

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, June 7, 2012 – 1:00 p.m.

Present:	David Parker	Chairman
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura L. McGrory	Director
	Andrew Wade	Chief Counsel
	William Wright	Asst. Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Parker 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 May 23, 2012 Meeting

Mr. Sanders requested an addition to the Minutes on page three, under "Announcements and Scheduling of Future Meetings" to add the underlined, "In response to a question from Mr. Sanders regarding the Request for Proposal on the website, Darin Perkins announced that the Capitol Police were no longer going to accept after-hours notification of accidents and that he was exploring contracting with an answering service to handle after-hours calls". The Commission unanimously approved the Minutes of May 23, 2012 as amended on motion of Mr. Sanders, second of Ms. Oster.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C11/12-0312 Dunn's Horse Productions, LLC
  2. 2C10/11-2112 Gila Valley Mobile Home Service and Accessories, L.L.C.

Chairman Parker asked whether any items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the consent agenda on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that there was nothing new to report. Scot Butler will be here next week to address the Commission.

Discussion & Action regarding Resolution to Adopt Proposed Rulemaking Amendments for A.A.C. R20-5-601 and A.A.C. R20-5-602 from the Federal Occupational Safety and Health Standards, 29 CFR 1926 Construction Standards and 29 CFR 1910 General Industry Standards

William Wright provided a summary of changes to the Federal Occupational Safety and Health Standards related to acetylene, hazard communication rules and material safety data sheets. Mr. Wright explained why the Commission is required to adopt the changes and the time-frame for adopting the changes. The Commission discussed communicating the new rules to stakeholders. Following discussion, the Commission unanimously approved the amendments to A.A.C. R20-5-601 and A.A.C. R20-5-602 and directed the Arizona Division of Occupational Safety and Health to file the Notice of Final Rulemaking with the Secretary of State on motion of Ms. Strickler, second of Mr. Sanders.

Discussion & Action of Proposed OSHA Citations & Penalties

Organized Spaces LLC dba Closet Factory  
14425 North 79<sup>th</sup> Street, Suite H  
Scottsdale, AZ 85260

Planned  
Yrs/Business - 9  
Empl. Cov. by Insp. - 9

Site Location: 14425 North 79<sup>th</sup> Street, Suite H, Scottsdale, AZ 85260  
Inspection #: N9589/316509579  
Insp. Date: 05/04/12

SERIOUS - Citation 1, Item 1 - The north end of the Mezzanine was approximately nine feet above the floor and not protected with guardrails and toe boards (1910.023(c)(1)).  
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, Item 2 - The emergency exit was blocked by stored materials and a miter saw table (1910.037(a)(3)).

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 3(a) - The subject saw was not provided with a blade guard (1910.213(c)(1)).

Citation 1, Item 3(b) - The subject saw was not provided with a spreader (1910.213(c)(2)).

Citation 1, Item 3(c) - The subject saw was not provided with anti-kickback fingers or dogs (1910.213(c)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, Item 4 - Two 125 volt receptacles within a receptacle outlet box were damaged rendering the receptacle unusable and exposing interior live parts (1910.303(b)(7)(iv)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Wright summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously



(1910.1030(c)(1)(i)).

Citation 1, Item 4(b) – The employer did not make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure (1910.1030(f)(1)(i)).

Citation 1, item 4(c) – The employer did not establish and maintain a sharps injury log where employees have exposure to percutaneous injuries from contaminated sharps (1910.1030(h)(5)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1, item 5 – The employer did not ensure that employees with occupational exposure participated in a training program (1910.1030(g)(2)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

NONSERIOUS – Citation 2, item 1 – The employer did not maintain OSHA Forms 300 and 300A for the establishment (1910.029(a)).

Div. Proposal - \$ 500.00

Formula Amt. - \$ 500.00

TOTAL PENALTY - \$13,000.00

TOTAL FORMULA AMT. - \$13,000.00

Chairman Parker stated that this matter is on the agenda because ADOSH has requested the Commission reconsider the action taken at the last Commission meeting where the Commission added Citation 1, item 4(d) for failing to have post-exposure evaluation and follow-up and assessed the recommended penalty of \$13,000.00. Upon further review, ADOSH is recommending that citation not be added since the employer did have post-exposure evaluation and follow-up. The Commission unanimously agreed to reconsider the action on motion of Mr. Parker, second of Mr. Sanders. Following discussion, the Commission unanimously assessed the original recommended citations and penalty on motion of Ms. Oster, second of Mr. Sanders.

Discussion &/or Action pursuant to A.R.S. §23-1041(E) to Adopt the Maximum Average Monthly Wage under A.R.S. §23-1041(D)(8) for Calendar Year 2013

Andrew Wade explained the Commission's role in adopting the maximum average monthly wage for each year. He summarized the data and advised that based on the increase in the Arizona mean wage of 3.04%, staff is recommending the maximum average monthly wage be set at \$4,185.78 for 2013. Mr. Wade further advised that the legislature just amended A.R.S. §23-1041 to change the specific index used to adjust the maximum average monthly wage from the "Arizona mean wage . . . coded for all occupations" to the "employment cost index." The effective date for this new amendment is August 2, 2012. Because the current version of the statute directs the Commission to adopt a new maximum average monthly wage "not later than August 1 of each calendar year," the Commission must use the current version of the statute (which specifies the Arizona mean wage) to establish the maximum average monthly wage for calendar year 2013.

Discussion followed regarding the need for clarification of the new legislation as to what series in the new index will be used in the future. The Commission also discussed that stakeholder input should be obtained and whether rulemaking may be involved on this issue. Mr. Parker stated that it would also be helpful to hear from Scot Butler regarding the process to clarify this issue. In response to a question from Mr. Sanders, Ms. McGrory gave a brief legislative history and explained how increases to the maximum average monthly wage were accomplished in the past. Ms. Strickler stated she would be more comfortable if stakeholders

were informed that calculation of the 2013 maximum average monthly wage will be based on the current statute (rather than the new one) before action is taken to adopt the new maximum. Mr. Parker suggested tabling consideration of this matter. Following further discussion, Chairman Parker tabled the matter to be put back on the agenda on July 11, 2012.

Announcements and Scheduling of Future Meetings

The Commissioners moved next week's meeting from Thursday, June 14 to Wednesday, June 13, 2012.

Ms. McGrory advised that Physicians' Fee Schedule will be an agenda item for the next Commission meeting. She described the materials that are being supplied to the Commissioners.

Ms. McGrory also advised that an additional agenda item for next week will be an update regarding her advisory group on evidence-based medical treatment guidelines.

Ms. Hilton reminded the Commissioners that additional meetings are scheduled for June 28, July 11, 18 (if needed), and 26, 2012. The Commission also scheduled a meeting for Friday, August 10<sup>th</sup> at the Claims Seminar.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:05 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Teresa Hilton, Commission Secretary