

U.S. Department of Labor – Occupational Safety and Health Administration

Inspection Report

March 29, 2022 5:31 PM

RID	CSHO ID	Supervisor ID	Inspection Number	Optional Report Number	Case Closed Date
0523400	(b)(7) (C)	F3130	1566426		

Establishment Name	S. J. Louis Construction, Inc.		Doing Business As (DBA)			
Ownership Type	Private Sector	Type of Business	Corporation	Primary NAICS	237110 - Water and Sewer Line and Related Structures Construction	
Site Address	Corner of Janesville Rd. and Moorland Rd	Site Phone		Extn	Site FAX	
	Muskego, WI 53150					
Business Address	1351 West Broadway Street	Business Phone	(320) 253-9291	Business FAX		
	Rockville, MN 56369					
Mailing Address	P.O. Box 459	E-mail		Mobile Phone		USA
	Rockville, MN 56369					
Site Activity	Water main installation	Site NAICS	237110		Days on Site	1
Federal EIN	411440589	DUNS		Temporary or Fixed Site?	Y	
State Estab Id		DUNS plus4		CAGE Code		
Construction Type	Highways/Streets/Bridges					

Parent Company Legal Name		Parent Company Trade Name/DBA	
Parent Company Address		Phone Number	Extn
TIN / EIN		DUNS	

CAGE Code		DUNS plus4	
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Entry	12/02/2021	12:45 PM	First Closing Conference	12/02/2021	02:30 PM
Opening Conference	12/02/2021	01:00 PM	Second Closing Conference	03/24/2022	10:30 AM
Walkaround	12/02/2021	01:15 PM	Exit	12/02/2021	02:45 PM

Inspection Initiating Type	Program Planned	Secondary Type	
Other Initiating Type		Inspection Category	Safety
Scope of Inspection	Partial	Reason No Inspection	
Migrant Farm Worker	N	Expln. for No Insp.	
State Strategic Initiatives			
National Emphasis	TRENCH		
State/Local Emphasis			
Primary Emphasis	TRENCH		

Additional Codes			
Type	ID	Value	Description
N	20	WISOS Found	COMMENTS

Employed in Establishment	50	Walkaround?	N	Advance Notice?	N
Covered By Inspection	8	Interviewed?	Y	Flag for Follow-up	N
Controlled By Employer	130	Union?	N	Reason for Follow-up	
Is this Company a current federal contractor?	Unknown				

Related UPA		
Activity Number	Activity Type	Establishment Name

Related Inspections		
Inspection Number	Related Inspection Type	Establishment Name

SVEP Information					
SVEP Case?	Post Citation SVEP Action	Post Citation SVEP Action Date	Is this inspection related to a previous SVEP inspection?	Is an Imminent Danger Notice included in this case?	Date Imminent Danger Notice was issued
N			N	N	

Employer Representatives Contacted					
Name	Ever Miranda	Job Title	Foreman	Occupation	
Address				Interviewed?	Y
Home		Mobile	(320) 330-8382	Fax	
Email				Participation	Opening Conference, Walk Around

Employer Representatives Contacted					
Name	Brian Schmidt	Job Title	General Superintendent	Occupation	
Address				Interviewed?	N
Home		Mobile		Fax	
Email				Participation	

Employer Representatives Contacted					
Name	Jake Dilworth	Job Title	Superintendent	Occupation	
Address				Interviewed?	N
Home		Mobile	(320) 428-5567	Fax	
Email				Participation	

Employer Representatives Contacted					
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Name	Joel Martin	Job Title	Safety Manager	Occupation	joelm@sjlouis.com
Address	ROCKVILLE, MN 56369			Interviewed?	N
Home		Mobile	(320) 292-9457	Fax	
Email				Participation	Credentials, Opening Conference, Closing Conference, Citation Mailed

Employees Contacted

(b)(7)(C)

Name
Address
Home
Email



Name
Address
Home
Email



Name
Address
Home
Email



(b)(7)(C)

Name
Address
Home
Email
Name
Address
Home
Email

Penalty Adjustment Factors			
Size Reduction	10%	Size Justification	System set it to 10% based on the number of employees controlled.
Good Faith Reduction	0%	Good Faith Justification	Employer has safety program issues exist with safety audits and training.
History Reduction	0 %	History Justification	Employer has OSHA history.

Denial of Entry			
Denial Date/Time	Stage	Reason	Re-entry Date/Time

CSHO Signature		Date	
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SAFETY NARRATIVE

Inspection Number	1566426
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COVERAGE INFORMATION

SJ Lewis Construction Inc.: A full service utility contractor located at 1351 Broadway Street, Rockville MN. And conducting operations in Waukesha WI. using Caterpillar excavating equipment and Werner extension ladders.

Date of Inspection: December 02, 2021

Equipment Used on Site: 2 each) Caterpillar 336 excavators, Ford work truck, trench boxes, hand tools. Gasoline generator

Work Crew Demographics 1 Foreman, and 6 employees.

Employee Representatives: Non-Union

CSHO PPE- Eye Protection, Steel Toe Boots, Reflective High Vis. Vest and Hard Hat. **Face mask Worn.**

NATURE AND SCOPE

Check Applicable Boxes and Explain Findings:

- Complaint Items – Anonymous
- Referral Items
- Accident Investigation Summary & Findings
- NEP
TRENCH (TRENCHING AND EXCAVATION)
- Planned Inspection
- Follow-up Inspection

NATURE AND SCOPE – UNUSUAL CIRCUMSTANCES (Mark X and explain all the apply:)

- None
- Denial of entry (see denial memo)
- Delays in conducting the inspection
- Strikes

Jurisdictional Issues

Trade Secrets

Other

Comments:

This inspection was conducted under the trenching NEP after an (b)(7)(C) called in to AAD Grisar and assigned to CSHO (b)(7)(C)(C)

OPENING CONFERENCE NOTES:

CSHO (b)(7)(C) drove past the trenching site, while driving down Moorland Rd. in Muskego WI. The CSHO observed what appeared to be several workers around a long trench. At that time the CSHO pulled off the busy roadway. The CSHO was looking for the best entrance into the site due to busy roads associated with the commercial area of town and compounded by this construction site. After finding a safe place to stop, the CSHO observed at least (1) trench box in the trench which primarily ran North and south along the west side of Mooreland Road on the Northwest side of the street, The CSHO noted that the trench was close to 100 feet long. The CSHO evaluated the site and noted 2 Caterpillar 336 excavators, a generator, and two large trench boxes that were not in use and sitting on the ground. The CSHO saw one of the trench boxes that was not in the trench and was located at the southeast corner of the jobsite next to the corner of the road. The box was on its side and a Caterpillar wheeled loader was holding it steady on the loaders forks while an employee was on a Werner extension ladder that was leaned against the trench box at an extreme angle, with the base of the ladder being about fourteen feet away from the trench box and the top of the ladder leaned against the box approximately 12 feet up in the air. The CSHO took two quick photos of this and looked at the adjoining trench. The CSHO approached the trench from the north end There was a trench box visible with a ladder in it as the CSHO continued to approach he noted there were no employees in this box but that there was a second trench box in the excavation and it was approximately ten (10) feet Southeast from the first one and it was approximately four feet below grade without adequate shielding seen by the CSHO and there were no visible ladders in this trench box, but there were employees visible (multiple hard hats seen moving in the trench) The CSHO walked over and observed several individuals working around and in the trench. At this time the CSHO noticed an employee approach the trench with a ladder, and he put the extension ladder in the trench and started speaking to someone in the trench. I quickly walked up to the trench and was taking photos from the opposite side of the trench this prevented me from getting close to the trench box where the employees were located due to the shape of the trench. I Showed my credentials and asked the worker who had just put the ladder in the trench box where the Foreman was located and he pointed into the trench, at that time someone was climbing the ladder out of the trench. This person identified himself as Ever Miranda a superintendent and the Foreman for this site. I asked him how many more people were in the trench and he said three as the employees climbed out of the trench behind Mr. Miranda. After the last exposed employee exited, I again showed my credentials and asked the questions regarding the non-covid inspection JHA. The Foreman said

there were no known cases of covid and that no employees had been suffering symptoms nor had there been any reports of friends or family with the virus. I began to discuss items related to an opening conference, and I told Mr. Miranda it would be a good time to get in touch with his supervisor and the company Safety Manager he then made the call. I looked around the area and noticed the following:

- There was a Caterpillar 336 excavator located near the North end of the trench on the West side this excavator was assisting with operations in the trench box that had been occupied.
- The trench box in use was approximately six foot wide and four (4) foot six (6) inches below grade with minimal benching on the west side of it and in some places the dirt and debris came all the way up to the trench box and made contact with it.
- The two trench boxes inserted in the trench were approximately ten (10) feet apart and there was an exposure hazard between the two boxes. IMG_4296
- Neither box had had 1" thick steel plate behind them for shielding as should have been and is the policy according to management.
- There was what looked to be an approximately two feet tall gap under the trench boxes of exposed soil tapered inward.
- There was a second Caterpillar 336 excavator located on the East side of the trench.
- There was approximately 60 feet of concrete barricade along the East side of the trench between the trench and Mooreland Road for protection, but it terminated about 40 feet from the intersection to allow for a turn lane
- The exposed forty-foot section near the road is where the exposed employee on the ladder had been seen and allowed the loader to get up to the employee.
- Some steel plates were in the trench, but none were placed in a manner that would protect the exposed employees in the trench.
- Photo IMG_4286 shows an employee putting a ladder in the trench.

Additional management to include Jake Dilworth arrived on site. An opening conference was held The CSHO was told by Mr. Dilworth that Joel Martin- Safety Manager was out of state and was currently not reachable. The CSHO said that he would attempt contact with Mr. Martin and discuss the inspection as well as send him a document request. Mr. Dilworth confirmed that Ever Miranda was in charge of the site and the Competent person. Mr. Dilworth said that steel plates had been used as part of shielding by placing them behind the trench boxes, but he conceded that it was not currently set up that way but said that would be done before the CSHO let the site so that OSHA would be able to see that the issue had been abated. At this time multiple concrete trucks arrived to backfill the pipe that had been completed and the CSHO began conducting interviews while this occurred.

- The foreman said he was trained as the competent person, and he was watching operations closely.
- The Foreman said he was aware that protection is needed in a trench 5 feet deep or more.
- The Foreman said no one had been in the other trench box today.
- The Foreman said the trench was too small for four (4) employees the pipe and the

ladder, so he had it removed. He said that if an emergency occurred, he would yell for someone to bring it back. When asked the foreman conceded that the excavator operator was in the running excavator and might not hear or see the incident occur right away.

- The CSHO viewed the other trench box and the foreman said that it was separated from this trench box they had not started working in that area yet.
- The foreman said he understood that 2nd trench box was not 18 “ above grade but since they were not working in that portion of the trench it was not an issue, and that he planned to add additional shielding before it was used.
- The CSHO asked the foreman why there were steel plates adjacent to the occupied trench box but not behind it? He said that the crew had gotten busy and forgotten to move the plates as they were trying to complete as much work as possible.

The following was learned through employee interviews:

- Employees said they had not been trained by the company in trench safety, but conceded it could have been part of new hire training. (documentation provided by the employer.)
- Employees said they do not go in areas of the trench without shielding.
- Employee said he was leveling gravel in the bottom of the trench.
- CSHO asked if employees had been in the trench all morning, and was told only about 20 minutes
- Daily safety meetings held with employees before the start of each day.
- Employees do not witness trench inspection said it happens before they get there.
- Employee said ladder was installed after CSHO arrived that the foreman and employees knew that the ladder should be in the trench but it was in the way.

After the interviews the CSHO spoke with Jake Dilworth again. Mr. Dilworth asked if this inspection was the result of another complaint and the CSHO said it was an anonymous complaint. The superintendent said it was hard to work with so much attention. The CSHO reminded him that safety had to be observed whether people are watching closely or not. The superintendent agreed and said it is hard to find good employees. The CSHO watched the employees install steel plates behind the trench box for additional shielding.

The inspection came to an end and issues were reviewed. Jobsite inspections were discussed as was continued process improvement. 11c was discussed. The CSHO told the manager that a document request would be sent, and the company would have 5 working days to respond. A closing conference was held with the employer. The CSHO again said he would contact the Company Safety Manager – Joel Martin. The alleged violations were reviewed. The company’s rights and responsibilities were discussed, and an informal conference was encouraged. The CSHO then left the jobsite.

RECORDKEEPING PROGRAMS

(Other than 29 CFR 1904 requirements)

Does the employer have a record keeping program relating to any occupational health issues (monitoring, medical, training, respirator fit tests, ventilation measurements, etc.)?

Yes No

Are any programs required by OSHA health standards?

Yes No

COMPLIANCE PROGRAMS

(engineering controls, PPE, regulated areas, emergency procedures, compliance plans, etc.)

Address any relevant compliance efforts regarding potential health hazards covered by the scope of inspection.

Other significant injury/illness trends

Yes No

If yes, explain:

EVALUATION OF EMPLOYER'S OVERALL SAFETY AND HEALTH PROGRAM

Construction Industry:

Yes No Accident Prevention Program

Yes No Written

Yes No Copy Attached

Evaluation of Safety and Health Program

(0=Nonexistent 1=Inadequate 2=Average 3=Above average)

- 2 Written S&H Program
- 2 Communication to Employees
- 1 Enforcement
- 2 Safety Training Program
- 2 Health Training Program
- 2 Accident Investigation Performed
- 2 Preventive Action Taken

Comments: The employer provided an extensive safety program. There appears to be discrepancies in how the program is followed and understood by management as well as employees. The company conducts jobsite inspections, holds daily safety huddles and provides OSHA 10 classes.

CLOSING CONFERENCE NOTES:

Were any unusual circumstances encountered such as, but not limited to, abatement problems, expected contest and/or negative employer attitude? If yes, explain below:

- Yes No

19. Closing Conference Checklist (“x” as appropriate)

- No Violations Observed
- Gave Copy Employer Rights
- Reviewed Hazards and Standards
- Discuss Employer Rights/Obligations
- Encouraged Informal Conference
- Offered Abatement Assistance
- Discussed Consultation Programs
- Employer/Employee Questionnaires

**U.S. Department of Labor
Occupational Safety and Health Administration**

Violation Worksheet

Print Date: 04/01/2022

		Inspection Number	1566426		
		Opt. Insp. Number			
Establishment Name	S. J. Louis Construction, Inc.				
DBA Name					
Type Of Violation	Serious	Citation Number	1	Item/Group	1
Standard	1926.651(c)(2)				
Alleged Violation Description	<p>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:</p> <p>(a) On or about December 2, 2021, at a job site located at the Northwest Corner of Janesville Rd. & Moorland Rd., Muskego, WI, employees were working in a trench approximately 17 feet deep without a safe means of egress installed within 25 feet of the work being performed. Employees travel to the nearest ladder located at the north end of the trench was located approximately 38 feet from the area of work being performed and was impeded by pipe being laid, excavator arm with chain sling attached to the pipe and trench box spreader bars.</p>				
Recommended Abatement Action					
# Instances	1	# Exposed	4		
Special Enforcement Type		Related Event Code (REC)	Complaint		
General Duty Key Words		Employer's Relation to Hazard	All		
Photo/Video Number	IMG_4332, IMG_4333, IMG_4334	Substance Codes			

Penalty

Severity	High		
Severity Justification	Means of egress requirement to escape trench in the event a trench becomes unsafe. Ladder(s) stairway or ramp not properly installed, or present in the trench. Exposes employees to struck by, asphyxiation and crushing injuries that can lead to death.		
Probability	Lesser		
Probability Justification	Proper egress was not available in this trench. Potential hazards were present in the trench, that would not allow quick exit to be possible; exit of any kind would be hindered. Shoring protection was installed, but no properly, but still a lesser probability.		
Gravity	Moderate	Size	10%

Gravity based Penalty	\$10,360.00	Good Faith	15%
# Times Repeated		History	0%
Multiplier		Quick Fix	15%
Calculated Penalty	\$6,737.00	Proposed Penalty	\$6,737.00
Proposed Penalty Justification			

Abatement Details

# Days to Abate		Abatement Status	Quick Fix
Abatement Due Date		Date Abated	12/02/2021
Abatement Documentation Required?	No	Date Verified	12/02/2021
Abatement Completed Description	Ladder placed in the trench while CSHO approached and watched.		

Multi-Step Abatement

Type/Other Type	# Days to Abate	Abatement Due Date	Completed (Status)	Verify Date
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Employee Exposure

Violation Instance	# Exposed to Instance	Employer	Name and Address Telephone Numbers	Duration	Frequency	Proximity
a	4	S. J. Louis Construction, Inc.		(b)(7)(C)		
a	4	S. J. Louis Construction, Inc.				
a	4	S. J. Louis Construction, Inc.				
a	4	S. J. Louis Construction,				

		Inc.
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Worksheet Details

A) **Hazards-Operation/Condition-Accident:** On or about December 02, 2021, at the Northwest Corner of Janesville Rd. & Moorland Rd. Muskego WI employees were working in a trench approximately seventeen (17) feet deep and approximately one hundred (100) feet in length. Employees were working in a trench box that was ten (10) tall x (16) long and separated from the other (2nd) trench box in the excavation. The employees were exposed without adequate safe means of egress. The four employees that included the site Foreman Ever Miranda were working at the pipe end located inside the trench box. Employee(s) were positioned below the Caterpillar 336 excavator that was being used to aid in the pipe laying process. At the time there was no ladder in the trench or other means of egress to allow the employees safe exit from the trench. After the CSHO arrived and was seen by employees a ladder was put in the trench and the site foreman used this ladder to exit the trench. The top of the trench box was located approximately 4 feet below grade and there was dirt and gravel located at the top of the box and directly next to it without proper sloping. This exposed the employees to an engulfment hazard from possible cave in. The excavation inspection checklist filed out by the Foreman Ever Miranda stated that the soil was class C.

B) **Equipment:** 2) Caterpillar 336 Excavators, Werner Extension ladder(s), Hand tools, shovels and other related tools. Two trench boxes in the trench, two more on the ground on site near the trench, 8' x 20 1" steel plates were also available on site. A trailer mounted generator supplied water pump.

C) **Location:** Pipe installation jobsite at the Northwest corner of Janesville Rd. & Moorland Rd., S69W15612 Janesville Rd, Muskego, WI 53150

D) **Injury/Illness (and Justifications for Severity and Probability):** Severity:-High: No access to a ladder without hazardous exposure. Ladder(s) not properly installed, or present in the trench. Exposes employees to struck by, asphyxiation and crushing injuries that can result in death or permanent disability. Probability-Lesser: There was a ladder at the end of the trench that employees could get out on but this would require employees to climb over obstacles to include the pipe that was being installed and walk through an unshielded portion of the trench in order to escape. Shoring protection was installed, but no properly, but still a lesser probability of cave-in and requiring rapid egress.

E) **Measurements:** Trench depth approximately seventeen (17) feet deep, trench length approximately 100 feet. With approximately forty feet of trench box protection but no steel plates behind the trench box to protect above, or below the trench box .

F) **Employer Knowledge:** The employer had a ladder on site for this portion of the excavation but the ladder was not in the trench until the CSHO had been seen onsite, at which time the ladder was returned to this portion of the excavation. The foreman Ever Miranda who is the competent person was in the trench and one of the four exposed employees without adequate ladders for egress. The foreman was the competent person on site. The company has a safety program and outlines trench and ladder safety requirements.

Daily Excavation Safety Inspection for 12-02-21 conducted by Ever Miranda item (5) stated Potential (b)(4)

When the CSHO asked the foreman Ever Miranda why the ladder was not installed in the trench Mr. Miranda Said that between the pipe in the bottom trench, and the 4 employees in the trench, and the narrow width of the trench box there was not space to leave enough room in the trench to work. Mr. Miranda said they took the ladder out of the trench with the understanding that if an

emergency occurred he would yell up and ask for someone to put the ladder in. I asked Mr. Miranda if that was the safe way to do it he said no but the company expects me to get the job done.

S.J. Louis currently has OSHA Inspection #1523626 in contest 1926.651(c)(2) previously cited in that inspection inspection under Citation 1 Item 2 this goes to the employer knowledge as related to this hazard.

Additional Knowledge.

The S.J. Louis Safety and Health Action Plan Waukesha Water Utility Great Lakes Water Supply Program Contract Package 5 - Return Flow Pipeline Job # 52007-10 & 62007-50 Pages 10 and 11

Potential (b)(4)

11

Potential (b)(4)

G) **Comments:** A Werner extension ladder that was designated for use in the trench was being used for other activities on site. This ladder was returned as soon as an employee saw the CSHO on site, before the CSHO was able to even ask about the ladder.

H) **Other Employer Information:**

**U.S. Department of Labor
Occupational Safety and Health Administration**

Violation Worksheet

Print Date: 04/01/2022

	Inspection Number		1566426		
	Opt. Insp. Number				
Establishment Name	S. J. Louis Construction, Inc.				
DBA Name					
Type Of Violation	Repeat - Serious	Citation Number	2	Item/Group	1/ a
Standard	1926.651(k)(2)				
Alleged Violation Description	<p>29 CFR 1926.651(k)(2): Where there was evidence of a situation that could result in a possible cave-in or other hazardous condition, the competent person did not remove exposed employees until necessary precautions could be taken to ensure their safety.</p> <p>(a) On or about December 2, 2021, at a job site located at the Northwest corner of Janesville Rd. & Moorland Rd, Muskego, WI, the competent person did not remove employees who were exposed to cave-in and struck-by hazards while conducting pipe installation work in a trench that was not properly protected. The trench box installed in the trench was four (4) feet below the the top cut of the trench surface and was not sufficiently sloped or benched to prevent employee exposure to cave-in hazards.</p> <p>(b) On or about December 2, 2021, at a job site located at the Northwest corner of Janesville Rd. & Moorland Rd, Muskego, WI, the competent person did not remove employees who were exposed to hazard associated with working in a trench without a ladder located in the trench for immediate egress and within 25 feet of the work being performed.</p> <p>S.J. Louis Construction, Inc. was previously cited for a violation of this occupational safety and health standard, which was contained in OSHA inspection number 1356045, citation number 2, item number 1(b) and was affirmed as a final order on January 21, 2019, with respect to a workplace located at 1908 South Dakota Highway 50, Yankton, SD 57078.</p>				
Recommended Abatement Action					
# Instances	1	# Exposed	6		
Special Enforcement Type		Related Event Code (REC)	Complaint		
General Duty Key Words		Employer's Relation to Hazard	All		
Photo/Video Number	IMG_4312	Substance Codes			

Penalty

Severity	High		
Severity Justification	Class C soil. Potential asphyxiation from being buried/engulfed by wet soil broken bones and other debilitating injuries can occur from crushing injuries or being struck by falling debris falling into the trench. No ladder hinders quick exit if an emergency occurs. Without a ladder for egress employees will be deterred from safely exiting a hazardous area.		
Probability	Greater		
Probability Justification	The foreman had shoring protection in the trench but the protection was not sufficient or properly installed to fully protect employees in the excavation.		
Gravity	High	Size	10%
Gravity based Penalty	\$14,502.00	Good Faith	15%
# Times Repeated	1	History	0%
Multiplier	2	Quick Fix	0%
Calculated Penalty	\$22,188.00	Proposed Penalty	\$22,188.00
Proposed Penalty Justification			

Abatement Details

# Days to Abate	1 working days	Abatement Status	
Abatement Due Date		Date Abated	
Abatement Documentation Required?	Yes	Date Verified	
Abatement Completed Description			

Multi-Step Abatement

Type/Other Type	# Days to Abate	Abatement Due Date	Completed (Status)	Verify Date

Employee Exposure

Violation Instance	# Exposed to Instance	Employer	Name and Address Telephone Numbers	Duration	Frequency	Proximity
a	6	S. J. Louis Construction, Inc.		(b)(7)(C)		
a	6	S. J. Louis Construction, Inc.				

a	6	S. J. Louis Construction, Inc.
a	6	S. J. Louis Construction, Inc.
a	6	S. J. Louis Construction, Inc.
a	6	S. J. Louis Construction, Inc.

Worksheet Details

A) **Hazards-Operation/Condition-Accident:** On or about December 02, 2021, at the Northwest Corner of Janesville Rd. and Moorland Rd. Muskego WI. employees were exposed to falling, struck-by crushing, cave-in hazards while conducting pipe installation in a trench that was not properly protected . The competent person determined that the trench required cave-in protection, but failed to have the trench protection fully implemented by properly installed shielding in all portions where employees were exposed to cave-in hazards nor had adequate ladders or other acceptable forms of egress been installed in the trench for employees to exit the trench. At the time of the inspection Four employees were working in an excavation that measured approximately seventeen (17) feet deep and one hundred feet long. The Site Foreman Ever Miranda who is the competent person was in the exposed trench with three other employees. The Foreman recognized the hazards associated with this site but did not take the necessary steps to remove employees from the hazards associated with this excavation.

B) **Equipment:** 2) Caterpillar 336 Excavators, Werner Extension ladder(s), Hand tools, shovels and other related tools. Two trench boxes in the trench, two more on the ground on site near the trench, 8' x 20 1" steel plates were also available on site. A trailer mounted generator supplied water pump.

C) **Location:** Pipe installation jobsite at the Northwest Corner of Janesville Rd. and Moorland Rd. Muskego WI.

D) **Injury/Illness (and Justifications for Severity and Probability):** Severity: High, trench depth up to and greater than Seventeen (17) feet exposure to struck-by crushing,, that can result in injuries such as cuts, and abrasions, contusions, head trauma, broken bones, temporary and permanently debilitating injuries, and in severe cases Death.

Probability: Greater, previously disturbed soil, vibration due to high vehicle traffic, moderate rain, and trench depth greater than 17 feet. Insufficient shielding to prevent dirt, rock, and debris above from falling into the excavation.

E) **Measurements:** Trench depth approximately Seventeen (17) feet, trench length approximately 100 feet. With approximately forty (40) feet in trench box protection only one ladder in the excavation with obstacles and distance greater than 25 feet between ladders and employees and unprotected portions of trench in between employees and the ladder in the trench.

F) **Employer Knowledge:** The Foreman was on site and directing employees work. The foreman, is trained as competent persons for trench safety, he performs daily inspections and those inspections are recorded and kept by the safety manager. There were four trench boxes that were located on site with two in the trench and two on the ground and not in use. The CSHO observed the Foreman standing in the trench that had 3 other exposed employees working in it.

During discussions with the foreman, he stated that he was the individual who instructed employees as to the work to be completed.

The Foreman stated , he knew the 3 employees were in the trench as he was working side by side with the exposed employees while they worked in the trench, which was approximately seventeen feet deep. The foreman also indicated that he knew the depth of the excavation as he marked it on the daily excavation inspection form that he filled out on a daily basis. (several examples of this inspection included) The Foreman is the Competent person for the job site and has been trained by the company on trenching safety. The Foreman further stated that he had been doing trenching work for many years, and receives trench training every year from his employer. The Foreman who was the competent person on site and he indicated that he inspected the job site daily for hazards, following the company provided Daily Excavation Safety Inspection sheet. He also stated that shoring protection is to be used when the excavation/trench is five (5) or more feet in depth. The Foreman stated that the trench boxes and shielding provided were sufficient to protect employees in the trench. The employer provided the items needed to protect the employees working on the jobsite.

The foreman said that he had been watching the employees closely. The employer had a ladder on site but it was not in the trench until the CSHO was seen on site then an employee immediately put the ladder where it needed to be.

S.J. Louis Construction, Inc. was previously cited for a violation of this occupational safety and health standard, which was contained in OSHA inspection number 1356045, citation number 2, item number 1(b) and was affirmed as a final order on January 21, 2019, with respect to a workplace located at 1908 South Dakota Highway 50, Yankton, SD 57078.

The Daily Excavation Safety Inspection states in item:

Potential (b)(4)

The following information was taken from the tabulated data for the trench box located in the area where the concrete road had been undermined on the South side of the trench this included sections of concrete material that had cracked, and in some cases started to break loose and fall towards the excavation. On the North side Concrete was undermined but not cracked or broken. This information goes to knowledge of the system being used.

NOTES & LIMITATIONS:

1) Refer to page 2 for manufacturer's assembly instructions.

- 2) Excavation 2' below bottom of shield is only permitted when there is no indication of possible loss of soil from behind or below the bottom of the shield.
- 3) Sloped soils must extend to no less than 18" below the top of the shield, as shown in diagram above. Shield need not extend above soil when soils are flat and level with top of shield.
- 4) Except as approved in table above (Hs), any excavations over 20'-deep with sloping require site specific approval by a Licensed Professional Engineer (P.E.).
- 5) User is responsible for safe support of shield to ensure it cannot shift vertically or horizontally at any time
- 6) Shield may be stacked, provided that appropriate connections are made between the stacked shields to prevent lateral movement.
- 7) Shield must be used in strict compliance with all applicable OSHA guidelines and limitations outlined in this document
- 8) This document has been prepared by a P.E., as required by OSHA 29 CRF, Part 1926, Subpart P.
- 9) Shield shall be used under the supervision and direction of a Competent Person as defined by CRF, Part 1926, Subpart P. Among other qualifications, the Competent Person shall be trained in the use of trench shields and have practical field experience with the use of shields, soil classification, and recognizing hazardous conditions.
- 10) All spreaders shall be secured to sockets with pins or other mechanical connections approved by the manufacturer, prior to shield use. Do not apply side load or vertical load to the spreaders at any time (such as leaning plates/sheeting for soil support), unless approved in writing by a P.E. or the Manufacturer .
- 11) Shield shall be installed in a manner to restrict lateral or other hazardous movement of the shield in the event of the application of sudden lateral loads.
- 12) Shield shall be inspected prior to each use, to ensure they are in good condition and free of any damage or visual defects.
- 13) Any repairs or modifications to the shield, such as extending height or length with plates, are strictly prohibited, unless approved in writing by a P.E.
- 14) Pressure rating of shield is a uniform rectangular pressure over full height of shield.

WARNING . USE OF SHIELDING OTHER THAN OUTLINED IN THIS DOCUMENT COULD CAUSE FAILURE , COLLAPSE, OR CAVE-INS , AND MAY RESULT IN SERIOUS INJURY OR DEATH

NOTE: other tabulated data available for employer knowledge of Hazards and equipment limitations.

S J Louis Construction Inc.SAFETY AND HEALTH ACTION PLAN Waukesha Water Utility Great Lakes Water Supply Program Contract Package 5 - Return Flow Pipeline Job # 52007-10 & 62007-50
Action plan provided the information on page 5 regarding the information program:

Potential (b)(4)

Potential (b)(4)

page 15

Potential (b)(4)

G) **Comments:** Excavation located less than twenty (20) feet from a highly trafficked road and the vibrations associated with a traffic way of this nature. This road way included semi-trailer traffic on a frequent basis.

H) **Other Employer Information:**

**U.S. Department of Labor
Occupational Safety and Health Administration**

Violation Worksheet

Print Date: 04/01/2022

		Inspection Number	1566426		
		Opt. Insp. Number			
Establishment Name	S. J. Louis Construction, Inc.				
DBA Name					
Type Of Violation	Repeat - Serious	Citation Number	2	Item/Group	1/ b
Standard	1926.652(a)(1)				
Alleged Violation Description	<p>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 (b) or (c).</p> <p>(a) On or about December 2, 2021, at a job site located at the Northwest Corner of Janesville Rd. & Moorland Rd., Muskego, WI, employees were conducting water line installation while working in an excavation 17 feet in depth without sufficient shoring or sloping. This exposed employees to a trench collapse and engulfment hazard from soil.</p> <p>S.J. Louis Construction, Inc. was previously cited for a violation of this occupational safety and health standard, which was contained in OSHA inspection number 1356045, citation number 2, item number 1(a) and was affirmed as a final order on January 21, 2019, with respect to a workplace located at 1908 South Dakota Highway 50, Yankton, SD 57078.</p>				
Recommended Abatement Action					
# Instances	1	# Exposed	4		
Special Enforcement Type		Related Event Code (REC)			
General Duty Key Words		Employer's Relation to Hazard	All		
Photo/Video Number	IMG_4312	Substance Codes			

Penalty

Severity	High
Severity Justification	Exposure to cave-in hazard crushing, struck-by, and engulfment which can result in broken bones asphyxiations, internal injuries.
Probability	Lesser
Probability Justification	Seventeen (17) foot deep excavation consisting of previously disturbed soil while working without appropriate shielding and or benching . Class C soil. Company attempted to bench the upper 4 feet of soil, but was not completed to standard.

Gravity	Moderate	Size	10%
Gravity based Penalty	\$10,360.00	Good Faith	0%
# Times Repeated	1	History	0%
Multiplier	2	Quick Fix	0%
Calculated Penalty	\$0.00	Proposed Penalty	\$0.00
Proposed Penalty Justification			

Abatement Details

# Days to Abate		Abatement Status	Corrected During Inspection
Abatement Due Date		Date Abated	12/02/2021
Abatement Documentation Required?	No	Date Verified	12/02/2021
Abatement Completed Description	The superintendent placed steel plates behind the trench box while CSHO was still on site.		

Multi-Step Abatement

Type/Other Type	# Days to Abate	Abatement Due Date	Completed (Status)	Verify Date
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Employee Exposure

Violation Instance	# Exposed to Instance	Employer	Name and Address Telephone Numbers	Duration	Frequency	Proximity
a	4	S. J. Louis Construction, Inc.		(b)(7)(C)		
a	4	S. J. Louis Construction, Inc.				
a	4	S. J. Louis Construction, Inc.				

a	4	S. J. Louis Construction, Inc.
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Worksheet Details

A) **Hazards-Operation/Condition-Accident:** On, or about December 2, 2021 at a worksite located at the Northwest Corner of Janesville Rd. & Moorland Rd., Muskego, WI, employee(s) working in the utility trench was exposed to struck-by, cave-in, engulfment, and asphyxiation hazards when working at a depth of approximately Seventeen(17) foot without proper shielding or other adequate steps taken to insure that the trench was properly supported. The workers had been exposed to the hazard while engaged in work activities in the trench. This is a jobsite located next to a high traffic four lane roadway. The area of exposure was located on the west side of the trench located above the 16 foot long trench box located on the south end of the excavation/trench. Reference worksite diagram and pictures.

B) **Equipment:** Extension ladder, cordless battery powered saws, assorted hand tools, shovels and other equipment. Wacker Neuson generator.

C) **Location:** Utility trench located at the Northwest Corner of Janesville Rd. & Moorland Rd., Muskego, WI,

D) **Injury/Illness (and Justifications for Severity and Probability):** Severity-Higher: Struck by hazard leads to injuries such as lacerations contusions, broken bones, and temporary, and or permanent disability, engulfment, crushing injuries.

Probability -Lesser : Loose disturbed soil, actively working excavator next to the trench. located at a busy intersection with heavy truck traffic. Thirty foot distance of sloped soil directly above the exposed employee as there was no distinction between the top of the excavation and bottom of the loose soil that comprised the spoil pile., however the area was benched, with a 1 foot bench approximately.

E) **Measurements:** Trench was approximately seventeen (17) feet deep. There was a sixteen (16) foot long, ten foot tall trench box in the trench. The bottom of the trench box was located approximately two feet above the bottom of the trench. The exposed employees were located within the trench box. The trench box was located 4 foot below grade and had been stepped approximately 12-13 inches.

F) **Employer Knowledge:** The acting Foreman was on site and directing employees work while in the trench. He is trained as competent persons for trench safety, he performs daily inspections and those inspections are recorded and kept by the safety manager. There was one trench box located in the trench with the box being approximately Sixteen (16) feet long and ten feet tall and another trench box (separated and not in use) Twenty feet long and ten feet tall . The CSHO observed the Foreman come out of the trench that had three other exposed employees working in it as well. The foreman was looking down into the excavation this gave him direct line of sight of the employees.

During discussions with the foreman, he stated that he was the individual who instructed employees as to the work to be completed.

The competent person indicated that he knew the depth of the excavation was approximately sixteen (16) feet deep. The Competent person for the job site has been trained by the company on trenching safety. The Foreman further stated that he had been doing trenching work for several years, and receives trench training every year from his employer.

The CSHO asked about the steel plates that were in the excavation next to the trench box but not behind it. When the CSHO asked the Foreman about the placement of the shielding the Foreman said that work had progressed

quickly and the 1" steel plate had not been moved yet.

The superintendent stated that the trench boxes and shielding provided and available on the jobsite were sufficient to protect employees in the trench. The employer provided and produced for the CSHO to view the items needed to protect the employees working on the jobsite.

The foreman said that he had been watching the employee closely. This was witnessed by the CSHO and shown in attached photos. The project safety manager Joel Martin was not in the State of Wisconsin at the time of the inspection but superintendent Jake Dilworth was called when the CSHO arrived on site and showed up on the jobsite within 10 minutes after the CSHO arrived on site. The Superintendent said that he had been on this site but was not present at the time the CSHO arrived.

S.J. Louis Construction, Inc. was previously cited for a violation of this occupational safety and health standard, which was contained in OSHA inspection number 1356045, citation number 2, item number 1(a) and was affirmed as a final order on January 21, 2019, with respect to a workplace located at 1908 South Dakota Highway 50, Yankton, SD 57078.

NOTES & LIMITATIONS:

- 1) Refer to page 2 for manufacturer's assembly instructions.
- 2) Excavation 2' below bottom of shield is only permitted when there is no indication of possible loss of soil from behind or below the bottom of the shield.
- 3) Sloped soils must extend to no less than 18" below the top of the shield, as shown in diagram above. Shield need not extend above soil when soils are flat and level with top of shield.
- 4) Except as approved in table above (Hs), any excavations over 20'-deep with sloping require site specific approval by a Licensed Professional Engineer (P.E.).
- 5) User is responsible for safe support of shield to ensure it cannot shift vertically or horizontally at any time
- 6) Shield may be stacked, provided that appropriate connections are made between the stacked shields to prevent lateral movement.
- 7) Shield must be used in strict compliance with all applicable OSHA guidelines and limitations outlined in this document
- 8) This document has been prepared by a P.E., as required by OSHA 29 CFR, Part 1926, Subpart P.
- 9) Shield shall be used under the supervision and direction of a Competent Person as defined by CRF, Part 1926, Subpart P. Among other qualifications, the Competent Person shall be trained in the use of trench shields and have practical field experience with the use of shields, soil classification, and recognizing hazardous conditions.
- 10) All spreaders shall be secured to sockets with pins or other mechanical connections approved by the manufacturer, prior to shield use. Do not apply side load or vertical load to the spreaders at any time (such as leaning plates/sheeting for soil support), unless approved in writing by a P.E. or the Manufacturer .
- 11) Shield shall be installed in a manner to restrict lateral or other hazardous movement of the shield in the event of the application of sudden lateral loads.
- 12) Shield shall be inspected prior to each use, to ensure they are in good condition and free of any damage or visual defects.
- 13) Any repairs or modifications to the shield, such as extending height or length with plates, are strictly prohibited, unless approved in writing by a P.E.
- 14) Pressure rating of shield is a uniform rectangular pressure over full height of shield.

WARNING . USE OF SHIELDING OTHER THAN OUTLINED IN THIS DOCUMENT COULD CAUSE FAILURE , COLLAPSE, OR CAVE-INS , AND MAY RESULT IN SERIOUS INJURY OR DEATH

NOTE: other tabulated data available for employer knowledge of Hazards and equipment limitations.

S J Louis Construction Inc.SAFETY AND HEALTH ACTION PLAN Waukesha Water Utility Great Lakes
Water Supply Program Contract Package 5 - Return Flow Pipeline Job # 52007-10 & 62007-50
Action plan provided the information on page 5 regarding the information program:

Potential (b)(4)

page 15

Potential (b)(4)

G) Comments:

H) Other Employer Information:

**U.S. Department of Labor
Occupational Safety and Health Administration**

Violation Worksheet

Print Date: 04/01/2022

	Inspection Number		1566426		
	Opt. Insp. Number				
Establishment Name	S. J. Louis Construction, Inc.				
DBA Name					
Type Of Violation	Other-than-Serious	Citation Number	3	Item/Group	1
Standard	1926.1053(b)(5)(i)				
Alleged Violation Description	<p>29 CFR 1926.1053(b)(5)(i): Non-self-supporting ladder(s) were not used at an angle such that the horizontal distance from the top support to the foot of the ladder was approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support).</p> <p>(a) On or about December 2, 2021, at the Northwest corner of Janesville Rd. & Moorland Rd., Muskego, WI, employees did not properly use an extension ladder at an adequate angle (4-1 ratio) to safely support an employee who was using the ladder to reach the upper portion of a trench box to install pins into the box support arms as a part of setup. This exposed the employee to a fall hazard.</p>				
Recommended Abatement Action					
# Instances	1	# Exposed	1		
Special Enforcement Type		Related Event Code (REC)			
General Duty Key Words		Employer's Relation to Hazard	All		
Photo/Video Number	IMG_4281, IMG_4282	Substance Codes			

Penalty

Severity	Minimal		
Severity Justification	Employees were exposed to a fall hazard of approximately 12 feet onto dirt and steel which results in injuries such as lacerations, contusions, Broken bones, and permanently debilitating injuries		
Probability	Lesser		
Probability Justification	The ladder was used at an unsafe angle beyond what is specified by this standard this leads to ladder slippage and possible failure.		
Gravity		Size	10%
Gravity based Penalty	\$0.00	Good Faith	15%
# Times Repeated		History	0%
Multiplier		Quick Fix	0%

Calculated Penalty	\$0.00	Proposed Penalty	\$0.00
Proposed Penalty Justification			

Abatement Details

# Days to Abate	10 working days	Abatement Status	
Abatement Due Date		Date Abated	12/02/2021
Abatement Documentation Required?	No	Date Verified	03/02/2022
Abatement Completed Description	The ladder was moved from this location and no longer used for this application.		

Multi-Step Abatement

Type/Other Type	# Days to Abate	Abatement Due Date	Completed (Status)	Verify Date
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Employee Exposure

Violation Instance	# Exposed to Instance	Employer	Name and Address Telephone Numbers	Duration	Frequency	Proximity
a	1		(b)(7)(C)			

Worksheet Details

A) **Hazards-Operation/Condition-Accident:** On, or about December 02, 2021, at the Northwest Corner of Janesville Rd. and Moorland Rd. Muskego WI. employee involved in equipment set up was exposed to a fall hazard of approximately twelve (12) feet when an extension ladder was improperly installed and used to support an employee while said employee was inserting safety pins into the vertical sides of a trench box prior to use. The trench box side was supported with a Caterpillar loader used to properly position the side while the employee on the ladder inserted the retaining pins. The base of the ladder was approximately 14 feet away from the base of the trench box. This would allow the ladder to shift, slide, or structurally fail while in use.

B) **Equipment:** 2) Caterpillar 336 Excavators, Werner Extension ladder(s), Hand tools, shovels and other related tools. Two trench boxes in the trench, two more on the ground on site near the trench, 8' x 20 1" steel plates were also available on site. A trailer mounted generator supplied water pump.

C) **Location:** Pipe installation jobsite at the Northwest corner of Janesville Rd. & Moorland Rd., Muskego, WI 53150

D) **Injury/Illness (and Justifications for Severity and Probability):** Severity-OTS: Per consistency memo twelve foot fall hazard onto frozen dirt and steel will result in lacerations, contusions broken bones temporary disability.
Probability-Greater: Improper use of ladder can result in failure of the ladder as well as slippage increasing the

probability of a fall.

E) **Measurements:** Twelve foot from top of the trench box side to the ground, level to which it was resting on. The 4 to 1 ratio was not meet for the ladder. The base of the ladder was approximately 14 feet from the vertical surface the ladder was placed on. This was a 4/2 ratio.

F) **Employer Knowledge:** The Foreman Ever Miranda is the competent person on site and was working in direct line of site to the trench box that was being prepared for service. The ladder being used belongs in the trench for egress, but was taken from the trench. The Foreman oversees production on the site. The job superintendent visits the jobsite and had been at this site earlier in the day and was not on site when the CSHO opened the inspection.

The Foreman is responsible for completing the Daily Excavation Safety Inspection.

Potential (b)(4)

The S.J. Louis Safety and Health Action Plan Waukesha Water Utility Great Lakes Water Supply Program Contract Package 5 - Return Flow Pipeline Job # 52007-10 & 62007-50 Pages 10 and 11

Potential (b)(4)

11

Potential (b)(4)

G) **Comments:**

H) **Other Employer Information:**

**U.S. Department of Labor
Occupational Safety and Health Administration**

Violation Worksheet

Print Date: 04/01/2022

		Inspection Number		1566426	
		Opt. Insp. Number			
Establishment Name	S. J. Louis Construction, Inc.				
DBA Name					
Type Of Violation	Other-than-Serious	Citation Number	3	Item/Group	2
Standard	1926.1053(b)(8)				
Alleged Violation Description	<p>29 CFR 1926.1053(b)(8): Ladders placed in a location where they could be displaced by workplace activities or traffic, such as in passageways, doorways, or driveways, were not secured to prevent accidental displacement, nor was a barricade used to keep the activities or traffic away from the ladder.</p> <p>(a) On or about December 2, 2021, at the Northwest corner of Janesville Rd. & Moorland Rd., Muskego, WI, a ladder being used to access an elevated area on a trench box and secure retaining pins in the spreader bar while working in a place of work activities, was not secured to prevent accidental displacement, nor was a barricade used to keep the activities or away from the ladder.</p>				
Recommended Abatement Action					
# Instances	1	# Exposed	1		
Special Enforcement Type		Related Event Code (REC)			
General Duty Key Words		Employer's Relation to Hazard	All		
Photo/Video Number	IMG_4281, IMG_4282	Substance Codes			

Penalty

Severity	Minimal		
Severity Justification	The ladder was not properly erected and was being used at the corner of the jobsite near an active road intersection.		
Probability	Lesser		
Probability Justification	Limited duration of exposure.		
Gravity		Size	10%
Gravity based Penalty	\$0.00	Good Faith	15%
# Times Repeated		History	0%
Multiplier		Quick Fix	0%
Calculated Penalty	\$0.00	Proposed Penalty	\$0.00

Proposed Penalty Justification	
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Abatement Details

# Days to Abate	10 working days	Abatement Status	
Abatement Due Date		Date Abated	12/02/2021
Abatement Documentation Required?	No	Date Verified	03/02/2022
Abatement Completed Description	The employer removed ladder from the hazard.		

Multi-Step Abatement

Type/Other Type	# Days to Abate	Abatement Due Date	Completed (Status)	Verify Date
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Employee Exposure

Violation Instance	# Exposed to Instance	Employer	Name and Address Telephone Numbers	Duration	Frequency	Proximity
a	1	S. J. Louis Construction, Inc.		(b)(7)(C)		

Worksheet Details

A) **Hazards-Operation/Condition-Accident:** On, or about December 02, 2021, at the Northwest corner of Janesville Rd. & Moorland Rd. Muskego WI.: an employee involved in equipment set up was exposed to a fall hazard of approximately twelve feet when an extension ladder that was improperly installed and used to support an employee while said employee was inserting safety pins into the vertical sides of a trench box prior to use. The ladder was being used in a high traffic area near a busy intersection. The ladder was not secured to prevent accidental displacement, nor was a barricade used to keep the activities or traffic away from the ladder.

B) **Equipment:** 2) Caterpillar 336 Excavators, Werner Extension ladder(s), Hand tools, shovels and other related tools. Two trench boxes in the trench, two more on the ground on site near the trench, 8' x 20 1" steel plates were also available on site. A trailer mounted generator supplied water pump.

C) **Location:** Pipe installation jobsite at the Northwest corner of Janesville Rd. & Moorland Rd., Muskego, WI 53150

D) **Injury/Illness (and Justifications for Severity and Probability):** Severity- OTS: Ladder was not properly erected and was being used at the corner of the jobsite near an active road intersection. Injuries such as lacerations, abrasions, broken bones, temporary, and permanent disability, and death may occur. Probability-Lesser: Limited duration of exposure.

E) **Measurements:** Ladder used at a height of 12 feet with the base 14 feet away while working 10 feet from a

busy intersection.

F) **Employer Knowledge:** The Foreman Ever Miranda is the competent person on site and was working in direct line of site to the trench box that was being prepared for service. The ladder being used belongs in the trench for egress, but was taken from the trench. The Foreman oversees production on the site. The job superintendent visits the jobsite and had been at this site earlier in the day and was not on site when the CSHO opened the inspection.

The Foreman is responsible for completing the Daily Excavation Safety Inspection.

The S.J. Louis Safety and Health Action Plan Waukesha Water Utility Great Lakes Water Supply Program
Contract Package 5 - Return Flow Pipeline Job # 52007-10 & 62007-50 Pages 10 and 11

Potential (b)(4)

G) **Comments:**

H) **Other Employer Information:**

Este documento es muy importante. Si ud. No habla inglés,
busque un traductor o llame al (414) 297-3315.

U.S. Department of Labor

Occupational Safety and Health Administration
310 W. Wisconsin Avenue Room 1180
Milwaukee, WI 53203
Phone: (414) 297-3315 Fax: (414) 297-4299



April 1, 2022

Dear Mr. Martin,

On 12/02/2021, an OSHA compliance officer met with you or your representative as part of an inspection at Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150. This letter includes the citations for the violations that were found (see summary below). Please choose one of the three options from the box to the right and complete the associated steps found on the following page **within 15 working days**. Please call us if you have any questions about the enclosed citation and/or penalties; we are here to help you choose the best option to resolve your citation as quickly as possible.

Sincerely,

**ALLEN
GRISAR**

Digitally signed by ALLEN
GRISAR
Date: 2022.04.01
16:22:12 -05'00'

Christine Zortman, Area Director

Your Citation Summary

S. J. Louis Construction, Inc.
Inspection Number: 1566426

Total Amount Due: \$28,925.00

**Payment Due Date: 15 working days
after receipt of
this letter**

You must correct each violation by the date listed in the Citation and Notification of Penalty. Please see the violations and the correction deadline for each violation starting on page 6.

Total Number of Violations: 5

**Your First Correction Deadline is:
4/7/2022**

Step 1 – Choose a Response Option and Act within 15 working days

Respond now before you lose the ability to discuss potential adjustments to penalty amounts and/or due dates. Please choose one option below and complete the steps on the next page.

Option #1 – Discuss with OSHA

I would like to discuss the citation with an OSHA representative. This may lead to changes in the penalty amount, due date or correction deadlines (if appropriate).

Option #2 – Correct and Pay

I agree with the citation, penalties, and correction deadlines, and do not contest.

Option #3 – Contest the Citation

I do not agree with the citation, penalties, and/or correction deadlines, and would like to contest.

Questions or Concerns?

If you have any questions or concerns regarding the citation, penalties, and/or correction deadlines, please call us at (414) 297-3315.

Step 2 – Complete One Option Checklist

Please post a copy of the citation at or near the place where each violation occurred, even if you plan to contest. You can use the checklist to the right to help plan your next steps. Please do not send in your checklist.

Option #1 – Discuss with OSHA

I will complete by:



1. Call: Christine Zortman, Area Director, at (414) 297-3315 as soon as possible to schedule a meeting with an OSHA representative that must occur **within 15 working days** of receiving this citation. Bring supporting documentation of existing conditions and corrections done thus far. If necessary, you can still contest the citation after this meeting. ****This meeting does NOT extend your 15 working day deadline to contest the citation.****
2. Fill in and post the attached "Notice to Employees OSHA Informal Conference" after scheduling meeting.

___ / ___

___ / ___



Option #2 – Correct Violations and Pay Penalty

I will complete by:



1. Correct violations, then complete and mail the attached "Certification of Corrective Action Worksheet" along with the appropriate evidence of repair (e.g. photos, purchase orders, etc.) to the OSHA office listed on the first page, **postmarked within 10 calendar days after each violation's correction deadline and include any required evidence. If these documents are transmitted by means other than mailing, the date the Agency received the documents is the date of submission.**
2. Pay the **Total Penalty** by using one of the following methods:
****Include your Inspection Number (see first page) on the payment.****

___ / ___

___ / ___



Pay Online: Search "OSHA" on www.pay.gov and complete the "OSHA Penalty Payment Form." Pay by debit, credit or Automated Clearing House (ACH) **within 15 working days.** Penalties over \$25,000 must be paid by ACH and require a Transaction ID (Call 202-693-2170 to obtain one).

Pay by Check: Mail check or money order payable to "DOL-OSHA" for the Total Penalty to the OSHA office listed on the first page **within 15 working days.**

Option #3 – Contest the Citation

I will complete by:



Mail a letter of intent to legally contest to the OSHA office listed on the first page, postmarked within **15 working days.**

___ / ___

U.S. Department of Labor
Occupational Safety and Health Administration
310 W. Wisconsin Avenue
Room 1180
Milwaukee, WI 53203



Citation and Notification of Penalty

To:
S. J. Louis Construction, Inc.
and its successors
P.O. Box 459
Rockville, MN 56369

Inspection Number: 1566426
Inspection Date(s): 12/02/2021 - 03/24/2022
Issuance Date: 04/01/2022

Inspection Site:
Corner of Janesville Rd. and Moorland Rd
Muskego, WI 53150

The violation(s) described in this Citation 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.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty **you either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling (414) 297-3315. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the [pay.gov](http://www.pay.gov) homepage, type "OSHA" in the Search field and select Search. From **OSHA Penalty Payment Form** search result, select Continue. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide **abatement certification** to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that **abatement documentation** is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

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 U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

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 U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 04/01/2022. The conference will be held by telephone or at the OSHA office located at 310 W. Wisconsin Avenue, Room 1180, Milwaukee, WI 53203 on _____ at _____ . Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1566426

Company Name: S. J. Louis Construction, Inc.
Inspection Site: Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150
Issuance Date: 04/01/2022

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 310 W. Wisconsin Avenue, Room 1180, Milwaukee, WI 53203.**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review



Citation and Notification of Penalty

Company Name: S. J. Louis Construction, Inc.
Inspection Site: Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150

Citation 1 Item 1 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:

(a) On or about December 2, 2021, at a job site located at the Northwest Corner of Janesville Rd. & Moorland Rd., Muskego, WI, employees were working in a trench approximately 17 feet deep without a safe means of egress installed within 25 feet of the work being performed. Employees travel to the nearest ladder located at the north end of the trench was located approximately 38 feet from the area of work being performed and was impeded by pipe being laid, excavator arm with chain sling attached to the pipe and trench box spreader bars.

Date By Which Violation Must be Abated:
Proposed Penalty:

Quick Fix
\$6,737.00



Citation and Notification of Penalty

Company Name: S. J. Louis Construction, Inc.

Inspection Site: Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150

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

Citation 2 Item 1 a Type of Violation: **Repeat - Serious**

29 CFR 1926.651(k)(2): Where there was evidence of a situation that could result in a possible cave-in or other hazardous condition, the competent person did not remove exposed employees until necessary precautions could be taken to ensure their safety.

(a) On or about December 2, 2021, at a job site located at the Northwest corner of Janesville Rd. & Moorland Rd, Muskego, WI, the competent person did not remove employees who were exposed to cave-in and struck-by hazards while conducting pipe installation work in a trench that was not properly protected. The trench box installed in the trench was four (4) feet below the the top cut of the trench surface and was not sufficiently sloped or benched to prevent employee exposure to cave-in hazards.

(b) On or about December 2, 2021, at a job site located at the Northwest corner of Janesville Rd. & Moorland Rd, Muskego, WI, the competent person did not remove employees who were exposed to hazard associated with working in a trench without a ladder located in the trench for immediate egress and within 25 feet of the work being performed.

S.J. Louis Construction, Inc. was previously cited for a violation of this occupational safety and health standard, which was contained in OSHA inspection number 1356045, citation number 2, item number 1(b) and was affirmed as a final order on January 21, 2019, with respect to a workplace located at 1908 South Dakota Highway 50, Yankton, SD 57078.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

April 07, 2022

Proposed Penalty:

\$22,188.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: S. J. Louis Construction, Inc.
Inspection Site: Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150

Citation 2 Item 1 b Type of Violation: **Repeat - Serious**

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 (b) or (c).

(a) On or about December 2, 2021, at a job site located at the Northwest Corner of Janesville Rd. & Moorland Rd., Muskego, WI, employees were conducting water line installation while working in an excavation 17 feet in depth without sufficient shoring or sloping. This exposed employees to a trench collapse and engulfment hazard from soil.

S.J. Louis Construction, Inc. was previously cited for a violation of this occupational safety and health standard, which was contained in OSHA inspection number 1356045, citation number 2, item number 1(a) and was affirmed as a final order on January 21, 2019, with respect to a workplace located at 1908 South Dakota Highway 50, Yankton, SD 57078.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$0.00

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1566426
Inspection Date(s): 12/02/2021 - 03/24/2022
Issuance Date: 04/01/2022



Citation and Notification of Penalty

Company Name: S. J. Louis Construction, Inc.
Inspection Site: Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150

Citation 3 Item 1 Type of Violation: **Other-than-Serious**

29 CFR 1926.1053(b)(5)(i): Non-self-supporting ladder(s) were not used at an angle such that the horizontal distance from the top support to the foot of the ladder was approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support).

(a) On or about December 2, 2021, at the Northwest corner of Janesville Rd. & Moorland Rd., Muskego, WI, employees did not properly use an extension ladder at an adequate angle (4-1 ratio) to safely support an employee who was using the ladder to reach the upper portion of a trench box to install pins into the box support arms as a part of setup. This exposed the employee to a fall hazard.

Date By Which Violation Must be Abated:
Proposed Penalty:

April 20, 2022
\$0.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1566426
Inspection Date(s): 12/02/2021 - 03/24/2022
Issuance Date: 04/01/2022



Citation and Notification of Penalty

Company Name: S. J. Louis Construction, Inc.
Inspection Site: Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150

Citation 3 Item 2 Type of Violation: **Other-than-Serious**

29 CFR 1926.1053(b)(8): Ladders placed in a location where they could be displaced by workplace activities or traffic, such as in passageways, doorways, or driveways, were not secured to prevent accidental displacement, nor was a barricade used to keep the activities or traffic away from the ladder.

(a) On or about December 2, 2021, at the Northwest corner of Janesville Rd. & Moorland Rd., Muskego, WI, a ladder being used to access an elevated area on a trench box and secure retaining pins in the spreader bar while working in a place of work activities, was not secured to prevent accidental displacement, nor was a barricade used to keep the activities or away from the ladder.

Date By Which Violation Must be Abated:

April 20, 2022

Proposed Penalty:

\$0.00

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Christine Zortman
Area Director

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration
310 W. Wisconsin Avenue
Room 1180
Milwaukee, WI 53203



**INVOICE /
DEBT COLLECTION NOTICE**

Company Name: S. J. Louis Construction, Inc.
Inspection Site: Corner of Janesville Rd. and Moorland Rd, Muskego, WI 53150
Issuance Date: 04/01/2022

Summary of Penalties for Inspection Number: 1566426

Citation 1 Item 1, Serious	\$6,737.00
Citation 2 Item 1a, Repeat - Serious	\$22,188.00
Citation 2 Item 1b, Repeat - Serious	\$0.00
Citation 3 Item 1, Other-than-Serious	\$0.00
Citation 3 Item 2, Other-than-Serious	\$0.00

TOTAL PROPOSED PENALTIES: \$28,925.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the pay.gov homepage, type "OSHA" in the Search field and select Search. From the **OSHA Penalty Payment Form** search result, select Continue. The direct link is: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions, or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.

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4/1/2022

Christine Zortman
Area Director

Date



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

S.J. LOUIS CONSTRUCTION, INC.

Respondent.

OSHRC DOCKET NO. 22-0506

ORDER TERMINATING PROCEEDING

The parties have filed a joint Notification of Settlement acknowledging that the parties have resolved all contested citation items and agreed to terminate the proceeding before the Commission in the above captioned case.

IT IS THEREFORE ORDERED that this proceeding is TERMINATED pursuant to Commission Rule 100(b)(3); 100(c).¹

This Order Terminating Proceeding shall become a final Order of the Commission thirty (30) days from the date of its docketing by the Executive Secretary, unless a Commission Member directs review of the order within that time. *See* 29 U.S.C. § 661(j); Commission Rule 90(f).

SO ORDERED.

Dated: September 21, 2022
Washington, DC.

/s/ William S. Coleman
The Honorable William S. Coleman
U.S. OSHRC Judge

¹ OSHRC's new Rules of Procedure were effective June 10, 2019 and all references contained herein refer to these revised Rules. Rules of Procedure, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200). (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>).

CERTIFICATE OF SERVICE

This is to certify that a copy of the Notice/Order was sent to the parties listed below electronically using the Commission's E-Filing System on **September 21, 2022**.

Christine Heri, Regional Solicitor
U.S. Department of Labor
Office of the Solicitor
8th Floor
230 South Dearborn Street
Chicago, Illinois 60604
Attention: Suzanne Dunne, Esquire
Email: dunne.suzanne@dol.gov

Eric Hobbs, Esquire
OGLETREE DEAKINS
Email: eric.hobbs@ogletree.com

/s/ A. Black

A. Black, Legal Assistant

Post Office Address:
Judge William S. Coleman
OSHRC
One Lafayette Center
1120 20th Str. N.W. - 9th Floor
Washington, D.C. 20036-3419
(202) 606-5405
FAX (202) 606-5409

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

S.J. LOUIS CONSTRUCTION, INC.

Respondent.

OSHRC DOCKET NO. 22-0506

JOINT NOTIFICATION OF FULL SETTLEMENT

The parties respectfully notify the Court that the parties have fully settled the above captioned case and have executed a formal settlement agreement.

CERTIFICATION OF CITATION ITEMS FULLY SETTLED

The parties certify that all citation items in this case have been fully settled. All settled citation items are set forth, on a separate row, in the following chart. Commission Rule 100(b)(1)(i).¹

Citation No.	Item No.	Resolution: Settled / Withdrawn
1	1	settled
2	1a	withdrawn
2	1b	settled
3	1	settled
3	2	withdrawn

¹ OSHRC's new Rules of Procedure were effective June 10, 2019 and all references contained herein refer to these revised Rules. Rules of Procedure, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200). (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>).

CERTIFICATION OF POSTING

The parties certify that the executed settlement agreement was posted to provide notice to the affected employees.² Commission Rules 7(g); 100(b)(1)(ii); 100(c). The Secretary certifies that Respondent represented that the settlement agreement was posted at a location prescribed by Commission Rule 7(g) on the following date: September 6, 2022.

The settlement agreement shall remain posted for fourteen (14) days.

CERTIFICATION REGARDING PARTY WHO HAS ELECTED PARTY STATUS

The parties certify that any party who has elected party status, under Commission Rule 20, has been afforded an opportunity to provide input on all matters pertaining to the settlement before the settlement agreement was finalized. Commission Rule 100(b)(1)(iii).

CERTIFICATION WHETHER SETTLEMENT INCLUDES PLEADING WITHDRAWAL, AND WHETHER THE WITHDRAWAL IS WITH PREJUDICE

In the following chart, the parties certify the status of any citations, notifications, notices, or petitions, withdrawn in the settlement agreement, and certify whether the withdrawal was with or without prejudice. Each citation item and notification of proposed penalty withdrawn is included, on a separate row, in the chart. Commission Rule 100(b)(1)(iv).

Pleading	Withdrawal - With or Without Prejudice
Notice of Contest	With prejudice
Citation 2, Item 1a	With prejudice
Citation 3, Item 2	

² In cases where *all* affected employees are represented by an authorized employee representative an alternative certification shall be included in the Joint Notification of Full Settlement, rather than the posting certification stated above. The alternative certification shall comply with Commission Rules 7(f); 100(b)(1)(ii); 100(c) and shall include the date of service.

ACKNOWLEDGEMENT THAT THE PARTIES HAVE NOT PROVIDED THE SETTLEMENT AGREEMENT WITH THIS JOINT NOTIFICATION.

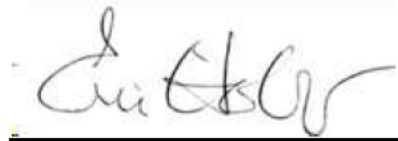
The parties confirm that they have not incorporated the settlement agreement in, or append it to, this joint Notification of Settlement. *See* Commission Rule 100(b)(2).

DRAFT ORDER TERMINATING PROCEEDING.

The parties confirm that they have filed, for execution by the Judge, a draft Order Terminating Proceeding, acknowledging that the parties have resolved all contested citation items and agreed to terminate the proceeding before the Commission, pursuant to Commission Rules 100(b)(3); 100(c).

Date: Sept 6, 2022

S.J. LOUIS CONSTRUCTION, INC.



ERIC E. HOBBS
Attorney

Attorney for Respondent

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

Suzanne F. Dunne

SUZANNE F. DUNNE
Attorney

Attorneys for **MARTIN J. WALSH**, the
Secretary of Labor, United States
Department of Labor, Complainant

CERTIFICATE OF SERVICE

This is to certify that service of the Joint Notification of Settlement filed in the Commission's E-File System was also simultaneous served by email attachment to the parties listed below on September 8, 2022

Eric E. Hobbs, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Eric.hobbs@ogletree.com

Suzanne F. Dunne

SUZANNE F. DUNNE
Attorney
United States Department of Labor
One of the Attorneys for
Complainant

- e. Complainant vacates Citation 1, Items 4b, 4c, and 4d.
- f. Complainant amends Citation 1, Item 5 to allege an Other-than-Serious violation with a penalty of \$6,144.00.
- g. Complainant vacates Citation 2, Item 1.

21-1249

Complainant vacates Citation 1, Item 1

22-0506

- a. There is no change to Citation 1, Item 1.
- b. Complainant vacates Citation 2, Item 1a.
- c. Complainant amends Citation 2, Item 1b to allege a penalty of \$16,641.00.
- d. There is no change to Citation 3, Item 1.
- e. Complainant vacates Citation 3, Item 2.

22-0507

- a. There is no change to Citation 1, Item 1.
- b. Complainant amends Citation 1, Item 2a to allege an Other-than-Serious violation with a penalty of \$6,526.00.
- c. Complainant vacates Citation 1, Item 2b.
- d. Complainant amends Citation 1, Items 2c, 2d and Citation 2, Item 1 to allege grouped, Serious violations with a penalty of \$13,052.00.

22-0740

Complainant amends Citation 1, Item 1 to allege an Other-than-Serious violation with a penalty of \$3,170.00.

II.

Respondent has no objection to Complainant amending the Citations and Notifications of Penalty as set forth in Paragraph I above.

III.

Respondent hereby withdraws its Notice of Contest to the Citation and Notification of Penalties, as amended herein, and agrees that the citations, penalties, and abatement measures (as set forth and amended herein by this Agreement) shall become a final order of the Commission on the same date that the Order Terminating Proceeding becomes a final order, as set forth in the Notice of Docketing issued by the Executive Secretary of the Commission. Respondent makes the following representations and assurances to Complainant:

- a. The conditions alleged in the Citations and Notifications of Penalty have been abated.
- b. Respondent shall pay the total proposed penalty of \$80,597.00 by check made payable to **U.S. Department of Labor, Milwaukee Area Office, 310 W. Wisconsin Ave., Rm 1180, Milwaukee, Wisconsin 53203** or through **www.Pay.gov**. The payment will be due within 30 days of the Final Order date.
- c. Respondent agrees to the following enhancements:

- Respondent will implement a real-time safety audit program on or before October 31, 2022.
- Respondent will add two safety resources on or before December 31, 2022.
- Respondent will arrange for its competent persons to be retrained by a third party of its choice on or before January 31, 2023.
- On or before October 31, 2022, Respondent will implement a “Safety Jam Line” for employees to report directly to the Safety Director hazards they believe are not being addressed on their worksites. On or before October 31, 2022, Respondent also will provide employees with stickers for their hard hats that include the “Safety Jam Line” phone number.

IV.

Based on the aforesaid assurances and representations by Respondent, Complainant has no objection to the withdrawal of the Notice of Contest.

V.

Except for these proceedings, and matters arising out of these proceedings, and any other subsequent OSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by Respondent shall be deemed an admission by the Respondent of the allegations contained within the Citations and Notifications of Penalty and the Complaint. The agreements, statements, findings, and actions taken herein are made for the purpose of compromising and settling this matter amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

VI.

Respondent certifies that this Settlement Agreement has been served on any unrepresented employees, by posting this agreement on September 6, 2022 in a place where the citations are required to be posted, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure.

VII.

Each party agrees to bear its/his own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended. Further, this Agreement shall become a final order of the Commission on the same date that the Order Terminating Proceeding becomes a final order, as set forth in the Notice of Docketing to be issued by the Executive Secretary of the Commission.

VIII.

Complainant and Respondent agree that an order should be entered which:

1. Amends the Citations and Notifications of Penalty, as set forth above;
2. Allows Respondent to withdraw its Notice of Contest to the Citations and Notifications of Penalty, as amended herein;
3. Affirms the Citations and Notifications of Penalty, as amended, as a final and enforceable order of the Review Commission, and affirms the penalty in the amount proposed with no costs, fees or other expenses to be assessed or awarded to any of the parties in this litigation.

DATED: Sept 6, 2022

S.J. LOUIS CONSTRUCTION, INC.

By:



ERIC E. HOBBS
Attorney

Attorney for Respondent

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

Suzanne F. Dunne
SUZANNE F. DUNNE
Attorney

Attorneys for **MARTIN J. WALSH**, Secretary
of Labor, United States Dep't
of Labor, Complainant

NOTICE

Any party (including any authorized employee representative of affected employees and any affected employee not represented by an authorized representative) who has any objection to the entry of an order as set forth in this agreement, must communicate such objections with Honorable William Coleman, Judge, Occupational Safety and Health Review Commission, 1120 20th St., N.W., 9th Floor, Washington, D.C., 20036-3419, with copies to attorneys for Complainant and Respondent.