

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007

Thursday, November 19, 2009 – 1:00 p.m.

Present:	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Noreen Thorsen	Claims Manager
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Asst. Chief Financial Officer
	Michael Hempel	Program Manager, MIS
	Teresa Hilton	Commission Secretary

Vice Chairman Weeks convened the Commission meeting at 1:00 p.m. noting a quorum present. Chairman Delfs was not able to attend. Also in attendance was Teresa Yi of Snell & Wilmer.

Approval of Minutes of November 12, 2009 Meeting

The Commission approved the Minutes of the November 12, 2009 General Session on motion of Mr. Lujano, second of Mrs. Weeks. Mr. McCarthy abstained. The Commission approved the Minutes of the November 12, 2009 Executive Session on motion of Mr. Lujano, second of Mr. Parker. Mr. McCarthy abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

Luna Nueva Harvest	Fatality
99 E. Main Street	Yrs/Business – 10
Herber, CA 92249	Empl. Cov. by Insp. – 60
Site Location: Amarillo Valley & Teel Road, Maricopa, AZ 85138	
Inspection #: P0775/313580896	
Insp. Date: 06/30/09	

SERIOUS – Citation 1, item 1 – The employer did not instruct employees in the safe operation of the “Dragon” harvester equipment, including the safe manner of entering and exiting the equipment (1928.57(a)(6)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

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 2a – Two employees were operating a farm field tractor without the use of the seatbelt (1928.51(b)(2)(i)(b)).

Citation 1, item 2b - An employee was allowed to operate a farm field tractor without any instructions on the operating practices (1928.51(d)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
TOTAL DIV. PROP. - \$9,250.00	TOTAL FORMULA AMT - \$9,250.00

Darin Perkins advised that this case file had been previously presented to the Commission. At that time, consideration of the citations was held for Legal staff to review the file for a possible willful classification. Upon review by Legal staff, it has been determined that there is not sufficient evidence to support a willful classification. Mr. Perkins advised that the first citation was worded a little differently from the first time it was presented and now references a specific standard rather than general duty. Mr. Lujano made a motion to assess the gravity-based penalty for both citations for a total penalty of \$9,500.00 due to the egregious nature of the violations and employer disregard for employee safety in causing the steps to be inaccessible.

Mrs. Weeks questioned how the other employees got on and off the harvester. She agreed that the violation was egregious, but wondered if the employee should have asked them to stop so she could get on. Mr. Perkins responded that the information obtained by the compliance officer is that it is a fairly common practice for employees to get on and off while the vehicle is in motion and that this was not an isolated occurrence. Mr. Lujano renewed his motion which was seconded by Mr. McCarthy. Mrs. Weeks asked why the Legal Division did not recommend a willful classification. Mr. Wade summarized their findings. Mr. Wade stated that the Commission may consider the rulemaking process to adopt a rule that would require employers provide safe means of access and egress for workers on farm machinery.

Following further discussion and inspection of photos of these violations, Mr. Parker requested clarification of the motion. The Commission unanimously approved issuing the citations and assessed the gravity-based penalty of \$9,500.00.

JR Lath & Stucco LLC
213 S. 132nd Street
Chandler, AZ 85225

Planned
Yrs/Business – 5
Empl. Cov. by Insp. – 6

Site Location: 9290 N. Thornydale Road, Tucson, AZ 85742

Inspection #: F3875/313860801

Insp. Date: 09/04/09

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 a steel welded-frame scaffold 12' high, 3' wide and 60' long that was not fully planked between the front uprights and the guardrail supports (1926.451(b)(1)).

Citation 1, item 1b - Employees were conducting work on a steel welded-frame scaffold 12'

high, 3' wide and 60' long and the scaffold frame posts were placed on loose lumber (1926.451(c)(2)).

Citation 1, item 1c - Employees working on a steel welded-frame scaffold 12' high, 3' wide and 60' long were not provided with any ladders or other safe means of access to the scaffold (1926.451(c)(1)).

Citation 1, item 1d - The employer failed to provide a competent person to conduct daily inspections of the scaffold for visual defects (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 steel welded-frame scaffold measuring 12' high, 3' wide and 60' long that did not have any guardrails installed along the open sides and ends of the platforms (1926.451(g)(4)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - Employees working on a steel-welded frame scaffold 12' high, 3' wide and 60' long were not trained by a qualified person in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards (1926.454(a)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

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. Lujano.

Hasa, Inc.
PO Box 848
Eloy, AZ 85131

Planned
Yrs/Business - 27
Empl. Cov. by Insp. - 25

Site Location: 735 N. Eleven Mile Corner Road, Eloy, AZ 85131

Insp. #: T3633/313891285

Insp. Date: 09/30/09

SERIOUS - Citation 1, item 1 - A bailer used to bail plastic from worn-out reusable bleach jug crates had a front guard which did not close as designed by the manufacturer to protect operators from the movement of the ram (1910.212(a)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,375.00

Formula Amt. - \$1,375.00

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 \$1,375.00 on motion of Mr. Lujano, second of Mr. Parker.

Sun State Components of Northern Arizona, Inc.
4505 Mohave Airport Drive
Kingman, AZ 86402

Planned
Yrs/Business – 20
Empl. Cov. by Insp. – 16

Site Location: 4505 Mohave Airport Drive, Kingman, AZ 86402
Insp. #: A7717/313891392
Insp. Date: 09/29/09

SERIOUS – Citation 1, item 1 – A lifting device (custom drum grab) did not have a load rating and/or identification plate (23.403(A).

(Two inspections with two serious and 4 nonserious violations in the past three years.)

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – A shop built horizontal drill did not have four rotating/moving drill bits guarded to prevent the operator from placing any part of his body into the danger zone during the operating cycle (1910.212(a)(1). There were three other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – One employee was using a radial arm saw which was lacking side guards for the lower portion of the blade (1910.213(h).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned the 10% adjustment factor for history since this employer had violations within the past three years. Mr. Perkins reviewed the file and stated that recommendation was in error and the Division recommendation for each violation should have been \$1,000.00 for a total recommended penalty of \$3,000.00. 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.

Tube Specialties, Inc.
1736 W. 10th Street
Tempe, AZ 85281

Complaint
Yrs/Business – 38
Empl. Cov. by Insp. – 93

Site Location: 1736 W. 10th Street, Tempe, AZ 85281
Insp. #: A7717/313891541
Insp. Date: 10/08/09

SERIOUS – Citation 1, item 1 – One employee was operating a forklift which was lacking a seat belt (1910.178(p)(1). There was another instance of this violation.

(One inspection with 3 serious and 12 nonserious violations in the past three years.)

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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 2a – A radial drill did not have the drive-belt guarded and the pulley completely enclosed to prevent accidental contact with rotating parts, pinch points and in-going nip points

(1910.219(d)(1). There were two other instances of this violation.

Citation 1, item 2b - A swag machine did not have the drive belt guarded and the pulleys completely enclosed to prevent accidental contact with rotating parts, pinch points and in-going nip points (1910.219(d)(1). 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. Mr. Parker questioned the 10% adjustment factor for history since this employer had violations within the past three years. Mr. Perkins reviewed the file and stated that recommendation was in error and the Division recommendation for each violation should have been \$1,500.00 for a total recommended penalty of \$3,000.00. 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. McCarthy.

Discussion & Action of Application for Renewal of Self Insurance Authority

University Medical Center Corporation – Laura McGrory advised that staff is holding consideration of renewal of self insurance for additional information.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory stated that there is a critical need to update the Claims System of the Commission. She described the components of the current system, explaining that the technology is approximately 20 years old and not supported by or compatible with current technology. As a result, the system is unstable and crashes multiple times a month. She explained the impact when the system crashes and the risk to the workers' compensation system which includes significant delays in the processing of workers' compensation claims and delivery of workers' compensation benefits to injured workers. She explained that the current system costs in excess of \$350,000 annually to maintain. She provided an analysis prepared by the agency's Chief Information Officer, Michael Hempel, of the projected costs associated with updating the system. She explained that in addition to bringing stability into the system with increased functionality and efficiencies, the maintenance costs would be dramatically reduced with the upgrade. It is projected to save the agency approximately one million dollars over the next five years and paying for itself in less than two. She addressed the ability of the agency to pay for the upgrade and the difficulties associated with having to address this issue in a time of fiscal crisis for the state. She explained that the critical problems associated with the system leaves the Commission no choice but to address the problem now.

She introduced Michael Hempel to the Commissioners. Mr. Hempel explained in greater detail the existing and proposed systems and responded to questions from the Commissioners about the current technology and proposed technology. He explained that maintaining the current system is particularly challenging due to the age of the components and the lack of support for the components. He explained that if some components fail it is a challenge to find replacement components because they are no longer manufactured. He explained the difficulty and risks associated with attempting to work within the current system because there is no "development environment" within which to work. The Commissioners all agreed that there is an urgent need to upgrade the system to assure benefits to injured workers continue without

interruption. Mr. Hempel and Ms. McGrory addressed the role of the Governor's Information Technology Agency (GITA) in the process. Mr. Hempel also addressed timeframes for implementation.

Ms. McGrory stated that there was another item for the Commissioners' information. She explained that in an effort to better target its inspections, ADOSH will be utilizing workers' compensation experience data provided by NCCI. She explained how the information would be used and that notice of ADOSH's targeting efforts has recently been posted on our web site. She also stated that ADOSH will begin to use data provided by Dunn and Bradstreet to identify Arizona employers by SIC and/or NAIC codes. Mr. Parker stated that there was a recent General Accounting Office (GAO) report recommending that inspectors review employers' OSHA 300 logs to ensure that the employers are properly recording and reporting injuries. Ms. McGrory stated that she and Mr. Perkins had, prior to the issuance of that report, discussed this issue as part of the efforts to improve its targeting of inspections.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that the Legislature is currently in Special Session to address some of the budget issues. At this point in time, the House had passed a bill, which had been sent to the Senate.

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

Ms. McGrory stated that there was nothing new to report.

Announcements

Ms. Hilton reminded the Commissioners that there was no meeting next week and that the next meeting was scheduled for Wednesday, December 2nd.

There being no further business to come before the Commission and no public comment, Vice Chairman Weeks adjourned the meeting at 2:10 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Chairman

By *Marion Weeks*
Vice Chairman

By *Louis W. Lyman, Sr.*
Member

ATTEST:

By *James A. [unclear]*
Member

Teresa Hulten
Commission Secretary

By *[unclear]*
Member