

SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and **G and G Hauling and Excavating Inc** (hereinafter referred to as "Employer") hereby agree as follows:

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty, IOSHA Inspection No. **318100443** issued to the Employer on **October 26, 2018**, in the following manner.

SAFETY ORDER 01:

Item 1a: **DELETE**; penalty reduced to \$ 0.00.

Item 1b: Upheld; penalty reduced to \$ 562.50, **abatement has been modified verified on October 24, 2018.**

Amend Standard to read, 29 CFR 1926.651(k)(1): Daily inspections of excavations, the adjacent areas, and protective systems were not made by a competent person for evidence of a situation that could have resulted in possible cave-ins, indications of failure of protective systems, hazardous atmospheres or other hazardous conditions

Amend AVD to read, In the Trench-at 200 South, Warsaw, IN 46580 - On or about June 8, 2018, in the course of construction activities a 6" water line pipe was not protected, supported or removed to safeguard employees.

Item 2: **DELETE**; penalty reduced to \$ 0.00.

Item 3: Upheld; Penalty reduced to \$ 937.50.

Amend AVD to read, In the Trench - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018, during construction activities, the employees did not use eye protection while engaged in operating a gas powered chop saw.

Item 4: Upheld; penalty reduced to \$ 937.50.

Amended AVD to read, In a Trench - at 620 West 200 South, Warsaw, IN, 46580 - On or about June 8, 2018 during construction activities an employee worked in an excavation site without using appropriate head protection to protect against head injury from overhead hazards, such as falling or flying objects.

Item 5: Upheld; penalty reduced to \$ 1,875.00.

SAFETY ORDER 02:

Item 1: Upheld; penalty reduced to \$ 375.00.

Item 2: Upheld; penalty reduced to \$ 1,875.00.

In exchange, The Employer agrees:

- 1. Refresher training for all employee(s) who have a safety responsible in a limited scope Construction Excavation/Trenching and PPE safety course, within one hundred twenty (120) days of signed Settlement Agreement. Also provide Competent Person training for supervisors.***
- 2. The Employer shall provide an agenda and the class sign in sheet to IDOL upon completion of the course.***

Employer 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 318100443 are retained intact.

The TOTAL AGREED PENALTY is \$ 6,562.50

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


Unless otherwise specified herein, the total AGREED PENALTY is due and payable within fifteen (15) working days from the Employer's execution of this Agreement. The Employer further agrees that if Employer fails to make timely payments or fails to pay the full total agreed penalty as stated herein, 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, minus any payments already made, is due and payable immediately to the Indiana Department of Labor. The Commissioner may use every legal remedy available to collect such unpaid amount, interest shall begin to accrue on said unpaid amount at the rate of 12% apr compounded daily, and the Commissioner may collect legal fees from the Employer for any collection action that may be necessary.

Please make your check or money order payable to "Indiana DOL/IOSHA," indicate IOSHA's Inspection Number (indicated above) on your remittance, and send payments to the following address:

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

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.

G and G Hauling and Excavating Inc

By: 

Title: Conor H. Meeks
Counsel

Date: 10-26-18

COMMISSIONER OF LABOR

By: 

Title: D. Melvin

Date: 10 26 18

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



Safety Order and Notification of Penalty

To:
G and G Hauling and Excavating Inc
115 North Columbia Street
Warsaw, IN 46580

Inspection Number: 318100443
CSHO ID: I6147
Optional Report No.: 00319
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018

Inspection Site:
620 West 200 South
Warsaw, IN 46580

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 10/2/2018. 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: 318100443
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018
CSHO ID: I6147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

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

29 CFR 1926.20(b)(2): The employer's safety and health program did not provide for frequent and regular inspections of the jobsite and equipment by a competent person:

Jobsite - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018 during construction activities, the employer's competent person, on the site, failed to identify existing and predictable hazards and/or take the necessary measures to alleviate the hazards of no personal protective equipment for the eyes, face and head.

Date By Which Violation Must Be Abated: 11/21/2018
Proposed Penalty: \$750.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318100443
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Issuance Date: 10/2/2018
CSHO ID: 16147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

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

29 CFR 1926.651(k)(1): Daily inspections of excavations, the adjacent areas, and protective systems were not made by a competent person for evidence of a situation that could have resulted in possible cave-ins, indications of failure of protective systems

In a trench - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018 during construction activities, a 6 inch water line pipe was not protected, supported or removed to safeguard employees.

Date By Which Violation Must Be Abated: 11/21/2018
Proposed Penalty: \$0.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318100443
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018
CSHO ID: 16147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

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:

In a trench - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018, 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 PPE.

Date By Which Violation Must Be Abated: **11/21/2018**
Proposed Penalty: **\$750.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318100443
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018
CSHO ID: 16147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

Safety Order 01 Item 003

Type of Violation: **Serious**

29 CFR 1926.95(a): Personal protective equipment, including personal protective equipment (ppe) for eyes, face, head, and extremities, protective clothing, respirator devices, and protective shields and barriers, was not provided, used, or maintained:

In a trench - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018, during construction activities, the employer allowed employees to not use eye protection while engaged in operating a gas powered chop saw.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$2,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318100443
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018
CSHO ID: I6147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

Safety Order 01 Item 004

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:

In a trench - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018 during construction activities, the employer allowed an employee to work under other employees handing down tools above him and did not protect him from overhead hazards such as a gas powered chop saw.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$2,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318100443
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018
CSHO ID: I6147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

Safety Order 01 Item 005

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:

Trench, at 620 West 200 South, Warsaw, IN 46580 - On or about or about June 8, 2018, during construction activities, while the trench was open, a 6 inch water line was with-in the trench and was not protected, supported or removed to safeguard employees.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$2,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318100443
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018
CSHO ID: I6147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

Safety Order 02 Item 001

Type of Violation: **NonSerious**

29 CFR 1904.29(b)(3): The employer did not enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness had occurred:

In a trench - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018 a recordable worker injury was not entered on the 2018 OSHA 300 Log.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318100443
Inspection Date(s): 7/12/2018 - 7/27/2018
Issuance Date: 10/2/2018
CSHO ID: I6147
Optional Report No.: 00319

Safety Order and Notification of Penalty

Company Name: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580

Safety Order 02 Item 002

Type of Violation: **NonSerious**

29 CFR 1904.39(a)(2): The in-patient hospitalization, amputation, or loss of an eye was not reported to OSHA within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye as a result of a work-related incident:

In a trench - at 620 West 200 South, Warsaw, IN 46580 - On or about June 8, 2018, a recordable injury was not reported within the 24 hour OSHA required time frame.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$2,500.00

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: G and G Hauling and Excavating Inc
Inspection Site: 620 West 200 South, Warsaw, IN 46580
Issuance Date: 10/2/2018

Summary of Penalties for Inspection Number: 318100443

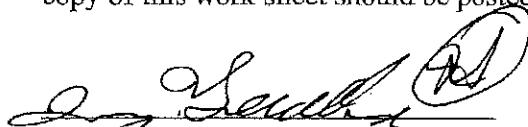
Safety Order 1, Serious	= \$9,000.00
Safety Order 2, NonSerious	= \$3,000.00
TOTAL PENALTIES	= \$12,000.00

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. Lander
Director of Construction Safety

10-2-18
Date