UC 149-2

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INTERNAL CORRESPONDENCE

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CHEMICALS AND PLASTICS

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PLAINTIFF'S EXHIBIT UC-1151

To (Name) EP/OH Coordinators (N and S)
Division
Location

Date December 5, 1977

Originating Dept.

Answering letter date

Copy to Distribution List Attached

Subject Cal -OSHA

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D. E. D.

Attached for your information are copies of a letter from Ken Morlock to John Whittlesey of the Legal Department regarding a Cal -OSHA inspection at the Torrance Latex Plant and his response.

The OH Team wanted you to be aware of the Cal-OSHA philosophy that they could, in effect, establish by administrative fiat exposure standards for materials that have no published TLV, and also of the UCC Legal Department opinion that legally enforceable exposure standards cannot be established in this manner by either state or federal OSHA inspectors.

Should a similar situation ever arise at your location, please advise a member of the Occupational Health Team or Mr. J. E. Whittlesey of the Legal Department.

Bob

R. T. Kramer

bda

Attachment

UCTC 19684

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UNION CARBIDE CHEMICALS AND PLASTICS
ALSIP WATER-BORNE COATINGS MATERIALS PLANT
12840 South Crawford Avenue Alsip IL 60658
312 389 7000

September 12, 1977

To: Mr. J. W. Whittlesey - NYO

Dear Mr. Whittlesey:

While discussing a recent Cal-OSHA inspection of the Torrance Latex Plant with Nick Wheeler the other day, I mentioned a conversation I had with the chief of the inspection team, Mr. Robert Tarkington of the California Department of Health, Occupational Health Branch. Nick apparently talked to you and then asked me to write you with the details, as I remember them, so you might legally evaluate the situation as discussed.

I am enclosing a copy of the memorandum covering the report of this inspection which I issued on August 24th for your background information.

At one point during this report, Mr Tarkington was reviewing the analytical results of some of the samples which were taken during the inspection. The particular sample was of the atmosphere in an empty reactor which had been cleaned, the blanks pulled, and was then ready to be returned to service. There was no question of any one being exposed to this atmosphere and there really was little purpose in taking the sample, but it was taken and the results of the analysis were listed.

I saw the results listed and noticed there were, as I recall, 116 ppm of butyl acrylate reported. This brought a question to my mind which I proposed to Mr. Tarkington. Since Butyl Acrylate does not have a Threshold Limit Value published, what would be the process if this were actually a sample of an atmosphere to which we were exposing people?

Mr. Tarkington's reply was this. If, in reviewing the data from the inspection, it was found that workers were being exposed to questionable concentrations of any material for which there was not a published limit, the data would be submitted to the state toxicologists. A literature search would be conducted and an opinion issued as to an "acceptable" level of exposure.

The report to the employer would then contain "recommendations" for the reduction of exposure to this material to the "acceptable" level and no citation would result.

However, at the time of the next inspection, if exposures to this material were not reduced to the "acceptable" level a citation and possible fine would result.

UCTC 19685

Union Carbide trial exhibit UC-1151: R. T. Kramer to EP/OH Coordinators Forwarding Cal-OSHA Inspection Corres... Published by AsbestosClaims.Law
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I have checked my recollections with another of the individuals present and he recalls the same explanation of the proposed situation.

Nick Wheeler said that you had expressed a serious concern over the legality of this process which is in effect, the establishment of a new standard. I would certainly be interested in hearing your opinion of this process since Mr. Tarkington said this had been done in at least one case of which he was aware.

If you have any other questions concerning this incident please call me.

Very truly yours,

K. G. Morlock

cc: R. N. Wheeler - 514
A. E. Stafford - NY-33
R. T. Kramer - 512
T. R. Raby - BB

UCTC 19686

UNION CARBIDE CORPORATION
270 PARK AVENUE, NEW YORK, N.Y. 10017
LAW DEPARTMENT

September 29, 1977

Mr. K. G. Morlock
Chemicals and Plastics Division
Alsip Water-Borne Coatings Materials Plant
12840 South Crawford Avenue
Alsip, Illinois 60658

Re: Cal-OSHA

Dear Mr. Morlock:

I have had Ms. Marguerite A. Smith, one of my associates look into the question of whether or not Cal-OSHA can set an employee exposure standard for allegedly toxic materials merely by administrative fiat after an inspection of a particular plant, as alleged by the Cal-OSHA inspector who recently visited your California location.

As in the federal OSHA statute, the California law requires that standards be set only after public hearing and quite clearly the procedure suggested to you by the inspector was far short of meeting that particular requirement. Absent going through the formalities, therefore, there is no way that Cal-OSHA can set a specific standard for exposure for any substance merely by having a group of industrial hygienists conferring among themselves and coming up with an answer.

The Cal-OSHA statute, of course, does have a general duty clause similar to that of the federal OSHA. This means that the hazards which an employer must protect his employees against as a general proposition are "recognized" hazards. It is not a "recognized" hazard for an OSHA inspector to come up with an ex parte standard in the manner they propose and then apply such action, I would regard as a clear dereliction on Cal-OSHA's part.

If any such incident takes place, notify me at once and we will proceed to contest any citation issued on such an unlawful basis.

Very truly yours,

UCTC 19687

John W. Whittlesey

Enclosure
JWW:me

cc: Ms. M. A. Smith
Messrs. R. T. Kramer, T. R. Raby, A. E. Stafford, R. N. Wheeler

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UCTC 19688

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