

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Thursday, July 28, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (telephonic)
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Andrew Wade	Acting Director
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Noreen Thorsen	Claims Manager
	David Sosa	Special Fund Monitor
	Sylvia Simpson	Controller
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Kamen Kovatchev	Accounting
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present was Brian Love.

Public Hearing to accept comments and other information regarding the one-half percent assessment under A.R.S. §23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment

Chairman Delfs welcomed interested parties to the public hearing and advised that notice was provided to the public on June 6, 2011 inviting comments. He also advised that the record will close at the conclusion of the hearing. At a later scheduled meeting, the Commission will discuss and may take action on this assessment. A court reporter was present for this agenda item.

Mike Hawthorne addressed the Commission and summarized his report and exhibits. He noted that under A.R.S. §23-1065(F), the Commission is authorized to assess a one-half percent assessment if the total annual reserved liabilities of the Special Fund for apportionment under §23-1065 exceed six million dollars. The tax was previously assessed in calendar years 2005, 2006, 2007, 2010 and 2011 and was discontinued for 2008 and 2009. As of June 30, 2010 the Special Fund liabilities under A.R.S. §23-1065(B) and (C) was \$74.2 million at a confidence level of 75%.

Mr. Hawthorne stated that as of June 30, 2010, the Special Fund net deficit was \$53.3 million. Mr. Hawthorne stated that, in view of the foregoing apportionment liabilities and the net asset deficit of the Special Fund, there is justification and authority to continue the one-half percent assessment under A.R.S. §23-1065(F) for calendar year 2012.

Mr. Hawthorne responded to a question from Ms. Oster regarding the confidence level and Mr. Parker explained the reasoning behind increasing the confidence level last year.

There were no comments from the attendees. Chairman Delfs closed the hearing at 1:10 p.m. The Commission continued with its regularly scheduled meeting.

Approval of Minutes of July 13, 2011 Meeting

The Commission unanimously approved the Minutes of July 13, 2011 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations and Penalties

Powill Manufacturing and Engineering 21039 N. 27 th Avenue Phoenix, AZ 85027	Planned Yrs/Business – 51 Empl. Cov. by Insp. – 97
Site Location: 21039 N. 27 th 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 inspection history in the past three years).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
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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 - \$1,250.00	Formula Amt. - \$1,250.00
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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 - \$ 850.00	Formula Amt. - \$ 850.00
TOTAL PENALTY - \$3,100.00	TOTAL FORMULA AMT. - \$3,100.00

Darin Perkins summarized the citations and proposed penalty as listed. Mr. Perkins explained why Citation 1, Item 3 had a 15% good faith adjustment factor and why Items 1 and 2 did not and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,100.00 on motion of Ms. Oster, second of Mr. Parker.

South Bay Circuits, Inc. 99 N. McKenny Avenue Chandler, AZ 85226	Referral Yrs/Business – 30 Empl. Cov. by Insp. – 47
Site Location: 99 N. McKenny Avenue, Chandler, AZ 85226	
Inspection #: Q8339/315553198	
Insp. Date: 05/03/11	

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 conduct a hazard assessment within the Wet Process to determine the appropriate personal protective equipment necessary to protect employees from chemical hazards associated with copper etching of circuit boards (1910.132(d)(1)).

Item 1b – Employees working near or around the open chemical vats were allowed to wear prescription eye glasses or safety glasses. A review of the Circuposit 3350 electroless copper solution MSDS requires goggles for eye protection (1910.133(a)(1)).

Item 1c – The employer selected latex gloves for employees who work with caustic and acidic copper etching solutions when the MSDS called for neoprene (1910.138(b)).
(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 – The employer had not implemented a written respirator protection program for employees who were potentially exposed to etching chemicals such as ammonia, sulfuric acid and formaldehyde (1910.134(c)(1)).

Item 2b – The employer did not conduct exposure monitoring for employees working with Cuposit “Y” (formaldehyde (1910.1048(d)(1)(i)).

Item 2c – Eye wash stations were not inspected or maintained in a safe, clean, operating condition (1910.1048(i)(3)).

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. He advised that Item 2c should be a separate citation and be identified as Item 3 with a separate penalty of \$1,750.00 and a total proposed penalty of \$5,250.00. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,250.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Total Seal, Inc.
22642 N. 15th Avenue
Phoenix, AZ 85027

Planned
Yrs/Business – 40
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 - \$1,250.00

Formula Amt. - \$1,250.00

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

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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 - \$1,250.00

Formula Amt. - \$1,250.00

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 - \$6,250.00

TOTAL FORMULA AMT. - \$6,250.00

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 \$6,250.00 on motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action of Requests for Lump Sum Commutation

Efrain Gonzalez #20092-810249 - Noreen Thorsen presented this lump sum petition with a recommendation to approve the petition. In support of this recommendation, Ms. Thorsen explained how approving the lump sum commutation would be expected to result in a financial betterment to Mr. Gonzalez and that Mr. Gonzalez recognizes he would forfeit a large amount of the present value of his LEC award if the lump sum is approved. Ms. Thorsen responded to questions from the Commissioners. Following discussion, the Commission approved the lump sum request on motion of Ms. Oster, second of Ms. Strickler. Mr. McCarthy voted nay.

Brian Love #20061-050258 - Noreen Thorsen presented this lump sum petition with a recommendation to approve the petition. In support of this recommendation, Ms. Thorsen explained that it would benefit Mr. Love’s financial situation to pay off some of his existing debt. Ms. Thorsen responded to questions from the Commissioners. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. McCarthy, second of Mr. Parker.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-1649	Alba Investment Group, LLC
2C10/11-1718	Gyro 5, L.L.C. dba Segway of Scottsdale
2C10/11-2023	Joe’s Road Service, LLC
2C10/11-1839	NV Fitness Management, LLC (A Nevada Corporation) dba Xpress Fitness

Andrew Wade advised that he is withdrawing consideration of employer #1839. 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 #1649, 1718 and 2032. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #1649, 1718 and 2032 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion &/or Action regarding Legislation

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

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

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

Discussion & Action regarding Residential Fall Protection including Establishment of Process and Agenda for Informal Public Hearings regarding the same

Mr. Wade summarized staff's draft Notice of Informal Public Hearings, including the purposes of the hearings and the specific issues identified in the draft Notice (Agenda). He noted that the Commission had received correspondence from the Homebuilders' Association of Central Arizona and he explained how the issues identified by the Homebuilders' Association have been incorporated in the Agenda. With respect to some of the information mentioned by the Homebuilders' Association, such as the statistics related to falls and injuries in residential construction, ADOSH is exploring what statistics are available and will supply what it is able to locate prior to the hearings scheduled for early September. At a prior meeting, the Commission decided to anticipate and schedule each hearing for a full day, but the starting time was not discussed. Mr. Wade noted that Staff has placed a starting time of 9:00 a.m. on the draft Agenda for both meetings, the September 6 meeting in Phoenix and the September 9 meeting in Tucson, but the starting times and the other items in the draft Agenda are all subject to Commission approval. The Commission discussed holding the record open for a longer period of time to allow interested parties to submit comments based on what may be addressed during the hearings.

Mr. Perkins stated that the only comments received were those from the Homebuilders' Association. The Commissioners discussed the time frames and extending the close of the record. The Commission unanimously approved the Agenda with a modification to receive comments up to 5:00 p.m. September 16, 2011 and the Commission would receive any supporting documentation to those comments up to 5:00 p.m. on September 20, 2011, on motion of Mr. Parker, second of Mr. McCarthy.

Announcements and Scheduling of Future Meetings

Ms. Oster stated that the Kids' Chance of Arizona is holding its Awards Gala at the Wigwam after the Claims' Seminar on August 12, 2011, and, although the invitation does not mention the cost, it is \$55 per person.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Friday, August 12th and will be held at the Wigwam in conjunction with the Claims' Seminar. The Commissioners also scheduled future meetings for September 14 and 22, 2011.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By Andrew Wade
Andrew Wade, Acting Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary