

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 13, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Larry Gast	Asst. Director, ADOSH
	Randy Austin	Chief Boiler Inspector
	Renee Pastor	Manager, Self Insurance
	Michael Hawthorne	Chief Financial Officer
	Angela McCray	Manager, Human Resources
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:01 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist; Jeff Homer of General Dynamics; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of June 5, 2013 Meeting

The Commission unanimously approved the Minutes of the June 5, 2013 meeting on motion of Mr. McCarthy, second of Ms. Strickler.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C12/13-0441 Arizona Small Dog Rescue
2. 2C12/13-1506 B-Healthy Medical Corporation
3. 2C11/12-1929 B.A. Contracting & Restoration of Arizona, L.L.C.
4. 2C12/13-0243 Diffenbaugh Design Build, L.L.C.
5. 2C12/13-1735 Fred Fox & Sandra Fox, Husband & Wife,
dba Peoria Florist
6. 2C12/13-1509 Gabriel's Auto Body & Paint, Inc. dba
One Day Paint & Body
7. 2C11/12-1804 Maria & Friends Enviroclean, L.L.C.
8. 2C12/13-0351 Subculture Express, L.L.C.
9. 2C12/13-0717 World Restaurants, Inc. dba Amsterdam Café / Miami

Chairman Parker stated that agenda item a (2) would be removed from the consent agenda. The Commission unanimously approved the remaining consent agenda items on motion

of Mr. Sanders, second of Ms. Oster. Andrew Wade advised that with regard to item a (2) B-Healthy Medical Corporation, the employer has obtained workers' compensation insurance and he is recommending a penalty of \$500.00 be assessed against this employer. The Commission unanimously assessed the recommended penalty of \$500.00 against employer a (2) on motion of Mr. Sanders, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler provided an updated report of current legislative activity and the status of the budget.

Discussion & Action regarding ADOSH Boiler Advisory Board Appointments pursuant to A.R.S. §23-474(2) and A.A.C. R20-5-403.

Chairman Parker stated that this agenda item had been presented previously at which time the Commissioners had requested more candidates with a labor background. Bill Warren advised that Randy Austin, Chief Boiler Inspector, has solicited members from labor and has recommended three additional individuals who are willing to serve on the Board. Mr. Warren recommended that the Commission appoint and reappoint the following individuals: Edward R. Emerson (reappointment), Dean T. McCook (reappointment), Earl Werner, Russell Crossan, Jacob Evenson, William M. Marshall, Frederick Anderson (reappointment), Raymond Choi, Don R. Snyder, Terry R. Melot (reappointment), Mike Rutledge (reappointment) and Zachary Schloss. Chairman Parker expressed his thanks to Mr. Austin for finding quality people to fill the positions. The Commission unanimously appointed the above listed individuals on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action regarding ADOSH Discrimination Complaint

#13-3633-03 Lindsey Emerson vs. Crystal Reflections Int., Inc. – Mr. Warren presented a summary of the employee's complaint, the employer's response, and the Division's investigation of the matter. Mr. Warren and Larry Gast responded to questions from the Commissioners. Mr. Warren recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Berlin Packaging L.L.C. dba Berlin Packaging
3949 W. Van Buren St.
Phoenix, AZ 85009

Fatality/Accident
Yrs/Business – 100+
Empl. Cov. by Insp. – 6

Site Location: 3949 W. Van Buren St., Phoenix, AZ 85009

Inspection #: H1793-316956366

Insp. Date: 02/19/2013

SERIOUS – Citation 1 - Item 1 – The workplace was not assessed to determine if hazards were present, or were likely to be present, which necessitated the use of personal protective equipment when accessing elevated portions of storage racks. (1910.132(d)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 – Employees were not trained to use personal protective equipment when accessing elevated portions of metal storage racks. (1910.132(f)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 3 – Temporary employees tasked with industrial truck operations had not been trained and evaluated prior to operation of forklifts, within the establishment. (1910.178(l)(2)(ii)).

Div. Proposal - \$ 5,000.00

Formula Amt. - \$ 5,000.00

TOTAL PENALTY - \$15,000.00

TOTAL FORMULA AMT. - \$15,000.00

Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposed the gravity based penalty for each item with no adjustment factors because the violations directly related to a serious injury. The Commission discussed the employer/employee relationship in the context of a worker with a staffing agency and the responsibilities of the staffing agency and the host employer for training on specific equipment. Ms. McGrory stated that federal OSHA is exploring the issue of exposure to temporary workers and regulatory action in this area can be expected in the future. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$15,000.00 on motion of Ms. Strickler, second of Mr. McCarthy.

Town of Huachuca City

500 N. Gonzales Blvd.

Huachuca City, AZ 85616

Planned

Yrs/Business – 54

Empl. Cov. by Insp. – 39

Site Location: 600 Skyline Blvd., Huachuca City, AZ 85616

Inspection #: L8491-316892793

Insp. Date: 01/10/2013

SERIOUS – Citation 1 - Item 1 – Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body were not provided within the work area for immediate emergency use. (1910.151(c)). There were three other instances of this violation.

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 2 – The employer having employee(s) with occupational exposure did not establish a written Exposure Control Plan designed to eliminate or minimize employee exposure. (1910.1030(c)(1)(i)). There were two other instances of this violation.

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

NON-SERIOUS – Citation 2 - Item 1 – A log and summary of recordable injuries and illnesses (OSHA 300 forms) was not maintained for the establishment. (1904.1(a)(2)).

Div. Proposal - \$ 600.00

Formula Amt. - \$ 600.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren stated this was a planned inspection based on the employer's high experience modification rate. He 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 \$3,000.00 on motion of Ms. Oster, second of Mr. Sanders.

Discussion & Action regarding Application 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

Empire Southwest, L.L.C. - Chairman Parker asked if any of the Commissioners wanted to discuss confidential information in Executive Session. Hearing no request, he stated Ms. Pastor could present her report and the Commission could go into Executive Session later if needed. Rene Pastor presented staff's renewal report along with a current Experian credit rating and responded to questions from the Commissioners. The company is privately held and the financials are not released to the public. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on the Company's financial soundness; a clean audit report and good credit ratings. Following discussion, the Commission unanimously approved renewal of authorization to self-insure on motion of Mr. Sanders, second of Ms. Strickler.

Discussion & Action of Application for Renewal of Self-Insurance Authority.

Honeywell International, Inc. - Ms. Pastor presented staff's renewal report along with current Standard and Poor's, Fitch, and Moody's bond ratings and a current Experian credit rating. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on its financial stability with total assets of just over \$41.8 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 authorization to self-insure on motion of Ms. Strickler, second of Ms. Oster.

Discussion &/or Action regarding the Selection and Hiring Process for Chief Administrative Law Judge

Ms. McGrory introduced the Commission's new Human Resources Manager, Angela McCray. She then explained that with the pending retirement of Chief ALJ Turney, the Commissioners will need to make some decisions regarding the selection and hiring process to fill the position. Ms. McGrory explained the options to the Commissioners. Following discussion, the Commissioners agreed that they would like the position to be posted externally, with the first review of resumes to be performed at 4 weeks. The Commissioners also agreed that the position would remain open until filled and that they would make a decision on the interview process after knowing how many applicants had applied for the position.

Discussion & Action regarding Attendance at International Association of Industrial Accident Boards & Commissions (IAIABC) 99th Annual Convention

Ms. McGrory summarized the Commission's past participation in the IAIABC and explained that due to prior budgetary and "out of state" travel restrictions, Commission staff and Commissioners had not attended any IAIABC conferences in the last several years. She explained the projected revenue picture for the Commission and provided information about the

upcoming conference that is being held in San Diego projections. The Chairman and Commissioner Sanders supported attendance at the upcoming conference noting the value and benefits of attending. Ms. McGrory asked that the Commissioners let Ms. Hilton know whether they would be interested in attending (and which days) so that she could make the necessary arrangements.

Announcements and Scheduling of Future Meetings

Ms. McGrory stated that next week's meeting, scheduled for Wednesday, June 19, 2013, will include the apportionment tax assessment public hearing in the Auditorium and consideration of the annual 2013-2014 Physicians' Fee Schedule. She stated that if anyone had questions concerning either of these items, that they could contact her or Michael Hawthorne. She also reminded the Commissioners that the Claims Seminar is scheduled for August 8 and 9, 2013 at the Wigwam.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:15 p.m.

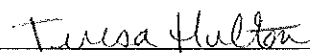
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary