# SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and Shoppers World, (hereinafter referred to as "Employer") hereby agree as follows:

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty, IOSHA Inspection No. 313197295 issued to the Employer on December 22, 2009 in the following mann

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JAN 19 2010
DEPARTMENT OF LABOR
I.O.S.H.A.

SAFETY ORDER 01:

| | |
|---|---|
| Item 1: | Upheld, reduced to Serious, penalty reduced to $1,500.00 |
| Item 2a: | Deleted, penalty reduced to $0.00 |
| Item 2b: | Upheld, penalty set at $2,500.00, extend abatement date to 02/20/10 |
| Item 2c: | Upheld |

**The TOTAL AGREED PENALTY is $4,000.00**

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.

| SHOPPERS WORLD | COMMISSIONER OF LABOR |
|---|---|
| By: Howard Lyppe | By: [signature] |
| Title: Director of Store Operations | Title: Director IC |
| Date: 1/14/10 | Date: 1-19-10 |

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 0510 0003 8218 0849 12-22-09 JT

# Safety Order and Notification of Penalty

**To:**

Shoppers World,
and its successors
9 East 40th Street
C/O SW Group
New York, NY 10016

**Inspection Site:**

3919 Lafayette Road
Indianapolis, IN 46254

**Inspection Number:** 313197295

**Inspection Date(s):** 11/04/2009 - 11/19/2009

**Issuance Date:** 12/22/2009

*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.

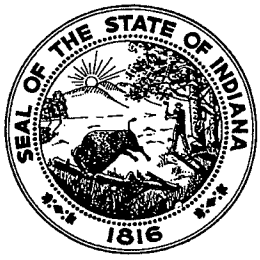
**Notification of Corrective Action** - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance 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 12/22/2009. 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.

**Indiana Department of Labor**

Occupational Safety and Health Administration

**Inspection Number:** 313197295

**Inspection Dates:** 11/04/2009 - 11/19/2009

**Issuance Date:** 12/22/2009

**Safety Order and Notification of Penalty**

**Company Name:** Shoppers World

**Inspection Site:** 3919 Lafayette Road, Indianapolis, IN 46254

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Safety Order 1 Item 1 Type of Violation: **Repeat**

29 CFR 1910.303(g)(2)(i): Live parts of electric equipment operating at 50 volts or more were not guarded against accidental contact by approved cabinets or other forms of approved enclosures, or other means listed under this provision:

Shipping/Receiving Area - Employees such as, but not limited to receiving employees used a 110 volt electric door opener control box that was not covered. This door opener control box that was used to open and close the shipping/receiving door to receive shipments. The missing cover for the box exposed employees to live electrical equipment operating above 50 volts.

Shoppers World was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent Standard 1910.303(g)(2)(i), which was contained in OSHA inspection number 312654486, citation number 1, item number 3b, issued on 06/19/2009, with respect to a workplace located at 3919 Lafayette Road, Indianapolis, IN 46254.

**Date By Which Violation Must be Abated:** **Corrected During Inspection**

**Proposed Penalty:** **$7,500.00**

**Safety Order and Notification of Penalty**

**Company Name:** Shoppers World

**Inspection Site:** 3919 Lafayette Road, Indianapolis, IN 46254

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Safety Order 1 Item 2a Type of Violation: **Repeat**

29 CFR 1910.1001(j)(2)(iii): Building and facility owners did not inform employers of employees, and employers did not inform employees who will perform housekeeping activities in areas which contain ACM and/or PACM of the presence and location of ACM and/or PACM in such areas which may be contacted during such activities:

Shoppers World Stock Rooms - Employees such as, but not limited to shipping and receiving employees and customer service employees worked in stock rooms that contained 100,000 square feet of asbestos containing material (ACM) found in the spray-on fire insulation located on the steel structural members of the ceiling. These employees performed housekeeping activities such as but not limited to sweeping of the floor with a broom and dust pan and changing of light bulbs exposing them to possible contact with ACM.

Shoppers World was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent Standard 1910.1001(j)(2)(iii), which was contained in OSHA inspection number 312654486, citation number 1, item number 4a, issued on 06/19/2009, with respect to a workplace located at 3919 Lafayette Road, Indianapolis, IN 46254.

**Date By Which Violation Must be Abated:** **01/20/2010**

**Proposed Penalty:** **$12,500.00**

**Safety Order and Notification of Penalty**

**Company Name:** Shoppers World

**Inspection Site:** 3919 Lafayette Road, Indianapolis, IN 46254

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

29 CFR 1910.1001(j)(7)(iv): The employer did not provide, at no cost to employees who performed housekeeping operations in areas which contained ACM or PACM, an asbestos awareness training course, which at a minimum contained the following elements: health effects of asbestos, locations of ACM and PACM in the building/facility recognition of ACM and PACM damage and deterioration, requirements in this standard relating to housekeeping, and proper response to fiber release episodes, to all employees who perform housekeeping work in areas where ACM and/or PACM is present. Each such employee was not trained at least once a year:

Shoppers World Stock Rooms - Employees such as, but not limited to shipping and receiving employees and customer service employees worked in stock rooms that contained 100,000 square feet of asbestos containing materials (ACM) found in the spray-on fire insulation located on the steel structural members of the ceiling. The employees performed housekeeping activities such as, but not limited to sweeping of the floor with a broom and a dust pan and changing of light bulbs exposing them to possible contact with ACM.

**Date By Which Violation Must be Abated: 01/20/2010**

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

29 CFR 1910.1001(j)(7)(v)(A): The employer did not make a copy of this standard and its appendices readily available without cost to all affected employees:

Shoppers World Stock Rooms - Employees such as, but not limited to shipping and receiving employees and customer service employees worked in stock rooms that contained 100,000 square feet of asbestos containing materials (ACM) found in the spray-on fire insulation located on the steel structural members of the ceiling. The employees performed housekeeping activities such as, but not limited to sweeping of the floor with a broom and a dust pan and changing of light bulbs exposing them to possible contact with ACM.

**Date By Which Violation Must be Abated: 01/20/2010**

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:** Shoppers World
**Inspection Site:** 3919 Lafayette Road, Indianapolis, IN 46254
**Issuance Date:** 12/22/2009

**Summary of Penalties for Inspection Number** 313197295

| | | |
|---|---|---|
| **Safety Order** 01, Repeat | = | $20,000.00 |
| **Safety Order** 01, Serious | = | $0.00 |
| Total Proposed Penalties | | $20,000.00 |

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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

12-22-09
Date

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