

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Wednesday, December 4, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member (telephonic)
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	Director, ADOSH
	Marshall Krotenberg	Safety Compliance Supv.
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:03 p.m. noting a quorum present. Numerous interested parties were in attendance. An audio tape of this meeting is available and included with the minutes.

Approval of Minutes of November 20, 2013 Meeting

The Commission unanimously approved the Minutes of the November 20, 2013 General Session on motion of Ms. Strickler, second of Mr. Hennelly.

The Commission unanimously approved the Minutes of the November 20, 2013 Executive Session on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Arizona State Forestry Division	Fatality/Accident
1110 W. Washington St., Ste. 100	Yrs/Business – 100
Phoenix, AZ 85007	Empl. Cov. by Insp. – 325
Site Location: Weaver Mountains/Yarnell Hill Fire, Yarnell, AZ 85362	
Inspection #: L3419-317242683	
Insp. Date: 07/01/2013	

WILLFUL SERIOUS – Citation 1 - Item 1 – The employer did not furnish to each of his employees employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to their employees, in that the employer implemented suppression strategies that prioritized protection of non-defensible structures and pastureland over firefighter safety, and failed to prioritize strategies consistent with Arizona State Forestry Division – Standard Operational Guideline 701 Fire Suppression and Prescribed Fire Policy (2008). When the employer knew that suppression of extremely active chaparral fuels was ineffective and that wind would push active fire towards non-defensible

(IAP) containing objectives reflecting the overall incident strategy, specific tactical actions, and supporting information for the next operational period was not conducted by fire management to ensure a safe transition to extended attack.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 2 – Item 2 – The employer did not furnish to each of his employees employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to their employees, in that pursuant to Arizona State Fire Division Standard Operating Guideline SOG-701, transition from initial attack to an extended attack operations is extremely dangerous and critical incident management personnel necessary to support the planning and implementation of fire suppression operations arrived late or were absent from their assigned positions during the life-threatening transition thereby increasing the risk of firefighter exposure to smoke inhalation, burns, and death: (A.R.S. § 23-403(A)).

- a) Yarnell Hill Fire, Yarnell, Arizona: On or about June 30, 2013, fire management positions of Safety Officer and Planning Section Chief were unfilled and therefore unable to participate during critical fire suppression planning, transition planning, and oversight of ongoing wildfire suppression operations.
- b) Yarnell Hill Fire, Yarnell, Arizona: On June 30, 2013, at approximately 1330, Division Z Supervisor departed from his assigned position which left Division Z without supervision during ongoing wildfire suppression operations.

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL PENALTY - \$559,000.00

TOTAL FORMULA AMT. - \$559,000.00

Chairman Parker explained the Commission's role in reviewing proposed citations and penalties. He then introduced ADOSH Director, Bill Warren. Mr. Warren briefly described the Yarnell Hill Fire and advised that as a result of ADOSH's investigation it is recommending one willful serious citation and two serious citations. Mr. Warren introduced Marshall Krotenberg, the lead investigator, to explain the proposed citations and penalties. Mr. Krotenberg acknowledged the ADOSH investigative team members, Brett Steurer and Bruce Hannah, and he introduced the experts from Wildland Fire Associates who were retained to assist in the investigation: Dan O'Brien, Elizabeth Anderson, Darrell Schulte, Barry Hicks and Dave Larson. Mr. Krotenberg provided an overview of the chronology of events. He then summarized the citations and proposed penalties as listed and responded to questions from the Commissioners regarding the findings of the investigation and recommendations for citations and penalties.

Barry Hicks responded to questions from the Commissioners regarding the elements of proper plans, which would have identified the escape routes and safety zones. He explained that protection of a structure should never take priority over the safety of the firefighters.

During the presentation, Michael Sanders' telephonic connection was dropped and re-established several times and he did not take part in the following votes.

Following further discussion, the Commission unanimously approved issuing Citation 2, Item 2 and assessed the recommended penalty of \$7,000.00 on motion of Ms. Strickler, second of Ms. Oster.

The Commission unanimously approved issuing Citation 2, Item 1 and assessed the recommended penalty of \$7,000.00 on motion of Mr. Hennelly, second of Ms. Strickler.

With regard to Citation 1, Item 1, Ms. Oster made a motion to issue the citation as a willful serious and assess the recommended penalty of \$70,000.00 which was seconded by Ms. Strickler. Mr. Parker explained that while he believed the team that was on site did everything that was within their power to defend the community and provide for their safety, employees remained exposed after they should have no longer been exposed and he believes a willful classification is justified. Chairman Parker called for the vote. The Commission unanimously approved issuing Citation 1, item 1 and assessed the recommended penalty of \$70,000.00.

Mr. Parker explained that since Citation 1, Item 1 is being issued as a willful serious citation, that the Commission is required to consider the assessment of an additional penalty under A.R.S. § 23-418.01. Mr. Krotenberg explained the requirements of this statute and recommended that the Commission assess an additional penalty of \$25,000.00 for each employee that died, which is payable to the dependents or estate of the deceased. Following discussion, and finding that the requirements of A.R.S. §23-418.01 have been met, the Commission unanimously assessed a penalty of \$25,000.00 for each employee that died for a total penalty of \$475,000.00 on motion of Mr. Hennelly, second of Ms. Strickler.

Chairman Parker thanked Marshall Krotenberg for his presentation.

Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting is scheduled for December 12, 2013.

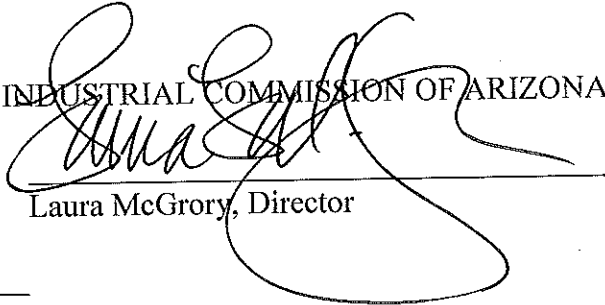
Public Comment

Juliann Ashcraft, wife of Andrew Ashcraft, addressed the Commission and thanked the ADOSH investigative team for their comprehensive investigation and giving a clearer vision of what happened.

There being no further business to come before the Commission, the meeting was adjourned at 3:35 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laura McGrory, Director

ATTEST:


Teresa Hilton, Commission Secretary