

**Expedited Informal Settlement Agreement**

Indiana Department of Labor  
Occupational Safety and Health Administration  
402 W. Washington Street, Room W195  
Indianapolis, IN 46204

RECEIVED

FEB 10 2020

INDIANA DEPT OF LABOR  
I.O.S.H.A

In the Matter of: University of Evansville; Inspection Number: 318117108

**EXPEDITED INFORMAL SETTLEMENT AGREEMENT**

The undersigned EMPLOYER and the undersigned Indiana Occupational Safety and Health Administration (IOSHA), in settlement of the above referenced Safety Order(s) and Notification(s) of Penalty which were issued on January 20, 2020, hereby agree as follows:

1. The EMPLOYER agrees to correct the violations as cited in the above referenced safety order(s).
2. The EMPLOYER agrees to provide evidence of the actions taken to correct the cited violations.
3. Upon correction of all violations, the EMPLOYER agrees to provide written certification to IOSHA that all of the violations have been corrected. The EMPLOYER agrees to post a copy of the written certification for a period of three (3) working days in the same location where the safety orders were posted as described in paragraph 6 of this AGREEMENT.
4. IOSHA agrees that the total penalty is amended to **\$9,067.50**. Failure of the EMPLOYER to comply with the terms of this AGREEMENT shall cause the penalty to revert to the initial proposed penalty.
5. In consideration of the foregoing amendment(s) and/or modification(s) to the safety order(s), the EMPLOYER hereby waives its right to contest said safety order(s). It is understood and agreed by the Indiana Occupational Safety and Health Administration and the EMPLOYER that the citation(s) as amended and/or modified by this agreement shall be deemed a final order not subject to review by any court or agency.
6. The EMPLOYER agrees to immediately post a copy of this Settlement Agreement in the same manner and place as the Safety Orders (Safety Orders are required by law to be posted in a prominent place at or near the location of the violation(s)). **Safety Orders must remain posted until the violations cited have been corrected, or for three working days (excluding weekends and federal holidays), whichever is longer.**
7. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

University of Evansville

By: Kim Winstett  
Title: Director, Administrative Services  
Risk Management  
Date: 2/5/2020

Rick J. Ruble,  
COMMISSIONER OF LABOR

By: [Signature]  
Title: Director  
Date: 2-10-2020

# Indiana Department of Labor

Indiana Occupational Safety and Health Administration  
402 West Washington St - Room W195  
Indianapolis, IN 46204  
Phone: (317)232-2691 FAX: (317)233-3790



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## Safety Order and Notification of Penalty

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**To:**  
University of Evansville  
and its successors  
1800 Lincoln Avenue  
Evansville, IN 47722

**Inspection Number:** 318117108  
**CSHO ID:** T6073  
**Optional Report No.:** 2167-20  
**Inspection Date(s):** 10/8/2019 - 10/10/2019  
**Issuance Date:** 1/20/2020

**Inspection Site:**  
1800 Lincoln Avenue  
Evansville, IN 47722

*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.*

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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 and proof of abatement must be sent to the email address: [AbatementGI@dol.in.gov](mailto:AbatementGI@dol.in.gov) 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 be sent to the email address: [AbatementGI@dol.in.gov](mailto:AbatementGI@dol.in.gov) 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 sending the Petition to [AbatementGI@dol.in.gov](mailto:AbatementGI@dol.in.gov). 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 and sent to the email address [AbatementGI@dol.in.gov](mailto:AbatementGI@dol.in.gov). 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 via email at [AbatementGI@dol.in.gov](mailto:AbatementGI@dol.in.gov), 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 1/20/2020. 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:** 318117108  
**Inspection Date(s):** 10/8/2019 - 10/10/2019  
**Issuance Date:** 1/20/2020  
**CSHO ID:** T6073  
**Optional Report No.:** 2167-20

## **Safety Order and Notification of Penalty**

**Company Name:** University of Evansville  
**Inspection Site:** 1800 Lincoln Avenue, Evansville, IN 47722

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### **Safety Order 01 Item 001**

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 fall hazards:

a) University Facilities - Inspections were not being conducted for man lifts such as, but not limited to: the Genie AWP, with sufficient frequency to identify deficiencies in the man lifts that could result in potential falls from a height greater than 4 feet.

FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Conduct inspections per ANSI 92.3 which states in section 7.3.3 "Prestart Inspection. Before use each day or at the beginning of each shift, the aerial platform shall be given a visual inspection and functional test including but not limited to the following: (1) Operating and emergency controls, (2) Safety devices, (3) Personal protective devices, including fall, (4) Air, hydraulic and fuel system leaks, (5) Cables and wiring harness, (6) Loose or missing parts, (7) Tires and wheels, (8) Placards, warnings, and control markings, (9) Outriggers, stabilizers, and other structures (10) Guardrail system, (11) Items specified by the manufacturer."

Follow the Genie AWP Owner's Manual which states on page 6 "Conduct a thorough pre-operation inspection of the machine and test all functions before each work shift (check list on page 11). Immediately tag and remove from service a damaged or malfunctioning machine."

b) University Facilities - Employees using man lifts such as, but not limited to: the Genie AWP, were not trained per the owner manual which created a potential fall hazard from greater than 4 feet.

FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Follow the Genie AWP Owner's Manual which states on page 1 "Do Not Operate Unless: You are properly trained to safely operate the machine."

Conduct training per ANSI 92.3 which states in section 8.6 "Before Operation. Before being authorized to operate the aerial platform, the operator shall have: (1) Been instructed by a qualified person in the intended purpose and function of each of the controls, (2) Read and understood the manufacturer's/owner's operating instructions and safety rules, or been trained by a qualified person on the contents of the manufacturer's/ owner's operating instructions and safety rules, (3) Understood by reading or by having a qualified person explain all decals, warnings, and instructions displayed on the aerial platform."

<b>Date By Which Violation Must Be Abated:</b>	<b>2/20/2020</b>
<b>Proposed Penalty:</b>	<b>\$3,150.00</b>



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

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### **Safety Order and Notification of Penalty**

**Company Name:** University of Evansville  
**Inspection Site:** 1800 Lincoln Avenue, Evansville, IN 47722

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#### **Safety Order 01 Item 002**

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 burns and struck-by hazards:

University Heating Plant - Employees responsible for maintaining boilers were not provided training which created potential burn and struck-by hazards.

FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Provide required training per NFPA 85, section 4.4.2.1.1 which states "The owner or the owner's representative shall be responsible for establishing a formal training program that is consistent with the type of equipment and hazards involved to prepare personnel to operate equipment" and section 4.4.2.2.1 which states "The owner or the owner's representative shall be responsible for establishing a formal and ongoing program, consistent with the type of equipment and hazards involved, for training maintenance personnel to perform all required maintenance tasks."

**Date By Which Violation Must Be Abated:** 2/20/2020  
**Proposed Penalty:** \$3,150.00

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Occupational Safety and Health Administration

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**CSHO ID:** T6073  
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**Safety Order and Notification of Penalty**

**Company Name:** University of Evansville  
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**Safety Order 01 Item 003**                      Type of Violation: **Serious**

29 CFR 1910.305(b)(2)(i): Pull boxes, junction boxes, and fittings were not provided with covers approved for the purpose:

University Heating Plant - A live electrical junction box did not have a cover exposing the conductors within which created a potential electrical shock hazard.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$3,150.00**

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**Safety Order 01 Item 004**                      Type of Violation: **Serious**

29 CFR 1910.1001(j)(7)(iv): The employer did not provide, at no cost to employees who perform housekeeping operations in an area which contains presumed asbestos-containing material (PACM) and/or other asbestos-containing material (ACM), an asbestos awareness training course:

Facility - No training program was in place for employees who performed required maintenance and housekeeping tasks in areas where ACM materials were located which created a potential asbestos fiber exposure.

**Date By Which Violation Must Be Abated:**                      **2/20/2020**  
**Proposed Penalty:**    **\$4,500.00**

Julie C. Alexander, JD  
Director of General Industry

# Indiana Department of Labor

Indiana Occupational Safety and Health Administration  
402 West Washington St - Room W195  
Indianapolis, IN 46204  
Phone: (317)232-2691 FAX: (317)233-3790



## INVOICE/DEBT COLLECTION NOTICE

**Company Name:** University of Evansville  
and its successors  
**Inspection Site:** 1800 Lincoln Avenue, Evansville, IN 47722  
**Issuance Date:** 1/20/2020

**Summary of Penalties for Inspection Number: 318117108**

<b>Safety Order 1, Serious</b>	<b>= \$13,950.00</b>
<b>TOTAL PENALTIES</b>	<b>= \$13,950.00</b>

**\*No penalty due if all items abated due to Public Sector Employer Policy.**

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. 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 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).

Julie C. Alexander, J.D.  
Director of General Industry

1.20.2020  
Date