Business – 9
Empl. Cov. by Insp. – 9

Site Location: 648-B Lake Havasu Blvd., Lake Havasu City, AZ 86103

Insp. #: Y5457/313532137

Insp. Date: 05/18/09

SERIOUS – Citation 1, item 1 – Approximately 500' of Schedule 40 PVC was used for the transportation of compressed air at various pressures (R205.628).

(No inspection history in the past three years).

Div. Proposal - \$300.00

Formula Amt. - \$300.00

SERIOUS – Citation 1, item 2 – A table mounted vertical bandsaw did not have an on/off switch installed that would prevent automatic restart upon restoration of power after power failure (1910.213(b)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – A table saw was lacking a hood guard (1910.213(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – One employee was using a woodworking bandsaw and did not

adjust the blade guard to the thickness of the material being cut (1910.213(i)(1)).

Div. Proposal - \$ 750.00	Formula Amt. - \$ 750.00
TOTAL DIV. PROP. - \$2,550.00	TOTAL FORMULA AMT - \$2,550.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker noted that the PVC rule was an Arizona separate safety standard and not a federal OSHA standard. Mr. Perkins and Ms. McGrory explained the adoption of the rule through the standard rulemaking process. Mr. Parker questioned whether municipalities were aware of the unique Arizona PVC standards. Mr. Perkins responded that he believed so but would get additional information regarding the rule out to planning managers. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,550.00 on motion of Mr. Lujano, second of Mr. Parker.

Nogales Manufacturing Company	Planned
959 N. Bankard Avenue	Yrs/Business – 20
<u>Nogales, AZ 85621</u>	Empl. Cov. by Insp. – 4
Site Location: 959 N. Bankard Avenue, Nogales, AZ 85621	
Insp. #: P0775/313587347	
Insp. Date: 06/22/09	

SERIOUS – Citation 1, item 1 – The employer had a portable gasoline powered air compressor with dual tanks that did not have the drive belt fully enclosed and the pulleys guarded (1910.219(d)(1)).

(One inspection with one serious and 11 nonserious violations in the past three years).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
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SERIOUS – Citation 1, item 2 – An angle grinder with a six inch diameter abrasive wheel was not equipped with a safety guard (1910.242(c)(3)).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
TOTAL DIV. PROP. - \$2,000.00	TOTAL FORMULA AMT - \$2,000.00

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 \$2,000.00 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Request for Renewal of Self Insurance Authority

Arizona School Alliance for Workers' Compensation, Inc. – Renee Pastor presented staff's renewal report along with current Dunn and Bradstreet credit report ratings and responded to questions from the Commissioners. Mr. Parker questioned the pilot program that allows pools to add new members without Commission approval. Mr. Pastor and Mr. McGrory explained the program. Mr. Parker raised a question regarding the pool's security deposit and wondered if pools could get a waiver if they were fully funded. Ms. Pastor and Ms. McGrory responded to his question and explained the current rule that authorizes an alternative to the posting of a security deposit by a public entity. Mr. Wade stated that this issue could be reviewed by staff and placed on a future agenda.

Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the pool's consistent record of profitability and growth, large size with total assets of just under \$24.5 million, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved renewal of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. Parker.

Chairman Delfs stated that consideration of the renewal of self insurance authorization for Empire Southwest would be held until the end of the agenda since it involves an executive session.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-0319	Asset Creation L.L.C. dba Asset Creation
2C08/09-2051	BMJ Transport, Inc.
2C08/09-2047	Ken Steed & Crystal Steed Husband & Wife dba S & S Automotive
2C08/09-1172	Storage Depot USA, LLC dba Storage Depot USA

Andrew Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that civil penalties of \$1,000.00 be assessed against each of these employers. Mr. Wade responded to questions from the Commissioners regarding these employers. The Commission unanimously assessed the recommended penalties of \$1,000.00 against employers #0319, 2051, 2047 and 1172 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of New Employment Agency License Application

Eugene Krohn on behalf of TTG Consultants-Arizona, LLC - Randy Maruca advised that this applicant is a career counseling service and has been investigated by the Department as required by the Revised Statutes and Rules governing Private Employment Agencies. He explained what the task of the State Labor Department entails regarding investigating applicants and what a career counseling business does. He advised that the Employment Advisory Council has recommended approval of the license. Following discussion, the Commission unanimously approved the license and signed Resolution to that effect on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that there was nothing new to report

Discussion &/or Action regarding Legislation

Ms. McGrory stated that Mr. Butler will give an update when there is something new to report regarding the budget.

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 there was nothing new to report.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, September 17th. Director McGrory stated that she and Chief Counsel Wade will be at the workers' compensation attorney's seminar in Prescott and Darin Perkins will be Acting Director at the September 17th Commission meeting.

Executive Session pursuant to A.R.S. §38-431.03(A)(2) to Discuss Records Exempt by Law from Public Inspection regarding the application for Renewal of Self Insurance Authority for Empire Southwest, LLC.

The Commission unanimously voted to go into Executive Session on motion of Mr. Lujano, second of Mr. McCarthy. Executive Session Minutes are kept separately.

General Session for Discussion & Action regarding Application for Renewal of Self Insurance Authority for Empire Southwest, LLC.

Renee Pastor presented staff's renewal report along with current Dunn and Bradstreet credit report ratings. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial soundness with assets of just over \$530.8 million, a clean audit report and a good credit rating.

Following discussion, the Commission unanimously granted continuance of self-insurance authority and signed a Resolution to that effect on motion of Mr. Lujano, second of Mr. Parker.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:55 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By *Francis C. Delfs*
Chairman

By *Thomas Webb*
Vice Chairman

By *James W. Byrnes, Sr.*
Member

ATTEST:

By *John McAty*
Member

Theresa Helton
Commission Secretary

By *Q. O. M.*
Member