

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, April 6, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	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
	Randall Maruca	Director, Labor Division
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:05 p.m. noting a quorum present. Others in attendance included Scot Butler, the agency's lobbyist; Tod Kean of Bonded Logic, Inc.; John Djordjevich, attorney, representing Jerry B. Roberts; Jeremy Bethancourt; and Eda Barolli of Snell & Wilmer.

Discussion &/or Action regarding Legislation

Scot Butler provided an updated legislative report including the status of the state budget and proposed legislation of interest to the Commission. Mr. Butler discussed HB's 2151, 2476, 2541, 2584, 2616 and 2617 and SB's 1102 and 1264 and responded to questions from the Commissioners. Discussion followed regarding HB 2151 and language changes proposed by the banking industry. Mr. Maruca described current practices with respect to payroll cards. The Commission authorized Ms. McGrory and Mr. Butler to provide a memorandum to the Governor and legislators explaining some the ramifications of the proposed language changes and agreed the Commission would remain neutral with regard to this legislation.

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

Ms. McGrory provided a summary of the impacts of the budget legislation on the Commission's operations. She described changes to the employer and employee contributions to the State retirement system and other issues. She also provided a summary prepared by ASRS regarding changes to the ASRS and stated that the Commissioners could contact her if they had any questions regarding that information.

Approval of Minutes of March 31, 2011 Meeting

The Commission unanimously approved the Minutes of March 31, 2011 on motion of Mr. McCarthy, second of Mr. Parker.

Lump Sum Commutation Hearing – Jerry Roberts #20082-910288

Mr. Roberts participated in the hearing through telephonic conference. His attorney, John Djordjevich, was in attendance. A Court reporter was also in attendance. Chairman Delfs convened the hearing and read an opening statement into the record explaining the process to Mr. Roberts and his attorney. After being sworn, Mr. Roberts responded to questions from Mr. Wade, the Commissioners and Mr. Djordjevich. The Commissioners discussed Mr. Roberts' request for a lump sum commutation and some Commissioners expressed concerns over whether the facts demonstrated a reasonable basis for his financial betterment or rehabilitation. Following the discussion, the Commission upheld the prior decision to deny the request on motion of Mr. McCarthy, second of Mr. Parker. Ms. Oster voted against the motion.

Discussion & Action of Proposed OSHA Citations and Penalties

Bonded Logic, Inc.  
24053 S. Arizona Avenue, Suite 151  
Chandler, AZ 85248

Fatality  
Yrs/Business – 15  
Empl. Cov. by Insp. – 16

Site Location: 24053 S. Arizona Avenue, Suite 151, Chandler, AZ 85248  
Inspection #: I7163/314950908  
Insp. Date: 10/15/10

SERIOUS – Citation 1, item 1 – Two employees operated a baler machine and were not trained in the hazards associated with the baler (23.403(A)).

(One inspection with 4 nonserious violations in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – An elevated platform approximately 3' wide, 25' long and 7' high was lacking an adequate guardrail system or other equivalent means to prevent a fall (1910.23(c)(1)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

SERIOUS – Citation 1, item 3 – Lockout/tagout procedures were not developed, documented and utilized for the control of potentially hazardous energy for each machine or motor in the facility (1910.147(c)(4)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 4 – Employees were not adequately trained on the written lockout/tagout procedures (1910.147(c)(7)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 5 – A baler machine did not have a functional point of operation guard (interlock guard) to prevent the machine from actuating during the operating cycle (1910.212(a)(1)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL PENALTY - \$28,800.00

TOTAL FORMULA AMT. - \$28,800.00

Mr. Perkins summarized the citations and proposed penalty as listed. The Division recommendation for items 1, 3, 4 and 5 was for the gravity based penalty with no adjustment factors since the violations directed contributed to the fatality. He responded to questions from



Cooley Industries Inc. dba Cooley Forest Products  
1930 W. Broadway Road  
Phoenix, AZ 85041

Planned  
Yrs/Business – 30  
Empl. Cov. by Insp. – 22

Site Location: 3830 Hwy 277, MP 318, Heber, AZ 85928  
Inspection #: R0738/315113712  
Insp. Date: 11/16/10

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 – The step across distance from the fixed ladder to a fixed ladderway platform leading to the top of the chip bin was greater than 12" at a height of 18' above the ground (1910.27( c)(6).

Citation 1, item 1b - The cage at the top of the fixed metal ladder leading to the top of the chip bin 33' above the ground did not extend 42" above the top of the landing (1910.27(d)(1)(iii) (One inspection with one serious and one nonserious violation in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

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

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 1, item 3 – Employees operating a forklift did not receive adequate training in the safe operation of powered industrial trucks (1910.178(l)(1)(i).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 4 – A heavy duty forklift was in use while missing a seatbelt and was not taken out of service (1910.178(p)(1). There were six other instances of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

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 5a – An electric floor stand abrasive wheel was operated without guards in place to protect employees from accidental contact (1910.215(a)(1).

Citation 1, item 5b - Work rest opening on an electric floor stand abrasive wheel was greater than one-eighth inch (1910.215(a)(4). There was another instance of this violation.

Citation 1, item 5c - The adjustable tongue guard on an electric floor stand abrasive wheel was greater than one-fourth inch (1910.215(b)(9).

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

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 6a – An unguarded power transmission rotating shaft measuring 4'5" long was not protected by enclosing, stationary casing or other means to prevent accidental contact (1910.219( c)(2)(i).

Citation 1, item 6b - An unguarded shaft end with a diameter of 2" projected 5" into a walkway used by employees to access the main waste chipper and conveyor (1910.219( c)(4)(i). There were two other instances of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 7 – An elevated platform near the top of the chip bin at 33' above the ground was not provided with a standard railing (1910.265( c)(4)(iv). There were 8 other instances of this violation

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 8 – A metal stairway leading to the top of an elevated deck at least 6' above the ground was not provided with a standard handrail on at least one open side (1910.265( c)(5)(ii).

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

SERIOUS – Citation 1, item 9 – Employees were working in and around chain transfer conveyors that were not guarded by hand rails, guard plates, etc. to minimize the possibility of an operator's limbs or clothing being caught between the moving parts of the conveyor (1910.265( c)(18)(i). There were 4 other instances of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 10 – A chipper was configured so the outer rim of the horizontal in-feed chute was 13.5" from the cutter knives (1910.265( c)(21)(ii)(A).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 11 – The area in which the log carriage operated was not provided with a barrier and warning signs to prevent possible employee entry into the travel space during operation of the headsaw (1910.265(e)(1)(v).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 12 – A switchboard energized with at least 480 volts was missing the side cover with exposed live parts and was not located in a permanently dry location accessible only to qualified persons (1910.305(d).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 13 – Service electricians were not trained or familiar with specific safety-related work practices pertaining to their respective job assignments on or near equipment or circuits potentially energized at 480 volts (1910.332(b)(1).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 14 - Safety-related work practices were not developed or employed

to prevent electrical shock or other injuries for service electricians performing work on or near potentially energized electrical equipment or circuits (1910.333(a))

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 15 – Employees were not provided with adequate personal protective equipment designed to protect them while working on equipment potentially energized at 480 volts (1910.335(a)(1)(i))

Div. Proposal - \$ 1,500.00

Formula Amt. - \$ 1,500.00

TOTAL PENALTY - \$23,400.00

TOTAL FORMULA AMT. - \$23,400.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Mr. Parker questioned how common these violations were in the sawmill industry and whether most sawmills were aware of the standards and were in compliance. Mr. Perkins responded that he has seen very few sawmill inspections since there are few in Arizona. Mr. Parker asked if there was a sawmill association and suggested if this would be an opportunity for educating those in the industry. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$23,400.00 on motion of Mr. McCarthy, second of Ms. Oster.

Fire Training Structures, LLC  
3233 E. Corona Avenue  
Phoenix, AZ 85040

Complaint  
Yrs/Business – 8  
Empl. Cov. by Insp. – 31

Site Location: 3233 E. Corona Avenue, Phoenix, AZ 85040

Inspection #: N9589/315247403

Insp. Date: 01/18/11

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 – During on-going fabrication of a fire training structure (metal shipping container), a stairway floor opening with exposed sides was not guarded with standard railings (or equivalent) and toeboards (1910.23(a)(1)).

Citation 1, item 1b - During fabrication of a fire training structure, a floor hole in the roof walking surface was not guarded, covered, or constantly attended (1910.23(a)(8)).

Citation 1, item 1c - During fabrication of fire training structures, open sided floors 9'2" above ground level were not guarded with standard railings (or equivalent) and toeboards (1910.23(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 that follow have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 2a – The circular handfed rip saw was not guarded by an automatically adjusting hood which completely enclosed that portion of the saw above the table and above the material

being cut (1910.213(c)(1)).

Citation 1, item 2b - The circular handfed rip saw was not furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator (1910.213(c)(2)).

Citation 1, item 2c - The circular handfed rip saw did not have non-kickback fingers or dogs designed to provide adequate holding power for all thickness of material being cut to prevent material from being thrown back at the operator (1910.213(c)(3)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 3 - Workers or other person adjacent to the welding area were not protected from the rays by non-combustible or flame proof screens or shields (1910.252(b)(2)(iii))

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 - Employees used electrical equipment connected to 125 volt, single phase, 15-, 20-, and 30- ampere receptacle outlets located on shop-made portable power distribution boxes that did not have ground-fault circuit-interrupter protection (1910.304(b)(3)(ii)(A)). There was another instance of this violation.

Citation 1, item 4b - Portable 220-volt power distribution equipment (i.e. spider boxes) and associated cord and plug equipment did not have ground-fault circuit interrupter protection and the employer did not institute an assured equipment grounding program (1910.304(b)(3)(ii)(C)). There was another instance of this violation.

Citation 1, item 4c - Permanently wired outlet receptacles rated for 250 volt, 50 ampere were connected to portable power distribution equipment (i.e. spider boxes) that supply power to two 30-ampere arc welders, portable hand grinders, and portable lighting connected to spider boxes arranged in series for a potential total load of 60 or more amperes (1910.304(b)(4)).

Citation 1, item 4d - Conductors and equipment were not adequately protected from overcurrent (1910.304(f)(1)(i)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 2, item 5 - A written respiratory protection program that included the provisions in 1910.134(c)(i)-(ix) with worksite specific procedures was not established and implemented for required respirator use when employees were exposed to welding fumes and spray paint vapors (1910.134(c)(1))

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$5,500.00

TOTAL FORMULA AMT. - \$5,500.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,500.00 on motion of Ms. Oster, second of Mr. Parker.

Performance Steel Building, LLC  
1551 N. Plaza de Lirios  
Tucson, AZ 85745

Planned  
Yrs/Business – 10  
Empl. Cov. by Insp. – 3

Site Location: 612 N. 4<sup>th</sup> Avenue, Tucson, AZ 85745  
Inspection #: P0775/315283192  
Insp. Date: 01/20/11

SERIOUS – Citation 1, item 1 – An employee was allowed to operate a forklift without the use of a seatbelt (23.403(A).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – An employee was allowed to operate a forklift without being trained and evaluated in the safe operation of the truck (1910.178(l)(1)(i).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – The employees were using a right angle grinder that had damage to the outer and inner insulation of the power cord (1926.403(b)(1). There were three other instances of this violation.

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1, item 4 – The employees were using a mobile scaffold (scissor lift) that was 13.3' above the floor and was lacking guardrails on one end (1926.451(g)(4)(i).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – Employees were standing on top of the guardrails of the mobile scaffold 10'4" - 16'8" above the floor, installing the metal rafters on top of the steel carport frame, and had not been trained to recognize those hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards (1926.454(a).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 6 – Employees were working on top of the steel carport frame installing the metal rafters across the top of the steel beams that were 16'8" above the pavement and were not provided with fall protection equipment necessary to be tied off, or be provided with other means of protection from fall hazards (1926.760(b)(3).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 7 – Employees were working on top of a steel carport frame installing the metal rafters across the top of the steel beams 10'4" to 16'8" above the floor and were not provided any training in the recognition of fall hazards and the procedures to minimize those hazards (1926.761(b)

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$5,100.00

TOTAL FORMULA AMT. - \$5,100.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,100.00 on motion of Mr. McCarthy, second of Ms. Strickler.



Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C09/10-1115 D.C. Carriers, Inc.  
2C10/11-0971 USA Gymnastics and Dance Center, Inc.  
aka USA Youth Fitness Center

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), he recommended a civil penalty of \$500.00 be assessed against employer #1115 since they have recently obtained insurance. He is further recommending a penalty of \$1,000.00 be assessed against employer #0971. Mr. Wade provided information regarding each of the employers and responded to questions from the Commission. Following discussion, the Commission unanimously assessed a civil penalty of \$500.00 against employer #1115 and a civil penalty of \$1,000.00 against employer #0971 on motion of Mr. McCarthy, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, April 21<sup>st</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Teresa Hilton, Commission Secretary