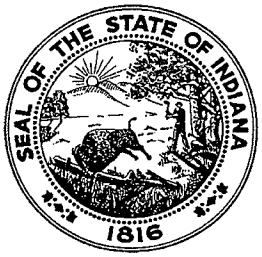
Indiana Department of Labor
Indiana Occupational Safety and Health Administration
402 West Washington Street
Room W195
Indianapolis, IN 46204-2751
Phone: 317/232-1979 Fax: 317/233-8509



certified mail # 7003 1010 0003 5732 1612 3-2-12 gto

Safety Order and Notification of Penalty

To:

Marsh Supermarkets LLC,
and its successors
9800 Crosspoint Boulevard
Indianapolis, IN 46256

Inspection Site:

333 South Franklin Road
Indianapolis, IN 46219

Inspection Number: 315718999

Inspection Date(s): 11/03/2011 - 01/24/2012

Issuance Date: 03/02/2012

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.

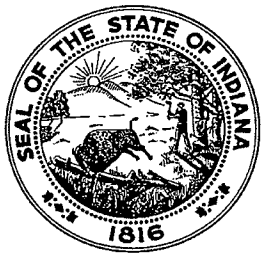
Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination 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
Indiana Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 03/02/2012. 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

Inspection Number: 315718999

Inspection Dates: 11/03/2011 - 01/24/2012

Issuance Date: 03/02/2012

Safety Order and Notification of Penalty

Company Name: Marsh Supermarkets LLC

Inspection Site: 333 South Franklin Road, Indianapolis, IN 46219

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 injuries such as, but not limited to crushing injuries:

Entire Facility - Employees such as, but not limited to warehouse employees operated Crown, Electric Rider Pallet Trucks, PC 3000 Series, on a daily basis. Operators used powered industrial trucks when various job duties such as, but not limited to material handling were performed. Electric pallet trucks were operated in a riding (stand -up) position in coast mode (spring was not set).

Among other methods, one feasible and acceptable method to correct this hazard is to ensure that the employer references and follows applicable consensus standards including but not limited to; *ANSI/TSDF B56.1-2009 Travel Controls: Electric Motorized Hand, Hand/Rider and Low Lift Order Picker Trucks.*

Date By Which Violation Must be Abated: **03/28/2012**
Proposed Penalty: **$5,000.00**

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 exposed to injuries such as, but not limited to crushing injuries:

Entire Facility - Maintenance and warehouse employees operated material handling equipment such as, but not limited to the Crown Service Model No. PC3040-80, Serial No. 6A127434 electric pallet jack on a daily basis. Operators performed various job duties such as, but not limited to material handling and testing of powered industrial trucks after repairs were performed. A routine preventative maintenance plan was not established or implemented.

Among other methods, one feasible and acceptable method to correct this hazard is to ensure that all powered industrial trucks have preventive maintenance performed on a routine basis in accordance with the manufacturer's recommendations.

Date By Which Violation Must be Abated: **03/28/2012**
Proposed Penalty: **$5,000.00**

Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 315718999

Inspection Dates: 11/03/2011 - 01/24/2012

Issuance Date: 03/02/2012

Safety Order and Notification of Penalty

Company Name: Marsh Supermarkets LLC

Inspection Site: 333 South Franklin Road, Indianapolis, IN 46219

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

29 CFR 1910.178(l)(3)(i)[M]: Powered industrial truck operators shall receive initial training in the topics such as but not limited to, operating instructions, warnings or precautions listed in the operator's manual for the types of vehicle that the employee is being trained to operate:

Entire Facility - Maintenance and warehouse employees operated electric pallet jacks on a daily basis. The employer did not have an operator's manual for electric pallet Jacks including the 1995 Crown, Model PC 3040-80, Serial Number 6A127434. Electric pallet jack operators had not been informed of the precautions or warnings listed in this operator manual.

Date By Which Violation Must be Abated: **03/28/2012**
Proposed Penalty: **$5,000.00**

Safety Order 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.178(l)(4)(iii): The employer did not evaluate each powered industrial truck operator's performance at least once every three years:

Entire Facility - Maintenance employees were required to operate powered industrial equipment such as but not limited to, electric pallet jacks to move materials and to test the equipment after repair activities werer performed. A maintenance employee had not been evaluated on electric pallet jacks once every three years as required.

Date By Which Violation Must be Abated: **03/28/2012**
Proposed Penalty: **$5,000.00**

Indiana Department of Labor

Occupational Safety and Health Administration

Inspection Number: 315718999

Inspection Dates: 11/03/2011 - 01/24/2012

Issuance Date: 03/02/2012

Safety Order and Notification of Penalty

Company Name: Marsh Supermarkets LLC

Inspection Site: 333 South Franklin Road, Indianapolis, IN 46219

Safety Order 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.178(q)(7): Industrial trucks were not examined before being placed in service if the examination shows any condition adversely affecting the safety of the vehicle. Such examination was not made a least daily:

Entire Facility - Employees such as but not limited to, warehouse employees operated the 1995 Crown, Model PC 3040-80, Serial Number 6A127434 electric pallet jack on a daily basis. Employee's had not performed daily checks of the powered industrial trucks they operated.

Date By Which Violation Must be Abated: **03/28/2012**

Proposed Penalty: **$5,000.00**

Robert A. Kattau
Director, Industrial Compliance

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: Marsh Supermarkets LLC
Inspection Site: 333 South Franklin Road, Indianapolis, IN 46219
Issuance Date: 03/02/2012

Summary of Penalties for Inspection Number 315718999

Safety Order 01, Serious	=	$25,000.00
Total Proposed Penalties		$25,000.00

Penalties are due within fifteen (15) working days of receipt of this notification unless contested. Make your check (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 exist.

Corrective action, taken by you for each alleged violation should be submitted to this office on or about the abatemei 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).

Robert A. Kattau
Director, Industrial Compliance

3-3-12
Date