# SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and Lock Joint Tube LLC, (hereinafter referred to as "Employer") hereby agree as follows:

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty, IOSHA Inspection No. 313197220 issued to the Employer on December 29, 2009 in the following manner.

SAFETY ORDER 01:

| | |
|---|---|
| Item 1: | Upheld with instance "d" deleted, penalty reduced to $3,500.00 |
| Item 2: | Upheld, penalty reduced to $1,575.00 |

**The TOTAL AGREED PENALTY is $5,075.00**

**In addition to the above specified amendments, the employer further agrees to send the Plant Engineer to OSHA 10 hour General Industry training by March 31, 2010. Penalty includes a 30% reduction for abatement of all outstanding citations and agreement for OSHA training.**

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 the Employer will post this Agreement for three (3) working days or until abatement is completed, whichever period is longer.

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.

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.

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

LOCK JOINT TUBE LLC

By: [signature]

Title: Mgr. H.R. & Safety

Date: 1/12/10

COMMISSIONER OF LABOR

By: [signature]

Title: Director IC

Date: 1-13-10

Indiana Department of Labor
Indiana Occupational Safety and Health Administration
402 West Washington Street
Room W195
Indianapolis, IN 46204-2751
Phone: 317/232-1979 Fax: 317/233-8509

Certified mail # 7002 0570 0003 8218 0962 12-29-09 JLO

# Safety Order and Notification of Penalty

**To:**

Lock Joint Tube LLC,
and its successors
515 W. Ireland Road
South Bend, IN 46614

**Inspection Site:**

515 W. Ireland Road
South Bend, IN 46614

**Inspection Number:** 313197220

**Inspection Date(s):** 10/13/2009 - 11/02/2009

**Issuance Date:** 12/29/2009

*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.

# NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 12/29/2009. 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.

**Safety Order and Notification of Penalty**

**Company Name:** Lock Joint Tube LLC
**Inspection Site:** 515 W. Ireland Road, South Bend, IN 46614

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Safety Order 1 Item 1 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 potential fire and/or deflagration (explosion) hazards because methods were not utilized to contain combustible dusts such as, but not limited to aluminum dust from becoming airborne and combining with an ignition source:

**a)** Mill Department - The hose connected to the box leading to the duct work for the ventilation system was a flexible synthetic type of hose. The synthetic duct potentially allows for a static charge to accumulate which could provide an ignition source for the aluminum dust, a Class II Group E combustible dust, transported through the duct.

Among other methods, one feasible and acceptable method to correct this hazard is to use duct made of non-sparking metal in accordance with Section 6.3.3.5.1 of the National Fire Protection Agency's (NFPA) 484 *Standard for Combustible Metals* 2009 Edition. Section 6.3.3.5.1 of NFPA 484 states that ducts shall be constructed of conductive material and shall be carefully fabricated and assembled with smooth interior surfaces and with internal lap joints facing the direction of air flow.

**b)** Mill Department - The mist collector used with the remetalization box for aluminum spray welding was designed for mist collection, not aluminum dust, a Class II Group E combustible dust, and did not have deflagration venting.

Among other methods, one feasible and acceptable method to correct this hazard is to use have deflagration venting designed into the dust collector in accordance with Section 6.3.5.6 of the National Fire Protection Agency's (NFPA) *Standard for Combustible Metals* (NFPA 484 - 2009 Edition). Section 6.3.5.6 of NFPA 484 states where an explosion hazard exists, dry-dust collectors shall be provided with deflagration vents.

**c)** Mill Department - The exhaust for the remetalization box was not interlocked with the power supply for the welder. The missing interlock allowed a maintenance employee to turn on the welder and the airline, without the exhaust ventilation, which resulted in a flash fire.

Among other methods, one feasible and acceptable method to correct this hazard is to interlock the system so the local exhaust is on when the welder is on in accordance with Section 6.3.4.7.1 of the National Fire Protection Agency's (NFPA) *Standard for Combustible Metals* (NFPA 484 - 2009 Edition). Section 6.3.4.7.1 of NFPA 484 states the power supply to the dust-producing equipment shall be interlocked with the airflow from the exhaust blower and the liquid-level controller of the collector so that improper functioning of the dust collection system will shut down the equipment it serves.

**d)** Mill Department - All components for the dust collection system were not electrically grounded and bonded. All the equipment is bolted to the floor and all of the duct passes through the roof of the facility, however the employer could not verify the continuity between the equipment and the duct.

Among other methods, one feasible and acceptable method to correct this hazard is to use a voltmeter to verify the continuity between the equipment and the dust collection system in accordance with Section 6.3.8.2.1 of the National Fire Protection Agency's (NFPA) *Standard for Combustible Metals* (NFPA 484 - 2009 Edition). Section 6.3.8.2.1 of NFPA 484 states all components of dust collection systems shall be electrically bonded and grounded.

**e)** Mill Department - The periodic clean-up of the remetalization box was performed by scraping with a piece of steel tube or by knocking the box over on it's side. The scraping by ferrous metal parts can allow a spark to be created, resulting in igniting the aluminum dust.

Among other methods, one feasible and acceptable method to correct this hazard is to use conductive, nonsparking scoops and soft brooms, natural fiber bristles or approved vacuum cleaning system in accordance with Section 6.4.2.2 of the National Fire Protection Agency's (NFPA) *Standard for Combustible Metals* (NFPA 484 - 2009 Edition). Section 6.4.2.2 of NFPA 484 states periodic cleanup of fugitive dusts shall be accomplished by using one of the following:

(1) Conductive, nonsparking scoops and soft brooms
(2) Brushes that have natural fiber bristles
(3) Vacuum cleaning systems designed for handling combustible metal powders in accordance with 6.4.3.

**f)** Mill Department - The class ABC fire extinguishers did not have signs stating " Not for use on aluminum powder fires". Across the aisle way from every mill operators station was a class ABC fire extinguisher. A class D fire extinguisher had been mounted onto the each of the spray welders, however the class ABC extinguisher was closer to the operator and they had not been informed which extinguisher to use.

Among other methods, one feasible and acceptable method to correct this hazard is to post a sign on the ABC fire extinguisher stating "Not for use on aluminum powder fires" in accordance with Section 6.5.2.6.2 of the National Fire Protection Agency's (NFPA) *Standard for Combustible Metals* (NFPA 484 - 2009 Edition). Section 6.5.2.6.2 of NFPA 484 states where Class A, Class B, or Class C fire hazards are in the combustible aluminum powder area, extinguishers suitable for use on such fires shall be permitted, provided they are marked "Not for Use on Aluminum Powder Fires."

**Date By Which Violation Must be Abated:** **01/26/2010**
**Proposed Penalty:** **$5,000.00**

**Indiana Department of Labor**

Occupational Safety and Health Administration

**Inspection Number:** 313197220

**Inspection Dates:** 10/13/2009 - 11/02/2009

**Issuance Date:** 12/29/2009

**Safety Order and Notification of Penalty**

**Company Name:** Lock Joint Tube LLC

**Inspection Site:** 515 W. Ireland Road, South Bend, IN 46614

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Safety Order 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.1200(h)(3)(ii): Employee training did not include the physical and health hazards of the chemicals in the work place:

Mill Department - The mill operators performed spray welding using an aluminum wire. The spray welding operation created combustible aluminum dust.

**Date By Which Violation Must be Abated:** **01/26/2010**

**Proposed Penalty:** **$5,000.00**

Robert A. Kattau
Director, Industrial Compliance

**Indiana Department of Labor**
Indiana Occupational Safety and Health Administration
402 West Washington Street
Room W195
Indianapolis, IN 46204-2751
Phone: 317/232-1979 Fax: 317/233-8509

# INVOICE/DEBT COLLECTION NOTICE

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**Company Name:** Lock Joint Tube LLC
**Inspection Site:** 515 W. Ireland Road, South Bend, IN 46614
**Issuance Date:** 12/29/2009

**Summary of Penalties for Inspection Number** 313197220

| | | |
|---|---|---|
| **Safety Order** 01, Serious | = | $10,000.00 |
| Total Proposed Penalties | | $10,000.00 |

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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 n 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).

Robert A. Kattau
Director, Industrial Compliance

12-29-9
Date

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