

SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and Service Electric of Allen County, Inc. (hereinafter referred to as "Employer") hereby agree as follows:

The Commissioner amends the Safety Order(s) and Notification(s) of Penalty, I OSHA Inspection No. 318009891 issued to the Employer on March 11, 2016 in the following manner:

SAFETY ORDER 01:

Item 1, 2, 3, and 4: Upheld and Grouped. Items 1, 2, 3, and 4 grouped.

Abatement date amended to June 1, 2016.

Interim abatement: Initial Confined Space training was already conducted by Ermco for the Employer and change task policy implemented.

Penalty is amended to \$7000 total for all four grouped violations related to permit confined spaces and confined spaces.

The AVD for all of the above grouped items is amended in the proposed citations to read as the following:

During the course of investigation, it was revealed that for a period from approximately 9/28/2016 to 10/20/16 (i.e., when the project started inside the HVAC unit to when the work inside the unit was complete) Service Electric failed to produce evidence that it properly documented the fact that the HVAC unit went from a permit required confined space to a non-permit required confined space upon instituting a lock out tag out procedures in violation of the standards 29 CFR 1910.146 (c)(1), 29 CFR 1910.146(d)(2), 29 CFR 1910.146(d)(3), and 29 CFR 1910.146(g)(1).

Item 5a, 5b and 5c: Deleted. Penalty is reduced to \$00.

Item 6: Deleted. Penalty is reduced to \$00.

Item 7: Deleted. Penalty is reduced to \$00.

In consideration for all of the above the Employer agrees to the following:

1. Employer established a pre-task checklist that includes procedures for changing tasks and agrees to provide the documentation of this policy/procedure and documentation of implementation by June 1, 2016 including sign-in sheets for training.
2. Employer agrees to conduct confined space training of all affected employees that includes procedures for communicating with the host employer regarding permit confined spaces and sign in sheets of employees that were provided the training by June 1, 2016.

3. Employer agrees to increase monitoring/auditing of employees with respect to safety and agrees to provide IOSHA with the policy/procedures and documentation of the increased audits/monitoring by June 1, 2016.

The TOTAL AGREED PENALTY is \$7000.00

The first of ten payments of \$700 will be due and payable on the 1st of June and the next nine payments are due on the 1st of each consecutive month with the last payment of \$1000 due and payable on March 1, 2017.

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

The Employer further agrees that if the AGREED PENALTY is not paid as agreed 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 IOSHA 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 IOSHA matter economically and amicably, and they shall not be used for any other purpose, except as herein stated.

SERVICE ELECTRIC OF
ALLEN COUNTY, INC.

By: 

Title: SVC. TREASURER

Date: 4/4/2016

COMMISSIONER OF LABOR

By: 

Title: Director

Date: 4/4/2016

Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington St - Room W195
Indianapolis, IN 46204
Phone: 317-232-2691 FAX: (317)233-3790



Certified mail # 91 7190 005 2720 0056 9728 3-11-16 JH

Safety Order and Notification of Penalty

To:
Service Electric of Allen County Incorporated
4015 Meyer Road
Fort Wayne, IN 46806

Inspection Number: 318009891
CSHO ID: K9073
Optional Report No.: 3215
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016

Inspection Site:
11700 SE 00 West Highway 9
Fairmount, IN 46928

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 3/11/2016. 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: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

Safety Order 01 Item 001

Type of Violation: **Serious**

29 CFR 1910.146(c)(1): The employer did not evaluate the workplace to determine if any spaces were permit-required confined spaces:

Madison-Grant United School Corp - On October 27, 2015, an employee entered the Trane Air Handling Unit to remove binding from the thermocouple which had been installed previously. The confined space contained a live electric heating element which posed a safety hazard that made the space a permit required confined space.

Date By Which Violation Must Be Abated: 4/14/2016
Proposed Penalty: \$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

Safety Order 01 Item 002

Type of Violation: **Serious**

29 CFR 1910.146(d)(2): Under the permit-required confined space program required by 29 CFR 1910.146(c)(4), the employer did not identify and evaluate the hazards of permit spaces before employees entered:

Madison-Grant United School Corp - On October 27, 2015, an employee worked inside the Trane Air Handling Unit to remove binding from the thermocouple which had been installed previously. The confined space contained a live electric heating element which posed a safety hazard that made the space a permit required confined space.

Date By Which Violation Must Be Abated: 4/14/2016
Proposed Penalty: \$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

Safety Order 01 Item 003

Type of Violation: **Serious**

29 CFR 1910.146(d)(3): Under the permit-required confined space program required by 29 CFR 1910.146(c)(4), the employer did not develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including but not limited to, the following; 29 CFR 1910.146(d)(3)(i) through 29 CFR 1910.146(d)(3)(vi):

Madison-Grant United School Corp - On October 27, 2015, the Trane Air Handling Unit permit required confined space was not rendered safe for an employee who entered to perform maintenance/repairs with exposed live electrical components.

The means, procedures, and practices necessary for safe permit space entry operations, include, but are not limited to, the following: (i) Specifying acceptable entry conditions; (ii) Providing each authorized entrant or that employee's authorized representative with the opportunity to observe any monitoring or testing of permit spaces; (iii) Isolating the permit space; (iv) Purging, inerting, flushing, or ventilating the permit space as necessary to eliminate or control atmospheric hazards; (v) Providing pedestrian, vehicle, or other barriers as necessary to protect entrants from external hazards; and (vi) Verifying that conditions in the permit space are acceptable for entry throughout the duration of an authorized entry.

Date By Which Violation Must Be Abated: 4/14/2016
Proposed Penalty: \$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
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Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

Safety Order 01 Item 004

Type of Violation: **Serious**

29 CFR 1910.146(g)(1): The employer did not provide training so that all employees whose work was regulated by 29 CFR 1910.146 (permit required confined spaces) acquired the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under 29 CFR 1910.146:

Madison-Grant United School Corp - On October 27, 2015, an employee who entered the Trane Air Handling Unit did not recognize that the confined space was a permit required confined space due to exposed live electrical components.

Date By Which Violation Must Be Abated: 4/14/2016
Proposed Penalty: \$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

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 005a Type of Violation: **Serious**

29 CFR 1910.332(b)(3)(i): Qualified persons (i.e., those permitted to work on or near exposed energized parts) shall, at a minimum, be trained in and familiar with the skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment:

Madison-Grant United School Corp - On October 27, 2015, an employee entered the Trane Air Handling Unit without taking steps to ensure protection from the exposed live electrical parts in the permit required confined space.

Date By Which Violation Must Be Abated: **4/14/2016**
Proposed Penalty: **\$3,500.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

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

29 CFR 1910.333(c)(2): Only qualified persons may work on electric circuit parts or equipment that have not been deenergized under the procedures of paragraph (b) of this section. Such persons shall be capable of working safely on energized circuits and shall be familiar with the proper use of special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools:

Madison-Grant United School Corp - On October 27, 2015, an employee entered the Trane Air Handling Unit without taking steps such as, but not limited to; deenergization, personal protective equipment, and/or shields, barriers, and insulation, to ensure protection from the exposed live electrical parts in the permit required confined space.

Date By Which Violation Must Be Abated: **4/14/2016**
Proposed Penalty: **\$0.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

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

29 CFR 1910.333(c)(5): When an employee worked in a confined or enclosed space (such as a manhole or vault) that contained exposed energized parts, the employer did not provide and/or the employee did not use protective shields, protective barriers, or insulating materials as necessary to avoid inadvertent contact with these parts:

Madison-Grant United School Corp - On October 27, 2015, an employee entered the Trane Air Handling Unit without taking steps such as, but not limited to; deenergization, personal protective equipment, and/or shields, barriers, and insulation, to ensure protection from the exposed live electrical parts in the permit required confined space.

Date By Which Violation Must Be Abated: **4/14/2016**
Proposed Penalty: **\$0.00**

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

Safety Order 01 Item 006

Type of Violation: **Serious**

29 CFR 1910.333(a)(1): Live parts to which an employee may be exposed were not deenergized before the employee works on or near them, unless the employer can demonstrate that deenergizing introduces additional or increased hazards or is infeasible due to equipment design or operational limitations:

Madison-Grant United School Corp - On October 27, 2015, an employee entered the Trane Air Handling Unit to remove binding from the thermocouple which had been installed previously. The electrical disconnect that provided power to the air handling unit was not turned off and locked in the off position prior to entry thus exposing the employee to live electrical parts.

Date By Which Violation Must Be Abated: 4/14/2016
Proposed Penalty: \$3,500.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 318009891
Inspection Date(s): 10/28/2015 - 1/29/2016
Issuance Date: 3/11/2016
CSHO ID: K9073
Optional Report No.: 3215

Safety Order and Notification of Penalty

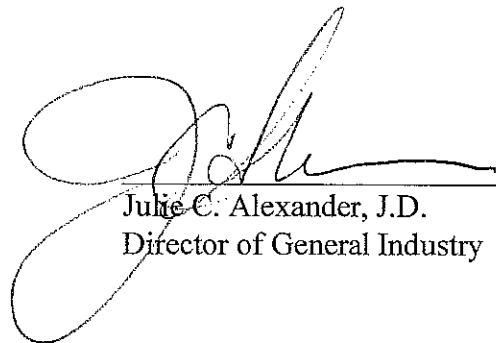
Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928

Safety Order 01 Item 007 Type of Violation: **Serious**

29 CFR 1910.335(a)(1)(i): Employees working in areas where there were potential electrical hazards were not provided with electrical protective equipment that was appropriate for the specific parts of the body that needed to be protected and for the work being performed:

Madison-Grant United School Corp - On October 27, 2015, an employee who worked inside the Trane Air Handling Unit while exposed to live electrical components did not wear adequate personal protective equipment.

Date By Which Violation Must Be Abated: **4/14/2016**
Proposed Penalty: **\$3,500.00**



Julie C. Alexander, J.D.
Director of General Industry

Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington St - Room W195
Indianapolis, IN 46204
Phone: (317)232-2691 FAX: (317)233-3790



INVOICE/DEBT COLLECTION NOTICE

Company Name: Service Electric of Allen County Incorporated
Inspection Site: 11700 SE 00 West Highway 9, Fairmount, IN 46928
Issuance Date: 3/11/2016

Summary of Penalties for Inspection Number: 318009891

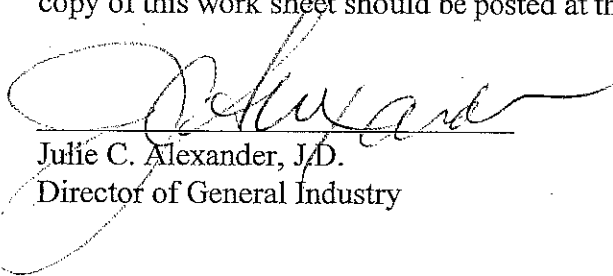
Safety Order 1, Serious = \$24,500.00
TOTAL PENALTIES = \$24,500.00

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).


Julie C. Alexander, J.D.
Director of General Industry

3/10/16
Date