# 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


Certified Mail #91 7190 0005 2720 0043 7607 4-28-15 jts

## Safety Order and Notification of Penalty

**To:**
Flynn Brothers Contracting Inc
1213 Outer Loop
Louisville, KY 40232

**Inspection Site:**
Howard Ave & Clark Blvd
Clarksville, IN 47129

**Inspection Number:** 317862480
**CSHO ID:** U7851
**Optional Report No.:** 02215
**Inspection Date(s):** 2/6/2015 - 2/16/2015
**Issuance Date:** 4/28/2015

*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

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 4/28/2015. 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:** 317862480
**Inspection Date(s):** 2/6/2015 - 2/16/2015
**Issuance Date:** 4/28/2015
**CSHO ID:** U7851
**Optional Report No.:** 02215

## Safety Order and Notification of Penalty

**Company Name:** Flynn Brothers Contracting Inc
**Inspection Site:** Howard Ave & Clark Blvd, Clarksville, IN 47129

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

IC 22-8-1.1 Section 2: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were exposed to:

Job site-- On or about February 6, 2015, the employer did not prohibit personnel from riding the bucket of the excavator Caterpillar brand (Model-329E-L; #04399), a hazard which could result in serious physical harm.

Among other methods, one feasible and acceptable abatement method to correct this hazard would be to follow the safety guidelines and operating procedures published by Caterpillar on the AEM (Association of Equipment Manufactures) Safety Manual for Hydraulic Excavators, there is the following statement appears. "Never use a bucket for a work platform or personnel carrier ".

**Date By Which Violation Must Be Abated:** **5/26/2015**
**Proposed Penalty:** **$3,500.00**

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

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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 002a** Type of Violation: **Serious**

29 CFR 1926.20(b)(2): The employers safety and health program did not provide for frequent and regular inspections of the jobsite and equipment by a competent person:

Jobsite- On February 6, 2015, the employers competent person, on the site, failed to identify existing and predictable hazards and /or take the necessary measures to alleviate the hazards of falls.

**Date By Which Violation Must Be Abated:** **6/16/2015**
**Proposed Penalty:** **$3,500.00**

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

29 CFR 1926.651(k)(2): Where the competent person found evidence of a situation that could result in possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employee(s) was/were not removed from the hazardous area until the necessary precautions have been taken to ensure their safety:

Excavation-- On February 6, 2015, the competent person failed to perform the duties as required, in that he did not correct conditions, and did not prevent employees from being exposed to, or cause them to be removed from, the hazards of a cave in, in the a trench-excavation approximately 10 deep.

**Date By Which Violation Must Be Abated:** **6/16/2015**
**Proposed Penalty:** **$0.00**

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Occupational Safety and Health Administration

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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 003a** Type of Violation: **Serious**

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury:

Job site- On February 6, 2015, employees were not instructed in the recognition and avoidance of unsafe conditions applicable to their work environment such as, but not limited to trenching and excavation.

**Date By Which Violation Must Be Abated:** **6/16/2015**
**Proposed Penalty:** **$1,400.00**

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Occupational Safety and Health Administration

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

29 CFR 1926.503(a)(2): The employer did not assure that each employee, who might be exposed to falls, had been trained as necessary, by a competent person, qualified in items listed in 503(a)(2)(i) thru 503(a)(2)(viii):

Job site- On February 6, 2015, the employer had not provided such training for any employees on the job site.

**Date By Which Violation Must Be Abated:** **6/16/2015**
**Proposed Penalty:** **$0.00**

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Occupational Safety and Health Administration

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

29 CFR 1926.502(d)(15): Anchorages used for attachment of personal fall arrest equipment was not capable of supporting 5,000 pounds per employee attached:

Excavator bucket -- On or about February 6, 2015, while riding in the bucket of the excavator, caterpillar (Model number 329E-L) , the employee's personal fall arrest system was attached to the hook on the bucket, and the hook was not capable of supporting 5000 pounds.

**Date By Which Violation Must Be Abated:** **5/26/2015**
**Proposed Penalty:** **$3,500.00**

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**Safety Order 01 Item 005** Type of Violation: **Serious**

29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees:

Job site- On February 6, 2015, no ladder, ramp, or other acceptable means of egress was provided for the employees in the trench-excavation approximately 33 feet wide, 37 feet long, and 14 feet deep.

**Date By Which Violation Must Be Abated:** **5/26/2015**
**Proposed Penalty:** **$1,400.00**

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**Safety Order 01 Item 006** Type of Violation: **Serious**

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652(c):

Job site- On February 6, 2015, no cave in protection was provided for the employee in trench excavation that was approximately, 10 feet deep, 20 feet wide at the top, 25 feet long, that had near vertical sides.

**Date By Which Violation Must Be Abated:** **5/26/2015**
**Proposed Penalty:** **$1,400.00**

Jerry W. Lander
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:** Flynn Brothers Contracting Inc
**Inspection Site:** Howard Ave & Clark Blvd, Clarksville, IN 47129
**Issuance Date:** 4/28/2015

**Summary of Penalties for Inspection Number: 317862480**

| | |
|---|---|
| **Safety Order 1, Serious** | **= $14,700.00** |
| **TOTAL PENALTIES** | **= $14,700.00** |

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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.

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).

Jerry W. Lander
Director of Construction Safety

Date 4/28/15