

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, May 13, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Marcia Weeks	Vice Chairman
	John A. McCarthy, Jr.	Member
	David Parker	Member (video conference)
	Kathleen Oster	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Suzanne Marwil	Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Gary Norem	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:02 p.m. noting a quorum present. Newly appointed Commissioner, Kathleen Oster, was welcomed. Also present were Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Approval of Minutes of April 29, 2010 Meeting

The Commission approved the Minutes of April 29, 2010 on motion of Mr. McCarthy, second of Ms. Weeks. Ms. Oster abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

Hughes-Nelson Painting, Inc. dba Apex Painting Company	Complaint
2700 N. Garey Avenue	Yrs/Business – 61
Pomona, CA 91767	Empl. Cov. by Insp. – 2
Site Location: 725 W. Warner Rd., Tempe, AZ 85284	
Inspection #: Z5834/314424268	
Insp. Date: 04/08/10	

SERIOUS – Citation 1, item 1 – One employee was working from an aerial lift at a height of up to 40' above ground without wearing a body harness or body belt (1926.453(b)(2)(v). (No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – One untrained employee was operating an aerial lift at a height of up to 40' above ground (1926.454(a).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$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. Parker.

Desert Truss, Inc.  
5404 W. Montebello Avenue  
Glendale, AZ 85301

Planned  
Yrs/Business - 14  
Empl. Cov. by Insp. - 16

Site Location: 5404 W. Montebello Avenue, Glendale, AZ 85301  
Inspection #: 17163/314309972  
Insp. Date: 02/18/10

SERIOUS - Citation 1, item 1 - One radial arm saw was not adequately guarded for the lower portion of the blade (1910.213(h)(1). There was another instance 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 - One abrasive wheel bench grinder was lacking a tool work rest (1910.215(a)(4).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS - Citation 1, item 3 - Two conveyor belt systems were lacking a guard to prevent accidental contact with rotating sprockets and chains (1910.219(f)(3).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$2,100.00

TOTAL FORMULA AMT. - \$2,100.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. McCarthy questioned the lack of an adjustment factor for history since there were no violations in the past three years. Mr. Perkins amended his recommendation by adding a 10% adjustment factor for history. The proposed penalties for items 1 and 3 were amended to \$750.00 apiece, while item 2 remained the same. The total proposed penalty was amended to \$1,600.00. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,600.00 on motion of Mr. Parker, second of Ms. Weeks.

BioFlora dba Global Organics LLC  
1612 W. Eddie Albert Way  
Goodyear, AZ 85338

Planned  
Yrs/Business - 25  
Empl. Cov. by Insp. - 13

Site Location: 1612 W. Eddie Albert Way, Goodyear, AZ 85338  
Inspection #: Y5457/314341074  
Insp. Date: 03/16/10

SERIOUS - Citation 1, item 1 - The employer did not establish a program consisting of an energy control procedure and employee training to ensure that employees would not be injured by the unexpected energizing of any machinery or equipment (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 - Two employees were operating a forklift without formal

training and certification (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

NONSERIOUS – Citation 2, item 1 – A log and summary of recordable injuries and illnesses was not maintained for the establishment (1904.0001(a)(2)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$1,800.00

TOTAL FORMULA AMT. - \$1,800.00

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 \$1,800.00 on motion of Mr. Parker, second of Ms. Weeks.

Chariot Eagle-West Inc.

8100 W. Buckeye Road

Phoenix, AZ 85043

Complaint

Yrs/Business – 16

Empl. Cov. by Insp. – 41

Site Location: 8100 W. Buckeye Rd., Phoenix, AZ 85043

Inspection #: L3419/314384710

Insp. Date: 04/07/10

SERIOUS – Citation 1, item 1 – Two mobile rolling scaffolds with a work level 10' above the ground or floor level had an incomplete guardrail system in that each end and front of the scaffold was not equipped with a standard guardrail to prevent a fall (1910.29(a)(3)(vii).

(No inspection history in the past three years).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 2 – The on/off switch for a 10' radial arm saw had been removed and replaced with a simple rocker switch (1910.213(b)(3).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

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 – A 10" radial arm saw was not equipped with a lower blade guard (1910.213(n)(1).

Citation 1, item 3b - A 10" radial arm saw cutting head did not retract to the starting position when released by the operator (1910.213(h)(4).

Div. Proposal - \$ 875.00

Formula Amt. - \$ 875.00

TOTAL PENALTY - \$2,625.00

TOTAL FORMULA AMT. - \$2,625.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned the 15% adjustment factor for good faith. Mr. Perkins explained that the discount was given since this employer does have good safety programs in place. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,625.00 on motion of Mr. McCarthy, second of Ms. Weeks.

Natural Stone Mfg. Co., Inc.  
4902 W. Superior Avenue  
Phoenix, AZ 85043

Planned  
Yrs/Business – 12  
Empl. Cov. by Insp. – 44

Site Location: 4902 W. Superior Avenue, Phoenix, AZ 85043  
Inspection #: I7163/314142563  
Insp. Date: 01/14/10

SERIOUS – Citation 1, item 1 – The conveyor belt system did not have the point of operation guarded to prevent the operator from placing any part of his body into the danger zone (1910.212(a)(1)). There were two other instances of this violation.

(One inspection with four serious and 13 nonserious violations in the past three years).

Div. Proposal - \$1,000.00                      Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 2 – One abrasive wheel grinder was lacking a tool work rest (1910.215(a)(4)).

Div. Proposal - \$100.00                      Formula Amt. - \$100.00

SERIOUS – Citation 1, item 3 – Two industrial line baggers were lacking a guard on the horizontal drive belts and pulleys (1910.219(d)(1)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – One platform automatic conveyORIZED stretch wrapper was lacking a guard to prevent accidental contact with rotating sprockets and chains (1910.219(f)(3)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

TOTAL PENALTY - \$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. Mr. Perkins amended the Division recommendation by removing the adjustment factor for history and advised that the proposed penalty for item 1 is \$1,200.00, item 3 is \$1,500.00 and item 4 is \$1,500.00. Item 2 remains at \$200.00, for a total proposed penalty of \$4,300.00. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,300.00 on motion of Mr. Parker, second of Mr. McCarthy.

Pima County Regional Wastewater Reclamation Dept.  
130 W. Congress, 6th Floor  
Tucson, AZ 85701

Complaint  
Yrs/Business – 100  
Empl. Cov. by Insp. – 5

Site Location: 7101 N. Casa Grande Highway, Tucson, AZ 85743  
Inspection #: T3633/314309964  
Insp. Date: 03/01/10

SERIOUS – Citation 1, item 1 – An employee used an electric drill motor in an area where a flammable atmosphere was temporarily produced by gas vented from the pipe connecting to the #3 clarifier (1910.334(d)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00                      Formula Amt. - \$1,875.00

Mr. Parker recused himself and was not present during the discussion or the vote. Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from



### Discussion &/or Action regarding Legislation

Scot Butler advised that the legislature adjourned on April 29, 2010. Mr., Butler summarized the status of bills of interest to the Commission including SB 1045 (State Compensation Fund privatization) and HB 2228 (private elevator inspectors). Mr. Butler stated that he would provide the Commission with a final summary of bills that were signed or vetoed.

### Discussion & Action of Attorney's Fee Petitions

Weston Montrose, Taylor and Associates, PLLC, v Ivan Kancab - Mr. Wade advised that Weston Montrose of Taylor and Associates has petitioned the Industrial Commission to set attorney' fees with respect to work that he performed for Mr. Kancab in connection with his May 30, 2008 industrial injury claim. Mr. Wade gave a history of the claim and the work performed by Taylor and Associates on behalf of Mr. Kancab. Mr. Kancab terminated the attorney/client relationship and hired a new attorney. Mr. Montrose has received \$1,052.05 in attorney fees and estimates that he spent 9.8 hours on the case.

Mr. Wade presented several options to the Commission. One option would be to award attorney' fees on an hourly basis, which would award Mr. Montrose an additional \$63.45. Another option would be to award attorney fees on the contracted for contingency fee of 25%, which would amount to a total of \$12,624.60. The third option would be to decide that Mr. Montrose has already been fairly compensated for the time that he had devoted to the case. Mr. Wade stated that staff's recommendation is to issue an award granting attorneys' fees on an hourly basis and awarding an additional \$63.45. This recommendation is based on the amount of time Mr. Montrose invested in the case and the reality that Mr. Kancab continues to litigate issues in his case with a new attorney. In response to a question regarding why Mr. Kancab was dissatisfied with Mr. Montrose and hired a new attorney, Ms. Marwil stated that she was not sure but that there may have been difference in opinion regarding the settlement. Following discussion, the Commission unanimously awarded additional attorneys' fees in the amount of \$63.45 on motion of Mr. McCarthy, second of Ms. Oster.

Patrick R. McNamara and Tretschok, McNamara & Miller, P.C. v Alvon Phillips - Mr. Wade advised that Patrick McNamara of Tretschok, McNamara & Miller has petitioned the Industrial Commission to set attorney' fees with respect to work that he performed for Mr. Phillips in connection with his August 24, 2006 industrial injury claim. Mr. Wade and Ms. Marwil gave a history of the claim and the work performed by Tretschok, McNamara & Miller on behalf of Mr. Phillips. Mr. Wade stated that this case has involved significant litigation and Mr. McNamara did well in representing Mr. Phillips. Mr. McNamara has stated that he received \$1,774.06 in attorney fees and estimates that he spent 92.9 hours on the case. Mr. Wade presented several options to the Commission. One option would be to award attorney' fees based on an hourly basis using \$125 as a reasonable hourly rate for an attorney certified as a specialist in workers' compensation, such as Mr. McNamara. Under this approach Mr. McNamara would be entitled to an additional \$9,750.94. Another option would be to award attorney fees on the contracted for contingency fee of 25%, which would be difficult to determine since it is unknown what, if any, monthly entitlement Mr. Phillips will receive. The third option would be to decide that Mr. McNamara has already been fairly compensated for the work that he performed in the case. Mr. Wade stated that staff's recommendation is to issue an award granting attorneys' fees on an hourly basis, but providing that the award of attorneys' fees

should not exceed 25% of Mr. Phillips' benefits for a period of five years. The Commission discussed the five year limitation and whether the award should include a maximum award of \$9,750.94. The Commission also discussed that Mr. Phillips' monthly entitlement of permanent benefits is unknown as it is still in litigation and that it does not appear that he has retained other counsel.

Ms. Weeks made a motion to award 25% of future benefits for a maximum of five years, which was seconded by Mr. Parker. Following additional discussion, Mr. Delfs offered an amendment to the motion to state that the award would be subject to a maximum of \$9,750.94 of additional attorney fees and, if the loss of earning capacity benefits are the subject of a settlement agreement, then Mr. McNamara would be entitled to 25% of the settlement amount not to exceed \$9,750.94. Ms. Weeks and Mr. Parker agreed to the amendment and the Commission unanimously approved the motion.

Discussion & Action of Proposed Civil Penalties against Uninsured Employers

2C09/10-2180	Arcadia Farms, Ltd. dba Arcadia Farms
2C09/10-2058	Carlos Zavala & Carmen Zavala, Husband & Wife dba Zavala's Towing
2C09/10-2618	John Donley & Melinda Donley, Husband & Wife dba Donley Farms
2C09/10-2069	Nobilka, L.L.C. dba Trade Embossing & Finishing
2C09/10-2179	Premier Exteriors of Arizona, LLC dba Premier Remodeling
2C09/10-2617	World Express Service, LLC

Mr. Wade advised that with regard to the above listed employers, a compliance investigation confirmed that they were operating (or had operated) a business with employees, but without workers' compensation insurance. Mr. Wade stated that staff had initially recommended a penalty of \$5,000.00 against employer #2180 but now recommends a reduced penalty of \$2,500.00 against employer #2180 since they have recently obtained coverage. Giving consideration to the factors of A.R.S. §23-907(K), civil penalties of \$1,000.00 are recommended against employers #2058 and 2069. Mr. Wade also recommended a civil penalty of \$5,000.00 be assessed against employers #2618, 2179 and 2617 since this is their second civil penalty. Mr. Wade provided additional information regarding these employers and responded to questions from the Commission.

Mr. Parker stated that \$2,500.00 seemed excessive for employer #2180 since they have obtained insurance, and he moved to assess a penalty of \$750.00 against this employer and to assess the Division recommendations against the remaining employers. The motion died for lack of a second. The Commission approved civil penalties of \$2,500.00 against employer #2810, \$1,000.00 against employers #2058 and 2069, and civil penalties of \$5,000.00 against employers #2618, 2179 and 2617 on motion of Ms. Weeks, second of Mr. McCarthy. Mr. Parker was opposed to the motion and Ms. Oster did not vote.

Discussion & Action of Requests for Renewal of Self Insurance Authority

Carondelet Health Network - 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 parent company's financial stability with total assets of just over \$16.5 billion, a clean audit report and a good credit rating. Following discussion, the Commission unanimously approved continuance of self insurance authority on motion of Mr. Parker, second of Ms. Weeks.

City of Scottsdale - Renee Pastor presented staff's renewal report along with current Moody's, Standard and Poor, 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 and approval of utilizing the City of Scottsdale's fully funded (actuarially based) internal service fund (risk management fund) as an alternative from the requirement to post securities pursuant to A.A.C. § R20-5-1114 due to the financial stability of the fund; the financial stability of the City; a clean audit report and good credit ratings. Following discussion, the Commission unanimously approved continuance of self insurance authority and approved alternative to posting of securities on motion of Ms. Weeks, second of Mr. McCarthy.

John C. Lincoln Health Network - Renee Pastor presented staff's renewal report along with current Moody's 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 Network's financial stability with total assets of just over \$509 million, a clean audit report and an acceptable credit rating. Following discussion, the Commission unanimously approved continuance of self insurance authority on motion of Mr. McCarthy, second of Ms. Weeks.

Parker Hannifin 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 their financial stability and profitability, large size with assets exceeding \$9.8 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. Parker, second of Ms. Oster.

Southwest Gas Corporation - Renee Pastor presented staff's renewal report along with current 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 its consistent record of profitability and growth, large size with total assets of just under \$3.6 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. McCarthy, second of Ms. Weeks.

Tucson Unified School District No. 1 - Renee Pastor presented staff's renewal report along with current Fitch and Dunn and Bradstreet credit ratings. She provided additional information regarding the trust and responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the District's satisfactory financial condition; protections afforded it as a governmental agency, a clean audit report and acceptable bond and credit ratings. Following discussion, the Commission unanimously approved continuance of self insurance authority on motion of Ms. Weeks, second of Mr. McCarthy.



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

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

Discussion &/or Action regarding Commission's Participation in Western Association of Workers' Compensation Board

This agenda item will be addressed at the next meeting.

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 advised that there was nothing new to report

Announcements and Scheduling of Future Meetings and Public Hearings and/or Comment Periods

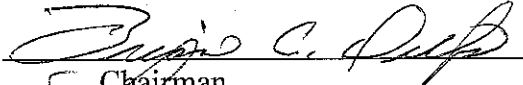
The Commission scheduled future meetings on Wednesday, June 2<sup>nd</sup>, and Wednesday, June 30<sup>th</sup>. Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, May 19<sup>th</sup> and that the annual fee schedule hearing is scheduled for Thursday, June 10<sup>th</sup>. It was agreed that the tax assessment hearing will be held on June 30<sup>th</sup>.

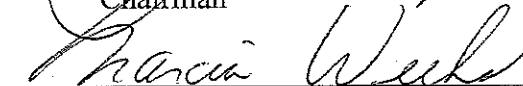
Chairman Delfs expressed his appreciation to ADOSH Consultation Officers Bill Garton and Francisco Mendoza for their thorough job inspection conducted for the Avra Valley Fire District. He stated that the entire Division does a great job, and he appreciated the value of the program and valuable service to employers.

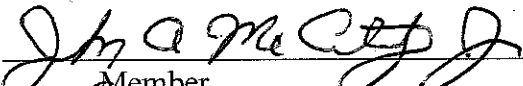
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 3:03 p.m.

APPROVED:

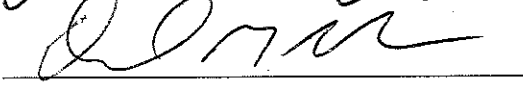
THE INDUSTRIAL COMMISSION OF ARIZONA

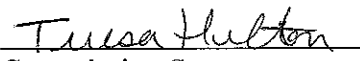
By   
Chairman

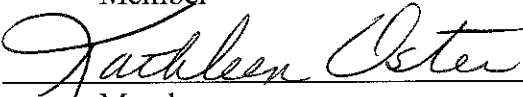
By   
Vice Chairman

By   
Member

ATTEST:

By   
Member

  
Commission Secretary

By   
Member