

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Auditorium  
Phoenix, Arizona 85007  
Thursday, June 28, 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
	Michael Hawthorne	Chief Financial Officer
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Kathy McLeod	Admin. Consultant
	David Sosa	Special Fund Monitor
	Kamen Kovatchev	Self Insurance Administrator
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, Commission lobbyist; Eda Barolli of Snell & Wilmer; Michael Mason of City of Surprise; Heather Wilkey of Dorn Policy Group; and David Childers for Farmers Insurance.

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 Parker welcomed interested parties to the public hearing and stated that the Commission published notice of this hearing on May 18, 2012 inviting comments. He described the process for today's hearing and explained 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, 2011 and 2012 and was discontinued for 2008 and 2009. As of June 30, 2011 the Special Fund's total reserved liabilities obligated under A.R.S. §23-1065(B) and (C) was \$75.9 million at a confidence level of 75%. Mr. Hawthorne stated that, in view of the foregoing apportionment liabilities there is justification and authority to continue the one-half percent assessment under A.R.S. §23-1065(F) for calendar year 2013.

There were no comments from the attendees. Chairman Parker closed the hearing at 1:05 p.m. The Commission continued with its regularly scheduled meeting.

### Approval of Minutes of June 13, 2012 Meeting

The Commission unanimously approved the Minutes of June 13, 2012 on motion of Mr. McCarthy, second of Mr. Sanders.

### Consent Agenda:

#### a. Approval of Proposed Civil Penalties Against Uninsured Employers.

- |    |              |   |
|----|--------------|---|
| 1. | 2C11/12-2356 | Enstanislao T. Lona & Maria Jesus Lona,<br>Husband & Wife dba El Triunfo Bakery |
| 2. | 2C11/12-2680 | Express Auto Commercial, L.L.C.   |
| 3. | 2C11/12-2125 | Hartley Enterprises, L.L.C. dba Oil Can Henry's                                 |
| 4. | 2C11/12-1645 | Ness Car Washes, L.L.C. dba<br>Ponderosa Hand Car Wash                          |
| 5. | 2C11/12-1053 | Outdoorsman RV Repair Center, Inc.  |
| 6. | 2C11/12-2702 | The Chile Pepper, L.L.C. dba<br>Chile Pepper Village Store Gift & Gourmet       |

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. Sanders, second of Ms. Oster.

### Discussion &/or Action regarding Legislation

Scot Butler provided an initial list of the primary election contests and discussed how redistricting has impacted the process. He stated that he would provide a full list of all legislative races at an upcoming meeting.

### Discussion & Action of Proposed OSHA Citations & Penalties

Superior Equipment Sales and Service, Inc.  
1007 E. Maricopa Freeway  
Phoenix, AZ 85034

Referral  
Yrs/Business – 20  
Empl. Cov. by Insp. – 3

Site Location: 1007 E. Maricopa Freeway, Phoenix, AZ 85034  
Inspection #: N9589/316452762  
Insp. Date: 03/22/12

GROUPED WILLFUL SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, Item 1a – The employer did not establish and maintain a respiratory protection program which included the requirements outlined in 29 CFR 1910.134(c) when employees wearing respirators worked with volatile hydrocarbon-based coatings/paints, conducted metal welding inside confined spaces, and conducted spray finishing (1910.134(a)(2)).

Citation 1, Item 1b – The employer did not provide a medical evaluation to determine the employee's ability to use a respirator, before the employee was fit tested or required to use the respirator in the workplace (1910.134(e)(1)).

Citation 1, Item 1c – Employees using tight-fitting face piece respirators were not fit tested prior to initial use of the respirator (1910.134(f)(2)).

Citation 1, Item 1d – The employer did not ensure that respirator inspection included a check of respirator function, tightness of connection, and the condition of the various parts including, but not limited to, the face piece, head straps, valves, connecting tube, and cartridges, canisters or filters (1910.134(h)(3)(ii)(A)).

Citation 1, Item 1e – The employer did not provide training prior to requiring employees to use a respirator in the workplace (1910.134(k)(3)).

(One inspection in the past three years with four serious violations and four non serious violations.)

Div. Proposal - \$14,000.00

Formula Amt. - \$14,000.00

WILLFUL 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 failed to evaluate the workplace to determine if any spaces were permit-required confined spaces. Employees were tasked with cleaning and coating the interior of empty water tanks and welding within tanks which were permit-required confined spaces (1910.146(c)(1)).

Citation 1, Item 2b – The employer did not develop and implement a confined space entry program to ensure safe entry for employees tasked with cleaning, coating/painting, and welding within permit required confined spaces (1910.146(c)(4)).

Citation 1, Item 2c – The employer did not provide training to employees tasked with permit-required confined space entry (1910.146(g)(1)).

Div. Proposal - \$14,000.00

Formula Amt. - \$14,000.00

SERIOUS – Citation 2, Item 1 – Greater than 300 linear feet of one inch diameter PVC piping was used for the transportation of compressed air. Reported line pressure was 120 psi (A.A.C. R20-5-628)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 2, Item 2a – The employer did not assess the hazards associated with application of epoxy coatings to the interior of the subject tank to determine what personal protective equipment was needed (1910.132(d)(1)).

Citation 2, Item 2b – The employer did not select and require employee use of appropriate hand protection when employees' hands were exposed to irritating, corrosive and sensitizing epoxy coatings (1910.138(a)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

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 2, Item 3a – Portable fire extinguishers were not mounted, located and identified so that they were readily accessible without subjecting the employees to injury (1910.157(c)(1)).

Citation 2, Item 3b – Portable fire extinguishers were not maintained in a fully charged and operable condition (1910.157(c)(4)). There was another instance of this violation.

Citation 2, Item 3c – Portable fire extinguishers were not visually inspected at least monthly (1910.157(e)(2)).

Citation 2, Item 3d – Portable fire extinguishers were not subjected to an annual maintenance check (1910.157(e)(3)).

Citation 2, Item 3e – Employees were not provided training in the use of portable fire extinguishers used for incipient stage firefighting (1910.157(g)(1)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

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 2, Item 4a – The subject lift truck did not have the manufacturer provided load charts in place (1910.178(a)(6)).

Citation 2, Item 4b – The employer did not certify that each fork truck operator had been trained and evaluated for each type of fork truck operated by employees (1910.178(I)(1)(i)).

Citation 2, Item 4c – The subject lift truck was not examined before being placed in service (1910.178(q)(7)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

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 2, Item 5a – The subject grinder was not equipped with an adjustable work rest (1910.215(a)(4)).

Citation 2, Item 5b – The subject grinder was not equipped with an adjustable tongue guard (1910.215(b)(9)).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 2, Item 6 – The pinch-point between power transmission belts and pulleys was not fully guarded (1910.219(d)(1))

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2, Item 7 – The subject angle grinder equipped with an abrasive wheel was used without a safety guard (1910.243(c)(3)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2, Item 8 - The exterior and individual interior conductor insulation of the flexible motor power supply cord was deteriorated and weathered thereby exposing employees to live conductors (1910.303(b)(1)). There was another instance of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2, Item 9 – The cover on the motor junction box was not in place thereby exposing 125 volt conductors (1910.303(g)(2)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2, Item 10 – A portable (125 volt) electric lamp was used to provide illumination within a confined space during coating operations using a flammable epoxy coating. The subject lamp was not approved for use in Class I, Division 1 or Division 2 flammable atmospheres (1910.307(c)(2)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2, Item 11 – An employee performing epoxy coating of the interior of the subject tank was exposed to toluene at greater than 500 ppm for more than 10 minutes (1910.1000(b)(2)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 2, Item 12 – The employer did not develop or implement at the workplace a written hazard communication program when employees handle hazardous chemicals such as epoxy coating, paint, and welding supplies (1910.1200(c)(1)).

Div. Proposal - \$ 1,000.00

Formula Amt. - \$ 1,000.00

TOTAL PENALTY - \$38,700.00

TOTAL FORMULA AMT. - \$38,700.00

Darin Perkins summarized the citations and proposed penalty as proposed. He explained the basis for the willful classification and the history of the company. In response to questions from the Commissioners, he addressed the different size adjustment factors for willful classifications. The discussion included concerns over the egregious nature of the violations and apparent lack of concern for employee safety as well as whether the 80% adjustment factor is appropriate. Following further discussion, Chairman Parker stated that the matter would be tabled to allow ADOSH to reconsider whether the grouped citations are appropriate and to investigate the number of workers employed in the business.

Town of Gilbert Parks and Recreation  
50 East Civic Center Drive  
Gilbert, AZ 85296

Complaint  
Yrs/Business – 90  
Empl. Cov. by Insp. – 5

Site Location: 45 West Page Ave., Gilbert, AZ 85296

Inspection #: L3419/316553148

Insp. Date: 05/29/12

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 – One employee entered two wet wells (approximately 6-8' in diameter and

11' deep) to clean out debris and sediment from the bottom without an evaluation of the spaces to determine if the spaces were permit-required confined spaces (1910.146(c)(1)).

Citation 1, Item 1b – One employee entered two wells to clean out debris and sediment from the bottom without the requisite understanding, knowledge and skills necessary for the safe performance of the duties assigned (1910.146(g)(1)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, Item 2 – A plumbed emergency eye wash and safety shower installed for employee exposure to corrosive materials (muriatic acid and sodium hypochlorite) did not function as installed (1910.151(c))

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Darin 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.

Schletter Inc.  
3761 E. Farnum Place  
Tucson, AZ 85706

Fatality/Accident  
Yrs/Business – 3  
Empl. Cov. by Insp. – 85

Site Location: 3761 E. Farnum Place, Tucson, AZ 85706

Inspection #: P0775/316313980

Insp. Date: 01/23/12

SERIOUS – Citation 1, Item 1 – Two employees did not utilize lock out tag-out procedures for removing stuck or jammed aluminum slugs from the power press when normal machine guards had been bypassed or rendered inoperable (1910.147(c)(4)(i)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, Item 2 – Two employees were inadequately trained to ensure that the purpose and function of the energy program was understood when removing aluminum slugs that were stuck or jammed in the dies of the power press (1910.147(c)(7)(i)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, Item 3 – The guards on the 125 ton mechanical power press were not in position during the operation of the machine (1910.217(c)(1)(i)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, Item 4 – The 125 ton mechanical power press operator was not adequately trained and instructed in the safe operation of the press (1910.217(f)(2)).

Div. Proposal - \$ 5,000.00

Formula Amt. - \$ 5,000.00

TOTAL PENALTY - \$20,000.00

TOTAL FORMULA AMT. - \$20,000.00

Darin Perkins summarized the citations and proposed penalty as listed and stated that the Division proposal was for the gravity based penalties with no adjustment factors since the violations directly related to the serious injury. Mr. Perkins responded to questions from the Commissioners. The Commission discussed the multi-employer doctrine since the injured

employee was provided by a temporary agency. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$20,000.00 on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of Applications for Renewal of Self Insurance Authority

ABF Freight System, Inc. - Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the large size of the parent company with total assets of just above \$916.2 million along with receipt of a clean audit report; acceptable credit ratings and an increased deposit amount. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Ms. Strickler, second of Mr. McCarthy.

Chairman Parker recused himself from consideration of the next agency item. Vice Chair Oster took over chairmanship of the meeting for this item only.

Glendale Elementary S.D. No. 40 - Ms. Pastor presented staff's renewal report along with current Standard & Poor's bond and credit ratings and Dunn and Bradstreet credit rating and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the District's financial stability and a clean audit report. The Commission granted renewal of self-insurance authority on motion of Ms. Strickler, second of Mr. Sanders. Mr. Parker did not vote.

Honeywell International, Inc. - Ms. Pastor presented staff's renewal report along with current Standard and Poor's, Fitch, Moody's and Dunn and Bradstreet bond and credit reports and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability with total assets of just over \$39.8 billion; a \$2,852,003 letter of credit as a statutory deposit; a clean audit report and good credit ratings. Following discussion, the Commission unanimously approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Sanders.

International Paper Company - Ms. Pastor presented staff's renewal report along with current Moody's, Standard & Poor's, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. She advised there was some uncertainty as to the accuracy of the unpaid liabilities number and that she would clarify this with the TPA. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's large size with worldwide assets of just below \$27 billion at December 31, 2011; a clean audit report and acceptable bond and credit ratings. The Commission unanimously granted continuance of self-insurance authority on motion of Mr. Sanders, second of Ms. Strickler.

Manpower, Inc. - Ms. Pastor presented staff's renewal report along with current Moody's, Standard & Poor's, and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability, large size with total assets of almost \$6.9 billion; acceptable credit ratings; and clean audit report. Following discussion, the Commission unanimously granted renewal of self-insurance authority on motion of Ms. Oster, second of Ms. Strickler.

Phoenix Newspapers, Inc. – Ms. Pastor presented staff's renewal report along with current Moody's and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Administration is recommending renewal of workers' compensation self-insurance authority based on the parent company's excellent financial record, total worldwide assets of just over \$6.6 billion; acceptable credit ratings and a clean audit report. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Mr. Sanders, second of Mr. McCarthy.

Wal-Mart Associates, Inc. – Mr. McCarthy recused himself from discussion and action for this item. Ms. Pastor presented staff's renewal report along with current Moody's, Fitch and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. She noted that the Commission had requested Wal-Mart utilize the services of the ADOSH consultation program due to their continued high experience modification rate. The Commission has made this request dating to 2006. Wal-Mart's experience modification rating has not improved from 2006 to 2012. Administration is recommending renewal of workers' compensation self-insurance authority based on the company's financial stability and profitability, with total assets of just over \$193.4 billion; a clean audit report and acceptable credit ratings with the contingency that the company work with OSHA in an effort to improve its safety program and reduce its experience ratings. The Commissioners expressed concern with Wal-Mart's safety program and consistently high experience modification ratings. Ms. Oster asked about Wal-Mart's safety training. Following further discussion, the Commission tabled renewal for at least six months and required Wal-Mart to present a loss control plan to address the high experience modification rates, suggesting that they focus on frequency, and offered the OSHA consultation program. The company is free to use whatever method they choose to, but Wal-Mart must respond within six months with its plan for implementation. Mr. Parker explained that the Commission will revisit the self-insurance renewal topic in approximately six months, on motion of Mr. Parker, second of Mr. Sanders. Mr. McCarthy did not vote.

#### Announcements and Scheduling of Future Meetings

Ms. McGrory announced that Federal OSHA has notified ADOSH that Federal OSHA compliance officers will be accompanying ADOSH compliance officers on inspections that involve residential fall protection.

Ms. McGrory advised that Evidence Based Medicine Treatment Guidelines will be placed on the agenda for the next Commission meeting for purposes of receiving input from the Commissioners regarding their goals and expectations for the advisory committee. She stated she has finalized the member roster, which will be presented at the next meeting, and that she anticipates the first meeting to be August 27<sup>th</sup>.

Ms. Hilton reminded the Commissioners that meetings are scheduled for July 11, 18, 26, and August 10, 2012. Additional meetings were scheduled for Wednesday, August 1<sup>st</sup> and Wednesday, August 22<sup>nd</sup>.

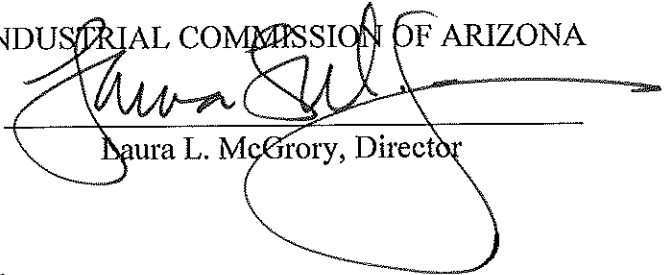
Mr. Sanders announced that his children, Grant and Gloria Sanders, were in attendance and that Grant will be nine years old tomorrow.



There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:33 p.m.


THE INDUSTRIAL COMMISSION OF ARIZONA

By

A large, stylized handwritten signature in black ink, appearing to read 'Laura L. McGrory', is written over a horizontal line. The signature is highly cursive and loops around the line.

Laura L. McGrory, Director

ATTEST:

A handwritten signature in black ink, appearing to read 'Teresa Hilton', is written over a horizontal line.  
Teresa Hilton, Commission Secretary