MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 10, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Michael G. Sanders	Vice Chairman
	David M. Parker	Commissioner (video)
	Joseph M. Hennelly, Jr.	Commissioner
	Clint Bolick	Commissioner
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Kelly LeFevre	Human Resource Manager
	William Warren	ADOSH Director
	Billie Gingrass	Compliance Officer
	Bruce Hanna	Compliance Officer
	Chris Brandon	Compliance Officer
	Erik Anderson	Compliance Officer
	Candice Casiano	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were John Osborn and Sam Cook of Schuff Steel, Jason Weber of Snell & Wilmer, and Dave Selden of the Cavanaugh Law Firm.

Approval of Minutes of August 27, 2015 Regular Meeting.

The Commission unanimously approved the Minutes of the August 27, 2015 Regular Session meeting on motion of Vice Chairman Sanders, second of Commission 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 Proposed Civil Penalties Against Uninsured Employers.

1.	2C14/15-2948	All-Star Fencing, L.L.C., dba Sav-On Fence
2.	2C14/15-1545	Creative Home Repair & Remodeling, LLC
3.	2C14/15-2903	Eldercare For Life, Inc., dba Thoroughcare Home Health

4. 2C14/15-2398 G.D.V. Custom Homes, Inc.
5. 2C15/16-0522 Get Smart Delivery, LLC
6. 2CSP15/16-0036 Rainey & Associates, L.L.C.
7. 2C41/15-0558 SSA Executive Search International, Ltd.
8. 2CSP15/16-0024 Sun Valley Organization LLC
9. 2C14/15-0606 Superior Precision Engineering LLC

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

1. Freeport-McMoran Inc.
2. Knight Transportation, Inc.
3. Learjet Inc.
4. Macy's, Inc.
5. Mayo Clinic
6. Southwest Gas Corporation
7. Van Tuyl Group, LLC

Chairman Schultz stated that items a.4. and a.7. will be removed from the consent agenda and heard separately. Commissioner Bolick asked that item a.6. also be heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Bolick, second of Commissioner Hennelly.

Andrew Wade advised that item a.4., G.D.V. Custom Homes, Inc., had obtained workers' compensation insurance and staff is recommending a reduced penalty of $500.00, instead of staff's previous recommendation of a $1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of $500.00 against the employer on motion of Commissioner Parker, second of Vice Chairman Sanders

Commissioner Bolick asked about the justification for the $5,000.00 penalty for item a.6., Rainey & Associates, L.L.C. Mr. Wade reviewed the file and indicated that it was a typographical error and that staff was actually recommending a $1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of $1,000.00 against the employer on motion of Commissioner Bolick, second of Vice Chairman Sanders.

Mr. Wade advised that item a.7., SSA Executive Search International, Ltd., had obtained workers' compensation insurance and staff is recommending a reduced penalty of $500.00, instead of staff's previous recommendation of a $1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of $500.00 against the employer on motion of Commissioner Bolick, second of Commissioner Hennelly.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

B & B Holdings, LLC dba Precision Powdercoat
1616 S Edward Dr
Tempe, AZ 85281

Site Location: 1616 S Edward Dr
Tempe, AZ 85281
Inspection No: J7272-1070499
Inspection Date: 06/15/2015

Planned
Years in Business: 18
Empl. Covered by inspection: 16

SERIOUS – Citation 1 - Item 1 –

a) Batch room: The installed pressure activated device, a Dwyer Photohelic model A3008, was not functioning while the spray booth ventilation system was in operation which prevented employees from ensuring required air velocity was maintained during powder coating operations. (29 CFR 1910.107(b)(5)(i)).

b) Batch room: The Donaldson Torit spray booth model ECB-1, serial number IG037106, did not have approved automatic sprinklers installed upstream and downstream of the spray booth's filters since the automatic sprinkler system was not plumbed into the building's water system. (29 CFR 1910.107(b)(5)(iv)).

c) Batch room: An employee was applying powder coating paint to a steel frame while the power pack of a Wagner powder spray system model SprintX, serial number unknown, was located inside the perimeter of the spray booth. (29 CFR 1910.107(i)(4)).
Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 2 –

a) Production Floor: A written respiratory protection program was not established and implemented for employees using a 3M filtering facepiece respirator, model 8210, or a Bullard supplied air respirator model Nova 2000, that included a medical evaluation, fit testing, procedures for proper use, procedures for cleaning, training and procedures for evaluating the effectiveness of the program. (29 CFR 1910.134(c)(1)).

b) Production Floor: A medical evaluation was not provided to determine an employees' ability to use a 3M filtering facepiece respirator, model 8210, or a Bullard supplied air respirator model Nova 2000, while working with hazardous chemicals such as FlashClene 1414 and Surcoat 953 or abrasive blasting particulates. (29 CFR 1910.134(e)(1)).

c) Production Floor: Two employees were not fit tested prior to required, initial use of a 3M half facepiece reusable respirator, model 8210 when working with hazardous chemicals such as powder coating paint in the facility. (29 CFR 1910.134(f)(2)).

d) Production Floor: Employees who were required to wear a 3M filtering facepiece respirator, model 8210, or a Bullard supplied air respirator model Nova 2000, were not trained on respiratory protection elements outlined in section (i)-(vii). (29 CFR 1910.134(k)(1)).

e) Sandblasting booth: An employee using a Bullard Nova 2000 Supplied Air Respirator system was not provided Grade D breathing air as part of a supplied air respiratory protection system when working in an abrasive blasting booth. (29 CFR 1910.134(i)(1)(ii)).

f) Sandblasting booth: An air filter model APF 3000 on a Sullair rotary screw compressor model number ES8-30H, serial number 003-124650, did not have a tag containing the most recent change date at the compressor. (29 CFR 1910.134(i)(5)(iv)).
Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 3 – Production Line: An emergency eyewash station providing 15 minutes of continuous water flow was not available to employees who work with corrosive chemicals such as Surcoat 953 and FlashClene 1414. (29 CFR 1910.151(c)).

Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 4 – Outside storage area: An employee was not trained in the safe operation of a Toyota Class IV forklift, model 7FGCU15, serial number 63514. (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 5 –

a) Batch room: A Square D panelboard catalog #49-60401-28, labeled "Panel H1" on the exterior of the panelboard and marked "Panel HB" on the inside of the panelboard door, did not have all of the circuit breakers legibly marked and identified. (29 CFR 1910.303(f)(2)).

b) Batch room: One GE 200 line starter controller, powering the "small oven", was missing a cover over an opening on the front panel, exposing employees to contact with energized electrical parts. (29 CFR 1910.303(g)(2)(i)).

c) Batch room: A fitting, specifically a conduit body, was lacking a cover plate where energized wires were protruding from the conduit entering and exiting the fitting. (29 CFR 1910.305(b)(2)(i)).

d) Batch room: A black 25' extension cord had exposed wires where the outer cord insulation had been damaged. (29 CFR 1910.305(f)(1)).

e) Batch room: One black 25' electrical extension cord, that provided electricity to a cell phone charger, was attached to the building surface by zip tie connectors affixed to metal electrical conduit pipes. (29 CFR 1910.305(g)(1)(iv)(D)).

f) Batch room: A black 25' extension cord had exposed wires where the outer insulation had separated from the base where it was plugged into an electrical outlet due to tension in the joint of the wire. (29 CFR 1910.305(g)(2)(iii)).

Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 6 –

a) Production floor: A written hazard communication program had not been developed and implemented at the job site for employees who were potentially exposed in the workplace to hazardous chemicals, materials, and/or substances such as FlashClene 1414 and Surcoat 953. (29 CFR 1910.1200(e)(1)).

b) Production floor: The employer did not furnish information and training to employees who were exposed in the workplace to hazardous chemicals such as FlashClene 1414 and Surcoat 953. (29 CFR 1910.1200(h)(1)).

Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

TOTAL PENALTY - $7,500.00 TOTAL FORMULA AMT. - $7,500.00

William Warren summarized the citation and proposed penalty as listed and described the photographs. Vice Chairman Sanders asked about the hazards associated with the powder spray system located within the spray booth. Warren responded to the question. Vice Chairman Sanders asked about ownership and Mr. Warren responded to the question. Vice Chairman Sanders asked about the potential for a willful if the original owner was still involved. Mr. Warren responded to the question.

Commissioner Parker commented on Citation 1, Item 2, the air respirator, using self-contained breathing apparatus, and the potential for contaminates. He also referred to Item 5 and the 25 foot electrical cord, possible intent to locate the extension cord so as to avoid a trip hazard, the condition representing a technical violation, but with the magnitude of other violations, citing is appropriate, and the potential for an education moment.

The Commission unanimously approved issuing the citation and assessed the recommended penalty of $7,500.00 on motion of Vice Chairman Sanders, second of Commissioner Bolick.

Blucor Contracting Inc.
6939 E. Parkway Norte
Mesa, AZ 85212

Complaint
Years in Business: 26
Empl. Covered by inspection: 7

Site Location: 850 W. Combs Rd
San Tan Valley, AZ 85140
Inspection No: T9350-1066603
Inspection Date: 05/27/2015

SERIOUS – Citation 1 - Item 1 – North half of trench: A stairway, ladder, ramp or other safe means of egress was not provided to employees in the trench that was six feet deep. (29 CFR 1926.651(c)(2)).

Div. Proposal - $1,750.00 Formula Amt. - $1,750.00

SERIOUS – Citation 1 Item 2 – North half of trench: Three employees were working in a trench that was approximately 50 to 60 feet in length, 4 feet wide, and 6 feet deep and was not adequately protected from cave-ins or collapse, according to the requirements of 29 CFR 1926.652 (b) or (c). (29 CFR 1926.652(a)(1)).

Div. Proposal - $1,750.00 Formula Amt. - $1,750.00

TOTAL PENALTY - $3,500.00 TOTAL FORMULA AMT. - $3,500.00

Mr. Warren summarized the citation and proposed penalty as listed and described the photographs. The Commission unanimously approved issuing the citation and assessed the recommended penalty of $3,500.00 on motion of Commissioner Parker, second of Commissioner Bolick. Chairman Schultz commented on the employer's abatement of the hazards.

Coldwater Roofing, LLC
26263 N 74th Ln.
Peoria, AZ 85383

Planned
Years in Business: 7
Empl. Covered by inspection: 5

Site Location: 2510 Mesa Trl
Flagstaff, AZ 86001
Inspection No: A3807-1068878
Inspection Date: 06/08/2015

SERIOUS – Citation 1 - Item 1 – Roof: Five employees were engaged in re-roofing work on a low-slope roof with unprotected sides and edges approximately 11 feet 2 inches above a lower level and were not protected from falling by a fall protection system, safety net system or guardrail system. (29 CFR 1926.501(b)(10)).

Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 – Roof: The employer did not retrain 5 employees who were engaged in re-roofing activities of a single story home and did not demonstrate knowledge, understanding or skill in the recognition of fall hazards or the use of fall protection systems as described by 1926.503 paragraph (a). (29 CFR 1926.503(c)(3)).

Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3 –

a) Patio Roof Section: Five employees were utilizing an orange fiberglass extension ladder, brand, size, model and serial number unknown, which did not extended 3 feet above the landing surface of the roof; the ladder was not secured at its top and a grasping device had not been provided. (29 CFR 1926.1053(b)(1)).

b) South Patio Roof Section: An employee ascending an orange fiberglass extension ladder, make, model and serial number unknown was carrying a full sheet of plywood that could cause him to lose balance and fall. (29 CFR 1926.1053(b)(22)).

Div. Proposal - $750.00 Formula Amt. - $750.00

TOTAL PENALTY - $3,750.00 TOTAL FORMULA AMT. - $3,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker commented on the frequency in which fall protection is not used and suggested ADOSH reach out to the roofing trades association regarding the requirements.

Vice Chairman Sanders referred to mounted photograph number 7, commented on the angle of the ladder, and asked if moving the base of the ladder inward would have led to compliance. Mr. Warren and Billie Gingrass responded to the question. Commission Bolick noted he had the same concern but noted the violation was encompassed with multiple other violations. The Commission unanimously approved issuing the citation and assessed the recommended penalty of $3,750.00 on motion of Vice Chairman Sanders, second of Commissioner Bolick.

C.A.S. Corporation dba National Mallfront & Design
901 W Melinda Ln
Phoenix, AZ 85027

Complaint
Years in Business: 37
Empl. Covered by inspection: 7

Site Location: 27035 N Black Rock Blvd
Glendale, AZ 85301
Inspection No: S8089-1068207
Inspection Date: 06/04/2015

SERIOUS – Citation 1 - Item 1 – East side of the classroom building: Two employees were working from a JLG aerial lift, model 660SJ, serial number unknown, at a height of approximately 75 feet above the level below without wearing a body belt or a full body harness with a lanyard connected to the equipment. (29 CFR 1926.453(b)(2)(v)).

Div. Proposal - $1,750.00 Formula Amt. - $1,750.00

SERIOUS – Citation 1 - Item 2 – Class room building roof: Three employees were working on a flat roof without the use of a guardrail system, safety net system, or personal fall arrest system to prevent an approximate 26 foot fall hazard to a lower level. (29 CFR 1926.501(b)(1)).

Div. Proposal - $1,750.00 Formula Amt. - $1,750.00

SERIOUS – Citation 1 - Item 3 – Classroom building roof: Three employees working at heights greater than 6 feet and exposed to falls were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - $1,750.00 Formula Amt. - $1,750.00

SERIOUS – Citation 1 - Item 4 – Class room building roof: Protruding reinforcing steel (i.e., rebar) which employees could fall onto, were not protected by appropriate caps, covers or other equivalent means to protect employees from the hazard created by impalement. (29 CFR 1926.701(b)).

Div. Proposal - $1,400.00 Formula Amt. - $1,400.00

SERIOUS – Citation 1 - Item 5 – Class room building: Three employees had been utilizing a 10 foot Werner Fiberglass step ladder; model number and serial number unknown, to access the roof of the classroom building. (29 CFR 1926.1053(b)(4)).

Div. Proposal - $1,400.00 Formula Amt. - $1,400.00

TOTAL PENALTY - $8,050.00 TOTAL FORMULA AMT. - $8,050.00

Mr. Warren summarized the citation and proposed penalty as listed and described the photographs. Vice Chairman Sanders referred to mounted photograph number 1 and asked if the employees were working on the lift at that height. Mr. Warren responded to the question. Commissioner Parker asked about the ladder shown in mounted photographs 13 and 14 and the use of the ladder to access and exit the roof. He described a hazard with employees attempting to exit the roof through the hole feet first and hoping to locate the ladder. Commissioner Parker described the circumstances as an accident waiting to happen. The Commission unanimously approved issuing the citation and assessed the recommended penalty of $8,050.00 on motion of Commissioner Parker, second of Commissioner Hennelly.

Craftsmen in Wood Mfg. Co.
5441 W Hardley St
Phoenix, AZ 85043

Site Location: 5441 W Hardley St
Phoenix, AZ 85043
Inspection No: U5916-1066785
Inspection Date: 05/29/2015

Complaint
Years in Business: 48
Empl. Covered by inspection: 47

SERIOUS – Citation 1 - Item 1 –

a) Shop Area: Toyota forklift number 1, model 42-6FGU25 and serial number 63889, was not taken out of service for the unsafe condition of a non-operational horn. (29 CFR 1910.178(p)(1)).

b) Shipping and Receiving Area: One Toyota forklift: model 7FGU30, serial number 63924, was not examined prior to daily use. (29 CFR 1910.178(q)(7)).

Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 2 – Shop Area: One Raimann Gang Saw, model KR 310M, machine number 5422, was lacking a guard to prevent the operator from placing any part of his body into the danger zone during operation. (29 CFR 1910.213(f)(1)).

Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 3 – Shop Area: One Porter Cable Router, Model 1001-T2, was lacking a guard to keep the operator's hand away from the cutting edge. (29 CFR 1910.213(m)(1)).

Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

TOTAL PENALTY - $3,750.00 TOTAL FORMULA AMT. - $3,750.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Parker noted that there were two forklifts and daily checklists, and asked about the employer's practices with the checklists. Mr. Warren responded to the question. Commissioner Parker suggested an alternative method of describing the violation in Citation 1 Item 1 as a horn that operated intermittently and he explained why. The Commission unanimously approved issuing the citation and assessed the recommended penalty of $3,750.00 on motion of Vice Chairman Sanders, second of Commissioner Bolick.

DMS Roofing, Inc.
3118 W Thomas Rd Ste 722
Phoenix, AZ 85017

Planned
Years in Business: 14
Empl. Covered by inspection: 2

Site Location: 4434 N 185th Ave
Goodyear, AZ 85395
Inspection No: T9350-1063639
Inspection Date: 05/19/2015

SERIOUS – Citation 1 - Item 1 – South section of roof; above back patio: One employee was working on the roof which had four roof holes that were cut to 11 inches wide and 24 inches long, and the employee was not protected by a guardrail system, hole cover, or personal fall arrest system to prevent employees from falling into the hole. (29 CFR 1926.501(b)(4)(i)).

Div. Proposal - $1,200.00 Formula Amt. - $1,200.00

SERIOUS – Citation 1 - Item 2 – South side of house roof, vehicle garage: Two employees were working on low-slope (4:12) roof, approximately 13 feet 3 inches in height above the ground level without utilizing a fall protection system to prevent a fall. (29 CFR 1926.501(b)(10)).

Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

TOTAL PENALTY - $2,700.00 TOTAL FORMULA AMT. - $2,700.00

Mr. Warren summarized the citation and proposed penalty as listed. The Commission unanimously approved issuing the citation and assessed the recommended penalty of $2,700.00 on motion of Commissioner Bolick, second of Commissioner Hennelly.

Papago Plating Company, Inc.
2312 E Washington St
Phoenix, AZ 85034

Referral
Years in Business: 53
Empl. Covered by inspection: 10

Site Location: 2312 E Washington St
Phoenix, AZ 85034
Inspection No: L3419-1065089
Inspection Date: 05/22/2015

SERIOUS – Citation 1 - Item 1 – North end of the plating line, elevated work platform: Sodium hydroxide from a caustic cleaning tank had hardened and accumulated on the steps (risers and treads), work platform, wood planking and side of the tank creating a slippery and uneven walking surface. (29 CFR 1910.22(a)(2)).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 Item 2 – Plating line: One floor hole opening 14" by 3 1/2" located on the elevated work platform was not guarded with a floor hole cover of standard strength and construction. (29 CFR 1910.23(a)(8)).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 3 – Plating line: Elevated work platforms adjacent to and between dip tanks used for plating operations were not guarded with a standard railing and toe board. A number of the dip tanks ranged in height from 30-40" measured from the top of the working platform. (29 CFR 1910.23(c)(3)).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 4 – Plating line: The existing guardrail installed on the elevated work platform adjacent to the dip tanks did not meet the minimum specifications. The height of the top rail was 39" with no intermediate rail and 4" nominal toe board. (29 CFR 1910.23(e)(1)).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 5 – Employee restroom and changing area: Toilets, urinals, wash basins and floors were not maintained in a sanitary condition. (29 CFR 1910.141(d)(1)).

Div. Proposal - $450.00 Formula Amt. - $450.00

SERIOUS – Citation 1 - Item 6 – Antiquing room: One electric box fan mounted inside a wall opening did not have the fan blades guarded. (29 CFR 1910.212(a)(5)).

Div. Proposal - $450.00 Formula Amt. - $450.00

SERIOUS – Citation 1 - Item 7 – Polishing and buffing department: One double spindle horizontal machine used for sanding, polishing and buffing did not have the drive pulleys guarded to prevent inadvertent or accidental contact with rotating parts or pinch points. (29 CFR 1910.219(d)(1)).

Div. Proposal - $450.00 Formula Amt. - $450.00

SERIOUS – Citation 1 - Item 8 – Polishing and buffing department: A double spindle horizontal buffing and polishing machine inclined drive belt located 7' or lower from the working surface was not enclosed to prevent accidental or inadvertent contact with moving parts, pinch points and in-going nip points. (29 CFR 1910.219(e)(3)(i)).

Div. Proposal - $450.00 Formula Amt. - $450.00

SERIOUS – Citation 1 - Item 9 – Polishing and buffing department: A 3" abrasive belt sander used for grinding and finishing metal had several projecting bolt heads on a rotating shaft that that were not made flush or guarded by a metal cover. One employee injured his hand as his glove got caught in the rotating shaft projection. (29 CFR 1910.219(h)(1)).

Div. Proposal - $450.00 Formula Amt. - $450.00

SERIOUS – Citation 1 - Item 10 – North end of plating line on the east wall: One conductor located in an open junction box was energized. (29 CFR 1910.303(g)(2)(i)).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 11 – South end of plating line: The flexible power cord for a small air compressor did not have a grounding conductor to ensure that the ground path was permanent, continuous and effective. (29 CFR 1910.304(g)(5)).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1 - Item 12 – Plating department north end, east wall: One electrical panel was missing ten blankout covers. (29 CFR 1910.305(b)(1)(ii)).

Div. Proposal - $750.00 Formula Amt. - $750.00

TOTAL PENALTY - $7,500.00 TOTAL FORMULA AMT. - $7,500.00

Mr. Warren summarized the citation and proposed penalty as listed. Vice Chairman Sanders referred to the notation that there were no inspections in 3 years and asked whether there were any prior inspections. Bruce Hanna described prior inspections and citations. Commissioner Bolick explained why the reduction for history should not apply. Vice Chairman Sanders commented on the lack of abatement. Mr. Hanna responded to the question and describes additional history including the involvement of the Arizona Department of Environmental Quality (ADEQ) and the Phoenix Fire Department. Commissioner Parker asked if the ADEQ had been notified. Mr. Hanna responded to the question and noted the involvement of other City of Phoenix departments. Commissioner Parker asked about an abatement inspection rather than having the employer just certify abatement by submitting some photographs and he commented on whether the adjustment factors should be applied in light of the circumstances.

Chairman Schultz commented on the penalty and Mr. Warren and Mr. Hanna responded to the comment.

Commissioner Parker commented on the potential for penalties and actions from other agencies and moved staff's recommend citations with the total penalty of $7,500.00 and an abatement inspection. Vice Chairman Sanders seconded the motion. Chairman Schultz, Vice Chairman Sanders, Commissioner Parker, and Commissioner Hennelly voted in favor of the motion. Commissioner Bolick voted against the motion. Commissioner Bolick explained his vote, noted that he agreed with issuing the citation but in his view the penalty amount should, at the least, not have any reduction for history. He reiterated that he supported the citation but there should be a greater penalty. Chairman Schultz reviewed the vote on the motion and stated the motion passed four in favor and one against. Mr. Warren added that ADOSH will perform the abatement inspection in 90 days. Vice Chairman Sanders asked about the potential for more citations upon the abatement inspection and requested ADOSH provide the Commission with a follow up report on the inspection. Mr. Warren responded to the question and agreed to provide a follow up report.

Schuff Steel Company
420 South 19th Ave
Phoenix, AZ 85009

Site Location: 420 South 19th Ave
Phoenix, AZ 85009
Inspection No: T9350-1067222
Inspection Date: 06/01/2015

Complaint
Years in Business: 40
Covered by inspection: 168

SERIOUS – Citation 1 - Item 1 – Yard: One Caterpillar forklift Model #DP150, Serial Number 6DP10354 was not taken out of service while there were broken brake lights. (29 CFR 1910.178(p)(1)).

Div. Proposal - $2,250.00 Formula Amt. - $2,250.00

SERIOUS – Citation 1 - Item 2 – S-4 Column 9: A Whitney (portable punch machine) Model and Serial numbers unknown, was lacking a point of operation guard to prevent the operator from placing their hands into the danger zone during operation cycle. (29 CFR 1910.212(a)(3)(ii)).
Div. Proposal - $1,350.00 Formula Amt. - $1,350.00
TOTAL PENALTY - $3,600.00 TOTAL FORMULA AMT. - $3,600.00

Mr. Warren summarized the citation and proposed penalty as listed. Chairman Schultz asked the representatives of Schuff Steel if they wanted to make any comments and they responded that they did not have any comment at this time.

Commissioner Parker asked about the daily forklift inspection form, noted the issues on the forklift, and asked about employer knowledge of the problems. Mr. Warren responded to the questions and commented on the inspections. Commissioner Parker asked that the Schuff Steel representatives inform upper management of the importance of acting on issues and how this citation may be used to establish knowledge of the requirements to support a willful should this happen again.

The Commission unanimously approved issuing the citation and assessed the recommended penalty of $3,600.00 on motion of Commissioner Parker, second of Commissioner Bolick. Chairman Schultz thanked the Schuff Steel representatives for the abatement of the taillights, the tires, and repair of the mast which was truly significant. Vice Chairman Sanders asked the Schuff Steel representatives how long the tires on the forklift had been in poor condition and one of the representatives replied that he did not know the answer but obviously the tires needed repair.

Shooter's World of Peoria L.L.C.
8966 W Cactus Rd
Peoria, AZ 85381

Complaint
Years in Business: 4
Empl. Covered by inspection: 8

Site Location: 8966 W Cactus Rd
Peoria, AZ 85381
Inspection No: J7272-1059101
Inspection Date: 04/28/2015

SERIOUS – Citation 1 - Item 1 –

a) Exterior of gun range: Employees accessing the top of the gun range were not protected from falling approximately 12'-10-1/2" to the ground below by standard railings on all open sides or equivalent means of protection. (29 CFR 1910.23(c)(1)).

b) Exterior of gun range: Employees accessing the top of the gun range daily to turn on the gun range's ventilation system and change lead accumulation filters, were not provided fixed stairs to access the top of the gun range. (29 CFR 1910.24(b)).
Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 2 –

a) Gun range: A medical evaluation was not provided to determine an employees' ability to use a tight fitting Honeywell Sperian Survivair half facepiece or full facepiece respirator with

P100 filters, while sweeping spent bullet casings that contained lead from the gun range bay floors. (29 CFR 1910.134(e)(1)).

b) Gun range: Two employees were not fit tested prior to required, initial use of a Honeywell Sperian Survivair half facepiece respirator, when sweeping gun range floors that contained lead dust. (29 CFR 1910.134(f)(1)).
Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 3 –

a) Gun range: Personal air sampling was conducted and found an employee exposed to 68.8 micrograms of lead per cubic meter of air averaged over an eight hour period. (29 CFR 1910.1025(c)(1)).

b) Gun range: An initial determination of employee exposure through personal air sampling was not performed to determine if employees were exposed to lead dust at or above the action level. (29 CFR 1910.1025(d)(2)).

c) Gun range: A written compliance program was not developed and implemented which outlined company procedures and policies to limit and/or reduce employee occupational exposure to lead below the permissible exposure limit with engineering and administrative controls. (29 CFR 1910.1025(e)(3)(i)).

d) Sales floor: Two surfaces sampled, the membership counter computer keyboard and a product shelf, were examined and found to have lead accumulation levels above the industry clearance level of 40 micrograms per square foot. (29 CFR 1910.1025(h)(1)).

e) Gun range: Lead warning signs bearing regulated language were not posted in each work area where the Permissible Exposure Limit (PEL) was exceeded. (29 CFR 1910.1025(m)(2)(i)).
Div. Proposal - $1,250.00 Formula Amt. - $1,250.00

TOTAL PENALTY - $3,750.00 TOTAL FORMULA AMT. - $3,750.00

Mr. Warren summarized the citation and proposed penalty as listed and described the photographs. Commissioner Parker commented on his interest in indoor ranges as a risk manager for a sheriff's department, and commented on the amount of lead not just within the shooting range itself but in the sales floor area. He commented on the potential for educational outreach. Chairman Schultz commended Chris Brandon for performing sampling, not just in the range, but also where the retail and front end people worked, and the customers, who are exposed to those unacceptable concentrations of lead.

Vice Chairman Sanders asked if that was Mr. Brandon in the photo and asked if the sampling represents the exposure throughout the facility. Mr. Brandon responded to the questions. Vice Chairman Sanders referred to mounted photographs numbers 14 and 16, noted the retail products, and asked whether the test results could mean that lead could be found anywhere in the room. Mr. Brandon commented on the test results, the impact of frequent cleaning on the countertops, and the general impact of the cleaning schedule and the use of cleaning products. Vice Chairman Sanders asked about abatement. Mr. Brandon commented on the ventilation system, monitoring, and the rotation schedule of employees.

Commissioner Parker explained how lead may be tracked into the retail area and how there may be a combination of different factors that contribute to the high levels of lead.

The Commission unanimously approved issuing the citation and assessed the recommended penalty of $3,750.00 on motion of Commissioner Bolick, second of Vice Chairman Sanders.

Presentation and discussion regarding the operations of the Arizona Division of Occupational Safety and Health.

Mr. Warren presented a summary of ADOSH's operation. He described the different sections, commented on chapter six of the Field Operations Manual, referred to the five-year plan as well as the strategic plan, and noted the federal the grants and grant process. Mr. Warren described samples of educational outreach.

Chairman Schultz offered his assistance with any of the ADOSH programs. Commissioner Parker commented on the PEP and VPP Programs, and the Safety Summit at Marana. Commissioner Bolick commented on the number the metrics used by OSHA to evaluate the State program including the number of inspections that result in citations and identifying hazards as non-serious rather than serious. He explained why it is more appropriate to assess the State plan based on the results in terms of safety in the workplace rather than finding violations. Laura McGrory commented on the "in compliance rate" and noted that there are established expectations for the compliance officers to conduct a certain number of inspections per year, but ADOSH does not impose any expectations for the number of citations issued. She explained how the in compliance rate is an indicator of how ADOSH is effectively allocating resources.

Mr. Warren also commented on the in compliance rate. Commissioner Bolick asked if the number of violations found was part of the performance appraisal for compliance officers and Mr. Warren explained that is not part of the performance appraisal process and described some of the components of the performance appraisal process.

Ms. McGrory noted another discussion point with federal OSHA is the percentage of violations classified as serious, willful, and repeat. She explained that ADOSH's percentage of violations being classified as serious, willful, and repeat is lower than federal OSHA's and that federal OSHA also reclassifies their citations at a higher rate, and what these differences may mean in terms of how the programs are managed.

Commissioner Parker commented on the in compliance rate, noted that Arizona may not have some of the problems the rest of the country has and referred to, as an example, issues with skilled nursing facilities, and that ADOSH issues citations only where appropriate. He noted the five member Commission does great work and how having five individuals with different backgrounds, experience, and views helps make the program better. Commissioner Parker contrasted this approach with those states that have only one administrator deciding whether to issue citations.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

The Commission reviewed the meeting schedule and scheduled meetings for November 5, 12 and 19.

Public Comment.

Chairman Schultz asked if there were any public comments. Mr. Seldon stated that Mr. Warren's presentation was excellent and he noted that he represents employers in contested ADOSH cases. He explained that he views the statistics related to reduction or classification differently in comparing ADOSH with federal OSHA and he relayed some of his experiences with OSHA cases in other states. He also commented on his experiences in settling cases.

Chairman Schultz thanked Mr. Selden and asked if there were any other comments. There was no other public comment and Chairman Schultz asked if there was a motion to adjourn. Vice Chairman Sanders moved to adjourn and Commissioner Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 3:03 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Laura McGrory, Director

ATTEST:

_____
Kara Dimas, Commission Secretary