

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

Inspection Report

October 7, 2021 9:45 AM

RID	CSHO ID	Supervisor ID	Inspection Number	Optional Report Number	Case Closed Date
0523400	(b)(7)(C)	F3130	1544992		

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	South Moorland Rd, South of South Westridge Dr. 42.9373143619 91156, - 88.1130607519 6912 New Berlin, WI 53146	Site Phone	(320) 428-5567	Extn	Site FAX
Business Address	Construction, inc. Rockville, MN 56369	Business Phone	(320) 253-9291	Business FAX	
Mailing Address	P.O. Box 459 Rockville, MN 56369	E-mail	michaelb@sjlo uis.com	Mobile Phone	USA
Site Activity	Water line installation.	Site NAICS	237110		Days on Site 3
Federal EIN	411440589	DUNS		Temporary or Fixed Site?	Y
State Estab Id		DUNS plus4		CAGE Code	
Construction Type	Commercial Construction				

Parent Company Legal Name		Parent Company Trade Name/DBA	
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Parent Company Address		Phone Number		Extn	
TIN / EIN			DUNS		
CAGE Code			DUNS plus4		

Entry	07/30/2021		First Closing Conference	07/30/2021	
Opening Conference	07/30/2021		Second Closing Conference	10/07/2021	
Walkaround	07/30/2021		Exit	08/24/2021	

Inspection Initiating Type	Complaint	Secondary Type	Program Planned
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	COMMENTS

Employed in Establishment	25	Walkaround?	N	Advance Notice?	N
Covered By Inspection	3	Interviewed?	Y	Flag for Follow-up	N
Controlled By Employer	138	Union?	N	Reason for Follow-up	
Is this Company a current federal contractor?	Y				

Related UPA		
Activity Number	Activity Type	Establishment Name

1792177	Complaint	S.J. Louis Construction, Inc.
1792193	Complaint	S.J. Louis Construction, Inc.

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	Jake Dilworth	Job Title	Superintendent	Occupation	Management
Address				Interviewed?	N
Home		Mobile	(320) 428-5567	Fax	
Email	jaked@sjlouis.com		Participation		Credentials, Opening Conference, Closing Conference, Walk Around

Employer Representatives Contacted					
Name	Joel Martin	Job Title	Safety Director	Occupation	Management
Address				Interviewed?	N
Home		Mobile	(320) 292-9457	Fax	
Email	joelm@sjlouis.com		Participation		Credentials, Closing Conference

Employer Representatives Contacted					
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Name	Jerry Contreras	Job Title	Superintendent	Occupation	Management
Address	(b)(7)(C)			Interviewed?	Y
Home		Mobile	(320) 250-8813	Fax	
Email				Participation	Credentials
Employees Contacted					
Name	(b)(7)(C)				
Address					
Home					
Email					
Name					
Address					
Home					
Email					
Name					
Address					
Home					
Email					
Name					

(b)(7)(C)

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	Company does not have a systematic method of insuring compliance with safety and health standards. The company has repeat violations.
History Reduction	10 % Increase	History Justification	Repeat and gravity 10 citations in the last 5 years.

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

CSHO Signature		Date	
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SAFETY NARRATIVE

Establishment Name	S.J. Louis Construction, Inc.
Inspection Number	1544992

COVERAGE INFORMATION

The company has offices, and operates, in Minnesota and Texas.

NATURE AND SCOPE

Check Applicable Boxes and Explain Findings:

Complaint Items
1792177
1792193

Planned Inspection
OSHA Instruction - CPL 02-00-161 - National Emphasis Program on Trenching and Excavation

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

None

OPENING CONFERENCE NOTES:

CSHO (b)(7)(C) opened an inspection with the company on July 30, 2021. CSHO presented credentials and discussed the purpose and scope of the inspection. CSHO discussed the inspection process and 11(c). The superintendent was present for the opening conference.

WALKAROUND NOTES:

The CSHO conducted a walk around after the opening conference. The CSHO took photos, measurement, and interviewed employees. This inspection was initiated by a complaint alleging trench/excavation hazards. In addition to the complaint, this inspection is covered under OSHA's NEP for Trenching and Excavations.

At the time of the inspection, no work was being performed at that site. The CSHO documented the conditions of the trench/excavation. The superintendent stated that the site had not been active for a while. Later the superintendent confirmed that the site was in the same condition as it was in the video provided by the complainant. The video depicts two employees (b)(7)(C) in an unprotected excavation. While the employees (b)(7)(C) continued to work in the unprotected trench, the (b)(7)(C) talked and directed employees. According to the company (b)(7)(C). Employees were under the impression that (b)(7)(C) worked for the company and was a management official.

Trench/Excavation Dimensions: 177 inches wide, ~30 feet long, ~102" depth west of drain pipe, ~116" depth East of drain pipe, and a 30" trench box at the east side of the trench.

Type C Soil - visual test, previously disturbed, known adjacent utilities, adjacent to active roadway, and water accumulation in trench from water table (river near location).

The CSHO will propose a citation for the lack of trench/excavation protection. Other hazard of competent person and/or egress were not able to be substantiated at this time.

The employer stated that a local Union has been harassing them and their employees since the onset of the project. The employer claims that they have been taking down people's license plates and then contacting them to try to get them to provide information.

PPE UTILIZED:

Safety Glasses, Safety Shoes, Hard Hat, Mask, Visibility Vest

RECORDKEEPING PROGRAMS

Other than 29 CFR 1904 requirements)

Does the employer have 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 standards?

Yes No

HAZARD COMMUNICATION PROGRAM

Written Program (complete)

Yes No

SDS's (all)

Yes No

Labeling (adequate)

Yes No

Training (complete)

Yes No

Copy of SDSs/Program attached

Yes No

Comments: See attached program in case file.

ERGONOMIC PROBLEMS

Yes No

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)

Written S&H Program

2

Communication to Employees

1

Enforcement

0

Safety Training Program

1

Health Training Program

1

Accident Investigation Performed

2

Preventive Action Taken

0

Comments: The Company has safety and health programs (including excavation safety) and provides employees with training on those programs. However, the company has shown a pattern of non-compliance in that they have had various inspection for violations of trenching/excavation, and related hazards. Additionally, the consultant was on site and did not remove employees from the cave-in/engulfment hazards. Their enforcement policies have not been sufficient to ensure compliance.

CLOSING CONFERENCE NOTES:

A closing conference was held with the superintendent and EHS manager (via phone) on October 7, 2021. The CSHO discussed the violation and other possible violations, abatement,

11(c), and the employer's rights and responsibilities.

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

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

Violation Worksheet

Print Date: 10/07/2021

		Inspection Number		1544992	
		Opt. Insp. Number			
Establishment Name	S.J. Louis Construction, Inc.				
DBA Name					
Type Of Violation	Repeat - Serious	Citation Number	1	Item/Group	1
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 July 22, 2021, at a worksite located on South Moorland Drive, south of South Westridge Drive in New Berlin, Wisconsin, employees were working in an unprotected excavation greater than 8.5 feet in depth without shoring or sloping. This exposed employees to engulfment hazards.</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	2		
Special Enforcement Type		Related Event Code (REC)	Complaint		
General Duty Key Words		Employer's Relation to Hazard	All		
Photo/Video Number		Substance Codes			

Penalty

Severity	High		
Severity Justification	Injuries could lead to death.		
Probability	Greater		
Probability Justification	(b) (7)(C) and (7)(D)		
Gravity	High	Size	10%
Gravity based Penalty	\$13,653.00	Good Faith	0%
# Times Repeated	1	History	10% Increase

Multiplier	2	Quick Fix	0%
Calculated Penalty	\$27,033.00	Proposed Penalty	\$27,033.00
Proposed Penalty Justification			

Abatement Details

# Days to Abate	5 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	1	S.J. Louis Construction, Inc.		(b)(7)(C)		
a	1	S.J. Louis Construction, Inc.				

Worksheet Details

A) **Hazards-Operation/Condition-Accident:** Engulfment Hazards: Two employees were working in a trench and were not protected from cave-ins by shoring or sloping. One employee was exposed in a section of trench that was 8.5 ft. in depth while compacting fill materials, and the other employee was exposed in a 9.5 ft. trench. A video of the exposure is contained in the case file (12- Initiating Documents). This inspection was opened after the exposure incident. One of the exposed employees is not employed by the company any longer. The company's consultant was on site and talking directly to the exposed employees at the time of exposure. The (b)(7)(C) and employer stated that the (b)(7)(C) was not a management official for the company. However, (b) (7)(C) and (7)(D)

B) Equipment: CAT Excavator (349F), trench boxes (Double stacked), ladders, catwalk, water pump, and other tools of the trade.

C) Location: South Moorland Road, South of South Westridge Drive
New Berlin, WI 53146
42.937314361991156, -88.11306075196912

D) Injury/Illness (and Justifications for Severity and Probability): Severity: High severity due to the injuries resulting in hospitalization or a variable but limited period of disability. Injuries which could occur include death. Probability: Greater probability due to multiple employees in a soil class C trench with water and vibration hazards.

E) Measurements: Trench Dimensions: 177 inches wide, ~30 feet long, ~102" depth west of drain pipe, ~116" depth East of drain pipe, and a 30" trench box at the east side of the trench.
Type C Soil - visual test, previously disturbed, known adjacent utilities, adjacent to active roadway, and water accumulation in trench from water table (river near location).

F) Employer Knowledge: The superintendent and consultant were on site, assigned the work, and directed employees. The consultant was in direct contact with the exposed employees while they were exposed. The consultant did not attempt to remove the exposed employees. The company has had multiple inspections (1539128, 1523626, 1519860) due to trench hazards. Additionally, the company was issued a citation for trench protection in South Dakota in 2018.

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



October 8, 2021

Dear Employer,

On 07/30/2021, an OSHA compliance officer met with you or your representative as part of an inspection at South Moorland Rd, South of South Westridge Dr., 42.937314361991156, -88.11306075196912, New Berlin, WI 53146. 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: 2021.10.08
14:48:29 -05'00'

Christine Zortman, Area Director

Your Citation Summary

S.J. Louis Construction, Inc.
Inspection Number: 1544992

Total Amount Due: \$27,033.00
**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 : 1

**Your First Correction Deadline is:
10/21/2021**

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



10/08/2021

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

Dear Employer:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet entitled, "Employer Rights and Responsibilities Following an OSHA Inspection", (OSHA 3000-04R) revised 2018, which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussions in person or by telephone. Please contact me at (414) 297-3315.

You will note on page 6 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 3 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

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 the citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the Citations as soon as the time, date and the place of the informal conference have been determined. Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of 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.

You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of 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.

Sincerely,

Christine Zortman
Area Director

Enclosures

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: 1544992
Inspection Date(s): 07/30/2021 - 10/07/2021
Issuance Date: 10/08/2021

Inspection Site:
South Moorland Rd, South of South Westridge Dr.,
42.937314361991156, -88.11306075196912
New Berlin, WI 53146

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 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 10/08/2021. 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: 1544992

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

Inspection Site: South Moorland Rd, South of South Westridge Dr., 42.937314361991156, -88.11306075196912, New Berlin, WI 53146

Issuance Date: 10/08/2021

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



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

Inspection Number: 1544992
Inspection Date(s): 07/30/2021 - 10/07/2021
Issuance Date: 10/08/2021

Citation and Notification of Penalty

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

Inspection Site: South Moorland Rd, South of South Westridge Dr., 42.937314361991156, - 88.11306075196912, New Berlin, WI 53146

Citation 1 Item 1 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 July 22, 2021, at a worksite located on South Moorland Drive, south of South Westridge Drive in New Berlin, Wisconsin, employees were conducting water line installation while working in an unprotected excavation greater than 8.5 feet in depth without 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.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

October 21, 2021

Proposed Penalty:

\$27,033.00

**ALLEN
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Date: 2021.10.08
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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: South Moorland Rd, South of South Westridge Dr., 42.937314361991156, -
88.11306075196912, New Berlin, WI 53146**
Issuance Date: 10/08/2021

Summary of Penalties for Inspection Number: 1544992

Citation 1 Item 1, Repeat - Serious	\$27,033.00
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TOTAL PROPOSED PENALTIES:	\$27,033.00
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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](http://www.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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Date: 2021.10.08
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10/8/2021

Christine Zortman
Area Director

Date

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

:
:
: **MARTIN J. WALSH**, Secretary of Labor, :
United States Department of Labor, :
:
Complainant, : **OSHRC Docket Nos.: 21-1055,** :
: **21-1249, 22-0506, 22-0507,** :
: **22-0740** :
:
v. :
:
S.J. LOUIS CONSTRUCTION, INC., :
Respondent. :
:

STIPULATION and SETTLEMENT AGREEMENT

Complainant, **MARTIN J. WALSH**, Secretary of Labor, United States Department of Labor, and Respondent, **S.J. LOUIS CONSTRUCTION, INC.**, pursuant to Rule 100 of Commission, hereby agree and stipulate to the full settlement of these matters as follows:

I.

21-1055

- a. Complainant amends Citation 1, Item 1 to allege an Other-than-Serious violation with a penalty of \$2,238.00.
- b. Complainant amends Citation 1, Item 2 to allege a penalty of \$7,461.00.
- c. Complainant vacates Citation 1, Item 3.
- d. Complainant amends Citation 1, Item 4a to allege a penalty of \$12,288.00.

- 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.

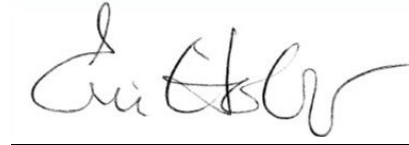
Complainant and Respondent agree that an order should be entered which:

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.