

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW
CASE DOCKET NO. 15-014

IN THE MATTER OF:)
)
COMMISSIONER OF LABOR,)
)
Complainant,)
)
v.)
)
KONE INCORPORATED)
AND ITS SUCCESSORS,)
)
Respondent.)

FILED
MAY 09 2017
Indiana Board of
Safety Review

AGREED ENTRY

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor (hereinafter "Complainant") and Kone Incorporated (hereinafter "Respondent"), through their duly authorized representatives, desiring to enter into this Agreed Entry as final settlement of this matter, do hereby stipulate and agree as follows:

PART I.

1. From April 6, 2015 through June 29, 2015, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent's worksite located at 250 W. U.S. Hwy. 12, Burns Harbor, Indiana 46394.

2. On August 7, 2015, Complainant issued a Safety Order and Notification of Penalty (hereinafter "Safety Order") resulting from Indiana Department of Labor Inspection No. 317864072 and alleging that Respondent had violated the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*) or the standards or rules thereunder. The Safety Order is attached hereto as Exhibit A and is incorporated herein.

3. On or about August 31, 2015, Respondent duly and timely petitioned for review of

the Safety Order.

PART II.

4. The Safety Order consists of Safety Order 1, Item Nos. 1, 2a, 2b, and 3.
5. Safety Order 1, Item 1 alleges a “Serious” violation of 29 CFR 1910.146(c)(1) and assesses a penalty of Six Thousand Three Hundred Dollars (\$6,300).
6. Safety Order 1, Item 2a alleges a “Serious” violation of 29 CFR 1910.146(c)(4) and assesses a total shared penalty, grouped with Item 2b, of Six Thousand Three Hundred Dollars (\$6,300).
7. Safety Order 1, Item 2b alleges a “Serious” violation of 29 CFR 1910.146(g)(1) and assesses no additional penalty above what is assessed in Item 2a.
8. Safety Order 1, Item 3 alleges a “Serious” violation of 29 CFR 1910.147(e)(2)(i) and assesses a penalty of Six Thousand Three Hundred Dollars (\$6,300).
9. The total assessed penalty for Safety Order 1 is Eighteen Thousand Nine Hundred Dollars (\$18,900).

PART III.

10. The Safety Order is hereby amended as follows.
11. Safety Order 1, Item 1 is deleted in its entirety.
12. Safety Order 1, Item 2a is deleted in its entirety.
13. Safety Order 1, Item 2b is upheld as a “Serious” violation of 29 CFR 1910.146(g)(1), but the AVD is amended to read as follows: “Facility – Permit required confined space training was not provided where employees performed occasional repairs and preventative maintenance activities in the facility’s elevator pits and an employee made an un-authorized entry into the BOF freight elevator pit.”

14. Safety Order 1, Item 3 is deleted in its entirety.

15. The AGREED total penalty for all violations and all subparts thereunder, subject to this Agreed Entry, is Six Thousand Three Hundred Dollars (\$6,300).

16. Respondent further agrees to do the following:

a. Within sixty (60) days of the filing of this Agreed Entry with the Indiana Board of Safety Review, Respondent shall update its safety program and training materials to include information about following OSHA's permit-required confined space standards, including their application to elevator pits that meet the definition of "confined space" and which contain electrical and mechanical hazards during normal use and operation of the elevator. This should include, but not be limited to, instruction on never breaking the plane of a permit-required confined space before hazards have been removed by following applicable permit space reclassification procedures and after the hazards have been re-introduced into the space. It should also include information concerning the temporary nature of reclassification. Respondent shall provide Complainant with copies of the updated program and training materials.

b. By September 30, 2017, train all exposed employees working in Indiana regarding the program and training updates done pursuant to subsection (a) herein and provide Complainant with the employee sign-in sheets.

17. It is understood and agreed by the Respondent and Complainant that this Agreed Entry and attachments will constitute a final, enforceable OSHA Safety Order(s) and penalties for the purposes of the Indiana Occupational Safety and Health Act ("Act").

18. Respondent confirms Complainant's right to re-inspect its workplaces, in accordance

with the Act, and to verify abatement of the alleged violations.

19. Respondent hereby withdraws its petition for review previously filed in this matter.

PART IV.

20. Nothing contained in this Agreed Entry shall be construed to affect Complainant's interpretation of the Act or any standard or regulation enforced pursuant thereto or the applicable classification thereof.

21. 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 the Respondent shall be deemed an admission by Respondent 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.

22. The invalidity or unenforceability of any section, subsection, clause or provision of this Agreed Entry does not affect the remaining sections, subsections, clauses, or provisions of this Agreed Entry.

23. Respondent, upon full execution of this Agreed Entry, will post this Agreed Entry for three (3) working days or until abatement is completed, whichever period is longer, pursuant to Board of Safety Review Rules of Procedure, 615 IAC 1-2-18(b)(3)(C).

AGREED this ____ day of May, 2017.

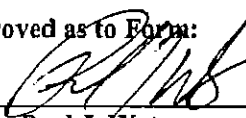
KONE INCORPORATED

By: 

Printed: John Dahlquist

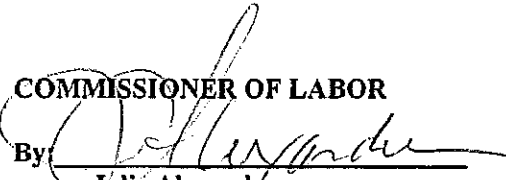
Title: Senior Counsel

Approved as to Form:

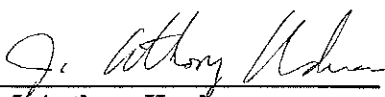
By: 

Paul J. Waters,
Counsel for Respondent

COMMISSIONER OF LABOR

By: 

Julie Alexander,
Director of General Industry,
IOSHA

By: 

J. Anthony Hardman,
Counsel for Complainant

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



certified mail #91 7190 0005 2720 0047 4350 8-7-15 JH

Safety Order and Notification of Penalty

To:
 Kone Incorporated
 4335 Naperville Road Suite 400
 Lisle, IL 60532

Inspection Number: 317864072
CSHO ID: A9888
Optional Report No.: 09-15
Inspection Date(s): 4/6/2015 - 6/29/2015
Issuance Date: 8/7/2015

Inspection Site:
 250 West US Highway 12
 Burns Harbor, IN 46394

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 8/7/2015. 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: 317864072
Inspection Date(s): 4/6/2015 - 6/29/2015
Issuance Date: 8/7/2015
CSHO ID: A9888
Optional Report No.: 09-15

Safety Order and Notification of Penalty

Company Name: Kone Incorporated
Inspection Site: 250 West US Highway 12, Burns Harbor, IN 46394

Safety Order 01 Item 001

Type of Violation: **Serious**

29 CFR 1910.146(c)(1): The employer did not evaluate the workplace to determine if any spaces were permit-required confined spaces:

Facility - On or about April 5, 2015, a permit required confined space evaluation was not performed on the BOF freight elevator pit where mechanics performed repairs and preventative maintenance activities to include placing the selector tape back onto the sheave.

Date By Which Violation Must Be Abated: 9/10/2015
Proposed Penalty: \$6,300.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317864072
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The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Safety Order 01 Item 002a Type of Violation: **Serious**

29 CFR 1910.146(c)(4): When the employer decided that its employees would enter permit spaces, the employer did not develop and implement a written permit space entry program that complied with 29 CFR 1910.146:

Facility - On or about April 5, 2015, a written permit required confined space program was not implemented on spaces such as, but not limited to, the BOF freight elevator pit, where mechanics performed repairs and preventative maintenance activities to include placing the selector tape back onto the sheave.

Date By Which Violation Must Be Abated: **9/10/2015**
Proposed Penalty: **\$6,300.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317864072
Inspection Date(s): 4/6/2015 - 6/29/2015
Issuance Date: 8/7/2015
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Safety Order and Notification of Penalty

Company Name: Kone Incorporated
Inspection Site: 250 West US Highway 12, Burns Harbor, IN 46394

Safety Order 01 Item 002b **Type of Violation: Serious**

29 CFR 1910.146(g)(1): The employer did not provide training so that all employees whose work was regulated by 29 CFR 1910.146 (permit required confined spaces) acquired the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under 29 CFR 1910.146:

Facility - On or about April 5, 2015, effective permit required confined space training was not provided where employees entered spaces such as, but not limited to, the BOF freight elevator pit where mechanics performed repairs and preventative maintenance activities to include placing the selector tape back onto the sheave.

Date By Which Violation Must Be Abated: 9/10/2015
Proposed Penalty: \$0.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317864072
Inspection Date(s): 4/6/2015 - 6/29/2015
Issuance Date: 8/7/2015
CSHO ID: A9888
Optional Report No.: 09-15

Safety Order and Notification of Penalty

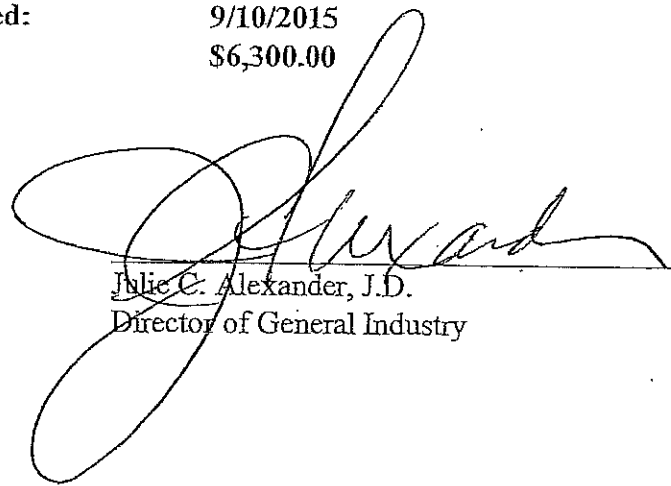
Company Name: Kone Incorporated
Inspection Site: 250 West US Highway 12, Burns Harbor, IN 46394

Safety Order 01 Item 003 **Type of Violation: Serious**

29 CFR 1910.147(e)(2)(i): Before lockout or tagout devices were removed and energy was restored to the machine or equipment, authorized employees did not ensure that all employees had been safely positioned or removed from the work area:

BOF Freight Elevator - On or about April 5, 2015, a mechanic removed a lockout device and activated the elevator without ensuring the area was clear whereupon another mechanic, observing the selector tape, was struck possibly by the elevator counterweight.

Date By Which Violation Must Be Abated: 9/10/2015
Proposed Penalty: \$6,300.00



Julie C. Alexander, J.D.
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: Kone Incorporated
Inspection Site: 250 West US Highway 12, Burns Harbor, IN 46394
Issuance Date: 8/7/2015

Summary of Penalties for Inspection Number: 317864072

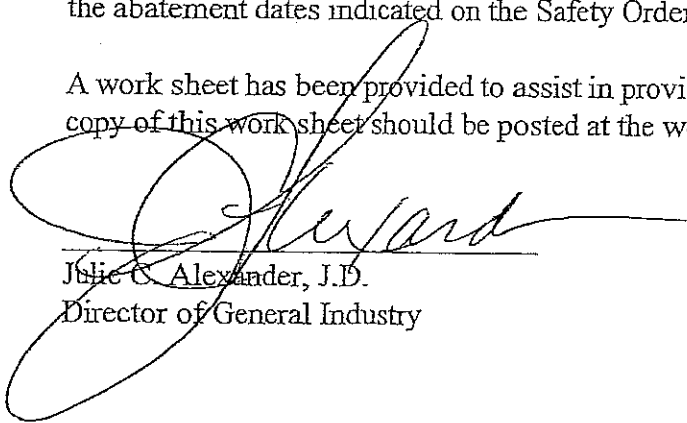
Safety Order 1, Serious = \$18,900.00
TOTAL PENALTIES = \$18,900.00

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).


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

Date 8/7/15