

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE IOSHA BOARD OF  
SAFETY REVIEW

**F I L E D**

IN THE MATTER OF THE )  
COMMISSIONER OF LABOR, )

**MAY 10 2012**

Indiana Board of  
Safety Review

Complainant, )

CASE DOCKET NO. 11-007

v. )

STEEL WAREHOUSE, LLC, )  
AND ITS SUCCESSORS, )

Respondent. )

**FINAL ORDER**

The parties to the above-referenced proceeding, through their duly authorized representatives, have filed with the Board their Agreed Entry. The Board, being duly advised, now accepts the Respondent's withdrawal of its Notice of Contest, and adopts the Safety Orders and penalty issued by the Commissioner of Labor, as modified by the Agreed Entry, as its final order in this matter.

IT IS ORDERED that the Respondent's withdrawal of its Notice of Contest is accepted and the Safety Orders and penalty issued by the Commissioner of Labor, as modified by the Agreed Entry, is adopted as a final order.

Dated: 10 May 2012

  
\_\_\_\_\_  
Danny Deighton, Chairman

Copies to:

Julie C. Alexander  
Legal Counsel  
Department of Labor  
402 W. Washington St., Rm. W195  
Indianapolis, IN 46204

Mark A. Lies II  
SEYFARTH SHAW LLP  
131 S. Dearborn St., Ste. 2400  
Chicago, IL 60603

IN THE STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE THE IOSHA BOARD OF  
SAFETY REVIEW  
CASE DOCKET NO. 11-007

IN THE MATTER OF:

COMMISSIONER OF LABOR, )  
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 Complainant, )  
 )  
 v. )  
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 STEEL WAREHOUSE, LLC, )  
 AND ITS SUCCESORS, )  
 Respondent. )

**F I L E D**  
MAR 14 2012  
Indiana Board of  
Safety Review

**AGREED ENTRY**

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor and Steel Warehouse, LLC, through their duly authorized representatives, being desirous of entering into this Agreed Entry prior to hearing do hereby stipulate and agree as follows:

**PART I.**

1. From February 14, 2011 through March 4, 2011, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent's jobsite located at 1400 Riverside Drive, South Bend, Indiana 46616.

2. On April 7, 2011, the Commissioner of Labor issued Safety Order No. 1 and Safety Order No. 2 (Indiana Department of Labor Inspection No. 314815846) alleging that Steel Warehouse, LLC, had violated the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*) or the standards or rules thereunder. Safety Order No. 1 and No. 2 are attached hereto as Exhibit A and are incorporated herein.

3. On May 4, 2011 Respondent duly and timely petitioned for review of Safety Order No. 1 and Safety Order No. 2.

PART II.

4. The petitioned for review Safety Order No. 1 consists of Item No. 1 and Item No. 2.

5. The petitioned for review Safety Order No. 2 consists of Item No. 1 and Item No. 2.

6. Safety Order No. 1, Item No. 1 alleges a “Serious” violation of 29 CFR 1910.178(l)(1)(ii) and assesses a total penalty of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875).

7. Safety Order No. 1, Item No. 2 alleges a “Serious” violation of 29 CFR 1910.178(q)(1) and assesses a total penalty of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875).

8. The total penalty for Safety Order No. 1 is Three Thousand Seven Hundred Fifty Dollars (\$3,750).

9. Safety Order No. 2, Item No. 1 alleges a “Nonserious” violation of 29 CFR 1910.178(l)(4)(iii) and assesses a total penalty of Zero Dollars (\$0).

10. Safety Order No. 2, Item No. 2 alleges a “Nonserious” violation of 29 CFR 1910.178(l)(6) and assesses a total penalty of Zero (\$0).

11. The Total penalty for Safety Order No. 2 is Zero Dollars (\$0).

PART III.

12. Complainant deletes Safety Order No. 1, Item No. 1 in its entirety including the penalty.

13. Complainant deletes Safety Order No. 1, Item No. 2 in its entirety including the penalty.

14. Safety Order No. 2, Item No. 1 and Item No. 2 are amended by grouping the two violations into Item No. 1a and Item No. 1b and the penalty is amended to One Thousand Dollars (\$1,000).

15. The AGREED total penalty for all violations and all subparts thereunder subject to this Agreed Entry is One Thousand Dollars (\$1000).

16. Respondent confirms Complainant's right to reinspect its workplaces, in accordance with the Act and to verify abatement of the alleged violations.

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

#### PART IV.

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

19. 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").

20. Except for these proceedings, and matters arising out of these proceedings and any other subsequent OSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by the Respondent shall be deemed an admission. 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.

21. 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.

22. 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).

AGREED this 11<sup>th</sup> day of March, 2012.

**STEEL WAREHOUSE COMPANY LLC**

By: Grant F. Luman

Title: Vice President

By: 

Mark A. Lies II  
Elizabeth L. Ash  
Seyfarth Shaw, LLP

**COMMISSIONER OF LABOR**

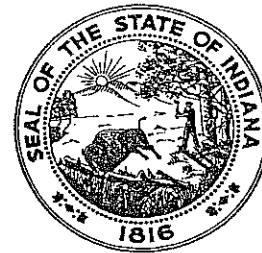
By: 

Jeffrey Carter  
Deputy Commissioner  
IOSHA

By: 

Julie C. Alexander  
Deputy Attorney General

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 00035731 6359 4-7-11 JH*

## Safety Order and Notification of Penalty

**To:**

Steel Warehouse, LLC, / Profiling of Indiana  
and its successors  
1400 Riverside Dr.  
South Bend, IN 46616

**Inspection Number:** 314815846

**Inspection Date(s):** 02/14/2011 - 03/04/2011

**Issuance Date:** 04/07/2011

**Inspection Site:**

1400 Riverside Dr.  
South Bend, IN 46616

*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.

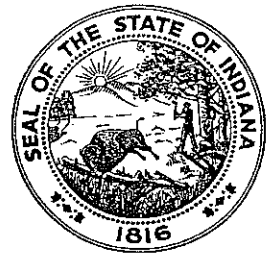
**Notification of Corrective Action** - Correction of the alleged violations which have an abatement period of thirty (30) days or less should be reported in writing to us promptly upon correction. A "Letter of Abatement" form and an "Abatement Photographs" worksheet are enclosed for your assistance 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.



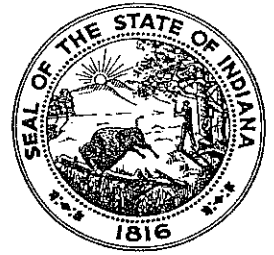
## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the safety order(s) issued on 04/07/2011. 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: 314815846  
Inspection Dates: 02/14/2011 - 03/04/2011  
Issuance Date: 04/07/2011



**Safety Order and Notification of Penalty**

Company Name: Steel Warehouse, LLC / Profiling of Indiana  
Inspection Site: 1400 Riverside Dr., South Bend, IN 46616

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

1910.178 (I)(i)(ii) Prior to permitting an employee to operate a powered industrial truck (except for training purposes) the employer shall ensure that each operator has successfully completed the training required by this paragraph.

Plant area - The employer did not train a fork truck operator prior to their being assigned to operate a fork truck.

**Date By Which Violation Must be Abated: 05/25/2011**  
**Proposed Penalty: \$1,875.00**

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

29CFR1910.178(q)(1) Any power- operated industrial truck not in safe operating condition shall be removed from service.

Plant area - The Yale fork truck, #8004, had a defective emergency brake and was not removed from service.

**Date By Which Violation Must be Abated: 05/25/2011**  
**Proposed Penalty: \$1,875.00**

Indiana Department of Labor  
Occupational Safety and Health Administration

Inspection Number: 314815846  
Inspection Dates: 02/14/2011 - 03/04/2011  
Issuance Date: 04/07/2011



**Safety Order and Notification of Penalty**

Company Name: Steel Warehouse, LLC / Profiling of Indiana  
Inspection Site: 1400 Riverside Dr., South Bend, IN 46616

**Safety Order 2 Item 1 Type of Violation: Non-serious**

29 CFR 1910.178 (l)(4)(iii) An evaluation of each powered industrial truck operators's performance shall be conducted at least once every three years.

Plant area - Not all fork truck operators were evaluated every three years, two operators were last evaluated in 2005.

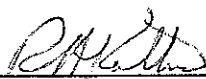
**Date By Which Violation Must be Abated: 05/25/2011**  
**Proposed Penalty: \$.00**

**Safety Order 2 Item 2 Type of Violation: Non-serious**

29CFR1910.178 (l)(6) Certification. The employer shall certify that each operator has been trained and evaluated as required by this paragraph (l). The certification shall include the name of the operator, the date fo the training, the date of the evaluation, and the identity of the person(s) performing the training or evaluation.

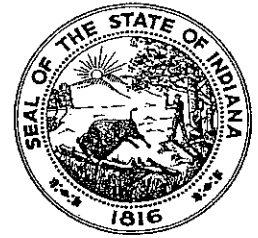
Plant area - There were no documented performance evaluations for the fork truck operators in the facility.

**Date By Which Violation Must be Abated: 05/25/2011**  
**Proposed Penalty: \$.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:** Steel Warehouse, LLC / Profiling of Indiana  
**Inspection Site:** 1400 Riverside Dr., South Bend, IN 46616  
**Issuance Date:** 04/07/2011

<b>Summary of Penalties for Inspection Number</b>		314815846
Safety Order 01, Serious	=	\$3,750.00
Safety Order 02, Non-serious	=	\$0.00
Total Proposed Penalties		\$3,750.00

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).

  
\_\_\_\_\_  
Robert A. Kattau  
Director, Industrial Compliance

4-7-11  
\_\_\_\_\_  
Date