

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:
Elmer M Schwartz
975 S. 200 E.
Decatur, IN 46733

Inspection Number: 318102357
CSHO ID: F0899
Optional Report No.: 719
Inspection Date(s): 8/23/2018 - 12/7/2018
Issuance Date: 12/17/2018

Inspection Site:
5780 E. 1100 North
North Manchester, IN 46962

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 12/17/2018. 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: 318102357
Inspection Date(s): 8/23/2018 - 12/7/2018
Issuance Date: 12/17/2018
CSHO ID: F0899
Optional Report No.: 719

Safety Order and Notification of Penalty

Company Name: Elmer M. Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 001

Type of Violation: **Serious**

29 CFR 1910.178(l): Operators were not trained in the safe operation of powered industrial trucks (Construction Reference: 1926.602(d)):

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962, - On or about August 22, 2018, during construction activities the operator of the "GEHL", Pin# 055JFVU990474, Model DS10-55, fork lift, was not certified to operate this equipment.

Date By Which Violation Must Be Abated: 2/6/2019
Proposed Penalty: \$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318102357
Inspection Date(s): 8/23/2018 - 12/7/2018
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 002

Type of Violation: **Serious**

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met: (Construction Reference: 1926.59)

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, the employer had not developed, implemented or maintained such program where employees were exposed to pneumatic tool lubrication and treated lumber.

Date By Which Violation Must Be Abated: 2/6/2019
Proposed Penalty: \$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318102357
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 003

Type of Violation: **Serious**

29 CFR 1926.20(b)(1): The employer did not initiate and maintain such programs as may be necessary to comply with this part.

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, the employer had not developed, implemented, or enforced an accident prevention safety & health program which included but is not limited to the following items:

- (1) A statement of management commitment toward the identification and evaluation of occupational hazards.
- (2) Establishment of employee participation in safety meetings and inspections.
- (3) Development of documentation of the instructions of each employee in the recognition and avoidance of unsafe work.

Date By Which Violation Must Be Abated: 2/6/2019
Proposed Penalty: \$7,000.00

Indiana Department of Labor
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Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 004

Type of Violation: **Serious**

29 CFR 1926.451(a)(1): Each scaffold component was not capable of supporting, without failure, its own weight and at least 4 times the maximum intended load applied or transmitted to it:

Personal platform at 5780 E. 1100 N. North Manchester. IN. 46962 - On or about August 22, 2018, during construction activities, the 24 foot long by 60 inch wide by 42 inch high personal platform, set on the forks of a fork lift, and did not have any manufacture details for capacity and/or weight, was carrying 3 employees, tools and 4 wood stud walls, and was not capable of supporting, without failure, it's weight and at least 4 times the maximum intended load.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
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Inspection Number: 318102357
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 005

Type of Violation: **Serious**

29 CFR 1926.451(a)(6) Scaffold(s) were not erected, moved, dismantled, or altered under the supervision and direction of a competent person qualified in such:

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, employees engaged in scaffold activities, were not trained, directed or supervised by a qualified competent person.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318102357
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 006

Type of Violation: **Serious**

29 CFR 1926.451(c)(2)(iv): Front-end loaders and similar pieces of equipment were used to support scaffold platforms without being specifically designed by the manufacturer for such use.

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, I observed the "GEHL" industrial rough terrain fork lift, PIN# 055JFO990474, model RS10-55, was not used in accordance with manufacturers recommendations, in that an unauthorized personal platform was set on the forks of this lift and was not specifically designed by the manufacture for such use.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
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Inspection Number: 318102357
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 007

Type of Violation: **Serious**

29 CFR 1926.451(c)(2)(v): Fork-lifts were used to support scaffold platforms while the entire platform was not attached to the fork and the fork-lift was moved horizontally while the platform was occupied:

Personal platform at 5780 E. 1100 N. North Manchester, In. 46962 - On or about August 22, 2018, during construction activities, the personal platform that was set on the GEHL, Pin# 055JFVU990474, model DS10-55, fork lift, was not secured to the lift and was being moved horizontally while the platform was occupied by 3 employees.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318102357
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 008

Type of Violation: **Serious**

29 CFR 1926.451(g)(4)(i): Guardrail systems were not installed along all open ends of platforms 10 feet or more above a lower level before the scaffold was released for use by employees other than erection/dismantling crews.

Personal platform at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, the personal platform, with no identifying markings, that was 24 feet long, 60 inches wide and 42 inches high, did not have the front side guarded.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318102357
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Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 009

Type of Violation: **Serious**

29 CFR 1926.451(g)(4)(iv): Mid rails were not installed approximately midway between the top edge of the guardrail system and the platform.

Jobsite at 5780b E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, mid rail(s) on the personal platform that was 24 feet long, 60 inches wide and 42 inches high, on the platform that was 16 feet above the lower level, while set on the GEHL all terrain fork lift, Pin# 055JFVU990474, model RS10-55, had the chain mid rails installed, at 21 inches above the platform, but with slack at the center of the chain was 17 inches and was not midway between top edge of guardrail system and the platform.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 010

Type of Violation: **Serious**

29 CFR 1926.453(b)(2)(v): A body belt was not worn and a lanyard was not attached to the boom or platform when working from an aerial lift.

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, the employer allowed 3 employees to work on the personal platform that was 24 feet long, 60 inches wide and 42 inches high, at 16 feet above the lower level, that was set on the GEHL all terrain fork lift, Pin # 055JFVU990474, model RS10-55, and not provided with fall protection.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318102357
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Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

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 011a Type of Violation: **Serious**

29 CFR 1926.454(b)(2): The employer did not have each employee who is involved in erecting, disassembling, moving, operating, repairing, maintaining, or inspecting a scaffold trained by a competent person to recognize any hazard associated with the work in question.

Jobsite at 5780 E. 1100 N. North Manchester, In. 46962 - On or about August 22, 2018, during construction activities, 3 employees engaged in performing work, while on a personnel platform, set on a GEHL all terrain fork lift, exposed to falls, had not been trained by a competent person.

Date By Which Violation Must Be Abated: **2/6/2019**
Proposed Penalty: **\$7,000.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318102357
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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 011b

Type of Violation: **Serious**

29 CFR 1926.503(a)(1): The employer did not provide a training program for each employee potentially exposed to fall hazards.

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962, during construction activities, the employer allowed employees to work on a 14 inch wide concrete wall, that was 16 feet above the lower level, and did not assure that the employees were trained to recognize the hazards associated with falls.

Date By Which Violation Must Be Abated: 2/6/2019
Proposed Penalty: \$0.00

Indiana Department of Labor
Occupational Safety and Health Administration

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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 012

Type of Violation: **Serious**

29 CFR 1926.501(b)(1): Each employee on a walking/working surface with an unprotected side or edge which was 6 feet or more above a lower level was not protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities; 3 employees engaged in setting wood stud walls, on a 14 inch wide concrete wall, at a height of 16 feet above the lower level, were not protected from falling.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

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Safety Order and Notification of Penalty

Company Name: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962

Safety Order 01 Item 013

Type of Violation: **Serious**

29 CFR 1926.602(c)(1)(viii)(A): The industrial truck was not equipped with a safety platform/cage firmly secured to the lifting carriage and/or forks when used for lifting personnel:

Jobsite at 5780 E. 1100 N. North Manchester, IN. 46962 - On or about August 22, 2018, during construction activities, when personnel were being elevated, the safety platform was not firmly secured to the lifting carriage and/or forks of the GEHL, Pin# 055JFVU990474 Model RS10-55. all terrain fork lift.

Date By Which Violation Must Be Abated:
Proposed Penalty:

Corrected During Inspection
\$7,000.00


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: Elmer M Schwartz
Inspection Site: 5780 E. 1100 North, North Manchester, IN 46962
Issuance Date: 12/17/2018

Summary of Penalties for Inspection Number: 318102357

Safety Order 1, Serious = \$91,000.00
TOTAL PENALTIES = \$91,000.00

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. Eander
Director of Construction Safety

12-18-18
Date