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**Major Mistakes:
Preliminary Report on Sunesis
Construction Company, Inc. in the
Indiana Construction Market**

July 31, 2008

Indiana Construction Information Network

Prepared by David Williams

REPORT SUMMARY

This report examines eight (8) recent Indiana projects on which Sunesis Construction Company, Inc., an Ohio-based general construction contractor, served as the general contractor (GC) during 2007 and 2008. These projects represent approximately \$30 million in Indiana construction work.¹

All of the examined projects are either currently in-progress or recently completed. The examined projects include Indiana Department of Transportation (INDOT) projects, including Major Moves projects, as well as local municipal projects.

Sunesis and the Major Moves Program

Sunesis has a regular practice of using out-of-state workers on its Indiana construction jobs. The majority of Sunesis workers on its Indiana construction jobs are Ohio residents. Two of the projects, State Road 238 and State Road 44, were identified as Major Moves projects totaling approximately \$13 million. Compounding this problem, at least eight (8) examples of Sunesis using Ohio-based subcontractors on its Indiana construction jobs were identified. This is most disturbing in areas that have been hard hit economically, e.g. Fayette County, location of the State Road 44 project, which has the highest unemployment rate in the state at 10.3%.²

The Tax Gap

The use of out-of-state workers creates a "tax gap." Sunesis out-of-state workers pay state income tax back to their state of residence, not Indiana, creating a significant revenue loss for the state of Indiana.³ A review of 201 weeks of certified payroll records across all eight (8) projects during 2007 and 2008 reveal that during the examined periods:⁴

- 79% of state taxes paid by Sunesis workers were paid to Ohio
- 14% of state taxes paid by Sunesis workers were paid to Indiana
- 7% of state taxes paid by Sunesis workers were paid to Kentucky

Worker Deaths and OSHA

Sunesis was fined over \$130,000 after two (2) workers died in separate trench collapse accidents in 2005. Sunesis received citations for as many as 23 violations from OSHA inspectors in 2005. Since 2005, Sunesis' dismal safety record has been highlighted in two (2) national reports on worker safety:

1. Discounting Death: OSHA's Failure to Punish Safety Violations that Kill Workers; U.S. Senate Health, Education, Labor and Pensions Committee; Released: April 29, 2008
2. Workplace Health and Safety "Dirty Dozen" Report; The National Council for Occupational Safety and Health (NCOSH); Released: April 24, 2006

¹ This dollar amount is based on original valuation, which is the engineer's valuation estimate taken from McGraw-Hill "Dodge" reports. The actual contract amounts may differ slightly depending on a number of factors.

² <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

³ This report did not examine county and local tax payments.

⁴ Totals exceed one hundred percent due to rounding.

Litigation

Sunesis has an extensive history of litigation, including at least four (4) cases in which they sought, and received, permanent injunctions against awarding agencies to prohibit the agency from accepting Sunesis' own job bids.

National Labor Relations Board (NLRB)

Sunesis has a history of NLRB charges being filed against them. During 2007 and 2008 at least six (6) Unfair Labor Practice charges were filed against Sunesis at NLRB Region 25 in Indianapolis alleging violations of the National Labor Relations Act.

Sunesis 2007 and 2008 Projects

The eight (8) projects examined for this report are as follows:

Noblesville, Indiana
Bike/Pedestrian Facility Riverwalk, Phase 1
INDOT R30232
Hamilton County - Unemployment Rate – 3.5%⁵
Original Project Valuation - \$961,981⁶

Centerville, Indiana
Waste Water Treatment Plant Improvements Contract 1
Wayne County – Unemployment Rate – 6.0%⁹
Original Project Valuation - \$2,780,000¹⁰

Various Locations
State Road 238 Project; INDOT R28939
[Major Moves Project]
Hamilton County – Unemployment Rate – 3.5%¹³
Hancock County – Unemployment Rate – 4.2%¹⁴
Original Project Valuation - \$10,827,812¹⁵

Connersville, Indiana
State Road 44 Project; INDOT R28527
[Major Moves Project]
Fayette County – Unemployment Rate – 10.3%¹⁸
Original Project Valuation - \$2,418,386¹⁹

Centerville, Indiana
U.S. 40; INDOT R28787
Wayne County – Unemployment Rate – 6.0%⁷
Original Project Valuation - \$1,198,041⁸

Columbus, Indiana
Mariah Basins Project
Bartholomew County – Unemployment Rate – 4.0%¹¹
Original Project Valuation - \$5,565,000¹²

Greenwood, Indiana
Stones Crossing; INDOT R29324
Johnson County – Unemployment Rate – 4.2%¹⁶
Original Project Valuation - \$2,873,832¹⁷

Aurora, Indiana
Sanitary Collection Lines & Pumping System
Dearborn County – Unemployment Rate – 5.2%²⁰
Original Project Valuation - \$4,000,000²¹

⁵ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

⁶ McGraw-Hill Dodge Report, May 29, 2008

⁷ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

⁸ McGraw-Hill Dodge Report, May 29, 2008

⁹ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

¹⁰ McGraw-Hill Dodge Report, May 29, 2008

¹¹ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

¹² McGraw-Hill Dodge Report, May 29, 2008

¹³ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

¹⁴ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

¹⁵ McGraw-Hill Dodge Report, May 29, 2008

¹⁶ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

¹⁷ McGraw-Hill Dodge Report, May 29, 2008

¹⁸ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

¹⁹ McGraw-Hill Dodge Report, May 29, 2008

²⁰ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

OVERVIEW OF SUNESIS CONSTRUCTION COMPANY, INC.

Company Profile

Sunesis Construction Company, Inc. is an Ohio-based general construction contractor engaged primarily in street, highway, and bridge construction. Sunesis is headquartered at 2610 Crescentville Road, West Chester, Ohio 45069. Sunesis is incorporated in the State of Ohio and during peak season Sunesis employs about 125 employees.²²

Sunesis was started in 1991 by Rick Jones, Bruce Benskin, Julie Barnes, and Bill Huber. Company officers are: Rick Jones, President; Bill Huber, Treasurer; and Steve Abernathy, Vice President.²³

Finances

The most recent end-year figures available are for 2005. In 2005, Sunesis' Contract Revenue Earned was \$45,547,322 with a gross profit of \$6,737,875 or 14.8%. Sunesis listed total assets that year of \$18,572,903 on total liabilities of \$10,381,535.²⁴ Rick Jones owns 100% of the capital stock.²⁵

Dun & Bradstreet Report

The February 22, 2008, Dun & Bradstreet Risk Management "Live Report" gave Sunesis a 3-month PayDex score of 51 and a 12-month score of 55. According to the report, payments to suppliers averaged 29 days and 26 days beyond terms, respectively.²⁶ D & B PayDex scores are a dollar weighted indicator of payment performance based on up to 263 payment experiences as reported to D&B by trade references. PayDex scores range from 1 to 100 with 100 being the highest rating for payment performance.²⁷

The February 22, 2008, D & B report also gives Sunesis a Commercial Credit Score Class of 5. This is on a scale of 1 to 5 with 5 being the highest risk for severe payment delinquency over the next 12 months.²⁸

Background on Owner Rick Jones

Prior to starting Sunesis, Jones was employed at Price-Waterhouse in Cincinnati between 1987-1991. Jones, born in 1965, is a 1987 graduate of Miami University in Oxford, Ohio.²⁹

Rick Jones is also involved in auto racing. For the 2008 racing season, Sunesis sponsors a late model stock car race every Friday night at Moler Raceway Park in Williamsburg, Ohio.³⁰ Rick Jones also owns and operates a late model stock car racing team.³¹

²¹ McGraw-Hill Dodge Report, May 29, 2008

²² Dun & Bradstreet Live Report, 2/22/2008; Hoovers report, 2/25/08

²³ Dun & Bradstreet Live Report, 2/22/2008; Hoovers report, 2/25/08

²⁴ Sunesis year-end balance sheet as certified on 2/24/06 by Barnes, Dennig & Company, Ltd., Cincinnati, Ohio

²⁵ Dun & Bradstreet Live Report, 2/22/2008

²⁶ Dun & Bradstreet Live Report, 2/22/2008

²⁷ <https://www.dnb.com/product/ptpsampl.htm#paydexintrprt>

²⁸ Dun & Bradstreet Live Report, 2/22/2008

²⁹ Dun & Bradstreet Live Report, 2/22/2008; Hoovers report, 2/25/08

³⁰ <http://www.molerracewayparkonline.com/TRACK.html>

³¹ <http://www.whowon.com/Results.asp?TrackID=2813&StoryID=232963>; conversation with Rick Jones, Aug. 31, 2007

SUNESIS AND THE “MAJOR MOVES” PROGRAM



BUILDING ROADS. CREATING JOBS.

“According to a USDOT economic model, Major Moves could create 130,000 jobs”

*Governor Mitch Daniels Major Moves Proposal
November 22, 2005*

Overview of the “Major Moves” Program

“Major Moves: Building Roads, Creating Jobs” is the theme for the “Major Moves” Indiana road construction program which began in 2006. The Major Moves program is promoted as a 10-year plan that will raise road construction spending from \$213 million in FY 2006 to \$874 million in 2015. The program was conceived and extensively promoted by Indiana Governor Mitch Daniels. A key component of the program was Daniels’ decision to lease the Indiana toll road. The 75-year toll road lease was awarded for \$3.8 billion to Cintra-Maquarie, an Australian-Spanish consortium which operates more than 40 toll facilities worldwide.³²

A portion of the proceeds from the lease deal were then earmarked for the I-69 extension between Indianapolis and Evansville. The rest of the funds were designated for road construction throughout the state of Indiana and were to be distributed at the county level to all 92 counties. Additionally, all counties in which the Indiana toll road is located were slated to receive one-time payments of between \$40 million and \$120 million for local transportation projects.³³

This is an excerpt from the Major Moves section of the Indiana Department of Labor web site:

*Highway planning and construction is in full gear all across Indiana - thanks to Governor Daniels' Major Moves program. During 2007, the Indiana Department of Transportation awarded \$831 million in construction contracts. The 10-year, \$12 billion program is the largest roads and jobs plan in the state's history. More than 400 projects are part of the Major Moves program.*³⁴

It is very difficult to track which projects have Major Moves monies associated with them. In part, this is due to recent changes in INDOT’s purchase order documents and the commingling of Major Moves monies with federal and local funds. While there is a listing of Major Moves projects on the INDOT web site, it does not appear to be all-inclusive. There has been a tradition of erecting signs on construction sites with the “Major Moves” logo, but there have been many job site locations with “Major Moves” signs erected which are not reflected on the INDOT web site list.³⁵

³² http://en.wikipedia.org/wiki/Major_Moves; <http://www.in.gov/indot/2276.htm>

³³ http://en.wikipedia.org/wiki/Major_Moves; <http://www.in.gov/indot/2276.htm>

³⁴ <http://www.in.gov/2411.htm>

³⁵ Job site visits

Major Moves Projects Awarded to Sunesis

Major Moves projects have been awarded to Sunesis. This has been extremely problematic for many who supported the Major Moves initiative. While many Hoosiers were uncomfortable with leasing an Indiana asset to a foreign entity for 75 years, they supported the program with the understanding that it would create jobs for Indiana residents. At least two (2) Major Moves projects have been awarded to Sunesis. The first is the State Road 238 project, a \$10.8 million project.³⁶ The second project is State Road 44 in Fayette County (Connersville), a \$2.4 million project.³⁷

“The more creative and aggressive we are, the more we can build and the sooner we can begin reaping the benefits in jobs and dollars that our major moves will trigger. And the jobs benefits of all this additional activity during the construction period alone would be enormous.”

*Governor Mitch Daniels, letter addressed to “My Fellow Hoosiers”
Major Moves Proposal, November 22, 2005*

The Use of Out-of-State Employees

Sunesis has a regular practice of bringing their Ohio workers to Sunesis jobs in Indiana rather than hiring local Indiana workers. A check of Indiana certified payroll records, job site discussions with Sunesis employees, and a conversation with owner Rick Jones confirms that a majority of Sunesis’ workforce on Indiana jobs are residents of Ohio.³⁸ This was further confirmed through an National Labor Relations Board investigation.³⁹ This practice is troubling considering the April 2008, seasonally adjusted unemployment rate in Indiana was 5.3%.⁴⁰

Sunesis’ practice of not hiring Indiana workers for Indiana construction jobs becomes even more problematic at Sunesis job sites in areas of the state that have been extremely hard hit by the economic downturn. Fayette County, location of the State Road 44 project, has the highest unemployment rate in the state. The May 2008, seasonally adjusted unemployment rate for Fayette County is 10.3%.⁴¹ The Visteon plant in Connersville closed operations in 2007 idling some 900 workers. The plant represented nearly one-third of the manufacturing work force in Fayette County.⁴² Additionally, this project represents Fayette County’s entire allotment of “Major Moves” money.⁴³

The project’s pre-job conference was held on February 29, 2008. Among the conference attendees were the Mayor of Connersville, Leonard Urban, and Sunesis representatives, including Construction Manager, Corbin Lewis.⁴⁴ At the conference, Sunesis indicated to Mayor Urban that Sunesis would attempt to hire local residents to work on the project.⁴⁵ Since the conference, Mayor Urban has repeatedly pressed the issue with Sunesis. In a letter from Mayor Urban addressed to Sunesis dated April 16, 2008, Mayor

³⁶ A Major Moves sign has been present on this job site since at least March 26, 2008

³⁷ Conversation with Connersville Mayor Leonard Urban, March 14, 2008

³⁸ Confirmed through certified payroll records and visits to job sites; conversation with Rick Jones, April 2, 2008

³⁹ See pg. 15 of this report, ULP charge number - 25-CA-30453

⁴⁰ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

⁴¹ <http://www.nidataplus.com/inrate1.htm> – June 29, 2008

⁴² <http://www.indianaeconomicdigest.net/main.asp?SectionID=31&subsectionID=62&articleID=31821>

⁴³ Conversation with Connersville Mayor Leonard Urban, March 14, 2008

⁴⁴ INDOT pre-job conference minutes, R-28527, February 29, 2008

⁴⁵ Letter from Mayor Urban to Dwayne Myers, INDOT, dated April 29, 2008

Urban explained that he was still waiting for Sunesis employment applications to be made available at the Indiana Work One center. In the letter, Mayor Urban also provided Sunesis with the language from Section 107.01, subsection 30, of the INDOT Standards Specifications Manual which mandates the hiring of county residents on certain state funded projects.⁴⁶ On June 4, 2008, Mayor Urban asserted that Sunesis had declined to hire any local residents for the project.⁴⁷

On April 3, 2008, the Fortville-McCordsville Reporter published an article on the hiring practices of Sunesis. In the article, Chuck Renken, Director of Human Resources for Sunesis, is reported saying that while Sunesis appreciates the “Major Moves” issue, the contracts do not require a specific number of Indiana residents to be present on a job. Renken was also quoted in the piece as claiming that Sunesis had hired Indiana residents on past jobs, but he was unable to provide to reporter Brianna Cole the number of Indiana residents on current jobs.⁴⁸

The Use of Out-of-State Subcontractors

Sunesis has also used Ohio-based subcontractors on Sunesis' Indiana projects. At least eight (8) examples of this practice were identified:

State Road 238 Project:	Complete Clearing Inc., Marengo, Ohio ⁴⁹
Mariah Basin Project:	Lithko Contracting, Inc., Hamilton, Ohio ⁵⁰ Erosion Runner, Springboro, Ohio ⁵¹
U.S. 40 Project:	Scherzinger Drilling, Inc., Miamtown, Ohio ⁵² Complete Clearing, Inc., Marengo, Ohio ⁵³
Aurora Lift/Pump Station:	Capital Electric, Dayton, Ohio ⁵⁴ Protective Coatings, Dayton, Ohio ⁵⁵ Mobilcomm Inc., Cincinnati, Ohio ⁵⁶

This seems to be a questionable practice given the number of qualified local subcontractors that could perform this work, thereby keeping Indiana residents employed and generating revenue for the Indiana economy.

⁴⁶ Letter from Mayor Urban dated April 16, 2008

⁴⁷ Conversation with Mayor Urban, June 4, 2008

⁴⁸ Fortville-McCordsville Reporter, April 3, 2008, pg 1

⁴⁹ Confirmed via job site visits

⁵⁰ Certified payroll records, 11/21/07 – 12/13/07

⁵¹ Certified payroll records, 10/10/07

⁵² INDOT IC-30 Form, dated 4/22/08

⁵³ Quote dated 3/21/08; confirmed via job site visits

⁵⁴ Certified payroll records, 6/10/07

⁵⁵ Certified payroll records, 2/27/08

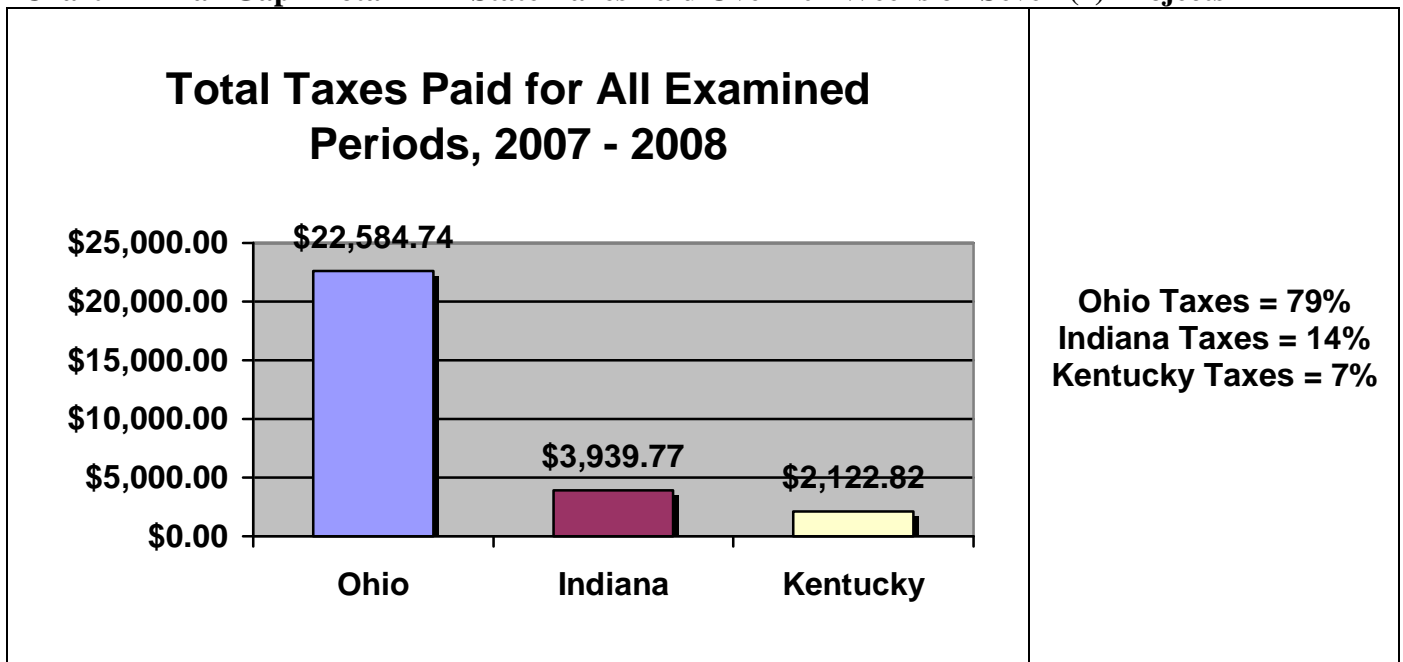
⁵⁶ Certified payroll records, 2/28/08

The "Tax Gap" - Indiana Resident Tax Issues

Indiana workers face an obvious problem when public construction jobs are lost to out-of-state workers. Compounding this issue is the fact that Ohio workers employed by Sunesis on Indiana construction projects are paying taxes back to their home state, not Indiana.

A review of a total of 201 weeks of certified payroll records on seven (7) of the eight (8) Sunesis jobs in Indiana reveal a serious revenue issue for the State of Indiana. Since Indiana has a reciprocal tax agreement with five nearby states, one of which is Ohio, state withholding tax is paid to the workers' state of residence and not the state in which the worker earned the income.⁵⁷ Reciprocal tax agreements are a loophole that needs to be addressed. They were not intended to provide income and jobs for Ohio residents while Indiana residents remained unemployed and Indiana loses tax revenue. As can be seen in the chart below, this situation is a losing proposition for the State of Indiana.

Chart 1 - "Tax Gap" Total – All State Taxes Paid Over 201 Weeks on Seven (7) Projects⁵⁸



INDOT/Major Moves Regulations for Indiana Residents

"The steps we propose to take or to explore have all been used successfully elsewhere. We cannot know that every one will succeed here, but if we fail to try we will never know how many jobs we missed out on or dreams we left unfulfilled."

*Governor Mitch Daniels, letter addressed to "My Fellow Hoosiers"
Major Moves Proposal, November 22, 2005*

⁵⁷ Indiana Department of Revenue Tax Bulletin #28, dated September 2007

⁵⁸ Totals exceed one hundred percent due to rounding

Sunesis Human Resource Director, Chuck Renken's, reported assertion that Indiana does not require any specific number of Indiana residents on Major Moves jobs is not entirely accurate. In fact, Section 107.01, Subsection 30 of the INDOT Standards Specifications Manual does require the following:

It shall be a condition of each contract let for the construction of a State maintained highway or bridge, financed entirely with state funds that all unskilled laborers employed on such work shall be residents of the county or counties in which such highway or bridge is being constructed, if such labor is available. The Department will designate the class of labor which is unskilled. This provision will not apply to any contract on which federal funds are to be used.[emphasis added]⁵⁹

It is clear from the passage above that some requirements to hire local residents are placed on contractors in the performance of certain INDOT work.

A Solution That Benefits Hoosier Workers Should be Found

It is reasonable to assume, given the INDOT language above, a workable solution could be found to limit the flight of Indiana tax dollars to out-of-state contractors, subcontractors, and workers. Specifically, a solution should include all Major Moves projects. There are several important factors that should be considered when addressing this issue:

- The Major Moves program was a key economic development initiative of Indiana Governor Mitch Daniels. At the time of its implementation the program was widely criticized for the leasing of the toll road to a foreign entity. The Daniels administration now has an opportunity to address a similar issue at the local level for the benefit of Hoosier workers.
- The theme of Major Moves is “Building Roads, Creating Jobs.” Indiana residents have carried the burden of the Major Moves program. As such, Indiana residents should be the beneficiaries of the jobs created and the resulting tax revenues. There is an all-too-obvious revenue interest for the State of Indiana when Hoosier workers are fully employed and paying taxes to the State of Indiana.
- There are many responsible and responsive contractors in Indiana capable of doing this work. Once again, the utilization of Hoosier workers on public construction projects should be a matter of obvious interest to the State of Indiana.
- While the issue of out-of-state workers paying state taxes back to their state of residence is a focus of this report, the issue of whether county and local taxes are being paid by these workers was not analyzed. If out-of-state workers are not paying local taxes to the county or community in which the work is being performed it may represent a significant revenue loss at the county and local level. This issue requires further research.

⁵⁹ INDOT Standards Specifications Manual, Section 107.01, Subsection 30

SUNESIS HAS A HISTORY OF WORKER DEATHS AND WILLFUL AND SERIOUS OSHA VIOLATIONS

Sunesis and OSHA Violations

Sunesis was fined over \$130,000 by OSHA after two (2) workers died in separate trench collapse accidents in 2005.⁶⁰ According to a National Council for Occupational Safety and Health report issued in 2006, "worker fatalities from trench cave-ins are well recognized in the industry and totally preventable."⁶¹ Sunesis received citations for as many as 23 violations from OSHA inspectors in 2005.

Table 1 – OSHA Establishment Search Results Page⁶²

Activity	Opened	St	Type	Sc	# of Violations	Establishment Name
309724789	10/25/2006	IN	Planned	Complete		Sunesis Construction
309894640	03/07/2006	OH	Planned	Partial		Sunesis Construction Co.
309414100	10/18/2005	OH	Accident	Partial	6	Sunesis Construction Co.
309266864	09/06/2005	OH	Planned	Partial	4	Sunesis Construction Co.
309266849	08/16/2005	OH	Planned	Partial	1	Sunesis Construction Co.
309263119	07/31/2005	OH	Accident	Partial	12	Sunesis Construction Co.

Sunesis’ Dismal Safety Record Has Been Highlighted in Two (2) National Reports on Worker Safety

The two (2) worker deaths and Sunesis’ history of OSHA violations have been highlighted in two national reports:

DISCOUNTING DEATH: OSHA’S FAILURE TO PUNISH SAFETY VIOLATIONS THAT KILL WORKERS; U.S. SENATE HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE

- Released: April 29, 2008⁶³

This recent report was prepared by the Majority Staff of the U.S. Senate Committee on Health, Education, Labor, and Pensions, chaired by Senator Edward Kennedy. The report, released on April 29, 2008, details the inadequate system of OSHA penalties and fines. Discussing the second fatality at Sunesis, the report states, "Tragically, in October 2005, another worker was killed in a trench collapse at a nearby Sunesis worksite. Among other violations, the inspector found that the fatality was caused by a violation of exactly the same safety standard for which inspector had issued a serious citation in August and a willful citation in September."

The following is the full excerpt from the U.S. Senate Committee report explaining the Sunesis worker fatalities and violations:

⁶⁰ Discounting Death: OSHA’s Failure to Punish Safety Violations That Kill Workers; U.S. Senate Health, Education, Labor and Pensions Committee.

⁶¹ Workplace Health and Safety *Dirty Dozen* Report; The National Council for Occupational Safety and Health (NCOSH); pg. 4. April 25, 2006

⁶² OSHA Web Site - Establishment Search Results Page, http://www.osha.gov/pls/imis/establishment.search?p_logger=1&establishment=sunesis&State=All&officetype=All&Office=All&p_case=closed&endmonth=06&endday=01&endyear=1974&startmonth=06&startday=01&startyear=2008; search for "Sunesis," June 1, 2008

⁶³ The report is available at the INCIN web site: www.incin.org

In July 2005, a worker was killed in a trench collapse at a Cincinnati, Ohio, construction site of Sunesis Construction Company. The inspector issued thirteen serious and two willful citations and assessed total penalties of \$150,500. After the company contested the citations, OSHA settled the case by deleting one willful citation and two serious citations, and reducing the penalties to \$80,000, a 47% reduction.

Sunesis was designated as an Enhanced Enforcement Program target, but no follow-up inspection was conducted at the jobsite where the July fatality occurred.

OSHA conducted two planned inspections at other jobsites in Cincinnati in August and September of that year. In August, an inspector cited a serious violation of the same group of regulations that the inspector found had caused the July fatality – regulations protecting workers working in trenches or “excavations.” The inspector issued a \$3,500 fine, but, after the company contested the citations, OSHA settled the case by cutting the penalty to \$500, an 85% reduction.

In September, the inspector cited the company for two willful and two serious violations, and assessed total fines of \$119,000. One of the willful violations was for exactly the same safety standard cited in August. After the company contested the citations, OSHA settled the case, downgrading both willful violations to serious and cutting total fines to a mere \$6,500 – an astonishing 95% reduction.

Tragically, in October 2005, another worker was killed in a trench collapse at a nearby Sunesis worksite. Among other violations, the inspector found that the fatality was caused by a violation of exactly the same safety standard for which inspector had issued a serious citation in August and a willful citation in September. All the October 2005 violations were in the same category of standards which the inspector found were violated in the July 2005 fatality investigation.

The inspector issued five serious violations, one willful violation, and assessed \$71,750 in penalties. Again, the company contested the citations. In settling the case, OSHA downgraded the willful citation to “unclassified” and reduced penalties to \$50,500, a 30% reduction. EEP logs indicate no follow-up or “related site” inspections for any of these fatalities.⁶⁴

WORKPLACE HEALTH AND SAFETY "DIRTY DOZEN" REPORT; THE NATIONAL COUNCIL FOR OCCUPATIONAL SAFETY AND HEALTH (NCOSH)

- Released: April 24, 2006⁶⁵

The introduction to the NCOSH report, in part, states, *"This report describes 12 cases of companies whose reckless disregard for their employees' safety and health has had tragic consequences. These companies have been able to act with such negligence due to a lack of adequate sanctions from governmental regulations or public oversight."*

The following is the full excerpt from the 2006 NCOSH "Dirty Dozen" report discussing Sunesis:

⁶⁴ Discounting Death: OSHA's Failure to Punish Safety Violations That Kill Workers; U.S. Senate Health, Education, Labor and Pensions Committee; pg 15. April 29, 2008

⁶⁵ The report is available at the INCIN web site: www.incin.org

Sunesis is a medium size construction company [100 employees] that was responsible for the death of a worker, 28-year old Timothy Roark, when a 30-foot trench collapsed on July 31, 2005 near Cincinnati, Ohio. Worker fatalities from trench cave-ins are well recognized in the industry and totally preventable. Past records from OSHA indicate that each year an estimated 40 workers are killed in trench cave-ins.

In 2003, 15 of the country's 48 trench cave-in fatalities, or 31 percent, were Hispanic Workers, according to BLS data. OSHA's analysis of internal investigations puts the percentage even higher, at 44. OSHA has specific regulations to safeguard workers during these operations. The follow-up story after the fatality found that the company was "rushing to make a deadline." In a very common follow-up media report on the fatality, Cincinnati News 5 reported that this was a "freak accident." However, the hazards of unshored trenches have been well documented for decades and the numbers of workers killed each year tell the real story.

Subsequently, another Sunesis worker fatality occurred; Gregory Miller was killed on the job on October 17, 2005. "This is the second death at this company in three months. I am at a complete loss," said Robyn Miller, sister of the victim.⁶⁶

SUNESIS HAS A HISTORY OF LITIGATION

Sunesis is based in West Chester, Ohio, which is located within Hamilton County. A check of Hamilton County and surrounding county courts web sites reveals a history of litigation involving over 50 cases.⁶⁷

Sunesis Has History of Seeking Permanent Injunctions Against Awarding Agencies

In at least four (4) cases Sunesis has sought and received permanent injunctions against awarding agencies after the bid openings to prevent the agencies from accepting the Sunesis bids.

Sunesis Construction Co. vs. City of Cincinnati, Case No. A0704224

- Filed May 10, 2007

In this case, Sunesis submitted the lowest bid to the City of Cincinnati on a water main project. The Sunesis bid was \$4,111,140.65, which was \$526,991 less than the next lowest bid. However, immediately upon the opening of the bids, Sunesis conferred with city representatives and advised them that they had made a material error in their bid calculations in the amount of \$273,000 and asked that the city allow them to clarify their bid. The city declined. The city asserted that under the terms of the bidding process it had a right to award the contract to Sunesis and call upon it to enter into it. Sunesis alleged that should Sunesis default in doing so, the city could declare the Sunesis bond forfeited and otherwise ban Sunesis from bidding on city projects.⁶⁸

➤ **Result:** a permanent injunction was awarded on May 18, 2007⁶⁹

⁶⁶ Workplace Health and Safety *Dirty Dozen* Report; The National Council for Occupational Safety and Health (NCOSH); pg. 4. April 25, 2006

⁶⁷ The Ohio County Court records, as reviewed via the internet, do not indicate the grounds for the litigation or its ultimate result. Any interested party should review the actual Court file to obtain the specific facts regarding any case.

⁶⁸ See Sunesis Construction Co. vs. City of Cincinnati, Case No. A0704224

⁶⁹ http://www.courtclerk.org/case_summary.asp?sec=history&casenumber=A%200704224

Sunesis Construction Co. Inc. vs. City of Cincinnati, Case No. A0207050

- Filed September 13, 2002

In this case, Sunesis submitted the lowest bid on a city project named Herron Street Improvements. Sunesis bid the job for \$538,370. This was \$143,085 less than the next lowest bid. Once again, immediately after the bids were opened Sunesis conferred with city officials and informed them that they had made an error in their bid in the amount \$101,630. Sunesis again asked the city to allow it to withdraw its bid and bond. The city declined, asserting that it had no authority to permit the withdrawal of the bid.⁷⁰

➤ **Result:** a permanent injunction was awarded on September 13, 2002⁷¹

Sunesis Construction Co. Inc. vs. City of Cincinnati, Case No. A0000629

- Filed February 1, 2000

Sunesis submitted the lowest bid on the Ft. Washington Way Reconstruction Project. The Sunesis bid was \$739,000, which was \$151,000 less than the next lowest bid. Immediately after the opening of the bids, Sunesis conferred with city officials and informed them of an error in their bid in the amount of \$100,000. Sunesis again asked the city to allow it to withdraw its bid and bond. The city declined, asserting that it had no authority to permit the withdrawal of the bid.⁷²

➤ **Result:** a permanent injunction was awarded on February 1, 2000⁷³

Sunesis Construction Co. Inc. vs. City of Cincinnati, Case No. A9606487

- Filed November 15, 1996

Once again, we have the same basic fact pattern. Sunesis submitted the lowest bid on the Mill Creek WWTP Liquid/Fluid Industrial Waste Treatment Facility. The Sunesis bid was \$259,908, which was \$138,752 less than the next lowest bid. Immediately after the opening of the bids, Sunesis conferred with city officials and informed them of an error in their bid. Sunesis again asked the city to allow it to withdraw its bid and bond. The city declined, asserting that it had no authority to permit the withdrawal of the bid.⁷⁴

➤ **Result:** a permanent injunction was awarded on November 15, 1996⁷⁵

SUNESIS HAS A HISTORY OF UNFAIR LABOR PRACTICE CHARGES AT THE NATIONAL LABOR RELATIONS BOARD

The NLRB is the federal agency charged with administering and enforcing the National Labor Relations Act (NLRA) which protects a myriad of workers' rights. An alleged violation of the NLRA can result in an Unfair Labor Practice (ULP) charge being filed at a regional office of the NLRB.

The Laborers International Union of North America (LIUNA), Local 120 and the International Union of Operating Engineers (IUOE), Local 103 have been engaged in organizing campaigns with Sunesis over

⁷⁰ Sunesis Construction Co. Inc. vs. City of Cincinnati, Case No. A0207050; next lowest bid was \$681,455.00

⁷¹ http://www.courtclerk.org/case_summary.asp?sec=history&casenumber=A%200207050

⁷² See Sunesis Construction Co. Inc. vs. City of Cincinnati, Case No. A0000629

⁷³ http://www.courtclerk.org/case_summary.asp?sec=history&casenumber=A%200000629

⁷⁴ See Sunesis Construction Co. Inc. vs. City of Cincinnati, Case No. A0000629

⁷⁵ http://www.courtclerk.org/case_summary.asp?sec=history&casenumber=A%209606487

the past two years.⁷⁶ Since 2007, Sunesis has had six (6) ULP charges filed against it at the Region 25 office in Indianapolis. Four (4) of those charges were filed by LIUNA, Local 120 and two (2) by IUOE, Local 103.

Laborers International Union of North America, Local 120

Three (3) ULP Charges in 2008

- **Case no. - 25-CA-30653**
- **Case no. - 25-CA-30664**
- **Case no. - 25-CA-30733**

Local 120 filed a ULP charge, case no. 25-CA-30653, on April 4, 2008, alleging a violation of Section 8(a)(3) of the NLRA. The charge alleged that Sunesis had refused to consider for employment or hire eight (8) union members due to their union affiliation or protected activities.⁷⁷

Local 120 filed another ULP charge, case no. 25-CA-30664, on April 17, 2008, alleging a violation of Section 8(a)(1) of the NLRA. The charge alleged that Sunesis management personnel had engaged in surveillance of legally protected union activities.⁷⁸

Both of these charges were withdrawn by the union on May 8, 2008.⁷⁹ This was prior to any determination being made by the Regional office. In accordance with Section 10(b) of the NLRA, charges may be re-filed within six (6) months from the date of the alleged violation.

Local 120 filed another ULP charge, case no. 25-CA-30733, on June 13, 2008, alleging a violation of Section 8(a)(1) of the NLRA. The charge alleges that Sunesis management personnel engaged in surveillance of legally protected union activities.⁸⁰ This charge is currently pending.

One (1) ULP Charge in 2007

- **Case no. - 25-CA-30453**

Local 120 filed a ULP charge, case no. 25-CA-30453, on September 9, 2007 alleging a violation of Section 8(a)(3) of the NLRA. The charge alleged that Sunesis had refused to consider for employment or hire seven (7) union members due to their union affiliation or protected activities after they had replied to a “now hiring” job advertisement Sunesis had placed in the Indy Star newspaper in July.

After more than four months, Region 25 decided to dismiss the charge on January 31, 2008. Region 25 cited, in part, the following reason for its decision to dismiss the charge:

⁷⁶ As part of the campaign, LIUNA, Local 120 and IUOE, Local 103 have jointly sponsored a web site designed to alert the public to some of the issues highlighted in this report - <http://www.sunesisexposed.com>

⁷⁷ See 25-CA-30653

⁷⁸ See 25-CA-30664

⁷⁹ See NLRB Region 25 “withdrawal” letter dated May 8, 2008

⁸⁰ See 25-CA-30733

The evidence demonstrates that the Employer had a practice of transferring its employees from job to job and that practice existed prior to the time it ran its July 2007 advertisement for employees. The evidence also demonstrates that, in filling about 64 positions in Indiana it ran its ad, the Employer followed its established practice of transferring its own employees to fill these positions rather than hiring any applicants who responded to the ad.⁸¹

Even as the result of the Region 25's own investigation, it is clear that Sunesis brings its workers here from Ohio rather than hire local workers. Local 120 appealed the dismissal to the NLRB Office of Appeals in Washington on March 11, 2008. On March 26, 2008, the appeal was denied. NLRB General Counsel Meisburg stated, in part, the reason for the denial was due to the following:

...the Employer provided documentary evidence showing there were insufficient job opportunities for its current workers at other locations, and that it had a practice of transferring between jobs and states. Therefore, despite the additional expense of transferring employees from their permanent locations, it still could not be concluded that the Employer was unlawfully motivated within the meaning of the National Labor Relations Act.⁸²

Clearly, in the course of determining that Sunesis did not violate the law in its refusal to hire union members for its Indiana jobs, the NLRB documented Sunesis' practice of transferring out-of-state workers, even at greater costs, to Indiana jobs rather than hiring Indiana workers.

International Union of Operating Engineers, Local 103

Two (2) ULP Charges in 2008

- **Case no. - 25-CA-30642**
- **Case no. - 25-CA-30705**

Local 103 filed a ULP charge, case no. 25-CA-30642, on March 21, 2008 alleging a violation of Section 8(a)(3) of the NLRA. The charge alleged that Sunesis had refused to consider for employment or hire one (1) union member due to his union affiliation or protected activities. Local 103 also cited a violation of Section 8(a)(1) alleging that a member of Sunesis management called the Centerville police on one of their staff representatives for his legally protected union activities. This charge was withdrawn by Local 103 on May 30, 2008.

Local 103 filed a ULP charge, case no. 25-CA-30705, on May 23, 2008 alleging a violation of Section 8(a)(1) of the NLRA. The charge alleged that a member of Sunesis management called the Hamilton County police on one of their staff representatives for his legally protected union activities. This charge is currently pending.

⁸¹ Region 25 "Dismissal" letter dated January 31, 2008

⁸² NLRB "Denial" letter dated March 26, 2008

CONCLUSION

The Major Moves program channeled a large amount of money into Indiana road construction. This newly funded work has become very attractive to contractors from other states. This report examined eight (8) projects of one out-of-state contractor and found that only 14% of the state taxes being paid on those projects were being paid to Indiana. A true accounting of the overall economic impact of this problem should include the entire universe of Indiana Department of Transportation projects. Beyond this sample, the scope of potential problems with out-of-state contractors utilizing out-of-state workers is unknown. Further research should also include the possible loss of tax revenue at the local and county levels as well.

Indiana policy makers simply cannot continue to allow out-of-state contractors to bring in out-of-state workers for public construction projects while Hoosier workers sit at home. It is bad economic development policy. The practice of allowing any out-of-state contractor with a history of worker deaths, OSHA violations, litigation, and NLRB charges to bid on public works projects is inexplicable. Indiana has many reputable contractors capable of doing this work.

At some point Indiana policy makers should take a moment and ask some very simple questions such as, "Is it fair to residents of Connersville and Fayette County who struggle with 10% unemployment to allow Sunesis to bring in out-of-state workers to work on a Major Moves project?" Hoosier policy makers have a clear choice to make concerning the issues examined in this report. They can look the other way while Hoosier tax dollars pay for out-of-state contractors to employ out-of-state workers on public construction projects, or they can move to address the issues raised by this report. The answer is obvious. Hoosier workers deserve more.