

Indiana Department of Labor

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



Safety Order and Notification of Penalty

To:
Azteca Milling LP
and its successors
15700 Highway 41 North
Evansville, IN 47725

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023

Inspection Site:
15700 Highway 41 North
Evansville, IN 47725

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 workplace 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 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 board appointed by the governor with authority to conduct legal proceedings leading up to and including administrative hearings or assign an Administrative Law Judge (ALJ) to conduct the same, and to issue decisions concerning disputed safety orders and notifications of penalties. 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
402 West Washington Street, Room W195
Indianapolis, Indiana 46204
Phone: (317) 232-1979 FAX: (317) 233-3790



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with IOSHA to discuss the Safety Order(s) issued on 06/22/2023.

The Informal Conference will be held:

Date: _____

Time: _____

_____ **Virtually/Telephonically via Microsoft Teams**

Call-in Number: _____

Conference ID: _____

_____ **In-person at the Indiana Department of Labor, located at the following address:**

402 West Washington Street, Room W195
Indianapolis, Indiana 46204

Meeting/Conference Room: _____

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: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

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

29 CFR 1910.23(c)(8): The top step of a stepladder was used as a step or a seat:

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, an employee(s) using a 6 foot step ladder utilized the top cap as a step to access the top of a machine.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: August 08, 2023
Proposed Penalty: \$4,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.23(c)(11):(11) Where portable ladders were used to gain access to an upper landing surface the ladder side rails did not extend at least 3 feet (0.9 m) above the upper landing surface:

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, the employer did not assure the ladder used to access the machine was placed at least 3 foot above the top landing surface, nor was a grab rail provided.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	August 08, 2023
Proposed Penalty:	\$0.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.28(b)(1)(i): (1) Each employee on a walking/working surface with an unprotected side or edge which was 4 feet or more above a lower level was not protected from falling by the use of guardrail systems, safety net systems, or a personal fall arrest system:

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, an employee(s) engaged in maintenance activities at a height of approximately 7 feet (was/were) not protected from falls by any means.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	August 08, 2023
Proposed Penalty:	\$4,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.147(c)(6)(i)(C): Where lockout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected:

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, the employer did not perform periodic audits with authorized personnel.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	August 08, 2023
Proposed Penalty:	\$2,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.147(d): The established procedure for the application of energy control (the lockout or tagout procedures) did not cover the actions listed in and was not done in sequence as required by 29 CFR 1910.147 (d)(1)-(6):

Jobsite - 15700 US HWY 41 N, Evansville, Indiana 47725 - On or about May 10, 2023, Packaging Department - An employee was exposed to a caught by hazard when make repairs to an auger on line #5 Filler #4 in the Packing Department. The energy control application steps to perform the repair were not implemented per 1910.147(d) requirements. As a result, the following applicable energy control elements were not followed to include:

Prepare for shutdown [(d)(1)] - ensure authorized employee has knowledge of the type and magnitude of the energy, the hazards of the energy to be controlled, and the method or means to control the energy:

Shutdown the machine or equipment [(d)(2)] - the machine or equipment shall be turned off or shut down using the procedures established for the machine or equipment:

Machine isolation [(d)(3)] - physically locate and operate all energy isolating devices that are needed to control the energy to the machine or equipment in such a manner as to isolate the machine or equipment from the energy sources(s):

LOTO device application [(d)(4)(i)] - affix a lockout or tagout device to each energy isolating device:

Stored energy [(d)(5)(i)] - all potentially hazardous or stored residual energy shall be relieved, disconnected, restrained, or otherwise rendered safe:

Verification of isolation [(d)(6)] - Prior to starting work on machines or equipment that have been locked out or tagged out, the authorized employee shall verify that isolation and deenergization of the machine or equipment have been accomplished:

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

August 08, 2023

Proposed Penalty:

\$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725


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

29 CFR 1910.303(f)(4): Disconnect was not capable of accepting a lock. Disconnecting means required by this subpart shall be capable of being locked in the open position:

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, the employer allowed for the use of a disconnect unable to accept a lock in the open position.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: August 08, 2023
Proposed Penalty: \$2,000.00


Jeremy Galloway
IOSHA Director
JG:tj



INVOICE/DEBT COLLECTION NOTICE

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725
Issuance Date: 06/22/2023

Summary of Penalties for Inspection Number: 1669457

Safety Order 1 Item 1a, Serious	\$4,000.00
Safety Order 1 Item 1b, Serious	\$0.00
Safety Order 1 Item 2, Serious	\$4,000.00
Safety Order 1 Item 3, Serious	\$2,000.00
Safety Order 1 Item 4, Serious	\$7,000.00
Safety Order 1 Item 5, Serious	\$2,000.00


TOTAL PROPOSED PENALTIES: \$19,000.00

Penalties are due within fifteen (15) working days of receipt of this notification unless requested. Make your check or money order payable to: "Indiana DOL/IOSHA." Please indicate IOSHA's Inspection Number (indicated above) on the remittance. You may also make a payment online at <https://payingov.com/dol/>. Your account number is your inspection number.

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 worksheet has been provided to assist in providing the required abatement information. A completed copy of this worksheet should be posted at the worksite with safety orders.


Jeremy Galloway

6/22/2023

Date

IOSHA Director
JG:tj

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE IOSHA BOARD OF
SAFETY REVIEW

FILED

JUN 18 2024

Indiana Board of
Safety Review

IN THE MATTER OF THE)
COMMISSIONER OF LABOR,)
)
Complainant,)
)
v.)
)
AZTECA MILLING LP,)
AND ITS SUCCESSORS,)
)
Respondent.)

CASE DOCKET NO. 23-052

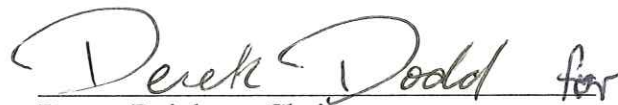
ADMINISTRATIVE CAUSE NO.
DOL-2312-003114

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: 06/18/2024


Derek Dodd for
Danny Deighton, Chairman

Copies to:

J. Anthony Hardman
General Counsel
Department of Labor
402 W. Washington St., Rm. W195
Indianapolis, IN 46204

Kenneth B. Siepman
Ogletree Deakins Nash Smoak & Stewart PC
300 N. Meridian St., Suite 2700
Indianapolis, IN 46204

Indiana Office of Administrative Law Proceedings
100 N. Senate Avenue, Rm. N802
Indianapolis, IN 46204



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

**BEFORE THE INDIANA OFFICE OF
ADMINISTRATIVE LAW PROCEEDINGS,
SUBJECT TO THE ULTIMATE
AUTHORITY OF THE IOSHA BOARD OF
SAFETY REVIEW**

IN THE MATTER OF:)
)
COMMISSIONER OF LABOR,)
)
Complainant,)
)
v.)
)
AZTECA MILLING LP)
AND ITS SUCCESSORS,)
)
Respondent.)

**OALP CASE NO. DOL-2312-003114
BSR DOCKET NO. 23-052**

AGREED ENTRY

The parties to the above-captioned proceeding, the Commissioner of the Indiana Department of Labor (hereinafter “Complainant”) and Azteca Milling LP (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 May 11, 2023, through June 12, 2023, authorized employees of the Indiana Department of Labor conducted an inspection at the Respondent’s worksite located at 15700 Highway 41 North, Evansville, IN 47725.

2. On June 22, 2023, Complainant issued a Safety Order and Notification of Penalty (hereinafter “Safety Order”) resulting from Indiana Department of Labor Inspection No. 1669457 and alleging that Respondent had violated the Indiana Occupational Safety and Health Act (IC 22-8-1.1 *et seq.*) or the standards or rules thereunder. The Safety Order is attached hereto as Exhibit A and is incorporated herein.

3. On or about December 8, 2023, Respondent duly and timely petitioned for review of the Safety Order.

PART II.

4. The Safety Order consists of Safety Order 1, Item Nos. 1a, 1b, 2, 3, 4, and 5.

5. Safety Order 1, Item 1a alleges a "Serious" violation of 29 CFR 1910.23(c)(8) and assesses a penalty of Four Thousand Dollars (\$4,000).

6. Safety Order 1, Item 1b alleges a "Serious" violation of 29 CFR 1910.23(c)(11) and assesses no additional penalty above what is assessed in Item 1a.

7. Safety Order 1, Item 2 alleges a "Serious" violation of 29 CFR 1910.28(b)(1)(i) and assesses a penalty of Four Thousand Dollars (\$4,000).

8. Safety Order 1, Item 3 alleges a "Serious" violation of 29 CFR 1910.147(c)(6)(i)(C) and assesses a penalty of Two Thousand Dollars (\$2,000).

9. Safety Order 1, Item 4 alleges a "Serious" violation of 29 CFR 1910.147(d) and assesses a penalty of Seven Thousand Dollars (\$7,000).

10. Safety Order 1, Item 5 alleges a "Serious" violation of 29 CFR 1910.303(f)(4) and assesses penalty of Two Thousand Dollars (\$2,000).

11. The total assessed penalty for Safety Order 1 is Nineteen Thousand Dollars (\$19,000).

PART III.

12. The Safety Order is hereby amended as follows.

13. Safety Order 1, Item 1a is upheld, but re-classified to "NonSerious" and retains the penalty originally cited.

14. Safety Order 1, Item 1b is upheld, but re-classified to "NonSerious" and retains the

penalty originally cited.

15. Safety Order 1, Item 2 is upheld, but re-classified to "NonSerious" and retains the penalty originally cited.

16. Safety Order 1, Item 3 is upheld, but re-classified to "NonSerious" and retains the penalty originally cited.

17. Safety Order 1, Item 4 is deleted in its entirety, due to lack of evidence to support.

18. Safety Order 1, Item 5 is upheld, but re-classified to "NonSerious" and retains the penalty originally cited.

19. The AGREED total penalty for all violations and all subparts thereunder, subject to this Agreed Entry, is Twelve Thousand Dollars (\$12,000).

20. In consideration for reclassification of the citations, Respondent has completed the following enhanced abatement and provide Complainant with proof of each:

- a. Updated its safety compliance observations.
- b. Implemented new machine specific LOTO procedures throughout the facility.
- c. Trained employees on new procedures.

21. 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").

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

23. If not already identified in the Safety Order and Notification of Penalty as completed during the inspection, all abatement, including any enhanced abatement identified and agreed upon herein, must still be completed in a timely manner and certified to IOSHA by sending

confirmation of abatement, including a detailed description of what was done along with any supporting documentation and photographs, to IOSHA by email to abatement@dol.in.gov.

24. Respondent hereby withdraws its petition for review previously filed in this matter, subject to the terms of this agreed entry.

PART IV.

25. 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.

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

27. 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.

28. 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 20th day of May 2024.

AZTECA MILLING LP

By: Alberto Jacques
Alberto Jacques (May 20, 2024 15:21:27)
Printed: Alberto Jacques
Title: VP Manufacturing

By: Francisco Martinez
Francisco Martinez (May 20, 2024 15:21:27)
Printed: Francisco Martinez
Title: VP of Operations

Approved as to Form:

By: Kenneth B. Siepman
Kenneth B. Siepman,
Counsel for Respondent

COMMISSIONER OF LABOR

By: Jeremy Galloway
Jeremy Galloway,
Director of Safety Compliance,
IOSHA

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

EXHIBIT A

Indiana Department of Labor

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



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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 board appointed by the governor with authority to conduct legal proceedings leading up to and including administrative hearings or assign an Administrative Law Judge (ALJ) to conduct the same, and to issue decisions concerning disputed safety orders and notifications of penalties. 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
402 West Washington Street, Room W195
Indianapolis, Indiana 46204
Phone: (317) 232-1979 FAX: (317) 233-3790



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the Safety Order(s) issued on 06/22/2023.

The Informal Conference will be held:

Date: _____

Time: _____

_____ Virtually/Telephonically via Microsoft Teams

Call-in Number: _____

Conference ID: _____

_____ In-person at the Indiana Department of Labor, located at the following address:

402 West Washington Street, Room W195
Indianapolis, Indiana 46204

Meeting/Conference Room: _____

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: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

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

29 CFR 1910.23(c)(8): The top step of a stepladder was used as a step or a seat:

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4. On or about May 10, 2023, an employee(s) using a 6 foot step ladder utilized the top cap as a step to access the top of a machine.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

August 08, 2023
\$4,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.23(e)(11)(11) Where portable ladders were used to gain access to an upper landing surface the ladder side rails did not extend at least 3 feet (0.9 m) above the upper landing surface:

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, the employer did not assure the ladder used to access the machine was placed at least 3 foot above the top landing surface, nor was a grab rail provided.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM:

Date By Which Violation Must be Abated:
Proposed Penalty:

August 08, 2023
\$0.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.28(b)(1)(i): (1) Each employee on a walking/working surface with an unprotected side or edge which was 4 feet or more above a lower level was not protected from falling by the use of guardrail systems, safety net systems, or a personal fall arrest system;

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, an employee(s) engaged in maintenance activities at a height of approximately 7 feet (was/were) not protected from falls by any means.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

August 08, 2023
\$4,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.147(c)(6)(i)(C): Where lockout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected.

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, the employer did not perform periodic audits with authorized personnel.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

August 08, 2023
\$2,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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

29 CFR 1910.147(d): The established procedure for the application of energy control (the lockout or tagout procedures) did not cover the actions listed in and was not done in sequence as required by 29 CFR 1910.147(d)(1)-(6):

Jobsite - 15700 US HWY 41 N, Evansville, Indiana 47725 - On or about May 10, 2023, Packaging Department - An employee was exposed to a caught by hazard when make repairs to an auger on line #5 Filler #4 in the Packing Department. The energy control application steps to perform the repair were not implemented per 1910.147(d) requirements. As a result, the following applicable energy control elements were not followed to include:
Prepare for shutdown [(d)(1)] - ensure authorized employee has knowledge of the type and magnitude of the energy, the hazards of the energy to be controlled, and the method or means to control the energy;
Shutdown the machine or equipment [(d)(2)] - the machine or equipment shall be turned off or shut down using the procedures established for the machine or equipment;
Machine isolation [(d)(3)] - physically locate and operate all energy isolating devices that are needed to control the energy to the machine or equipment in such a manner as to isolate the machine or equipment from the energy sources(s);
LOTO device application [(d)(4)(i)] - affix a lockout or tagout device to each energy isolating device;
Stored energy [(d)(5)(i)] - all potentially hazardous or stored residual energy shall be relieved, disconnected, restrained, or otherwise rendered safe;
Verification of isolation [(d)(6)] - Prior to starting work on machines or equipment that have been locked out or tagged out, the authorized employee shall verify that isolation and deenergization of the machine or equipment have been accomplished;

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

August 08, 2023
\$7,000.00

Indiana Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1669457
CSHO ID: R6100
Optional Report No.: UNKNOWN
Inspection Date(s): 05/11/2023 - 06/12/2023
Issuance Date: 06/22/2023



Safety Order and Notification of Penalty

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725

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


29 CFR 1910.303(D)(4): Disconnect was not capable of accepting a lock. Disconnecting means required by this subpart shall be capable of being locked in the open position.

Azteca Milling LP, 15700 HWY 41 N, Evansville, Indiana, Packing Department Line No. 5 Filler No. 4, On or about May 10, 2023, the employer allowed for the use of a disconnect unable to accept a lock in the open position.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

August 08, 2023
\$2,000.00


Jeremy Galloway
IOSHA Director
JG:tj

Indiana Department of Labor
Occupational Safety and Health Administration



INVOICE/DEBT COLLECTION NOTICE

Company Name: Azteca Milling LP
Inspection Site: 15700 Highway 41 North, Evansville, IN 47725
Issuance Date: 06/22/2023

Summary of Penalties for Inspection Number: 1669457

Safety Order 1 Item 1a, Serious	\$4,000.00
Safety Order 1 Item 1b, Serious	\$0.00
Safety Order 1 Item 2, Serious	\$4,000.00
Safety Order 1 Item 3, Serious	\$2,000.00
Safety Order 1 Item 4, Serious	\$7,000.00
Safety Order 1 Item 5, Serious	\$2,000.00


TOTAL PROPOSED PENALTIES: \$19,000.00

Penalties are due within fifteen (15) working days of receipt of this notification unless requested. Make your check or money order payable to: "Indiana DOL/IOSHA." Please indicate IOSHA's Inspection Number (indicated above) on the remittance. You may also make a payment online at <https://payingov.com/dol/>. Your account number is your inspection number.

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 worksheet has been provided to assist in providing the required abatement information. A completed copy of this worksheet should be posted at the worksite with safety orders.


Jeremy Galloway

6/22/2023

Date

IOSHA Director

JG:tj