

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Auditorium  
Phoenix, Arizona 85007  
Wednesday, November 30, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member (telephonic)
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Noreen Thorsen	Claims Manager
	Renee Pastor	Self Insurance Manager
	Stephen Ball	Legal Counsel
	Kathryn Harris	Legal Counsel
	William Wright	Asst. Director, ADOSH
	Bill Cooper	ADOSH
	Katherine Gosiger	ADOSH
	Randall Maruca	Director, Labor Dept.
	Michael Hawthorne	Chief Financial Officer
	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 in attendance was Jason Weber of Snell & Wilmer; Connie Wilhelm and Jackson Moll of Homebuilders Association; Jeremy Bethancourt of LeBlanc Building; and Toni DiDomenico of Toni D. and Associates.

Approval of Minutes of November 10, 2011 Meeting

The Commission unanimously approved the Minutes of November 10, 2011 on motion of Mr. Parker, second of Ms. Oster.

Discussion &/or Action regarding Residential Fall Protection

Darin Perkins presented a summary of the status of the December 2010 compliance directive, informal public hearings held in Phoenix and Tucson, and the efforts and recommendations of the Arizona Residential Fall Protection Workgroup. Mr. Perkins described ADOSH's recommendations which include approving the Workgroup's recommendations regarding the criteria that may be used to determine technological infeasibility and greater hazard, lifting the stay of enforcement of the December 2010 compliance directive, and implementing a 90-day phase in period. He also recommended that ADOSH consultation provide higher priority to requests for consultation requests regarding residential fall protection during the 90-day phase in period. Mr. Perkins' prepared remarks and details regarding the

recommendations are attached to these Minutes. Mr. Parker and Mr. Delfs thanked Mr. Perkins and Mr. Delfs called for public comments. There were no comments from the public and no requests to speak. Mr. Delfs read aloud the November 29, 2011 letter received from the Arizona Housing Association. Mr. Parker stated he was impressed with the leadership of the Workgroup. The Commission unanimously approved the recommendations of the workgroup regarding the criteria to determine technological infeasibility and greater hazard, such recommendations shall become the foundation for ADOSH enforcement guidance under the residential fall protection standard on motion of Mr. Parker, second of Ms. Oster. The Commission unanimously agreed to lift its stay of enforcement of the December 2010 directive, effective January 1, 2012 in recognition that the workgroup's recommendations provide clearer direction with regard to how determinations of technological infeasibility or greater hazard may be made, on motion of Mr. Parker, second of Ms. Strickler. The Commission unanimously established a 90 day phase-in period following the January 1, 2012, effective date on motion of Mr. Parker, second of Ms. Strickler. The motion further stated that during this period of time, if an employer is inspected by ADOSH and asserts that conventional fall protection is technologically infeasible or creates a greater hazard, then ADOSH will give the employer 30 days to provide the written documentation required, if any, under the criteria developed by the workgroup. If no documentation is provided to ADOSH within 30 days, or the documentation provided is deemed inadequate, then ADOSH will conclude that the employer has not met its initial burden to demonstrate that the use of conventional fall protection is technologically infeasible or creates a greater hazard and appropriate citations will be issued. Additionally, during this period, ADOSH will give higher priority to consultation requests regarding residential fall protection. Lastly, Mr. Parker proposed that in recognition that the workgroup did not reach a consensus on the issue of economic infeasibility, but did address economic concerns through the other criteria agreed upon, that the Commission take no action at this time on economic infeasibility. There was no objection to this proposal.

Chairman Delfs reaffirmed his appreciation to the staff members and all of those who worked together on this very important issue. Mr. Delfs stated that the approach was well reasoned. Noting that the Commission held two days of hearing and that the workgroup was comprised of some of the best, most knowledgeable stakeholders in the State of Arizona on the issues, he stated that the leadership was admirable, with the stakeholders coming together to find a win/win solution that was reported back to the Commission. He stated that the Commission has also performed its duty in giving this issue the due process that it deserved and by spending the time and the energy that was required to visit all of these issues. Through the cooperative efforts of all involved, he expressed that Arizona has taken a leadership role on this issue and that other states around the nation are watching this process here in Arizona. He further stated that the issue was addressed through sober and steady judgment and a dogged determination to protect both the employees and the employers in the State of Arizona. Acknowledging that Arizona did not alter the federal OSHA standard and stayed within the State's scope of authority, he stated that the Commission found a way to work within the rules to make sure that the employees and the employers in the State of Arizona are at a better place than they were at the beginning of this discussion. Mr. Delfs stated that, again, he would like to thank everyone, the Director, the Director of ADOSH, and all of the others who came to the table to work through this process and find a reasonable solution.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C10/11-1889 Advanced Care Gastroenterology, P.C.
2. 2C10/11-1931 Almost Famous Talent Firm, L.L.C.
3. 2C10/11-1929 Angelica's Record Distributors, Inc.
4. 2C11/12-0008 Beautiful Beginnings Assisted Living Home, L.L.C.
5. 2C10/11-1381 G.J. Productions, LLC dba Dark Scares
6. 2C09/10-1024 Nizhoni Transportation, Inc.  
(A New Mexico Corporation)
7. 2C10/11-2053 Outlaw Cattle Company, L.L.C.
8. 2C11/12-0922 RJ & J, L.L.C. dba Bojangles

b. Approval of Requests for Renewal of Self Insurance Authority

1. ConAgra Foods, Inc.
2. Honeywell International, Inc.
3. Parker Hannifin Corporation
4. The Procter & Gamble Company

Chairman Delfs asked if any of the listed items needed to be removed from the consent agenda. Secretary Hilton stated that employers ending in #'s 1889, 1929 and 1381 needed to be removed from the consent agenda for proposed civil penalties.

The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Parker, second of Mr. McCarthy. Mr. Wade advised that Advanced Care Gastroenterology, P.C., Angelica's Record Distributors, Inc., and G.J. Productions, LLC dba Dark Scares have recently obtained workers' compensation insurance and he is recommending civil penalties in a reduced amount of \$500.00 for each of these employers. The Commission unanimously assessed civil penalties of \$500.00 against employers #1889, 1929 and 1381 on motion of Ms. Strickler, second of Ms. Oster

Discussion & Action of Proposed OSHA Citations and Penalties

Nexus Steel, LLC  
1505 E. Weber Drive, Suite 104  
Tempe, AZ 85281

Fatality/Accident  
Yrs/Business - 5  
Empl. Cov. by Insp. - 40

Site Location: 3740 S. Signal Butte Rd., Mesa, AZ 85281  
Inspection #: L3419/315978270  
Insp. Date: 09/15/11

**SERIOUS** - Citation 1 - Item 1 - The panelized joist system was not attached to the structure at each corner before the hoisting cable was released. (1926.757(b)(4)).

(Two inspections with no violations in the past three years.)

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to

questions from the Commissioners. He advised the first three case files are related and explained each employer's role. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,000.00 on motion of Mr. Parker, second of Ms. Oster.

M + W U.S., Inc.  
4710 E. Elwood Street, Suite 9  
Phoenix, AZ 85040

Unprogrammed Related  
Yrs/Business - 10  
Empl. Cov. by Insp. - 21

Site Location: 3740 S. Signal Butte Rd., Mesa, AZ 85212  
Inspection #: L3419/315978288  
Insp. Date: 09/15/11

SERIOUS - Citation 1 - Item 1 - The panelized joist system was not attached to the structure at each corner before the hoisting cable was released. (1926.757(b)(4)).  
(No inspection history in the past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Mr. Perkins summarized the citation 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 \$5,000.00 on motion of Mr. Parker, second of Ms. Oster.

McShane Construction Company LLC  
3131 E. Camelback Rd., Suite 200  
Phoenix, AZ 85016

Unprogrammed Related  
Yrs/Business - 25  
Empl. Cov. by Insp. - 5

Site Location: 3740 S. Signal Butte Rd., Mesa, AZ 85212  
Inspection #: L3419/315978296  
Insp. Date: 09/15/11

SERIOUS - Citation 1 - Item 1 - The panelized joist system was not attached to the structure at each corner before the hoisting cable was released. (1926.757(b)(4)).  
(No inspection history in the past three years.)

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$5,000.00 on motion of Mr. Parker, second of Ms. Strickler.

Siemens Industry, Inc.  
4025 E. Cotton Center Blvd., Suite 200  
Phoenix, AZ 85040

Fatality  
Yrs/Business - 13  
Empl. Cov. by Insp. - 5

Site Location: 510 S. 3<sup>rd</sup> Avenue, Phoenix, AZ 85003  
Inspection #: N4762/315658161  
Insp. Date: 06/13/11

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 1a – The employer did not evaluate if the space inside the Trane Air Handler Unit from the air filter area to the electric duct heater coils, was a Permit-Required Confined Space (1910.146(c)(1)).

Citation 1 - Item 1b – Siemens Industry, Inc. did not obtain any available information regarding permit space hazards and entry operations from APS Energy Services Company, Inc. (1910.146(c)(9)(i)).

(No inspection history in the past three years).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – An employee was not provided with Permit-Required Confined Space training for the safe performance of his assigned duties while working on the Trane Air Handler Unit (1910.146(g)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 3 – Two employees were not provided with safety-related work practices training pertaining to their respective job assignments (1910.332(b)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 4 – An employee had not de-energized the electric duct heater in the Trane Air Handler Unit before the employee worked near the exposed energized duct heater coils (1910.333(a)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 5 – One employee was not provided with and did not use protective shields, protective barriers, or insulating materials designed to protect employees while working on or near energized equipment (1910.333(c)(5)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 6 – Employees were not provided with adequate personal protective equipment designed to protect employees while working on or near energized equipment (1910.335(a)(1)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$27,750.00

TOTAL FORMULA AMT. - \$27,750.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for items 4, 5 and 6 was for the gravity based penalty with no adjustment factors since the violations directly contributed to the fatality. Mr. Parker questioned whether item 3 should also be assessed the gravity based penalty. Mr. Perkins agreed that items 1, 2 and 3 could be considered as contributing to the fatality. Ms. Strickler asked which entities had obligations related to the confined space and de-energizing. Mr. Perkins responded to the question. Following further discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$27,750.00 on motion of Ms. Strickler, second of Mr. Parker.

APS Energy Services Company, Inc.  
60 E. Rio Salado Pkwy, Suite 100  
Tempe, AZ 85281-9501

Unprogrammed Related  
Yrs/Business - 13  
Empl. Cov. by Insp. - 25

Site Location: 510 S. 3<sup>rd</sup> Avenue, Phoenix, AZ 85003  
Inspection #: N4762/315658153  
Insp. Date: 06/13/11

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 evaluate if the space inside the Trane Air Handler Unit from the air filter area to the electric duct heater coils, was a permit-required confined space (1910.146(c)(1)).

Citation 1 - Item 1b - Employees did not obtain any available information regarding permit space hazards and entry operations (1910.146(c)(9)(i)).  
(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 2 - The General Contractor did not apprise the subcontractor's employees of the electrical hazards inside of an unidentified Permit-Required Confined Space involving the Trane Air Handler Unit (1910.146(c)(8)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 3 - An employee was not provided with Permit-Required Confined Space training for the safe performance of his assigned duties while working near the Trane Air Handler Unit (1910.146(g)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 4 - An employee was not provided with safety-related work practices training pertaining to his respective job assignment (1910.332(b)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1 - Item 5 - APS Energy Services Company, Inc. did not have a subcontractor's employee de-energize the electric duct heater in the Trane Air Handler before the subcontractor's employee worked on or near the exposed energized duct heater coils (1910.333(a)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1 - Item 6 - APS Energy Services Company, Inc. did not have a subcontractor's employee use protective shields, protective barriers, or insulating materials designed to protect the subcontractor's employee while working near energized equipment (1910.333(c)(5)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

TOTAL PENALTY - \$19,000.00

TOTAL FORMULA AMT. - \$19,000.00

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 \$19,000.00 on motion of Ms. Strickler, second of Mr. Parker.

Ironwood Door & Moulding, Inc.  
4228 N. 39<sup>th</sup> Avenue  
Phoenix, AZ 85019

Complaint  
Yrs/Business - 8  
Empl. Cov. by Insp. - 20

Site Location: 4228 N. 39<sup>th</sup> Avenue, Phoenix, AZ 85019  
Inspection #: Y5457/31598262  
Insp. Date: 09/15/11

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 worksite lacked a safe means of exit in case of a fire or other emergency that would ensure employee safety (1910.36(b)(1)).

Citation 1 - Item 1b - The front door was kept locked during working hours (1910.36(d)).

Citation 1 - Item 1c - Showroom; An exit was not adequately marked by a readily visible "Exit" sign (1910.37(b)(2)). There was another instance of this violation (No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$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 - A portable fire extinguisher was not mounted or visible so that it was readily accessible without subjecting the employees to injuries (1910.157(c)(1)). There were three other instances of this violation.

Citation 1 - Item 2b - All portable fire extinguishers throughout the facility had not been subjected to a monthly inspection (1910.157(e)(2)).

Citation 1 - Item 2c - The employer did not provide an educational program to employees to familiarize them with the usage of fire extinguishers and the hazards involved with incipient stage firefighting (1910.157(g)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS - Citation 1 - Item 3 - Employees were operating the sit-down forklift, without formal training and certification (1910.178(l)(I)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 4 - An employee was operating a forklift with defects; (i.e., missing seatbelt) and had not been withdrawn from service until restored to safe operating condition (1910.178(p)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – A fan did not have a guard over the blades (1910.212(a)(5)).

Div. Proposal - \$750.00

Formula Amt. - \$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 6a – A 10” table saw was lacking a hood guard (1910.213(c)(1)). There was another instance of this violation.

Citation 1 - Item 6b – A 10” table saw was lacking a spreader to prevent material from being thrown back on the operator (1910.213(c)(2)). There was another instance of this violation.

Citation 1 – Item 6c – A 10” table saw was lacking non-kickback finger or dogs (1910.213(c)(3)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 7 – Employees are using a vertical band-saw and did not adjust the blade guard to the thickness of the material being cut (1910.213(i)(1)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 8 – A shaper was lacking a guard to prevent accidental contact with the rotating parts (1910.213(m)(1)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 9 – A joiner was lacking a guard that returned automatically to cover the rotating blade (1910.213(n)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 10 – An edge sander was lacking a guard at each nip point where the sanding belt ran onto a pulley, to prevent the operator’s hands or fingers from coming into contact with nip points (1910.213(p)(4)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 11 – A miter saw automatic blade-guard was prevented from covering the blade to prevent accidental contact (1910.213(r)(4)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 12 – A edge sander did not have the drive belt guarded and the pulleys completely enclosed to prevent accidental contact with rotating parts (1910.219(e)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 13 – A wide belt sanding machine did not have the vertical drive belt guarded and the pulleys completely enclosed to prevent accidental contact with rotating parts (1910.219(e)(3)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00



SERIOUS – Citation 1 - Item 14 – A 120/240 volt electrical panel was lacking at least one circuit breaker and/or blank-out cover, leaving a 2” opening (1910.305(b)(1)(ii)). There were six other instances of this violation

Div. Proposal - \$ 750.00  
TOTAL PENALTY - \$10,200.00

Formula Amt. - \$ 750.00  
TOTAL FORMULA AMT. - \$10,200.00

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 \$10,200.00 on motion of Ms. Oster, second of Mr. Parker.

B&K Ables Enterprises, Inc.  
2981 E. Adams Street  
Phoenix, AZ 85901

Planned  
Yrs/Business – 25  
Empl. Cov. by Insp. – 3

Site Location: 2981 E. Adams Street, Phoenix, AZ 85901  
Inspection #: N4762/315658120  
Insp. Date: 06/08/11

SERIOUS – Citation 1 - Item 1 – An overhead storage area, approximately 10’ wide by 15’ long and 10’ above the floor, did not have a standard guardrail system installed to prevent a fall to the floor below (1910.23(c)(1)). There was another instance of this violation.  
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

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

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – The employer did not instruct each powered industrial truck operator in the safe operation of such equipment (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – The forklift did not have a seat belt installed for the operator to use (1910.178(p)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – A lathe did not have the chuck guarded to protect the operator from placing any part of his body into the danger zone during the operating cycle (1910.212(a)(1)). There were four other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6 – The grinder was missing the electrical switch cover, thereby exposing employees to contact with energized electrical parts (1910.303(g)(2)(i)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 7 – The compressed air distribution system in the building was

comprised of polyvinyl chloride pipe, including some service drops (A.A.C. RR20-5-628).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$4,800.00

TOTAL FORMULA AMT. - \$4,800.00

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 \$4,800.00 on motion of Ms. Oster, second of Mr. Parker.

#### Discussion & Action of Request for Lump Sum Commutation

David Quebedeaux #90068-031920 - Noreen Thorsen presented this lump sum petition with a recommendation to approve the petition. In support of this recommendation, Ms. Thorsen explained that approving the lump sum commutation would allow Mr. Quebedeaux to purchase a vehicle with a lift and equipment and miscellaneous items to assist him in everyday living. Mr. Parker commented that normally the Commission considers economic betterment before approving a lump sum but that he views this situation as a quality of life issue as well and that the lump sum would improve Mr. Quebedeaux's quality of life. The Commission unanimously approved the lump sum request on motion of Ms. Oster, second of Mr. Parker.

#### Discussion & Action of Application for Self Insurance Authority

University of Arizona Health Network - Renee Pastor presented staff's report, which included an analysis of financial information and current credit rating and responded to questions from the Commissioners. Ms. Pastor stated that Administration is recommending approval of workers' compensation self-insurance authority based on the submission of a complete and satisfactory application, the filing of \$2,702,246 in U.S. Treasury Notes as a statutory deposit, a clean audit report, the Network's stability and profitability, and acceptable bond and credit ratings. Following discussion, the Commission unanimously granted self-insurance authority effective January 1, 2012, on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action regarding Requests for Renewal of Self Insurance Authority. The Commission may move into Executive Session under A.R.S. 38-431.03(A)(2) to discuss records exempt by law from public inspection. 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.

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Prudential Overall Supply Company - The Commissioners agreed that an Executive Session was not necessary since they had thoroughly reviewed the previously provided financial information. Rene Pastor presented staff's renewal report along with current Dunn and Bradstreet credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability; \$598,614 in U.S. Treasury Notes as a statutory deposit; acceptable credit rating scores and a clean audit report. The Commission unanimously granted continuance of self-insurance authority 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.

Discussion &/or Action regarding Legislation

Ms. McGrory stated there was nothing new to report.

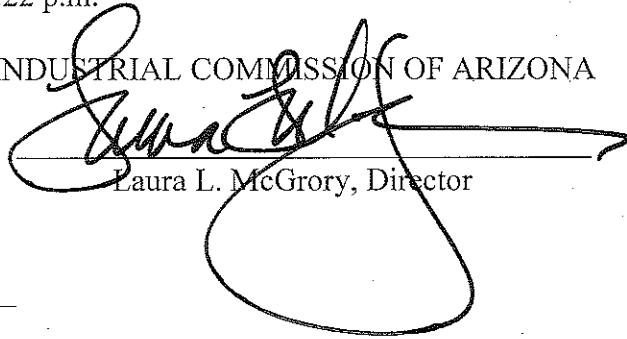
Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next Commission meeting is scheduled for December 8<sup>th</sup> and will begin with the stakeholders' meeting in the Auditorium. There is also a meeting scheduled for December 15<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:22 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



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Laura L. McGrory, Director

ATTEST:

Teresa Hilton  
Teresa Hilton, Commission Secretary

November 30, 2011

Good afternoon, Mr. Chairman and members of the Commission.

I would like to present to you the recommendations of the residential fall protection workgroup, together with ADOSH's recommendations regarding the enforcement of OSHA's residential fall protection directive. However, before doing so, I want to offer some background information as well as some information regarding the efforts of the Arizona residential fall protection workgroup.

Construction fall protection requirements have been in place for many years. The current fall protection construction standards were promulgated by federal OSHA and adopted by ADOSH on August 28, 1996. Those standards include the requirement that employees in residential construction exposed to a fall hazard of six feet or more be provided with conventional fall protection, meaning a guardrail, safety net, or personal fall arrest system. Following the adoption of these standards in the mid-90's, and in response to the concerns expressed by the residential home building industry, OSHA issued its directive – *Interim Fall Protection Compliance Guidelines for Residential Construction* – in the mid-90's. That guidance document was cancelled on June 18, 1999, and replaced with OSHA's Directive: *Plain Language Revision of OSHA Instruction STD 3.1*. These compliance directives provided residential construction employers with a presumption of infeasibility regarding the use of conventional fall protection in residential or "residential-like" construction. Additionally, residential contractors were no longer required to have a written fall protection plan, nor were they required to document why conventional methods were infeasible.

ADOSH did not adopt the 1999 directive. As a result, with the exception of determinations of infeasibility, ADOSH enforced the residential fall protection standard as written, including the requirement that an employer develop and implement a fall protection plan that included a statement of infeasibility. Consistent, however, with the presumption of infeasibility set forth in the OSHA directive, ADOSH accepted an employer's determination of infeasibility as set forth in its written fall protection plan.

After many years, federal OSHA concluded that technological advancements had all but eliminated the once widely-held belief that fall protection in residential construction is infeasible. In recognition of the feasibility of using conventional fall protection, federal OSHA issued a new compliance directive on December 16, 2010 and canceled its prior interim directive addressing residential fall protection. Arizona adopted the December 2010 directive with an effective date of June 16, 2011. On June 9, 2011, federal OSHA announced that it would implement a three-month phase-in period to allow additional time for employers to comply with the December directive. On June 16, 2011, the Commission determined that it would be appropriate to stay its enforcement of the new directive and to continue to enforce the fall protection standards as it did prior to the new directive. The Commission also decided to hold informal public hearings to receive additional information regarding the use of conventional fall protection in residential construction.

Public hearings were held on September 6, 2011, and September 9, 2011, in Phoenix and Tucson respectively. Following the hearings, the Commission established the Arizona Residential Fall

Protection Workgroup consisting of representatives from the residential construction community. The Commission directed the workgroup to identify criteria that could be considered by ADOSH and the industry when making determinations of infeasibility or greater hazard under 29 CFR 1926.502(b) (13). The Commission also directed that recommendations made by the workgroup with regard to the establishment of these criteria be by consensus.

The workgroup met throughout the months of October and November of this year. The members worked hard to reach a consensus on the issues presented. While a consensus was not reached on all issues, I am happy to report that a consensus was reached on the issues that I believe were the most critical. Specifically, the workgroup identified criteria that ADOSH and employers can consider when making a determination whether the use of a conventional fall protection system is technologically infeasible or creates a greater hazard.

This workgroup's recommendations have been provided to you, but I would like to briefly walk through with you the criteria developed by the workgroup.

The first addresses Technological Infeasibility

Regarding technological infeasibility, the workgroup agreed that it is technologically infeasible to use conventional fall protection in the following situations:

- When anchor points or the structure cannot support the required load;
- When fall clearances are inadequate for properly installed CFP equipment;
- When CFP cannot be installed according to the manufacturer's installation instructions and/or in accordance with the OSHA and ADOSH standards; or
- When the use of CFP renders it impossible to perform necessary work operations

The workgroup identified how an employer would meet its initial burden to demonstrate technological infeasibility for the first three criteria which included written documentation that a qualified person had performed a job hazard/safety analysis regarding the use of CFP that includes an analysis of the infeasibility to use CFP prepared specifically for the site. The analysis must also include, among other things, a description of the work practices and methods that have been evaluated and whether these practices or methods can be modified to either eliminate the fall hazard or permit the use of CFP. Where a load analysis is needed, the criteria require a written report from a professional engineer, based on quantitative data and principles of science and engineering, and that documents whether the structure is adequate to resist the loads applied by the CFP system or systems identified by the employer. The engineer's report must also document the methodology used to perform the analysis.

It is important to note that while ADOSH expects employers to conduct an analysis of their work methods and practices to determine if fall hazards can be eliminated or reduced, or if CFP systems can be used, ADOSH cannot compel the employer to use any one particular practice or method, such as the use of a crane to hoist several sheeted trusses into place.

The second recommendation made by the workgroup addresses Greater Hazard

Under this recommendation, the workgroup agreed that the use of CFP creates a greater hazard when the fall protection system installation and removal processes increase the time of exposure to a fall hazard as compared to the actual work task.

The workgroup agreed that an employer would meet its initial burden to demonstrate that the use of CFP creates a greater hazard under these criteria by establishing the following:

- The actual work that exposes an employee to a fall hazard is a task of 15 minutes or less. An exception to this 15 minute provision would be made where the employer provides written documentation that the time to install and remove CFP would exceed 15 minutes. In no case would it be acceptable to perform a task without CFP in excess of 30 minutes.

And

- A competent or qualified person conducts a job hazard/safety analysis and determines that the employee performing the work is not exposed to other hazards or conditions that would increase the probability of an accident. Such hazards or conditions would include work on surfaces that are slippery with rain, ice or snow; a lack of fall protection training for the exposed employee(s); insufficient lighting, particularly in attics; and tasks requiring more than two employees to complete.

It is important to understand that the criteria developed by the workgroup do not replace or alter the requirements of the OSHA/ADOSH fall protections standards located in 29 CFR 1926 Subpart M, including the specific requirement for residential fall protection located at 29 CFR 1926.501(b)(13). Residential construction employers are required to comply with that standard (as well as other applicable portions of Subpart M), as written. The standard requires employers to provide conventional fall protection (CFP) to those employees engaged in residential construction activities six feet or more above lower levels, unless the employer can demonstrate that conventional methods are infeasible or create a greater hazard. If an employer can demonstrate that conventional fall protection methods are infeasible or create a greater hazard, then the employer is required, as it has been in the past, to implement a site-specific, written fall protection plan in accordance with 29 CFR 1926.502(k).

It is also important to understand that the criteria developed by the workgroup do not represent the exclusive means by which an employer can demonstrate technological infeasibility and greater hazard. It is possible that an employer could present other criteria. If an employer chooses to demonstrate technological infeasibility or greater hazard, it is up to the employer to determine what criteria will best serve that purpose. While demonstration of technological infeasibility or greater hazard is mandatory for any employer who believes that CFP cannot be used to protect his employees, use of the criteria developed by the workgroup is not mandatory.

In view of the consensus reached by the workgroup regarding the development of criteria to determine technological infeasibility and greater hazard, ADOSH makes the following recommendations to the Commission:

1. That the Commission approve the recommendations of the workgroup regarding the criteria to determine technological infeasibility and greater hazard. These recommendations are set forth in the documents provided to you and would become the foundation for ADOSH enforcement guidance under the residential fall protection standard.
2. In recognition that the workgroup's recommendations provide clearer direction with regard to how determinations of technological infeasibility or greater hazard may be made, that the Commission lift its stay of enforcement of the December 2010 directive, effective January 1, 2012.
3. That the Commission establish a 90 day phase-in period following the January 1, 2012, effective date. During this period of time, if an employer is inspected by ADOSH and asserts that CFP is technologically infeasible or creates a greater hazard, then ADOSH will give the employer 30 days to provide the written documentation required, if any, under the criteria developed by the workgroup. If no documentation is provided to ADOSH within 30 days, or the documentation provided is deemed inadequate, then ADOSH will conclude that the employer has not met its initial burden to demonstrate that the use of CFP is technologically infeasible or creates a greater hazard and appropriate citations will be issued. During this period, ADOSH will provide higher priority to consultation requests regarding residential fall protection.

Lastly, while the workgroup discussed the development of separate criteria for "economic infeasibility," the workgroup was not able to reach a consensus on this issue. The key difference in the respective positions focused on whether economic infeasibility could be considered within the definition of "infeasibility" as that word is defined and used in the residential fall protection standard. On the one hand, some members of the group asserted that the definition of "infeasibility" under the residential fall protection standard does not include economic infeasibility. Therefore, if an employer wants to claim economic infeasibility (meaning that the employer cannot afford conventional fall protection), then the employer must provide an alternative to its employees that is as safe and healthful as providing conventional fall protection (consistent with the requirements of a variance). Under this position, the fall protection standards permitting the use of an alternative fall protection plan would not apply, and the use of a safety monitoring system would be prohibited because it is not considered as safe and protective as the use of conventional fall protection.

On the other hand, some members of the group asserted that economic infeasibility should be considered within the definition of infeasibility under the residential fall protection standard. They contend that where an employer establishes economic infeasibility for the use of conventional fall protection, then the employer can develop and implement an alternative fall protection plan (which would include the use of a safety monitoring system).

In view of the fact that a consensus was not reached on this issue, the members agreed that they should be given the opportunity to submit language to the Commission reflecting their respective positions. Those documents have also been provided to you.

It should be noted that although the members of the group did not reach a consensus on this issue, the members agreed that most of the economic concerns were, in fact, addressed through the other criteria agreed upon. Therefore, much was accomplished by this group including the development of other criteria that responded to economic impact concerns. Because, however, the workgroup did not reach a consensus on the economic infeasibility issue, it is recommended that the Commission take no action at this time on that specific issue.

In conclusion, on behalf of ADOSH, I would like to publicly thank the members of the workgroup for their willingness to work together on tough issues. Their hard work and commitment to the process is reflected in the end result.