

### SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and Sherman Dixie Concrete, 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. 313197717 issued to the Employer on May 6, 2010 in the following manner.

#### SAFETY ORDER 01:

- Item 1: Upheld, penalty remains at \$3,500.00
- Item 2: Upheld, grouped with Item 1, penalty deleted
- Item 3a: Upheld, penalty remains at \$1,750.00
- Item 3b: Upheld.
- Item 4: Upheld, grouped with Item 3a, penalty deleted
- Item 5: Upheld, penalty reduced to \$3,000
- Item 6: Upheld, grouped with Item 5, penalty deleted
- Item 7a: Upheld, penalty remains at \$1,750.00
- Item 7b: Upheld.
- Item 8: Upheld, grouped with Item 7a, penalty deleted

#### SAFETY ORDER 02:

- Item 1: Upheld

**The TOTAL AGREED PENALTY is \$10,000.00**

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 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.

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 OSHA 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.

Sherman Dixie Concrete, Inc.

By: 

Title: DIRECTOR of OPERATIONS

Date: 5-19-10

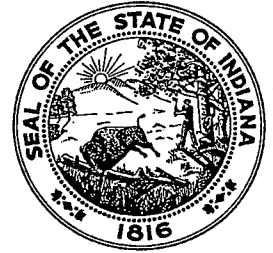
COMMISSIONER OF LABOR

By: 

Title: Director

Date: 5-19-10

Indiana Department of Labor  
Indiana Occupational Safety and Health Administration  
402 West Washington Street  
Room W195  
Indianapolis, IN 46204-2751  
Phone: 317/232-1979 Fax: 317/233-8509



*certified mail # 7003 1010 0003 57308446 5-6-10 JH*

## Safety Order and Notification of Penalty

<b>To:</b>	<b>Inspection Number:</b>	313197717
Sherman Dixie Concrete, Inc., and its successors 1213 Stanley Ave. Evansville, IN 47711	<b>Inspection Date(s):</b>	02/23/2010 - 03/30/2010
	<b>Issuance Date:</b>	05/06/2010

**Inspection Site:**

1213 Stanley Ave.  
Evansville, IN 47711

*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.

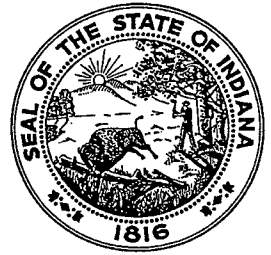
**Notification of Corrective Action** - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance 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.



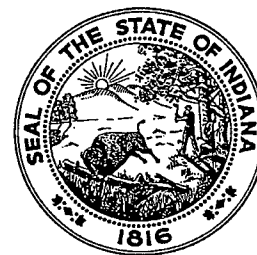
## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 05/06/2010. 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: 313197717  
Inspection Dates: 02/23/2010 - 03/30/2010  
Issuance Date: 05/06/2010



**Safety Order and Notification of Penalty**

Company Name: Sherman Dixie Concrete, Inc.  
Inspection Site: 1213 Stanley Ave., Evansville, IN 47711

**Safety Order 1 Item 1** Type of Violation: **Serious**

IC 22-8-1.1, Section 2: The employer did not establish and maintain conditions of work which were reasonably safe and healthful for employees, and free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to a fall hazard which could cause injuries or illnesses including, but not limited to lacerations, contusions, severe fractures of extremities, back, and skull, massive internal organ trauma, internal bleeding, loss of consciousness, death.

Shop floor: Laborers who accessed the top of concrete form platform located approximately ten (10) feet above the floor used a twelve (12) foot ladder that did not extend at least three (3) feet above the concrete form platform. Employees were exposed to a fall hazard where they were required to step up from the ladder to the concrete form platform.

Among others one feasible method of abatement includes placing platforms with standard railing around the concrete form, using mobile scaffolds to access the work area or using mobile scissor lift to access the work area.

**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$3,500.00

**Safety Order 1 Item 2** Type of Violation: **Serious**

29 CFR 1910.23(c)(1): Open sided floor(s) or platform(s) 4 feet or more above the adjacent floor or ground level were not guarded by standard railings (or the equivalent as specified in 29 CFR 1910.23(e)(3)(i) through (v)), on all open sides:

Shop: Sherman Dixie Concrete did not guard concrete forms with standard railings or equivalent where employees pour concrete while standing 10 feet above the concrete floor on a platform about 7 feet in diameter.

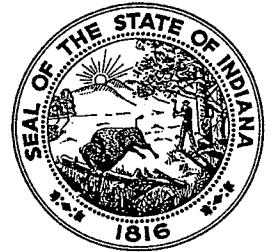
**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$3,500.00



**Indiana Department of Labor**

Occupational Safety and Health Administration

**Inspection Number:** 313197717  
**Inspection Dates:** 02/23/2010 - 03/30/2010  
**Issuance Date:** 05/06/2010



**Safety Order and Notification of Penalty**

**Company Name:** Sherman Dixie Concrete, Inc.  
**Inspection Site:** 1213 Stanley Ave., Evansville, IN 47711

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

**Safety Order 1 Item 3a Type of Violation: **Serious****

29 CFR 1910.146(d)(3)(i): Under the permit-required confined space program required by 29 CFR 1910.146(c)(4), the employer did not develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including specifying acceptable entry conditions:

Shop floor: Sherman Dixie Concrete did not develop safe entry procedures for entering the mixer to perform tasks such as cleaning and maintenance.

**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$1,750.00

**Safety Order 1 Item 3b Type of Violation: **Serious****

29 CFR 1910.146(e)(1): Before entry was authorized, the employer did not document the completion of measures required by 29 CFR 1910.146(d)(3) by preparing an entry permit:

Shop floor: Sherman Dixie Concrete did not complete an entry permit to authorize and document that acceptable safe entry conditions had been met prior to entry into the mixer.

**Date By Which Violation Must be Abated:** 06/02/2010

**Safety Order 1 Item 4 Type of Violation: **Serious****

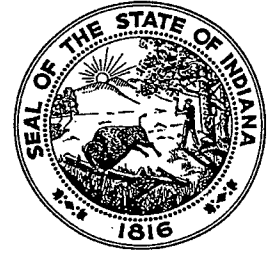
29 CFR 1910.146(d)(9): Under the permit-required confined space program required by 29 CFR 1910.146(c)(4), the employer did not develop and implement procedures for summoning rescue and emergency services, for rescuing entrants from permit spaces to rescued employees, and for preventing unauthorized personnel from attempting a rescue:

Shop floor: Sherman Dixie Concrete did not develop the means to summon emergency rescue services for Laborers who enter permit spaces to perform tasks such as, but not limited to cleaning and/or maintaining the mixer.

**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$1,750.00

Indiana Department of Labor  
Occupational Safety and Health Administration

Inspection Number: 313197717  
Inspection Dates: 02/23/2010 - 03/30/2010  
Issuance Date: 05/06/2010



**Safety Order and Notification of Penalty**

Company Name: Sherman Dixie Concrete, Inc.  
Inspection Site: 1213 Stanley Ave., Evansville, IN 47711

**Safety Order 1 Item 5 Type of Violation: **Serious****

29 CFR 1910.147(c)(4)(ii): The energy control procedures did not clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, including, but not limited to Items A through D of this section:

Shop: The lock out tag out procedure was not specific about steps to safely isolate the mixer from energy sources including, but not limited to the types of energy to the mixer, shutting down the mixer, lock out points for the mixer, transfer and removal of lock out devices for the mixer.

**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$3,500.00

**Safety Order 1 Item 6 Type of Violation: **Serious****

29 CFR 1910.147(c)(5)(ii): Lockout devices and tagout devices were not singularly identified and lockout and tagout devices were used for purpose other than controlling energy:

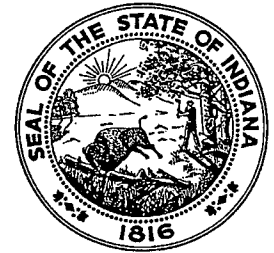
a. Mixer: Locks and/or tags were used by several employees did not identify the individual employee applying the lock out device on the mixer.

b. Mixer: Lock out devices for locking out mixer were used to lock the machine in the on position. Lock out devices were not removed and were secured to energy isolation points both when the mixer was energized and when the mixer was de-energized.

**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$3,500.00

**Indiana Department of Labor**  
Occupational Safety and Health Administration

**Inspection Number:** 313197717  
**Inspection Dates:** 02/23/2010 - 03/30/2010  
**Issuance Date:** 05/06/2010



**Safety Order and Notification of Penalty**

**Company Name:** Sherman Dixie Concrete, Inc.  
**Inspection Site:** 1213 Stanley Ave., Evansville, IN 47711

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

**Safety Order 1 Item 7a** Type of Violation: **Serious**

29 CFR 1910.179(j)(2): Frequent inspections for defects were not performed for all of the items listed in (j)(2)(i) through (j)(2)(iv) of this section:

Shop Floor: Sherman Dixie Concrete did not perform frequent inspection of required crane components including, but not limited to the 11 -Ton overhead crane, serial number 91097.

**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$1,750.00

**Safety Order 1 Item 7b** Type of Violation: **Serious**

29 CFR 1910.179(j)(2)(iii): Monthly inspections of hooks, with signed reports, were not performed:

Shop floor: Sherman Dixie Concrete did not perform and document daily inspection of crane hooks that were used to lift equipment including, but limited to concrete forms, concrete bucket, and header.

**Date By Which Violation Must be Abated:** 06/02/2010

**Safety Order 1 Item 8** Type of Violation: **Serious**

29 CFR 1910.179(l)(3)(iii)(a): Crane hooks showed defects described in paragraph (j)(2)(iii) of this section were not discarded or repaired under competent supervision and was not tested to load requirements of paragraph (k)(2) of this section before further use.

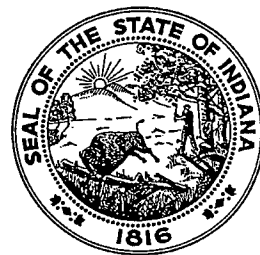
Shop floor: Sherman Dixie Concrete did not replace crane hooks that were damaged in that the safety latches were broken or missing.

**Date By Which Violation Must be Abated:** 06/02/2010  
**Proposed Penalty:** \$3,500.00

**Indiana Department of Labor**

Occupational Safety and Health Administration

**Inspection Number:** 313197717  
**Inspection Dates:** 02/23/2010 - 03/30/2010  
**Issuance Date:** 05/06/2010



**Safety Order and Notification of Penalty**

**Company Name:** Sherman Dixie Concrete, Inc.  
**Inspection Site:** 1213 Stanley Ave., Evansville, IN 47711

**Safety Order 2 Item 1 Type of Violation: **Nonserious****

29 CFR 1910.1200(h)(1): The employer did not provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees had not previously been trained about was introduced into their work area:

Shop Floor: Sherman Dixie Concrete did not provide Laborers with training on the hazards of chemicals they work with including but not limited to Portland cement.

**Date By Which Violation Must be Abated:**

**06/02/2010**

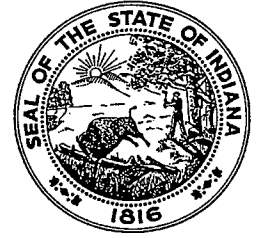
**Proposed Penalty:**

**\$ .00**

Robert A. Kattau  
Director, Industrial Compliance

**Indiana Department of Labor**

Indiana Occupational Safety and Health Administration  
402 West Washington Street  
Room W195  
Indianapolis, IN 46204-2751  
Phone: 317/232-1979 Fax: 317/233-8509



**INVOICE/DEBT COLLECTION NOTICE**

**Company Name:** Sherman Dixie Concrete, Inc.  
**Inspection Site:** 1213 Stanley Ave., Evansville, IN 47711  
**Issuance Date:** 05/06/2010

**Summary of Penalties for Inspection Number** 313197717


Safety Order 01, Serious	=	\$22,750.00
Safety Order 02, Nonserious	=	\$0.00
Total Proposed Penalties		\$22,750.00

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).

  
\_\_\_\_\_  
Robert A. Kattau  
Director, Industrial Compliance

5-6-10  
\_\_\_\_\_  
Date