

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Wednesday, September 11, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair (video conference)
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Chris Brandon	Compliance Officer
	Steven Black	Compliance Officer
	Michael Hawthorne	Chief Financial Officer
	Kamen Kovatchev	Self Insurance
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Matt Saxe of Lang, Baker & Klain, PLC; Jeff Homer of General Dynamics; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of September 4, 2013 Meeting

The Commission unanimously approved the Minutes of the September 4, 2013 General Session on motion of Ms. Oster, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the September 4, 2013 Executive Session on motion of Ms. Strickler, second of Mr. Hennelly.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. 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

a. Approval of Request for Renewal of Self Insurance Authority

1. Bashas', Inc.

Chairman Parker stated that consideration of self-insurance renewal for Bashas' was being removed from the Consent Agenda and would be considered after discussion and action of OSHA Proposed citations and penalties.

Smart Environment, LLC dba Preferred Collision
8355 E. Raintree Dr., Ste. 140
Scottsdale, AZ 85260

Complaint
Yrs/Business ->1
Empl. Cov. by Insp. - 8

Site Location: 18340 W. Vogel Ave., Waddell, AZ 85355
Inspection #: Q6169-317154185
Insp. Date: 05/24/2013

SERIOUS - Citation 1 - Item 1 - A mezzanine approximately 10 feet above the floor was not guarded with standard railings. (1910.23(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 2 -

(a) Job Hazard Assessments were not conducted when employees performed spray-paint operations while working in spray paint booths and handling caustic cleaners while detailing vehicles. (1910.132(d)(1)).

(b) Employees were not required to wear eye protection while working with corrosive chemicals. (1910.133(a)(1)).

(c) Employer did not provide an adequate eye-wash facility to employees for emergency use. (1910.151(c)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 3 -

(a) The employer did not develop and implement a written respiratory protection program for employees required to use respirators while spraying finishing with Isocyanate containing paint. (1910.134(c)(1)).

(b) Employer did not ensure that a medical evaluation was performed for employees required to wear a respirator. (1910.134(e)(1)).

(c) Employer did not ensure that fit-testing was performed for employees required to wear a 3M Dual Cartridge Respirator Assembly, Half-Facepiece respirator. (1910.134(f)(2)).

(d) Employer did not ensure that employees were trained in respirator use. (1910.134(k)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1 - Item 4 - One, 1-inch knock out on the 120v - 220v electrical panel mounted on the south wall of the Paint Department was missing one blank cover. (1910.303(b)(7)(i)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS - Citation 1 - Item 5 -

(a) A written hazard communication program had not been developed, implemented and/or maintained for employees who handle hazardous chemicals such as Vortex primer.

coatings, Vortex clear coatings, thinners, Choice brand adhesives, Glycol, and Beaver Brite acid (chrome cleaner). (1910.1200(e)(1)).

- (b) Employees tasked with handling chemicals were not provided MSDS for the chemicals in their workplace. (i.e., Vortex primer coatings, Vortex clear coatings, thinners, Choice brand adhesives, Glycol, and Beaver Brite acid). (1910.1200(g)(8)).
- (c) Employees tasked with handling chemicals were not provide information and training regarding the hazards associated with chemicals. (i.e., Vortex primer coatings, Vortex clear coatings, thinners, Choice brand adhesives, Glycol, and Beaver Brite acid). (1910.1200(h)).
- (d) A 32 ounce spray bottle containing Beaver Brite Aluminum and Stainless Steel Cleaner was not labeled with the identity of the chemicals contained therein, as the bottle was labeled "ACID Y2K" and not Beaver Brite Cleaner. (1910.1200(f)(5)(i)).

Div. Proposal - \$ 750.00	Formula Amt. - \$ 750.00
TOTAL PENALTY - \$3,600.00	TOTAL FORMULA AMT. - \$3,600.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,600.00 on motion of Ms. Oster, second of Ms. Strickler.

Tucson Residence Foundation, Inc.
115 S. Sherwood Village Drive
Tucson, AZ 85710

Complaint
Yrs/Business - 42
Empl. Cov. by Insp. - 10

Site Location: 115 S. Sherwood Village Drive, Tucson, AZ 85710
Inspection #: T3633-317038404
Insp. Date: 04/02/2013

SERIOUS – Citation 1 - Item 1 – An employee was injured by a consumer on January 22, 2013, and the same employee was injured by the same consumer on March 13, 2013. The company did not have a written violence prevention program relating to the hazard of employee injury from consumers, and did not ensure that other feasible action was taken to protect employees working with a consumer who had escalating violent behaviors. (A.R.S. § 23-403(A)).

Div. Proposal - \$4,500.00	Formula Amt. - \$4,500.00
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Bill Warren advised that this case file had been presented to the Commissioners previously at which time the Commission requested additional information. Mr. Warren advised that Steven Black had obtained the additional information and supplied the Commission with that information. Mr. Warren and Mr. Black summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Chairman Parker stated that his concerns had been addressed and he explained his position with respect to the penalty and whether the employer has initiated training, safety consulting, or other efforts to address the hazard. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,500.00 on motion of Ms. Strickler, 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

Bashas' Inc. – Chairman Parker advised that the Commission would move into Executive Session to discuss financial information exempt from public inspection following presentation and recommendations from staff. Michael Hawthorne gave a summary of staff's report including an analysis of workers' compensation claims and security.

The Commission unanimously voted to go into Executive Session on motion of Ms. Strickler, second of Ms. Oster. Executive Session Minutes are kept separately.

Upon return to General Session, the Commissioners discussed meeting with the risk manager and workers' compensation manager to get a better idea of what their current structure is. In relation to audits, Ms. McGrory stated that the Commission has the authority to direct an independent consultant audit of Bashas' claims files, review the reserving of workers' compensation claims, and obtain a complete understanding of the methodology Bashas' uses in reserving claims. The Commission discussed what would be an appropriate amount of security taking into account the circumstances. Following further discussion, the Commission unanimously directed staff to arrange for an audit to include an audit of the claims, an analysis of Bashas' reserving methodology, and a review of its workers' compensation safety risk management program; requested Bashas' supply resumes of certain key personnel, and provide the Commission with interim financials; increased the security to \$3,653,717 based on 135% of the total estimated future liability to include potential reopening of inactive claims; and that staff return this matter to the Commission no later than six months on motion of Mr. Sanders, second of Ms. Strickler.

Announcements and Scheduling of Future Meetings

The Commissioners agreed to change the meeting previously scheduled for October 17, 2013 to October 16, 2013. Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Tuesday, September 17, 2013.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:23 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laura McGrory, Director

ATTEST:


Teresa Hilton, Commission Secretary