

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, November 5, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Louis W. Lujano, Sr.	Member
	David Parker	Member (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Asst. Chief Financial Officer
	Jeri McAnerny	Tax Accountant
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Mrs. Weeks and Mr. McCarthy were not able to attend. Also in attendance were Jen Jones and Teresa Yi of Snell & Wilmer.

Approval of Minutes of October 29, 2009 Meeting

The Commission unanimously approved the Minutes of the October 29, 2009 meeting on motion of Mr. Lujano, second of Mr. Parker.

Lump Sum Commutation Hearing

Bruce Anderson #88139-040955 – Present for the lump sum hearing were Mr. and Mrs. Anderson. Court reporter was also present. Chairman Delfs opened the hearing with a brief statement explaining the process to Mr. Anderson. Mr. Anderson was sworn in by the court reporter. Mr. Anderson answered questions from Mr. Wade concerning his financial status, his current lump sum proposal, and his prior approved lump sum commutation. Mr. Anderson also responded to questions from the Commissioners and advised that it was still his intention to purchase a house that would accommodate his disability. He explained why he did not want to continue to live in his current home, how his injury has affected his life, and why he cannot live on the monthly income received for his worker's compensation injury. Mr. Anderson stated that he had been under the impression that he would receive \$140,000.00 in the lump sum and he explained why he disagreed with the reduction of that amount for a credit for the prior lump sum that he received. He explained if the Commission did not approve his lump sum request at \$140,000, then he did not want it. He showed the Commissioners multiple awards that he has received and a copy of an article from HVAC magazine about him. He stated that he thinks he has done very well given his physical and mental disabilities. Chairman Delfs stated that it is the Commission's duty to determine whether the lump sum would benefit Mr. Anderson financially and have rehabilitative value and he asked Mr. Anderson to explain how the lump sum would benefit him in this manner. Mr. Anderson explained how the purchase of a new home would benefit him, but that he needed \$140,000 to do this. Mrs. Anderson then asked to speak.

Mrs. Anderson was sworn in and testified that SCF Arizona had called Mr. Anderson in May and made an offer of \$140,000.00 to settle the claim. Chairman Delfs explained that the Industrial Commission is a separate agency from SCF and the Commission can only approve or deny the lump sum commutation. He further explained that if the Commission approved the lump sum, it would be in the amount of \$104,751.56. Chairman Delfs asked for clarification from Mr. Anderson concerning his earlier statement that he did not want the lump sum if it would not be approved at \$140,000. Following further discussion with Mr. Anderson on this issue, Mr. Anderson stated that he was withdrawing his request for hearing since the lower amount would not be enough to purchase a home and he felt he would be better off receiving the monthly entitlement. Chairman Delfs stated that the Commissioners had sympathy for the Anderson's situation and wished them the best. The hearing was closed at 1:45 p.m.

Discussion & Action of Proposed OSHA Citations and Penalties

Corrosion Engineering, Inc.
145 S. Nina
Mesa, AZ 85201

Planned
Yrs/Business – 33
Empl. Cov. by Insp. – 75

Site Location: 145 S. Nina, Mesa, AZ 85201
Inspection #: K4591/313883647
Insp. Date: 09/16/09

SERIOUS – Citation 1, item 1 – The employer failed to guard the skylights on the roof, creating a serious fall hazard for employees (1910.23(a)(4).
(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Employees working with an overhead crane were exposed to live conductors at the point of control. The electrical wiring leading into the crane control box was damaged and frayed (1910.303(g) (2) (i). There was another instance of this violation.

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. Lujano, second of Mr. Parker.

Elk Remodeling & Construction, LLC
29227 N. 46th Street
Cave Creek, AZ 85331

Complaint
Yrs/Business – 7
Empl. Cov. by Insp. – 4

Site Location: 9127 N. Vista Verde, Fountain Hills, AZ 85268
Inspection #: Z5834/313891046
Insp. Date: 09/25/09

SERIOUS – Citation 1, item 1 – Four employees were working from the balcony 15' - 20' above ground level without utilizing a fall protection system or other equivalent means to prevent a fall (1926.501(b)(1). There were two other instances of this violation.
(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 2 – The employer did not ensure each employee was protected from falling in or through holes in the working surface 15' above the next lower level by covers or other protective systems (1926.501(b)(4)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 3 – Four employees were using a stairway that did not have a handrail system installed on all open sides to prevent a 15' fall (1926.1052(c)(1)(ii)). There were two other instances of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

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, Mr. Parker questioned the lack of an adjustment factor for history and Mr. Perkins agreed that there should be an additional 10% added to the adjustment factor. With this adjustment, the proposed penalties for each item would be \$750.00 for a total proposed penalty of \$2,250.00. Mr. Parker also stated that it appeared to him that items 2 and 3 both referenced the same stairway and wondered if two separate citations were appropriate. Mr. Perkins stated that the citations address different standards, but since it was for the same stairway, the items could be grouped together. If items 2 and 3 are grouped, the resulting total proposed penalty would be \$1,500.00. Mr. Parker stated that he would be more comfortable with that and made a motion that items 2 and 3 be grouped as items 2a and 2b with a penalty of \$750.00 for a total penalty of \$1,500.00 which was seconded by Mr. Delfs and unanimously approved.

Johansen Construction, Inc.
3100 N. Navajo Drive, Suite B1
Prescott Valley, AZ 86312

Planned
Yrs/Business – 33
Empl. Cov. by Insp. – 5

Site Location: Burris Road, Casa Grande, AZ 85353
Insp. #: F3875/313697252
Insp. Date: 08/06/09

SERIOUS – Citation 1, item 1 – An employee working in an excavation that was 19' deep, 8' wide and 30' long, involved in the installation of the 36" diameter pipes, had not been trained by the employer to recognize the hazards associated with excavations (1926.21(b)(2)).
(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – The employee working in the excavation measuring 19' deep, 8' wide and 30' long was not provided a safe means of egress out of the excavation (1926.651(c)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – An employee working in the excavation 19' deep, 8' wide and 30' long was not protected from falling debris (i.e. spoil piles, materials and equipment within 2' of the edge of the excavation (1926.651(j)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – The competent person designated by the employer was not conducting daily inspections of the excavation which was 10' deep, 8' wide and 30' long

(1926.651(k)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 5 – An employee working in an excavation 19' deep, 8' wide and 30' long was not protected from cave-ins by an adequate protective system (1926.652(a)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 6 – An employee was conducting work in a excavation that was 19' deep, 8' wide and 30' long and the steel trench shield was set at five feet off the bottom of the excavation (1926.652(g)(2).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$7,500.00

TOTAL FORMULA AMT - \$7,500.00

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 \$7,500.00 on motion of Mr. Parker, second of Mr. Lujano.

City of Casa Grande, Wastewater Treatment Plant

410 E. Florence Blvd.

Casa Grande, AZ 85222

Site Location: 1194 W. Kortsen Road, Casa Grande, AZ 85222

Insp. #: T3633/313765695

Insp. Date: 08/26/09

Referral

Yrs/Business – 100+

Empl. Cov. by Insp. – 10

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, item 1a – Employees operated and maintained the water chlorination facility, a process which involves up to 4,000 pounds of chlorine, and the employer had not performed an initial process hazard analysis (1910.119(e)(1).

Citation 1, item 1b - Employees operated and maintained the water chlorination facility, a process which involves up to 4,000 pounds of chlorine, and the employer did not develop and implement written operating procedures for all tasks performed by the operators (1910.119(f)(1)(i).

Citation 1, item 1c - Employees operated and maintained the water chlorination facility, a process which involves up to 4,000 pounds of chlorine, and the employer did not develop written procedures for inspection and testing of piping, valves, and the ventilation and scrubber system controls and equipment (1910.119(j)(2).

Citation 1, item 1d - Employees operated and maintained the water chlorination facility, a process which involves up to 4,000 pounds of chlorine. The city had decided to not repair or replace an inoperable fluid level sensor for the caustic soda tank in the scrubber system, and had not taken the steps required by the standard to evaluate and document this change, including a determination of the impact of this change on the safety and health of employees (1910.119(l)(1).

Citation 1, item 1e - Employees operated and maintained the water chlorination facility, a process which involves up to 4,000 pounds of chlorine, and the employer did not establish an incident investigation team to investigate an incident in which a leak occurred between the chlorine tank and the plant piping system (1910.119(m)(3)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

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 \$1,875.00 on motion of Mr. Lujano, second of Mr. Delfs.

DMR Companies, L.L.C.
P. O. Box 24046
Tucson, AZ 85766

Planned
Mos./Business - 6
Empl. Cov. by Insp. - 4

Site Location: 4725 S. Contractors Way, Tucson, AZ 85766

Insp. #: N5645/313883571

Insp. Date: 09/16/09

SERIOUS - Citation 1, item 1 - A chain and sprocket on the lumber feed of the web saw was not enclosed or otherwise guarded (1910.213(a)(9)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - Nonworking portions of the saw blade on a bandsaw were not enclosed or guarded (1910.213(i)(1)).

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. Parker, second of Mr. Delfs.

In-Cide Technologies, Inc.
50 N. 41st Avenue
Phoenix, AZ 85009

Planned
Yrs/Business - 34
Empl. Cov. by Insp. - 5

Site Location: 50 N. 41st Avenue, Phoenix, AZ 85009

Insp. #: A7717/313848863

Insp. Date: 09/01/09

SERIOUS - Citation 1, item 1 - A storage rack had a cross member that was visibly damaged and not immediately unloaded for repair or replacement (23.403.A). There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS - Citation 1, item 2 - One employee was operating an aerial lift without a full body harness and lanyard attached to the boom basket (1910.67(c)(2)(v)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – One employee was operating a forklift which was lacking a seatbelt (1910.178(p)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – A portable bagging machine had vertical belts and pulleys without guards installed (1910.219(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – The sprocket wheel and chain drive for a mixer and two cork screw conveyor belts were lacking a guard (1910.219(f)(3)). There was another instance of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$3,600.00

TOTAL FORMULA AMT - \$3,600.00

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 \$3,600.00 on motion of Mr. Lujano, second of Mr. Parker.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Pima County – Mr. Parker recused himself. Consideration of application for renewal was held until a quorum is present.

Unisource Energy Corporation - Renee Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the Company's financial stability and profitability, large size with assets exceeding \$3.5 billion, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Mr. Lujano, second of Mr. Parker.

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 Truly Nolen of America, Inc.

Chairman Delfs stated, and the other Commissioners agreed, that there was no need for an Executive Session since there were no questions regarding the confidential information provided.

General Session for Discussion & Action regarding Application for Renewal of Self Insurance Authority for Truly Nolen of America, Inc.

Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the Company's record of profitability, a clean audit report, the meeting of all requirements for a self-insured employer in the State of Arizona and an acceptable credit rating. Following discussion, the Commission unanimously granted renewal of self-insurance authority on motion of Mr. Lujano, second of Mr. Parker.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

- 2C08/09-1236 E.T.I. Technologies, LLC dba Kirby of Mesa
aka Elite Technologies, Inc.
- 2C08/09-1841 JCA Mobility Systems LLC dba Worldwide Mobility
- 2C09/10-0215 Heavy Duty Radiator Services, L.L.C.
- 2C09/10-0057 Patrick Nilz & Boby Nilz, Husband & Wife
dba All R.V. Service Center, Inc.
- 2C08/09-2093 RAM, LLC dba Catalina Market

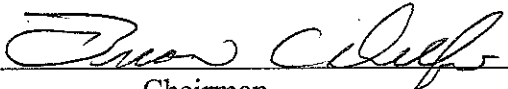
Mr. Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended that civil penalties of \$1,000.00 be assessed against each of the above listed employers. Mr. Lujano made a motion of assess the recommended penalties of \$1,000.00 against each of the above listed employers. The telephonic connection with Mr. Parker was lost. This will be an agenda item for next week's meeting.

Since the telephonic connection with Mr. Parker was not reestablished, the rest of the agenda was suspended for lack of a quorum.

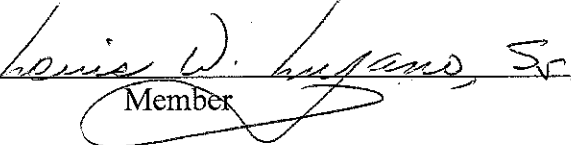
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:20 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

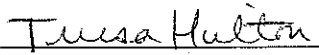
By 
Chairman

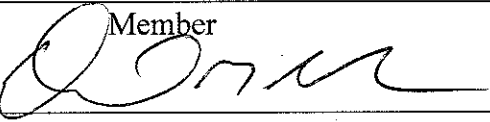
By _____
Vice Chairman

By 
Member

ATTEST:

By _____
Member


Commission Secretary

By 
Member