

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Wednesday, October 27, 2010 – 1:00 p.m.

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

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present was Teresa Yi of Snell & Wilmer.

Approval of Minutes of October 14, 2010 Meeting

The Commission unanimously approved the Minutes of October 14, 2010 on motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action of Proposed OSHA Citations and Penalties

Reclamation Sciences, LLC	Fatality
3218 E. Bell Road, Ste. 216	Yrs/Business – 10 mos.
Phoenix, AZ 85032	Empl. Cov. by Insp. – 12
Site Location: 13303 S. Ellsworth Road, Mesa, AZ 85212	
Inspection #: Z5834/314698812	
Insp. Date: 07/20/10	

SERIOUS – Citation 1, item 1 – One employee was not trained in the safe operation of the loader/backhoe (1926.21(b)(2)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation was for the gravity-based penalty with no adjustment factors since the violation directly contributed to the fatality. Following discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Ms. Oster, second of Mr. McCarthy.

Van Horizon Ind. Inc. dba Ayers Painting
10150 W. Mercury Drive
Tucson, AZ 85735-8659

Complaint
Yrs/Business – 7
Empl. Cov. by Insp. – 2

Site Location: 1925 W. Orange Grove Road, Tucson, AZ 85704
Inspection #: A9339/314667536
Insp. Date: 06/24/10

SERIOUS – Citation 1, item 1 – An employee and a foreman were using angle grinders to remove the adhesive and stucco from the north face of the building, were exposed to flying particles and were not wearing any eye or face protection (1926.102(a)(1)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – A 4" angle grinder used to remove stucco material from the face of the building was missing a safety guard (1926.300(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Two employees were working 39'5" above the ground on an aerial lift and were not wearing any form of fall arrest or restraint (1926.453(b)(2)(v)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – The employees had not been trained in the safe operation and hazards associated with aerial lifts and procedures to control or minimize those hazards (1926.454(a)). There was another instance of this violation

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

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 \$3,000.00 on motion of Mr. Parker, second of Mr. McCarthy.

Lydia's Specialty Fruits, Inc.
412 Industrial Avenue
San Luis, AZ 85349

Complaint
Yrs/Business – 2
Empl. Cov. by Insp. – 30

Site Location: 412 Industrial Avenue, San Luis, AZ 85349
Inspection #: P0775/314738097
Insp. Date: 07/29/10

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 – A wet process is used in the production area and the cement floor in the area was not provided with false floors, platforms, mats or other dry standing places to prevent slip hazards (1910.22(a)(2)).

Citation 1, item 1b - An assessment of the workplace was not conducted to determine if hazards were present or were likely to be present, which could necessitate the use of personal protective

equipment to prevent employees from falling on the wet slippery floors (1910.132(d)(1).
(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 2 – An energy control program including lockout/tagout procedures and employee training had not been developed or implemented by the employer for employees who performed periodic service and maintenance and repairs to equipment and machinery located throughout the facility (1910.147(c)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – Employees who are exposed to 12.5% sodium hypochlorite (bleach) solution were not provided with a suitable eye wash for immediate emergency use (1910.151(c).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – Employees were allowed to operate a forklift without being trained and evaluated in the safe operations of the truck (1910.178(l)(1)(i).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$4,750.00

TOTAL FORMULA AMT. - \$4,750.00

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 \$4,750.00 on motion of Mr. McCarthy, second of Ms. Oster.

Totten Tubes, Inc.
1605 S. 39th Avenue
Phoenix, AZ 85009

Planned
Yrs/Business – 55
Empl. Cov. by Insp. – 9

Site Location: 1605 S. 39th Avenue, Phoenix, AZ 85009

Inspection #: Z5834/314820101

Insp. Date: 08/17/10

SERIOUS – Citation 1, item 1 – The lockout/tagout program and procedures for maintenance, repair persons and/or set-up personnel who are assigned to repair and/or service equipment and machinery was inadequate (1910.147(c)(1).

(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 injury resulting from accident

Citation 1, item 2a – Employees who operated the forklift did not have their performance evaluated at least once every three years (1910.178(l)(4)(iii).

Citation 1, item 2b - Certification of training was not available for three forklift operators (1910.178(l)(6)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 3 – Two synthetic web slings had snags and tears and were not

removed from service (1910.184(i)(9)(iii))

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 4 – One vertical bandsaw was missing its lower wheel guard (1910.212(a)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 5 – One floor fan with metal blades was missing its fan cover (1910.212(a)(5).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

NONSERIOUS – Citation 2, item 1 – A log and summary, OSHA 300 Log and OSHA 300A Summary of recordable injuries and illnesses, were not maintained for the establishment for calendar years 2007, 2008 and 2009 (1904.0001(a)(2)

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

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 \$6,000.00 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action regarding Requests for Renewal of Self Insurance Authority

City of Glendale – Renee Pastor presented staff's renewal report along with current Moody's, Standard and Poor's, and Dunn and Bradstreet credit ratings. She advised that the City has filed a request under Rule 20-4-1114 regarding the posting of securities. She advised that the City has provided the Commission with a certificate from their Board of Supervisors stating that they have a fully-funded risk management fund sufficient to cover actuarial liabilities. She described the fund and liabilities for workers' compensation. She also responded to questions from the Commissioners. Ms. Pastor stated that that the City of Glendale meets the qualification under Rule 1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities and advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the City's financial stability, clean audit report, good bond ratings and acceptable credit ratings. Following discussion, the Commission unanimously approved continuance of self-insurance authority and approved the City's to maintain a fully-funded risk management fund as an alternative to posting securities in accordance with the provisions of Rule 20-5-1114 on motion of Mr. Parker, second of Ms. Oster.

City of Scottsdale – Ms. Pastor presented staff's renewal report along with current Moody's, Standard and Poor's, Fitch and Dunn and Bradstreet credit ratings. She advised that the City has filed a request under Rule 20-5-1114 regarding the posting securities. Ms. Pastor advised that the City provided the Commission with a certificate from their City Council stating that they have a fully-funded risk management fund sufficient to cover actuarial liabilities. She described the fund and liabilities for workers' compensation. She also responded to questions from the Commissioners. Ms. Pastor stated that that the City of Scottsdale meets the qualification under Rule 1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities and advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the City's financial

stability, clean audit report, good bond ratings and acceptable credit ratings. Following discussion, the Commission unanimously granted renewal of self-insurance authority and approved the City's request to maintain a fully-funded risk management fund as an alternative to posting securities in accordance with the provisions of Rule 20-5-1114 on motion of Mr. Parker, second of Mr. McCarthy.

HealthSouth Corporation – Ms. Pastor presented staff's renewal report along with current Moody's and Dunn and Bradstreet credit ratings. She summarized the financial reports and described other financial considerations, including various legal actions that may impact HealthSouth's financial condition. She also described her concerns about the reserves established for their workers' compensation liability. Given the concerns about their financial stability and the accuracy of the reserve information, she recommended that the Commission continue to hold the statutory deposit at its current amount. Commissioner Parker asked questions about the calculation of the statutory deposit noting that it was 300% of the reserves stated by HealthSouth. Ms. Pastor reiterated her concerns about the financial stability of the company and the statement of their claims reserves. The Commission discussed the amount of the statutory deposit and whether it should be reduced. They also discussed whether to send an auditor to conduct an independent review of the claim reserves. Ms. McGrory explained that under reserving is becoming a bigger issue that needs to be addressed with the stakeholders.

Following further discussion, the Commission approved continuance of HealthSouth's self-insurance authority subject to retaining the bond at its current level (300% of stated reserves) for another year on motion of Ms. Oster, second of Mr. Parker. Mr. McCarthy voted nay. The Commission agreed that the general issue of under reserving, and what steps the Commission can take in response to that issue, would be a future agenda item.

Hyatt Corporation – Ms. 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 based on the company's continual profitability, financial strength with assets of \$3.6 billion, a clean audit report and acceptable bond and credit ratings. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-0055	AOM Holdings, L.L.C.
2C10/11-0059	Bob's Lock & Cycle L.L.C.
2C10/11-0026	George Fadoul, a Single Man, dba Jamie's Pizza And Pitas aka Jamie's Pizzas and Pitas
2C09/10-0715	Hugo's Landscaping, L.L.C.
2C09/10-2430	Pro-Active Building Services, LLC
2C10/11-0001	Swangaroon L.L.C. dba Bangkok Thai Bar B Q

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. Giving consideration to the factors of A.R.S. §23-907(K), civil penalties of \$1,000.00 are recommended against each of these employers. He provided additional information regarding these employers and responded to questions from the

Commissioners. The Commission unanimously assessed civil penalties of \$1,000.00 against employers #0055, 0059, 0026, 0715, 2430 and 0001 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that Scot Butler is scheduled to provide a legislative update and to summarize the results of the election at next week's meeting. She also described a recent meeting held with the Phoenix Chamber of Commerce to address legislative issues of concern to the agency. She asked that the Commission schedule a Legislative Stakeholders' meeting in early December and gave the members a draft Notice for the meeting. In response to a question from Commission Oster, she explained the purpose of holding a stakeholders' meeting.

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

Ms. McGrory advised that she and staff will be meeting with JLBC and OSPB to discuss the budget filed by the Commission. She also gave an update regarding ADOSH staffing and plans to utilize video conferencing.

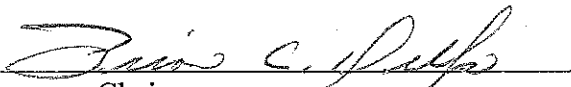
Announcements and Scheduling of Future Meetings

The Commissioners scheduled the Stakeholders' meeting for Wednesday, December 1st. In addition to previously scheduled meetings on November 4th and November 17th, the Commission scheduled meetings for Thursday, December 9th and Thursday, December 16th.

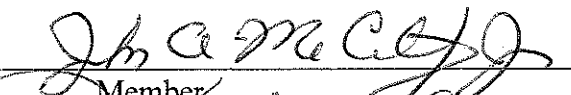
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:00 p.m.

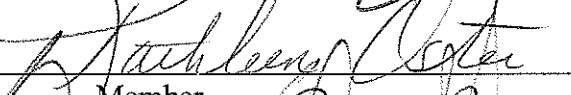
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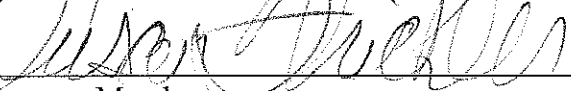
THE INDUSTRIAL COMMISSION OF ARIZONA

By 
Chairman

By 
Vice Chairman

By 
Member

By 
Member

By 
Member

ATTEST:


Commission Secretary