

SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and *Boyd Construction*, (hereinafter referred to as "Employer") hereby agree as follows:

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty, IOSHA Inspection No. *318091873* issued to the Employer on *February 12, 2018*, in the following manner.

SAFETY ORDER 01:

Item 1: Upheld; penalty reduced to \$ 2,625.00, *abatement has been waived on January 31, 2018, due to employer going out of business.*

Item 2: Upheld; penalty reduced to \$ \$ 2,625.00, *abatement has been waived on January 31, 2018, due to employer going out of business.*

Item 3: Upheld; penalty reduced to \$ \$ 2,625.00.

Item 4: Upheld; penalty reduced to \$ \$ 2,625.00.

Item 5: Upheld; penalty reduced to \$ \$ 2,625.00.

Item 6: Upheld; penalty reduced to \$ \$ 2,625.00.

Item 7: Upheld; penalty reduced to \$ \$ 2,625.00, *abatement has been waived on January 31, 2018, due to employer going out of business.*

Item 8: Upheld; penalty reduced to \$ \$ 2,625.00.

In exchange, The Employer agrees:

1. **OPTIONAL PAYMENT PLAN:** *twelve (12) installments at \$ 1,750.00, starting 1st May 20, 2018, 2nd June 20, 2018, 3rd July 20, 2018, 4th Aug 20, 2018, 5th Sept 20, 2018, 6th Oct 20, 2018, 7th Nov 20, 2018, 8th Dec 20, 2018, 9th Jan 20, 2019, 10th Feb 20, 2019, 11th March 20, 2019, 12th April 20, 2019.*

Respondent understands that a request must be made in writing to IOSHA for a Petition for Modification of Abatement prior to the above abatement date if abatement cannot be met by the respective dates and an extension is required.

Except for the above specified amendments all other provisions of Safety Order Number *318091873* are retained intact.

The TOTAL AGREED PENALTY is \$ 21,000.00

THE EMPLOYER IS SATISFIED WITH THE AMENDMENTS STATED ABOVE AND ACCORDINGLY WAIVES ITS RIGHT TO FILE A NOTICE OF CONTEST OF THE SAFETY ORDER(S) AND NOTIFICATION(S) OF PENALTY AS AMENDED AND AGREES TO WITHDRAW ANY PREVIOUSLY FILED NOTICES OF CONTEST IN THIS MATTER.

Upon full execution of this Settlement Agreement the Employer will post this Agreement for three (3) working days or until abatement is completed, whichever period is longer.

The total AGREED PENALTY is due and payable on within fifteen (15) working days from the Employer's execution of this Agreement. The Employer further agrees that if the AGREED PENALTY is not paid within fifteen working days from the Employer's execution of this Agreement, that the full amount of the penalty initially assessed against the Employer in the Safety Order(s) and Notification(s) of Penalty which are the subject of this Agreement is due and payable immediately. **Make your check or money order payable to: "Indiana DOL/IOSHA". Please indicate IOSHA's Inspection Number (indicated above) on your remittance. Please send payments to the following address:**

**Indiana Department of Labor
402 West Washington Street – Room W195
Indianapolis, Indiana 46204**

The Safety Order(s) and Notification(s) of Penalty are, and shall be, herein a final and enforceable Order of the Board of Safety Review.

Except for this agreement, and matters arising out of this agreement and any other subsequent IOSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by Employer shall be deemed an admission by Employer of the allegations contained within the Safety Order(s) and Notification(s) of Penalty. The agreements, statements, findings and actions taken herein are made in order to compromise and settle this matter economically and amicably, and they shall not be used for any other purpose, except as herein stated.

Boyd Construction

By: Richard A. Boyd

Title: PRESIDENT

Date: 2-12-18

COMMISSIONER OF LABOR

By: [Signature]

Title: Director

Date: 2/13/18

WE ELECT THE OPTIONAL PAYMENT PLAN

Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington St - Room W195
Indianapolis, IN 46204
Phone: 317-232-1979 FAX: (317)233-3790



certified mail # 706 3010 0001 0288 6535 1-18-18 JH

Safety Order and Notification of Penalty

To:
Boyd Construction
450 S Ohio Street
Hobart, IN 46342

Inspection Number: 318091873
CSHO ID: F2131
Optional Report No.: 01818
Inspection Date(s): 11/3/2017 - 12/11/2017
Issuance Date: 1/18/2018

Inspection Site:
S Pennsylvania & Lakeshore Dr
Hobart, IN 46342

The violation(s) described in this Safety Order and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

An inspection of your place of employment has revealed conditions which we believe do not comply with the provisions of the Indiana Occupational Safety and Health Act (Indiana Code Chapter 22-8-1.1) or the standards or rules adopted thereunder. Accordingly, enclosed please find safety order(s) and notification(s) of penalty describing such violation(s) with references to applicable standards, rules, or provisions of the statute and stating the amount of any penalty(ies).

Informal Conference - Please be advised that it may be possible to informally settle any potential dispute without initiating the more elaborate proceedings brought on by a petition for review. Prior to filing a petition for review, you may request an informal conference concerning any of the results of the inspection (safety orders, penalties, abatement dates, etc.) by contacting the Indiana Department of Labor/IOSHA, preferably by telephone, in a prompt manner. Please be advised that a request for an informal conference cannot extend the fifteen working day period for filing a petition for review. Informal conferences frequently resolve any possible disputes, and therefore you are urged to take advantage of this opportunity. Because of the limited time period and in order to facilitate scheduling, any requests for an informal conference should be made promptly upon your receipt of the safety order(s) and notification(s) of penalty.

Right to Contest - You are hereby also notified that you are entitled to seek administrative review of the safety order(s), penalty(ies), or both by filing a written petition for review at the above address postmarked within fifteen working days of your receipt of the safety order(s) and notification(s) of penalty. ("Working days" means Mondays through Fridays, but does not include Saturdays, Sundays, legal holidays under a state statute or days on which the Indiana Department of Labor's offices are closed during regular business hours). If you do not file such a petition for review (contest), the safety order(s)

and penalty(ies) shall be deemed final orders of the Board of Safety Review and not subject to review by any court or agency. The issuance of a safety order does not constitute a finding that a violation has occurred unless no petition for review is filed, or if a petition for review (contest) is filed, it must contain a statement of its basis and should reference the above inspection number. Upon receipt of your petition for review, we will affirm, amend or dismiss the safety order(s) and notification(s) of penalty. If we affirm, your petition for review will be granted (unless it was not timely) and the dispute will be certified by the Board of Safety Review for further proceedings. The Board of Safety Review is an independent agency appointed by the governor with authority to conduct hearings and to issue decisions concerning disputed safety order(s) and notification(s) of penalty. If we amend the safety order(s) or notification(s) of penalty, your petition for review shall be deemed moot. However, you will then be given an opportunity to file a petition for review concerning the amended safety order(s) and notification(s) of penalty.

Please be advised that an employee or representative of employees may file a petition for review to contest the reasonableness of the time stated in the safety order(s) for the abatement of any violation.

Posting - Upon receipt of any safety order(s) you are required to post such safety order(s), or a copy thereof, unedited, at or near each place an alleged violation referred to in the safety order(s) occurred. However, if your operations are such that it is not practicable to post the safety order(s) at or near each place of alleged violation, such safety order(s) shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, if you are engaged in activities which are physically dispersed, the safety order(s) may be posted at the location from which the employees operate to carry out their activities. You must take steps to ensure that the safety order is not altered, defaced, or covered by other material. Posting shall be until the violation is abated, or for three working days, whichever is longer.

Penalties - Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Abatement does not constitute payment of penalties.

Abatement - The conditions cited in the safety order(s) must be corrected (abated) on or before the date shown for each item on the safety order(s) and notification(s) of penalty unless:

- (1) You file a petition for review concerning the violation, in which case the full abatement period shall commence from the issuance of a final decision by the Board of Safety Review or the courts which requires compliance with the safety order; or
- (2) The abatement period is extended by the granting of a petition for modification of abatement date.

PMAs - The petition for modification of abatement date is a manner in which you may seek additional time to correct (abate) a violation without having to file a petition for review concerning the safety order, or after the expiration of the time period to file such a petition for review when it becomes apparent that you need extra time to abate the violation. A petition for modification of abatement date shall be in writing and shall include the following information:

- (1) All steps you have taken, and the dates of such actions, in an effort to achieve compliance

during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted, and if appropriate, served on the authorized representative of affected employees, and a certification of the date upon which such posting and service was made.

A petition for modification of abatement date shall be filed with the Indiana Department of Labor/IOSHA no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted until the time period for the filing of a petition for review of the Commissioner's granting or denying the petition expires. Where affected employees are represented by an authorized representative, said representative shall be served a copy of such petition.

Notification of Corrective Action - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance in providing adequate documentation of abatement. Reports of corrections should show specific corrective action on each alleged violation and the date of such action. On alleged violations with abatement periods of more than thirty (30) days, a written progress report should be submitted, detailing what has been done, what remains to be done, and the time needed to fully abate each such violation. When the alleged violation is fully abated, we should be so advised. Timely correction of an alleged violation does not affect the initial proposed penalty..

Followup Inspections - Please be advised that a followup inspection may be made for the purpose of ascertaining that you have posted the safety order(s) and corrected the alleged violations. Failure to correct an alleged violation may result in additional penalties for each day that the violation has not been corrected.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Indiana Department of Labor/IOSHA at the address shown above.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must

be mailed to the Indiana Department of Labor/IOSHA at the address shown above within fifteen (15) working days (excluding weekends and State holidays) or receipt by the employer of this safety order and penalty.

If you wish additional information, you may direct such requests to us at the address or telephone number stated above.

Indiana Department of Labor

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 1/18/2018. The conference will be held at the IOSHA office located at 402 West Washington Street, Room W195, Indianapolis, IN 46204 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318091873
Inspection Date(s): 11/3/2017 - 12/11/2017
Issuance Date: 1/18/2018
CSHO ID: F2131
Optional Report No.: 01818

Safety Order and Notification of Penalty

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342

Safety Order 01 Item 001 Type of Violation: **Serious**

29 CFR 1926.20(b)(2): The employer did not initiate and maintain programs which provided for frequent and regular inspections of the job site, materials and equipment to be made by a competent person(s)

Jobsite - S. Pennsylvania and Lakeshore Dr, Hobart, IN 46324, trench / excavation – On or about, November 2, 2017, during construction activities, the employer’s competent person failed to identify existing and predictable hazards and/or take the necessary measures to alleviate the hazard(s) of working in an excavation without cave-in protection, unsupported utilities, no egress, and no personal protection equipment.

Date By Which Violation Must Be Abated: **3/6/2018**
Proposed Penalty: **\$3,500.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318091873
Inspection Date(s): 11/3/2017 - 12/11/2017
Issuance Date: 1/18/2018
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Optional Report No.: 01818

Safety Order and Notification of Penalty

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342

Safety Order 01 Item 002 Type of Violation: **Serious**

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his/her environment to control or eliminate any hazards or other exposure to illness or injury:

Jobsite - S. Pennsylvania and Lakeshore Dr, Hobart, IN 46324 – On or about November 2, 2017, during construction activities, employees were not instructed, in the recognition and avoidance of unsafe conditions applicable to their work environment such as but not limited to those connected with excavations and personal protective equipment.

Date By Which Violation Must Be Abated: **3/6/2018**
Proposed Penalty: **\$3,500.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318091873
Inspection Date(s): 11/3/2017 - 12/11/2017
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Safety Order and Notification of Penalty

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342

Safety Order 01 Item 003

Type of Violation: **Serious**

29 CFR 1926.100(a): Employees working in areas where there was a possible danger of head injury from impact, or falling or flying objects, or from electrical shock and burns, were not protected by protective helmets:

Jobsite - S. Pennsylvania and Lakeshore Dr, Hobart, IN 46324 -- On or about, November 2, 2017, during construction activities, the employer allowed one employee working in the excavation below the excavator and did not protect them from the overhead hazards such as equipment and loose material (soil).

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318091873
Inspection Date(s): 11/3/2017 - 12/11/2017
Issuance Date: 1/18/2018
CSHO ID: F2131
Optional Report No.: 01818

Safety Order and Notification of Penalty

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342

Safety Order 01 Item 004 Type of Violation: **Serious**

29 CFR 1926.651(b)(4): While the excavation was opened, underground installations were not protected, supported or removed as necessary to safeguard employees:

Jobsite - S. Pennsylvania and Lakeshore Dr, Hobart, IN 46324 – On or about, November 2, 2017, during construction activities, utilities in the excavation were not supported while an employee was in the excavation and an excavator was being used to lower manhole to bottom of excavation.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318091873
Inspection Date(s): 11/3/2017 - 12/11/2017
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CSHO ID: F2131
Optional Report No.: 01818

Safety Order and Notification of Penalty

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342

Safety Order 01 Item 005 Type of Violation: **Serious**

29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees:

Jobsite - S. Pennsylvania and Lakeshore Dr, Hobart, IN 46324, excavation – On or about, November 2, 2017, during construction activities, the employer did not ensure that a safe means of egress was used when working in an excavation approximately seven feet three inches to eight feet two inches deep.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318091873
Inspection Date(s): 11/3/2017 - 12/11/2017
Issuance Date: 1/18/2018
CSHO ID: F2131
Optional Report No.: 01818

Safety Order and Notification of Penalty

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342

Safety Order 01 Item 006

Type of Violation: **Serious**

29 CFR 1926.651(e): Employee was not prohibited to be underneath loads handled by lifting or digging equipment:

Jobsite - S. Pennsylvania and Lakeshore Dr, Hobart, IN 46324, excavation – On or about, November 2, 2017, during construction activities, the employer did not ensure that employees were not prevented from working underneath the manhole lower section, lowered by the LBX 160LX Excavator serial number K2J5-9333.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318091873
Inspection Date(s): 11/3/2017 - 12/11/2017
Issuance Date: 1/18/2018
CSHO ID: F2131
Optional Report No.: 01818

Safety Order and Notification of Penalty

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342

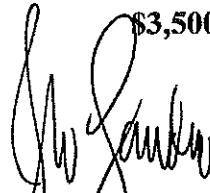
Safety Order 01 Item 008 Type of Violation: **Serious**

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section:

Jobsite - S. Pennsylvania and Lakeshore Dr, Hobart, IN 46324 – On or about November 2, 2017, during construction activities, the employer did not ensure that cave-in protection was provided / used to protect employees working in an excavation approximately seven feet three inches deep by the edge and approximately eight feet two inches towards the center area.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$3,500.00



Jerry W. Lander
Director of Construction Safety

Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington St - Room W195
Indianapolis, IN 46204
Phone: (317)232-1979 FAX: (317)233-3790



INVOICE/DEBT COLLECTION NOTICE

Company Name: Boyd Construction
Inspection Site: S Pennsylvania & Lakeshore Dr, Hobart, IN 46342
Issuance Date: 1/18/2018

Summary of Penalties for Inspection Number: 318091873

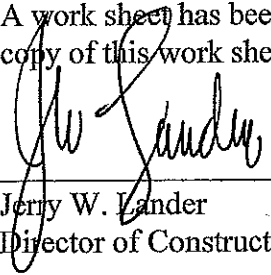
Safety Order 1, Serious = \$28,000.00
TOTAL PENALTIES = \$28,000.00

Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Make your check or money order payable to: "Indiana DOL/IOSHA". Please indicate IOSHA's Inspection Number (indicated above) on the remittance.

IOSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Corrective action, taken by you for each alleged violation should be submitted to this office on or about the abatement dates indicated on the Safety Order and Notification of Penalty.

A work sheet has been provided to assist in providing the required abatement information. A completed copy of this work sheet should be posted at the worksite with the safety order(s).



Jerry W. Vander
Director of Construction Safety

1 18 18

Date

Mr. Richard Boyd
President
Boyd Construction Company Inc.
450 S Ohio St
Hobart, IN 46342

Re: Inspection Number 318091873

Dear Mr. Boyd

An inspection of your workplace located near S Pennsylvania and Lakeshore Dr, Hobart, IN 46342 resulting from a fatality that occurred on November 1, 2017 disclosed the following hazards:

-While using the bucket of the excavator to assist in leveling the lower portion of the manhole an employee was also in the excavation. The excavator operator stood up to have a discussion with the employee in the excavation. As the operator sat back down his carharts became in tangled with the joy stick of the excavator causing the bucket to lurch forward and strike the employee in the excavation causing his death.

Since at this time it is not considered appropriate to cite an OSHA standard or to invoke IC 22-8-1.1, Section 2, the General Duty Clause of the Indiana Code, no safety order will be issued for this hazard.

In the interest of workplace safety and health, I recommend that you take the following steps voluntarily to reduce your employee's exposure to the hazard described above.

-Re-evaluate procedures for operating an excavator. When an excavator is in operation require operator to stay seated and focused on task at all times keeping all clothing and any other items clear of the controls. Use other forms of communication such as radios. If at any time the operator needs to leave the excavator ensure that employee(s) in the excavation has ample space between himself and the bucket.

Your interest in workplace safety and health is appreciated.

Sincerely,

Jerry W. Lander
Director
Construction Safety Compliance

JWL:dlz

Certified Receipt No.: 7016 3010 0001 0288 6535

1-18-18 jto