

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW

F I L E D

JUL 14 2011

Indiana Board of
Safety Review

IN THE MATTER OF THE)
COMMISSIONER OF LABOR,)

Complainant,)

v.)

VILLAGE PANTRY,)

Respondent.)


CASE DOCKET NO. 10-007

ORDER

The parties to the above-referenced proceeding, through their duly authorized representatives, have filed with the Board their Agreed Entry. The Board, being duly advised, now accepts the Respondent's withdrawal of its Notice of Contest, and adopts the Safety Orders and penalty issued by the Commissioner of Labor, as modified by the Agreed Entry, as its final order in this matter.

IT IS ORDERED that the Respondent's withdrawal of its Notice of Contest is accepted and the Safety Orders and penalty issued by the Commissioner of Labor, as modified by the Agreed Entry, is adopted as a final order.

Dated: 14 July 2011



Danny Deighton, Chairman

Copies to:

Julie C. Alexander
Deputy Attorney General
Department of Labor
402 W. Washington St., Rm. W195
Indianapolis, IN 46204

Robert F. Wagner
Robert R. Foos, Jr.
Lewis Wagner LLP
501 Indiana Avenue, Suite 200
Indianapolis, IN 46202-6150

STATE OF INDIANA)
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COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW
CASE DOCKET NO. 10-007

IN THE MATTER OF THE)
COMMISSIONER OF LABOR,)
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Complainant,)
v.)
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VILLAGE PANTRY, LLP,)
AND ITS SUCCESSORS,)
)
Respondent.)

F I L E D

JUN 09 2011

Indiana Board of
Safety Review

AGREED ENTRY

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor and **VILLAGE PANTRY, LLP**, through their duly authorized representatives, being desirous of entering into this Agreed Entry prior to hearing do hereby stipulate and agree as follows:

PART I.

1. From November 24, 2009, through March 9, 2009, authorized employee(s) of the Indiana Department of Labor conducted an inspection at the Respondent's place of employment, at the 1402 South Meridian Street, Indianapolis, Indiana 46225.

2. On March 9, 2010, the Commissioner of Labor issued Safety Order No. 01 and No. 02 (Indiana Department of Labor Inspection No. 313904864) alleging that **VILLAGE PANTRY, LLP**, had violated the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*).

3. On or about March 30, 2010, Respondent duly and timely petitioned for review of Safety Order No. 01 and 02 (Safety Order No. 01 and 02 attached hereto as Exhibit A is incorporated herein).

PART II.

4. The Petitioner for review Safety Orders are No. 01 consisting of Item No.1 including subparts, and Safety Order No.2 consisting of Item No. 1 including subparts.

5. Safety Order No. 1, Item No. 2 alleges a "Knowing" violation of IC 22-8-1.1 Section 2 and assesses a total penalty of Sixty Three Thousand Dollars (\$63,000.00)

6. Safety Order No. 2, Item No. 1 alleges a "Nonserious" violation of 29 CFR 1904.39(a) and assesses a total penalty of Four Thousand Five Hundred Dollars (\$4,500.00).

7. The total penalty for all violations and all subparts thereunder for Safety Order No. 01 and 02 is Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00).

PART III.

8. Complainant amends Safety Order No. 1, Item No. 1 from a "Knowing" Violation to a "Serious" violation and the penalty is reduced from Sixty Three Thousand Dollars (\$63,000.00) to Seven Thousand Dollars (\$7,000.00).

9. Complainant hereby amends Safety Order No. 2, Item No. 1 by reducing the penalty from Four Thousand Five Hundred Dollars (\$4,500.00) to Zero Dollars (\$0.00).

10. Respondent, Village Pantry, agrees to reinvigorate their safety campaign on a statewide basis, including:

a. Identifying the stores most at risk for violent episodes and starting with those stores most at risk;

Village Pantry has since identified 17 of the 134 Indiana stores which meet this criterion;

b. Perform a threat assessment on each store, starting with the 17 most at risk stores;

c. Village Pantry has instituted Appendix A, Sample Checklist 1 of the OSHA Recommendations for Workplace Violence Prevention Programs in Late Night Retail Establishments to use as a threat assessment; and

d. Take corrective action identified from the threat assessments on a store-by-store basis beginning with those stores identified as most at risk.

11. Village Pantry hereby certifies that it has already taken the following corrective actions:

- a. Replacing older video surveillance equipment with new digital equipment which can be accessed remotely (completed in all 17 of the identified “at risk” stores);
- b. Installing pass through devices and/or bullet resistant barriers, where the store footprint will allow, in the most at risk stores (completed in 5 of the 17 most at risk stores);
- c. Installing barriers at the front counter and deli areas of most at risk stores (completed in 8 out of 17 of the identified “at risk” stores);
- d. Revising the manner in which statistics are kept with regard to robberies, and keep additional information to further help in tracking potential at risk stores;
- e. Revising the manner in which cigarette displays are structured in stores where the clerk is required to have his/her back to the parking lot while waiting on customers (Respondent has identified three (3) of the seventeen (17) “at risk” stores where this abatement is not feasible); and
- f. Compilation and distribution of a completely new safety manual.

12. Village Pantry will report quarterly their progress towards items a through d in paragraph 10 above for a period of three (3) years. Village Pantry agrees to submit quarterly reports of capital expenditures on the safety related items, as outlined in paragraphs 11(a) through (f) above, in the seventeen (17) identified “at risk” stores using IOSHA’s Standard Abatement Form. The first abatement report will be filed on or before June 1, 2011 and will commence quarterly through June 1, 2014.

13. Pursuant to Administrative Rule 615 IAC 1-2-11(f) and 29 CFR 1903.14a(a) through 29 CFR 1903.14a(d), which are incorporated by reference in Administrative Rule 610 IAC 9-2-8, Village Pantry may petition the Area Director (Jeffrey Carter or his successor) for modification of abatement, or extensions of time to complete the abatement items in paragraphs ten (10) and/or eleven (11), including all subparts, above by proving that Village Pantry has made a good faith effort to comply with the abatement requirement and that abatement has not

been, or cannot be, completed because of factors beyond Village Pantry's control. Any appeal of the Area Director's denial of a modification of abatement or extension of time to complete abatement must be made to the Board of Safety Review commensurate with the Administrative Rules.

14. The AGREED total penalty for all violations and all subparts thereunder subject to this Agreed Entry is Seven Thousand Dollars (\$7,000.00).

15. It is understood and agreed by the Respondent and Complainant that this Agreed Entry and attachments will constitute a final, enforceable IOSHA Safety Order(s) and penalties for the purposes of the IOSHA Act. It is further understood and agreed by the Respondent and Complainant that Respondent will report this IOSHA Safety Order as a "serious" (and not a "knowing") violation on IOSHA 300 logs; and that Complainant will also adjust internal documents to reflect a "serious" (and not a "knowing") violation, and that any future IOSHA investigation, Safety Order and/or penalty will reflect the Safety Order and penalties covered by this agreement as "serious" (and not a "knowing") violation for the purposes of good faith discounts on penalties and all other internal and external applications.

16. Respondent confirms Complainant's right to reinspect store #519 (1402 South Meridian Street, Indianapolis, Indiana), in accordance with the Act and to verify abatement of the alleged violations.

17. Respondent hereby withdraws its petition for review previously filed in this matter.

PART IV.

18. Nothing contained in this agreement shall be construed to affect the Commissioner's interpretation of the Indiana Occupational Safety and Health Act or any

standard or regulation enforced pursuant thereto or the applicable classification thereof.

19. Except for these proceedings, and matters arising out of these proceedings and any other subsequent IOSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by the Respondent shall be deemed an admission. 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.

20. The invalidity or unenforceability of any section, subsection, clause or provision of this Agreed Entry does not affect the remaining sections, subsections, clauses, or provisions of this Agreed Entry.

21. Respondent, upon full execution of this Agreed Entry, will post this Agreed Entry at store #519 (1402 South Meridian Street, Indianapolis, Indiana) for three (3) working days or until abatement is completed, whichever period is longer, pursuant to Board of Safety Review Rules of Procedure, 615 IAC 1-2-18(b)(3).

22. Respondent must institute the safety related items contained in paragraph 11(a) through (f) in the 17 identified "at risk" stores within two (2) years from the date of this agreement. Respondent must also institute the safety related items contained in paragraph 10(a) through (d) in all 134 stores statewide within three (3) years from the date of this agreement, unless an extension of time is requested and granted under paragraph thirteen (13); or a petition for modification for abatement has been requested and granted under paragraph Thirteen (13) of this Agreed Entry.

AGREED this 7th day of June, 2011.

VILLAGE PANTRY, LLP

By: Fred Wine / J.P.H.

Title: Director of Human Resources

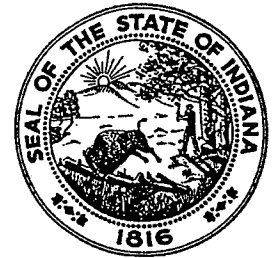
By: Robert R. Foos, Jr.
Robert R. Foos, Jr.
Counsel for Respondent

COMMISSIONER OF LABOR

By: Lori Torres
~~Jeffrey Carter~~ Lori Torres
Deputy Commissioner
~~IOSHA~~ Ind. Dept. of Labor

By: Julie C. Alexander
Julie C. Alexander
Deputy Attorney General

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 # 7003 101000035730 6565 3-9-10 jao

Safety Order and Notification of Penalty

To:
Village Pantry,
and its successors
6814 Hillside Court
Indianapolis, IN 46250-2001

Inspection Number: 313904864
Inspection Date(s): 11/24/2009 -
Issuance Date: 03/09/2010

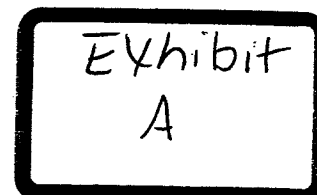
Inspection Site:
1402 South Meridian Street
Indianapolis, IN 46225

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 03/09/2010. 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: 313904864
Inspection Dates: 11/24/2009 -
Issuance Date: 03/09/2010



Safety Order and Notification of Penalty

Company Name: Village Pantry
Inspection Site: 1402 South Meridan Street, Indianapolis, IN 46225

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

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 from injuries such as blunt force and penetrating trauma.

Village Pantry- 1402 South Meridian Street- Employee's had been involved in over 32 armed / strong arm robberies since calendar year 2000. Employee's were exposed to hazards including, but not limited to robberies with weapons, threats of violence and assaults. In the early morning of 11/21/09 at approximately 5:00 AM an employee was fatally shot.

Among other methods, a feasible abatement method to correct this hazard is: Development and implementation of a Workplace Violence Prevention Program that includes a work site risk/hazard analysis, management commitment with employee involvement, hazard prevention through engineering controls, employee training, record-keeping and program evaluations.

Date By Which Violation Must be Abated: **04/05/2010**
Proposed Penalty: **\$63,000.00**

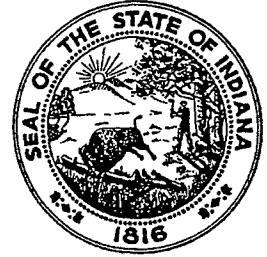
Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 313904864

Inspection Dates: 11/24/2009 -

Issuance Date: 03/09/2010



Safety Order and Notification of Penalty

Company Name: Village Pantry

Inspection Site: 1402 South Meridan Street, Indianapolis, IN 46225

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

29 CFR 1904.39(a): The employer failed to report within eight(8) hours after the death of an employee from a work-related incident or the inpatient hospitalization of three (3) or more employees as a result of a work-related incident. The employer must orally report the fatality or multiple hospitalization by telephone to the Area Office of the Occupational Safety and Health Administration(OSHA) :

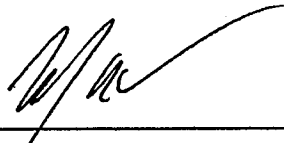
Village Pantry- On November 21,2009 the employer failed to report the work-related death of a clerk to the Indiana Occupational Safety and Health Administration (IOSHA) .

Date By Which Violation Must be Abated:

04/05/2010

Proposed Penalty:

\$4,500.00



Jeffrey S. Carter
Deputy Commissioner of Labor
Indiana Department of Labor / IOSHA

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

Company Name: Village Pantry
Inspection Site: 1402 South Meridan Street, Indianapolis, IN 46225
Issuance Date: 03/09/2010

Summary of Penalties for Inspection Number 313904864

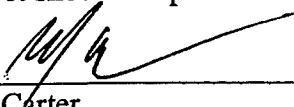
Safety Order 01, Knowing	=	\$63,000.00
Safety Order 02, Nonserious	=	\$4,500.00
Total Proposed Penalties		\$67,500.00

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).



Jeffrey S. Carter
Deputy Commissioner of Labor
Indiana Department of Labor / IOSHA



Date