

## SETTLEMENT AGREEMENT

The Commissioner of Labor (hereinafter referred to as "Commissioner") and Vertellus Specialties Inc. (hereinafter referred to as "Employer") hereby agree for purposes of settlement to the following.

### BACKGROUND

- A. On July 29, 2014, the Indiana Department of Labor issued Safety Order and Notification of Penalty, IOSHA Inspection No. 317403897 with respect to Inspection Date(s) 1/31/2014 – 7/21/2014, Inspection Site 1500 South Tibbs Avenue, Indianapolis, IN 46241 to Vertellus Specialties Inc.
- B. On August 12, 2014, representatives of IOSHA and Employer met for informal conference.
- C. On August 19, 2014, Employer timely submitted to IOSHA a Notice of Contest to petition for review of the allegations and proposed penalty of the Safety Order and Notification of Penalty.
- D. On August 26, 2014, the petition for review was granted by IOSHA and the matter certified to the Indiana Board of Safety Review.
- E. The parties subsequently have conferred and agree to the following terms for settlement purposes only.

### AGREEMENT

1.0 The Commissioner hereby amends the Safety Order(s) and Notification(s) of Penalty, IOSHA Inspection No. 317403897 issued to the Employer on July 29, 2014 in the following manner:

#### SAFETY ORDER 01:

- |         |   |
|---------|---|
| Item 1: | Unchanged.  |
| Item 2: | Unchanged.  |
| Item 3: | Unchanged but Grouped with Item 4. Proposed penalty remains \$4500. |
| Item 4: | Grouped with Item 3 and the proposed penalty is deleted.            |

**The TOTAL PROPOSED PENALTY is \$13,500.00**

2.0 For purposes of settlement only, the Employer concurs with the amendments stated above and agrees to withdraw its Notice of Contest of the Safety Order and Notification of Penalty, as amended herein.

3.0 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.

4.0 Within fifteen (15) working days from the Employer's execution of this Agreement, the Employer shall pay \$13,500.00 (the "Agreed Penalty") to "Indiana DOL/IOSHA" forwarded to Indiana Department of Labor, Indiana Occupational Safety and Health Administration, 402 West Washington St - Room W195, Indianapolis, IN 46204, indicating on the remittance IOSHA Inspection No. 317403897. 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 proposed against the Employer in the Safety Order and Notification of Penalty, which is the subject of this Agreement is due and payable immediately.

5.0 The Safety Order and Notification of Penalty is, and shall be, herein a final and enforceable Order of the Board of Safety Review.

6.0 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 any violation of the Indiana Occupational Safety and Health Act, the standards or rules adopted thereunder, or the allegations or statements contained within the Safety Order and Notification 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.

VERTILLUS SPECIALTIES INC.	COMMISSIONER OF LABOR
By: <u>Thomas E. McSwain L</u>	By: <u>[Signature]</u>
Title: <u>Corporate Counsel</u>	Title: <u>Director</u>
Date: <u>January 14, 2015</u>	Date: <u>1/16/15</u>

# 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)233-8509



*certified mail # 917190 0005 2720 0037 2847 7-29-14 jio*

## Safety Order and Notification of Penalty

**To:**

Vertellus Specialties Inc  
1500 South Tibbs Avenue  
Indianapolis, IN 46241

Inspection Number: 317403897  
CSHO ID: E2244  
Optional Report No.: 0007-14  
Inspection Date(s): 1/31/2014 - 7/21/2014  
Issuance Date: 7/29/2014

**Inspection Site:**

1500 South Tibbs Avenue  
Indianapolis, IN 46241

*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 7/29/2014. 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:** 317403897  
**Inspection Date(s):** 1/31/2014 - 7/21/2014  
**Issuance Date:** 7/29/2014  
**CSHO ID:** E2244  
**Optional Report No.:** 0007-14

**Safety Order and Notification of Penalty**

**Company Name:** Vertellus Specialties Inc  
**Inspection Site:** 1500 South Tibbs Avenue, Indianapolis, IN 46241

**Safety Order 01 Item 001**

Type of Violation: **Serious**

✓ 3/6/15

29 CFR 1910.119(e)(3)(i): The process hazard analysis did not address the hazards of the process:

Plant 27 - The process hazard analysis for Tank 212 [Node (49) Tank MT--620.212, including pump PP-620.XXXC. to FV-102.4 (01-008) dated 5/24/2004] did not identify hazards such as, but not limited to, those associated with a blocked conservation vent when pressurized steam was used to open frozen/blocked transfer piping during cold weather operations.

**Date By Which Violation Must Be Abated:** 8/29/2014  
**Proposed Penalty:** \$4,500.00



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

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**Safety Order and Notification of Penalty**

**Company Name:** Vertellus Specialties Inc  
**Inspection Site:** 1500 South Tibbs Avenue, Indianapolis, IN 46241

**Safety Order 01 Item 002**

Type of Violation: **Serious**

✓ 3/6/15

29 CFR 1910.119(f)(1)(i)[C]: The employer did not develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and did not address the steps for temporary operations:

Plant 27 - No operating procedures were developed for processes such as, but not limited to, pressurized steaming operations conducted during cold weather to open frozen/blocked piping as occurred on the Tank 212 piping on January 29, 2014, which led to an overpressurization of the tank and structural failure that created a potential benzene release to the atmosphere.

**Date By Which Violation Must Be Abated:** 8/29/2014  
**Proposed Penalty:** \$4,500.00

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

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**Safety Order and Notification of Penalty**

Company Name: Vertellus Specialties Inc  
Inspection Site: 1500 South Tibbs Avenue, Indianapolis, IN 46241

**Safety Order 01 Item 003**

Type of Violation: **Serious**

29 CFR 1910.119(j)(4)(i): Inspections and tests were not performed on process equipment:

Instance A

Plant 27 - Tanks such as, but not limited to, 212 were covered under the PSM standard and no inspection and tests were conducted on the process equipment as outlined in the Mechanical Integrity Overview. Failure to complete routine inspections and tests could allow for failure of the tank resulting in hazards such as, but not limited to, employee exposure to toxic chemicals such as, but not limited to, Benzene.

✓ 3/6/15

Instance B

Plant 27 - Conservation vents such as, but not limited to the vent on tank 212 were covered under the PSM standard and no inspection and tests were conducted on the process equipment as outlined in the Mechanical Integrity Overview. Failure to complete routine inspections and tests could allow for failure of the vent resulting in hazards such as, but not limited to, employee exposure to toxic chemicals such as, but not limited to Benzene.

✓ 3/6/15

**Date By Which Violation Must Be Abated:** 8/29/2014  
**Proposed Penalty:** \$4,500.00

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

**Inspection Number:** 317403897  
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**Safety Order and Notification of Penalty**

**Company Name:** Vertellus Specialties Inc  
**Inspection Site:** 1500 South Tibbs Avenue, Indianapolis, IN 46241

**Safety Order 01 Item 004**

Type of Violation: **Serious**

✓ 3/6/15

29 CFR 1910.119(j)(4)(iv): The employer did not document each inspection and test that had been performed on process equipment. The documentation did not identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test:

Instance A

Plant 27 - Tanks such as, but not limited to, 212 were covered under the PSM standard and did not have documentation that inspections and tests on the process equipment had been completed as outlined in the Mechanical Integrity Overview. Failure to document that inspections had been completed per the schedule stated in the Mechanical Integrity Overview increases the likelihood of the inspection and tests not being completed leading to hazards such as, but not limited to, employee exposure to toxic chemicals such as, but not limited to Benzene.

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

**Inspection Number:** 317403897  
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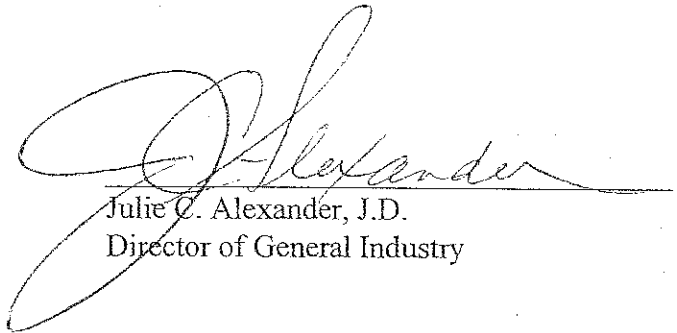
**Safety Order and Notification of Penalty**

**Company Name:** Vertellus Specialties Inc  
**Inspection Site:** 1500 South Tibbs Avenue, Indianapolis, IN 46241

*3/6/15*

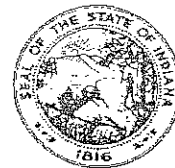
Instance B - Conservations vents such as, but not limited to, the conservation vent on Tank 212, covered under the PSM standards, did not have documentation that inspections had been completed as outlined in the Mechanical Integrity Overview. Failure to document that inspections had been completed per the schedule stated in the Mechanical Integrity Overview increased the likelihood of the inspections and testing not being completed, leading to hazards such as, but not limited to, employee exposure to toxic chemicals such as, but not limited to Benzene.

**Date By Which Violation Must Be Abated:** 8/29/2014  
**Proposed Penalty:** \$4,500.00

  
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)233-8509



## INVOICE/DEBT COLLECTION NOTICE

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**Company Name:** Vertellus Specialties Inc  
**Inspection Site:** 1500 South Tibbs Avenue, Indianapolis, IN 46241  
**Issuance Date:** 7/29/2014

**Summary of Penalties for Inspection Number:** 317403897

Safety Order 1, Serious	= \$18,000.00
<b>TOTAL PENALTIES</b>	<b>= \$18,000.00</b>

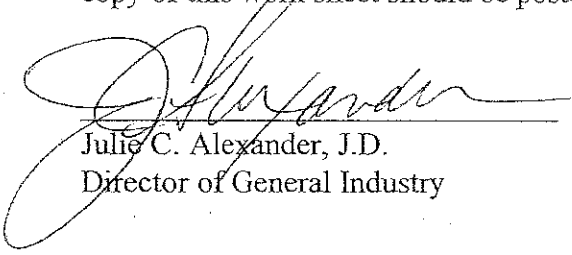
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Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Make your check or money order payable to: "Indiana DOL/IOSHA". Please indicate IOSHA's Inspection Number (indicated above) on the remittance.

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).

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

Date 7/29/14