

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, October 29, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	Marcia Weeks	Vice Chairman
	Louis W. Lujano, Sr.	Member (telephonic)
	David Parker	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Vice Chairman Weeks convened the Commission meeting at 1:02 p.m. noting a quorum present. Mr. McCarthy was not able to attend. Also in attendance were Jen Jones and Teresa Yi of Snell & Wilmer.

Approval of Minutes of October 22, 2009 Meeting

The Commission unanimously approved the Minutes of the October 22, 2009 General Session on motion of Mr. Lujano, second of Mr. Delfs. The Commission unanimously approved the Minutes of the October 22, 2009 Executive Session on motion of Mr. Lujano, second of Mr. Delfs.

Discussion & Action of Proposed OSHA Citations and Penalties

Luna Nueva Harvest	Fatality
99 E. Main Street	Yrs/Business – 10
Herber, CA 92249	Empl. Cov. by Insp. – 60
Site Location: Amarillo Valley & Teel Road, Maricopa, AZ 85138	
Inspection #: P0775/313580896	
Insp. Date: 06/30/09	

SERIOUS – Citation 1, item 1 – Two entrances on the harvesting mechanical conveyor system were obstructed with unfolded boxes requiring employees to climb in and out of the equipment from other than approved access points while moving (23-403.A).  
(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 2a – Two employees were operating a farm field tractor without the use of the seatbelt (1928.51(b)(2)(i)(b)).

Citation 1, item 2b - An employee was allowed to operate a farm field tractor without any instructions on the operating practices (1928.51(d).

Div. Proposal - \$2,250.00  
TOTAL DIV. PROP. - \$9,250.00

Formula Amt. - \$2,250.00  
TOTAL FORMULA AMT - \$9,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposal for Citation 1, item 1 was for the gravity-based penalty with no adjustment factors since the violation directly related to the fatality. Mr. Lujano noted that the steps to the trailer had been tied up so that they could not be used. He also commented on the manner in which the boxes were stacked on the trailer. He expressed concern as to whether that could be considered criminal and asked if the Attorney General had been notified of this fatality. Mr. Perkins explained that all fatalities are automatically referred to the Attorney General's Office for review. Mr. Parker questioned whether the violation could be considered willful as it seemed to fall into the same category as having emergency exits blocked or not allowing access. Mr. Lujano agreed and requested that staff request the Attorney General's Office to take a closer look at the file and report back to the Commission. After further discussion concerning the circumstances surrounding the fatality, and whether the citation should be classified as willful, Mr. Lujano made a motion to assess the recommended penalty of \$9,250.00

Andrew Wade stated that the Legal Division could review the file and make a recommendation of whether the citation should be classified as a willful citation. Mr. Lujano agreed and withdrew his motion. The Commission unanimously agreed to hold the file for Legal review of a possible willful classification on motion of Mr. Lujano, second of Mr. Parker.

ISS Grounds Control, Inc.  
2960 E. Elwood Street  
Phoenix, AZ 85040

Fatality  
Yrs/Business - 35  
Empl. Cov. by Insp. - 11

Site Location: 1010 N. Country Club Drive, Mesa, AZ 85201

Inspection #: R0738/313587255

Insp. Date: 06/16/09

**SERIOUS** - Citation 1, item 1 - The employer failed to implement and maintain accident prevention programs necessary to prevent its 15-ton mobile crane from contacting live overhead power lines carrying 12,000 volts, resulting in the death of one employee (1926.20(b)(1). There were two inspections in the past three years with no violations).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

**SERIOUS** - Citation 1, item 2 - The employer failed to adequately train employees to recognize hazards in the operation of a 15-ton mobile crane which contacted live overhead power lines carrying 12,000 volts (1926.21(b)(2).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

**SERIOUS** - Citation 1, item 3 - The employer operated a 15-ton mobile crane that did not receive a thorough annual inspection (1926.550(a)(6).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

**SERIOUS** - Citation 1, item 4 - The employer did not designate a person to observe the clearance of the equipment from electric transmission lines and to give timely warning for all

operations where it was difficult for the operator to maintain the desired clearance by visual means (1926.550(a)(15)(iv)).

Div. Proposal - \$ 7,000.00  
TOTAL DIV. PROP. - \$22,750.00

Formula Amt. - \$ 7,000.00  
TOTAL FORMULA AMT - \$22,750.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division proposals for Citation 1, item 1; Citation 1, item 2; and Citation 1, item 4 were for the gravity-based penalty with no adjustment factors since the violations directly related to the fatality. Mr. Parker commended the compliance officer for the photos and information presented. Mr. Lujano asked about the foreman's role onsite. Mr. Perkins explained the work being performed noting that there appeared to be confusion between the foreman and the crane operator regarding where the boulders that were being moved were to be placed. There also appeared to be confusion regarding where the power lines were. Mr. Lujano asked whether the fact that two other people could have also been killed affects the determination of citation and penalties. Mr. Perkins explained how the penalties were calculated. Mr. Perkins stated that this was a tragic accident that could have been avoided with preplanning and identification of hazards.

Mr. Parker noted that the next case file involved the general contractor on the job site and questioned whether they should have been involved in preplanning and identification of hazards. Mr. Perkins explained what the general contractor should have done, noting that the general contractor stated they did not consider the boom truck a crane so did not prepare a pre-assessment work plan.

Mr. Delfs disconnected from the meeting at this point.

Following further discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$22,750.00 on motion of Mr. Lujano second of Mr. Parker. Mr. Parker stated that the Commissioners could appreciate how tragic and difficult this accident had to be for the crane operator, since it was his son who was killed.

Holder Construction Group, LLC  
4222 E. Thomas Road, Suite 230  
Phoenix, AZ 85018

Unprogram Related  
Yrs/Business - 9  
Empl. Cov. by Insp. - 20

Site Location: 1010 N. Country Club Drive, Mesa, AZ 85201  
Insp. #: R0738/313587263  
Insp. Date: 06/16/09

SERIOUS - Citation 1, item 1 - The controlling general contractor failed to exercise reasonable care to prevent it's subcontractor from contacting a live overhead power line on its property with a 15-ton mobile crane, resulting in the death of an employee of the subcontractor (1926.550(a)(15)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

Darin Perkins summarized the citation 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 fatality. In response to questions posed by Mr. Parker regarding Holders responsibility as the "controlling" employer on

site, the Commission and staff further discussed Holder's responsibilities, their knowledge of the work being performed by ISS Grounds Control, Inc., and failure to assess the hazards. Based on that discussion, Mr. Parker stated that the proposed citation against Holder is appropriate. Mr. Lujano also expressed concern about public's safety given the conditions depicted in the photos. Following further discussion and inspection of photographs of this violation, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$7,000.00 on motion of Mr. Parker, second of Mr. Lujano.

Continental Steel West Corporation  
3101 E. 46<sup>th</sup> Street  
Tucson, AZ 85713

Planned  
Yrs/Business – 35  
Empl. Cov. by Insp. – 12

Site Location: 3101 E. 46<sup>th</sup> Street, Tucson, AZ 85713

Insp. #: T3633/313697609

Insp. Date: 08/19/09

SERIOUS – Citation 1, item 1 – Employees were working on the roof servicing evaporative coolers and skylights within 4' of the cooler vent drop 16' above the shop floor were not guarded by standard skylight screens or a fixed standard railing on all exposed sides (1920.23(a)(4).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1, item 2a – The spraying operations were not maintained so that sufficient air velocity was provided in that the air velocity at the cross section of the booths where spraying took place was not detectable (1910.107(b)(5)(i)

Citation 1, item 2b - The spray booth was not equipped with approved automatic sprinklers or other acceptable automatic fire suppression system (1910.107(b)(5)(iv).

Citation 1, item 2c - Standard 120 V electrical outlets were mounted on the east wall of the spray booth in an area where deposits of combustible residues were accumulating (1910.107(c)(5).

Citation 1, item 2d - Portable lamps were used in the spraying area during spraying operations (1910.107(c)(8).

Citation 1, item 2e - Twenty to thirty gallons of paint and cleaning solvents were stored in the spray booth, which was a quantity which exceeded the minimum required for operations (1910.107(e)(2).

Citation 1, item 2f - The fire extinguisher mounted inside the spray booth had not been inspected and was covered in overspray so that its operational status could not be assessed (1910.107(f)(4).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 3 – A vertical band saw had a broken adjusting screw so that the blade guard could not be adjusted to cover the unused portion of the blade (1910.212(a)(1). There were two other instances of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$2,250.00

TOTAL FORMULA AMT - \$2,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to



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

Ms. McGrory stated that there was nothing new to report.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that there was nothing new to report.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Ms. McGrory stated a meeting was recently held with the Attorney General's Office. She suggested that her briefing to the Commissioners of that meeting wait until all Commissioners are present. The Commissioners agreed.

Announcements

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, November 5<sup>th</sup>.

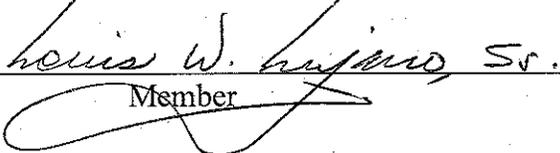
There being no further business to come before the Commission and no public comment, Vice Chairman Weeks adjourned the meeting at 2:00 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

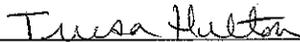
By   
Chairman

By \_\_\_\_\_  
Vice Chairman

By   
Member

ATTEST:

By \_\_\_\_\_  
Member

  
Commission Secretary

By   
Member