



One Indiana Square, Suite 3500 / Indianapolis, IN 46204-4609  
Tel: 317.713.3500 / Fax: 317.713.3699  
www.taftlaw.com

Thomas F. O'Gara  
(317)713-3610  
[togara@taftlaw.com](mailto:togara@taftlaw.com)

January 6, 2015

**VIA HAND DELIVERY**

Indiana Department of Homeland Security  
Fire Prevention and Building Safety Commission  
Attention: Pamela Walters, Counsel  
302 W. Washington St., Room W246  
Indianapolis, IN 46204  
Email: [pwalters@dhs.in.gov](mailto:pwalters@dhs.in.gov)

Re: Petition for Administrative Review

Facility: Alternative Two, LLC ("Alternative Two")  
Address: 700 W. Chippewa Ave., South Bend, IN 46614  
ID Number: BU23313  
Order: December 22, 2014 Notice of Violation

Dear Ms. Walters:

Thank you for taking time to discuss this matter by telephone yesterday. As discussed, I am filing this letter with the Fire Prevention and Building Safety Commission on behalf of my client Alternative Two, LLC ("Alternative Two") to serve as its petition for administrative review of the order hand delivered to Alternative Two by inspector Alvin Fry III of the Department of Homeland Security ("DHS") on December 22, 2014 (the "Order"). A copy of the Order is enclosed. The Order alleges that Alternative Two has violated Sections 2505.1, 2505.5, 2504.4, and 2505.2 of the 2008 Edition of the Indiana Fire Code ("IFC"), as adopted by 675 IAC 22-2.4-1. Alternative Two has been aggrieved by the Order and is entitled to relief under Ind. Code § 4-21.5-3-7.

Alternative Two seeks administrative review of all alleged violations of this Order on several grounds. First, the Order erroneously applies the 2008 Edition of the IFC. As of December 1, 2014, the 2008 Edition of the IFC was replaced by the 2012 Edition of the Indiana Fire Code. Any Order issued by DHS must be issued under the Edition of the IFC in effect at the time of the inspection. Because the inspection that led to this Order occurred on December 19, 2014, the 2012 Edition of the IFC was the controlling

version of the IFC, and the Order's failure to assert any violations under the 2012 Edition of the IFC renders it null and void.

Second, in the alternative if the first challenge to the Order is not upheld, the Order is in error because it erroneously concluded that Alternative Two's finished products should be classified as tire storage piles or yards. To the contrary, Alternative Two's finished products are not tires; instead, the finished products consist primarily of a product known as TDF or tire-derived fuel that should be classified as combustible solids or materials regulated under Section 315.4 of the 2012 Edition of the IFC as opposed to any sections of the IFC dealing with tire storage. Although Alternative Two does have tires at its facility that may be regulated under the provisions of the 2012 Edition of the IFC governing tire storage, none of the alleged violations in the Order arises out of the storage of actual tires by Alternative Two. Because all of the alleged violations in the Order improperly rely on a section of the IFC applying to tires, the alleged violations are without merit.

Third, in the alternative if neither of the first two challenges is upheld, the Order is in error because it is arbitrary and capricious, unsupported by the evidence, and contrary to law with respect to all alleged violations. For example, the Order erroneously determined that product is stored too close (i.e., within 100 feet) to "brush and forested areas" on an adjacent piece of property. However, the adjacent property does not have "brush or forested areas" within 100 feet of the area at issue as the ordinary meanings of those terms are commonly understood. Also, the Order erroneously concluded that a work area where material was processed, but not stored, should be classified as a storage area. In addition, the Order was the result of a biased inspector, Mr. Fry, who had prejudged the Alternative Two facility. More specifically, Mr. Fry made prejudicial statements about the facility at the start of the December 19, 2014 inspection and asserted that the facility had "too much product" and that "it would burn" irrespective of the provisions of the IFC. Moreover, during the inspection, an Alternative Two employee heard Mr. Fry make profane and vindictive statements toward Alternative Two based on its challenge of a prior Notice of Violation issued by Mr. Fry in which he had erroneously determined that the material at the facility should be classified as "flammable solids", and which Notice of Violation was subsequently withdrawn by DHS. Further, at a prior inspection, Mr. Fry advised Robert Krizmanich, the fire inspector from the City of South Bend, that he agreed with Mr. Krizmanich's assessment that the material at the facility should be considered combustible product. However, immediately after Mr. Krizmanich left the facility, Mr. Fry used profane language disavowing his statements to Mr. Krizmanich and asserting his authority over Alternative Two as a representative of the State Fire Marshal in a heavy-handed manner. Based on these and similar defects, the alleged violations are without merit.

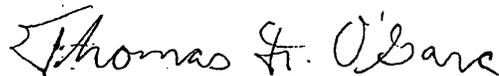
Indiana Department of Homeland Security  
Attn: Pamela Walters, Counsel  
January 6, 2015  
Page 3

---

Please contact me with any questions you might have regarding this matter. Per our conversation yesterday, Alternative Two is interested in exploring an informal resolution of this dispute. Finally, I would ask that you confirm via email your receipt of this petition for administrative review on behalf of the Fire Prevention and Building Safety Commission. In the meantime, I will await word from the Commission that the petition for administrative review has been granted and that an administrative proceeding will be conducted on the matter by an administrative law judge appointed by the Commission.

Thank you for your time and assistance. I look forward to working with you.

Sincerely,



Thomas F. O'Gara

Enclosure

2304692.1



# FIRE AND BUILDING CODE ENFORCEMENT INSPECTION REPORT ORDER

DIVISION OF FIRE AND BUILDING SAFETY  
INDIANA DEPARTMENT OF HOMELAND SECURITY  
302 WEST WASHINGTON STREET, RM E241  
INDIANAPOLIS, IN 46204  
TELEPHONE: 317-232-2222  
WEB ADDRESS: WWW.IN.GOV/DHS

Identification Number BU23313	Name of the facility ALTERNATIVE TWO LLC	County ST JOSEPH
Address of Property 700 W CHIPPEWA AVE SOUTH BEND 46614	Name of the Contact KEN, SHOEMACKER	Telephone Number
Email		Inspection Date 12/19/2014
Inspection Category COMPLAINT INVESTIGATION	Inspection Type INITIAL	Inspection Status: VIOLATION
Name of the Inspector ALVIN FRY III		Phone: 3176701517
Email: afry@dhs.in.gov		

### Violations

VIO- LATION NUMBER	RULE OR INDIANA CODE SECTION VIOLATED	DESCRIPTION OF VIOLATION	DATE BY WHICH VIOLATION MUST BE CORRECTED
1	2008 Edition IFC 675 IAC 22-2.4 section 2505.1	Tire storage shall be restricted to individual piles not exceeding 5,000 square feet (464.5 m <sup>2</sup> ) of continuous area. Piles shall not exceed 50,000 cubic feet (1416 m <sup>3</sup> ) in volume or 10 feet (3048 mm) in height.  <u>piles need to comply with this section</u>	01/22/2015
2	2008 Edition IFC 675 IAC 22-2.4 section 2505.5	Storage yards shall be maintained free from combustible ground vegetation for a distance of 40 feet (12 192 mm) from the stored material to grass and weeds; and for a distance of 100 feet (30 480 mm) from the stored product to brush and forested areas.  <u>back row of tires are to close to brush and trees, vegetation needs cleared in the whole yard. all stored material needs to comply with this section.</u>	01/22/2015
3	2008 Edition IFC 675 IAC 22-2.4 section 2505.4	Tire storage piles shall be located at least 50 feet (15 240 mm) from lot lines and buildings  <u>piles are to close to lot lines and buildings.</u>	01/22/2015
4	2008 Edition IFC 675 IAC 22-2.4 section 2505.2	Individual tire storage piles shall be separated from other piles of salvage by a clear space of at least 40 feet (12 192 mm).  <u>piles need a clear separation free of vegetation and rubber of at least 40 feet.</u>	01/22/2015

Facility Id BU23313	Received By Name	Signature and Date
------------------------	------------------	--------------------

*Carroll and left a copy of this report with Ken Shoemaker. Ken would not sign my copy. He said he would not sign on the advice of his lawyer. 12/22/14*



# FIRE AND BUILDING CODE ENFORCEMENT INSPECTION REPORT ORDER

DIVISION OF FIRE AND BUILDING SAFETY  
INDIANA DEPARTMENT OF HOMELAND SECURITY  
302 WEST WASHINGTON STREET, RM E241  
INDIANAPOLIS, IN 46204  
TELEPHONE: 317-232-2222  
WEB ADDRESS: WWW.IN.GOV/DHS

Identification Number HO32	Name of the facility ST MARGARET MERCY HOSPITAL	County LAKE
Address of Property 5454 HOHMAN AVENUE HAMMOND IN 46320	Name of the Contact JEFF STEVENSON	Telephone Number (219) 392-7002
Email jeff.stevenson@ssfhs.org	Inspection Date 10/06/2014	
Inspection Category HEALTHCARE FACILITY	Inspection Type SITE VISIT	Inspection Status: VIOLATION
Name of the inspector JOHN GETTLER	Phone: 3175016244	
Email: jgettler@dhs.in.gov		

## Violations

VIO-LATION NUMBER	RULE OR INDIANA CODE SECTION VIOLATED	DESCRIPTION OF VIOLATION	DATE BY WHICH VIOLATION MUST BE CORRECTED
1	675 IAC 12-4-9(a)	All buildings and structures, and any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion systems, and all parts thereof, shall be maintained in conformance with the applicable rules of the commission, or applicable rules of its predecessor agencies, in effect when constructed, installed, or altered.  <u>Hoses removed from facility without proper permission</u>	10/23/2014
2	2008 Edition IFC 675 IAC 22-2.4	901.8 Removal of or tampering with equipment. It shall be unlawful for any person to remove, tamper with or otherwise disturb any fire hydrant, fire detection and alarm system, fire suppression system, or other fire appliance required by this code except for the purpose of extinguishing fire, training purposes, recharging or making necessary repairs.	10/23/2014

Facility Id HO32	Received By Name	Signature and Date
---------------------	------------------	--------------------