

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, October 10, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Robert Breakiron	ADOSH 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. Vice Chair Susan Strickler was not able to attend. Also in attendance were Chris Hansen and Dave Park from the City of Tempe; Matt Saxe from Lang, Baker & Klain, PLC; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of September 17, 2013 Meeting

The Commission unanimously approved the Minutes of September 17, 2013 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. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C12/13-0425 A Secure Towing, LLC
2. 2C12/13-1416 B&G Auto Salvage LLC
3. 2C12/13-1732 Brice Hauling, LLC dba Z Fun Factory
4. 2C12/13-1403 Colin Graham & Brittany Graham, H/W
dba Balloons Over Yuma aka Endeavor Ballooning
5. 2C13/14-0255 Creative Tree Care, LLC
6. 2C13/14-0342 Country Boys Restaurant #110, Inc.
dba Country Boys Restaurant
7. 2C11/12-2797 Designated Drivers, LLC dba DD 24/7
8. 2C13/14-0346 Jesus Gonzalez Garcia, a Single Man,
dba Garcia Building Contractors
9. 2C13/14-0029 Lumberjack Timber, LLC

10. 2C11/12-1056 South Valley Recyclers, LLC
11. 2C12/13-0773 Valley Care & Enrichment Services, Inc.
12. 2C12/13-0619 Wild West Motorsports, L.L.C.

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. City of Mesa, Arizona
2. Costco Wholesale Corporation
3. Hyatt Corporation
4. Learjet Inc.
5. Nordstrom, Inc.
6. Swift Transportation LLC
7. YRC, Inc., dba YRC Freight

Chairman Parker stated that agenda items (b) (1) and (b) (7) would be removed from the consent agenda. The Commission unanimously approved the remaining consent agenda items on motion of Ms. Oster, second of Mr. Hennelly. Chairman Parker stated that item b (1) was being held until the next meeting, and that item (b) (7) would be considered separately today.

Discussion & Action regarding Request for Renewal of Self-Insurance Authority

YRC, Inc., dba YRC Freight – Michael Hawthorne presented staff's renewal report along with current Moody's, Standard & Poor's, and Experian bond and credit ratings 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 assets over \$2.2 billion and a clean audit report, and with a security deposit of 135% of estimated future liability.

Ms. Oster questioned the number of claims filed in 2013 and also requested a loss run for the year. Staff will request a full claims run and verify same with the Claims Division. Chairman Parker stated that the matter would be tabled until the requested information is received.

Discussion & Action regarding OSHA Review Board Appointments pursuant to A.R.S. §23-422 and A.R.S. §23-423

Bill Warren advised that there is a vacancy for a member representing the general public on the OSHA Review Board. The ADOSH Advisory Committee (AAC) has discussed and reviewed qualified candidates who are willing and able to serve on the OSHA Review Board and recommends the following list of names be forwarded to the Governor for consideration for appointment to the OSHA Review Board: Linda Howard, Ph.D., CSP; James A. Symonds, Rear Admiral, US Navy, retired; and Richard W. Murphy, CIH, CSP. ADOSH concurs with the AAC's recommendations. Following review of the nominees' resumes, the Commission agreed that the candidates all had impressive resumes and unanimously approved forwarding the names to the Governor for consideration on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of ADOSH Discrimination Complaint

#13-3875-04 Steve Cota vs. Wholesum Farms Arizona, L.L.C. - Bill Warren presented a summary of Mr. Cota's complaint, the employer's response, and the Division's investigation of the matter and 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 any protected activity and adverse action. The Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Mr. Hennelly.

Discussion & Action of Proposed OSHA Citations & Penalties

City of Tempe
20 E. 6th Street
Tempe, AZ 85281

Fatality/Accident
Yrs/Business - 119
Empl. Cov. by Insp. - 24

Site Location: 550 E. Tempe Town Lake, Tempe, AZ 85281

Inspection #: U5916-317112068

Insp. Date: 04/22/2013

SERIOUS - Citation 1 - Item 1 -

(a) Tempe Town Lake: One employee did not wear appropriate personal protective equipment necessary to protect him from the hazards inherent in working on and around a body of water, as wearing this equipment, a Personal Flotation Device (PFD), was not required by the employer for the work that he was performing. (1910.132(a)).

(b) Tempe Town Lake: An adequate hazard assessment was not conducted by the employer to determine the need for appropriate personal protective equipment to protect employees from drowning while working on or around bodies of water. (1910.132(d)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Bill Warren 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 violations directly related to the fatality. Chris Hansen, Risk Manager and Dave Park, Assistant City Attorney from the City of Tempe also addressed the Commission and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved deleting Citation 1, Item 1 (a) and issuing Citation 1, Item 1 (b) and assessed the recommended penalty of \$7,000.00 with the understanding that if the fatality was not caused by drowning or the operation of the boat, ADOSH staff can reduce the penalty on motion of Mr. Parker, second of Mr. Hennelly.

M&P Venture Partners L.L.C. - This involved a fatality and was for information only. No violations were noted or citations recommended.

Central Construction Co.
1256 W. Chandler Blvd., Suite E
Chandler, AZ 85224

Planned
Yrs/Business - 49
Empl. Cov. by Insp. - 5

Site Location: 1500 E. Tucson Market Place, Tucson, AZ 85714

Inspection #: F3875-317129872

Insp. Date: 05/20/2013

SERIOUS – Citation 1 - Item 1 – Two employees were observed working in an excavation that was 8 feet deep, six feet wide and 20 feet long, and employees had not been trained in the recognition and avoidance of unsafe conditions and the regulations applicable to excavations. (1926.21(b)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Two employees were allowed to work in an excavation that measured 8 feet deep, six feet wide at the top, two feet wide at the base and 20 feet long, and were not provided a safe means of egress. (1926.651(c)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Spoil piles were not located 2 feet or more away from the edge of an 8 foot deep, six feet wide and twenty feet long excavation that employees were working in. (1926.651(j)(2)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – The competent person designated by the employer was not conducting regular inspections of the excavation that was eight feet deep, six foot wide at the top and 20 feet long. (1926.651(k)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – Employees conducted work inside the excavation that was eight feet deep, six feet wide, and 20 feet long, and were not protected from a wall collapse by an adequate protective system. (1926.652(a)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$3,750.00 on motion of Mr. Sanders, second of Ms. Oster.

Graceland AZ, LLC
11498 W. Buckeye Rd.
Cashion, AZ 85329

Complaint
Yrs/Business – 3 Mos.
Empl. Cov. by Insp. – 9

Site Location: 11498 W. Buckeye Rd., Cashion, AZ 85329

Inspection #: W3109-317165074

Insp. Date: 06/07/2013

SERIOUS – Citation 1 - Item 1 - The fabrication and assembly shops had excessive buildup of saw dust around the base of saws creating a potential combustible atmosphere. (1910.22(a)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 2 – Two fabricated wood platforms measuring eight feet above the floor had no guardrails thereby exposing employees to a fall hazard. (1910.23(c)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 3 – Exit door blocked with multiple stacks of plywood blocking the emergency exit door. (1910.37(a)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 –

a) A Nissan #110 forklift (Model F04G50V, Serial Number A33-450013) had a load data plate that was not legible. (1910.178(a)(6)).

b) Forklift operators were not trained, evaluated and certified by the employer. (1910.178(1)(I)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 –

a) A Ridgid 10 inch table saw (Model R4512, Serial Number EM 124332294) was missing a blade guard assembly exposing operator to cutting portion of blade. (1910.213(d)(1)). There was one other instance of this violation.

(b) Two Ridgid 10 inch table saws (Model R4512, Serial Numbers unknown) were missing a blade guard assembly exposing operator to cutting portion of blade (1910.213(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6 – A Ridgid 10” radial saw (Model and Serial Number unknown) was missing the lower blade guard exposing the operator to the rotating blade. (1910.213(h)(1)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 7 – A receptacle box had been removed from the wall on a liquid tight insulated flexible cable and the cover plat removed exposing employees to 120 volt energized contacts. (1910.305(b)(2)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 8 – Approximately 1400 feet of PVC piping was used to transport compressed air. (A.A.C. R20-5-628)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$4,950.00

TOTAL FORMULA AMT. - \$4,950.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned whether the amount of saw dust would warrant a respiratory protection program. Mr. Warren responded to the question. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,950.00 on motion of Ms. Oster, second of Mr. Hennelly.

A brief break was taken at this point.

Discussion &/or Action regarding Budget and Operations of the Commission

Laura McGrory provided an update with respect to how the federal government shutdown is impacting the operations of ADOSH. She described the part-time furlough plan for

ADOSH, which has been approved by ADOA and would become effective on October 30, 2013, if the shutdown continues beyond that time. She gave a special thank you to Andrew Wade, Michael Hawthorne, and Bill Warren for their help on this issue.

Announcements and Scheduling of Future Meetings

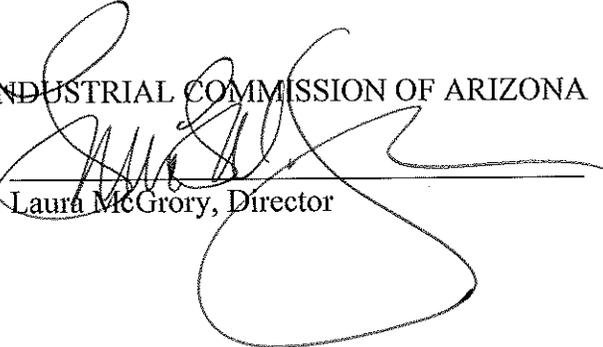
Secretary Hilton reminded the Commissioners of the dates that are scheduled for Commission meetings through the end of the year: October 16 and 30, November 6, 14, and 20, and December 4, 12 and 18. The Commission agreed to hold the annual stakeholders' meeting on November 20th.

Ms. McGrory stated that an agenda item for next week's meeting will be setting the Arizona Minimum Wage.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 3:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary