

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW
CASE DOCKET NO. 15-013

IN THE MATTER OF:)
)
COMMISSIONER OF LABOR,)
)
Complainant,)
)
v.)
)
MERRITTS TRUCK AND AUTO REPAIR)
AND ITS SUCCESSORS,)
)
Respondent.)

FILED
FEB 23 2016
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 Merritts Truck and Auto Repair (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 January 23, 2014 through March 20, 2014, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent's worksite located at 1025 Touby Pike, Kokomo, Indiana 46901.
2. On , July 23, 2014, Complainant issued a Safety Order and Notification of Penalty (hereinafter "1st Safety Order") resulting from Indiana Department of Labor Inspection No. 317403780 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 1st Safety Order is attached hereto as Exhibit A and is incorporated herein.
3. Due to Respondent's failure to abate certain hazards cited in 1st Safety Order, on June

15, 2015, authorized employees of the Indiana Department of Labor conducted a follow-up inspection at the Respondent's worksite located at 1025 Touby Pike, Kokomo, Indiana 46901.

4. On August 7, 2015, Complainant issued a Notification of Failure to Abate Alleged Violations (hereinafter "Failure to Abate") resulting from Indiana Department of Labor Inspection No. 317867075 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 Failure to Abate is attached hereto as Exhibit B and is incorporated herein.

5. During Complainant's follow-up inspection at Respondent's worksite on June 15, 2015, Complainant identified additional hazards that had not previously been cited or abated.

6. Also on August 7, 2015, Complainant issued a Safety Order and Notification of Penalty (hereinafter "2nd Safety Order") resulting from Indiana Department of Labor Inspection No. 317869089 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 2nd Safety Order is attached hereto as Exhibit C and is incorporated herein.

7. On or about August 20, 2015, Respondent duly and timely petitioned for review of the Failure to Abate and 2nd Safety Order.

8. After the petition was filed, Respondent undertook steps to abate all of the issues identified as a result of the Complainant's inspections and sent evidence of the same to Complainant.

9. Based on the evidence presented by Respondent, Complainant verified that all hazards cited have been abated.

PART II.

10. The Failure to Abate consists of Safety Order 1, Item Nos. 1, 2, 3, and 4.

11. Failure to Abate – Safety Order 1, Item 1 alleges a failure to abate a violation of 29 CFR 1910.212(a)(3)(ii) from 1st Safety Order and assesses a total penalty of Twenty-Four Thousand Dollars (\$24,000).

12. Failure to Abate – Safety Order 1, Item 2 alleges a failure to abate a violation of 29 CFR 1910.215(b)(9) from 1st Safety Order and assesses a total penalty of Twenty-Four Thousand Dollars (\$24,000).

13. Failure to Abate – Safety Order 1, Item 3 alleges a failure to abate a violation of 29 CFR 1910.303(b)(2) from 1st Safety Order and assesses a total penalty of Thirty Thousand Dollars (\$30,000).

14. Failure to Abate – Safety Order 1, Item 4 alleges a failure to abate a violation of 29 CFR 1910.1200(e)(1) from 1st Safety Order and assesses a total penalty of Twenty-Four Thousand Dollars (\$24,000).

15. The total assessed penalty for the Failure to Abate Safety Order is One Hundred Two Thousand Dollars (\$102,000).

16. The 2nd Safety Order consists of Safety Order 1, Item 1.

17. 2nd Safety Order 1, Item 1 alleges a “Serious” violation of 29 CFR 1910.215(a)(4) and assesses a total penalty of Zero Dollars (\$0).

18. The total combined penalty for the Failure to Abate and 2nd Safety Order is One Hundred Two Thousand Dollars (\$102,000).

PART III

19. The Failure to Abate and 2nd Safety Order are hereby amended as follows:

20. Failure to Abate – Safety Order 1, Item 1 is deleted in its entirety, contingent upon abatement of the hazard and payment of the penalty originally cited in 1st Safety Order 1, Item 1

which assesses a total penalty of Six Hundred Dollars (\$600).

21. Failure to Abate – Safety Order 1, Item 2 is deleted in its entirety, contingent upon abatement of the hazard and payment of the penalty originally cited in 1st Safety Order 1, Item 2 which assesses a total penalty of Six Hundred Dollars (\$600).

22. Failure to Abate – Safety Order 1, Item 3 is deleted in its entirety, contingent upon abatement of the hazard and payment of the penalty originally cited in 1st Safety Order 1, Item 3 which assesses a total penalty of Seven Hundred Fifty Dollars (\$750)

23. Failure to Abate – Safety Order 1, Item 4 is deleted in its entirety, contingent upon abatement of the hazard and payment of the penalty originally cited in 1st Safety Order 1, Item 4 which assesses a total penalty of Six Hundred Dollars (\$600)

24. 2nd Safety Order 1, Item 1 is upheld as cited.

25. The AGREED total penalty for all violations and all subparts thereunder, subject to this Agreed Entry, is Two Thousand Five Hundred Fifty Dollars (\$2,550).

26. 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”).

27. Respondent confirms Complainant’s right to re-inspect its workplaces in accordance with the Act.

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

PART IV.

29. 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.

30. 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 Notification of Failure to Abate Alleged Violations and 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.

31. 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.

32. 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 4 day of February 2016.

MERRITTS TRUCK AND AUTO REPAIR

By: 

Printed: Chad Merritt

Title: owner

Approved as to Form:

By: 

**Sean T. Devenney,
Counsel for Respondent**

COMMISSIONER OF LABOR

By: 

**Julie Alexander
Director of General Industry
IOSHA**

By: 

**J. Anthony Hardman,
Counsel for Complainant**

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 0037 1000 7-23-14 jtb

Safety Order and Notification of Penalty

To:
Merritt's Truck and Auto Repair
1025 Touby Pike
Kokomo, IN 46901

Inspection Number: 317403780
CSHO ID: C2709
Optional Report No.: 0003-14
Inspection Date(s): 1/23/2014 - 3/20/2014
Issuance Date: 7/23/2014

Inspection Site:
1025 Touby Pike
Kokomo, IN 46901

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 7/23/2014. 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: 317403780
Inspection Date(s): 1/23/2014 - 3/20/2014
Issuance Date: 7/23/2014
CSHO ID: C2709
Optional Report No.: 0003-14

Safety Order and Notification of Penalty

Company Name: Merritt's Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

Safety Order 01 Item 001

Type of Violation: **Serious**

29 CFR 1910.212(a)(3)(ii): Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s):

A) Garage - No point of operation guard was in place on the bit for employees who used the Clausing vertical drill press (150-2000 rpm) on a weekly basis in the repair of automobiles and commercial trucks.

B) Garage - No point of operation guarding was in place in the rear of the press to prevent employee access during use nor was there a means to prevent access to the point of operation for an employee who had their hand on the operating button directly next to the Enerpac PER-2042 hydraulic press die base plate during the operation cycle.

Date By Which Violation Must Be Abated: 8/25/2014
Proposed Penalty: \$600.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317403780
Inspection Date(s): 1/23/2014 - 3/20/2014
Issuance Date: 7/23/2014
CSHO ID: C2709
Optional Report No.: 0003-14

Safety Order and Notification of Penalty

Company Name: Merritt's Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

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

29 CFR 1910.215(b)(9): The distance between the abrasive wheel periphery(s) and the adjustable tongue or the end of the safety guard peripheral member at the top exceeded one fourth inch:

Garage - No tongue guard was in place on the pedestal abrasive wheel, that is used on a weekly basis in the repair of automobiles and commercial trucks, to protect employees from parts of the wheel in the event of a catastrophic failure of the wheel matrix.

20 days

Date By Which Violation Must Be Abated: 8/25/2014
Proposed Penalty: \$600.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317403780
Inspection Date(s): 1/23/2014 - 3/20/2014
Issuance Date: 7/23/2014
CSHO ID: C2709
Optional Report No.: 0003-14

Safety Order and Notification of Penalty

Company Name: Merritt's Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

Safety Order 01 Item 003

Type of Violation: **Serious**

29 CFR 1910.303(b)(2): Listed or labeled electrical equipment was not used or installed in accordance with instructions included in the listing or labeling:

Garage - Up to four 110V metal four outlet electrical boxes with knockouts were used as drop down pendants for up to 8 hours a day to supply power to equipment such as, but not limited to; power tools, lighting, and radios, which potentially exposed employees to electrical shock hazards.

20 days

Date By Which Violation Must Be Abated: 8/25/2014
Proposed Penalty: \$750.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 317403780
Inspection Date(s): 1/23/2014 - 3/20/2014
Issuance Date: 7/23/2014
CSHO ID: C2709
Optional Report No.: 0003-14

Safety Order and Notification of Penalty

Company Name: Merritt's Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

Safety Order 01 Item 004

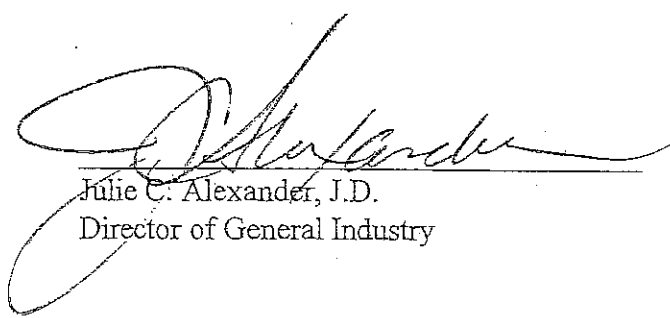
Type of Violation: **Serious**

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met:

Garage - No written hazard communication program was developed in the workplace where employees used hazardous products such as, but not limited to, Safety-Kleen premium solvent, spray paint, automobile oil, and 1st AYD Brake and Metal Parts Cleaner on a regular and routine basis.

A hazardous communication program shall consist of: a written program which at least describes labeling and other forms of warning, safety data sheets, criteria for employee information and training, list of hazardous chemicals, employee information on the hazards of non-routine tanks, and hazards of chemicals in unlabeled pipes.

Date By Which Violation Must Be Abated: 8/25/2014
Proposed Penalty: \$600.00


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

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



INVOICE/DEBT COLLECTION NOTICE

Company Name: Merritt's Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901
Issuance Date: 7/23/2014

Summary of Penalties for Inspection Number: 317403780

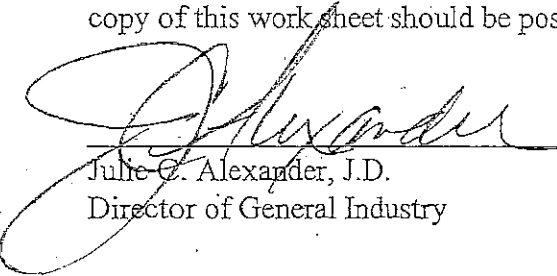
Safety Order 1, Serious	= \$2,550.00
TOTAL PENALTIES	= \$2,550.00

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 G. Alexander, J.D.
Director of General Industry

7/23/14
Date

Indiana Department of Labor

Indiana Occupational Safety and Health Administration
402 West Washington St - Room W195
Indianapolis, IN 46204
Phone: (317)232-1979 FAX: (317)233-3790



Certified mail # 917190 00052720 0047 4251 8-7-15 jjs

Notification of Failure to Abate Alleged Violations

To:
Merritts Truck and Auto Repair
1025 Touby Pike
Kokomo, IN 46901

Original Inspection Number: 317403780
Original Inspection Date(s): 1/23/2014 - 3/20/2014
Inspection Number: 317867075
Inspection Date(s): 06/15/2015
Issuance Date: 8/7/2015 *jjs*

Inspection Site:
1025 Touby Pike
Kokomo, IN 46901

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

After the original inspection, a Safety Order(s) was issued to you in accordance with the provisions of the Occupational Safety and Health Act of 1970 (the Act), notifying you of certain violations of the Act and the dates by which they were to be abated. Based upon reinspection, it is alleged that you have failed to abate the violation(s) listed below within the time prescribed, and the following additional penalties are proposed. The additional penalty is computed by multiplying a daily penalty times the number of days the violation(s) remained unabated. You are to notify the Area Director in writing of the date and nature of the corrective action taken. If you do not abate the violation(s), further penalties may be proposed and other enforcement action to compel abatement may be taken under section 11(b) of the Act.

You are further notified that you must pay the ADDITIONAL PENALTY unless you inform the Area Director in writing that you intend to contest the Notification or the Additional Penalty within 15 working days (excluding weekends and State holidays) from your receipt of this notification. If you do not contest within 15 working days after receipt, the Notification and the additional penalties will become the final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. Issuance of this Notification does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the Notification is affirmed by the Review Commission.

Notification of Corrective Action - For **each** violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of the IOSHA office issuing the

safety order and identification above. The certification must be sent by you within 10 calendar days of the abatement date of the abatement date identification on the safety order. For **Knowing and Repeat** violations, documents (examples: photos, copies of recipes, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the safety order is classified as Serious and the safety orders states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the safety order indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

For each safety order where you do contest the violation or the abatement date, your obligation to submit abatement certification and any documents is delayed until the contest and the 10-day period after the abatement date have expired. See 29CFR 1903.19 and the OSHA 3000 booklet for more information.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the safety order and safety order item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to IOSHA, also be posted at the location where the violation appeared and the corrective action took place.

Inspection Activity Data - you should be aware that IOSHA publishes information on its inspection and safety order activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 7 calendar days after the Safety Order Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

Make your check or money order payable to "Indiana DOL/IOSHA". Please indicate the Inspection Number on the remittance.

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 Notification of Failure to Abate Alleged Violations issued on 7/23/2014. The conference will be held at the OSHA 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

Notification of Failure to Abate Alleged Violation

Original Inspection:	317403780	Inspection Number:	317867075
Original Inspection Date(s):	1/23/2014 - 3/20/2014	Inspection Date(s):	06/15/2015
		Issuance Date:	8/17/2015 
		CSHO ID:	F2654
		Optional Report No.:	18-2015

Company Name: Merritts Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

Safety Order 01 Item 001

29 CFR 1910.212(a)(3)(ii): Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s):

A) Garage - No point of operation guard was in place on the bit for employees who used the Clausing vertical drill press (150-2000 rpm) on a weekly basis in the repair of automobiles and commercial trucks.

FAILURE TO ABATE

On June 15, 2015, a follow-up inspection determined that point of operation guarding was not in place on the Clausing vertical drill press. For a period of thirty (30) or more days, including (30) days from August 25, 2014, the employer failed to provide machine guarding as required by the terms of the Safety Order and Notification of Penalty issued In Re Inspection of Merritts Truck and Auto Repair and its Successors, Inspection No. 317403780, part of the citations issued to the employer on July 23, 2014, and the Final Order resulting therefrom.

B) Garage - No point of operation guarding was in place in the rear of the press to prevent employee access during use nor was there a means to prevent access to the point of operation for an employee who had their hand on the operating button directly next to the Enerpac PER-2042 hydraulic press die base plate during the operation cycle.

FAILURE TO ABATE

On June 15, 2015, a follow-up inspection determined that point of operation guarding was not in place on the Enerpac PER-2042 hydraulic press. For a period of thirty (30) or more days, including (30) days from August 25, 2014, the employer failed to provide machine guarding as required by the terms of the Safety Order and Notification of Penalty issued In Re Inspection of Merritts Truck and Auto Repair and its Successors, Inspection No. 317403780, part of the citations issued to the employer on July 23, 2014, and the Final Order resulting therefrom.

FAILURE TO ABATE Safety Order 01 Item 001, INSPECTION NO. 317403780, ISSUED ON July 23, 2014.

Additional Penalty:

\$24,000.00

Indiana Department of Labor
Indiana Occupational Safety and Health Administration

Notification of Failure to Abate Alleged Violation

Original Inspection:	317403780	Inspection Number:	317867075
Original Inspection Date(s):	1/23/2014 - 3/20/2014	Inspection Date(s):	06/15/2015
		Issuance Date:	8/7/2015 <i>(initials)</i>
		CSHO ID:	F2654
		Optional Report No.:	18-2015

Company Name: Merritts Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

Safety Order 01 Item 002

29 CFR 1910.215(b)(9): The distance between the abrasive wheel periphery(s) and the adjustable tongue or the end of the safety guard peripheral member at the top exceeded one fourth inch:

Garage - No tongue guard was in place on the pedestal abrasive wheel, that is used on a weekly basis in the repair of automobiles and commercial trucks, to protect employees from parts of the wheel in the event of a catastrophic failure of the wheel matrix.

FAILURE TO ABATE

On June 15, 2015, a follow-up inspection determined that the tongue guard on the Baldor HD Grinder was 3" from the abrasive wheel, greater than the 1/4" standard. For a period of thirty (30) or more days, including (30) days from August 25, 2014, the employer failed to provide an adequately adjusted tongue guard as required by the terms of the Safety Order and Notification of Penalty issued In Re Inspection of Merritts Truck and Auto Repair and its Successors, Inspection No. 317403780, part of the citations issued to the employer on July 23, 2014, and the Final Order resulting therefrom.

FAILURE TO ABATE Safety Order 01 Item 002, INSPECTION NO. 317403780, ISSUED ON July 23, 2014.

Additional Penalty: \$24,000.00

Indiana Department of Labor
Indiana Occupational Safety and Health Administration

Notification of Failure to Abate Alleged Violation

Original Inspection:	317403780	Inspection Number:	317867075
Original Inspection Date(s):	1/23/2014 - 3/20/2014	Inspection Date(s):	06/15/2015
		Issuance Date:	8/7/2015 (S)
		CSHO ID:	F2654
		Optional Report No.:	18-2015

Company Name: Merritts Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

Safety Order 01 Item 003

29 CFR 1910.303(b)(2): Listed or labeled electrical equipment was not used or installed in accordance with instructions included in the listing or labeling:

Garage - Up to four 110V metal four outlet electrical boxes with knockouts were used as drop down pendants for up to 8 hours a day to supply power to equipment such as, but not limited to; power tools, lighting, and radios, which potentially exposed employees to electrical shock hazards.

FAILURE TO ABATE

On June 15, 2015, a follow-up inspection determined that metal, wall mounted outlet boxes with knockouts were being used to supply power to various pieces of equipment. For a period of thirty (30) or more days, including (30) days from August 25, 2014, the employer failed to provide approved pendants/electrical drops as required by the terms of the Safety Order and Notification of Penalty issued In Re Inspection of Merritts Truck and Auto Repair and its Successors, Inspection No. 317403780, part of the citations issued to the employer on July 23, 2014, and the Final Order resulting therefrom.

FAILURE TO ABATE Safety Order 01 Item 003, INSPECTION NO. 317403780, ISSUED ON July 23, 2014.

Additional Penalty: \$30,000.00

Indiana Department of Labor
Indiana Occupational Safety and Health Administration

Notification of Failure to Abate Alleged Violation

Original Inspection:	317403780	Inspection Number:	317867075
Original Inspection Date(s):	1/23/2014 - 3/20/2014	Inspection Date(s):	06/15/2015
		Issuance Date:	8/7/2015
		CSHO ID:	F2654
		Optional Report No.:	18-2015

Company Name: Merritts Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

Safety Order 01 Item 004

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met:

Garage - No written hazard communication program was developed in the workplace where employees used hazardous products such as, but not limited to, Safety-Kleen premium solvent, spray paint, automobile oil, and 1st AYD Brake and Metal Parts Cleaner on a regular and routine basis.

A hazardous communication program shall consist of: a written program which at least describes labeling and other forms of warning, safety data sheets, criteria for employee information and training, list of hazardous chemicals, employee information on the hazards of non-routine tanks, and hazards of chemicals in unlabeled pipes.

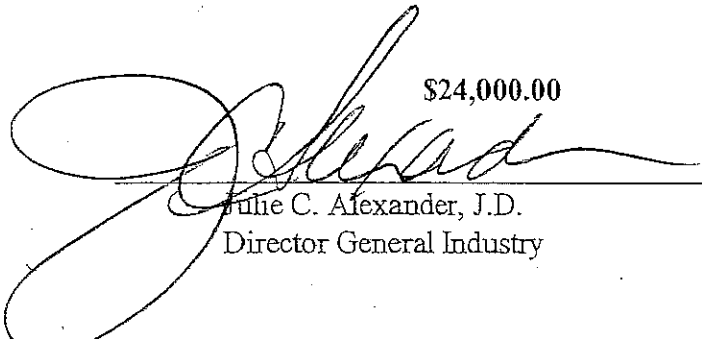
FAILURE TO ABATE

On June 15, 2015, a follow-up inspection determined that a written hazard communication program and the provisions contained therein was not in place or implemented. For a period of thirty (30) or more days, including (30) days from August 25, 2014, the employer failed to develop a hazard communication program as required by the terms of the Safety Order and Notification of Penalty issued In Re Inspection of Merritts Truck and Auto Repair and its Successors, Inspection No. 317403780, part of the citations issued to the employer on July 23, 2014, and the Final Order resulting therefrom.

FAILURE TO ABATE Safety Order 01 Item 004, INSPECTION NO. 317403780, ISSUED ON July 23, 2014.

Additional Penalty:

\$24,000.00


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

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)233-3790



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Merritts Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901
Issuance Date: 8/17/2015
Opt. Insp. Nr: 18-2015

Summary of Penalties for Inspection Number: 317403780
Followup Inspection Number: 317867075

Safety Order 1, Serious = \$102,000.00
TOTAL ADDITIONAL PROPOSED PENALTIES
= \$102,000.00

To avoid additional charges, please remit payment promptly to this Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "Indiana DOL/IOSHA". Please indicate IOSHA's Inspection Number (indicated above) on the remittance.

OSHA 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.

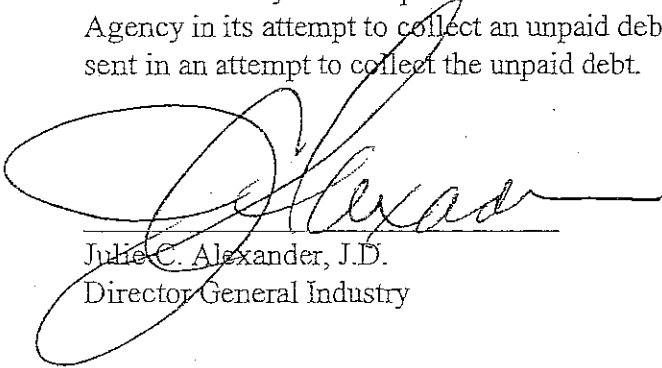
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest. Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is 5%. Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the

Safety Order and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges. A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs. Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



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

8/11/15
Date

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)233-3790



certified mail # 91 7190 0005 2720 0847 4220 8-7-15 jfo

Safety Order and Notification of Penalty

To:
Merritts Truck and Auto Repair
1025 Touby Pike
Kokomo, IN 46901

Inspection Number: 317869089
CSHO ID: F2654
Optional Report No.: 24-2015
Inspection Date(s): 6/15/2015
Issuance Date: 8/7/2015

Inspection Site:
1025 Touby Pike
Kokomo, IN 46901

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 8/7/2015. 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

Inspection Number: 317869089
Inspection Date(s): 6/15/2015
Issuance Date: 8/7/2015
CSHO ID: F2654
Optional Report No.: 24-2015

Safety Order and Notification of Penalty

Company Name: Merritts Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901

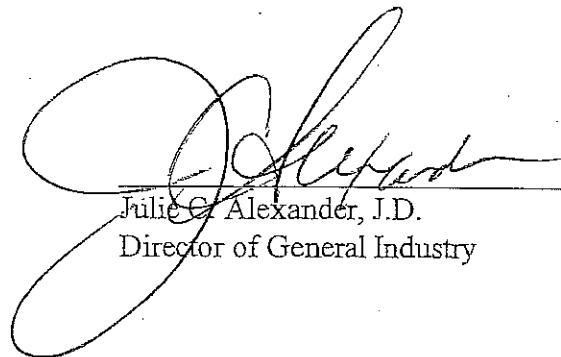
Safety Order 01 Item 001

Type of Violation: **Serious**

29 CFR 1910.215(a)(4): Work rest(s) on grinding machinery were not adjusted closely to the wheel with a maximum opening of one eighth inch:

Garage – The work rest on the Baldor pedestal grinder (s/n W584), used on a regular and routine basis, was 1 ½ inches from the surface of abrasive grinding wheel.

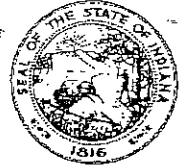
Date By Which Violation Must Be Abated: 9/10/2015
Proposed Penalty: \$0.00



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

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)233-3790



INVOICE/DEBT COLLECTION NOTICE

Company Name: Merritts Truck and Auto Repair
Inspection Site: 1025 Touby Pike, Kokomo, IN 46901
Issuance Date: 8/7/2015

Summary of Penalties for Inspection Number: 317869089

Safety Order 1, Serious = \$0.00
TOTAL PENALTIES = \$0.00

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

Date 8/7/15