

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,)
)
v.)
)
PROTECH METAL FINISHING INC.)
AND ITS SUCCESSORS,)
)
Respondent.)

**OALP CASE NO. DOL-2302-000884
BSR DOCKET NO. 23-010**

AGREED ENTRY

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor (hereinafter “Complainant”) and ProTech Metal Finishing Inc. (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 November 15, 2022, through December 6, 2022, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent’s worksite located at 214 Heckner St., Ligonier, Indiana 46767.

2. On February 16, 2023, Complainant issued a Notification of Failure to Correct Violation (hereinafter, “FTC”) resulting from Indiana Department of Labor Inspection No. 1634110 and alleging that Respondent had failed to correct a previous violation of the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*) or the standards or rules thereunder. The FTC is attached hereto as Exhibit A and is incorporated herein.

3. On or about March 13, 2023, Respondent duly and timely petitioned for review of the FTC.

PART II.

4. The FTC consists of Safety Order 1, Item No. 2 from original inspection No. 1417367.

5. The FTC for Safety Order 1, Item 2 alleges a "Failure to Correct - Serious" violation of 29 CFR 1910.212(a)(3)(ii) and assesses a penalty of Eighty-Four Thousand Dollars (\$84,000).

6. The total assessed penalty for this FTC is Eighty-Four Thousand Dollars (\$84,000).

PART III.

7. The FTC is hereby amended as follows.

8. Safety Order 1, Item 2 is upheld, but the penalty is reduced to Twenty-One Thousand Dollars.

9. The AGREED total penalty for all violations and all subparts thereunder, subject to this Agreed Entry, is Twenty-One Thousand Dollars (\$21,000).

10. Complainant agrees to allow Respondent no more than a total of twelve consecutive months to pay the agreed total penalty. Respondent shall make at least one payment of at least One Thousand Seven Hundred Fifty Dollars (\$1,750) each consecutive month until the agreed total penalty of \$21,000 is paid in full; the first payment being due with Respondent's execution of this Agreement. Subsequent payments shall be due by the 15th day of each month until said penalty is paid in full.

11. If Respondent fails to make timely payments or fails to pay the full agreed total penalty as stated herein, the full amount of unpaid penalty that remains shall be immediately due to Complainant, Complainant 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 Complainant may collect costs and fees, including legal fees, from Respondent for any collection action that may be necessary to enforce this agreement.

12. The penalty was reduced in part due to some existing guarding protection, even if it was not sufficient to provide the full required protection.

13. In consideration for the remainder of the penalty reduction, Respondent agrees to complete the following enhanced abatement and provide Complainant with proof of each by December 4, 2023:

- a. Replace stair treads on the catwalk.
- b. Install non-slip fiberglass tread covers.
- c. Improve ventilation behind the acid etch tank.
- d. Replace wooden walk boards/deck boards on the catwalk with composite boards.
- e. Provide a step ladder with handrails for the tumbler.
- f. Provide a new permanent "escape-type" ladder for viewing the top of the cone bottom tank.
- g. Provide new, upgraded walking mats for the catwalk.
- h. Provide safety lines on the floor for designated walk paths.
- i. Provide team members with high visibility clothing.
- j. Repair damaged floors.
- k. Have floors professionally cleaned.
- l. Engage a qualified third-party health and safety consultant for a comprehensive, facility-wide health and safety consultation at Respondent's facility.

m. Provide an abatement plan and at least one progress report to Complainant pursuant to 29 C.F.R. § 1903.19(e) and (f) for all of the enhanced abatement items listed in this paragraph.

14. 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").

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

16. 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 sending confirmation of abatement, including a detailed description of what was done along with any supporting documentation and photographs, to IOSHA by email to abatement@dol.in.gov.

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

PART IV.

18. 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.

19. 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.

20. 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.

21. 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 17TH day of August 2023.


PROTECH METAL FINISHING INC.

By: 

Printed: COZY KUHLE

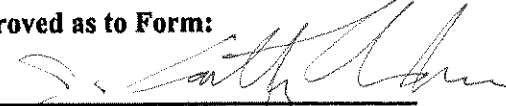
Title: VICE PRESIDENT

COMMISSIONER OF LABOR

By: 

Jameson Berry,
Director of Health Compliance,
IOSHA

Approved as to Form:

By: 

J. Anthony Hardman,
Counsel for Complainant



INDIANA

DEPARTMENT OF LABOR

ERIC J. HOLCOMB, GOVERNOR
David Redden, Commissioner
402 West Washington Street, Room W195
Indianapolis, Indiana 46204-2751
Phone: (317) 232-2655
Fax: (317) 233-3790

Notification of Failure to Correct Violations

To:
ProTech Metal Finishing Inc
and its successors
214 Heckner Street
Ligonier, IN 46767

Original Inspection Number: 318112554
Original Inspection Date(s): 06/24/2019 - 08/16/2019

Inspection Number: 1634110
Inspection Date(s): 11/15/2022 - 12/06/2022
Issuance Date: 02/16/2023

Inspection Site:
214 Heckner Street
Ligonier, IN 46767

The violation(s) described in this Notification of Failure to Correct Alleged Violations is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

After the original inspection, a Safety Order was issued to you in accordance with the provisions of the Occupational Safety and Health Act of 1970 (the Act), notifying you of certain violations of the Act and the dates by which they were to be abated. Based upon reinspection, it is alleged that you have failed to abate the violation(s) listed below within the time prescribed, and the following additional penalties are proposed. The additional penalty is computed by multiplying a daily penalty times the number of days the violation(s) remained unabated. You are to notify the Area Director in writing of the date and nature of the corrective action taken. If you do not abate the violation(s), further penalties may be proposed and other enforcement action to compel abatement may be taken under section 11(b) of the Act.

You are further notified that you must pay the ADDITIONAL PENALTY unless you inform the Area Director in writing that you intend to contest the Notification or the Additional Penalty within 15 working days (excluding weekends and Federal holidays) from your receipt of this notification. If you do not contest within 15 working days after receipt, the Notification and the additional penalties will become the final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. Issuance of this Notification does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the Notification is affirmed by the Review Commission.

Notification of Corrective Action - For each violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of the IOSHA office issuing the safety order and identified above. The certification must be sent by you within 10 calendar days of the abatement date indicated on the safety order. For **Knowing** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the safety order is classified as **Serious** and the safety order states that the abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the



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safety order indicates that the violation was corrected during the inspection, no abatement certificate is required for that item.

For each safety order where you do not contest the violation or the abatement date, your obligation to submit abatement certification and any documents is delayed until the contest and the 10-day period after the abatement date have expired. See 29 CFR 1903.19 and the OSHA 3000 booklet for more information.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the safety order and safety order item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to IOSHA, also be posted at the location where the violation appeared and the corrective action took place.

Inspection Activity Data - You should be aware that IOSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 7 calendar days after the Safety Order Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

Make your check or money order payable to "Indiana DOL/IOSHA". Please indicate the Inspection Narrative on the remittance.



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NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the Notification of Failure to Correct Violations issued on 02/16/2023.

The informal conference will be held:

_____ Virtually/Telephonically via Microsoft Teams

Call-in Number: _____

Conference ID: _____

_____ In-person at the Indiana Department Labor, located at the following address:

402 West Washington Street, Room W195

Indianapolis, Indiana 46204

Meeting/Conference Room: _____

Employees and/or representatives of employees have a right to attend an informal conference.

Indiana Department of Labor
Indiana Occupational Safety and Health Administration



Notification of Failure to Correct Violation:

Original Inspection Number: 1417367
Original Inspection Date(s): 06/24/2019 - 08/16/2019

Inspection Number: 1634110
Inspection Date(s): 11/15/2022 - 12/06/2022
Issuance Date: 02/16/2023

Company Name: ProTech Metal Finishing Inc
Inspection Site: 214 Heckner Street, Ligonier, IN 46767

Safety Order 1 Item 2 Type of Violation: **Failure to Correct-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):

a) Racking Area - Employees were exposed to the rotating bandsaw blade when operating the Jet horizontal bandsaw when the blade was not adequately guarded.

c) Racking Area - Employees were exposed to the rotating bandsaw blade when operating the Spartan horizontal bandsaw when the blade was not adequately guarded.


FAILURE TO CORRECT

On November 15, 2022, a follow-up inspection determined that employees were exposed to the unused portion of the rotating bandsaw blade when operating the Spartan horizontal bandsaw. For a period of thirty (30) or more days, including (30) days from October 3, 2019, the employer failed to adequately guard the saw blade as required by the terms of the Safety Order and Notification of Penalty issued in inspection of ProTech Metal Finishing, Inc. and its Successors, Inspection No. 318112554, part of the citations issued to the employer on September 9, 2019, and the Final Order resulting therefrom.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Additional Penalty:

\$84,000.00


Jameson Berry
IOSHA Director



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INVOICE / DEBT COLLECTION NOTICE

Company Name: ProTech Metal Finishing Inc
Inspection Site: 214 Heckner Street, Ligonier, IN 46767
Issuance Date: 02/16/2023

Summary of Penalties for Inspection Number: 318112554
Follow-up Inspection Number: 1634110

Safety Order 1 Item 2, FTC-Serious \$84,000.00

TOTAL PROPOSED PENALTIES: \$84,000.00

To avoid additional charges, please remit payment promptly to this Office for the total amount of the uncontested penalties summarized above. 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, conditions, or endorsements put on any check, money order or electronic payment for less than full amount due and will process the payments as if these restrictions or conditions do not exist.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which debt amount becomes due and payable (penalty due date). The current interest rate is 5%. Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Safety Order and Notification of Penalty), unless you file a notice to contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.



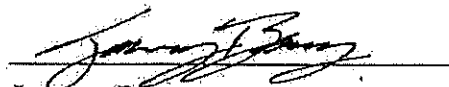
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Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.


Jameson Berry
IOSHA Director

2/16/2023

Date



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Original Inspection Date(s): 06/24/2019 - 08/16/2019

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Inspection Date(s): 11/15/2022 - 12/06/2022
Issuance Date: 02/16/2023

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IOSHA Director

2/16/2023

Date