

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE INDIANA OFFICE OF  
ADMINISTRATIVE LAW PROCEEDINGS,  
SUBJECT TO THE ULTIMATE  
AUTHORITY OF THE IOSHA BOARD OF  
SAFETY REVIEW

IN THE MATTER OF: )  
 )  
COMMISSIONER OF LABOR, )  
 )  
Complainant, )  
 )  
v. )  
 )  
LAND CONSTRUCTION CORP. )  
AND ITS SUCCESSORS, )  
 )  
Respondent. )

OALP CASE NO. DOL-\_\_\_\_\_-\_\_\_\_\_  
BSR DOCKET NO. 20-022

RECEIVED

NOV 16 2020

INDIANA DEPT OF LABOR  
I.O.S.H.A.

AGREED ENTRY

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor (hereinafter "Complainant") and Land Construction Corp. (hereinafter "Respondent"), through their duly authorized representatives, desiring to enter into this Agreed Entry as final settlement of this matter, do hereby stipulate and agree as follows:

PART I.

1. On March 17, 2020, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent's worksite located at Huffman St. and Franklin St., Fort Wayne, Indiana 46808.
2. On September 9, 2020, Complainant issued a Safety Order and Notification of Penalty (hereinafter "Safety Order") resulting from Indiana Department of Labor Inspection No. 318121605 and alleging that Respondent had violated the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*) or the standards or rules thereunder. The Safety Order is attached hereto as Exhibit A and is incorporated herein.

3. On or about October 2, 2020, Respondent duly and timely petitioned for review of the Safety Order.

PART II.

4. The Safety Order consists of Safety Order 1, Item Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

5. Safety Order 1, Item 1 alleges a “Serious” violation of 29 CFR 1926.100(a) and assesses a penalty of Four Thousand Two Hundred Dollars (\$4,200).

6. Safety Order 1, Item 2 alleges a “Serious” violation of 29 CFR 1926.651(b)(4) and assesses a penalty of Seven Thousand Dollars (\$7,000).

7. Safety Order 1, Item 3 alleges a “Serious” violation of 29 CFR 1926.651(c)(2) and assesses a penalty of Seven Thousand Dollars (\$7,000).

8. Safety Order 1, Item 4 alleges a “Serious” violation of 29 CFR 1926.651(h)(1) and assesses a penalty of Seven Thousand Dollars (\$7,000).

9. Safety Order 1, Item 5 alleges a “Serious” violation of 29 CFR 1926.651(j)(2) and assesses a penalty of Seven Thousand Dollars (\$7,000).

10. Safety Order 1, Item 6 alleges a “Serious” violation of 29 CFR 1926.651(k)(2) and assesses a penalty of Seven Thousand Dollars (\$7,000).

11. Safety Order 1, Item 7 alleges a “Willful” violation of 29 CFR 1926.652(a)(1) and assesses a penalty of One Hundred Thirty-Two Thousand Five Hundred Ninety-Eight Dollars (\$132,598).

12. Safety Order 1, Item 8 alleges a “Serious” violation of 29 CFR 1926.652(d) and assesses a penalty of Four Thousand Two Hundred Dollars (\$4,200).

13. Safety Order 1, Item 9 alleges a “Serious” violation of 29 CFR 1926.652(e)(1)(i) and

assesses a penalty of Four Thousand Two Hundred Dollars (\$4,200).

14. Safety Order 1, Item 10 alleges a “Serious” violation of 29 CFR 1926.652(g)(1)(ii) and assesses a penalty of Four Thousand Two Hundred Dollars (\$4,200).

15. Safety Order 1, Item 11 alleges a “Serious” violation of 29 CFR 1926.652(g)(1)(iii) and assesses a penalty of Seven Thousand Dollars (\$7,000).

16. The total assessed penalty for Safety Order 1 is One Hundred Ninety-One Thousand Three Hundred Ninety-Eight Dollars (\$191,398).

### PART III.

17. The Safety Order is hereby amended as follows.

18. Safety Order 1, Item 1 is deleted in its entirety.

19. Safety Order 1, Item 2 is deleted in its entirety.

20. Safety Order 1, Item 3 is upheld as cited, but the penalty is reduced to Three Thousand Five Hundred Dollars (\$3,500).

21. Safety Order 1, Item 4 is deleted in its entirety.

22. Safety Order 1, Item 5 is deleted in its entirety.

23. Safety Order 1, Item 6 is upheld as cited, but the penalty is reduced to Two Thousand One Hundred Dollars (\$2,100).

24. Safety Order 1, Item 7 is re-classified as a “Repeat” violation of 29 CFR 1926.652(a)(1), and the penalty is reduced to Twenty-Five Thousand Dollars (\$25,000).

25. Safety Order 1, Item 8 is upheld as cited, but the penalty is reduced to Two Thousand One Hundred Dollars (\$2,100).

26. Safety Order 1, Item 9 is upheld as cited, but the penalty is reduced to Two Thousand One Hundred Dollars (\$2,100).

27. Safety Order 1, Item 10 is deleted in its entirety.

28. Safety Order 1, Item 11 is upheld as cited, but the penalty is reduced to Two Thousand One Hundred Dollars (\$2,100).

29. The AGREED total penalty for all violations and all subparts thereunder, subject to this Agreed Entry, is Thirty-Six Thousand Nine Hundred Dollars (\$36,900).

30. Respondent further agrees to the following enhanced abatement:

a. Beginning seven (7) days after this Agreed Entry is filed with OALP, Respondent shall maintain a photolog and daily written Jobsite Hazard Analysis every day for six (6) months including the following:

i. Collect and retain photographs of all Excavation Protection Systems in use by employees when working near excavation hazards.

ii. Any day that there will not be an employee working near excavation hazards, record type of work being performed and justification why Excavation Protection Systems are not necessary.

iii. IOSHA may randomly request information during this timeframe.

b. Respondent shall work with third-party safety consultant for a comprehensive safety consultation as outlined in the action plan provided by Rukco during settlement meeting on 10/19/2020. Rukco will share reports from Physical Site Audits of active worksites with IOSHA and site audits are to be performed a minimum of twice a month for six months.

c. Within sixty (60) days of filing this Agreed Entry with OALP, Respondent shall work with a qualified third-party trainer to provide training for all employees in the following areas:

- Trench and Excavation Safety,
- Confined Space,
- Heavy Machinery, and
- Road and Traffic Management.

Within seven (7) days after this training is complete, Respondent shall send IOSHA a copy of the class sign-in log and agenda for each subject area.

d. Abatement of Safety Order 1, Item 6 shall be extended for sixty (60) days from the filing of this Agreed Entry with OALP to allow completion of the training required in subsection (c) herein above.

31. It is understood and agreed by the Respondent and Complainant that this Agreed Entry and attachments will constitute a final, enforceable OSHA Safety Order(s) and penalties for the purposes of the Indiana Occupational Safety and Health Act (“Act”).

32. Respondent confirms Complainant’s right to re-inspect its workplaces, in accordance with the Act, and to verify abatement of the alleged violations.

33. If not already identified in the Safety Order and Notification of Penalty as completed during the inspection, all abatement, including any enhanced abatement identified and agreed upon herein, must still be completed in a timely manner and certified to IOSHA by completing a Letter of Abatement, State Form 44425, and sending the form, along with any supporting documentation and photographs, to IOSHA by any of the means listed in the box in the upper right portion of the form.

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

PART IV.

35. Nothing contained in this Agreed Entry shall be construed to affect Complainant’s

interpretation of the Act or any standard or regulation enforced pursuant thereto or the applicable classification thereof.

36. 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 the Respondent shall be deemed an admission by Respondent 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.

37. 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.

38. Respondent, upon full execution of this Agreed Entry, will post this Agreed Entry 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)(C).

AGREED this 11<sup>th</sup> day of November, 2020.

LAND CONSTRUCTION CORP.

By: \_\_\_\_\_

Printed: Aaron S. Lybarger

Title: President

COMMISSIONER OF LABOR

By: \_\_\_\_\_

Jameson Berry,  
Director of Construction Safety,  
IOSHA

Approved as to Form:

By: \_\_\_\_\_

J. Anthony Hardman,  
Counsel for Complainant

# Indiana Department of Labor

Indiana Occupational Safety and Health Administration  
402 West Washington St - Room W195  
Indianapolis, IN 46204  
Phone: (317)232-1979 FAX: (317)233-3790



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## Safety Order and Notification of Penalty

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**To:**  
Land Construction Corp  
and its successors  
11808 SR 205 East / PO Box 191  
Laotto, IN 46763

**Inspection Number:** 318121605  
**CSHO ID:** X4033  
**Optional Report No.:** 02820  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020

**Inspection Site:**  
Huffman St & Franklin St  
Fort Wayne, IN 46808

*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.*

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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 9/9/2020. 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:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
**Optional Report No.:** 02820

**Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 001**                      Type of Violation: **Serious**

29 CFR 1926.100(a): Employees working in areas where there was a possible danger of head injury from impact, or falling or flying objects, or from electrical shock and burns, were not protected by protective helmets:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, employees working in and around trenches and in other areas where the hazard of flying and falling objects existed were not wearing hard hats.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$4,200.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
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**Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 002**                      Type of Violation: **Serious**

29 CFR 1926.651(b)(4): While the excavation was opened, underground installations were not protected, supported or removed as necessary to safeguard employees:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, a 6 inch water main, in a trench/excavation, approximately 57 feet 10 inches long, 17 feet 4 inches wide, 24 feet deep, was not protected, supported or removed to safeguard employees.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$7,000.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
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### **Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 003**                      Type of Violation: **Serious**

29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, no ladder, ramp, or other acceptable means of egress was provided for employees in the trench/excavation that was approximately 57 feet 10 inches long, 17 feet 4 inches wide, 24 feet deep.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$7,000.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
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**Optional Report No.:** 02820

### **Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 004**                      Type of Violation: **Serious**

29 CFR 1926.651(h)(1): Employees were working in excavations in which there was accumulated water, or excavations in which water was accumulating, and adequate precautions had not been taken to protect employees against the hazards posed by water accumulation:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, 1 employee is exposed to water accumulating in a trench, no adequate precautions to control or remove the water accumulating in the trench, approximately 57' 10" long X 17' 4" wide X 24' deep.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$7,000.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
**Optional Report No.:** 02820

**Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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

29 CFR 1926.651(j)(2): Protection was not provided by placing and keeping excavated or other materials or equipment at least 2 feet (.61m) from the edge of excavations, or by the use of retaining devices that were sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, the employer did not ensure that other materials were placed at least 2 feet from the edge of the trench/excavation.

|  |                                    |
|--|------------------------------------|
| <b>Date By Which Violation Must Be Abated:</b> | <b>Corrected During Inspection</b> |
| <b>Proposed Penalty:</b>                       | <b>\$7,000.00</b>                  |

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
**Optional Report No.:** 02820

### **Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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#### **Safety Order 01 Item 006**

Type of Violation: **Serious**

29 CFR 1926.651(k)(2): Where the competent person found evidence of a situation that could result in possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employee was not removed from the hazardous area until the necessary precautions have been taken to ensure their safety:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, the competent person failed to perform the duties as required, in that he did not correct conditions, and did not prevent employees from being exposed to, or cause them to be removed from, the hazards of a cave in, in a trench/excavation approximately 24 feet deep.

**Date By Which Violation Must Be Abated:** **10/27/2020**  
**Proposed Penalty:** **\$7,000.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
**Optional Report No.:** 02820

### **Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652(c):

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, the employer did not ensure that cave-in protection was provided/used to protect employees working in a trench/excavation approximately 57 feet 10 inches long, 17 feet 4 inches wide, 24 feet deep.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$132,598.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
**Optional Report No.:** 02820

### **Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 008**                      Type of Violation: **Serious**

29 CFR 1926.652(d): Manufactured materials and equipment used for protective systems were not used in a manner consistent with the recommendations of the manufacturer, that will prevent employee exposure to hazards:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, 1 employee is exposed to cave in hazards where the shield system being used had 1 spreader bar missing. The Manufacturer Tabulated Data specifies and requires all spreader bars are to be in place.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$4,200.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
**CSHO ID:** X4033  
**Optional Report No.:** 02820

### **Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 009**                      Type of Violation: **Serious**

29 CFR 1926.652(e)(1)(i): Members of support systems were not securely connected together to prevent sliding, falling, kickouts, or other predictable failure:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, on March 16, 2020, during construction activities, employees are exposed to an unsecured trench shields system where the members were stacked on top of each other, did not have all the required locking pins in place, in a trench approximately 57' 10" long X 17' 4" wide X 24' deep.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$4,200.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
**Issuance Date:** 9/9/2020  
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### **Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 010**                      Type of Violation: **Serious**

29 CFR 1926.652(g)(1)(ii): Shields were not installed in a manner to restrict lateral or other hazardous movement of the shield in the event of the application of sudden lateral loads:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, (1) one employee is exposed to a trench shield system, that is too far away from the trench walls, no bracing and no backfill against the shields walls to restrict lateral or other hazardous movement, in the event of the application of a sudden lateral load, trench/excavation is approximately 57 feet 10 inches long, 17 feet 4 inches wide, 24 feet deep.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$4,200.00**

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

**Inspection Number:** 318121605  
**Inspection Date(s):** 3/17/2020 -  
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**Optional Report No.:** 02820

**Safety Order and Notification of Penalty**

**Company Name:** Land Construction Corp  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808

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**Safety Order 01 Item 011**                      Type of Violation: **Serious**

29 CFR 1926.652(g)(1)(iii): Employees were not protected from the hazard of cave-ins when entering or exiting the area protected by shields:

On the jobsite - 1203 Huffman Street, Fort Wayne, Indiana 46808, in the intersection of Huffman Street and Franklin Avenue, Fort Wayne, Indiana 46808 – on March 16, 2020, during construction activities, (1) one employee, working in a trench/excavation that was approximately 57 feet 10 inches long, 17 feet 4 inches wide, 24 feet deep; was entering and exiting the trench box without cave in protection.

**Date By Which Violation Must Be Abated:**  
**Proposed Penalty:**

**Corrected During Inspection**  
**\$7,000.00**



Jameson Berry  
Director of Construction Safety

# Indiana Department of Labor

Indiana Occupational Safety and Health Administration  
402 West Washington St - Room W195  
Indianapolis, IN 46204  
Phone: (317)232-1979 FAX: (317)233-3790



## INVOICE/DEBT COLLECTION NOTICE

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**Company Name:** Land Construction Corp  
and its successors  
**Inspection Site:** Huffman St & Franklin St, Fort Wayne, IN 46808  
**Issuance Date:** 9/9/2020

### Summary of Penalties for Inspection Number: 318121605

**Safety Order 1, Serious** = \$191,398.00  
**TOTAL PENALTIES** = \$191,398.00

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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. You may also make a payment online at <https://payingov.com/dol/>. Your account number is your inspection number.

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).

Jameson Berry  
Director of Construction Safety

09-09-2020

Date