

# SETTLEMENT AGREEMENT

RECEIVED  
FEB 22 2021  
INDIANA DEPT OF LABOR  
I.O.S.H.A

The Commissioner of Labor (hereinafter referred to as "Commissioner") and *Crosby Excavating, Inc.* (hereinafter referred to as "Employer") hereby agree as follows:

A Safety Order and notification of Penalty resulting from IOSHA Inspection No. *318125077* was issued to the Employer on *February 1<sup>st</sup>, 2021* and is resolved in the following manner.

Citation 01:

Item 1a: *Upheld, Penalty reduced: \$4,200.00, Abatement due: 2/24/2021*

Item 1b: *Upheld, Grouped – No Penalty, Abatement due: 2/24/2021*

Item 2: *Deleted, Penalty removed, Abatement due: N/A*

Citation 02:

Item 1: *Reduced to Serious, Penalty: \$6,000.00, Abatement due: 2/24/2021*

*The TOTAL AGREED PENALTY is \$10,200.00*

*In consideration, The Employer has agreed to the following enhanced abatement:*

- 1. Maintain a photo log every-day for three (3) months starting March 8th, 2021:*
  - a. Collect and retain photographs of all confined space entry operations showing protective systems in use by employees.*
  - b. Any day that no employee will be working with confined spaces, record type of work being performed.*
  - c. IOSHA may randomly request information from the photo log during this timeframe.*
- 2. Work with INSafe or 3<sup>rd</sup> party safety consultant in a full-service and comprehensive safety consultation on an active jobsite within sixty (60) days of signed Settlement Agreement.*
  - a. Employer shall provide copy of conformation of consultation request by the consultant.*
- 3. Create a documented process to evaluate employee comprehension and retention of training related to confined space and related hazards.*

Employer agrees 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. Except for the above specified amendments all other provisions of Safety Order Number *318125077* are retained intact.

Employer agrees that failure to abide by the terms of enhanced abatement as stated herein above will rescind any penalty adjustment provided by the enhanced abatement, and the original penalty amount will be due within 15 business days of the Commissioner's knowledge of said failure.

Employer is required under the authority of §1903.16 to post copies of all amendments or changes to citations resulting from informal conferences. Employer must provide employee representatives with copies of any agreements.

*Unless otherwise specified herein, the TOTAL AGREED PENALTY is due and payable within fifteen (15) working days from the Employer's execution of this Agreement. The Employer further agrees that if the Employer fails to pay the full amount specified within this allotted time, the Commissioner may use every legal remedy available to collect such unpaid amount, interest shall begin to accrue on said unpaid amount at the rate of 12% apr compounded daily, and the Commissioner may collect legal fees from the Employer for any collection action that may be necessary.*

If paying online, visit: <https://payingov.com/Payment/SelectEntity/475>

If paying by check or money order: Please make your check or money order payable to "Indiana DOL/IOSHA," indicate IOSHA's Inspection Number (indicated above) on your remittance, and send payments to the following address:

Indiana Department of Labor  
402 West Washington Street – Room W195  
Indianapolis, Indiana 46204

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 Safety Order(s) and Notification(s) of Penalty, as amended herein, shall be a final and enforceable Order of the Board of Safety Review.

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.

*Crosby Excavating, Inc.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*S. E. Crosby, Inc.*

PRESIDENT

2/22/2021

*COMMISSIONER OF LABOR*

By: \_\_\_\_\_

Title: Director of Construction Safety

Date: \_\_\_\_\_

2-22-2021

# Indiana Department of Labor

Indiana Occupational Safety and Health Administration  
402 West Washington St - Room W195  
Indianapolis, IN 46204  
Phone: (317)232-1979 FAX: (317)233-3790



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## Safety Order and Notification of Penalty

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**To:**  
Crosby Excavating INC  
and its successors  
1030 Osage Street  
Fort Wayne, IN 46808

**Inspection Number:** 318125077  
**CSHO ID:** X4033  
**Optional Report No.:** 0621  
**Inspection Date(s):** 8/25/2020 - 1/26/2021  
**Issuance Date:** 1/29/2021

**Inspection Site:**  
499 S. Main Street  
Columbia City, IN 46725

*The violation(s) described in this Safety Order and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

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An inspection of your place of employment has revealed conditions which we believe do not comply with the provisions of the Indiana Occupational Safety and Health Act (Indiana Code Chapter 22-8-1.1) or the standards or rules adopted thereunder. Accordingly, enclosed please find safety order(s) and notification(s) of penalty describing such violation(s) with references to applicable standards, rules, or provisions of the statute and stating the amount of any penalty(ies).

**Informal Conference - Please be advised that it may be possible to informally settle any potential dispute without initiating the more elaborate proceedings brought on by a petition for review. Prior to filing a petition for review, you may request an informal conference concerning any of the results of the inspection (safety orders, penalties, abatement dates, etc.) by contacting the Indiana Department of Labor/IOSHA, preferably by telephone, in a prompt manner. Please be advised that a request for an informal conference cannot extend the fifteen working day period for filing a petition for review. Informal conferences frequently resolve any possible disputes, and therefore you are urged to take advantage of this opportunity. Because of the limited time period and in order to facilitate scheduling, any requests for an informal conference should be made promptly upon your receipt of the safety order(s) and notification(s) of penalty.**

**Right to Contest -** You are hereby also notified that you are entitled to seek administrative review of the safety order(s), penalty(ies), or both by filing a written petition for review at the above address postmarked within fifteen working days of your receipt of the safety order(s) and notification(s) of penalty. ("Working days" means Mondays through Fridays, but does not include Saturdays, Sundays, legal holidays under a state statute or days on which the Indiana Department of Labor's offices are closed during regular business hours). If you do not file such a petition for review (contest), the safety order(s)

and penalty(ies) shall be deemed final orders of the Board of Safety Review and not subject to review by any court or agency. The issuance of a safety order does not constitute a finding that a violation has occurred unless no petition for review is filed, or if a petition for review (contest) is filed, it must contain a statement of its basis and should reference the above inspection number. Upon receipt of your petition for review, we will affirm, amend or dismiss the safety order(s) and notification(s) of penalty. If we affirm, your petition for review will be granted (unless it was not timely) and the dispute will be certified by the Board of Safety Review for further proceedings. The Board of Safety Review is an independent board appointed by the governor with authority to conduct legal proceedings leading up to and including administrative hearings, or assign and Administrative Law Judge (ALJ) to conduct the same, and to issue decisions concerning disputed safety orders and notifications of penalties. 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

### **NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 1/29/2021. 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:** 318125077  
**Inspection Date(s):** 8/25/2020 - 1/26/2021  
**Issuance Date:** 1/29/2021  
**CSHO ID:** X4033  
**Optional Report No.:** 0621

**Safety Order and Notification of Penalty**

**Company Name:** Crosby Excavating INC  
**Inspection Site:** 499 S. Main Street, Columbia City, IN 46725

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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 001a**                      Type of Violation: **Serious**

29 CFR 1926.1203(a): The employer did not ensure that a competent person identifies all confined spaces in which one or more of the employees it directs may work, and identifies each space that is a permit space, through consideration and evaluation of the elements of that space, including testing as necessary:

Jobsite - 499 S. Main Street, Columbia City, Indiana 46725 - August 25, 2020, before beginning work, the employer's competent person failed to identify all confined spaces in which its employees are working and did not identify each space that is a permit space, through consideration and evaluation of all the elements of that space.

**Date By Which Violation Must Be Abated:**                      **2/24/2021**  
**Proposed Penalty:**    **\$4,200.00**



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

**Inspection Number:** 318125077  
**Inspection Date(s):** 8/25/2020 - 1/26/2021  
**Issuance Date:** 1/29/2021  
**CSHO ID:** X4033  
**Optional Report No.:** 0621

**Safety Order and Notification of Penalty**

**Company Name:** Crosby Excavating INC  
**Inspection Site:** 499 S. Main Street, Columbia City, IN 46725

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**Safety Order 01 Item 001b**                      Type of Violation: **Serious**

29 CFR 1926.1204(a): Under the permit required confined space program, the employer did not implement the measures necessary to prevent unauthorized entry:

Jobsite - 499 S. Main Street, Columbia City, Indiana 46725 - August 25, 2020, during construction activities, employees could be engaged in storm and sanitary sewer work, the employer did not implement all necessary measures and/or required procedures to prevent unauthorized entry.

**Date By Which Violation Must Be Abated:**                      **2/24/2021**  
**Proposed Penalty:**    **\$0.00**

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

**Inspection Number:** 318125077  
**Inspection Date(s):** 8/25/2020 - 1/26/2021  
**Issuance Date:** 1/29/2021  
**CSHO ID:** X4033  
**Optional Report No.:** 0621

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

**Company Name:** Crosby Excavating INC  
**Inspection Site:** 499 S. Main Street, Columbia City, IN 46725

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

29 CFR 1926.1207(a): The employer did not ensure that the employees trained, possess the understanding, knowledge, and skills necessary for the safe performance of their duties, the employer did not ensure its employees understands the hazards in the permit space and the methods used to isolate, control or in other ways protect employees from these hazards, and for those employees not authorized to perform entry rescues, in the dangers of attempting such rescues:

Jobsite - 499 S. Main Street, Columbia City, Indiana 46725 - August 25, 2020, during construction activities, the employer did not ensure the training resulted in an understanding of the hazards in the permit space and the methods used to isolate, control or in other ways protect employees from these hazards, and for those employees not authorized to perform entry rescues, in the dangers of attempting such rescues.

**Date By Which Violation Must Be Abated:**                      **3/17/2021**  
**Proposed Penalty:**    **\$4,200.00**

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

**Inspection Number:** 318125077  
**Inspection Date(s):** 8/25/2020 - 1/26/2021  
**Issuance Date:** 1/29/2021  
**CSHO ID:** X4033  
**Optional Report No.:** 0621

**Safety Order and Notification of Penalty**

**Company Name:** Crosby Excavating INC  
**Inspection Site:** 499 S. Main Street, Columbia City, IN 46725

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**Safety Order 02 Item 001**                      Type of Violation: **Repeat**

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

Jobsite - 499 S. Main Street, Columbia City, Indiana 46725 - August 25, 2020, during construction activities, employees working close to an excavator, where the hazards of flying and falling objects existed, were not wearing hard hats.

**Date By Which Violation Must Be Abated:**                      **2/24/2021**  
**Proposed Penalty:**    **\$6,000.00**



Jameson Berry  
Director of Construction Safety

# Indiana Department of Labor

Indiana Occupational Safety and Health Administration  
402 West Washington St - Room W195  
Indianapolis, IN 46204  
Phone: (317)232-1979 FAX: (317)233-3790



## INVOICE/DEBT COLLECTION NOTICE

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**Company Name:** Crosby Excavating INC  
and its successors  
**Inspection Site:** 499 S. Main Street, Columbia City, IN 46725  
**Issuance Date:** 1/29/2021

### Summary of Penalties for Inspection Number: 318125077

|                         |                      |
|-------------------------|----------------------|
| Safety Order 1, Serious | = \$8,400.00         |
| Safety Order 2, Repeat  | = \$6,000.00         |
| <b>TOTAL PENALTIES</b>  | <b>= \$14,400.00</b> |

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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).

Jameson Berry  
Director of Construction Safety

01-29-2021

\_\_\_\_\_  
Date