

## SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and Harlan Bakeries (hereinafter referred to as "Employer") hereby agree as follows:

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty IOSHA Inspection No. 318082369 issued to the Employer on May 25, 2017 in the following manner:

### SAFETY ORDER 01:

- Item 1: Upheld. Penalty is reduced to \$1250. Abatement extended to September 1, 2017.
- Item 2: Reduced to a Nonserious. Penalty is reduced to \$0. Abated.
- Item 3: Upheld. Penalty is reduced to \$2500. Abated.
- Item 4: Upheld and Grouped with Item 3. Penalty is reduced to \$0. Abated.
- Item 5: Upheld. Penalty is reduced to \$2500. Abated.

In consideration of the above amendments the employer agrees to or implemented the following:

1. Employer committed significant capital expenditure to comply with the standards and go above and beyond the requirements of the OSHA standards.

**The TOTAL AGREED PENALTY is \$6250.**

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 ("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 are, and shall be, herein a final and enforceable Order of the Board of Safety Review.

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 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.

Except for this Agreement, and IOSHA 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 IOSHA matter economically and amicably, and they shall not be used for any other purpose, except as herein stated.

HARLAN BAKERIES

By:    *M AS*   

Title:    *Plant Manager*   

Date:    *7-21-17*   

COMMISSIONER OF LABOR

By:    *[Signature]*   

Title:    *Director*   

Date:    *8/1/17*

# 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 # 7012 2210 0002 4229 7501 5-25-17 JH*

## Safety Order and Notification of Penalty

**To:**

Harlan Bakeries - Avon  
7597 East US Highway 36  
Avon, IN 46123

**Inspection Number:** 318082369**CSHO ID:** T6073**Optional Report No.:** 0131-17**Inspection Date(s):** 1/18/2017 - 4/18/2017**Issuance Date:** 5/25/2017**Inspection Site:**

7597 East US Highway 36  
Avon, IN 46123

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

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

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

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

and penalty(ies) shall be deemed final orders of the Board of Safety Review and not subject to review by any court or agency. The issuance of a safety order does not constitute a finding that a violation has occurred unless no petition for review is filed, or if a petition for review (contest) is filed, it must contain a statement of its basis and should reference the above inspection number. Upon receipt of your petition for review, we will affirm, amend or dismiss the safety order(s) and notification(s) of penalty. If we affirm, your petition for review will be granted (unless it was not timely) and the dispute will be certified by the Board of Safety Review for further proceedings. The Board of Safety Review is an independent agency appointed by the governor with authority to conduct hearings and to issue decisions concerning disputed safety order(s) and notification(s) of penalty. If we amend the safety order(s) or notification(s) of penalty, your petition for review shall be deemed moot. However, you will then be given an opportunity to file a petition for review concerning the amended safety order(s) and notification(s) of penalty.

Please be advised that an employee or representative of employees may file a petition for review to contest the reasonableness of the time stated in the safety order(s) for the abatement of any violation.

**Posting** - Upon receipt of any safety order(s) you are required to post such safety order(s), or a copy thereof, unedited, at or near each place an alleged violation referred to in the safety order(s) occurred. However, if your operations are such that it is not practicable to post the safety order(s) at or near each place of alleged violation, such safety order(s) shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, if you are engaged in activities which are physically dispersed, the safety order(s) may be posted at the location from which the employees operate to carry out their activities. You must take steps to ensure that the safety order is not altered, defaced, or covered by other material. Posting shall be until the violation is abated, or for three working days, whichever is longer.

**Penalties** - Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Abatement does not constitute payment of penalties.

**Abatement** - The conditions cited in the safety order(s) must be corrected (abated) on or before the date shown for each item on the safety order(s) and notification(s) of penalty unless:

(1) You file a petition for review concerning the violation, in which case the full abatement period shall commence from the issuance of a final decision by the Board of Safety Review or the courts which requires compliance with the safety order; or

(2) The abatement period is extended by the granting of a petition for modification of abatement date.

**PMAs** - The petition for modification of abatement date is a manner in which you may seek additional time to correct (abate) a violation without having to file a petition for review concerning the safety order, or after the expiration of the time period to file such a petition for review when it becomes apparent that you need extra time to abate the violation. A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps you have taken, and the dates of such actions, in an effort to achieve compliance

during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted, and if appropriate, served on the authorized representative of affected employees, and a certification of the date upon which such posting and service was made.

A petition for modification of abatement date shall be filed with the Indiana Department of Labor/IOSHA no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted until the time period for the filing of a petition for review of the Commissioner's granting or denying the petition expires. Where affected employees are represented by an authorized representative, said representative shall be served a copy of such petition.

**Notification of Corrective Action** - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance in providing adequate documentation of abatement. Reports of corrections should show specific corrective action on each alleged violation and the date of such action. On alleged violations with abatement periods of more than thirty (30) days, a written progress report should be submitted, detailing what has been done, what remains to be done, and the time needed to fully abate each such violation. When the alleged violation is fully abated, we should be so advised. Timely correction of an alleged violation does not affect the initial proposed penalty..

**Followup Inspections** - Please be advised that a followup inspection may be made for the purpose of ascertaining that you have posted the safety order(s) and corrected the alleged violations. Failure to correct an alleged violation may result in additional penalties for each day that the violation has not been corrected.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Indiana Department of Labor/IOSHA at the address shown above.

**Notice to Employees** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must

be mailed to the Indiana Department of Labor/IOSHA at the address shown above within fifteen (15) working days (excluding weekends and State holidays) or receipt by the employer of this safety order and penalty.

If you wish additional information, you may direct such requests to us at the address or telephone number stated above.

**Indiana Department of Labor**

**NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

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An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 5/25/2017. 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:** 318082369  
**Inspection Date(s):** 1/18/2017 - 4/18/2017  
**Issuance Date:** 5/25/2017  
**CSHO ID:** T6073  
**Optional Report No.:** 0131-17

### Safety Order and Notification of Penalty

**Company Name:** Harlan Bakeries - Avon  
**Inspection Site:** 7597 East US Highway 36, Avon, IN 46123

#### 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 to fire, explosion, and deflagration hazards:

a) Duct Collection System - On January 18, 2017, and at time prior to, where there was a possibility of fire or explosion propagation from 1 of 2 cyclones to the occupied production and bakery building, no mechanical isolation, spark detection or suppression system equipment was installed between the cyclones and occupied buildings for a Class II, Combustible Dust ( $K_{st}=6.59$  bar m/s, Explosion Severity = 0.93). The dust collection systems installed in the flour room building were not protected from downstream deflagration and explosion hazards which exposed employees to the possibility of burns and blunt force trauma.

AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Install isolation, spark detection and suppression systems to prevent propagation of fire or explosion per NFPA 652.

b) Storage/Silos - On January 18, 2017, and at time prior to, where there was a possibility of fire or explosion propagation from 1 of 2 cyclones involved in the material separation process to 1 of 6 silos being used as a storage system, no mechanical isolation, spark detection or suppression system equipment was installed for a Class II, Combustible Dust ( $K_{st}=6.59$  bar m/s, Explosion Severity = 0.93). The dust collection systems installed in the flour room were not protected from upstream



deflagration and explosion hazards which exposed employees to the possibility of burns and blunt force trauma.

AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: install isolation, spark detection and suppression systems to prevent propagation of fire or explosion per NFPA 652.

c) Storage/Silo # 9 - On January 18, 2017, and at time prior to, where there was a possibility of fire or explosion propagation from silo # 9 to the cyclone involved in the material separation process to the occupied production and bakery building, no explosion venting was installed for Class II Combustible Dust ( $K_{st}=6.59$  bar m/s, Explosion Severity = 0.93). Flour storage silo # 9 was not protected from explosion hazards which exposed employees in the area to the possibility of burns and blunt force trauma.

AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Install explosion venting per NFPA 68, based on maximum intended inventory of Class II Combustible Dust, KST values and explosion severity.

<b>Date By Which Violation Must Be Abated:</b>	<b>6/28/2017</b>
<b>Proposed Penalty:</b>	<b>\$2,500.00</b>

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

**Inspection Number:** 318082369  
**Inspection Date(s):** 1/18/2017 - 4/18/2017  
**Issuance Date:** 5/25/2017  
**CSHO ID:** T6073  
**Optional Report No.:** 0131-17

**Safety Order and Notification of Penalty**

**Company Name:** Harlan Bakeries - Avon  
**Inspection Site:** 7597 East US Highway 36, Avon, IN 46123

**Safety Order 01 Item 002**                      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 the hazards of combustible dust were not evaluated:

Facility - No combustible dust hazards analysis (DHA) was performed for equipment including, but not limited to; the dust collection, storage, and transport systems in the facility for a Class II, Combustible Dust (Kst=6.59 bar m/s, Explosion Severity = 0.93).

AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Conduct combustible dust hazards analysis for the dust collection, storage and transport systems within the facility as per NFPA 652-2016, section 7.2.1. in accordance with section 4.2.

**Date By Which Violation Must Be Abated:**                      **6/28/2017**  
**Proposed Penalty:**    **\$5,000.00**

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

**Inspection Number:** 318082369  
**Inspection Date(s):** 1/18/2017 - 4/18/2017  
**Issuance Date:** 5/25/2017  
**CSHO ID:** T6073  
**Optional Report No.:** 0131-17

**Safety Order and Notification of Penalty**

**Company Name:** Harlan Bakeries - Avon  
**Inspection Site:** 7597 East US Highway 36, Avon, IN 46123

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

29 CFR 1910.176(c): Storage areas were not kept free from accumulation of materials that constituted hazards from tripping, fire, explosion or pest harborage:

Flour (silo) Room - Dust accumulations greater than 1/32 of an inch were found outside the dust collection system in excess of 5% on the floors, electrical equipment and horizontal surfaces which can create an explosion, deflagration or other fire hazard. Facility flour dust was classified as a Class II, Combustible Dust ( $K_{st}=6.59$  bar m/s, Explosion Severity = 0.93, samples collected on 02/17/2017).

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$5,000.00**

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

**Inspection Number:** 318082369  
**Inspection Date(s):** 1/18/2017 - 4/18/2017  
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**CSHO ID:** T6073  
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**Safety Order and Notification of Penalty**

**Company Name:** Harlan Bakeries - Avon  
**Inspection Site:** 7597 East US Highway 36, Avon, IN 46123

**Safety Order 01 Item 004**                      Type of Violation: **Serious**

29 CFR 1910.307(c)(2)(i): Equipment in hazardous (classified) location(s) was not approved for the ignitable or combustible properties of the specific gas, vapor, dust, or fiber that was or could be present:

Flour room - Equipment such as, but not limited to; the 480 volt, 3 phase model #711-URA1, serial #1102928569, Roots Lobe Blower and 2 RotoLok #7186 rotary valve motors were not rated for the Class II Division 2 environment in which they were installed which exposed employees to the possibility of burns or blunt force trauma from fire or explosion.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$5,000.00**

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

**Inspection Number:** 318082369  
**Inspection Date(s):** 1/18/2017 - 4/18/2017  
**Issuance Date:** 5/25/2017  
**CSHO ID:** T6073  
**Optional Report No.:** 0131-17

### Safety Order and Notification of Penalty

**Company Name:** Harlan Bakeries - Avon  
**Inspection Site:** 7597 East US Highway 36, Avon, IN 46123

#### Safety Order 01 Item 005

Type of Violation: **Serious**

29 CFR 1910.307(f): The following are acceptable protection techniques for electric and electronic equipment in hazardous (classified) locations.

Instance a) Flour Room - Acceptable techniques listed per 1910.307(f)(1) through 1910.307(f)(10) were not used to protect electrical connections for the blower fan motor located in a Class II Combustible Dust location which exposed employees to the possibility of burns and or blunt force trauma. (Kst=6.59 bar m/s, Explosion Severity = 0.93).

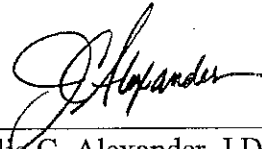
Instance b) Flour Room - Acceptable techniques listed per 1910.307(f)(1) through 1910.307(f)(10) were not used to protect electrical connections for the FDL dust collector located in a Class II Combustible Dust location which exposed employees to the possibility of burns and or blunt force trauma. (Kst=6.59 bar m/s, Explosion Severity = 0.93).

Acceptable protection techniques for electric and electronic equipment in hazardous (classified) locations; (1) Explosion proof apparatus. This protection technique is permitted for equipment in the Class I, Division 1 and 2 locations for which it is approved; (2) Dust ignition proof. This protection technique is permitted for equipment in the Class II, Division 1 and 2 locations for which it is approved; (3) Dust-tight. This protection technique is permitted for equipment in the Class II, Division 2 and Class III locations for which it is approved; (4) Purged and pressurized. This protection technique is permitted for equipment in any hazardous (classified) location for which it is approved; (5) Nonincendive circuit. This protection technique is permitted for equipment in Class I, Division 2; Class II, Division 2; or Class III, Division 1 or 2 locations; (6) Nonincendive equipment. This protection technique is permitted for equipment in Class I, Division 2; Class II, Division 2; or Class III, Division 1 or 2 locations; (7) Nonincendive component. This protection technique is permitted for equipment in

Class I, Division 2; Class II, Division 2; or Class III, Division 1 or 2 locations; (8) Oil immersion. This protection technique is permitted for current-interrupting contacts in Class I, Division 2 locations as described in the Subpart; (9) Hermetically sealed. This protection technique is permitted for equipment in Class I, Division 2; Class II, Division 2; and Class III, Division 1 or 2 locations; (10) Other protection techniques. Any other protection technique that meets paragraph (c) of this section is acceptable in any hazardous (classified) location.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$5,000.00**



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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:** Harlan Bakeries - Avon  
**Inspection Site:** 7597 East US Highway 36, Avon, IN 46123  
**Issuance Date:** 5/25/2017

### Summary of Penalties for Inspection Number: 318082369

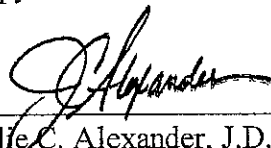
**Safety Order 1, Serious** = \$22,500.00  
**TOTAL PENALTIES** = \$22,500.00

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).

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

    MAY 25, 2017      
Date