



**STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

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Administrative Cause No.: DOL-0920-001364

Underlying/State Agency Action No.: 19-038

Ultimate Authority: the IOSHA Board of Safety Review

**Department of Labor  
Complainant,**

v.

**Aldi Indiana LP DBA Aldi Greenwood Warehouse and Its Successors  
Respondent.**

Issued: February 15, 2021



**File Dated: February 15<sup>th</sup>, 2021**

**NOTICE OF AGREEMENT OF THE PARTIES**

**AND SUBMISSION TO THE IOSHA BOARD OF SAFETY REVIEW**

On February 4, 2021 the above-mentioned Parties filed an Agreed Entry with the Office of Administrative Law Proceedings ("OALP"). The Parties request is not final and is subject to review by the IOSHA Board of Safety Review.

Thus, the OALP refers the attached filing to the IOSHA Board of Safety Review for review and final action. Parties to this proceeding may direct questions regarding the status of review by the IOSHA Board of Safety Review to: [ctrusty@dol.in.gov](mailto:ctrusty@dol.in.gov).

SO ORDERED: February 15, 2021

**/S/ Dan Vaughn**

Hon. Dan Vaughn  
Administrative Law Judge

**Distributed to Parties:**

Department of Labor –served by Counsel Tony Hardman by E-Mail at [JoHardman@dol.IN.gov](mailto:JoHardman@dol.IN.gov)

**Aldi Indiana LP DBA Aldi Greenwood Warehouse and Its Successors** – Respondent and served by Representative Adam Young and Brent Clark by E-Mail at [ayoung@seyfarth.com](mailto:ayoung@seyfarth.com) [bclark@seyfarth.com](mailto:bclark@seyfarth.com) 233 S. Wacker Dr. Ste. 8000 Chicago, IL 60606-6448

IOSHA Board of Safety – Ultimate Authority and served by E-mail at [boardofsafetyreview@dol.in.gov](mailto:boardofsafetyreview@dol.in.gov)

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

**BEFORE THE INDIANA OFFICE OF  
ADMINISTRATIVE LAW PROCEEDINGS,  
SUBJECT TO THE ULTIMATE  
AUTHORITY OF THE IOSHA BOARD OF  
SAFETY REVIEW**

IN THE MATTER OF: )  
 )  
COMMISSIONER OF LABOR, )  
 )  
 )  
Complainant, )  
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 )  
v. )  
 )  
ALDI INDIANA LP DBA ALDI )  
GREENWOOD WAREHOUSE )  
AND ITS SUCCESSORS, )  
 )  
Respondent. )

**OALP CASE NO. DOL-0920-001364  
BSR DOCKET NO. 19-038**



**File Dated: February 15<sup>th</sup>, 2021**

**AGREED ENTRY**

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor (hereinafter “Complainant”) and Aldi Indiana LP dba Aldi Greenwood Warehouse (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 July 3, 2019, through August 8, 2019, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent’s worksite located at 486 E. Stop 18 Rd., Greenwood, Indiana 46143

2. On August 22, 2019, Complainant issued a Safety Order and Notification of Penalty (hereinafter “Safety Order”) resulting from Indiana Department of Labor Inspection No. 318112976 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 September 17, 2019, 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, 2, and 3.

5. Safety Order 1, Item 1 alleges a "Serious" violation of I.C. 22-8-1.1-2 for struck by hazards while operating a dock leveler and assesses a penalty of Seven Thousand Dollars (\$7,000).

6. Safety Order 1, Item 2 alleges a "Serious" violation of 29 CFR 1910.147(c)(4)(ii)(B) and assesses a penalty of Seven Thousand Dollars (\$7,000).

7. Safety Order 1, Item 3 alleges a "Serious" violation of 29 CFR 1910.212(a)(3)(ii) and assesses a penalty of Seven Thousand Dollars (\$7,000).

8. The total assessed penalty for Safety Order 1 is Twenty-One Thousand Dollars (\$21,000).

PART III.

9. The Safety Order is hereby amended as follows.

10. Safety Order 1, Item 1 is deleted in its entirety.

11. Safety Order 1, Item 2 is upheld as cited, except the AVD is replaced with the following: "On July 4, 2019, the employer failed to fully document the procedure used by authorized employees for locking out gravitational energy on the Blue Giant Vertical-Storing Dock Leveler by engaging the maintenance strut. The manufacturer of the equipment was not identified."

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

13. The AGREED total penalty for all violations and all subparts thereunder, subject to this Agreed Entry, is Seven Thousand Dollars (\$7,000).

14. Respondent further agrees to the following:

- a. Modify the machine specific LOTO procedure for the dock leveler.
- b. Retrain all authorized employees on the updated machine specific LOTO procedure.
- c. Provide barriers such as at the end of the aisle and across the front of the leveler, where applicable, and signage near the dock leveler to prevent and warn employees of exposure to a moving dock plate.
- d. Train all affected employees on safety methods, barriers, signage, and staying clear at the dock plate or leveler.
- e. Remind contractors of their duty to comply with all OSHA requirements and safety measures relating to dock levelers including signage, barriers, and their duty to properly train their employees.

15. 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").

16. Respondent confirms Complainant's right to re-inspect its workplaces, in accordance with the Act, and to verify abatement of the alleged violations.

17. If not already identified in the Safety Order and Notification of Penalty as completed during the inspection, all abatement, including any enhanced abatement identified and agreed upon herein, must still be completed in a timely manner and certified to IOSHA by completing a

Letter of Abatement, State Form 44425, and sending the form, along with any supporting documentation and photographs, to IOSHA by any of the means listed in the box in the upper right portion of the form.

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

PART IV.

19. 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.

20. 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.

21. 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.

22. 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 3<sup>rd</sup> day of February, 2021.

**ALDI INDIANA LP DBA ALDI  
GREENWOOD WAREHOUSE**

By: Jennifer Cox

Printed: Jennifer Cox

Title: Director of Warehouse  
+ Logistics

**Approved as to Form:**

By: [Signature]

**Seyfaith Shaw LLP  
Brent I. Clark  
Adam R. Young  
Attorneys for Respondent**

**COMMISSIONER OF LABOR**

By: Michelle L. Ellison for

**Julie Alexander,  
Director of General Industry,  
IOSHA**

By: [Signature]

**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

### Safety Order and Notification of Penalty

**To:**  
 Aldi Indiana LP DBA Aldi Greenwood Warehouse  
 and its successors  
 486 East Stop 18 Road  
 Greenwood, IN 46143

**Inspection Number:** 318112976  
**CSHO ID:** M0362  
**Optional Report No.:** 2023-20  
**Inspection Date(s):** 7/3/2019 - 8/8/2019  
**Issuance Date:** 8/22/2019

**Inspection Site:**  
 486 East Stop 18 Road  
 Greenwood, IN 46143

*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 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 8/22/2019. 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:** 318112976  
**Inspection Date(s):** 7/3/2019 - 8/8/2019  
**Issuance Date:** 8/22/2019  
**CSHO ID:** M0362  
**Optional Report No.:** 2023-20

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

**Company Name:** Aldi Indiana LP DBA Aldi Greenwood Warehouse  
**Inspection Site:** 486 East Stop 18 Road, Greenwood, IN 46143

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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 caught-in between hazards:

a) Aldi Cooler Dock – The owner's manual for the Blue Giant Vertical Dock Levelers were not provided to dock personnel to ensure proper use and adequate training on the equipment. Dock personnel were exposed to potential struck-by hazards while performing activities such as, but not limited to; the unloading of cartons of eggs from refrigerated trailers.

AMONG OTHER METHODS, FEASIBLE AND ACCEPTABLE MEANS OF ABATEMENT MAY INCLUDE: Providing training in the operation of the dock levelers for employees loading and unloading trucks that is consistent with the instructions per the manufacturer. The Blue Giant Owner's Manual, issued October 17, 2016, Section 2.4 OWNER'S RESPONSIBILITY, #2 page 6 states, "Upon receipt of any newly purchased dock equipment the owner shall verify the presence of owner manuals, operating placards, and any other documentation necessary for training dock personnel how to use the equipment safely and effectively." Item #6 page 6 further states, "The owner shall ensure that all name plates and safety labels are in place and legible and that the appropriate manuals are provided to authorized users."

b) Aldi Cooler Dock – A Blue Giant Vertical Dock Leveler was not properly maintained in that the plate continued to creep to the down position instead of staying in place when powered down which created a potential struck-by hazard for employees who performed dock operations such as, but not limited to, unloading of cartons of eggs from refrigerated trailers.

AMONG OTHER METHODS, FEASIBLE AND ACCEPTABLE MEANS OF ABATEMENT MAY INCLUDE: Conduct daily documented inspections of the operational system of the dock levelers to ensure that the hydraulic functions and other safety features are performing per the manufacturer instructions.

<b>Date By Which Violation Must Be Abated:</b>	<b>9/25/2019</b>
<b>Proposed Penalty:</b>	<b>\$7,000.00</b>

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

**Inspection Number:** 318112976  
**Inspection Date(s):** 7/3/2019 - 8/8/2019  
**Issuance Date:** 8/22/2019  
**CSHO ID:** M0362  
**Optional Report No.:** 2023-20

**Safety Order and Notification of Penalty**

**Company Name:** Aldi Indiana LP DBA Aldi Greenwood Warehouse  
**Inspection Site:** 486 East Stop 18 Road, Greenwood, IN 46143

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

29 CFR 1910.147(c)(4)(ii)(B): The energy control procedures did not clearly and specifically outline the steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy.

Cooler Dock - The written energy control procedure did not address the gravity energy source and the necessary steps for isolating, blocking and securing the Blue Giant Vertical Dock Levelers during service and maintenance activities which created a potential struck-by hazard.

**Date By Which Violation Must Be Abated:**                      **9/25/2019**  
**Proposed Penalty:**    **\$7,000.00**

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

**Inspection Number:** 318112976  
**Inspection Date(s):** 7/3/2019 - 8/8/2019  
**Issuance Date:** 8/22/2019  
**CSHO ID:** M0362  
**Optional Report No.:** 2023-20

**Safety Order and Notification of Penalty**

**Company Name:** Aldi Indiana LP DBA Aldi Greenwood Warehouse  
**Inspection Site:** 486 East Stop 18 Road, Greenwood, IN 46143

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

29 CFR 1910.212(a)(3)(ii): Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s):

Aldi Cooler Dock – Employees could access the walk behind the Blue Giant Vertical Leveler by walking around the leveler itself during operation which created a potential struck-by hazard during leveler deployment or failure.

**Date By Which Violation Must Be Abated:**                      **9/25/2019**  
**Proposed Penalty:**    **\$7,000.00**

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

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**Company Name:** Aldi Indiana LP DBA Aldi Greenwood Warehouse  
and its successors  
**Inspection Site:** 486 East Stop 18 Road, Greenwood, IN 46143  
**Issuance Date:** 8/22/2019

**Summary of Penalties for Inspection Number: 318112976**

**Safety Order 1, Serious** = \$21,000.00  
**TOTAL PENALTIES** = \$21,000.00

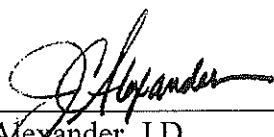
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Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Make your check or money order payable to: "Indiana DOL/IOSHA". Please indicate IOSHA's Inspection Number (indicated above) on the remittance. You 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

8/22/2019  
\_\_\_\_\_  
Date