MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308 Phoenix, Arizona 85007 Wednesday, July 13, 2011 – 1:00 p.m.

Present:

Brian Delfs

Chairman

David Parker

Vice Chairman

John A. McCarthy, Jr.

Member

Kathleen Oster Susan Strickler Member Member

Laura McGrory

Director

Andrew Wade Darin Perkins Randall Maruca Chief Legal Counsel Director, ADOSH Director, Labor Dept.

Tina Rivera

Labor Dept.

Renee Pastor Michael Hawthorne Manager, Self Insurance Chief Financial Officer

Kamen Kovatchev

Accounting

Teresa Hilton

Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Karen Kane; Chic Older of the Arizona Medical Association; Connie Wilhelm of the Home Builders' Association of Central Arizona; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of July 7, 2011 Meeting

The Commission unanimously approved the Minutes of July 7, 2011 on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of ADOSH Discrimination Complaints

#11-14 Dana Moore v Border Books, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Moore. In her complaint, Ms. Moore stated that she was terminated from her job because she expressed safety concerns about the store room being unorganized and unsafe to retrieve items that were needed daily. In response to the complaint, the employer presented its position with respect to Ms. Moore's separation from employment.

Mr. Perkins presented a history of Ms. Moore's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Ms. Oster.

#11-30 Yorel Vanessa Hayes v The Hartford Fire Insurance Company - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms.

Hayes. In her complaint, Ms. Hayes stated that her employment was terminated because she filed a workers' compensation claim and because she told her boss she was pregnant. In response to the complaint, the employer presented its position with respect to Ms. Hayes' separation from employment.

Mr. Perkins presented a history of Ms. Hayes' employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was insufficient evidence of a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Oster.

#11-40 Scott Harrington v Copper Queen Community Hospital - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Dr. Harrington. In his complaint, Dr. Harrington stated that his employment was terminated after he brought up indoor air quality problems with his employer and filed a complaint with ADOSH. In response to the complaint, the employer presented its position with respect to Dr. Harrington's separation from employment.

Mr. Perkins presented a history of Dr. Harrington's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was insufficient evidence of a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

#11-44 Matthew Mackey v Sunflower Farmers Market - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Mackey. In his complaint, Mr. Mackey stated that his employment was suspended in response to him telling his employer that he had made a complaint to OSHA, and then his employment was terminated in response to ADOSH conducting an inspection of the store. In response to the complaint, the employer presented its position with respect to Mr. Mackey's separation from employment.

Mr. Perkins presented a history of Mr. Mackey's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was insufficient evidence of a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations and Penalties

B/H Drywall, Stucco & Painting Co., Inc.

Planned

627 W. Commerce Avenue

Yrs/Business – 40

Gilbert, AZ 85233

Empl. Cov. by Insp. -6

Site Location: 5031 E. Washington Street, Phoenix, AZ 85034

Inspection #: N

N4762/315442293

Insp. Date:

03/28/11

<u>SERIOUS</u> – Citation 1, item 1 – One employee was working and standing near the edge of the roof structure that did not have a guardrail system installed and the employee was not using a personal fall protection system or equivalent to prevent an 25' fall hazard (1926.501(b)(1)).

(Two inspections with four nonserious violations in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – One employee working near the unprotected edge of a roof 25' above the ground, was not provided training to recognize the hazards of falling or in the procedures to be followed in order to minimize these hazards (1926.503(a)(1)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

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

Queen Creek Lath & Stucco, Inc.

Complaint

43104 N. Murphy Avenue Queen Creek, AZ 85240

Yrs/Business – 6

Empl. Cov. by Insp. -3

Site Location: 16502 N. Oracle Road, Catalina, AZ 85739

Inspection #: P0775/315553131

Insp. Date:

04/25/11

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 – Employees were working on a tubular welded frame scaffold 11' to 15' high, 20' - 30' long and 3' wide that was not fully planked or decked between the guardrail supports (1926.451(b)(1)). There was another instance of this violation.

Item 1b – Employees were working on a tubular welded frame scaffold 11' to 15' high, 20' – 30' long and 3' wide that had the base plates sitting on top of loose dirt and particle board and not on an adequate firm foundation (1926.451(c)(2)).

Item 1c - Employees were working on a tubular welded frame scaffold 11' to 15' high, 20' -30' long and 3' wide that had the legs resting on top of mud sills near the wet edge of an unstable 4' deep excavation (1926.451(c)(2)(i)).

Item 1d - Employees were working on a tubular welded frame scaffold 11' to 15' high, 20' -30' long and 3' wide and were not provided with a safe means of access to the working platform (1926.451(e)(1)).

Item 1e - Employees were working on a tubular welded frame scaffold 11' to 15' high, 20' -30' long and 3' wide that was not fully braced (1926.452(c)(2)). (No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

<u>SERIOUS</u> - Citation 1, item 2 - Employees who were working on a tubular welded frame scaffold 11' to 15' high, 20' - 30' long and 3' wide had not been trained by a person qualified to recognize the hazards associated with the type of scaffold being used and how to control or minimize those hazards (1926.454(a)). There was another instance of this violation. Formula Amt. - \$750.00 Div. Proposal - \$750.00

SERIOUS – Citation 1, item 3 – The tubular welded frame scaffold that was 11' to 15' high, 20' - 30' long and 3' wide was not inspected before each work shift by a competent person for visible defects such as missing guardrails, mud sills, cross braces and planking (1926.451(f)(3)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 4 - Employees were working on a tubular welded frame scaffold that was 11' to 15' high, 20' - 30' long and 3' wide that did not have guardrails installed along all open sides to prevent employees from falling to the lower level below(1926.451(g)(4)(i)). There was another instance of this violation.

Div. Proposal - \$ 750.00 TOTAL PENALTY - \$3,000.00

Formula Amt. - \$ 750.00 TOTAL FORMULA AMT. - \$3,000.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to Following discussion, the Commission unanimously questions from the Commissioners. approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Parker, second of Mr. McCarthy.

D & E Pool Repair, Inc.

Complaint

5927 W. Stella Lane

Yrs/Business - 2

Glendale, AZ 85301

Empl. Cov. by Insp. -5

Site Location: 2401 W. Southern Avenue, Tempe, AZ 85282

Inspection #: N9589/315584565

Insp. Date:

05/11/11

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 - The employer did not ensure that local exhaust ventilation was provided and used on equipment during dry grinding of cementitious pool deck surfacing that contained 19% crystalline silica (1926.57(g)(2)).

Item 1b - Employees performing dry grinding of cementitious pool deck surfacing, creating substantial noise, dust and flying debris did not wear appropriate hearing protection, respirators, face shields, goggles, and disposable or laundered clothing (1926.95(a)). (No inspection history in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – A written respiratory protection program that included the provisions 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 (1910.134(c)(1)).

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 3a - Insulation on an exposed interior black "hot" wire was cut thereby exposing employees to live electrical parts (1926.403(b)(1)).

Item 3b - The employer utilized flexible cord sets connected to permanent branched circuit not protected by ground-fault circuit-interrupters outlet receptacles that were (1910.404(b)(1)(ii)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 4 - The employer did not verify that testing and analysis of PACM was conducted and that results of that testing were reviewed prior to commencing demolition work involving PACM (1926.1101(k)(3)(i)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

NON-SERIOUS - Citation 2, item 1- The employer did not develop, implement and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f)(g) and (h) will be met. Employees are routinely exposed to concrete/cement products that contain crystalline silica during renovation of swimming pools and decking (1910.1200(e)(1)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$6,300.00

TOTAL FORMULA AMT. - \$6,300.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to Following discussion, the Commission unanimously questions from the Commissioners. approved issuing the citations and assessed the recommended penalty of \$6,300.00 on motion of Mr. McCarthy, second of Mr. Parker.

CDC Pools, Inc.

Unprogram Related

2364 S. Airport Blvd., Suite 1

Yrs/Business − 15

Chandler, AZ 85286

Empl. Cov. by Insp. -1

Site Location: 2401 W. Southern Avenue, Tempe, AZ 85282

Inspection #: N9589/315584664

Insp. Date:

05/11/11

SERIOUS - Citation 1, item 1 - CDC Pools Inc. instructed its subcontractor D&E Pool Repair, LLC to begin demolition of the subject decking prior to demonstrating that asbestos was not present (1926.1101(k)(5)(i)).

(No inspection history in the past three years).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

NON-SERIOUS – Citation 2, item 1 – A log of all Work-Related Injuries and Illnesses (OSHA FORM 300) and/or the Summary of Work-Related Injuries and Illnesses (OSHA Form 300-A), and/or the Injury and Illness Incident Report (OSHA Form 301) or its equivalent forms were not kept by the establishment (1904.29(a)).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 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. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Parker, second of Ms. Strickler.

Powill Manufacturing and Engineering

Planned

21039 N. 27th Avenue

Yrs/Business - 51

Phoenix, AZ 85027

Empl. Cov. by Insp. -97

Site Location: 21039 N. 27th Avenue, Phoenix, AZ 85027

Inspection #: I7163/315553024

Insp. Date: 04/15/11

SERIOUS - Citation 1, item 1 - Each operator of a forklift was not trained and certified in the safe operation of powered industrial trucks (1910.178(l)(1)(i)).

(No inspections in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 2 – One OD grinder did not have the chuck guarded to protect the operator from placing any part of his body into the danger zone (rotating chuck) during operation (1910.212(a)(1)). There were two other instances of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 3 – One horizontal band saw on the east side of the room did not have the horizontal drive belts fully enclosed and the pulleys were not guarded to protect employees from in-going nip points while operating (1910.219.(d)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,250.00

TOTAL FORMULA AMT. - \$3,250.00

Mr. Perkins held consideration of these citations.

Newflower Market, Inc. dba Sunflower Farmers Market

Complaint

7877 E. Broadway Blvd.

Yrs/Business – 7

Tucson, AZ 85710

Empl. Cov. by Insp. -20

Site Location: 7877 E. Broadway Blvd., Tucson, AZ 85710

Inspection #: A9339/315442392

Insp. Date:

03/30/11

<u>SERIOUS</u> – Citation 1, item 1 – Forklift operators were operating the electric forklift without utilizing the seatbelt (1910.132(a)).

(No inspection history in the past three years).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

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 – Forklift operators were not adequately trained in the safe operation of the electric forklift (1910.178(l)(1)(i)).

Item 2b - An evaluation of each powered industrial truck operator's performance was not conducted at least once every three years (1910.178(l)(4)(i)).

Item 2c - Forklift certifications did not include the dates of training, practical evaluations, or identify the person performing the training (1910.178(1)(6)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to Following discussion, the Commission unanimously questions from the Commissioners. approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Mr. McCarthy, second of Ms. Oster.

Total Seal, Inc.

Planned

22642 N. 15th Avenue

Yrs/Business - 40

Phoenix, AZ 85027

Empl. Cov. by Insp. -45

Site Location: 22642 N. 15th Avenue, Phoenix, AZ 85027

Inspection #: I7163/315489351

Insp. Date:

04/14/11

SERIOUS - Citation 1, Item 1 - A written lockout/tagout program was not developed and implemented for maintenance personnel or repair persons to prevent the release of stored energy during the performance of repair work on equipment such as, but not limited to work on lathes, mill machines or polisher machines (1910.147(c)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 2 – One employee was operating a forklift without training and certification (1910.178(1)(1)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 3 – One employee was operating a forklift which was lacking a seatbelt (1910.178(p)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 4 – One employee operated a double side polisher which was lacking a guard installed to prevent employees from contacting rotating and moving parts (1910.212(a)(1)). There were two other instances of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 5 – One 4" x 4" 110 volt electrical outlet was not effectively closed on the unused openings (1910.305(b)(1)). There was another instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$5,500.00

TOTAL FORMULA AMT. - \$5,500.00

Mr. Perkins held considerations of these citations.

South Bay Circuits, Inc.

6409 W. Commonwealth Avenue

Chandler, AZ 85226

Referral

Yrs/Business - 30

Empl. Cov. by Insp. -79

Site Location: 6409 W. Commonwealth Avenue, Chandler, AZ 85226

Inspection #: U5916/315584888

Insp. Date:

05/23/11

SERIOUS - Citation 1, item 1 - The employer did not establish an adequate energy control program for the location, or energy control procedures for specific equipment in order to prevent the unexpected startup or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment (1910.147(c)(1)). (No inspection history in the past three years).

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 injury resulting from accident.

Citation 1, item 2a - Two ½ ton electric chain hoists did not meet manufacturer's recommendations because they did not have the required safety latch on each hook (1910.179(h)(4)).

Item 2b - Two ½ ton electric chain hoists did not have the hooks inspected monthly by the employer (1910.179(j)(2)(iii)).

Item 2c – Two ½ ton electric chain hoists did not have the hoist chains inspected monthly by the employer (1910.179(i)(2)(iv)).

Item 2d - Two ½ ton electric chain hoists did not have a complete periodic inspection conducted in the past 12 months (1910.179(i)(3)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS -Citation 1, item 3 - Exposed 120 volt live electrical wiring, approximately 43" above the floor, was not guarded against accidental contact by any approved enclosure or any other approved means (1910.303(g)(2)(i)). There was another instance of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS -Citation 1, item 4 - An electrical circuit breaker panel, east of the panel labeled "1A", had two adjoining breaker openings that were not effectively closed (1910.305(b)(1)(ii)). There were two other instances of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$7,000.00

TOTAL FORMULA AMT. - \$7,000.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to Following discussion, the Commission unanimously questions from the Commissioners. approved issuing the citations and assessed the recommended penalty of \$7,000.00 on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Resolution Appointing Assistant Secretary of the Industrial Commission of Arizona

<u>Tina Rivera</u> – Randy Maruca introduced Ms. Rivera and advised that she is the office manager in the Labor Dept. and explained her responsibility to certify that records are accurate. Chairman Delfs expressed appreciation for Ms. Rivera's service. The Commission unanimously appointed Tina Rivera as Assistant Secretary on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of Application for Renewal of Self Insurance Authority

Scottsdale Healthcare Corporation - Renee Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to Scottsdale Healthcare's financial strength with total assets of just under \$1.1 billion, a clean audit report, and acceptable bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-1839	NV Fitness Management, LLC dba Xpress Fitness
2C10/11-0597	Roberto Soto, dba Soto's Security
2C10/11-1738	Team Ramco, LLC

Andrew Wade advised that he is withdrawing consideration of a penalty for employer #1839 due to a possible name correction on the agenda. With regard to the remaining 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 civil penalties of \$1,000.00 be assessed against employers #0597 and 1738. Mr. Wade provided information regarding each of the employers and responded to questions from the Commission. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #0597 and 1738 on motion of Mr. Parker, second of Mr. McCarthy.

Discussion and/or Action regarding United Food & Commercial Workers Local 99, et. al, v. Jan Brewer, in her capacity as Governor of the State of Arizona, et al., U.S. District Court case number 2:11-cv-921-PHX-SRB. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session

Mr. Wade stated that there was nothing new to report.

Discussion & Action regarding 2011-2012 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory advised that she had requested and received clarification from NCCI that "revenue neutral" means no impact at all, while -.1% is more accurately stated as an "extremely

negligible" impact. In follow-up to last week's discussion, she stated that she followed up with SCF and ASIA to invite additional comment on ArMA's proposal that the Commission modify the current methodology to select reimbursement values. She provided copies to the Commission of the responses received from SCF Arizona and ASIA and stated that Commission action is required on this remaining item. She summarized the responses received and explained why she continues to recommend that the Commission adopt ArMA's proposal. She also recommended that the Commission consider establishing a task force to look at medical cost drivers to ensure that the issue is viewed from a global perspective.

In response to a question from Ms. Strickler, Ms. McGrory explained the current methodology and the impact of the ArMA proposal on that methodology. Ms. Strickler expressed concern about the ArMA methodology and questioned whether, if adopted, this change in methodology would apply to codes reviewed in the future. Ms. McGrory stated that would be up to the Commissioners to decide and she explained options available to the Commission in this regard. Mr. Parker stated he appreciated SCF's balanced response to follow the methodology proposed by ArMA for a particular set of codes, and to wait and see what happens in the future regarding the need to revisit the issue for other codes. He also appreciated ASIA's comment regarding the public process and stated that he liked idea of a task force to identify cost drivers. Chairman Delfs stated that he agreed with Mr. Parker's comments. The Commission continued to discuss the proposed methodology and whether it should apply to just the codes currently under review. They also discussed medical cost drivers in Arizona and whether there was any value to the establishment of a task force to look at this issue.

Chairman Delfs asked if Mr. Older had any comments to make. Mr. Older restated the position of ArMA and stated that he would support a decision to adopt ArMA's proposal for only the values currently under review and to continue to evaluate the methodology to be used in the future. The Commission unanimously agreed to apply the ArMA proposal to only the codes currently being reviewed, which values are set forth in staff's memo dated June 29, 2011, on motion of Mr. Parker, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

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

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

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

Discussion & Action regarding Establishment of Public Forum and Scheduling of Informal Public Hearings regarding Residential Fall Protection

Ms. McGrory advised that as a follow-up to the action recently taken by the Commission to stay enforcement of the December 2010 residential fall protection directive issued by Federal OSHA, staff is working on the development of a public process to receive additional public input and comment on the residential fall protection issue. She then recommended that the Commission hold public hearings to accept testimony and documentary material on this issue. She suggested that the Commission schedule a full day in Phoenix and a full day in Tucson and that 30 days' notice of the hearings be given. She outlined the associated timeframes and stated that the goal is to have the public process completed by the 16th of September. Thereafter, the

Commission will have the opportunity to review the information received and may take action with regard to the stay that was previously implemented. She stated that an agenda of issues for Commission consideration is being developed and that input has been solicited from some interested parties. A draft notice of informal hearing and statement of issues will be brought back to the Commission at its next meeting. In response to questions from the Commission, Ms. McGrory stated that she would recommend that the record be kept open for a short period of time following the public hearings to allow additional written comment and that testimony at the public hearing limited to 10 or 15 minutes, subject to the discretion of the Chairman. Commissioner Parker explained the Federal process and suggested that parties be requested to submit a written copy of their testimony if their testimony was expected to exceed 10 minutes. The Commission agreed to schedule public hearings for September 6th in Phoenix and September 9th in Tucson and discussed the process. Mr. Parker asked whether ADOSH will provide any information to the Commission as part of the public process. Chairman Delfs stated that he has requested that ADOSH provide to the Commission a historical memo that explains what has happened to date on this issue from a state and federal standpoint, but that does not include any Mr. Parker agreed that this was appropriate. Chairman Delfs invited recommendations. comments from Connie Wilhelm and asked her if she had any comments or concerns with the public process that the Commission discussed and intends to follow. Ms. Wilhelm stated that she had no issues with the process.

Announcements and Scheduling of Future Meetings

Mr. Wade stated that Governor Brewer has issued an Executive Order continuing the moratorium on rulemaking for an additional year.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, July 28th and will begin with the public assessment hearing in the Auditorium.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Laura L. McGrozy, Director

ATTEST:

Teresa Hilton, Commission Secretary