

SETTLEMENT AGREEMENT

The Commissioner of Labor (here in after referred to as "Commissioner") and the MVB Inc dba Upstate Recycling Inc, herein after referred to as "Employer") hereby agree as follows:

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty, IOSHA Inspection No. 316505718 issued to the Employer on June 10, 2013 in the following manner.

SAFETY ORDER 01:

Item 1a, b & c: Upheld; group, penalty reduced to \$ 1,050.00, **abatement has been modified until August 28, 2013.**

Item 2: Upheld; penalty reduced to \$ 1,050.00, **abatement has been modified until August 28, 2013.**

Item 3: Upheld; penalty reduced to \$ 1,050.00, **abatement has been verified work completed June 4, 2013.**

Item 4a & b: Upheld; penalty reduced to \$ 1,050.00, **abatement has been verified work completed June 4, 2013.**

Item 5: Upheld; penalty reduced to \$ 525.00, **abatement has been verified work completed June 4, 2013.**

Item 6: Upheld; penalty reduced to \$ 525.00, **abatement has been verified work completed June 4, 2013.**

Item 7: Upheld; penalty reduced to \$ 1,050.00.

Item 8: Upheld; penalty reduced to \$ 1,050.00.

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.

In exchange, The Employer agrees:

- 1. Refresh all employees doing welding, cutting and in the use of Scaffolds in an limited scope training course in Construction Safety or General Industry course along with competent person training for Supervisors within thirty (30) days of the Settlement Agreement.**
- 2. The Employer will request the services of IDOL INSafe for an Onsite Consultation and help with the developing of their Health and safety programs, within sixty (60) days of the Settlement Agreement.**

3. The Employer shall provided an agenda and the class sign in sheet to IDOL upon completion of the course and a copy of the new programs for our review. (*programs will be returned to employer after review*)
4. Also, the Employer has agreed to a PAYMENT PLAN: six (6) payments at \$ 1,225.00, starting: 1st June 28, 2013, 2nd July 28, 2013, 3rd Aug 28, 2013, 4th Sept 28, 2013, 5th Oct 28, 2013, 6th Nov 28, 2013.

Except for the above specified amendments all other provisions of Safety Order Number 316505718 are retained intact.

The TOTAL AGREED PENALTY is \$ 7,350.00

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.

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.

MVB Inc dba Upstate Recycling Inc

By: Martin J Henry

Title: President

Date: 6/6/13

COMMISSIONER OF LABOR

By: [Signature]

Title: [Signature]

Date: 6/7/13

Indiana Department of Labor

402 West Washington Street
Room W195
Indianapolis, IN 46204-2751
Phone: 317/232-1979; Fax: 317/233-3790



certified mail # 70031010 0003 5732 7997 5-14-13 jto

Safety Order and Notification of Penalty

To:

MVB Inc,
and its successors
PO Box 11227
Attn: Mr. Martin T. Henry
Fort Wayne, IN 46856

Inspection Number: 316505718
Inspection Date(s): 11/28/2012 - 05/09/2013
Issuance Date: 05/14/2013

Inspection Site:

1125 Kent Street
Yoder Oil (Tank Demolition)
Elkhart, IN 46514

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.

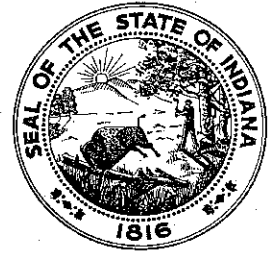
Notification of Corrective Action - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance in providing 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 05/14/2013. The conference will be held at the IOSHA office located at 402 West

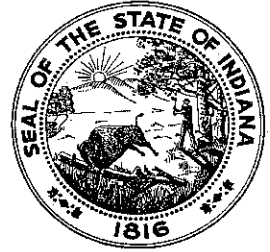
Washington Street, Room W195, Indianapolis, IN 46204 on _____ at

_____. 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: 316505718
Inspection Dates: 11/28/2012 - 05/09/2013
Issuance Date: 05/14/2013



Safety Order and Notification of Penalty

Company Name: MVB Inc
Inspection Site: 1125 Kent Street, Yoder Oil (Tank Demolition), Elkhart, IN 46514

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 1a 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)

Job Site ----- On November 16, 2012 and before, the employer had not developed, implemented or maintained such program.

Date By Which Violation Must be Abated: **07/01/2013**
Proposed Penalty: **\$1,500.00**

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

29 CFR 1910.1200(g)(1): The employer did not have a material safety data sheet for each hazardous chemical which they used: (Construction Reference: 1926.59)

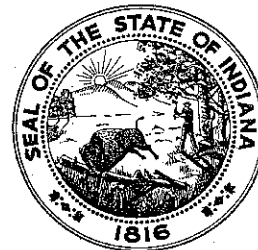
Job Site ----- On November 16 , 2012 and before, Material Safety Data Sheets (MSDS) were not maintained on the job site for any products in use or available for use such as but not limited to oxygen, propane and petroleum products.

Date By Which Violation Must be Abated: **06/10/2013**

Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 316505718
Inspection Dates: 11/28/2012 - 05/09/2013
Issuance Date: 05/14/2013



Safety Order and Notification of Penalty

Company Name: MVB Inc
Inspection Site: 1125 Kent Street, Yoder Oil (Tank Demolition), Elkhart, IN 46514

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

29 CFR 1910.1200(h)(1): Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(2) and (3) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area: (Construction Reference 1926.59)

Job Site ----- On November 16, 2012 and before, the employer had not provided employees with information on the hazard communications standard and employees were not trained on the use and presence of hazardous substances in their work area such as, but not limited to propane, oxygen and petroleum products.

Date By Which Violation Must be Abated: **07/01/2013**

Safety Order 1 Item 2 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:

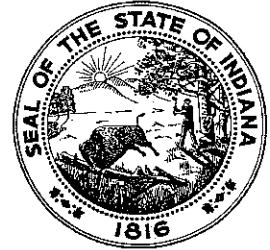
Job Site ----- On November 16, 2012 and before, the employer had not developed, implemented, or enforced an accident prevention safety & health program which included but is not limited to the following items:
(1) a statement of management commitment toward the identification and evaluation of occupational 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 conditions.

Date By Which Violation Must be Abated: **07/01/2013**
Proposed Penalty: **\$1,500.00**

Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 316505718
Inspection Dates: 11/28/2012 - 05/09/2013
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Safety Order and Notification of Penalty

Company Name: MVB Inc
Inspection Site: 1125 Kent Street, Yoder Oil (Tank Demolition), Elkhart, IN 46514

Safety Order 1 Item 3 Type of Violation: Serious

29 CFR 1926.20(b)(2): Inspections of the job site, materials and equipment were not made by a competent person designated by the employer:

Job Site ----- On November 16, 2012 and before, the employers designated competent person, on the site, failed to identify existing and predictable hazards and/or take the necessary measures to alleviate the hazards such as those associated with welding and cutting and scaffolding.

Date By Which Violation Must be Abated: 06/10/2013
Proposed Penalty: \$1,500.00

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 4a Type of Violation: Serious

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury:

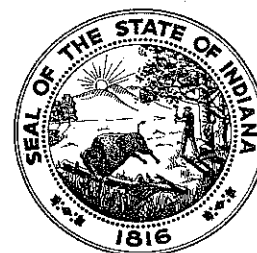
Job Site ----- On November 16, 2012 and before, employees were not instructed, or adequately instructed, in the recognition and avoidance of unsafe conditions applicable to their work environment such as but not limited to those connected with welding and cutting and scaffolding.

Date By Which Violation Must be Abated: 07/01/2013
Proposed Penalty: \$1,500.00

Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 316505718
Inspection Dates: 11/28/2012 - 05/09/2013
Issuance Date: 05/14/2013



Safety Order and Notification of Penalty

Company Name: MVB Inc
Inspection Site: 1125 Kent Street, Yoder Oil (Tank Demolition), Elkhart, IN 46514

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

29 CFR 1926.454(b): 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:

Job Site ---- On November 16, 2012 and before, one employee who operated the JLG Lift, Model 460 SJ was not tied off while cutting a metal fuel tank had not been trained by a competent person on recognizing scaffold hazards and on the scaffold regulations which included the nature of such hazards, proper operation and other requirements.

Date By Which Violation Must be Abated: **07/01/2013**

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

29 CFR 1926.350(a)(9): Compressed gas cylinder(s) were not secured in an upright position:

Elkhart Bulk Plant - Tank Farm ---- On November 16, 2012 none of the 21 Oxygen bottles, seven of which were lying on the ground horizontally or the 19 propane bottles, all compressed gas cylinders not in use were secured in an upright position.

Date By Which Violation Must be Abated: **05/20/2013**
Proposed Penalty: **\$750.00**

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

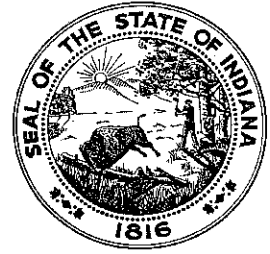
29 CFR 1926.350(a)(10): Oxygen cylinders were not separated from fuel gas cylinders a minimum distance of 20 feet or by a noncombustible barrier at least 5 feet high having a fire resistance of at least one half hour:

Elkhart Bulk Plant - Tank Farm ---- On November 16, 2012 two oxygen cylinders and three propane cylinders were not separated from each other.

Date By Which Violation Must be Abated: **05/20/2013**
Proposed Penalty: **\$750.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 316505718
Inspection Dates: 11/28/2012 - 05/09/2013
Issuance Date: 05/14/2013



Safety Order and Notification of Penalty

Company Name: MVB Inc
Inspection Site: 1125 Kent Street, Yoder Oil (Tank Demolition), Elkhart, IN 46514

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

29 CFR 1926.352(b): If the object to be welded cut, or heated cannot be moved and if all the fire hazards cannot be removed, positive means shall be taken to confine the heat, sparks, and slag, and to protect the immovable fire hazards from them:

Elkhart Bulk Plant - Tank Farm ---- On November 16, 2012 the employee began cutting the 420,000 gallon tank directly above a 12,000 gallon tank which was labeled "Ethonated No Lead" vapors were escaping through the vents without taking such precautions a fire did occur.

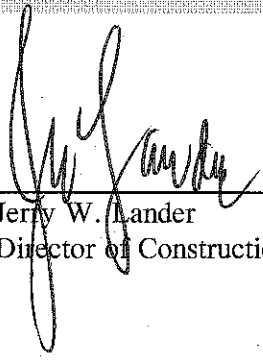
Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$1,500.00

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

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

Elkhart Bulk Plant - Tank Farm ----- On November 16, 2012 the employee working at height up to 20 feet high in the basket of the JLG aerial lift, Model 460 SJ was not wearing any fall protection.

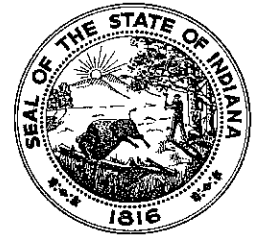
Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$1,500.00



Jerry W. Lander
Director of Construction Safety 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: 317/233-3790



INVOICE/DEBT COLLECTION NOTICE

Company Name: MVB Inc
Inspection Site: 1125 Kent Street, Yoder Oil (Tank Demolition), Elkhart, IN 46514
Issuance Date: 05/14/2013

Summary of Penalties for Inspection Number 316505718

Safety Order 01, Serious	=	\$10,500.00
Total Proposed Penalties		\$10,500.00

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 Compliance

Date

5 14 13