



INDIANA

DEPARTMENT OF LABOR

ERIC J. HOLCOMB, GOVERNOR

David Redden, Commissioner

402 West Washington Street, Room W195

Indianapolis, Indiana 46204-2751

Phone: (317) 232-2655

Fax: (317) 233-3790

Safety Orders and Notification of Penalties

To:

Fox Contractors Corporation
and its successors
5430 Ferguson Road
Fort Wayne, IN 46809

Inspection Number: 1597662

CSHO ID: L9647

Inspection Dates: 05/23/2022 - 08/01/2022

Issuance Date: 08/18/2022

Inspection Site:

St Rd 39 and St Rd 26
Frankfort, IN 46041

The violations described in these Safety Orders and Notification of Penalties are alleged to have occurred on or about the days the inspection was made unless otherwise indicated within the description given below.

An inspection of your workplace 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 orders and notifications of penalty describing such violations with references to applicable standards, rules or provisions of the statute and stating the amount of any penalties.

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 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 and to facilitate scheduling, any requests for an informal conference should be made promptly upon your receipt of the safety orders and notification of penalties.

Right to Contest – You are hereby also notified that you are entitled to seek administrative review of the safety orders, penalties, or both by filing a written petition for review at the above address postmarked within fifteen working days of your receipt of the safety orders and notification of penalties. (“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 closed during regular

business hours). If you do not file such a petition for review (contest), the safety orders and penalties shall be deemed final orders of the Board of Safety Review and not subject to review by any court or agency. The issuance of safety orders does not constitute a finding that the violations have 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 orders and notifications of penalties. 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 board appointed by the governor with authority to conduct legal proceedings leading up to and including administrative hearings or assign an Administrative Law Judge (ALJ) to conduct the same, and to issue decisions concerning disputed safety orders and notifications of penalties. If we amend the safety orders or notification of penalties, 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 orders and notification of penalties.

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 orders for the abatement of any violation.

Posting - Upon receipt of any safety orders you are required to post such safety orders, or a copy thereof, unedited, at or near each place an alleged violation referred to in the safety orders occurred. However, if your operations are such that it is not practicable to post the safety orders at or near each place of alleged violations, such safety orders 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 orders 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 orders are 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 orders must be corrected (abated) on or before the date shown for each item on the safety orders and notification of penalties 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 way 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 to file such a petition for review when it becomes apparent that you need extra time to abate the violations. 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, to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary 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 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.

Follow-up Inspections - Please be advised that a follow-up inspection may be made for the purpose of ascertaining that you have posted the safety orders 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.

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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 citation(s) issued on 08/18/2022.

The Informal Conference will be held:

_____ Virtually/Telephonically via Microsoft Teams

Call-in Number: _____

Conference ID: _____

_____ In-person at the Indiana Department of Labor, located at the following address:

402 West Washington Street, Room W195
Indianapolis, Indiana 46204

Meeting/Conference Room: _____

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: 1597662
CSHO ID: L9647
Inspection Dates: 05/23/2022 - 08/01/2022
Issuance Date: 08/18/2022

Safety Order and Notification of Penalty

Company Name: Fox Contractors Corporation
Inspection Site: St Rd 39 and St Rd 26, Frankfort, IN 46041

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

29 CFR 1926.651(k)(2): Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety:

Trench area - St Rd 28 and St Rd 39 Frankfort IN. - On or before May 23, 2022, during trenching activities, the competent person failed to perform the duties as required, in that she did not correct conditions, and did not prevent employees from being exposed to, or cause them to be removed from, the hazards of a cave in, in a trench/excavation 8 feet deep.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$5,400.00

Indiana Department of Labor
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Safety Order 1 Item 2 Type of Violation: **Serious**

29 CFR 1926.652(a)(1): Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when:

Trench - St Rd 38 and St Rd 28, Frankfort IN. - on or before May 23, 2022 - during construction activities, the employer did not ensure that cave-in protection was provided/used to protect employees working in a trench/excavation 7 feet 6 inches deep.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$6,300.00


Jeremy Galloway
Director of Construction



INDIANA

DEPARTMENT OF LABOR

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David Redden, Commissioner
402 West Washington Street, Room W195
Indianapolis, Indiana 46204-2751
Phone: (317) 232-2655
Fax: (317) 233-3790

INVOICE/DEBT COLLECTION NOTICE

Company Name: Fox Contractors Corporation
Inspection Site: St Rd 39 and St Rd 26, Frankfort, IN 46041
Issuance Date: 08/18/2022

Summary of Penalties for Inspection Number: 1597662

Citation 1 Item 1, Serious	\$5,400.00
Citation 1 Item 2, Serious	\$6,300.00


TOTAL PROPOSED PENALTIES:	\$11,700.00
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Penalties are due within fifteen (15) working days of receipt of this notification unless requested. Make your check or money order payable to: "Indiana DOL/IOSHA." Please indicate IOSHA's Inspection Number (indicated above) on the remittance. You may also make a payment online at <https://payingov.com/dol/>. Your account number is your inspection number.

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 worksheet has been provided to assist in providing the required abatement information. A completed copy of this worksheet should be posted at the worksite with safety orders.


Jeremy Galloway
Director of Construction

08-17-2022

Date