

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, September 19, 2019 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Stacy Rogan	Assistant Chief Legal Counsel
	Jason M. Porter	Deputy Director
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Jessie Atencio	ADOSH Director
	Larry Gast	ADOSH Supervisor
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Scot Butler (Undisclosed); Kaelyn Belloc (Townley MFG); Daniel Wagner (Complainant); Amanda Caldwell (Representing Daniel Wagner); Jody Bohr (Gallagher & Kennedy, representing Trendwood) and Michael Fassett and Shane Padilla (Snell & Wilmer).

Approval of Minutes of September 12, 2019 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the September 12, 2019 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

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.

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|----|-----------------|---------------------------------------|---------|
| 1. | 2C-18/19-0707 | Blue Eagle Harvesting LLC | \$1,000 |
| 2. | 2CSP-19/20-0009 | Gabriel A Sanchez dba El Fenix Bakery | \$1,000 |
| 3. | 2CLP-18/19-0870 | Darren and Sons Lawn Care LLC | \$1,000 |
| 4. | 2C-18/19-0735 | Leodegardio Ortiz-Valdez | \$5,000 |

Vice Chair Hennelly moved to approve the items on the Consent Agenda and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or Action of Appeal of Arizona Division of Occupational Safety and Health Initial Negative Determination regarding Discrimination Complaint under ARS 23-425.

1. 16-9037-36 Trendwood, Inc.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH Initial Negative Determination regarding Discrimination Complaint.

Mr. Atencio summarized the investigation findings, which were based upon interviews with the Complainant, his legal counsel, and other employees, including the Human Resources manager. ADOSH also conducted a safety inspection, and reviewed documents.

Mr. Atencio recommended that ADOSH's original decision to dismiss the case on the merits be upheld.

Mr. Atencio noted the items considered for appeal and would review the ADOSH findings, Complainant's request for appeal and position and Respondent's position on appeal and notes from the investigation interviews, and conclusion.

Chairman Schultz and Mr. Atencio discussed the impetus for the safety inspection. Mr. Atencio explained that ADOSH conducted an inspection because an employee raised the safety concern; however ADOSH did not find any indication of a machine malfunction.

Ms. Caldwell disagrees with the findings of ADOSH. She expressed that the safety concern was based upon previous injuries at Trendwood from debris falling when the machines did not operate properly. Here, when the E-stop button did not stop the machine, it became evident that there was a safety problem with the machine. She noted the appeal was based on several factors, some of which were in Mr. Gast's summary and others which were not. She stated that the makeshift keyboard was not broken, therefore there was no damage to company property.

Chairman Schultz noted that from Mr. Wagner's statement that he fixed it, that it was broken in order to be fixed. Ms. Caldwell noted it comes apart and was not the only time that it had broken and was something that was broken frequently throughout his employment. Mr. Wagner noted it was the shelving and not the keyboard that allowed the keyboard to fall and that vibrations caused it to fall.

Ms. Caldwell noted they would disagree that the keyboard falling apart was a serious event justifying termination. Chairman Schultz noted it was not the sole justification.

Ms. Caldwell stated that Mr. Wagner did not violate the Trendwood policy because Mr. Wagner did report the incident immediately. Chairman Schultz questioned whether Mr. Wagner could have reported the concerns to his manager, rather than continuing to use the machine in an unsafe condition to take the video. Ms. Caldwell stated the Complainant has acted similarly in the past.

Ms. Caldwell discussed the concerns the Complainant has with respect to the employer's documentation of his attendance.

Ms. Caldwell expressed concern about the procedures followed in this particular matter, including the lengthy time frame, missing records at the federal level, and missing papers within the file. She wanted the board to be aware of the issues.

Chairman Schultz acknowledged and apologized for the delay and issues related to the handling of this claim, and explained that in an effort to cure the problems the appeal was allowed even though the statutory time frame has elapsed. The process for today and the Commission review of ADOSH's decision is to affirm whether or not they took actions appropriately based upon fact for action and the appeal process is to allow for the opportunity for new and additional information that may have changed the outcome which allows the Commission to reverse, remand, or approve the decision of ADOSH.

Ms. Bohr with Gallagher & Kennedy stated the handling of the appeal has nothing to do with the handling of the investigation. Mr. Perez was extremely thorough and interviewed six employees and took time to digest the information and made a sound decision. Regarding the September 2 incident, the extent of the damage to the keyboard is irrelevant, Mr. Wagner got angry, was rough with the equipment, stormed off leaving the keyboard hanging long enough for some to take pictures and was not doing his work all of the time. When counseled about the situation, he was insubordinate, yelling at his supervisor. She believed that ADOSH presented a good background to the issues and Mr. Wagner said he was not going to come in and work because they did not take the machine out of commission, which is not true. The machine was tested and Mr. Wagner was told to come in and if he was not comfortable working on the equipment he would be put in a different area, but he refused to come in.

Chairman Schultz and Ms. Rogan discussed the options for the Commission to reverse, affirm, or remand.

Vice Chair Hennelly noted he reviewed all materials, summaries, interviews and various exhibits and wish it would have been handled more timely and expressed concern, but on the substance of the matter he agreed with the recommendation and moved to affirm ADOSH case 16-9037-36. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Ms. Bohr asked if they would be receiving something in writing. Mr. Gast noted she would, and Chairman Schultz noted it would be in the meeting Minutes.

Executive Session under A.R.S. § 38-431.03(A)(3) to Discuss Appeal of Arizona Division of Occupational Safety and Health Initial Negative Determination regarding Discrimination Complaint under ARS 23-425.

1. 16-9037-36 Trendwood, Inc.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Mr. Atencio noted this was a joint inspection being presented at the same time. The first will be the safety inspection and then the health inspection.

Townley Engineering & Manufacturing Co., Inc.

Planned

P.O. Box 756
Eloy, AZ 85131

Years in Business: 45
Empl. Covered by Inspection: 15

Site Location: 660 N 11 Mile Corner Rd.
Eloy, AZ 85131
Inspection No: B8139 -1395385
Inspection Date: 04/10/2019

SERIOUS – Citation 1 - Item 1 –

- a) Rubber Shop: One custom built man basket did not have an adequate guardrail system. 29 CFR 1910.23(e)(1)
Div. Proposal - \$1,600.00 Formula Amt. - \$1,600.00

SERIOUS – Citation 1 - Item 2 –

- a) 660 N 11 Mile Corner Rd Eloy, AZ: A hazardous energy control program (Lockout/Tagout) had not been developed for employees performing maintenance on equipment. 29 CFR 1910.147(c)(1)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 –

- a) Receiving area: Wood pallets supporting pipe molds were damaged, not stable and secured from sliding and/or collapsing.
- b) South end storage area: Wood pallets supporting pipe molds were damaged, not stable and secured from sliding and/or collapsing. 29 CFR 1910.176(b)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 4 –

- a) 660 N 11 Mile Corner Rd Eloy, AZ: Three employees were not trained in the safe of operation of powered industrial trucks. 29 CFR 1910.178(l)(1)(i)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 5a –

- a) Rubber Shop: A Harrington 5 ton crane, model and serial numbers unknown, pendant control had unused openings and damage.
- b) Rubber Shop: A Harrington 5 ton crane, model and serial numbers unknown, pendant control wiring was replaced with electrical tape.
- c) Curing Oven Room: An overhead gantry crane, brand, model and serial numbers unknown, pendant was assembled with electrical tape.
- d) Curing Oven Room: A 2 ton Dayton Crane, model and serial numbers unknown, pendant was damaged and repaired with electrical tape. 29 CFR 1910.179(g)(1)(i)
Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

- a) Curing Oven Room: A 3" wide 10' long synthetic web sling was damaged and torn.
- b) Curing Oven Room: A 3" wide 10' long synthetic web sling was damaged and torn.
- c) Curing Oven Room: A 6" wide 8' long synthetic web sling was damaged and exposing threads.
- d) Curing Oven Room: A 6" wide 90" long synthetic web sling was damaged.
- e) Cutting Oven Room: A 64" long synthetic loop was torn and damaged. 29 CFR 1910.184(i)(9)(iii)
 Div. Proposal - \$0.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 8 –

- a) South Storage Area: An employee operating a barrel crushing machine, brand, model and serial numbers unknown, was not guarded.
- b) Curing Oven Area: An employee operating a Republic Machinery Co., band saw, model and serial numbers unknown, was lacking an adequate guard.
- c) Welding Area: An employee operating a Wysong roll bender, model and serial numbers unknown, was lacking a guard.
- d) Curing Oven Area: Employees were operating a Bridgford Machine Tool Works lathe, model and serial numbers unknown, was lacking an adequate guard. 29 CFR 1910.212(a)(1)
 Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 9a –

- a) Pouring area: A bench grinder, brand, model and serial numbers unknown, did not have a safety guard installed to cover the spindle end, nut, and flange projections on both ends of the grinder. 29 CFR 1910.215(a)(2)
 Div. Proposal - \$1,200.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 9b –

- a) Pouring area: A bench grinder, brand, model and serial numbers unknown, did not have a work rests installed. 29 CFR 1910.215(a)(4)
 Div. Proposal - \$0.00 Formula Amt. - \$1,200.00

SERIOUS – Citation 1 - Item 10a –

- a) Curing Oven Area: The rotating belt on a Republic Machinery Co., band saw, model and serial numbers unknown, lacked a guard for the in-going nip points.
- b) Abrasive Blasting Area: The rotating belt and pulley for an exhaust fan, brand, model and serial numbers unknown, lacked a guard for the in-going nip points. 29 CFR 1910.219(f)(3)
 Div. Proposal - \$1,600.00 Formula Amt. - \$1,600.00

SERIOUS – Citation 1 - Item 10b –

- a) Curing Oven Room: A Chromalox mixer, model number unknown and serial #AR-219P, was lacking a guard on the gears and chain drive. 29 CFR 1910.219(f)(3)
Div. Proposal - \$0.00 Formula Amt. - \$1,600.00

SERIOUS – Citation 1 - Item 10c –

- a) Curing Oven Area: The vertical belt on a Republic Machinery Co., band saw, model and serial numbers unknown, lacked a guard. 29 CFR 1910.219(e)(3)(i)
Div. Proposal - \$0.00 Formula Amt. - \$1,600.00

SERIOUS – Citation 1 - Item 11 –

- a) Pouring Area: Employees used a Towniprene brand P-3380 prepolymer to pour urethane parts, and did not have the live electrical parts guard on top of the machine. 29 CFR 1910.303(g)(2)(i)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00
TOTAL PENALTY - \$19,600.00 TOTAL FORMULA AMT. - \$32,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz and Mr. Atencio discussed the chains being used and depicted in photographs 21 and 22, and the use of the slings depicted in photographs 24 and 25.

Mr. Ashley and Mr. Atencio discussed that 2 compliance officers were present at the inspection.

Vice Chair Hennelly confirmed with Mr. Atencio that there was no abatement.

Ms. Belloc stated that the plant has been in operation for about 45 years. She noted the headquarters in Florida has taken it seriously, allowing her to make corrections as necessary. She noted that 12 of the 19 items have been mitigated and the other seven are in progress and plans in place for each item. They have paid about \$14,000 in mitigation expenses to be in compliance. The bench grinder, hoist controls and hooks have been replaced. They are still working on the guarding to make sure the pinch points are guarded and some already have been guarded. Hazard communication has been addressed for both inspections and new PPE and uniforms have been ordered. She has been communicating the policy changes and what to expect since the inspection.

Chairman Schultz noted that abatement was an incredibly important part of protecting employees going forward.

Vice Chair Hennelly and Ms. Belloc discussed ADOSH consultation services. She also noted the extra efforts that they are working on since the inspection and have let headquarters know for this site and others as well.

Chairman Schultz stated the Commission takes it seriously when there is a large number of citations and the amount of the fines and penalties and would like to have businesses investing in correction rather than paying fines and penalties.

Vice Chair Hennelly moved to amend the proposed penalties to include a 25% reduction in the total penalty, for \$4,900, for a total penalty of \$14,700. Commissioner Krenzel seconded the motion.

SERIOUS – Citation 1 - Item 1f –

- a) Pouring area: Employees who were required to wear MSA brand Comfo Classic half-face respirators or 3M brand, unknown model number half-face respirators during the urethane pouring had not been provided with effective training.
- b) Abrasive blasting area: Employees who were required to wear the RS Blastech brand Nova 2000 helmet-style air line respirator during abrasive blasting work were not provided with effective training. 29 CFR 1910.134(k)(1)
Div. Proposal - \$0.00 Formula Amt. - \$4,000.00

SERIOUS – Citation 1 – Item 2 –

- a) Abrasive blasting area: A hearing conservation program was not adequately implemented for the workplace. 29 CFR 1910.95(c)(1)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 –

- a) Pouring area: Employees used Towniprene brand P-3380 prepolymer to pour urethane parts, and gloves and clothing that would protect the affected employees from the identified hazards had not been selected and provided.
- b) Abrasive blasting area: An employee who did the abrasive blasting work was not using hearing protection that would protect the employee from noise hazards which had been identified by the company. 29 CFR 1910.132(d)(1)(i)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 4 –

- a) Abrasive blasting area: An employee working in the abrasive blasting area was not provided an assessment for his exposure to silica. 29 CFR 1910.1053(d)(1)
Div. Proposal - \$2,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 5a –

- a) 660 N 11 Mile Corner Rd, Eloy: Employees used products including Towniprene brand P-3380 prepolymer, toluene, and welding consumables, and the written hazard communication program had not been maintained. 29 CFR 1910.1200(e)(1)
Div. Proposal - \$1,600.00 Formula Amt. - \$1,600.00

SERIOUS – Citation 1 - Item 5b –

- a) 660 N 11 Mile Corner Rd, Eloy: Employees used products including Towniprene brand P-3380 prepolymer, toluene, and welding consumables, and the safety data sheets (SDS) were not maintained. 29 CFR 1910.1200(g)(1)
Div. Proposal - \$0.00 Formula Amt. - \$1,600.00

SERIOUS – Citation 1 - Item 5c –

- a) 660 N 11 Mile Corner Rd, Eloy: Employees used products including Towniprene brand P-3380 prepolymer, toluene, and welding consumables, and the employees had not been trained on the hazards of the chemicals. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$0.00	Formula Amt. - \$1,600.00
TOTAL PENALTY - \$9,600.00	TOTAL FORMULA AMT. - \$26,800.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Schultz and Mr. Atencio discussed whether this type of manufacturing uses a similar table as construction. The tables are traditional in the construction field and manufacturing can use them if they are using those types of materials of off grind, but they're intended for construction.

Chairman Schultz and Ms. Belloc discussed the new PPE and her government background and enforcement of hearing protection and respirator programs are in her abatement plan. Ms. Belloc mentioned that forklift certifications have been conducted on all employees and daily inspection tags have been added to all hoist and forklifts and they include a checklist to be completed before operation and signed off with name and date of inspection. She explained that medical evaluations have been conducted on all employees. For the silica on the sand blasting, the sand has been replaced with Copper Slag. A new CO monitor has been installed, is operating and training procedures have been developed. Fit testing kits have also been purchased.

Ms. Belloc continued with the list of abatement for hearing conservation. Hazard communication training has been revamped and SOPs are in place for all chemicals within the plant. The employees have been trained and are aware of the chemicals present, the hazards of the chemicals, how to protect themselves with PPE and how to read the labels. For the 12 citations, seven have been mitigated in the process for mitigating the remaining five and being shared with headquarters for the other sites.

Chairman Schultz and Vice Chair Hennelly praised the inspections conducted by Alex Ceballos and Steve Black.

Vice Chair Hennelly moved to amend the proposed penalties with a 10% reduction in the total penalty, totaling \$960 for an adjusted penalty of \$8,640. He explained it was not to denigrate the actions taken, they are still very commendable, but the company was benefitted greatly by the happenstance of the penalty grouping. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz also advised Ms. Belloc that ADOSH could assign a mentor through the Voluntary Protection Program.

Discussion and/or Action regarding: (1) a Proposed Sale of the Frontage Portion of the Tucson Property to the City of Tucson for Purposes of the Broadway Improvement Project and (2) Associated Transactional Documents.

Mr. Porter summarized the updates for the roadway improvement. He provided background regarding the sale of a five foot section of land being sold to the City of Tucson for the expansion of the Broadway Widening Project. He noted the City already owns 60 feet in front of the building and needs an additional 5 foot section. They also need a temporary construction easement. After a lengthy negotiation, he noted the issues that were within the 5 foot section of utilities that are required to be

moved for the construction that were not included in the original appraisal. He noted the final breakdown of the sale.

Mr. Porter recommended moving forward with the sale. This would require two motions. One would note the project is in the public interest and the acquisition parcel will be used for a specific purpose in the public interest as required by statute. The other motion for the Director or Chairman of the Special Fund Investment Committee to be authorized to execute the purchase agreement and related documents.

Mr. Porter stated the Special Fund Investment Committee has approved the sale and the matter is being presented to the Commission simply to insure we have agreement from the Commission and Special Fund.

Chairman Schultz asked if the utilities being moved would remain in front of the building and just moved back. Mr. Porter explained that the City agreed to reconnect the sewer and reestablish the flagpole if necessary.

A motion that the conveyance of the acquisition parcel, together with simultaneous grant of the Temporary Construction Easement (TCE) to the City for use in the Broadway Project is in the public interest and the acquisition parcel will be used for a specific purpose in the public interest was moved by Vice Chair Hennelly. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

A motion that the Director of the Commission and de facto Member of the Special Fund Investment Committee is authorized to execute a Purchase or similar agreement with the City in connection with the transactions described herein, together with the current forms of deed related to the acquisition parcel and temporary construction easement together with all deeds, conveyances, easements and other closing documents including, without limitation, affidavits, closing statements, documents in facilitation of title insurance or otherwise deemed by the Director and de facto Member of the Special Fund Investment Committee to be necessary or desirable to convey the acquisition parcel to the City and to create the TCE was moved by Vice Chair Hennelly. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3), (A)(4) & (A)(7) regarding: (1) a Proposed Sale of the frontage portion of the Tucson Property to the City of Tucson for Purposes of the Broadway Improvement Project and (2) Associated Transactional Documents.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas presented a retirement resolution for Layna Taylor, Administrative Law Judge in the ALJ Division. She noted Ms. Taylor's thirty years of state service.

Ms. Dimas confirmed Commission meeting dates through November 2019. Vice Chair Hennelly asked about quorum for October, Commissioner Krenzel confirmed his availability.

Mr. Ashley shared that a stakeholder advised that CopperPoint has acquired another company, Alaska National, to continue their expansion.

Mr. Ashley listed a sampling of administrative improvements with the treatment guidelines, evidence based medicine, implementation and expansion and shared a letter that State Senate President Karen Fann received from a constituent who benefited from the recent implementation of Full and Final legislation.

Public Comment.

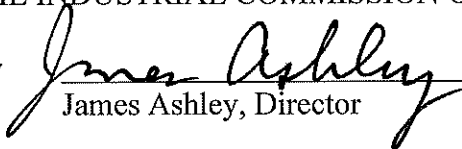
Mr. Padilla commented it was a great meeting and he was going to miss Mr. Fassett.

Ms. Belloc commented that she appreciated everyone listening and being open to what her company has been doing. Chairman Schultz appreciated her being there to provide the information needed to assist in making the Commission's decisions.

There was no other public comment.

Vice Chair Hennelly moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:55 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary