

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, September 24, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting Department
	William Warren	ADOSH Director
	Bruce Hanna	Compliance Officer
	Sean Campbell	Legal Division
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Spencer Ryan and Keith Ryan of Fuels, LLC, Jason Weber of Snell & Wilmer, and Stephanie Coulter of The Cavanagh Law Firm.

Approval of Minutes of September 18, 2014 Regular Meeting and Executive Session.

The Commission unanimously approved the Minutes of the September 18, 2014 Regular Session on motion of Mr. Sanders, second of Mr. Hennelly. The Commission unanimously approved the September 18, 2014 Minutes of Executive Session on motion of Ms. Strickler, second of Mr. Sanders.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C13/14-0724 A-1 Advantage, Inc. dba A-1 Advantage Garage Door
 2. 2C13/14-1841 Advance Auto Center, L.L.C. dba Advance Auto Repair
 3. 2C13/14-1243 Atlacat, LLC
 4. 2C13/14-1153 Empire 1st Kirby Company, LLC
 5. 2C13/14-1375 Lovecare Co.
- b. Approval of Requests for Renewal of Self-Insurance Authority.
1. Freeport-McMoran Inc.
 2. Quiktrip Corporation
 3. Van Tuyl Group, Inc.

Chairman Parker stated that agenda items 3b(2) would be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Mr. Hennelly, second of Mr. Sanders.

Vice-Chair Strickler took over chair of the meeting for the following agenda item only.

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

Quiktrip Corporation – Chairman Parker recused himself from consideration of this agenda item. The Commission approved renewal of self-insurance authority on motion of Mr. Sanders, second of Mr. Hennelly with a vote of three in favor of the motion and none against. Mr. Parker did not participate in the vote.

Chairman Parker resumed chair of the meeting.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation.

Mr. Wade stated that the Commission's attorneys are working on the final draft of the response to Federal OSHA. He explained that if there was a need for discussion or recommended revision other than what has been communicated, that it would be appropriate to move into executive session and if the Commission is comfortable with the draft, the Commission can direct counsel in regular session. Mr. Hennelly moved to direct counsel to prepare the document in final form, subject to correction of typographical, format, and other non-substantive changes, and submit it to the appropriate entity. Mr. Sanders seconded the motion. Mr. Parker thanked counsel for all of their hard work and for doing a very nice job. Ms. Stickler added that the draft is very comprehensive. The Commission unanimously voted in favor of the motion.

Discussion and Action Regarding Industrial Commission of Arizona's Substantive Policy Statement Published in the Arizona Administrative Register on December 30, 2011 Regarding ADOSH Guidance Document 2011-11 Relating to General Enforcement Policies and Procedures for Conducting Inspections Related to Fall Hazards in Residential Construction.

Ms. McGrory provided a brief summary of the guidance statement that the Commission adopted regarding the interpretation and enforcement of the infeasibility and greater hazard provisions of 29 CFR 1926.501(b)(13), the Residential Fall Protection Standards found in Subpart M. She explained how the subsequent legislative action taken with respect to adopting Senate Bill 1441, as it was amended by 1307, nullified that guidance document and it could no longer serve as guidance because it was supplanted by that legislation. She recommended the Commission take formal action to repeal the guidance statement that was adopted and published in the Arizona Register on December 30, 2011. Mr. Parker commented on the guidance statement and noted that the stakeholders involved devoted a lot of time on it, but to avoid confusion now, the Commission does need to take action. Ms. McGrory responded to Mr. Parker's questions about the

Div. Proposal - \$1,500.00
TOTAL PENALTY - \$11,500.00

Formula Amt. - \$1,500.00
TOTAL FORMULA AMT. - \$11,500.00

Mr. Parker addressed the representatives from Fuels, LLC and summarized the current proceeding. Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Warren and Mr. Hanna responded to questions from Mr. Sanders regarding the plant operator and whether ADOSH considered him part of management. Mr. Sanders asked for details concerning the accident such as why the plant operator did not shut the pump off rather than trying to reconnect the fittings, why the PTO pumps on the truck was not used, and the proximity of other tanks and the extent of the damage. Mr. Hanna responded to the questions. Mr. Warren responded to Mr. Parker's question about whether the injured workers were employees of Fuels LLC. Mr. Hanna responded to Mr. Parker's questions regarding training. Mr. Sanders asked about the use of the water pumps and who purchased the pump. Mr. Hanna replied that the information established the operations manager purchased the pump. Mr. Sanders explained that it appeared that management purchased the pump with the intention of using the pump improperly and there may be more of an issue than a serious violation. Mr. Sanders asked if Legal had reviewed the file for a possible wilful, and Mr. Wade responded to the question. Mr. Parker asked if the representative from Fuels, LLC if they wanted to say anything and one of the representatives replied that they had no comment. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$11,500.00 on motion of Mr. Sanders, second of Mr. Hennelly.

Arizona Hay Press, LLC
5601 W Buckeye Rd
Phoenix, AZ 85043

Complaint
Years in Business: 4
Empl. Covered by inspection: 7

Site Location: 38315 S Harquahala Valley Rd
Tonopah, AZ 85354
Inspection No: T9350-317783215
Inspection Date: 6/26/2014

SERIOUS – Citation 1 - Item 1 – Warehouse Floor: One floor hole that was 26 inches in diameter, 8 inches deep, was not properly guarded by a floor hole cover or standard railing, to prevent employees from accidentally walking or driving a forklift into the open hole. (1910.23(a)(8)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Warehouse area: The employer made a metal fabricated work platform to lift employees to an elevated height (approximately 20 feet) on the Caterpillar Telehandlers Model number TL642, Serial number TBK01335, without prior written approval from the manufacturer. (1910.178(a)(4)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – 38315 S Harquahala Rd Tonopah, AZ 85354: One employee operated a Hyster Powered Industrial Truck Model number H180H, Serial number C007002685H, and was not trained in the safe operation of the powered industrial truck. (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – North side of warehouse: Hyster Lift Truck Model H180H, Serial number C007002685H was not taken out of service for the unsafe condition that the air brake coupler was broken. (1910.178(p)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – Warehouse: The Hay Press, Model number unknown, Serial number unknown, did not have a guard to prevent employees from accidental contact with the guillotine blade. (1910.212(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 6 – Warehouse: Compressed air used for cleaning the Hay Press machine and employees clothes was not reduced to less than 30 psi. (1910.242(b)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Sanders asked for additional details concerning the bailing process. Mr. Warrant responded to the question. Ms. Strickler also asked about the process and Mr. Warren responded to the question. Mr. Parker had questions regarding the fabricated work platform and commented on obtaining approval from a manufacturer. Mr. Warren responded to the question and comment. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,500.00 on motion of Ms. Strickler, second of Mr. Hennelly.

Discussion and Action of New Employment Agency License Application.

Gary Recchion dba Recchion and Associates – Ms. McGrory presented the information provided by the Labor Department as required by the statutes and rules governing Private Employment Agencies. The Employment Advisory Council has recommended approval of this application for a license. Mr. Parker asked if this agency license application could have been addressed as part of the Consent Agenda and Ms. McGrory responded to the question. The Commission unanimously approved the application on motion of Ms. Strickler, second of Mr. Sanders.

Announcements and Scheduling of Future Meetings.

Ms. McGrory stated the Commissioner should have received their copy of the Final Special Fund Actuarial Report and a copy of the 2016 Budget submitted and a cover memo from Sylva Simpson.

Due to audio difficulties, Vice-Chair Strickler took over chair of the meeting for the remaining items.

Ms. Strickler inquired if there were any changes needed to the future meeting schedule and it appeared that no changes were needed at this time. The next meeting is scheduled for October 8, 2014.

Ms. McGrory added there is no meeting scheduled for next week and explained why.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:40 p.m.

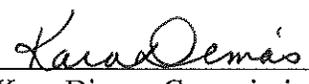
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrovy, Director

ATTEST:



Kara Dimas, Commission Secretary