

Received

APR 04 2014

SETTLEMENT AGREEMENT

The Commissioner of Labor (here in after referred to as "Commissioner") and the Indiana Dept. of Labor
Stemaly Excavating Inc, herein after referred to as "Employer") hereby agree as follows: I.O.S.H.A.

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty, IOSHA Inspection No. 317056117 issued to the Employer on February 28, 2014 in the following manner.

SAFETY ORDER 01:

Item 1: Upheld; penalty reduced to \$ 600.00, *abatement has been modified until April 1, 2014.*

Item 2: Upheld; penalty reduced to \$ 600.00.

Item 3: Upheld; penalty reduced to \$ 1,500.00.

Item 4: Upheld; penalty reduced to \$ 1,500.00.

Item 5: Upheld; penalty reduced to \$ 1,500.00.

Item 6: Upheld; penalty reduced to \$ 1,500.00.

Item 7: Upheld; penalty reduced to \$ 1,500.00.

Item 8: Upheld; penalty reduced to \$ 1,500.00.

SAFETY ORDER 02:

Item 1: Upheld; *reclassified to SERIOUS* penalty reduced to \$ 1,500.00.

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. Provide limited scope refresher Trenching and Excavating safety training in a OSHA 1926 Regulations for all employees along with Competent Person training of Supervisor(s)*
- 2. The Employer shall provided an agenda and the class sign in sheet to IDOL upon completion of the course.*
- 3. Also, the Employer has agreed to a PAYMENT PLAN: twelve (12) payments at \$ 975.00, starting: 1st April 13, 2014, 2nd May 13, 2014, 3rd June 13, 2014, 4th July 13, 2014, 5th Aug 13, 2014, 6th Sept 13, 2014, 7th Oct 13, 2014, 8th*

Nov 13, 2014, 9th Dec 13, 2014, 10th Jan 13, 2015, 11th Feb 13, 2015, 12th March 13, 2015.

Except for the above specified amendments all other provisions of Safety Order Number 316546209 are retained intact.

The TOTAL AGREED PENALTY is \$ 11,700.00

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.

Stemaly Excavating Inc

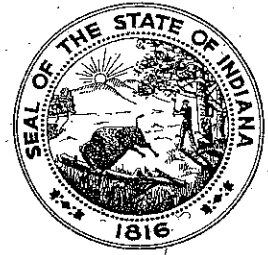
By: Wally Dandy
Title: 3rd Party
Date: 3-28-2014

COMMISSIONER OF LABOR

By: [Signature]
Title: [Signature]
Date: 4/4/14

Indiana Department of Labor

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



Certified Mail # 91 7190 0005 2720 0032 6079 1-29-14 JH

Safety Order and Notification of Penalty

To:
Stemaly Excavating, Inc.,
and its successors
2010 Fuquay Road
Attn: Marilyn Stemaly/Jeff Stemaly
Evansville, IN 47715

Inspection Number: 317056117
Inspection Date(s): 10/21/2013 - 10/28/2013
Issuance Date: 01/29/2014

Inspection Site:
7100 Felstaed Road
The Enclave at Eagle Cliff Housing Development
Evansville, IN 47712

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.

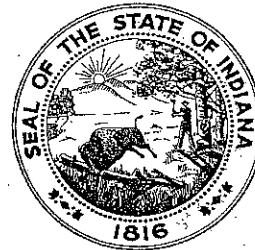
Notification of Corrective Action - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance in providing 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 01/29/2014. 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.

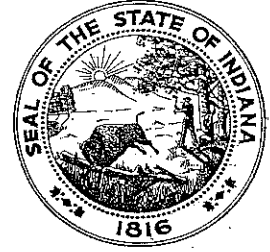
Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 317056117

Inspection Dates: 10/21/2013 -
10/28/2013

Issuance Date: 01/29/2014



Safety Order and Notification of Penalty

Company Name: Stemaly Excavating, Inc.
Inspection Site: 7100 Felstaed Road, The Enclave at Eagle Cliff Housing
Development, Evansville, IN 47712

Safety Order 1 Item 1 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/Trench ----- On October 21, 2013, employees were not instructed in the recognition and avoidance of unsafe conditions applicable to their work environment such as but not limited to those connected to cave-in, struck by, and falling object.

Date By Which Violation Must be Abated: 03/18/2014
Proposed Penalty: \$600.00

Safety Order 1 Item 2 Type of Violation: **Serious**

29 CFR 1926.100(a): Employees were not protected by protective helmets while working in areas where there was a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns:

In trench ----- On 10/21/13 an employee working in a 10 foot 1 inch deep, 36 inch wide, and 75 foot long vertical trench is standing beneath or beside the 36 inch wide bucket of a John Deere Excavator Product ID # FF230CX603746 - Model # 230LC as the operator dumps crushed stone into the 10 foot 1 inch deep trench, and the employee working in the bottom of the 10 foot 1 inch deep unprotected trench is not wearing a hard hat.

Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$600.00

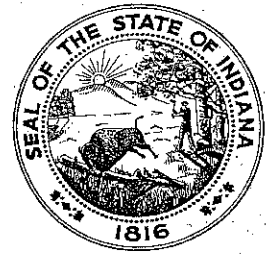
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Occupational Safety and Health Administration

Inspection Number: 317056117

Inspection Dates: 10/21/2013 -
10/28/2013

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Safety Order and Notification of Penalty

Company Name: Stemaly Excavating, Inc.
Inspection Site: 7100 Felstaed Road, The Enclave at Eagle Cliff Housing
Development, Evansville, IN 47712

Safety Order 1 Item 3 Type of Violation: **Serious**

29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees:

Trench ----- On October 21, 2013 no ladder ramp, or other acceptable means of egress was provided for the employee working in 10 foot 1 inch deep, 36inch wide, and 75 feet long trench with vertical side walls.

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

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

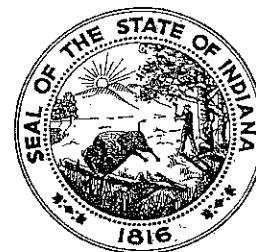
29 CFR 1926.651(e): Employee was not prohibited to be underneath loads handled by lifting or digging equipment:

Trench ----- On October 21, 2013 an employee working in a 10 foot 1 inch deep, 36 inch wide, 75 feet long trench with vertical side walls was not prevented from working underneath the load of a John Deere Excavator 3 foot wide bucket Product ID # FF230CX603746 - Model # 230LC, as the laborer operating the excavator dumped crushed stone beside or beneath the employee working down in the unprotected trench.

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

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317056117
Inspection Dates: 10/21/2013 - 10/28/2013
Issuance Date: 01/29/2014



Safety Order and Notification of Penalty

Company Name: Stemaly Excavating, Inc.
Inspection Site: 7100 Felstaed Road, The Enclave at Eagle Cliff Housing Development, Evansville, IN 47712

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

29 CFR 1926.651(f): A warning system such as barricades, hand, or mechanical signals, or stop logs was not utilized when mobile equipment was operated adjacent to an excavation, when such equipment was required to approach the edge of the excavation, and the operator did not have clear and direct view of the edge of the excavation:

East End of Trench ----- On October 21, 2013 no warning or stop system(s) of any kind were utilized when the John Deere Excavator Product ID # FF230CX603746 - Model # 230LC approached east edge of the 10 foot 1 inch deep, 36 inch wide trench and the laborer operating the excavator did not have a clear and direct view of the edge.

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

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

29 CFR 1926.651(j)(1): Adequate protection was not provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face:

Trench ----- On October 21, 2013 no such protection was provided for the employee working in a 10 foot 1 inch deep, 36 inch wide, 75 foot long trench with vertical side walls from loose dirt, and dirt clods piled up in front of the John Deere Excavator Product ID # FF230CX603746 - Model # 230LC tracks.

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

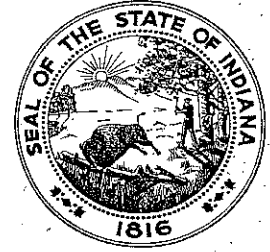
Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 317056117

Inspection Dates: 10/21/2013 -
10/28/2013

Issuance Date: 01/29/2014



Safety Order and Notification of Penalty

Company Name: Stemaly Excavating, Inc.
Inspection Site: 7100 Felstaed Road, The Enclave at Eagle Cliff Housing
Development, Evansville, IN 47712

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

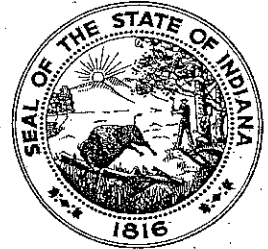
29 CFR 1926.651(k)(1): Daily inspections of excavations, the adjacent areas, and protective systems were not made by a competent person for evidence of a situation that could have resulted in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions:

Trench ----- On October 21, 2013, the competent person did not inspect the 10 foot 1 inch deep, 36 inch wide, 75 feet long trench as needed through out the shift.

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

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317056117
Inspection Dates: 10/21/2013 - 10/28/2013
Issuance Date: 01/29/2014



Safety Order and Notification of Penalty

Company Name: Stemaly Excavating, Inc.
Inspection Site: 7100 Felstaed Road, The Enclave at Eagle Cliff Housing Development, Evansville, IN 47712

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

29 CFR 1926.651(k)(2): Where the competent person found evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees were not removed from the hazardous area until the necessary precautions had been taken to ensure their safety:

Trench ----- On October 21, 2013 the competent person failed to perform the duties as required, in that he did not correct conditions, and did not prevent an employee from being exposed to, or cause the employee to be removed from, the hazards of a cave-in, in a trench 10 feet 1 inch deep with vertical side walls.

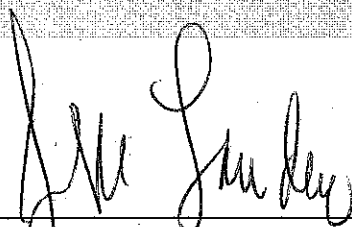
Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$1,500.00

Safety Order 2 Item 1 Type of Violation: **Knowing**

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652(c). The employer had not complied with the provisions of 29 CFR 1926.652(b)(1)(i) in that the excavation was sloped at an angle steeper than one and one-half horizontal to one vertical (34 degrees measured from the horizontal):

Trench ----- On October 21, 2013 no cave-in protection was provided for an employee working in a 10 foot 1 inch deep, 36 inch wide, 75 feet long trench-excavation that had vertical sides.

Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$28,000.00



Jerry W. Lander
Director of Construction Compliance

Indiana Department of Labor

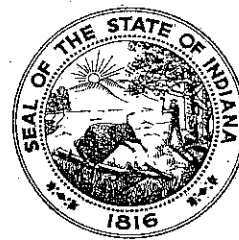
Indiana Occupational Safety and Health Administration

402 West Washington Street

Room W195

Indianapolis, IN 46204-2751

Phone: 317/232-1979; Fax: 317/233-3790



INVOICE/DEBT COLLECTION NOTICE

Company Name: Stemaly Excavating, Inc.
Inspection Site: 7100 Felstaed Road, The Enclave at Eagle Cliff Housing Development, Evansville, IN 47712
Issuance Date: 01/29/2014

Summary of Penalties for Inspection Number 317056117

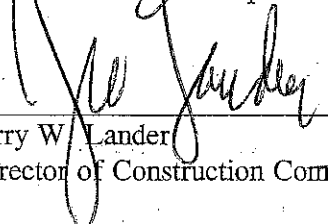
Safety Order 01, Serious	=	\$10,200.00
Safety Order 02, <i>Knowing</i>	=	\$28,000.00
Total Proposed Penalties		\$38,200.00

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". Visit <https://payingov.com/dol/> to make payment with a debit/credit card. 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).


Date 1/29/14

 Jerry W. Lander
 Director of Construction Compliance