

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW
CASE DOCKET NO. 13-003

IN THE MATTER OF:)
)
COMMISSIONER OF LABOR,)
)
Complainant,)
)
v.)
)
PILKINGTON NORTH AMERICA)
AND ITS SUCCESSORS,)
)
Respondent.)

F I L E D

OCT 30 2014

Indiana Board of
Safety Review

AGREED ENTRY

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

PART I.

1. From October 23, 2012 through November 30, 2012, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent's worksite located at 300 Northridge Dr., Shelbyville, Indiana 46176.

2. On January 4, 2013, Complainant issued a Safety Order and Notification of Penalty (hereinafter "Safety Order") resulting from Indiana Department of Labor Inspection No. 316546779 and alleging that Respondent had violated the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*) or the standards or rules thereunder. The Safety Order is attached hereto as Exhibit A and is incorporated herein.

3. On or about January 24, 2013, Respondent duly and timely petitioned for review of the Safety Order.

PART II.

4. The Safety Order consists of Safety Order 1, Items 1, 2, and 3; and Safety Order 2, Items 1, 2a, 2b, and 3.

5. Safety Order 1, Item 1 alleges a "Serious" violation of I.C. 22-8-1.1-2 for employee exposure to inadvertent start/restart of the robot or robot system when they are inside the safeguard space and assesses a total penalty of Seven Thousand Dollars (\$7,000).

6. Safety Order 1, Item 2 alleges a "Serious" violation of I.C. 22-8-1.1-2 for improperly installed laser sensing devices used to guard industrial robots and assesses a total penalty of Seven Thousand Dollars (\$7,000).

7. Safety Order 1, Item 3 alleges a "Serious" violation of 29 CFR 1910.147(c)(1) and assesses a total penalty of Seven Thousand Dollars (\$7,000).

8. The total penalty for Safety Order 1 is Twenty-One Thousand Dollars (\$21,000).

9. Safety Order 2, Item 1 alleges a "Knowing" violation of 29 CFR 1910.147(c)(6)(i)(C) and assesses a total penalty of Seventy Thousand Dollars (\$70,000).

10. Safety Order 2, Item 2a alleges a "Knowing" violation of 29 CFR 1910.147(c)(7)(i) and assesses a total shared penalty, grouped with Item 2b, of Seventy Thousand Dollars (\$70,000).

11. Safety Order 2, Item 2b alleges a "Knowing" violation of 29 CFR 1910.147(c)(7)(i)(A) and assesses no additional penalty above what is assessed in Item 2a.

12. Safety Order 2, Item 3 alleges a "Knowing" violation of 29 CFR 1910.147(c)(7)(i)(B) and assesses a total penalty of Seventy Thousand Dollars (\$70,000).

13. The total penalty for Safety Order 2 is Two Hundred Ten Thousand Dollars (\$210,000).

14. The total penalty for Safety Order 1 and 2 combined is Two Hundred Thirty-One Thousand Dollars (\$231,000).

PART III.

15. The Safety Order is hereby amended as follows.

16. Safety Order 1, Item 1 remains unchanged in its entirety and the penalty remains Seven Thousand Dollars (\$7,000).

17. Safety Order 1, Item 2 remains unchanged in its entirety and the penalty remains Seven Thousand Dollars (\$7,000).

18. Safety Order 1, Item 3 remains unchanged in its entirety and the penalty remains Seven Thousand Dollars (\$7,000).

19. Safety Order 2, Item 1 is re-classified as a "Serious" violation of 29 CFR 1910.147(c)(6)(i)(C) and the penalty is reduced to Seven Thousand Dollars (\$7,000).

20. Safety Order 2, Item 2a is re-classified as a "Serious" violation of 29 CFR 1910.147(c)(7)(i) and the total shared penalty, grouped with amended Item 2b, is reduced to Seven Thousand Dollars (\$7,000).

21. Safety Order 2, Item 2b is re-classified as a "Serious" violation of 29 CFR 1910.147(c)(7)(i)(A) and assesses no additional penalty above what is assessed in amended Item 2a herein.

22. Safety Order 2, Item 3 is re-classified as a "Serious" violation of 29 CFR 1910.147(c)(7)(i)(B) and the penalty is reduced to Seven Thousand Dollars (\$7,000).

23. The AGREED total penalty for all violations and all subparts thereunder, subject to

this Agreed Entry, is Forty-Two Thousand Dollars (\$42,000).

24. Respondent and Complainant agree that all abatement required under this Safety Order shall be complete by December 31, 2014, unless both parties subsequently agree in writing to a modification.

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

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

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

PART IV.

28. Nothing contained in this Agreed Entry shall be construed to affect Complainant's interpretation of the Act or any standard or regulation enforced pursuant thereto or the applicable classification thereof.

29. Except for this agreement, and matters arising out of this agreement and any other subsequent IOSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by the Respondent shall be deemed an admission by Respondent of the allegations contained within the Safety Order(s) and Notification(s) of Penalty. The agreements, statements, findings, and actions taken herein are made in order to compromise and settle this matter economically and amicably, and they shall not be used for any other purpose, except as herein stated.

30. The invalidity or unenforceability of any section, subsection, clause or provision of this Agreed Entry does not affect the remaining sections, subsections, clauses, or provisions of

this Agreed Entry.

31. Respondent, upon full execution of this Agreed Entry, will post this Agreed Entry for three (3) working days or until abatement is completed, whichever period is longer, pursuant to Board of Safety Review Rules of Procedure, 615 IAC 1-2-18(b)(3)(C).

AGREED this 24th day of October, 2014.

PILKINGTON NORTH AMERICA

By: Alan R. Graham

Printed: Alan R. Graham

Title: Vice President & Secretary

COMMISSIONER OF LABOR

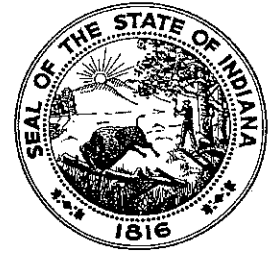
By: Timothy E. Maley
Timothy E. Maley
Deputy Commissioner - IOSHA

Approved as to Form:

By: Gregory S. Narsh
Gregory S. Narsh,
Counsel for Respondent

By: J. Anthony Hardman
J. Anthony Hardman,
Counsel for Complainant

Indiana Department of Labor
Indiana Occupational Safety and Health Administration
402 West Washington Street
Room W195
Indianapolis, IN 46204-2751
Phone: 317/232-1979 Fax: 317/233-8509



certified mail # 7003 1010 0003 5732 5924 -1-4-13 jto

Safety Order and Notification of Penalty

To:
Pilkington,
and its successors
300 Northridge Drive
Shelbyville, IN 46176

Inspection Number: 316546779
Inspection Date(s): 10/23/2012 - 11/30/2012
Issuance Date: 01/04/2013

Inspection Site:
300 Northridge Drive
Shelbyville, IN 46176

The violation(s) described in this Safety Order and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

An inspection of your place of employment has revealed conditions which we believe do not comply with the provisions of the Indiana Occupational Safety and Health Act (Indiana Code Chapter 22-8-1.1) or the standards or rules adopted thereunder. Accordingly, enclosed please find safety order(s) and notification(s) of penalty describing such violation(s) with references to applicable standards, rules, or provisions of the statute and stating the amount of any penalty(ies).

Informal Conference - Please be advised that it may be possible to informally settle any potential dispute without initiating the more elaborate proceedings brought on by a petition for review. Prior to filing a petition for review, you may request an informal conference concerning any of the results of the inspection (safety orders, penalties, abatement dates, etc.) by contacting the Indiana Department of Labor/IOSHA, preferably by telephone, in a prompt manner. Please be advised that a request for an informal conference cannot extend the fifteen working day period for filing a petition for review. Informal conferences frequently resolve any possible disputes, and therefore you are urged to take advantage of this opportunity. Because of the limited time period and in order to facilitate scheduling, any requests for an informal conference should be made promptly upon your receipt of the safety order(s) and notification(s) of penalty.

Right to Contest - You are hereby also notified that you are entitled to seek administrative review of the safety order(s), penalty(ies), or both by filing a written petition for review at the above address postmarked within fifteen working days of your receipt of the safety order(s) and notification(s) of penalty. ("Working days" means Mondays through Fridays, but does not include Saturdays, Sundays, legal holidays under a state statute or days

on which the Indiana Department of Labor's offices are closed during regular business hours). If you do not file such a petition for review (contest), the safety order(s) and penalty(ies) shall be deemed final orders of the Board of Safety Review and not subject to review by any court or agency. The issuance of a safety order does not constitute a finding that a violation has occurred unless no petition for review is filed, or if a petition for review (contest) is filed, it must contain a statement of its basis and should reference the above inspection number. Upon receipt of your petition for review, we will affirm, amend or dismiss the safety order(s) and notification(s) of penalty. If we affirm, your petition for review will be granted (unless it was not timely) and the dispute will be certified by the Board of Safety Review for further proceedings. The Board of Safety Review is an independent agency appointed by the governor with authority to conduct hearings and to issue decisions concerning disputed safety order(s) and notification(s) of penalty. If we amend the safety order(s) or notification(s) of penalty, your petition for review shall be deemed moot. However, you will then be given an opportunity to file a petition for review concerning the amended safety order(s) and notification(s) of penalty.

Please be advised that an employee or representative of employees may file a petition for review to contest the reasonableness of the time stated in the safety order(s) for the abatement of any violation.

Posting - Upon receipt of any safety order(s) you are required to post such safety order(s), or a copy thereof, unedited, at or near each place an alleged violation referred to in the safety order(s) occurred. However, if your operations are such that it is not practicable to post the safety order(s) at or near each place of alleged violation, such safety order(s) shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, if you are engaged in activities which are physically dispersed, the safety order(s) may be posted at the location from which the employees operate to carry out their activities. You must take steps to ensure that the safety order is not altered, defaced, or covered by other material. Posting shall be until the violation is abated, or for three working days, whichever is longer.

Penalties - Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Abatement does not constitute payment of penalties.

Abatement - The conditions cited in the safety order(s) must be corrected (abated) on or before the date shown for each item on the safety order(s) and notification(s) of penalty unless:

- (1) You file a petition for review concerning the violation, in which case the full abatement period shall commence from the issuance of a final decision by the Board of Safety Review or the courts which requires compliance with the safety order; or
- (2) The abatement period is extended by the granting of a petition for modification of abatement date.

PMAs - The petition for modification of abatement date is a manner in which you may seek additional time to correct (abate) a violation without having to file a petition for review concerning the safety order, or after the expiration of the time period to file such a petition for review when it becomes apparent that you need extra time to abate the violation. A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps you have taken, and the dates of such actions, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted, and if appropriate, served on the authorized representative of affected employees, and a certification of the date upon which such posting and service was made.

A petition for modification of abatement date shall be filed with the Indiana Department of Labor/IOSHA no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted until the time period for the filing of a petition for review of the Commissioner's granting or denying the petition expires. Where affected employees are represented by an authorized representative, said representative shall be served a copy of such petition.

Notification of Corrective Action - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance in providing adequate documentation of abatement. Reports of corrections should show specific corrective action on each alleged violation and the date of such action. On alleged violations with abatement periods of more than thirty (30) days, a written progress report should be submitted, detailing what has been done, what remains to be done, and the time needed to fully abate each such violation. When the alleged violation is fully abated, we should be so advised. Timely correction of an alleged violation does not affect the initial proposed penalty.

Followup Inspections - Please be advised that a followup inspection may be made for the purpose of ascertaining that you have posted the safety order(s) and corrected the alleged violations. Failure to correct an alleged violation may result in additional penalties for each day that the violation has not been corrected.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Indiana Department of Labor/IOSHA at the address shown above.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Indiana Department of Labor/IOSHA at the address shown above within fifteen (15) working days (excluding weekends and State holidays) or receipt by the employer of this safety order and penalty.

If you wish additional information, you may direct such requests to us at the address or telephone number stated above.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

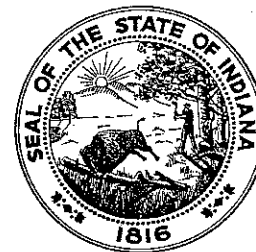
An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 01/04/2013. The conference will be held at the IOSHA office located at 402 West Washington Street, Room W195, Indianapolis, IN 46204 on _____ at _____.

_____. Employees and/or representatives of employees have a right to attend an informal conference.

Indiana Department of Labor

Indiana Occupational Safety and Health
Administration

Inspection Number: 316546779
Inspection Dates: 10/23/2012 - 11/30/2012
Issuance Date: 01/04/2013



Safety Order and Notification of Penalty

Company Name: Pilkington
Inspection Site: 300 Northridge Drive, Shelbyville, IN 46176

Safety Order 1 Item 1 Type of Violation: **Serious**

IC 22-8-1.1 Section 2 : The employer did not establish and maintain conditions of work which were reasonably safe and healthful for employees, and free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to potentially/ broken bones and/or death due to employees not being protected from inadvertent start/restart of the robot or robot system when they are inside the safeguard space.

Value Added 3 - Camry Line and other Industrial Robot Systems throughout the facility: Pilkington management did not protect employees from inadvertent start/restart of the robot system when they were inside the safeguard space. Restart shall require deliberate actions outside the safeguard area. Where start and restart of the cell does not provide for clear view of the safeguard space, a method for detection of personnel in the non-observable location(s) are required.

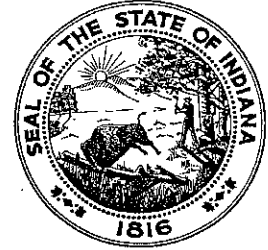
AMONG OTHER FEASIBLE AND ACCEPTABLE METHODS TO CORRECT THIS HAZARD ARE TO FOLLOW THE GUIDELINES IN ANSI/RIA R15.06 SAFETY REQUIREMENTS FOR INDUSTRIAL ROBOTS AND ROBOT SYSTEMS.

Date By Which Violation Must be Abated: 01/31/2013
Proposed Penalty: \$7,000.00

Indiana Department of Labor

Indiana Occupational Safety and Health
Administration

Inspection Number: 316546779
Inspection Dates: 10/23/2012 - 11/30/2012
Issuance Date: 01/04/2013



Safety Order and Notification of Penalty

Company Name: Pilkington
Inspection Site: 300 Northridge Drive, Shelbyville, IN 46176

Safety Order 1 Item 2 Type of Violation: **Serious**

IC 22-8-1.1 Section 2 : The employer did not establish and maintain conditions of work which were reasonably safe and healthful for employees, and free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were potentially exposed to broken bones and/or death due to improperly installed laser sensing devices used to guard industrial robot systems.

Value Added 3 - Camry Line and other Industrial Robot Systems through out the facility: Employer did not protect employees from crushing hazards by following the safety laser scanner S3000 operating instructions such as, but not limited to, section 2.1 and section 4.1.2 to mount the S3000 such that there are no unprotected areas.

AMONG OTHER FEASIBLE AND ACCEPTABLE METHODS TO CORRECT THIS HAZARD ARE TO FOLLOW THE MANUFACTURER'S OPERATING INSTRUCTIONS AS DESCRIBED IN THE OPERATORS MANUAL ON THE S3000 SAFETY LASER SCANNER.

Date By Which Violation Must be Abated: 01/31/2013
Proposed Penalty: \$7,000.00

Safety Order 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.147(c)(1): The employer did not establish a program consisting of an energy control procedure and employee training to ensure that before any employee performed any servicing or maintenance on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury, the machine or equipment would be isolated, and rendered inoperative in accordance with 29 CFR 1910.147(c)(4):

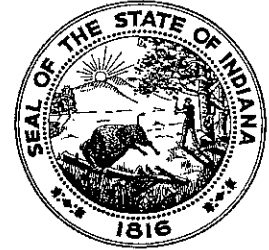
Facility - Industrial Robot Systems - Value Added 3 - Camry Line: Authorized employees who are required to perform set-up and or maintenance operations use safety interlocks to lock-out the equipment they are working on.

Date By Which Violation Must be Abated: 01/31/2013
Proposed Penalty: \$7,000.00

Indiana Department of Labor

Indiana Occupational Safety and Health
Administration

Inspection Number: 316546779
Inspection Dates: 10/23/2012 - 11/30/2012
Issuance Date: 01/04/2013



Safety Order and Notification of Penalty

Company Name: Pilkington
Inspection Site: 300 Northridge Drive, Shelbyville, IN 46176

Safety Order 2 Item 1 Type of Violation: **Knowing**

29 CFR 1910.147(c)(6)(i)(C): Where lockout was used for energy control, the periodic inspection did not include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected:

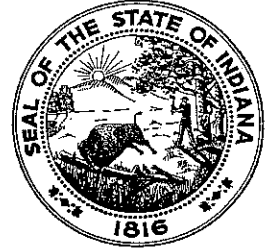
Facility: On October 23, 2012 and times prior, Maintenance Techs did not have an annual evaluation of energy control procedures required to be used in their job tasks.

Date By Which Violation Must be Abated:	01/31/2013
Proposed Penalty:	\$70,000.00

Indiana Department of Labor

Indiana Occupational Safety and Health
Administration

Inspection Number: 316546779
Inspection Dates: 10/23/2012 - 11/30/2012
Issuance Date: 01/04/2013



Safety Order and Notification of Penalty

Company Name: Pilkington
Inspection Site: 300 Northridge Drive, Shelbyville, IN 46176

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

Safety Order 2 Item 2a Type of Violation: **Knowing**

29 CFR 1910.147(c)(7)(i): The employer did not provide adequate training to ensure that the purpose and function of the energy control program was understood by employees:

Value Added 3 - Camry Line: Authorized Maintenance Techs & Operators and those employees who are affected did not receive adequate training to ensure employees understood the purpose and function of the lock-out/tag-out program.

Date By Which Violation Must be Abated: 01/31/2013
Proposed Penalty: \$70,000.00

Safety Order 2 Item 2b Type of Violation: **Knowing**

29 CFR 1910.147(c)(7)(i)(A) :Each authorized employee shall receive training in the recognition of applicable hazardous energy sources, the type and magnitude of the energy available in the workplace, and the methods and means necessary for energy isolation and control.

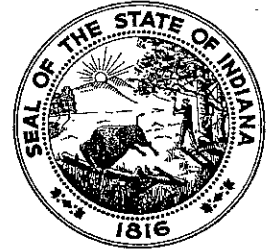
Facility: Maintenance Techs & Operators who are required to lock-out equipment when performing maintenance or set up of equipment did not receive training in recognizing hazardous energy sources that require lock-out, the types of and the magnitudes of energy sources available in the workplace, and the methods and means for the isolation and control of the equipment.

Date By Which Violation Must be Abated: 01/31/2013

Indiana Department of Labor

Indiana Occupational Safety and Health
Administration

Inspection Number: 316546779
Inspection Dates: 10/23/2012 - 11/30/2012
Issuance Date: 01/04/2013



Safety Order and Notification of Penalty

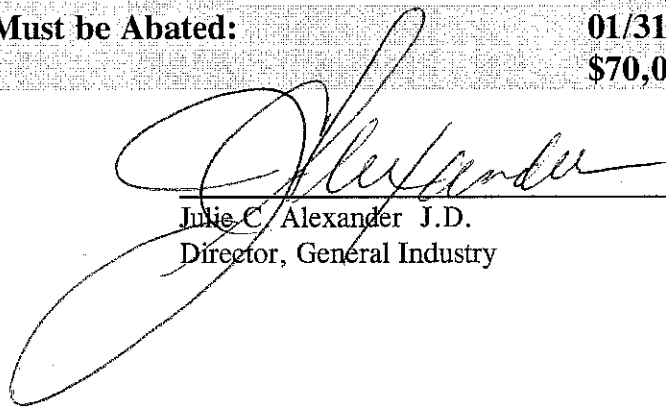
Company Name: Pilkington
Inspection Site: 300 Northridge Drive, Shelbyville, IN 46176

Safety Order 2 Item 3 Type of Violation: **Knowing**

29 CFR 1910.147(c)(7)(i)(B) : Each affected employee shall be instructed in the purpose and use of the energy control procedure.

Value Added 3 - Camry Line & Facility: Maintenance Techs & Operators had not been trained in the purpose and the use of all energy control procedures involved for locking out Industrial Robot Systems.

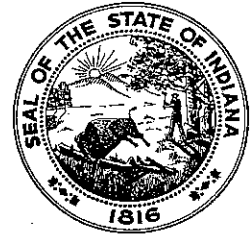
Date By Which Violation Must be Abated:	01/31/2013
Proposed Penalty:	\$70,000.00



Julie C. Alexander J.D.
Director, General Industry

Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington Street
Room W195
Indianapolis, IN 46204-2751
Phone: 317/232-1979; Fax: 317/233-8509



INVOICE/DEBT COLLECTION NOTICE

Company Name: Pilkington
Inspection Site: 300 Northridge Drive, Shelbyville, IN 46176
Issuance Date: 01/04/2013

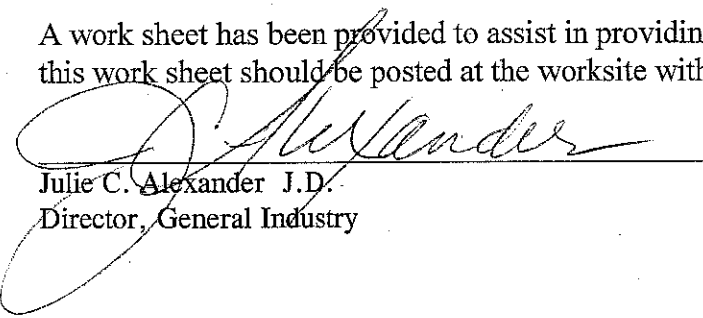
Summary of Penalties for Inspection Number		316546779
Safety Order 01, Serious	=	\$21,000.00
Safety Order 02, Knowing	=	\$210,000.00
Total Proposed Penalties		\$231,000.00

Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Make your check or money order payable to: "Indiana DOL/IOSHA". Please indicate IOSHA's Inspection Number (indicated above) on the remittance.

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

Corrective action, taken by you for each alleged violation should be submitted to this office on or about the abatement dates indicated on the Safety Order and Notification of Penalty.

A work sheet has been provided to assist in providing the required abatement information. A completed copy of this work sheet should be posted at the worksite with the safety order(s).


Julie C. Alexander J.D.
Director, General Industry

Date

1/24/2013