MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, October 5, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member (telephonic)
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Eda Barolli of Snell & Wilmer; Connie Wilhelm and Jackson Moll of Home Builders' Association; Toni DiDomenico of Toni D & Associates; Jeremy Bethancourt of LeBlanc Building; and Gustavo Portillo of Petersen-Dean Roofing.

Approval of Minutes of September 14, 2011 Meeting

The Commission unanimously approved the Minutes of September 14, 2011, on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action regarding Residential Fall Protection

Laura McGrory briefly summarized the status of the residential fall protection issue and the informal hearings held on September 6, 2011, and September 9, 2011, noting that some interested parties testified that conventional fall protection is feasible and does not create a greater hazard in all phases of residential construction while other interested parties testified that it was not feasible or created a greater hazard. Ms. McGrory also explained the definition of infeasibility as found in the fall protection standards and suggested that the Commission identify the criteria by which infeasibility or greater hazard is determined under the standards. Ms. McGrory recommended that the Commission create a small work group consisting of individuals from some of the affected trades, along with Commission staff, to identify suggested criteria and to make recommendations to the Commission. She also recommended that the stay of enforcement of the December 2010 directive be continued during this process. Because the federal OSHA three month phase-in period has ended and Arizona is now under an obligation to enforce the fall protection standard under the December 2010 directive, Ms. McGrory stated that it is imperative that the Commission move quickly to fulfill its obligations under the state plan authority. Ms. McGrory further recommended that the work group be directed to return to the Commission with their recommendations within the next 30 days. If the Commission agrees to the creation of this work group, staff will contact the Home Builders' and the American Subcontractors' Association for suggestions of individuals from the homebuilders, framers/carpenters, roofers, and other trade groups to participate in the work group. Lastly, Ms. McGrory stated that although the task at hand is difficult, she believes that by working together a

solution can be found that is forward thinking, is responsive to the environment within which the work is being performed, and keeps Arizona employees safe.

Mr. Delfs agreed that the heart of the issue is establishing a state specific interpretation of what is infeasible and that establishing the work group with representatives from the different trades and Commission staff is a great start. He stated that everyone involved must recognize and understand that worker safety is paramount. The Commission also must make sure that employers in other industries, who are not affected by this process, do not suffer, which is what would happen if Arizona's ability to administer the state's OSHA program is imperiled by an appearance that the Commission is stalling or trying to skirt the issue. He reiterated that this is definitely not what the Commission is doing. Mr. Delfs stated that he agreed with the need to move forward quickly, and agreed with continuing the stay of enforcement. He stated that the members chosen for the work group must be willing to compromise and work together to establish a means to protect workers and at the same time not have a devastating economic impact on the homebuilding industry and the state's economy.

Mr. Parker stated that during the hearings, some speakers identified three phases of construction of new homes in which residential fall protection was deemed infeasible; initial framing, roofing, and attic work. Mr. Delfs added that some speakers also identified instances of infeasibility or greater hazard during construction activity on existing homes. Mr. Parker agreed there is also the issue of time of exposure and duration, along with the definition of infeasibility. He also stated that another subject heard consistently at the hearings was whether site specific analyses need to be performed and that the Commission also needs to answer that question. There were also some phasing, policy and process type questions regarding the perceived or actual liability in sharing anchors, scaffolding, etc. which may be outside of the Commission's ability to address and may require future legislative changes. Ms. McGrory responded that it is up to the Commission how much to address at this time with the work group, but that the first step would appear to be the establishing of criteria to determine infeasibility or greater hazard.

Ms. Oster sought to clarify whether Arizona is going to follow the federal compliance directive and if the work group is just to determine the criteria of infeasibility. Ms. McGrory stated that at this point in time she is recommending to the Commission that the stay of enforcement of the new directive continue. The recommendations from the work group will be additional information for the Commission to consider when making the decision regarding enforcement under the new directive. Ms. Oster stated that there is more information and guidance on the federal OSHA website concerning the use of conventional fall protection in residential construction than was presented at the informal public hearings. She noted that employers in other states have devised methods to use conventional fall protection and some of those methods were not mentioned at the hearings. Ms. Oster asked whether the work group members can review this information. Ms. McGrory stated that the Commissioners can ask that the members of the work group look at the material Ms. Oster is referring to on the OSHA website.

The Commission unanimously adopted staff's recommendations and requested that the Director prepare a written scope of work, along with the recommendation of individuals to serve on the work group and have residential fall protection on the agenda for the next meeting on motion of Mr. Delfs, second of Mr. McCarthy.

Lump Sum Commutation Hearing

Adan Martinez #20060-050416 - Present for the lump sum hearing were Mr. Martinez and Deborah Mittleman, attorney for SCF Arizona. A court reporter and language translator were also present. Chairman Delfs opened the hearing with a brief description of the process and identified the issues. The first is whether the request for hearing was timely filed. The second issue, if the Commission deems the request for hearing timely filed, is whether to approve the lump sum commutation request. After being sworn, Mr. Martinez answered questions from Mr. Wade and the Commissioners. In response to a question from the Commission, Ms. Mittleman stated that the SCF Arizona had no objection to the request for hearing being considered timely filed. The Commission unanimously considered the request for hearing timely filed on motion of Mr. Delfs, second of Ms. Strickler.

Mr. Martinez responded to questions from Mr. Wade and the Commissioners concerning his financial status and his current lump sum proposal. Mr. Martinez explained the lump sum commutation would result in a financial betterment. Following discussion, the Commission denied the lump sum request on motion of Mr. McCarthy, second of Ms. Oster. Ms. Strickler and Mr. Delfs voted nay, the motion passed 3 to 2.

The hearing was closed at 2:12 p.m.

Discussion & Action of Proposed OSHA Citations and Penalties

R.C. Taylor, Inc. dba Southwest Partitions — Planned
4600 N. 7th Avenue — Yrs/Business – 33
Phoenix, AZ 85013 — Empl. Cov. by Insp. – 8

Site Location: 3144 W. Lewis Avenue, Phoenix, AZ 85009
Inspection #: U5916/315697409
Insp. Date: 07/13/11

GROUPED SERIOUS – Citation 1 - Item 1a – Shelving that is suspended from the ceiling 8'6" above the floor, that is walked on by employees to store and retrieve stored items, was not marked as to the approved loads (1910.22(d)(1)).

Item 1b – Shelving that is suspended from the ceiling 8'6" above the floor, that is walked on by employees to store and retrieve stored items, was not guarded by standard railings (or equivalent) and toe boards (1910.23(c)(1)).
(No inspection history in the past three years).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 2 – The employer did not establish an adequate energy control program for the location and energy control procedures for specific equipment in order to prevent the unexpected start-up or energization of equipment that could cause injury to an employee performing service or maintenance on the equipment (1910.147(c)(1)).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 3 – Forklifts are operated by operators that are not currently trained (1910.178(l)(1)(i)).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 4 – Two forklifts were not taken out of service for the unsafe conditions of a missing seat belt and an illegible nameplate (1910.178(p)(1)).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 5 – One bench grinder did not have a safety guard installed to cover the spindle end, nut and flange projections on the left side (1910.212(a)(1)).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 6 – One table saw was being operated without the guard in place (1910.213(d)(1)).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 7 – One bench grinder was not equipped with a work rest to support off-hand grinding work (1910.215(a)(4)).
Div. Proposal - $100.00 Formula Amt. - $100.00

SERIOUS – Citation 1 - Item 8 – The compressed air distribution system at the entire site was comprised of polyvinyl chloride pipe (PVC) (R205.628(A)).
Div. Proposal - $ 300.00 Formula Amt. - $ 300.00
TOTAL PENALTY - $4,900.00 TOTAL FORMULA AMT. - $4,900.00

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 $4,900.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Yulex Corporation
6744 W. Germann Road
Chandler, AZ 85226-9704

Complaint
Yrs/Business – 8
Empl. Cov. by Insp. – 12

Site Location: 37860 W. Smith Enke Road, Maricopa, AZ 85138
Inspection #: N9589/315697375
Insp. Date: 07/13/11

SERIOUS – Citation 1 - Item 1 – A metal platform 7'5" above the lower level was not guarded with standard railings and toeboards (1910.23(c)(1)).
(No inspection history in the past three years)
Div. Proposal - $700.00 Formula Amt. - $700.00

SERIOUS – Citation 1 - Item 2 – Procedures to control all sources of hazardous energy during repair and/or maintenance of the hammer mill were not documented (1910.147(c)(4)(i)).
Div. Proposal - $875.00 Formula Amt. - $875.00

SERIOUS – Citation 1 - Item 3 – The paddle washer contained two rotating screw-type paddle mounted shafts within the machine that were not adequately guarded (1910.212(a)(1)).
Div. Proposal - $875.00 Formula Amt. - $875.00

SERIOUS – Citation 1 - Item 4 – The horizontal drive shaft located on the south side of the machine and 50" above the floor was not protected by stationary casings (1910.219(c)(2)(i)).
Div. Proposal - $875.00 Formula Amt. - $875.00

SERIOUS – Citation 1 - Item 5 – Vertical belts 6'5" above ground were not enclosed by guards (1910.219(e)(3)(i)).

Div. Proposal - $ 875.00 Formula Amt. - $ 875.00
TOTAL PENALTY - $4,200.00 TOTAL FORMULA AMT. - $4,200.00

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 $4,200.00 on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C11/12-0036	Ace Pallets, Inc.
2C11/12-0041	Baltazar Colmenero & Esperanze Colmenero, H&W, dba Baltazar Pallets
2C11/12-0043	Del Colorado Pallets, L.L.C.
2C11/12-0044	EE Pallet Supply, L.L.C.
2C11/12/0045	Encino Pallets, L.L.C.
2C11/12-0067	Fernando Rivas & Lourdes Rivas, H&W dba Rivas Pallets
2C11/12-0048	Glendale Pallets, L.L.C.
2C11/12-0049	Guerrero's Pallets, L.L.C.
2C10/11-1956	Moceri & Son, L.L.C. dba Deluxe Cleaners
2C11/12-0065	Ruby Pallets, L.L.C.
2C11/12-0302	Asadero Mexican Food, LLC
2C10/11-0696	Apartment Movers, Inc.
2C10/11-1647	Bruce Paul Gorman & Leann Marie Gorman, H/W dba All About Towing aka All About Auto Service and Towing
2C10/11-1414	G.D. and Sons Construction, LLC
2C10/11-1713	Icon Payment Solutions, Inc.
2C10/11-2099	J & B Assisted Living, Inc.
2C10/11-1864	Maxicare Home Health, Inc.
2C10/11-0686	Phoenix Falcons Fencing Club, Inc.
2C10/11-1472	Piedra Fria Incorporated dba Coldstone Creamery
2C09/10-2930	Smith Trucking, Inc. (A Minnesota Corporation)
2C10/11-0333	Southwest Auto Glass, LLC
2C10/11-0698	The Latham Consolidated Companies, L.L.C. dba TL Consolidated Painting Company
2C10/11-1052	RJ & J, L.L.C. dba Bojangles
2C09/10-2906	Tobacco World, LLC
2C11/12-0300	Wintenamerica Gilbert, 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), he recommended reduced civil penalties of $500.00 be assessed against employers #0045 and 0067 since they have recently obtained insurance. He is further recommending penalties of $1,000.00 be assessed against each of the remaining employers. 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 $500.00 against employers #0045 and 0067 and civil penalties of $1,000.00 against employers #0036, 0041, 0043, 0044, 0048, 0049, 1956, 0065, 0302, 0696, 1647, 1414, 1713, 2099, 1864, 0686, 1472, 2930, 0300, 0698, 1052, 2906 and 0300 on motion of Mr. McCarthy, second of Ms. Strickler.

Announcements and Scheduling of Future Meetings

Ms. McGrory stated that there will be a change in the future format of the Commission meeting agenda. She explained that items that do not need discussion will be bundled in a Consent Agenda and voted on in one motion. If any of the Commissioners wishes to discuss an item, it can be pulled from the Consent Agenda. Ms. McGrory also stated that Scot Butler will be at next week's meeting to discuss whether there will be a need for a legislative stakeholder's meeting this year.

Ms. McGrory stated that agenda items for next week's meeting will include the State minimum wage for 2012 and the setting of assessment tax rates for 2012.

Ms. Hilton reminded the Commissioners that the next Commission meeting is scheduled for Thursday, October 13th. The Commission also scheduled additional meetings for Thursday, October 27th, Thursday, November 10th and Wednesday, November 30th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Laura L. McGrory, Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary