

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street  
Conference Room 308

Phoenix, Arizona 85007

Thursday, November 10, 2011 – 1:00 p.m.

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

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Eda Barolli of Snell & Wilmer.

Approval of Minutes of October 13 and 27, 2011 Meetings

The Commission approved the Minutes of October 13, 2011 on motion of Mr. McCarthy, second of Mr. Parker. Ms. Oster abstained. The Commission approved the Minutes of October 27, 2011 on motion of Ms. Oster, second of Ms. Strickler. Mr. Parker and Mr. McCarthy abstained.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C10/11-0237 Arizona Tenants Advocates, Inc.
  2. 2C10/11-1852 Creamy Shimmy, L.L.C. dba  
Coldstone Creamery #624
  3. 2C10/11-1799 FSX3, Inc. dba Fly-N-Hi Total Performance
  4. 2C10/11-0215 Glenda A. Woods, ASW & Shelia Puryer, ASW  
dba The White House Group Home
  5. 2C10/11-0676 Goodyear Glass & Mirror, LLC
  6. 2C10/11-1882 Ocean Blue Pool and Spa Service & Repair, Inc.  
dba Botanical Oasis
  7. 2C11/12-0437 Sierra Blanca Rehabilitation, L.L.C.
  8. 2C09/10-1377 White Mountain Transmissions, L.L.C.
  9. 2C10/11-1899 The Giving Tree Outreach Program, Inc.

Chairman Delfs asked if any of the listed items needed to be removed from the consent agenda. Secretary Hilton confirmed with Mr. Wade that none of the items needed to be removed

from the consent agenda. The Commission unanimously assessed the recommended civil penalties of \$1,000.00 against the listed employers on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Reliant Holdings, Ltd. dba Reliant Processing, Ltd.  
38575 W. Cowtown Rd.  
Maricopa, AZ 85239

Accident  
Yrs/Business - 3  
Empl. Cov. by Insp. - 5

Site Location: 38575 W. Cowtown Rd., Maricopa, AZ 85239  
Inspection #: A9339/315697029  
Insp. Date: 06/24/11

SERIOUS WILLFUL - Citation 1 - Item 1 - There were no point of operation guards installed on the SR-1 hydraulic power press (1910.212(a)(3)(ii)). There were two other instances of this violation.

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

Div. Proposal - \$35,000.00                      Formula Amt. - \$35,000.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. He explained the reason for the willful classification and stated that the Legal Department has reviewed this file and concurs with the willful classification. The Commissioners and staff discussed the willful classification and the application of adjustment factors. Mr. Parker made a motion to assess the recommended penalty of \$35,000.00 which was seconded by Ms. Oster. Ms. McGrory described two approaches to the willful classification; intentional disregard and plain indifference. Following further discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$35,000.00.

Lee's Pipelines, Inc.  
435 S. Hamilton Court  
Gilbert, AZ 85233

Complaint  
Yrs/Business - 14  
Empl. Cov. by Insp. - 3

Site Location: 3045 E. Riggs Rd., Chandler, AZ 85249  
Inspection #: I7163/316073113  
Insp. Date: 09/28/11

SERIOUS - Citation 1 - Item 1 - One employee was not instructed in the recognition and avoidance of hazards associated with trenching and excavation work (1926.21(b)(2)).

(No inspection history in the past three years)

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 2 - The competent person at the jobsite did not conduct daily inspections of the excavation (1926.651(k)(1)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 - Three employees were working in a 7' deep, 8' wide and 30' long excavation that was lacking an adequate protective system installed to prevent a collapse (1926.652(a)(1)).

Div. Proposal - \$1,250.00                      Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

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 \$3,750.00 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action regarding Application for New Employment Agency License

Randall Maruca stated that Maral Jorjani on behalf of Jani Model Management LLC has applied for an employment agency license. He advised that this is a new agency and stated that the Labor Department has conducted an investigation as required by the rules, and the Employment Advisory Council has recommended approval of the Agency License application. The Commission unanimously granted the license on motion of Ms. Oster, second of Mr. Parker.

Discussion & Action of Proposed Youth Employment Penalties

CL 1112-0009 Nello's 2, Inc. dba Nello's Pizza – Mr. Maruca advised that this case involved a 16 year old youth who was employed as a pizza maker and operated a power driven dough roller in violation of A.R.S. § 23-231. The youth sustained an injury to the left hand finger. Mr. Maruca stated that due to the language of the statute, he consulted with both Legal and ADOSH to verify that the machine would be considered a power-driven bakery machine. In response to a question from Mr. Parker, Mr. Maruca read the statutory definition of a power-driven bakery machine that included examples. Mr. Parker agreed that he was comfortable that the piece of equipment would fall under the statute. The Commission unanimously assessed the recommended penalty of \$420.00 on motion of Mr. Parker, second of Mr. McCarthy.

CL 1112-0008 Bashas' Inc. – Mr. Maruca explained that the case involved a 17 year old grocery store courtesy clerk who was helping clean a power-driven bakery machine that makes tortillas when he sustained an injury to the right wrist. Mr. Maruca explained how the youth's employment violated A.R.S. § 23-231. Mr. Parker questioned whether there was also a lockout/tagout issue and requested that Mr. Maruca refer the file to ADOSH for review. Following further discussion, the Commission assessed the recommended penalty of \$420.00 on motion of Mr. Parker, second of Ms. Oster. Mr. McCarthy recused himself from discussion and did not vote.

CL 1112-0007 Quality Fast .... Foods! Company – Mr. Maruca stated that this case involved a 15 year old youth who was employed as a restaurant food preparer and cashier. He operated the oven and fryers while preparing food and sustained a minor burn on the upper left arm while removing a cooking tray from a hot oven. Mr. Maruca explained how this youth's employment violated A.R.S. § 23-232. Following discussion, the Commission assessed the recommended penalty of \$800.00 on motion of Ms. Oster, second of Mr. Parker.

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

Ms. McGrory stated there was nothing new to report regarding the budget. Ms. McGrory asked if the Commissioners wanted routine employment agency license application or child labor matters placed on the consent agenda. There being no objection, Chairman Delfs stated

that consideration of employment agency license applications be placed on the consent agenda and that proposed child labor penalties should be left as a separate item.

Discussion &/or Action regarding Legislation

Ms. McGrory described meetings she had been involved in with certain members of the Legislature this week.

Announcements and Scheduling of Future Meetings

Chairman Delfs announced that he has been notified that the Governor's Office has appointed a replacement for his position. He stated that he has enjoyed serving on the Commission and will continue to serve until the new appointee is confirmed. He stated that his biggest goal is to get the residential fall protection issue resolved before he leaves.

Ms. McGrory advised that Mr. Maruca will be interviewed by Channel 15 News next Tuesday for Consumer Watch regarding the unpaid wages statute.

Ms. Hilton reminded the Commissioners that the next Commission meeting is scheduled for Wednesday, November 30<sup>th</sup> and that there are also meetings scheduled for December 8<sup>th</sup> and 15<sup>th</sup>.

Discussion & Action regarding Residential Fall Protection

Mr. Perkins provided the Commissioners with a copy of Federal OSHA's response to ADOSH's request to extend the period for filing a response to the CASPA (Complaint Against State Plan Administration) related to enforcement of the residential fall protection standard. Mr. Perkins stated that Federal OSHA has denied the request for additional time and they have stated that they are moving forward with their investigation. Chairman Delfs asked if the residential fall protection workgroup was aware of the CASPA. Ms. McGrory responded that the workgroup has been informed that the CASPA has been filed. She stated that the group has one more meeting scheduled. She stated the workgroup has made progress and hopes a consensus can be reached so that the workgroup can present its suggestions to the Commission. Mr. Delfs reiterated that the Commission is not relinquishing any authority and will make a decision at the Commission level. Ms. McGrory stated that it was made clear at the last meeting that the Commission intended to take action on November 30<sup>th</sup> and will make a decision with or without the workgroup's input.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
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Teresa Hilton, Commission Secretary