

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 9, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Glenn Hurd	Accountant
	Susan Manandhar	Accountant
	Renee Pastor	Self Insurance Manager
	Teresa Hilton	Commission Secretary

Vice Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also present was Teresa Yi of Snell & Wilmer.

Approval of Minutes of September 2, 2010 Meeting

The Commission unanimously approved the Minutes of September 2, 2010 on motion of Mr. Parker, second of Ms. Oster.

Discussion &/or Action regarding Assessments under A.R.S. §§23-961(J), 23-966(D), 23-1065(A), and 23-1065(F)

Laura McGrory advised that the Commission has the authority to levy four assessments. She described the assessments and the purposes for each. She described the cash flow process involving the funds received from the assessments and how the cash flow and Commission's budget is affected by calendar year and fiscal year considerations. She stated that the Administrative Fund assessment rate is currently 2.65% and that the maximum rate that may be set is 3%. She also stated that the current Special Fund assessment is 2.5%, which represents the maximum that may be assessed under the three special fund statutes. She referenced the memo provided to the Commissioners that sets forth the criteria for imposition of these assessments and contains historical information regarding the decline in taxable premiums written. She described how a decline in taxable premium means a decline in assessment revenue and stated that as long as the current recession continues, the Commission's assessment revenue will be impacted.

Ms. McGrory described the past and current impact of assessment revenue on the administrative fund. She stated that this fiscal year staff is projecting a decline in premiums written in both CY 2010 and CY 2011, which means a decline in assessment revenue. The degree of decline will be based on the assessment rate that the Commission sets for CY 2011. She explained Exhibit A to the memorandum provided to the Commission, which details these

projections. In view of the foregoing, she stated that staff is recommending that the Commission increase the assessment rate under A.R.S. 23-962(J) from 2.65% to 3% for CY 2011 to cover the expenses of the Administrative Fund.

Regarding the Special Fund, Ms. McGrory described the actuarial and annual financial picture of the Special Fund. She stated that the three special fund assessments, standing alone, are insufficient to cover the actual expenses of the Special Fund. She described the other sources of revenue used by the Special Fund to meet its obligations, the most important and significant one being the returns from its investments. She described the investment returns of the Special Fund over the past several years. As the safety net for the workers' compensation system, she stated the Commission needs to take all steps it can to preserve the solvency of the Special Fund. She described prior steps taken by the Commission in this regard. In view of the ongoing actuarial deficit of the Special Fund that includes liabilities for insolvent carriers/employers, annual expenditures that exceed projected assessment revenue, and apportionment liabilities that exceed \$6 million, she stated that staff is recommending that the Commission continue the 23-966(D), 23-1065(A), and 23-1065(F) assessments at 0.5%, 1.5% and 0.5% respectively.

Ms. McGrory responded to questions from the Commissioners. Mr. Parker passed out a graph depicting the actuarial deficit of the Special Fund. He explained the graph and the outstanding liabilities of the Special Fund. The Commission discussed the impact of additional insolvencies and also the impact from large deductible policies and no insurance claims. Mr. Parker then provided and read a summary of the facts regarding the assessments, which summary he prepared based on the information provided regarding the assessments. This summary is attached to the minutes.

Following further discussion, the Commission unanimously increased the assessment under A.R.S. §§23-961(J) for the Administrative Fund to 3% on motion of Mr. McCarthy, second of Ms. Oster. The Commission unanimously left the §23-966(D) Special Fund assessment at 0.5% on motion of Ms. Oster, second of Mr. McCarthy. The Commission unanimously left the §23-1065(A) Special Fund assessment at 1.5% on motion of Mr. McCarthy, second of Ms. Strickler. The Commission unanimously left the §23-1065(F) Special Fund assessment at 0.5% on motion of Mr. Parker, second of Ms. Oster. All rates to be effective for CY 2011.

Announcements and Scheduling of Future Meetings

The Commission scheduled a meeting for Thursday, October 14th. Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, September 29th.

Mr. Delfs disconnected from the meeting at this point.

Discussion & Action of Proposed OSHA Citations and Penalties

Arizona Steel Finishing, L.L.C.
5136 S. Desert View Drive
Apache Junction, AZ 85018

Complaint
Yrs/Business – 8
Empl. Cov. by Insp. – 16

Site Location: 5051 S. Warner Drive, Apache Junction, AZ 85120
Inspection #: Y5457/314617572
Insp. Date: 06/03/10

SERIOUS – Citation 1, item 1 – A spreader beam was not marked with the rated load capacity or other identification (23.403(A)). There was another instance of this violation.
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – A ladder way platform 20' above the ground was lacking a swinging gate or so offset that a person cannot walk directly into the opening (1910.23(a)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – An employee was operating the forklift without being trained in changes in the workplace that affected the safe operations (1910.178(l)(4)(ii)(D)). There was another instance of this violation.

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1, item 4 – Rated load markings on a bridge crane were not clearly legible from the ground or the floor (1910.179(b)(5))

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$2,850.00

TOTAL FORMULA AMT. - \$2,850.00

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 \$2,850.00 on motion of Mr. McCarthy, second of Ms. Strickler.

D & S Automotive, Inc. dba
Big O Tires #4037
7140 East Golf Links Road
Tucson, AZ 85730

Complaint
Yrs/Business – 12
Empl. Cov. by Insp. – 7

Site Location: 7140 East Golf Links Road, Tucson, AZ 85730

Inspection #: T3633/314667593

Insp. Date: 06/25/10

WILLFUL SERIOUS – Citation 1, item 1 – A two-post vehicle lift was not inspected periodically to ensure the safe operation of the lift. Employees operated the lift with a broken mechanical safety lock mechanism, one broken lifting arm lock mechanism, and an unidentified problem with the equalization mechanism which caused uneven lifting of vehicles (23.403(A)). There were three other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 2, item 1 – The brake lathe did not have a shield to protect operators from flying chips (1910.212(a)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$7,750.00

TOTAL FORMULA AMT. - \$7,750.00

Mr. 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 \$7,750.00 on motion of Mr. Parker, second of Ms. Oster. As part of the motion, Citation 1, item 1 was changed to delete the first sentence regarding periodic

inspections.

Copper Mountain Inn, Inc.
1100 Monroe Street
Globe, AZ 85501

Planned
Yrs/Business – 9
Empl. Cov. by Insp. – 85

Site Location: 1100 Monroe Street, Globe, AZ 85501
Inspection #: R0738/314667601
Insp. Date: 06/22/10

SERIOUS – Citation 1, item 1 – A 6' by 6' skylight was lacking a standard guardrail, cover or other fall protection at an estimated 12' above the deck below (1910.23(a)(4)). There were two other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – A flat roof estimated at 12' above the ground in the front and 27' above the ground in the back of the building was accessed daily by employees without a standard guardrail or equivalent protection on all open sides (1910.23(c)(1)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or servicing on a machine or equipment where the unexpected energizing or release of stored energy could occur and cause injury (1910.147(c)(1)).

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 4a – An air compressor did not have the horizontal drive belt guarded and pulleys completely enclosed to prevent an employee from placing any part of their body in the danger zone during the operating cycle (1910.219(d)(1))

Citation 1, item 4b - A Trane "Climate Changer" with rotating pulleys and 4' inclined drive belts was missing a guard to protect maintenance staff from contact with moving parts (1910.219(e)(3)(i)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker stated that violations relating to sky lights and fall protection seem to be coming before the Commission frequently and suggested a press release to general industry reminding them of this hazard. Mr. Perkins agreed and Ms. McGrory stated that ADOSH could also include an article in the newsletter regarding the hazard. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Desert Refined Products Transport, Inc.
831 S. 59th Avenue
Phoenix, AZ 85043

Referral
Yrs/Business – 21
Empl. Cov. by Insp. – 6

Site Location: 831 S. 59th Avenue, Phoenix, AZ 85043
Inspection #: A7746/314667890
Insp. Date: 07/07/10

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 – The workplace was not evaluated to determine if any spaces are permit-required confined spaces (1910.146(c)(1).

Citation 1, item 1b - A written confined space permit program had not been developed and implemented to protect employees entering permit-required confined spaces (1910.146(c)(4).
(No inspection history 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 illness.

Citation 1, item 2a – The employer did not document the determination and supporting data for performing their confined space work as non-permit-required confined space work in that they did not demonstrate that the only hazard of the confined space was an actual or potential hazardous atmosphere, did not demonstrate that continuous forced air ventilation alone was sufficient to maintain the permit space as safe for entry (1910.146(c)(5)(i)(E).

Citation 1, item 2b - The internal atmosphere of confined spaces, were not tested for oxygen content, for flammable gases and vapors and for potential toxic contaminants, in that order, with a calibrated direct reading instrument prior to employees entering the confined space (1910.146(c)(5)(ii)(C).

Citation 1, item 2c - The confined space was not periodically monitored to ensure that the continuous forced air ventilation was preventing an accumulation of the hazardous atmosphere (1910.146(c)(5)(ii)(F).

Citation 1, item 2d - Employees required to enter confined spaces and perform tasks associated with confined space entry were not adequately trained to acquire the understanding, knowledge and skills necessary to perform confined space work safely (1910.146(g)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – An energized electrical outlet breaker panel was lacking a cover (1910.303(g)(2)(i).

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 illness.

Citation 1, item 4a – The electrical junction box wired to a 1 HP electric motor on the blower was lacking a cover (1910.305(b)(2)(i).

Citation 1, item 4b - The flexible cord supplying power to the 1 HP electric motor on the blower was lacking strain relief where the cord entered the motor (1910.305(g)(2)(iii) There was another instance of this violation.

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 illness.

Citation 1, item 5a – A written hazard communication program had not been developed, implemented and maintained for employees potentially exposed to hazardous chemicals including gasoline and diesel fuel (i.e. carcinogen benzene, oil, shop chemicals)(1910.1200(e)(1).

Citation 1, item 5b - Chemical hazard training and information had not been provided for employees exposed to hazardous chemicals in the workplace (i.e. carcinogen benzene, oil, shop chemicals)(1910.1200(h)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$6,250.00

TOTAL FORMULA AMT. - \$6,250.00

Mr. 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 \$6,250.00 on motion of Ms. Oster, second of Mr. McCarthy.

Golf International, Inc.
10440 Indian Wells Drive
Fountain Hills, AZ 85268

Planned
Yrs/Business – 28
Empl. Cov. by Insp. – 8

Site Location: 10440 Indian Wells Drive, Fountain Hills, AZ 85268

Inspection #: N4762/314617952

Insp. Date: 06/17/10

SERIOUS – Citation 1, item 1 – The employer did not provide inspection procedures for their employees to use for the golf equipment lift (23.403(A). There were four other instances of this violation.

(One inspection with no violations in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or servicing on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury (1910.147(c)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – One pedestal grinder did not have a guard covering the spindle end nut and flange on the wire wheel end of the pedestal grinder (1910.212(a)(1).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 4 – One pedestal grinder did not have a safety guard installed on the abrasive wheel side to cover the spindle end, nut and flange projection on the left end of the grinder (1910.215(a)(2). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 5 – One pedestal grinder did not have the work rest adjusted so that it was within one-eighth inch of the abrasive wheel, as the work rest was approximately one inch away from the abrasive wheel (1910.215(a)(4). There was another instance of this violation.

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1, item 6 – One 120/240 volt electrical circuit breaker panel was missing a circuit breaker or blank cover at slot numbers 8 and 10 on the right side, thereby exposing employees to contact with the energized electrical parts (1910.303(g)(2)(i). There were two other instances of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

NONSERIOUS – Citation 2, item 1 – The employer did not maintain and retain a Log and Summary of the recordable occupational injuries and illnesses for the establishment (1904.0001(a)(2).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$6,600.00

TOTAL FORMULA AMT. - \$6,600.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned the use of the general duty clause in relation to Citation 1, item 1 and stated he did not believe it was a standard practice in Arizona for the industry to recognize the need for inspections and recording inspections. Following discussion, Ms. McGrory suggested that the file be held and that ADOSH obtain more information about industry practices in Arizona.

IAJ, LLC dba R & C Supply Co., Inc.

3636 S. 7th Street

Phoenix, AZ 85040

Site Location: 3636 S. 7th Street, Phoenix, AZ 85040

Inspection #: U9805/314698499

Insp. Date: 07/08/10

Planned

Yrs/Business – 46

Empl. Cov. by Insp. – 10

SERIOUS – Citation 1, item 1 – Employees operating the forklifts did not have formal training or certification (1910.178(l)(1)(i).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

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 – Eight lathes did not have the chuck guarded to protect operators from flying chips and to prevent operators from placing any part of his body into the danger zone during the operating cycle (1910.212(a)(1). There were 11 other instances of this violation.

Citation 1, item 2b - A milling machine lacked a point of operation guard to prevent employees from coming into contact with the point of operation (1910.212(a)(3)(ii). There were 4 other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – A radial arm saw was lacking a bottom protective guard (1910.213(h)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – A vertical belt was not adequately enclosed and pulleys not fully guarded for a lathe (1910.219(d)(1)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – An electrical service panel was missing six blankout covers (1910.305(b)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. 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 Ms. Oster.

Plastics Management, LLC dba Republic Plastics, L.P.

Referral

P.O. Box J

Yrs/Business – 5

San Manuel, AZ 85631

Empl. Cov. by Insp. – 9

Site Location: 27095 S. Republic Road, San Manuel, AZ 85631

Inspection #: T3633/314424359

Insp. Date: 04/10/10

SERIOUS – Citation 1, item 1 – Routes of exit for employees working in the extrusion area were not adequate and the employer's emergency action plan was not adequate in that the evacuation route diagram included with the plan did not show Extrusion Line #3 or an Assembly Point, and a revised evacuation route diagram provided separately by the company which did show Extrusion Line #3 also showed an exit route through the center section of the extruder which would not have been available to employees when the machine was in operation (1910.37(a)(3)). (No inspection history in the past three years).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

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 2a – The employer's written operating procedure regarding emergency shutdown in the event of fire was not adequate in that the procedure did not address closing the isobutane supply valve(s) at the main isobutane storage tank (1910.119(f)(1)(i)(D)).

Citation 1, item 2b - The employer did not certify annually that the operating procedures were current and accurate (1910.119(f)(3)).

Citation 1, item 2c - The employer did not adequately implement their written management of change procedures during the addition and modification of isobutane piping and equipment performed as part of the addition of the Extrusion Line #3 (1910.119(l)(1)).

Citation 1, item 2d - The employer did not conduct an adequate investigation of a fire which occurred and which could reasonably have resulted in catastrophic release of a highly hazardous

chemical in the workplace in that the company did not determine if the emergency shutdown procedures for the isobutane system were followed, did not determine if the emergency shutdown procedures for the isobutane system were adequate, and did not establish a system to promptly address and resolve the incident report findings and recommendations (1910.119(m)(1)).

Div. Proposal - \$3,500.00
TOTAL PENALTY - \$7,000.00

Formula Amt. - \$3,500.00
TOTAL FORMULA AMT. - \$7,000.00

Mr. 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 \$7,000.00 on motion of Ms. Oster, second of Ms. Strickler.

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

Ms. McGrory stated this is a continuing agenda item and there was nothing new to report.

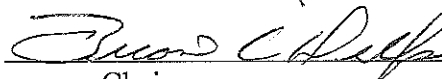
Discussion &/or Action regarding Legislation

Ms. McGrory advised that there is nothing new to discuss.

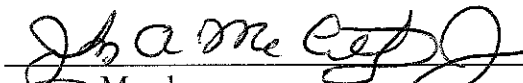
There being no further business to come before the Commission and no public comment, Vice Chairman Parker adjourned the meeting at 2:30 p.m.

APPROVED:

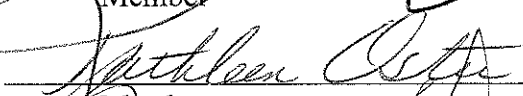
THE INDUSTRIAL COMMISSION OF ARIZONA

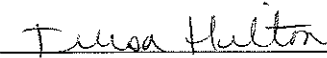
By 
Chairman

By _____
Vice Chairman

By 
Member

ATTEST:

By 
Member


Commission Secretary

By 
Member

Calendar Year 2011 Assessment Hearing
Findings of Fact

1. Arizona taxable workers' compensation insurance and self-insurance premiums are decreasing substantially.
2. The Industrial Commission of Arizona FY-10 and projected FY-11 appropriation (expenditures and transfers) is approximately \$19.9 million each fiscal year.
3. As tax revenue is received quarterly, the Administrative Fund fiscal year ending balance should slightly exceed \$2.0M (approximately two months worth of expenditures) for cash flow.
4. The Accounting Division of the Industrial Commission has estimated, based upon current revenue forecasts and appropriated expenditures and transfers, that the FY-11 Administrative Fund ending balance will be negative if the current Administrative Fund tax rate is maintained and will be zero or negative if the CY-11 Administrative Fund tax rate is increased to 3.0%, the statutory maximum.
5. The Accounting Division of the Industrial Commission has estimated that the maximum Administrative Fund revenue at a 3.0% tax rate for CY-11 is \$15.5M - \$17.6M.
6. The 2009 State of Arizona CAFR indicates that the Industrial Commission Special Fund net assets are a negative \$45,861,000 indicating that the Special Fund is not actuarially sound.
7. The Industrial Commission's actuarial analysis for Fiscal Year Ending June 30, 2009, dated March 30, 2010, estimated that the losses incurred by the Special Fund for new claims during FY-11 and FY-12 would be \$13.5M and \$13.8M, respectively.
8. The Accounting Division of the Industrial Commission has estimated that the maximum Special Fund revenue at a 2.5% tax rate for CY-11 is \$12.9M - \$14.7M.
9. The Industrial Commission's actuarial analysis for Fiscal Year Ending June 30, 2009, dated March 30, 2010, estimated that the Special Fund's outstanding liability for apportionment claims totaled \$56.7M. A public hearing was noticed on May 14, 2010, and was held on June 30, 2010, pursuant to A.R.S. § 23-1065(F).