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PLAINTIFF'S
EXHIBIT
TPI-149

October 1, 1990

CONFIDENTIAL

Tyler Pipe
Subsidiary of Tyler Corporation
P.O. Box 2027
Tyler, Texas 75710

Attention: Mr. Earl Davis

Re: Environmental Engineering Services
Plant Visit of September 24 & 25, 1990

Gentlemen:

At your request, we visited your facility on September 24 and 25, 1990. The purpose of this visit was to assist in evaluating the existing OSHA programs at the plant. This included a review of the required written programs and recordkeeping as well as the enforcement of the programs by employees and supervisors during day-to-day operations.

Our visit included a walkthrough of the foundries and other departments as well as discussions with safety committee members.

We have organized our comments into administrative and operations aspects of the program.

ADMINISTRATIVE

The administrative aspects of the OSHA related programs include the development of written programs to meet the specific needs of this facility; training of employees in the programs; medical monitoring programs; selection of necessary personal protective equipment and recordkeeping on all aspects of training, medical surveillance and enforcement.

In the brief period of time available, the review of written programs indicated that they were well written and specific to the Tyler Pipe plant in Texas. However, there is ever increasing

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Guimond
EXHIBIT NO. 18
WORLDWIDE COURT
REPORTERS, INC.

Tyler Pipe
Environmental Review
October 1, 1990
Page No. 2

government enforcement emphasis on these types of programs, and we would therefore recommend that these programs be updated and re-evaluated regularly to insure that they meet the OSHA requirements as they are being interpreted by the regional OSHA office and the courts.

For example, while not currently a high dollar fine violation, OSHA Area Offices are requiring that all Lock Out Programs include a listing and evaluation of the specific equipment that is covered by the program. In this approach, it would not be sufficient, for example, to outline the steps to lock out all electrical systems at the plant. Instead, the major equipment and types of service in the plant must be specified as well as the specific type of lock out procedure.

In addition, it is essential that a full record be kept of the content of all training programs, the names of personnel that have attended and date of these programs.

We are aware that such records are being kept, but they are kept by training program and not by individual. Therefore, it is our understanding that there is no individual record available which would show what training programs the worker has had during his period of employment.

This could cause considerable problems in tracking and establishing compliance for an individual. It is our concern that the number of workers at the facility, the lack of a tracking system, and the mobility of these workers could result in workers who are not adequately trained in required programs such as lock out, hearing conservation, respiratory protection, and hazard communication.

Presently, it is our understanding that the Hearing Conservation Program has not been kept current as a result of staff changes. Unfortunately, OSHA would not be considered to be an acceptable reason for not having kept this program up-to-date.

At the present time, in Regions II and III, the fines for exactly this type of noncompliance have risen dramatically and are generally classified as "willful" since the employer has knowledge of the requirements as proven by the existence of the company written program.

Tyler Pipe
Environmental Review
October 1, 1990
Page No. 3

Of course, a second major problem is that if it should be found that the violation is "willful" (meaning that the employer was aware of the requirements but did not fulfill them--even though no harm to employees was intended) then there is a possibility of future liability to the company beyond workers' compensation. At the present time, workers compensation has covered these claims but in nearly every part of the country, there have been continuing attempts to have the courts agree that willful acts are not covered and therefore would permit the worker to sue the employer.

In addition, we would note that in many large cities, every serious injury or fatality must be investigated by the local district attorney to determine if criminal charges should be filed against individuals or companies if it is felt that the firm has been criminally negligent in implementing these programs to protect employees.

In summary, our review indicated that:

1. The Hearing Conservation Program requires retesting of the hearing of affected employees as well as retraining to meet the annual training requirements.
2. The Respirator Program requires individual fit testing at least annually and retraining of all included employees. The written program should be updated to outline persons responsible and any new conditions based upon most recent test results.
3. OSHA requires that all employees permitted to use the portable fire extinguishers be annually trained in their use. It is our understanding that this program is not fully defined as to which employees may use the extinguishers and how they are to be trained.
4. The employees included in the Lockout Program are reported to be trained but the records of training are not centralized and do not indicate that employees are trained in all aspects of the standard including protection against hydraulic and pneumatic stored energy.
5. The OSHA Hazardous Waste and Substance standard requires that any employees used to handle spills at the site beyond the "normal" be trained in a formal program of at least 16 to 40 hours and a full written program be developed for handling any

Tyler Pipe
Environmental Review
October 1, 1990
Page No. 4

such spill. It is our understanding that the spill response program at Tyler Pipe has not yet been evaluated to determine if this portion of the regulations applies to the plant. We would note that based upon a national directive, this standard is presently actively being enforced by the OSHA regional offices.

6. Hazard Communication training is reported to be done upon employment, but there is no record of retraining for new operations or chemicals which may be introduced into the workplace.

7. Personal Protective Equipment Requirements for each operation are established and are published in the Safety Rules Booklets. As will be noted in the section on enforcement, these requirements are not being enforced in the majority of areas of the facility.

In addition, for certain occupations, such as those requiring exposure to hot metal, the requirements for personal protective equipment at this facility are not the same as those for the East Penn facility.

While this may not appear to be a problem since the plants are in different OSHA regions, the national policy is to view all plants under one corporate management as subject to all the agreements made for a specific facility.

For example, recently a Ford Motor Company plant in Pennsylvania was fined in excess of one million dollars for not meeting the requirements of an agreement made by OSHA with another Ford facility in another region over 1,000 miles away.

Similarly, if the East Penn plant agrees to provide a certain level of employee protection, the OSHA national office would consider that agreement to extend to the Texas facility and to any other facility of Tyler Pipe.

Of course, this interpretation may be challenged in court on the basis that the conditions are not identical at the two or more plants. In addition, the basis may be attacked upon a legal basis, but we are unaware at this time of any successful contest of this type of violation.

Tyler Pipe
Environmental Review
October 1, 1990
Page No. 5

In summary, while we were unable to complete more than a brief review of the records and written programs at the plant, it appears that there are written programs at the facility which provide a good basis for the safety program. These programs are maintained in the Safety Office and are specific to this facility and for the most part comply with OSHA requirements. Programs may need to be revised or updated in response to the relatively rapid current changes in OSHA policy or enforcement.

However, there are problems in implementing the training, medical surveillance and recordkeeping portions of these programs. Since the company has been cited for these deficiencies in the past and the written programs clearly establish that the company is aware of its responsibilities in this area, it is most important that these programs be brought into compliance.

OPERATIONS

A walkthrough of the facility and discussions with Safety Committee members brought to light some basic problems with the enforcement of the programs on a day-to-day basis.

We have broken the major areas of concern into:

1. Establishing a working company policy and philosophy on safety
2. Designation of those responsible for enforcement
3. Enforcement through disciplinary action
4. Co-ordination between those responsible for making policy, enforcers, production and maintenance personnel

In nearly all areas of the plant, the wearing of personal protective equipment does not meet the requirements as published in the Safety Manuals for that area.

These deficiencies include many workers seen not wearing basic protection such as safety glasses (with or without side shields), spats and leggings for hot metal workers, hard hats, gloves for hot metal workers, and hearing protection.

Tyler Pipe
Environmental Review
October 1, 1990
Page No. 6

Since there are established hazards at the plant that require the use of this equipment and there are medical surveillance programs to track long and short term damage that may result from noncompliance, this lack of enforcement should be a major concern of management.

In fact, in our discussions with the members of the Safety Committee, there was an almost universal recognition of this problem and acknowledgement that it needed correction.

Suggestions included more commitment from top management to the program, better training programs, more frequent safety meetings with all employees, and strict enforcement of the work rules through use of written warnings and suspensions.

While it appears that there is recognition of the problem, the responsibility for enforcement is not clear. A review of the company policies indicated that the supervisor is responsible for informing the employees of what equipment must be worn and the employee is responsible for wearing the required equipment.

What is not made clear, however, is who is responsible for the day-to-day enforcement of the policies.

This is a major problem area.

It has been our experience that the responsibility must be made very clear. Usually the front line supervisor is responsible for enforcement. If higher management personnel see a violation, it is the responsibility of that person to inform the supervisor or manager of that department. Of course, this line of reporting again should be made perfectly clear.

To date, the only way companies have been able to convince OSHA or the courts of their commitment to a safe workplace has been by establishing a history of enforcement through written warnings and suspensions.

The only way that front line supervision has been convinced that the company means to enforce the policy is if ALL MANAGEMENT PERSONNEL WEAR ALL REQUIRED PROTECTIVE EQUIPMENT AND THAT THEY REGULARLY SEE AND REPORT ANY EMPLOYEE NOT WEARING SUCH EQUIPMENT OUT TO THE RESPONSIBLE PERSON.

Tyler Pipe
Environmental Review
October 1, 1990
Page No. 7

Personal Protective Equipment Programs can and do work. They usually also more than pay for themselves by reducing lost work days and injuries. However, all involved must be convinced that the program will be enforced and all management personnel must have a high degree of sensitivity to the need for this protective equipment.

We would also note that there is a general need for improved housekeeping through out the plant. This includes clearing the required area in front of fire extinguishers, electrical control boxes, and exits.

Guards for fans, grinders, and larger equipment such as the core sand mullor and core machines also need to be installed, replaced, or repaired. These changes range from the need to adjust the tongue guards and tool rests for nearly all pedestal grinder to developing a guard for the old mullors and new core machine.

Respiratory protection is also required for employees in the core mullor area based upon test results from Tyler's testing program. We did not see one employee in this area wearing respiratory protection.

These are the types of problems which will result in employee claims against the company, and more importantly could result in occupational injury or disease. Every manager we spoke with stated strongly that he/she did not want any harm to come to an employee in his/her work area, and yet this type of lack of housekeeping and use of protection was wide spread.

In addition, the electrical work in the facility should be reviewed to insure that it meets the current and new (December 1990) electrical standards.

In many areas we noted the use of flexible cords and plugs that would not meet the OSHA standards as well as open electrical boxes and damaged wires.

In summary, we noted major problems with the implementation of the safety and health programs at the Tyler facility. However, every management person we spoke with acknowledged the need and the desire for improvement.

Tyler Pipe
Environmental Review
October 1, 1990
Page No. 8

However, it was felt that for any such program to truly work, company policy would need to be backed up by improved training, more enforcement, and a better understanding of the programs and how and why they are required for all employees.

The safety problems seen in the facility would not require a major commitment of money, but would require more attention to the daily need for better housekeeping.

Based upon our brief visit, the Tyler personnel are capable and willing to implement such a program, but any change in worker habits will require a long term program and commitment on the part of all levels of management.

Respectfully submitted,

JOSEPH A. GUIMOND & ASSOCIATES, INC.

Martha Guimond