

SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and Townsend Tree Service, LLC (hereinafter referred to as "Employer") have reached a full and complete settlement of the above-captioned matter. Accordingly, the parties state as follows:

1. The Commissioner amends the Safety Order and Notification of Penalty IOSHA Inspection No. 318101193 issued to the Employer on September 14, 2018 in the following manner:

SAFETY ORDER 01:

Item 1: The classification is amended to "other-than-serious" and alleges a violation of 29 C.F.R. 1910.38(c)(2) with the alleged violation description reading:

1910.38(c)(2): Procedures for emergency evacuation, including type of evaluation and exit route assignments.

On or about July 23, 2018, effective communication was not maintained between two employees during emergency evacuation while cutting down a tree at a worksite located at or around 8001 East County Road 275 North Muncie, Indiana.

Penalty: \$5,000

Item 2: Deleted.

Item 3: Deleted.

Item 4: Deleted.

The TOTAL AGREED PENALTY is \$ 5,000.

2. Employer shall further undertake the following enhanced abatement measures:

a. As a result of a third party corporate wide safety culture survey, Employer made the decision to incorporate videos into its corporate-wide training program. Within sixty (60) days from the date that the Safety Order, as amended by this Settlement Agreement ("Agreement"), becomes a final order, the Employer agrees to create and implement a video-based training module for tree felling and provide the training to all affected employees working in Indiana. Employer will provide documentation of the program and training within ten (10) days after these measures are completed to IOSHA at the email address abatementGI@DOL.IN.GOV.

b. In November 2018, Employer hired a Talent Acquisition Manager whose responsibilities include reviewing and confirming qualifications and skill levels of applicants and/or new hires.

c. Within sixty (60) days from the date that the Safety Order, as amended by this Agreement, becomes a final order, Employer agrees to relaunch its corporate-wide Leadership Safety Mentorship Program intended to assure that all newly hired or promoted supervisors receive proper safety orientation and mentorship from senior management and the Safety Department. This training will include coaching on how to closely supervise an employee who is in training. The Employer will provide documentation of the program, certification of the program's implementation, and the number of current enrollees within ten (10) days after these measures are completed to IOSHA at the email address abatementGI@DOL.IN.GOV.

d. Employer agrees to continue to have available at least one person trained and certified in CPR/FIRST AID at each work location and to continue to train and certify all new persons in CPR/FIRST AID within three (3) months of their hiring date. The Employer will provide documentation of the program and a random selection of CPR/FIRST AID certifications within 15 days from the date that the Safety Order, as amended by this Agreement, becomes a final order to IOSHA at the email address abatementGI@DOL.IN.GOV.

3. The Commissioner and Employer agree that the Logging Operations standard, 29 C.F.R. 1910.266, does not apply to this inspection and the General Duty Clause, is not appropriate to cite when a vertical standard is applicable, for example, 29 C.F.R. 1910.269.

4. Employer withdraws its previously filed notice of contest to the Safety Order and Notification of Penalty.

5. Upon full execution of this Agreement, the Employer will post this Agreement for three (3) working days or until abatement is completed, whichever is longer.

6. The Safety Order and Notification of Penalty, as amended by this Agreement, are, and shall be, herein final and enforceable Order of the Board of Safety Review.

7. The total AGREED PENALTY is due and payable within fifteen (15) working days from the date that the Safety Order and Notification of Penalty, as amended by this Agreement, become a final order. The Employer further agrees that if the AGREED PENALTY is not paid within fifteen working days from the date that the Safety Order and Notification of Penalty, as amended by this Agreement become a final order, that the full amount of the penalty initially assessed against the Employer in the Safety Order and Notification of Penalty which are the subject of this Agreement is due and payable immediately.

8. 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 and admission by Employer of the allegations contained within the Safety Order and Notification of Penalty. The agreements, statements, findings and actions 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.

TOWNSEND TREE SERVICE COMPANY LLC

By: *Michelle D. Brown*

Title: *EVP + Secretary*

Date: *06/17/2019*

COMMISSIONER OF LABOR

By: *[Signature]*

Title: *Director*

Date: *6/17/19*

38120564.1

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:

Townsend Tree Service Company LLC
1015 W. Jackson St
Muncie, IN 47308

Inspection Number: 318101193**CSHO ID:** V1065**Optional Report No.:** 2059-19**Inspection Date(s):** 8/1/2018**Issuance Date:** 9/14/2018**Inspection Site:**

8001 East County Road 275 North
Muncie, IN 47308

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 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 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. 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. 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, 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 9/14/2018. 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: 318101193
Inspection Date(s): 8/1/2018
Issuance Date: 9/14/2018
CSHO ID: V1065
Optional Report No.: 2059-19

Safety Order and Notification of Penalty

Company Name: Townsend Tree Service Company LLC
Inspection Site: 8001 East County Road 275 North, Muncie, IN 47308

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 struck-by hazards of trees and limbs due to ineffective hand signals or audible contact between employees:

Effective communication was not maintained between two employees while cutting down a tree at a worksite located at or around 8001 East County Road 275 North Muncie, Indiana.

AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Use of effective hand signals, or audible methods to communicate between each other.

OR IN THE ALTERNATIVE:

29 CFR 1910.266(d)(7)(i): Hand signals or audible contact, such as, but not limited to, whistles, horns, or radios, were not utilized whenever noise, distance, restricted visibility, or other factors prevented clear understanding of normal voice communications between employees:

Effective communication was not maintained between two employees while cutting down a tree at a worksite located at or around 8001 East County Road 275 North Muncie, Indiana.

Date By Which Violation Must Be Abated: **10/18/2018**
Proposed Penalty: **\$5,000.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318101193
Inspection Date(s): 8/1/2018
Issuance Date: 9/14/2018
CSHO ID: V1065
Optional Report No.: 2059-19

Safety Order and Notification of Penalty

Company Name: Townsend Tree Service Company LLC
Inspection Site: 8001 East County Road 275 North, Muncie, IN 47308

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 employees were exposed to struck-by hazards of a falling tree due to where cuts were made to the tree:

A tree which was being cut down at a worksite located at or around 8001 East County Road 275 North Muncie, Indiana, had a backcut which was not performed above the level of the notch and the hinge wood on one side was cut, which exposed employees to struck-by hazards.

AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Making cuts to the tree as described in 29 CFR 1910.266(h)(2)(vii).

OR IN THE ALTERNATIVE:

29 CFR 1910.266(h)(2)(vii): The backcut was not above the level of the horizontal facecut in order to provide an adequate platform to prevent kickback:

A tree which was being cut down at a worksite located at or around 8001 East County Road 275 North Muncie, Indiana, had a backcut which was not performed above the level of the notch and the hinge wood on one side was cut, which exposed employees to struck-by hazards.

Date By Which Violation Must Be Abated: **10/18/2018**
Proposed Penalty: **\$5,000.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318101193
Inspection Date(s): 8/1/2018
Issuance Date: 9/14/2018
CSHO ID: V1065
Optional Report No.: 2059-19

Safety Order and Notification of Penalty

Company Name: Townsend Tree Service Company LLC
Inspection Site: 8001 East County Road 275 North, Muncie, IN 47308

Safety Order 01 Item 003 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 struck-by hazards due to ineffective training on how to make effective cuts when cutting down a tree:

AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Provide employees with effective training as outlined in 29 CFR 1910.266.

OR IN THE ALTERNATIVE:

29 CFR 1910.266(i)(3): The training provided by the employer did not include the elements specified in 1910.266(i)(3)(i) through (vi):

Employees were not effectively trained on work tasks and use of equipment used to cut trees at work sites such as, but not limited to, at or around 8001 East County Road 275 North Muncie, Indiana.

Date By Which Violation Must Be Abated: **10/18/2018**
Proposed Penalty: **\$5,000.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318101193
Inspection Date(s): 8/1/2018
Issuance Date: 9/14/2018
CSHO ID: V1065
Optional Report No.: 2059-19

Safety Order and Notification of Penalty

Company Name: Townsend Tree Service Company LLC
Inspection Site: 8001 East County Road 275 North, Muncie, IN 47308

Safety Order 01 Item 004 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 hazards due to employees not being current on first aid:

Employees cutting down a tree at a worksite located at or around 8001 East County Road 275 North Muncie, Indiana, were not effectively trained in first aid.


AMONG OTHER METHODS, FEASIBLE MEANS OF ABATEMENT MAY INCLUDE: Train employees in first aid required by 29 CFR 1910.266 or 29 CFR 1910.151.

OR IN THE ALTERNATIVE:

29 CFR 1910.266(i)(7)(i): The employer did not assure that each employee, including supervisors, had received first-aid and CPR training meeting at least the requirements specified in Appendix B:

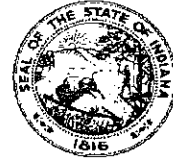
Employees cutting down a tree at a worksite located at or around 8001 East County Road 275 North Muncie, Indiana, were not effectively trained in first aid.

Date By Which Violation Must Be Abated: **10/18/2018**
Proposed Penalty: **\$5,000.00**


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

Company Name: Townsend Tree Service Company LLC
Inspection Site: 8001 East County Road 275 North, Muncie, IN 47308
Issuance Date: 9/14/2018

Summary of Penalties for Inspection Number: 318101193

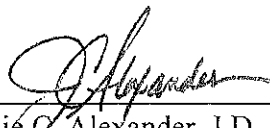
Safety Order 1, Serious = \$20,000.00
TOTAL PENALTIES = \$20,000.00

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

IOSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Corrective action, taken by you for each alleged violation should be submitted to this office on or about the abatement dates indicated on the Safety Order and Notification of Penalty.

A work sheet has been provided to assist in providing the required abatement information. A completed copy of this work sheet should be posted at the worksite with the safety order(s).



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

9/14/18

Date