MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Conference Room 308

Phoenix, Arizona 85007

Tuesday, September 17, 2013 – 1:00 p.m.

Present:

David M. Parker

Chairman (telephonic)

Susan Strickler

Vice Chair (telephonic)

Kathleen Oster Michael G. Sanders Member Member

Joseph M. Hennelly, Jr.

Member

Laura McGrory

Director

Andrew Wade

Chief Counsel

Larry Gast

Assistant Director, ADOSH

Erik Anderson

Compliance Officer

Michael Hawthorne

Chief Financial Officer

Teresa Hilton

Commission Secretary

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance was Andrea Lewis of Snell and Wilmer.

Approval of Minutes of September 11, 2013 Meeting

The Commission unanimously approved the Minutes of the September 11, 2013 General Session on motion of Ms. Oster, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the September 11, 2013 Executive Session on motion of Mr. Sanders, second of Ms. Oster.

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.

a. <u>Approval of Proposed Civil Penalties Against Uninsured Employers.</u>

1.	2C12/13-0755	Alis Macias & Maria Macias, Husband & Wife,
		dba Macias Landscaping

2. 2C12/13-1783 All Season Home Services, LLC

dba Apartment Locators

3. 2C13/14-0014 Arizona Precision Industries, Inc.

4. 2C11/12-1497 David Kluzak & Jamie L. Giraud, Husband & Wife,

dba Complete Pools
5. 2C12/13-0605 Miles Motel LLC

6. 2C12/13-1265 Movers of the Valley LLC Original

dba Movers of the Valley

7. 2C12/13-0758 Nieves Transportation Inc.

Ouick Park Quick Shuttle, Inc. 8. 2C12/13-2199

Chairman Parker stated that agenda item a (3) 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 (3) Arizona Precision Industries, Inc., the employer has obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 be assessed against this employer. Commission unanimously assessed the recommended penalty of \$500.00 against employer a (3) on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Milky Way Dairy, LLC 20000 N. Ralston Rd.

Fatality/Accident Yrs/Business - 33

Maricopa, AZ 85139

Empl. Cov. by Insp. -8

Site Location: 20000 N. Ralston Rd., Maricopa, AZ 85139

Inspection #: U9805-317112167

Insp. Date:

04/25/2013

SERIOUS - Citation 1 - Item 1 - The employer did not ensure that employees were instructed on the safe operations and servicing on the milking carousel. (1928.57(a)(6)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1 - Item 2 - The employer did not ensure that employees were protected from inadvertently contacting hazards such as a rotating carousel being guarded by a guardrail. One employee was fatally injured when his head was caught in between the carousel cabinet and the guardrail. (1928.57(a)(8)(i)).

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00 TOTAL FORMULA AMT. - \$14,000.00

TOTAL PENALTY - \$14,000.00

Larry Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal was for the gravity based penalties with no adjustment factors since the violations directly related to the fatality. Chairman Parker questioned whether there was a violation of the lock/out, tag/out standard under the agricultural standard. Mr. Gast responded to the question. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$14,000.00 on motion of Ms. Oster, second of Mr. Sanders.

Avnet, Inc.

Complaint

60 S. McKemy Ave.

Yrs/Business - 58 Empl. Cov. by Insp. -650

Chandler, AZ 85226

Site Location: 60 S. McKemy Ave., Chandler, AZ 85226 Inspection #: T9350-317424899

Insp. Date:

08/01/2013

SERIOUS - Citation 1 - Item 1 - Aggregation Area: A portion of a Hythrol conveyor, underneath the staircase, did not have a guard in place to prevent workers from getting caught-in the moving parts of the drive shaft. (1910.212(a)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Kathy Oster recused herself from consideration of this agenda item. Larry Gast and Erik Anderson summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal was for the gravity based penalty with no adjustment factors since the violation directly related to the serious injury. The Commission approved issuing the citation and assessed the recommended penalty of \$5,000.00 on motion of Mr. Sanders, second of Mr. Hennelly, with a vote of four in favor and none against. Ms. Oster did not take part in the discussion or vote.

Handyman Maintenance, Inc.

4714 N. 43rd Avenue

Complaint Yrs/Business - 6

Empl. Cov. by Insp. -140

Phoenix, AZ 85031

Site Location: 3119-3120 Highway I-17, Rimrock, AZ 86335

Inspection #: A7746-317165132

Insp. Date:

06/11/2013

SERIOUS - Citation 1 - Item 1 -

- (a) 4714 N 43rd Avenue, Phoenix, AZ, 85031: A hazard assessment of the workplace to determine the type of personal protective equipment, if any, employees performing landscaping and custodial activities should use had not been conducted. Landscaping activities included utilizing gas powered blowers and weed whackers, trimming trees and bushes with loppers or a chainsaw, picking up debris piles and spraying weed killer; and custodial activities including cleaning and sanitizing the rest rooms, as well as unclogging plumbing for the rest area rest rooms. (1910.132(d)(1)).
- (b) Rest Areas located along northbound and southbound Highway I-17 in Rimrock, Arizona: Employees exposed to eye and face hazards from flying particles, liquid chemicals and acids or caustic liquids were not provided with or did not have available safety glasses, chemical or goggles or faceshields. (1910.133(a)(1)).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

<u>SERIOUS</u> – Citation 1 - Item 2 – Rest Areas throughout the State of Arizona: Employees exposed to injurious corrosive liquids in the workplace were not provided with an emergency eye wash and emergency shower for quick drenching or flushing of the eyes and body in case of emergency. (1910.151(c)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS - Citation 1 - Item 3 - Rest Area located at 3119 Northbound Highway I-17; Metal Equipment Shed: The path to ground from the battery charger that was used in a wet location was not permanent, continuous and effective; the plug for the power supply cord was lacking a ground pin and the electrical outlet the battery charger was plugged into was not a grounded circuit. (1910.304(g)(5)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 4 –

- (a) 4714 N 43rd Avenue, Phoenix, AZ, 85031: A written Exposure Control Plan designed to eliminate or minimize employee occupational exposure to blood or OPIM had not been developed or established to protect employees. (1910.1030(c)(1)(i)).
- (b) 4714 N 43rd Avenue, Phoenix, AZ, 85031: The employer did not develop or implement and ensure the use of engineering or work practice controls by employees while they were removing hypodermic needles from sanitary napkin receptacles in the women's rest rooms at rest area locations. (1910.1030(d)(2)(i)).
- (c) 4714 N 43rd Avenue, Phoenix, AZ, 85031: Containers for contaminated sharps (used hypodermic needles found at the rest areas) were not provided for employees with occupational exposure. (1910.1030(d)(4)(iii)(A)(1)).
- (d) 4714 N 43rd Avenue, Phoenix, AZ, 85031: Containers for cleaning cloths potentially contaminated with blood or other potentially infectious material were not provided to protect employees with occupational exposure. (1910.1030(d)(4)(iii)(B)(1)).
- (e) 4714 N 43rd Avenue, Phoenix, AZ, 85031: The Hepatitis B vaccine and vaccination series were not made available to employees with occupational exposure to blood and OPIM (other potentially infectious materials). (1910.1030(f)(1)).
- (f) 4714 N 43rd Avenue, Phoenix, AZ, 85031: Employees with occupational exposure to blood and OPIM (other potentially infectious material) were not provided with training and information regarding the hazards of exposure and how to minimize those hazards. (1910.1030(g)(2)(i)).
- (g) 4714 N 43rd Avenue, Phoenix, AZ, 85031: A sharps injury log was not established and maintained for the recording of percutaneous injuries to employees with occupational exposure to contaminated sharps (used hypodermic needles). (1910.1030(h)(5)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$8,750.00

TOTAL FORMULA AMT. - \$8,750.00

Larry Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker stated that he believed that the probability factor for Citation 1, Item 4 should be Higher/Greater rather than Higher/Lesser and explained why. Following discussion, the Commission unanimously approved issuing the citations and changed the probability factor for Citation 1, Item 4 to Higher/Greater for a gravity-based penalty of \$5,000.00 and a penalty of \$3,500.00 after adjustment factors for a total penalty of \$10,500.00 on motion of Mr. Sanders, second of Mr. Hennelly.

Announcements and Scheduling of Future Meetings

The Commissioners confirmed future meeting dates through 2013 as follows: October 10, 16, and 30, November 6, 14, and 20, December 4, 12, and 18. All meetings begin at 1:00 p.m. except for the November 14th meeting which will begin at 1:30 p.m.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:50 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Ву

Laura McGrory, Director

ATTEST:

Tuesa Hulton

Teresa Hilton, Commission Secretary