COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
KOSHRC DOCKET NO. 2385-93

SECRETARY OF LABOR COMPLAINANT

VS.

RAYLOC RESPONDENT

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DECISION AND ORDER

On July 21, 1994 this case was called for further review by the review commission. Specifically, our review in this case is limited to serious citation 1, item 7a, an alleged violation of 29 CFR 1910.1200 (e) (1) (ii). The secretary of labor filed a brief and respondent filed a letter.

The hazard communications standard, 1910 (e) (1), begins:

> (1) Employers shall develop, implement, and maintain at the workplace, a written hazard communication program for their workplaces which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met.

Subparagraph (ii) of 1910.1200 (e) (1) goes on to state:

> The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas.
> 1910.1200 (e) (1) (ii)

The citation alleges Rayloc violated 1910.1200 (e) (1) (ii). The citation says:

> (a) For the employees of Rayloc where the written hazard communication program did not include the methods that will be used to inform employees of the hazards of non-routine tasks.

In her testimony, the compliance officer chose to designate the washing of walls and painting as non-routine tasks. Presumably, in a auto parts remanufacturer's operation, the sweeping of floors would also be a non-routine task. What the language of the standard (1910.1200 (e) (1) (ii)) mentions as an example of a non-routine task is the cleaning of reactor vessels.

Reactor vessels are used in the standard as an example because 1910.1200 is directed toward employers generally and chemical manufacturers specifically. Section 1910.1200 (b) (1) says chemical manufacturers must assess the hazards of the chemicals they manufacturer and that all employers must inform their employees of the chemicals to which they are exposed to in the workplace.

Section 1910.1200 (e) (1) (ii), see above, is specifically directed to chemical manufacturers. Chemical manufacturers use reactor vessels and move chemicals about the plant in pipes.

Reactor vessels are containers used in the manufacturer of chemicals where components of the product chemical (if, for example, a company manufactures hydrochloric acid that acid would be the company's product) are put into the reactor vessel and a catalyst chemical or heat or pressure (or some combination) is introduced into the reactor vessel whereupon the product chemical is produced by chemical reaction.

Let's say a chemical manufacturer uses a reactor vessel to produce a certain chemical for sale to customers. The chemical manufacturer under the requirements of 1910.1200 (b) must assess

the hazards of that product chemical and alert its customers by use of a warning label. But that same chemical manufacturer must also warn its own employees of the hazards of the product chemical itself and its components. 1910.1200 (e) (1) (ii) requires the chemical company to warn its employees of the hazards of the component chemicals which, when combined in the reactor vessel, go into the product chemical. Similarly, the chemical manufacturing employer must inform its employees of the hazards of the component chemicals moved about the plant in pipes.

But the labor cabinet's division of occupational health would have us believe that 1910.1200 (e) (1) (ii) applies to the washing of walls within Rayloc's building and painting some surface on the outside of the plant.

Painting and washing of walls, however, are not a non-routine tasks as defined in the standard and we so find. The standard protects employees entering a reactor vessel to clean it as it also protects employees from chemicals moved about a plant via pipes. Unless the company has some program for telling its employees what the component chemicals are for any given product when it's cleaning time, the employees will have no idea what they are faced with.

In our case there is no proof of any chemicals on the wall. And as to paint, the company could have been cited for not warning employees about the contents of the paint can as the contents were probably listed on the can itself.

Trident Seafoods Corp., CCH 1987-1990 para. 28,533, cites

.1200 (e) (1) to the effect that the employer failed to "... develop a hazard communication program for ammonia, chlorine and various other materials..."

Amarillo Redi-Mix, Inc., CCH 1987-1990 para. 28,751, says 1910.1200 (e) (1) was violated because hydrochloric acid and silica were not mentioned on the employer's hazardous communications program as harmful chemicals.

While not conclusive, the above two cases suggest that for a citation alleging a violation of 1910.1200 (e) (1) to be written and sustained, specific chemicals must be referred to within the citation itself. This was not done. In the case of the washed walls, the compliance officer had no earthly idea what if anything was on the walls in addition to soap and water.

There is no showing of the presence of harmful chemicals on the walls being washed, much less what those chemicals might be. Painting may or not be hazardous (depending on the solvents in the paint and the ventilation or lack thereof) but, again, there is no reference in the citation to what kind of paint or harmful chemicals was involved.

We find that the secretary of labor has not proven a violation of 1910.1200 (e) (1) (ii) because of the lack of any proof about the presence of chemicals to be warned about. We conclude as a matter of law that the secretary may not allege a violation of 1910.1200 (e) (1) (ii) without specific proof of the presence of a harmful chemical requiring a warning to employees.

We therefore dismiss serious citation 1, item 7a and the

penalty of $1,875. Since 7a was grouped with 7b and since serious violations require the imposition of a penalty, we set a penalty of $1 for serious citation 1, item 7b.

All other findings and conclusions of the hearing officer not inconsistent with this decision and order are affirmed.

This 15th day of ~~August~~ Sept., 1994.

George R. Wagoner
Chairman

Charles E. Yates
Commissioner

Donald A. Butler
Commissioner

Copy of the foregoing Order has been served upon the following parties in the manner indicated:

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This 15th day of September, 1994.

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