

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

## Inspection Report

August 18, 2021 10:50 AM

RID	CSHO ID	Supervisor ID	Inspection Number	Optional Report Number	Case Closed Date
0523400	(b)(7)(C)	F3130	1519860		

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 West Lawnsdale Rd & South Racine Ave.	Site Phone		Extn	Site FAX	
	New Berlin, WI 53146					
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		Site NAICS	237110		Days on Site	1
Federal EIN	411440589	DUNS		Temporary or Fixed Site?		
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	03/16/2021	01:55 PM	First Closing Conference	03/16/2021	04:00 PM
Opening Conference	03/16/2021	02:15 PM	Second Closing Conference	08/18/2021	07:35 AM
Walkaround	03/16/2021	02:30 PM	Exit	03/16/2021	04:20 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	FALL		
Primary Emphasis	FALL		

**Additional Codes**

Type	ID	Value	Description
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Employed in Establishment	20	Walkaround?	N	Advance Notice?	N
Covered By Inspection	9	Interviewed?	Y	Flag for Follow-up	N
Controlled By Employer	200	Union?	N	Reason for Follow-up	
Is this Company a current federal contractor?	Unknown				

**Related UPA**

Activity Number	Activity Type	Establishment Name
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**Related Inspections**

Inspection Number	Related Inspection Type	Establishment Name
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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	Victor Munoz	Job Title	Foreman	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	Credentials, Opening Conference, Closing Conference, Walk Around

Employer Representatives Contacted					
Name	Frank Wizner	Job Title	Project Manager	Occupation	
Address				Interviewed?	N
Home		Mobile	(320) 428-3433	Fax	
Email				Participation	Credentials, Opening Conference, Closing Conference, Walk Around

Employer Representatives Contacted					
Name	Joel Martin	Job Title	Safety Manager	Occupation	
Address				Interviewed?	N
Home		Mobile	(320) 292-9457	Fax	
Email			Participation		

Employees Contacted

Name	(b)(7)(C)				
Address					
Home					
Email					

Name	
Address	
Home	
Email	

Name	
Address	
Home	
Email	

Employees Contacted

Name
Address
Home
Email

(b)(7)(C)

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	
History Reduction	0 %	History Justification	

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

CSHO Signature		Date	
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## SAFETY NARRATIVE

Inspection Number	1519860
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### COVERAGE INFORMATION

**SJ Lewis Construction Inc.:** full service utility contractor located at 1351 Broadway Street, Rockville MN. And conducting operations in New Berlin WI. using Caterpillar excavating equipment. Conducting sewer and water main projects in the Greater Milwaukee, Racine and Kenosha, WI. area.

**Date of Inspection:** March 16, 2021

**Equipment Used on Site:** 2 Caterpillar excavators 336E and 349E, Ford work truck, trench box, Caterpillar dozer, Honda generator, associated equipment and hand tools.

**Work Crew Demographics** 1 Foreman, and 8 employees.

**Employee Representatives:** Non-Union

CSHO PPE- Eye Protection, Steel Toe Boots, Reflective High Vis. Vest, Hard Hat, Mask.

### NATURE AND SCOPE

Check Applicable Boxes and Explain Findings:

- Complaint Items
- Referral Items
- Accident Investigation Summary & Findings
- LEP & NEP  
CONSTRUCTION /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 an (b)(7)(C), based on employees seen riding in the bucket of an excavator at the corner of a major intersection in New Berlin WI.

**OPENING CONFERENCE NOTES:**

The CSHO was sent to the jobsite as the result of an (b)(7)(C) given to AAD Grisar and assigned to the CSHO.

CSHO (b)(7)(C) drove to the site, around, then past the site, in an attempt to assess the situation. While driving down South Racine Ave in New Berlin WI. the CSHO observed what appeared to be workers preparing pipe around a trench box that was partially in the ground, with one side against an excavation and the other side at a lower level of ground 2 Caterpillar excavators working on either end of the trench box with 1 of the excavators removing dirt and the other adding gravel After getting a feel for the situation the CSHO turned off the busy roadway (South Racine Ave.) and on to the intersecting street (Lawnsdale Road) that went past the construction site. The CSHO was looking for, and found a good safe place to park, got out of the vehicle. Donned the appropriate Personal Protective Equipment to include Eye Protection, Steel Toe Boots, Reflective High Vis. Vest, Hard Hat, and face mask then found what appeared to be the best walking entrance into the site while looking for hazards and attempting to take relevant pictures of this largely spread out construction site. The CSHO looked to the area where the actual construction was taking place and stopped adjacent (but away) from the activity occurring on the jobsite, in order to find a place to safely observe. and then began approaching the site while evaluating the situation and getting initial photos of what included one trench box in the trench, and the two excavators on either end, two dump trucks and a dozier off in the distance The CSHO walked over and observed 2 individuals working around the trench, I quickly walked up to the area around the trench and took pictures but no one was in the trench. I was approached by an employee that identified himself as the Site Foreman during this time I recognized the following:

- There was a Werner ladder in the trench box.
- There were multiple employees working outside/ around the trench box. None were exposed.
- The employees were preparing large diameter pipe to go in the trench
- The foreman had been observing the work being conducted by the two excavators and had been standing near the end of the trench box.
- Both excavators were actively engaged at this time.

The CSHO identified himself to the foreman and showed credentials. and informed the employer

representative the reason for the inspection. The CSHO then asked the employer representative the relevant Covid JHA questions while following the document, after getting satisfactory answers the CSHO continued with the inspection while observing social distancing guidelines. The CSHO suggested that the foreman may want to contact his company and he did by calling management. When the foreman finished with his phone call he told the CSHO they could proceed but that members of management would be arriving in a few minutes. The CSHO informed the foreman of the reason for the inspection to include that OSHA had received a complaint with photos of two employees in the excavator bucket the foreman identified which of the excavators was involved in the incident by looking at the photos and the Foreman also identified which employees had been in the bucket. At this time other company managers appeared. An opening conference was held with the employer and COVID guidelines were discussed with them as well. At this time the CSHO was called by the Companies safety director Joel Martin. The CSHO held an opening with the safety director who said he was in Minnesota at the Company corporate facility conducting employee training for the rest of the week. The nature, scope, and purpose of the inspection were explained and additional information (Fed ID number, OSHA Logs, S&H Programs, etc.) was requested at this time. Other appropriate opening conference items were discussed as well.

Following the opening conference the CSHO proceed with the walk around portion of the inspection. While addressing the issues the foreman disclosed the following:

- The foreman identified which employees were in the bucket at the time the photo was taken. This was done by looking at the photo of employees and the clothing and hard hats they were wearing (then asking the alleged employees if they had done it).
- The CSHO identified the operator of the excavator.
- After talking to his employees the Foreman said that this incident had occurred while he had gone back to the yard to get something.
- The Foreman then pointed over to the union employees picketing this site and said I know where your complaint came from too.
- The foreman said that he was the competent person on the site and that one of the excavator operators was also a competent person and was in charge of the site in the event the foreman was not present.

The CSHO looked around the site and did not see any obvious violations. The CSHO did note that the area where the

Following the walk around phase of the inspection, The CSHO interviewed the employees working on site. The following was discussed:

- Employees said they had been trained by the company in trench safety.
- Employees said they do not go in areas of the trench without shielding.
- Daily safety meetings held with employees before the start of each day.
- Employees said they rode the excavator bucket in order get around the frozen, broken ground that surrounded the semi-exposed trench box. Where the pipe was to be wrapped and laid.
- Employees said that foreman was not on site at the time of the incident.
- Employees said they had not been told to stay out of the bucket but that they knew they



should stay out of it.

The inspection was reviewed, and safety training was discussed as well. The CSHO told the managers 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 representatives. The possible violations were reviewed. The company made it clear that they would be pursuing employee misconduct. The company's rights and responsibilities were discussed and an informal conference was encouraged. The CSHO then left the site.

(b) (5)

**Discussion with the employer during the second closing conference, reiterated training and the importance of job site inspections. The safety manager indicated that they were working with WISCON to have a 3<sup>rd</sup> party assess their program since they were going to be performing more work in Wisconsin.**

#### **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.

#### **PERSONAL HYGIENE FACILITIES AND PRACTICES**

(showers, lockers, change rooms, etc.)

Are any required by OSHA health standards?

Yes       No

What Standards:

## HAZARD COMMUNICATION PROGRAM

Written Program (complete)

Yes       No  
MSDS's (all)

Yes       No  
Labeling (adequate)

Yes       No  
Training (complete)

Yes       No

Copy of SDS's/Program attached

Yes       No  
Comments:

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

2       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. The company conducts jobsite inspections, daily safety huddles, and provides OSHA 10 classes. The employees working on the job site were able to describe the safety program when asked about it.

**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  
Henry S. Reuss Federal Plaza  
310 West Wisconsin Avenue, Suite 1180  
Milwaukee, WI 53203**



September 3, 2021

Mr. Joel Martin  
S.J. Louis Construction, Inc.  
1351 West Broadway Street  
Rockville, MN 56369

Re: Inspection # 1519860

Dear Mr. Martin:

The Occupational Safety and Health Administration (OSHA) Milwaukee Office conducted an inspection of your worksite located at the corner of West Lawnsdale Road and South Racine Ave., New Berlin, WI 53146, on March 16, 2021, disclosed the following hazard:

Two employees were observed being lifted in an excavator bucket to an elevated working position to access and wrap a horizontally resting 30-inch diameter pipe resting above and on the top horizontal edge of a trench box. This exposed the employees to a fall hazard and crushing hazard.

Since no OSHA standard applies and it is not considered appropriate at this time to invoke Section 5(a)(1), the general duty clause of the Occupational Safety and Health Act, no citation will be issued for these hazards. In the interest of work place safety and health, however, OSHA recommends the employer take action voluntarily to eliminate or reduce employees' exposure to potential workplace violence hazards. Feasible methods of control/abatement to protect employees may include, but are not limited to, the following:

1. Follow the Caterpillar Excavator Operation and Maintenance Manual, SEBU8560-04, MAY 2011, page 36 work tools section, and page 37 Operation Section use warning, "NEVER USE WORK TOOL FOR A WORK PLATFORM".
2. Follow the Association of Equipment Manufacturers (AEM) Safety Manual for Operating and Maintenance Personnel – Hydraulic Excavator, Dated 02/03, which states on page 20; "WARNING: NEVER USE A BUCKET FOR A WORK PLATFORM OR PERSONNEL CARRIER."
3. Follow the NIOSH publication - PREVENTING INJURIES WHEN WORKING WITH HYDRAULIC EXCAVATORS AND BACKHOE LOADERS; which states "NEVER PERMIT WORKERS TO RIDE IN OR WORK FROM EXCAVATOR OR BACKHOE LOADER BUCKETS."

We appreciate your attention to these areas of concern. If you have any questions, please feel free to contact the Milwaukee Area OSHA Office at 414-297-3315.

Sincerely,

Christine Zortman  
Area Director