

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, February 2, 2011 – 1:00 p.m.

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|----------|-----------------------|----------------------------------|
| Present: | Brian Delfs | Chairman |
| | David Parker | Vice Chairman (video conference) |
| | John A. McCarthy, Jr. | Member |
| | Kathleen Oster | Member |
| | Susan Strickler | Member |
| | Laura McGrory | Director |
| | Andrew Wade | Chief Legal Counsel |
| | Darin Perkins | Director, ADOSH |
| | Marshall Krotenberg | Industrial Hygienist |
| | Steven Black | Industrial Hygienist |
| | Renee Pastor | Self Insurance Manager |
| | Kamen Kovatchev | Self Insurance and Tax Acct. |
| | Teresa Hilton | Commission Secretary |

Chairman Delfs convened the Commission meeting at 1:02 p.m. noting a quorum present. Also present was Scot Butler, the agency's lobbyist; Teresa Yi and Eda Barolli of Snell & Wilmer; and Marilyn & Herb Morrell.

Approval of Minutes of January 19, 2011 Meeting

The Commission unanimously approved the Minutes of January 19, 2011 on motion of Mr. McCarthy, second of Mr. Parker.

Discussion &/or Action regarding Legislation

Scot Butler provided an update of proposed legislation of interest to the Commission. Mr. Butler discussed HB's 2151, 2176, 2476 and 2584 and SB's 1102, 1264 and 1567 and responded to questions from the Commission. With regard to HB 2151, Ms. McGrory provided the Commissioners with a copy of a memorandum authored by the Labor Department Director, Randall Maruca. Ms. McGrory and Mr. Butler commented on the bill. Mr. Butler provided his recommendations related to SB 1264 and further summarized his recommendations with respect to other proposals.

Public Comments

Noting that there were several members from the public in attendance, Chairman Delfs asked if anyone wished to address the Commission. There were no public comments.

Discussion & Action of ADOSH Discrimination Complaints

#10-51 Mary McClelland v Child & Family Support Services, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms.

McClelland. In her complaint, Ms. McClelland alleged that she was terminated after requesting assistance because she felt unsafe. In response to the complaint, the employer stated that Ms. McClelland was terminated for her negative attitude and language about her work and clients, which were contrary to the company's philosophy and approach.

Mr. Perkins presented a history of Ms. McClelland's employment and chronology of events and responded to questions from the Commission. The Division recommendation was to pursue the matter. Mr. Perkins explained that there was evidence of a causal link between the protected activity and adverse action and that the adverse action does not appear to have been motivated by a legitimate, non-discriminatory reason. Following discussion, the Commission unanimously voted to pursue the complaint on motion of Ms. Oster, second of Mr. McCarthy.

#10-90 Camelia Hightower v Gold Buyers of America - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Hightower. In her complaint, Ms. Hightower alleged that she was harassed by her manager in retaliation for bringing up an occupational health issue and for complaining about that issue to ADOSH. The employer's position was that Ms. Hightower voluntarily resigned her employment with the company.

Mr. Perkins presented a history of Ms. Hightower's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since Ms. Hightower voluntarily left work prior to filing a discrimination complaint with ADOSH. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Ms. Strickler.

Mr. Perkins introduced Steven Black and Marshall Krotenberg, Industrial Hygienists with ADOSH, and advised that they were available should there be questions pertaining to some of the following agenda items.

Discussion & Action of Proposed OSHA Citations and Penalties

Vargas General Engineering, LLC
9299 W. Olive Avenue, Bldg 2, #211
Peoria, AZ 85345

Fatality
Yrs/Business - 8
Empl. Cov. by Insp. - 10

Site Location: 8 miles northeast of Payson on Houston Mesa Road, Payson, AZ 85541
Inspection #: A7746/314948779
Insp. Date: 09/24/10

SERIOUS - Citation 1, item 1 - Employees who had not been qualified by training or experience were permitted to operate heavy equipment and machinery (1926.20(b)(4)).
(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, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Mr. McCarthy, second of Ms. Strickler. Chairman Delfs asked if the industry was doing anything to make the cabs on this type of

equipment safer and Mr. Perkins responded that he was not aware of anything.

Veolia Transportation Services, Inc.
2225 W. Lower Buckeye Road
Phoenix, AZ 85009

Complaint
Yrs/Business – 20
Empl. Cov. by Insp. – 60

Site Location: 2010 W. Desert Cove Avenue, Phoenix, AZ 85029
Inspection #: N9589/314820309
Insp. Date: 08/31/10

SERIOUS – Citation 1, item 1 – The employer failed to adequately respond to liquid natural gas (LNG) leaks, train employees on the hazards associated with LNG and the proper response procedures to be followed in the event of LNG leaks (23.403.A).

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

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

SERIOUS – Citation 1, item 2 – The employer did not ensure that each component of combustible gas monitoring systems installed at the LNG fueling facility was maintained in a condition compatible with its safety purpose (23.403(A).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

SERIOUS – Citation 1, item 3a – The employer did not ensure that the emergency procedures covered under the emergency response plan were implemented when LNG alarms sounded (1910.120(q)(2)(ii).

Citation 1, item 3b - The employer did not implement critique and follow-up of emergency response activities related to LNG leaks (1910.120(q)(2)(x).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

SERIOUS – Citation 1, item 4 – Employees who were trained in accordance with 29 CFR 1910.120(q)(6) did not receive annual refresher training of sufficient content and duration to maintain their competencies or did not demonstrate competency in those areas at least yearly (1910.120(q)(8)(i).

Div. Proposal - \$ 4,500.00

Formula Amt. - \$ 4,500.00

TOTAL PENALTY - \$18,000.00

TOTAL FORMULA AMT. - \$18,000.00

Mr. Perkins summarized the citations and proposed penalty as listed. He and Marshall Krotenberg responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$18,000.00 on motion of Mr. McCarthy, second of Mr. Parker. Mr. Delfs stated the civil penalty seemed high but that Mr. Perkins has the discretion to reduce the civil penalty in closing conference if deemed appropriate.

City of Phoenix Police Transit Bureau
302 N. 1st Avenue, Suite 430
Phoenix, AZ 85003

Unprogram Related
Yrs/Business – 100
Empl. Cov. by Insp. – 7

Site Location: 2010 W. Desert Cove Avenue, Phoenix, AZ 85029
Inspection #: N9589/314857343
Insp. Date: 08/31/10

SERIOUS – Citation 1, item 1 – The emergency response plan did not address the practice of Municipal Security Guards (MSG's) travelling into a potentially hazardous location during a LNG alarm to unlock the LNG control room door for emergency personnel. The emergency response plan did not address the practice of MSG's investigating and/or assisting with investigations of LNG system leaks (1910.120(q)(2)(ii).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – Employees who were trained in accordance with 1910.120(q)(6) did not receive annual refresher training or did not demonstrate competency in those areas at least yearly (1910.120(q)(8)(i).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 3 – The employer did not ensure each employee issued air purifying respirators was knowledgeable of issued respirator limitations specific to oxygen deficient atmospheres(1910.134(k)(1)(i).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$5,625.00

TOTAL FORMULA AMT. - \$5,625.00

Mr. Perkins summarized the citations and proposed penalty as listed. He and Mr. Krotenberg responded to questions from the Commissioners. Following discussion, Ms. Oster made a motion to assess the recommended penalty of \$5,625.00 which was seconded by Mr. Strickler. Further discussion followed in which Mr. Parker asked questions about the security guard's role in the emergency response plan. Mr. Krotenberg responded to the questions. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,625.00.

RCC Holdings, LLC dba Andrew Lauren Interiors
3669 E. LaSalle Street
Phoenix, AZ 85040

Complaint
Yrs/Business – 1
Empl. Cov. by Insp. – 13

Site Location: 3669 E. LaSalle Street, Phoenix, AZ 85040

Inspection #: N9589/315113639

Insp. Date: 11/15/10

SERIOUS – Citation 1, item 1 – Exit routes were not maintained free and unobstructed (1910.37(a)(3).

(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – A written respiratory protection program that included the provision in 1910.134(c)(1)(i-ix) with worksite specific procedures was not established and implemented for required respirator use when employees were exposed to airborne crystalline silica during dry cutting and finishing of granite stone products(1910.134(c)(1).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

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 3a – The employer did not maintain a written hazard communication program at

the workplace where employees worked with granite stone, acetone and polyester adhesives (1910.1200(c)(1)).

Citation 1, item 3b - The employer did not have a material safety data sheet for granite stone products which are cut, ground and polished by employees, thereby exposing employees to silica dust (1910.1200(g)(1)).

Citation 1, item 3c - The employer did not provide effective information and training on the hazards associated with cutting and grinding on granite stone which generates silica dust (1910.1200(h)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 2, item 2 – The employer did not develop and implement a noise monitoring program when employee exposure to noise while using hand-held stone cutting, grinding and polishing equipment likely equaled or exceeded an 8-hour time-weighted average of 85 decibels (1910.95(d)(1)).

Div. Proposal - \$ 700.00

Formula Amt. - \$ 700.00

TOTAL PENALTY - \$5,950.00

TOTAL FORMULA AMT. - \$5,950.00

Consideration of this agenda item was tabled at the request of Mr. Wade.

Michael G. Jacobs dba Jacobs Assay Office
1435 S. 10th Avenue
Tucson, AZ 85713

Complaint
Yrs/Business – 130
Empl. Cov. by Insp. – 9

Site Location: 1435 S. 10th Avenue, Tucson, AZ 85713
Inspection #: T3633/315063255
Insp. Date: 11/03/10

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 required to use NIOSH certified N95 filtering facepiece respirators while conducting the fire assay test. The employer had not established a written respiratory protection program and was not following the provisions of the section (1910.134(c)(1)).

Citation 1, item 1b - An employee who weighed samples, mixed sample reagents and put samples in and out of the furnaces was exposed to an average lead concentration of 123 micrograms per cubic meter of air (ug/m3) during a nine-hour workday which is in excess of the permissible exposure level (1910.1450(c)). There were three other instances of this violation.

Citation 1, item 1c - Employees conducting the assay tests were potentially exposed to lead dust and fumes and the employer did not conduct initial monitoring to determine the employee's exposure to lead as required by the ADOSH lead standard (1910.1450(d)(1)).
(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 illness.

Citation 1, item 2a – Employees used hazardous chemicals in laboratory tests and the employer had not developed and implemented a written Chemical Hygiene Plan meeting the requirements of the standard (1910.1450(c)(1).

Citation 1, item 2b - Employees were not adequately trained as described by the standard concerning the hazards of the chemicals they worked with and how to recognize and prevent the effects of chemical exposure (1910.1450(f)(1).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – Exposure monitoring showed that employee exposures were greater than the ADOSH permissible exposure limit (PEL) for lead. The ADOSH lead standard has medical surveillance requirements, and the required medical surveillance was not established for the affected employees (1910.1450(g)(1)(ii).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – The exhaust fan did not have the blades guarded (1910.212(a)(5).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – The exhaust fan for the furnace hoods did not have the belt fully enclosed and the pulleys guarded (1910.219(d)(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. He and Steven Black responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Ms. Oster, second of Mr. McCarthy.

Bergmann Precisions, Inc. dba
Waterloo Healthcare, LLC
3730 E. Southern Avenue
Phoenix, AZ 85040

Planned
Yrs/Business – 8
Empl. Cov. by Insp. – 99

Site Location: 3730 E. Southern Avenue, Phoenix, AZ 85040

Inspection #: A7717/315113597

Insp. Date: 10/28/10

SERIOUS – Citation 1, item 1 – Two employees performing maintenance, service and repair on various machines and equipment were not adequately trained on the company's Lockout/Tagout program (1910.147(c)(1).

(No inspection history in the past three years).

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 2 – A vertical belt sander did not have the in-going nip points guarded between the rotating rollers and sanding belt (1910.212(a)(1). There were four other instances of this violation.

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 3 – Four milling machines were lacking a point of operation guard (1910.212(a)(3)(ii)). There was another instance of this violation.

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 4 – A parts tumbler had vertical drive belts that were not fully enclosed and pulleys guarded (1910.219(d)(1)). There was another instance of this violation.

Div. Proposal - \$875.00

Formula Amt. - \$875.00

SERIOUS – Citation 1, item 5 – A 35 ton punch press was not equipped with a guard to prevent accidental contact with exposed gears (1910.219(f)(1)).

Div. Proposal - \$ 875.00

Formula Amt. - \$ 875.00

TOTAL PENALTY - \$4,375.00

TOTAL FORMULA AMT. - \$4,375.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,375.00 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Request for Renewal of Self Insurance Authority

Carondelet Health Network - Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and 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 Ascension Health's financial stability with total assets of just over \$17.9 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. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C10/11-0890 Auto Fit, Inc.

2C10/11-0745 Dalmatian Roofing & Renovation, Inc.

2C10/11-1026 Sun Horizon Specialized, LLC

Andrew 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 \$500.00 are recommended against employers #0890 and 0745 since both have recently obtained coverage. Mr. Wade further advised that a civil penalty of \$5,000.00 is being recommended against employer #1026 since this is their second civil penalty. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission unanimously assessed civil penalties of \$500.00 against employers #0890 and 0745 and a civil penalty of \$5,000.00 against employer #1026 on motion of Mr. Parker, second of Mr. McCarthy with follow-up on employer #1026 in three months.

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

Ms. McGrory stated there was nothing new to report.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that meetings are scheduled for Wednesday, February 9th and Wednesday, February 23rd. The Commission also scheduled a meeting for Thursday, March 3rd.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:48 p.m.

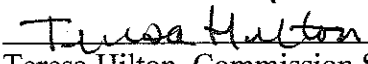
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary