Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington St - Room W195
Indianapolis, IN 46204
Phone: 317-232-2691 FAX: (317)233-8509

Certified Mail #91 7190 0005 2720 0042 1965 3-4-15 jto

Safety Order and Notification of Penalty

To:
ERCO LLC dba Eagle Battery
3720 South Hoyt Avenue
Muncie, IN 47302

Inspection Number: 317457943
CSHO ID: A9048
Optional Report No.: 090914
Inspection Date(s): 9/9/2014 - 2/3/2015
Issuance Date: 3/4/2015

Inspection Site:
3720 South Hoyt Avenue
Muncie, IN 47302

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.

Indiana Department of Labor

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 3/4/2015. 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
Occupational Safety and Health Administration

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Optional Report No.: 090914

Safety Order and Notification of Penalty

Company Name: ERCO LLC dba Eagle Battery
Inspection Site: 3720 South Hoyt Avenue, Muncie, IN 47302

Safety Order 01 Item 001 Type of Violation: **Serious**

29 CFR 1910.132(d)(1)(i): The employer did not select and have each affected employee use, the types of personal protective equipment that would protect the affected employee(s) from the hazards identified in the hazard assessment:

Sorting/Charging Area - Employees were handling batteries with electrolyte pooled on top of the outer plastic case. None of the employees were wearing rubber aprons to prevent contact with the electrolyte.

Date By Which Violation Must Be Abated: **4/7/2015**
Proposed Penalty: **$1,750.00**

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Safety Order 01 Item 002 Type of Violation: **Serious**

29 CFR 1910.133(a)(1): Appropriate eye or face protection was not used when employees were exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation:

Battery Charging – Batteries handled by employees had acidic liquid leaking and pooling on top of the outer plastic case. Safety glasses worn did not provide side shielding or vapor protection to prevent acid vapors or splashed acid from contacting the eyes and face, which exposed employees to an eye and skin irritation/burn hazard.

Date By Which Violation Must Be Abated: **4/7/2015**
Proposed Penalty: **$1,750.00**

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Safety Order 01 Item 003 Type of Violation: **Serious**

29 CFR 1910.138(b): The employer did not base selection of appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the tasks to be performed, conditions present, duration of use, and the hazards and potential hazards identified:

Sorting/Charging Area - Batteries handled by employees had electrolyte leaking and pooling on top of the outer plastic case. The bottom coated latex cotton gloves worn by employees did not prevent the tops of the hands from coming into contact with the electrolyte.

Date By Which Violation Must Be Abated: **4/7/2015**
Proposed Penalty: **$1,750.00**

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Safety Order 01 Item 004 Type of Violation: **Serious**

29 CFR 1910.151(c): Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body were not provided within the work area for immediate emergency use:

Charging Area - Personal wash units were used in lieu of plumbed or self contained eye wash station. Employees handle batteries with electrolyte pooled on top of the outer plastic case. The electrolyte was between a pH of 0 and 1.

Date By Which Violation Must Be Abated: **4/7/2015**
Proposed Penalty: **$1,750.00**

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Safety Order 01 Item 005 Type of Violation: **Serious**

29 CFR 1910.303(b)(1): Electrical equipment was not free from recognized hazards that were likely to cause death or serious physical harm to employees, in that the employer did not ensure the safety of the equipment pursuant to the considerations in sections (i) through (viii) of 29 CR 1910.303(b)(1):

Charging Area - Employees were exposed to live electrical parts from the open T7 access panel on unit number five (5) of the 480v Bitrode Sovema computer controlled charger.

Date By Which Violation Must Be Abated: **4/7/2015**
Proposed Penalty: **$2,500.00**

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Safety Order 01 Item 006 Type of Violation: **Serious**

29 CFR 1910.1025(h)(1): All surfaces were not maintained as free as practicable of accumulations of lead:(a)(IDENTIFY SPECIFICS AND/OR LOCATION(S))

Sorting/Charging Area - Work areas were not kept as free as practicable from lead where employees performed work tasks such as, but not limited to, sorting, recharging, and cleaning various used vehicle batteries between twelve (12) and eighteen (18) volts. on a regular and routine basis. Wipe samples taken on 09/09/14, showed a lead accumulation range of 790 micrograms per square foot to 560,000 micrograms per square foot. OSHA's acceptable limit of surface lead is 200 micrograms per square foot.

Date By Which Violation Must Be Abated: **4/7/2015**
Proposed Penalty: **$1,750.00**

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

Indiana Department of Labor

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402 West Washington St - Room W195
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Phone: (317)232-2691 FAX: (317)233-8509

INVOICE/DEBT COLLECTION NOTICE

Company Name: ERCO LLC dba Eagle Battery
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Issuance Date: 3/4/2015

Summary of Penalties for Inspection Number: 317457943

Safety Order 1, Serious	**= $11,250.00**
TOTAL PENALTIES	**= $11,250.00**

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 of General Industry

3/4/15
Date