

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Auditorium
Phoenix, Arizona 85007
Wednesday, December 1, 2010 – 1:00 p.m.

Present:	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
	Miral Sigurani	Legal Counsel
	Stephen Ball	Legal Counsel
	David Sosa	Special Fund Monitor
	Terry Ann Apodaca	Special Fund No Ins. Supv.
	Teresa Hilton	Commission Secretary

Vice Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Chairman Delfs was not able to attend. Also present was Scot Butler, the agency's lobbyist and Teresa Yi of Snell & Wilmer. List of attendees for the public hearing who chose to sign in is attached.

Stakeholders Meeting

Vice Chairman Parker welcomed interested parties to the public hearing and advised that the purpose of this meeting is to address matters of legislative interest to the Commission and to give the public an opportunity to comment on these issues or to recommend the introduction of legislation regarding any other aspect of the Industrial Commission's operations.

Laura McGrory presented a legislative summary from staff's perspective. She stated that while the Commission is a self-supporting, non-general fund agency whose operations and other statutorily mandated services are funded through annual taxes and assessments on workers' compensation premiums, the Commission continues to be impacted by the fiscal crisis facing the State of Arizona. She stated that while this impact has been experienced in multiple ways, the most significant impact has been on the Commission's revenues and budget. She summarized the revenue picture and stated that staff projects the Commission will not collect sufficient revenue to pay for the expenditures from the administrative fund. This projected collection of insufficient revenues requires the Commission to look at, and discuss all options, including legislative ones to address the deficiency. She then stated that the Commission needs to look at protecting its revenue and protecting its revenue sources. She explained that protecting its revenue means making sure that the revenue generated by workers' compensation assessments is used by the Commission to fund its operations. She stated that the Commission cannot transfer money to the State General Fund that it does not have and needs to work with the Legislature and Stakeholders on this issue. She then explained that protecting its revenue sources means making sure that everyone who should be paying into the workers' compensation system is paying into the system. She stated that employers who purchase deductible policies pay no tax

or assessment on the deductible portion of their policy, and she summarized the impact of this situation. With regard to these two issues she made no specific recommendations as to the form or content of proposed legislative language, except that with respect to deductible issue she recommended clarification of the deductible statute to provide that the retained deductible portion of any policy be subject to the self-insurer in-lieu assessment. She stated that subject to future discussions with the legislature and stakeholders, specific legislative language would be left to Commissioners to discuss and take action at subsequent Commission meetings.

Ms. McGrory stated that while the primary focus of legislative discussions concern revenue and budget issues, the Commission is also impacted by SB 1045, which privatizes SCF Arizona effective January 1, 2013. She summarized the impacts upon the Commission and stated that the goal of the Commission is to bring the processing of insolvent carrier/employer claims in-house and to utilize in-house expertise/staff to determine the formulas and factors needed to calculate self-insured employer assessments. She stated that to accomplish these goals, conforming changes to Title 23 legislation, as well as changes to the Commission's budget to provide for additional staffing and appropriation will be required. She stated that subject to future discussions with the legislature and stakeholders, specific legislative language would be left to Commissioners to discuss and take action at subsequent Commission meetings.

Jim Stabler of SCF Arizona addressed the Commission. He stated that the SCF values its relationship with the Industrial Commission, in particular with Director McGrory and Chief Counsel Wade. He stated that SCF has taken no position on the deductible policy issue and is waiting to see numbers regarding the financial impact. Regarding the mutualization of SCF mandated by SB 1045, he acknowledged the agency's interest regarding the calculation of premium taxes for self-insured employers and the handling of insolvent carrier claims. Mr. Stabler stated the SCF is willing to work with all stakeholders on these issues and urged that conforming language be drafted as soon as possible.

Following close of the stakeholder meeting at 1:13 p.m., the Commission continued with its regular meeting agenda.

Approval of Minutes of November 17, 2010 Meeting

The Commission approved the Minutes of November 17, 2010 on motion of Ms. Oster, second of Ms. Strickler. Mr. McCarthy abstained.

Discussion & Action of ADOSH Discrimination Complaint

#10-26 Norma Pollard v Pan Am Communications - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Pollard. In her complaint, Ms. Pollard alleged that she was terminated after management assumed she had filed a complaint with ADOSH. The employer stated that Ms. Pollard was terminated for not fulfilling the requirements of her position.

Mr. Perkins presented a history of Ms. Pollard's employment and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was no evidence to support a connection between the termination and any protected activity. The Commission unanimously voted not to pursue the complaint on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Sunstreet Mortgage, LLC – This case involved a fatality and was presented for discussion only as the Division was not recommending the issuance of any citations. Darin Perkins summarized the facts of the accident stating that an employee accidentally locked themselves out of their office. A co-worker stated that they could gain access to the locked office by climbing up through the ceiling and down into the locked office. The manager said no to this suggestion and left the work area to call a locksmith. The co-worker then climbed up through the ceiling and suffered a fatal injury when he fell through the ceiling.

Younger Brothers Construction Company, Inc.
8525 N. 75th Avenue
Peoria, AZ 85345

Accident
Yrs/Business – 34
Empl. Cov. by Insp. – 5

Site Location: 3502 E. Merlot Street, Gilbert, AZ 85298
Inspection #: U9805/314948811
Insp. Date: 09/28/10

SERIOUS – Citation 1, item 1 – An employee was using a forklift that was lacking a functioning seatbelt (23.403(A)).

(One inspection with 1 serious and 3 nonserious violations in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – An engine compartment on the forklift was lacking a guard to completely enclose the belts and pulleys (1926.307(d)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

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 \$3,500.00 on motion of Mr. McCarthy, second of Ms. Oster.

The Boeing Company
5000 E. McDowell Rd.
Mesa, AZ 85215

Planned
Yrs/Business – 94
Empl. Cov. by Insp. – 4,700

Site Location: 5000 E. McDowell Rd., Mesa, AZ 85215
Inspection #: Z5834/314857301
Insp. Date: 09/14/10

SERIOUS – Citation 1, item 1 – The 12' fixed ladder on the Therma-oxidizer Pollution Control did not have its ladderway opening protected by a swinging gate nor was it offset (1910.23(a)(2)).

There were two other instances of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,625.00

Formula Amt. - \$1,625.00

SERIOUS – Citation 1, item 2 – The reciprocating metal hack saw did not have a guard to enclose all portions of the saw blade except for the working portion of the blade (1910.212(a)(1)).

There were two other instances of this violation.

Div. Proposal - \$1,625.00

Formula Amt. - \$1,625.00

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 – One spindle sander did not have a guard installed to prevent the operator from placing their hands into the unused portion of the rotating spindle/drum (1910.213(p)(2).

Citation 1, item 3b – One belt sander did not have a pulley guard (1910.213(p)(4).

Div. Proposal - \$1,625.00

Formula Amt. - \$1,625.00

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 – One 7' long, 3' wide, 10'3" high mobile scaffold was supported under one wheel by a v-shaped piece of metal (1910.451(c)(2)(ii).

Citation 1, item 4b - One caster wheel on a 7' long, 3' wide, 10'3" high mobile scaffold was not locked to prevent movement (1910.452(w)(2).

Citation 1, item 4c - One untrained employee was working from a 7' long, 3' wide, 10'3" high mobile scaffold (1910.454(a).

Div. Proposal - \$1,625.00

Formula Amt. - \$1,625.00

TOTAL PENALTY - \$6,500.00

TOTAL FORMULA AMT. - \$6,500.00

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 \$6,500.00 on motion of Ms. Strickler, second of Mr. McCarthy.

Dave's Construction Services, Inc.
1400 N. Gilbert Road, Suite C
Gilbert, AZ 85234

Unprogram Related
Yrs/Business – 22
Empl. Cov. by Insp. – 2

Site Location: 11634 S. Warpaint, Phoenix, AZ 85044

Inspection #: I7163/314820341

Insp. Date: 08/27/10

SERIOUS – Citation 1, item 1 – One employee was not instructed in the recognition and avoidance of hazards associated with trenching and excavation work (1926.21(b)(2). (No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – One employee was working in an excavation that was approximately 13' deep, 19' wide and 35' long which was lacking a protective system installed to preclude a cave-in or collapse (1926.652(a)(1).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

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. This file and the following case file were at the same site with the same citations recommended and were discussed together. 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 Ms. Oster.

Turley Construction Company, Inc.
P.O. Box 2509
Mesa, AZ 85214

Unprogram Related
Yrs/Business – 33
Empl. Cov. by Insp. – 4

Site Location: 11634 S. Warpaint, Phoenix, AZ 85044
Inspection #: I7163/3149850718
Insp. Date: 08/27/10

SERIOUS – Citation 1, item 1 – One employee was not instructed in the recognition and avoidance of hazards associated with trenching and excavation work (1926.21(b)(2).
(No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – One employee was working in an excavation that was approximately 13' deep, 19' wide and 35' long which was lacking a protective system installed to preclude a cave-in or collapse (1926.652(a)(1).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

See discussion for previous file. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Ms. Oster, second of Ms. Strickler.

Genuine Machine Products, Inc.
1433 N. Tech Blvd.
Gilbert, AZ 85233

Planned
Yrs/Business – 15
Empl. Cov. by Insp. – 43

Site Location: 1433 N. Tech Blvd., Gilbert, AZ 85233
Inspection #: N9589/314857327
Insp. Date: 09/14/10

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 were permitted to prepare and consume food and beverage in work areas where metals were machined and metal cutting fluids are handled thereby exposing employees to toxic materials including but not limited to stainless steel particulate (e.g. chromium, nickel, zinc, etc.) and metal cutting/coolant fluids (e.g. heavy petroleum distillates)(1910.141(g)(2).

Citation 1, item 1b - Employee training did not include the requirements of sections (h)(3)(i) - (iii) of this paragraph. That is, employees were not provided with training regarding detection/exposure of chemicals in the workplace, hazards associated with the chemicals employees handle, and measure to be taken to protect employees from these hazards (1910.1200(h)(3).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – The existing belt and pulley guard on a honing machine did not fully enclose the drive belt and pulleys thereby exposing employees to nip points (1910.212(a)(1).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – The hose connection to a hand held pneumatic grinder operating at 118 psi was made by a hose clamp which had damaged the hose thereby increasing the potential for the hose to become detached (1910.243(b)(2).

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 illness.

Citation 1, item 4a – The abrasive wheel located on the right side of the bench grinder was not provided with safety guards for the spindle end, nut or flange projection (1910.215(a)(2).

Citation 1, item 4b - Work rests on the grinding wheels of a bench grinder were not adjusted within one eight inch of the abrasive wheel thereby allowing a tool to become stuck between the wheel and tool rest resulting in damage and/or breakage of the abrasive wheel (1910.215(a)(4).

Citation 1, item 4c - The abrasive grinding wheel of a bench grinder did not include an adjustable tongue guard to prevent sparks and/or debris from being ejected towards the machine operator (1910.215(b)(9).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 2, item 1 – The OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 300A Summary of Work-Related Injuries and Illnesses were not maintained by the establishment (1904.29(a).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker stated that Citation 1, item 3 would be more appropriately classified as nonserious with no penalty. Mr. Perkins agreed. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and changing the classification for Citation 1, item 3 to nonserious with no penalty for a total penalty of \$3,750.00 on motion of Mr. Parker, second of Mr. McCarthy.

Department of Corrections, ASPC Eyman Complex
1601 W. Jefferson, M/C 324
Phoenix, AZ 85007

Complaint
Yrs/Business – 100+
Empl. Cov. by Insp. – 300

Site Location: 4374 E. Butte Avenue, Florence, AZ 85132

Inspection #: L3419/314950940

Insp. Date: 10/19/10

SERIOUS – Citation 1, item 1 – Health unit nurses transporting medicines to inmates were not provided with appropriate protective eyewear (1910.132(a)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – Eyman Correctional Officers assigned to transport and guard an inmate that tested positive for Tuberculosis did not pass an appropriate qualitative or quantitative fit test when required to wear an N95 type filtering facepiece respirator (1910.134(f)(1)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 2, item 1 – Respirator cartridges (P100 CS/CN) for the MSA Advantage 1000 Riot Control Gas Mask were used beyond their expiration date/shelf life (1910.134(d)(3)(iii)(2)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. McCarthy questioned the 15% good faith adjustment and Mr. Perkins explained that DOC has many programs in place and that he believed the discount to be appropriate. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-0375

Boca, L.L.C.

2C09/10-2172

Certified Freight Logistics, Inc. dba CFL, Inc.

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. Discussion followed regarding employers who are self-insured in other states and the alternatives for obtaining coverage in Arizona. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #0375 and 2172 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

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

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

Ms. McGrory stated that there was nothing new to report at this time.

Announcements and Scheduling of Future Meetings

The Commissioners agreed to change next week's meeting from December 9th to December 8th.

There being no further business to come before the Commission and no public comment, Vice Chairman Parker adjourned the meeting at 1:52 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Chairman

By [Signature]
Vice Chairman

By [Signature]
Member

ATTEST:

[Signature]
Commission Secretary

By _____
Member

By [Signature]
Member

THE INDUSTRIAL COMMISSION OF ARIZONA

800 West Washington Street

Phoenix, Arizona 85007

PUBLIC MEETING

Subject: Stakeholder's Meeting – Proposed

Legislation for Year 2011

Date: December 1, 2010

Time: 1:00 p.m.

Location: Auditorium

ATTENDEES ARE INVITED TO SIGN IN

PLEASE PRINT

<u>NAME</u>	<u>REPRESENTING</u>
Milli Lee	AZASSE
Patricia wells	Wells Medical Practice Mgt
Jon Rawlson	ZWP
Jim Stabler	SCF Arizona
KERRY L HAYDEN	FARMERS INS
Farnell Quinlan	NFIB
Scott Dollinger	NFIB
S Jones	NFIB
Sarah Morgan	AZ, Associated General Contractors
Cynthia Everitt	AZ Hand & Wrist Specialists

ANYONE WISHING TO ADDRESS THE COMMISSION, PLEASE
FILL OUT A "REQUEST TO SPEAK" FORM