

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW

IN THE MATTER OF THE)
COMMISSIONER OF LABOR,)

CASE DOCKET NO. 12-016

Complainant,)

v.)

WALSH CONSTRUCTION)
COMPANY,)

Respondent.)

F I L E D

MAR 19 2015

Indiana Board of
Safety Review

FINAL ORDER

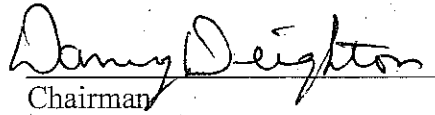
Danny Deighton, designated by the Indiana Board of Safety Review (hereinafter "Board") to act as Administrative Law Judge pursuant to Ind. Code § 4-21.5-3-9 and Ind. Code § 22-8-1.1-35.1, issued the Administrative Law Judge's Recommended Findings of Fact, Conclusions of Law and Recommended Order ("ALJ's Recommended Order") in this matter on January 15, 2015.

A copy of the Administrative Law Judge's Recommended Order is attached hereto as Exhibit A and made a part hereof.

There having been no objection to said Recommended Order filed and no notice of intent by the Board to review any issue related to said Order, pursuant to IC 4-21.5-3-29(c), the Board hereby affirms by a vote of 4-0-0 on MARCH 19, 2015 said Recommended Order and adopts it as its Final Order in this proceeding.

Now therefore, IT IS ORDERED in the above captioned matter that the Safety Order is hereby vacated.

SO ORDERED, this 19 day of March, 2015.


Chairman

Indiana Board of Safety Review

Distribution:

Mark A. Lies, II
Ilana R. Morady
SEYFARTH SHAW LLP
131 South Dearborn, Suite 2400
Chicago, IL 60603
(312) 460-5000
mlies@seyfarth.com
slarocco@seyfarth.com
imorady@seyfarth.com

J. Anthony Hardman
General Counsel
Indiana Department of Labor
402 W. Washington Street, Room W-195
Indianapolis, IN 46204
JoHardman@dol.IN.gov

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW

IN THE MATTER OF THE)
COMMISSIONER OF LABOR,)

CASE DOCKET NO. 12-016

Complainant,)

v.)

F I L E D

WALSH CONSTRUCTION)
COMPANY,)

JAN 15 2015

Respondent.)

Indiana Board of
Safety Review

ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER

Comes now Danny Deighton, Administrative Law Judge designated by the Indiana Board of Safety Review ("Board") in this proceeding, and hearing having been held, now issues and files this Recommended Order with the Board.

In accordance with Ind. Code § 4-21.5-3-29, notice is hereby given that any objection to the Administrative Law Judge's Recommended Order must be filed with the Board, identifying the basis of the objection with reasonable particularity, no later than eighteen (18) days from the date of the issuance of this order, unless such date is a Saturday, Sunday, or legal holiday under the state statute, in which case the deadline would be the first day thereafter that is not a Saturday, a Sunday, or a legal holiday under state statute. This Administrative Law Judge's Order is not the final order of the Board in this proceeding. However, in the absence of any objection, the Board will either affirm the Administrative Law Judge's order as its final order or will serve notice of its intent to review any issue related to the Administrative Law Judge's Order.

EXHIBIT A

FINDINGS OF FACT

1. On May 2, 2012, Indiana OSHA Compliance Safety and Health Officer (“CSHO”) David Zeigenbein performed an inspection of Respondent’s workplace at the Madison Bridge in Madison, Indiana (“Site”). (Tr. Vol I, 15:17-19; 16:17-17:1)
2. Mr. Zeigenbein performed the inspection based upon an incident that occurred on April 30, 2012 where one of Respondent’s employees, Roger Cox, was found unconscious in the basket of the JLG aerial lift that he had been operating, model 860SJ. (Tr. Vol. I, 17:8-17; 22:23-25; Bd’s Ex. A).
3. As a result of the inspection, the Indiana Department of Labor (“Department”) issued a Safety Order to Respondent on July 20, 2012 alleging that Respondent violated Indiana Code 22-8-1.1 Section 2 (Safety Order 1, Item 1), 29 CFR § 1926.454(a) (Safety Order 1, Item 2a), and 29 CFR § 1926.454(b) (Safety Order 1, Item 2b) with respect to the incident. (Bd’s Ex. A).
4. The Respondent timely petitioned to contest the Safety Order.
5. A hearing was held in this matter before the Honorable Sarah J. Fuhrman, Administrative Law Judge for the Indiana Occupational Safety and Health Board of Safety Review (the “Board”), on August 21-22, 2013 in Indianapolis, Indiana¹.
6. Attorney J. Anthony Hardman represented the Complainant, the Commissioner of the Indiana Department of Labor (hereinafter, “Commissioner”).

¹ The Board removed Administrative Law Judge Fuhrman from this matter and designated Board member Danny Deighton as Administrative Law Judge.

7. Walsh Construction Company ("Respondent") was represented by Mark A. Lies, II, Stephanie C. LaRocco, and Ilana R. Morady.
8. At the close of the Commissioner's case and again at the close of the case in whole, Respondent moved for a directed verdict, which the Board took under advisement. A ruling on this motion has not been issued.
9. Adam Birchfield, Jr. is Respondent's Safety Manager at the Site, and was designated by Respondent as a "competent person" and a "qualified person" with respect to aerial lifts. (Tr. Vol. II, 7:20-22; 19:16-21; 30:9-13).
10. Nicholaus Whitener is Respondent's superintendent at the Site and has been operating JLG aerial lifts for approximately 19 years. (Tr. Vol. II, 49:14-15; 96:10-16). Mr. Whitener is designated by Respondent as a competent and qualified individual with respect to aerial lifts.
11. Mr. Cox was a journeyman carpenter/welder, and was hired by Respondent on August 30, 2011 through the union hall. (Tr. Vol. I, 157:18-20; Tr. Vol. II, 12:18; 13:24-14:2; 98:24-99:1; 98:15-17).
12. Mr. Cox operated a JLG aerial lift at the Site; his job was to raise himself while standing in the man basket using the telescoping arm of the JLG and perform work on certain areas of the Madison Bridge. (Tr. Vol. II, 37:19-22; 39:6-15).
13. When Respondent hires employees through the union, it requests employees who are properly trained, however Respondent also conducts its own proficiency training. (Tr. Vol. II, 85:21-24; 86:3-5).

14. On August 30, 2011, the day that Mr. Cox was hired, Mr. Birchfield gave Mr. Cox an initial orientation which included verifying Mr. Cox's proficiency in operating the JLG aerial lift (Tr. Vol. II, 13:20-23; 15:8-11).
15. The orientation included a classroom portion during which Mr. Birchfield spoke about the use and operation of aerial lifts. (Tr. Vol. I, 15:16-25).
16. Specifically, Mr. Burchfield spoke about aerial lift-related safety issues such as ejection protection, pinch points, movement alarms, welding operations, weight requirements, and the location of the operator's manual in the aerial lift. (Tr. Vol. II, 16:3-19:11; 19:22-20:7; 20:15-25).
17. Mr. Birchfield also brought Mr. Cox to the supervisor that Mr. Cox would be working under, Mike McCoskey. (Tr. Vol. II, 22:12-18). Mr. McCoskey spoke with Mr. Cox about hazards and safety requirements at the Site and observed Mr. Cox operating the JLG to ensure that Mr. Cox knew how to safely operate it. (Tr. Vol. II, 22:19-23:19).
18. On October 14, 2011, Mr. Cox also received a second safety orientation that involved Mr. Birchfield going over a Safety Orientation Checklist with Mr. Cox and having Mr. Cox view a Safety Orientation film. (Tr. Vol. I, 25:21-22; 159:11-160:6; R's Ex. 5).
19. Mr. Birchfield observed Mr. Cox on a daily basis including walk-around safety observations to ensure that Mr. Cox was correctly and safely performing work in the aerial lift. (Tr. Vol. II, 24:1-6; 26:23-27:3).
20. The purpose of the walk-arounds was to verify the proficiency of the aerial lift operators. (Tr. Vol. II, 86:13-16).

21. Mr. Birchfield specifically observed Mr. Cox operating the JLG controls; using fall protection while in the JLG; operating the JLG with overhead obstructions; operating the JLG around other moving equipment; operating the JLG around holes, uneven terrain, and other stationary equipment; positioning the JLG's man basket between the uprights of x-braces underneath the Madison Bridge; telescoping the boom of the JLG; and welding. (Tr. Vol. II, 27: 4 - 28:18).
22. In addition to initial orientation and walk-arounds, Respondent's safety program also includes "safety huddles." (Tr. Vol. II, 31:1-6).
23. A "safety huddle" is a weekly training session that takes place in the field, lasts approximately 30 minutes, and covers various safety issues relevant to the Site (Tr. Vol. II, 31:8 - 32:4; 32:15-22).
24. Some of the "safety huddles" at the Site involved aerial lifts including one on September 19, 2011 which Mr. Cox attended. (Tr. Vol. II, 32:12-14; R's Ex. 6).
25. During the September 19, 2011 "safety huddle," multiple aspects of using JLG aerial lifts were discussed including potential hazards such as working around obstructions and overloading. (Tr. Vol. II, 33:23-34:2; 36:25 - 37:18; R's Ex. 6).
26. Will Banik, who was designated by Respondent as a competent person and a qualified person with respect to aerial lifts conducted the "safety huddle" that occurred on September 19, 2011. (Tr. Vol. II, 34:17-35:7).
27. Respondent's training program also includes Task Hazard Analyses ("THAs"). (Tr. Vol. II, 38:14-16).

28. THAs involve reviewing the tasks that will be done each day at the Site and reviewing the potential hazards specific to those tasks. (Tr. Vol. II, 38:17-21).
29. THA's are completed every day. (Tr. Vol. II, 49:7-9).
30. A THA was completed on the day of the accident, April 30, 2012, which Mr. Cox attended. (Tr. Vol. II, 49:17-23; 110:19-20; R's Ex. 4).
31. Prior to operators using the JLG aerial lifts at the Site, they are required to do a "preflight" inspection which involves checking the controls to ensure that the controls are working properly. (Tr. Vol. II, 39:24-40:7; 42:1-6).
32. If, at any time during operation of a JLG, an operator needs a spotter, he can obtain one. (Tr. Vol. II, 83:18-22; 102:15-17).
33. Walsh's project manager took photographs of the Site during construction of the Madison Bridge including three photographs showing Mr. Cox in the man basket of a JLG aerial lift. (Tr. Vol. II, 43:9-44:9; R's Ex. 8, 9, 10). The three photographs of Mr. Cox show that he was safely operating the JLG aerial lift. (Tr. Vol. II, 45:8-11; 46:18-20; 47:20-24; R's Ex. 8, 9, 10).
34. The Site Superintendent, Mr. Whitener, personally worked with Mr. Cox in the JLG multiple times to determine whether Mr. Cox was proficient in operating the JLG. (Tr. Vol. II, 99:24-100:2). In the approximately eight months that Mr. Cox was employed by Respondent, Mr. Whitener went up in a JLG with Mr. Cox at least 120 times. (Tr. Vol. II, 100:6-7).

35. In March or April of 2012, Respondent received a "new" JLG which was the same type and model as the "old" JLGs already at the Site. (Tr. Vol. II, 111:7-9).
36. There was no functional or operational difference between "old" and "new" JLGs; all of the controls were the same (Tr. Vol. II, 56:14-57:1; 64:11-17; 112:12-16).
37. Mr. Whitener went up with Mr. Cox in the "new" JLG as well as an "old" JLG. (Tr. Vol. II, 111:15-21).
38. There was no difference in Mr. Cox's ability to operate the "old" and "new" JLG. (Tr. Vol. II, 112:3-5).
39. When Mr. Whitener went up with Mr. Cox in the JLGs, he stood in the man basket with Mr. Cox and observed Mr. Cox operate the controls. (Tr. Vol. II, 102:4-7).
40. Mr. Whitener observed that Mr. Cox was able to operate the controls properly. (Tr. Vol. II, 102:8-10).
41. Mr. Cox was proficient in moving the JLGs forward and controlling the JLGs if there was any uneven terrain. (Tr. Vol. II, 103:5-11). Mr. Cox was proficient in moving the JLGs in spaces that were narrow in width and articulating the jib. (Tr. Vol. II, 104:16-19; 105:3-6). Mr. Cox was proficient in operating the JLGs underneath the Madison Bridge. (Tr. Vol. II, 106:6-10). Mr. Whitener also had the opportunity to be in the man basket of the JLGs with Mr. Cox while Mr. Cox was performing welding. (Tr. Vol. II, 106:17-25). Mr. Cox positioned the JLG properly for welding operations. (Tr. Vol. II, 106:17-25).

42. Mr. Whitener determined that Mr. Cox was comfortable operating the controls of the JLGs and knew how to properly operate the JLGs. (Tr. Vol. II, 106:11-16).
43. At no time did Mr. Whitener observe Mr. Cox operating the JLGs in an unsafe manner. (Tr. Vol. II, 107:17-20; 110:3-6).
44. Mr. Whitener's belief, as a designated competent and qualified person who went up in a JLG with Mr. Cox at least 120 times, is that Mr. Cox was proficient in operating a JLG. (Tr. Vol. II, 108:9-24)
45. Mr. Birchfield also determined that Mr. Cox was trained to competently operate a JLG aerial lift in a safe manner. (Tr. Vol. II, 54:8-15). This determination was based upon Mr. Birchfield's education, training, and experience as a degreed safety professional, his experience operating aerial lifts, and his observations of Mr. Cox safely operating the JLG aerial lift. (Tr. Vol. II, 29:4-9).
46. On the morning of April 30, 2012, Mr. Whitener conducted a THA about weld bracing which Mr. Cox attended. (Tr. Vol. II, 49:17-20; 49:21-23; 49:24-50:3; 110:19-20; R's Ex. 4).
47. Weld bracing was the function that Mr. Cox would be performing that day. (Tr. Vol. II, 49:24-50:3; R's Ex. 4). Mr. Cox had done weld bracing before and had previously been observed performed weld bracing at the Site in a safe manner. (Tr. Vol. II, 50:7-10).
48. During the THA, Mr. Whitener discusses the various potential hazards associated with weld bracing including burns, falls, and pinch points. (Tr. Vol. II, 50:11-62:7; R's Ex. 4).

49. After Mr. Cox went up in the aerial lift to perform work, he was found unresponsive in the basket of his aerial lift. (Tr. Vol. I, 17:12-21).
50. The Department issued a Safety Order to Respondent on July 20, 2012 alleging that Respondent violated Indiana Code 22-8-1.1 Section 2 (Safety Order 1, Item 1), 29 CFR § 1926.454(a) (Safety Order 1, Item 2a), and 29 CFR § 1926.454(b) (Safety Order 1, Item 2b) with respect to the incident. (Bd's Ex. A).
51. Indiana Code ("IC") 22-8-1.1 is Indiana's equivalent of the General Duty Clause. (Tr. Vol. I, 19:16 - 20:12). The Department issued Safety Order 1, Item 1 under IC 22-8-1.1 for an alleged failure to train Mr. Cox on the use and limitations of the aerial lift. (Tr. Vol. I, 20:11-21; Bd's Ex. A).
52. 29 CFR § 1926.454(a) requires aerial lift training by a qualified person. (Tr. Vol. I, 197:24-198:1). The Department issued a citation under Section 1926.454(a) for an alleged failure to train Mr. Cox "by a qualified person to recognize the hazards associated with the type of scaffold being used." (Bd's Ex. A).
53. 29 CFR § 1926.454(b) requires aerial lift training by a competent person. (Tr. Vol. I, 197:1-14).
54. The Department issued a citation under Section 1926.454(b) for an alleged failure to train Mr. Cox "by a competent person to recognize any hazard associated with the work in question." (Bd's Ex. A).
55. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.

CONCLUSIONS OF LAW

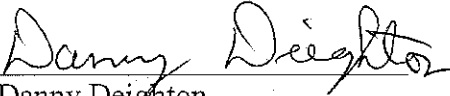
1. The board has jurisdiction over the subject matter of this action and the parties pursuant to Ind. Code § 22-8-1.1-30.1.
2. Ind. Code chapter 22-8-1.1 applies to Respondent and Respondent's worksite which is the subject matter of this action.
3. Competent and undisputed evidence put forth by Walsh establishes that Mr. Cox was trained and competent to safely operate and recognize the hazards associated with his aerial lift. The Commissioner did not rebut the testimony of Adam Birchfield and Nicholas Whitener -- both designated as competent and qualified individuals with respect to the hazards of aerial lifts -- who provided and oversaw the training on aerial lifts given to Mr. Cox. Although documentation of training under 29 CFR § 1926.454 is not required, Respondent in fact documented some of the training that it provided to Mr. Cox.
4. The Commissioner's evidence did not establish that Mr. Cox was inadequately trained to operate and perform work in the aerial lift as alleged by the Safety Order.
5. The Commissioner has not proved by a preponderance of the evidence that Respondent was in noncompliance with any the standards cited in the Safety Order: IC 22-8-1.1, 29 CFR § 1926.454(a); and 29 CFR § 1926.454(b). Accordingly, the Safety Order must be vacated in its entirety.
6. The General Duty Clause cannot be cited when a specific standard has been promulgated that addresses the alleged hazard or violative conduct. *Sec'y of Labor v. Sun Shipbuilding*

and Drydock Co., 1 OSH Cas. 1020, 1973 WL 4196, at *1 (OSHRC October 3, 1973).
29 CFR § 1926.454 is a vertical standard that governs the entirety of the requirements associated with aerial lifts in the construction industry. Accordingly, Safety Order 1 Item 1 cited under Indiana OSHA's General Duty Clause, IC 22-8-1.1, must be vacated.

RECOMMENDED ORDER

It is therefore the Administrative Law Judge's Recommended Order to the Indiana Board of Safety Review that the Safety Order issued to Respondent on July 20, 2012 be vacated.

DATED this 15th day of January, 2015.

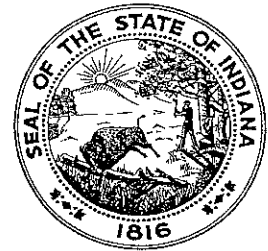

Danny Deighton
Administrative Law Judge

Distribution:

Mark A. Lies, II
Stephanie C. LaRocco
Ilana R. Morady
SEYFARTH SHAW LLP
131 South Dearborn, Suite 2400
Chicago, IL 60603
(312) 460-5000
mlies@seyfarth.com
slarocco@seyfarth.com
imorady@seyfarth.com

J. Anthony Hardman
General Counsel
Indiana Department of Labor
402 W. Washington Street, Room W-195
Indianapolis, IN 46204
JoHardman@dol.IN.gov

Indiana Department of Labor
Occupational Safety and Health Administration
402 West Washington Street
Room W195
Indianapolis, IN 46204-2751
Phone: 317/232-1979 Fax: 317/233-3790



Certified mail # 7003 1010 0003 5132 3746 7-20-12 jto

Safety Order and Notification of Penalty

To:

Walsh Construction Company,
and its successors
1260 E Summit Street
Attn: Roger Rister
Crown Point, IN 46307

Inspection Number: 315865907

Inspection Date(s): 05/02/2012 - 06/29/2012

Issuance Date: 07/20/2012

Inspection Site:

618 East Vaughn Drive
Milton/Madison Bridge
Madison, IN 47250

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.

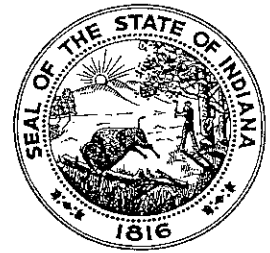
Followup Inspections - Please be advised that a followup inspection may be made for the purpose of ascertaining that you have posted the safety order(s) and corrected the alleged violations. Failure to correct an alleged violation may result in additional penalties for each day that the violation has 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
Indiana Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 07/20/2012. The conference will be held at the IOSHA office located at 402 West

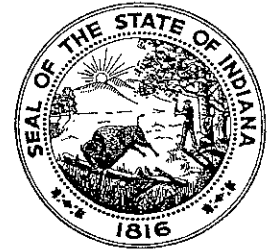
Washington Street, Room W195, Indianapolis, IN 46204 on _____ at

_____. 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: 315865907
Inspection Dates: 05/02/2012 - 06/29/2012
Issuance Date: 07/20/2012



Safety Order and Notification of Penalty

Company Name: Walsh Construction Company
Inspection Site: 618 East Vaughn Drive, Milton/Madison Bridge, Madison, IN 47250

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

IC 22-8-1.1 Section 2: The employer did not furnish employment and a place of employment which was free from recognized hazards that were causing or likely to cause death or serious physical harm to employees:

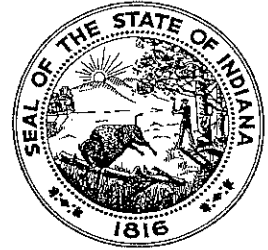
Temporary access ramp on the job site ----- On April 30, 2012 the employer had not trained and familiarized the employee operating a JLG aerial lift, model 860SJ, S/N: 0300155658, on the use and limitations of the aerial lift operated, a hazard which could result in serious physical harm. Among other methods, feasible and acceptable abatement methods to correct this hazard include to follow ANSI/SIA A92.5 - 2006, Boom Supported Elevating Work Platforms, Section 7.6, which states before operating an aerial lift the person assigned to operate lift has to be trained and familiarized with the machine or to follow the JLG Operation and Safety Manual which states the machine be operated only by trained personnel or to follow the companies own training requirements which states, only trained and qualified personnel shall operate an aerial lift.

Date By Which Violation Must be Abated: **Corrected During Inspection**
Proposed Penalty: **\$5,000.00**

Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 315865907
Inspection Dates: 05/02/2012 - 06/29/2012
Issuance Date: 07/20/2012



Safety Order and Notification of Penalty

Company Name: Walsh Construction Company
Inspection Site: 618 East Vaughn Drive, Milton/Madison Bridge, Madison, IN 47250

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 2a Type of Violation: **Serious**

29 CFR 1926.454(a): The employer did not have each employee who performs work while on a scaffold trained by a qualified person to recognize any hazard associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards:

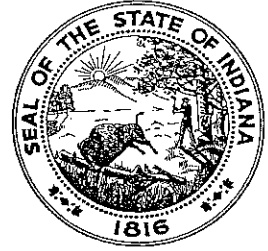
Temporary access ramp on the job site ---- On April 30, 2012 and before, an employee working from a JLG aerial boom lift, model 860SJ, S/N: 0300155658, had not received training from his employer, by a qualified person to recognize hazards associated with the aerial lift being used, and to understand the procedures to control or minimize those hazards.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$5,000.00

Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 315865907
Inspection Dates: 05/02/2012 - 06/29/2012
Issuance Date: 07/20/2012



Safety Order and Notification of Penalty

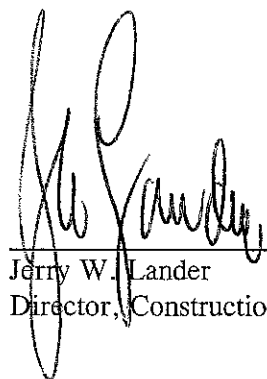
Company Name: Walsh Construction Company
Inspection Site: 618 East Vaughn Drive, Milton/Madison Bridge,
Madison, IN 47250

Safety Order 1 Item 2b 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:

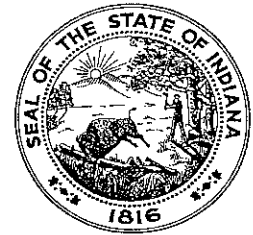
Temporary access ramp on the job site ----- On April 30, 2012 and before, an employee operating and working from a JLG aerial boom lift, model 860SJ, S/N: 0300155658, had not been trained by a competent person to recognize hazards associated with operating the aerial lift, and to understand the regulations and procedures to control or minimize those hazards.

Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$0.00



Jerry W. Lander
Director, Construction 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: Walsh Construction Company
Inspection Site: 618 East Vaughn Drive, Milton/Madison Bridge, Madison, IN 47250
Issuance Date: 07/20/2012

Summary of Penalties for Inspection Number 315865907

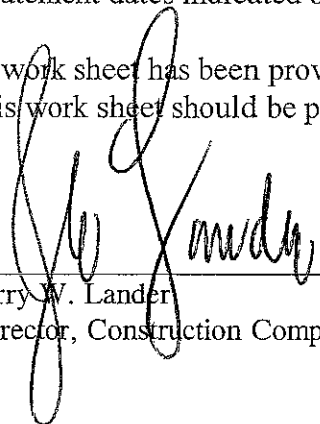
Safety Order 01, Serious	=	\$10,000.00
Total Proposed Penalties		\$10,000.00

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. Lander
Director, Construction Compliance

Date

7.20.12