

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

UC LOS ANGELES DEPT. OF
CHEMISTRY & BIOCHEMISTRY
501 Westwood Plaza, 4th Floor
Los Angeles, CA 90095

Employer

Docket Nos. 10-R4D1-0794
through 0800

ORDER

On February 24, 2010, the Division of Occupational Safety and Health (Division) issued to UC Los Angeles Dept. of Chemistry & Biochemistry (Employer) the following citations, items and proposed penalties for alleged violations of the occupational safety and health standards and orders found in Title 8, California Code of Regulations:

<u>Cit/Item</u>	<u>Section</u>	<u>Type</u>	<u>Penalty</u>
1 / 1	14300.29(b)(8) [Failure to classify injuries under the proper Article of the Code]	Regulatory	\$425
1 / 2	3203(a)(6) [Failure to establish an effective IIPP program]	General	\$475
1 / 3	3380(e) [Failure to provide employee proper fitting personal protective device]	General	\$315
1 / 4	5144(d)(1)(C) [Failure to properly evaluate respiratory hazards in the workplace]	General	\$635

1 / 5	5164(a)	General	\$475
	[Failure to evaluate various chemicals for compatibility for storage. Chemicals stored without secondary containment]		
1 / 6	5191(e)(4)	General	\$635
	[Failure to review and evaluate the effectiveness of Chemical Hygiene Plan]		
1 / 7	5194(f)(4)	General	\$315
	[Failure to ensure containers were labeled with identity of hazardous substances]		
1 / 8	5194(g)(8)	General	\$210
	[Failure to maintain copies of materials safety data sheets (MSDSs) for acetone and isopropyl alcohol]		
1 / 9	5202(d)(1)(A)	General	\$425
	[Failure to conduct monitoring to determine employees exposure to methylene chloride containing waste]		
1 / 10	5533(b)	General	\$475
	[Failure to ensure cabinet used to store flammable materials met the standard]		
2 / 1	3203(a)(4)	Serious	\$7,650
	[Failure to implement IIPP program for periodic inspections in some areas]		
3 / 1	3203(a)(7)	Serious	\$7,650
	[Failure to train supervisors regarding implementing IIPP program]		
4 / 1	3328(a)	Serious	\$5,735
	[Failure to store flammable gases in a properly rated refrigerator]		
5 / 1	5191(e)(3)(G)	Serious	\$7,650
	[Failure to designate a training or experienced chemical hygiene officer]		

6 / 1	5191(e)(3)(H) [Failure to establish standard operating procedures for chemicals with a high degree of toxicity, carcinogens or toxins]	Serious	\$7,650
7 / 1	5191(f)(4)(A) [Failure to provide hazardous chemical protection training to employees]	Repeat	\$27,000

On October 1, 2010, the Division and Employer submitted to the Appeals Board a "Stipulation of Parties and Motion to Board to Approve Same" which, by mutual agreement of the Division and Employer, disposes of all the contested issues on appeal. The written stipulation is incorporated herein and attached as Exhibit A.

GOOD CAUSE APPEARING, the Appeals Board hereby grants the written motion of the parties, thereby disposing of the instant appeal as set forth in the motion. Because no other issues remain on appeal, this proceeding is hereby closed.

[Redacted Signature]

CANDICE A. TRAEGER, Chairwoman

[Redacted Signature]

ART R. CARTER, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

FILED ON: OCT 29 2010
[Signature]



NOTE: Pursuant to regulation section 364.2(d) the employer shall post for 15 working days a copy of this Order and a copy of the disposition, which is attached hereto as Exhibit A. Pursuant to regulation section 364.2(b), the Division shall serve a copy of the disposition on any authorized employee representative if known to the Division to represent affected employees.

If any party disagrees with this Order, they may petition the Appeals Board for reconsideration within 30 days of service of the Order. The petition for reconsideration must be filed in Sacramento, California and must fully comply with the requirements of Labor Code sections 6614 through 6619. Please call the Appeals Board at (916) 274-5751 for information.

1 DIVISION OF OCCUPATIONAL SAFETY
AND HEALTH
2 AMY D. MARTIN, Chief Counsel, SBN 57720
TUYET-VAN T. TRAN, Staff Counsel, SBN 218663
3 320 W. 4th Street, Suite 400
Los Angeles, CA 90013
4 Telephone: (213) 576-7700
Facsimile: (213) 576-7498

5 Attorneys for DIVISION
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9 BEFORE THE
10 OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
11 DEPARTMENT OF INDUSTRIAL RELATIONS
12 STATE OF CALIFORNIA
13

14 In the Matter of the Appeal of:

15 UC Los Angeles Dept of Chemistry &
16 Biochemistry.

Docket No. 10-R4D1-0794-0800

17 STIPULATION OF THE PARTIES AND
18 MOTION TO BOARD TO APPROVE SAME

19 **TO THE OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD:**

20 The Parties in the above-entitled appeal, Division of Occupational Safety and Health
21 (hereinafter "Division"), UC Los Angeles Dept of Chemistry & Biochemistry hereinafter
22 ("Appellant" or "Employer"), and University Professional and Technical Employees (UPTE-
23 CWA 9199) (hereinafter "UTPE") move that the Occupational Safety and Health Appeals Board
24 (hereinafter the Board) approve their disposition of appeal as set forth below.

25 On or about August 25, 2009 the Division commenced an inspection at 609 Charles W.
26 Young Dr., East, Los Angeles, CA 90095. On February 24, 2010, the Division issued to
27 Appellant the following citations for violations of the occupational safety and health standards

28 ///

1 and orders found in Title 8, California Code of Regulations¹ with a civil penalty of \$67,720:

<u>Citation/Item</u>	<u>Section</u>	<u>Classification</u>	<u>Penalty</u>
3	1/1 14300.29(b)(8)	Regulatory	\$425
4	1/2 3203(a)(6)	General	\$475
5	1/3 3380(e)	General	\$315
6	1/4 5144(d)(1)(C)	General	\$635
7	1/5 5164(a)	General	\$475
8	1/6 5191(e)(4)	General	\$635
9	1/7 5194(f)(4)	General	\$315
10	1/8 5194(g)(8)	General	\$210
11	1/9 5202(d)(1)(A)	General	\$425
12	1/10 5533(b)	General	\$475
13	2/1 3203(a)(4)	Serious	\$7650
14	3/1 3203(a)(7)	Serious	\$7650
15	4/1 3328(a)	Serious	\$5735
16	5/1 5191(e)(3)(G)	Serious	\$7650
17	6/1 5191(e)(3)(H)	Serious	\$7650
18	7/1 5191(f)(4)(A)	Repeat Serious	\$27000

19 Appellant timely appealed all citations.

20 The University Professional and Technical Employees (UPTE-CWA 9199) filed a motion
21 for party status, which was granted by the Board.

22 **Stipulation and Agreement of the Parties**

23 The Division, Appellant, and UPTE herein stipulate that the following clauses incorporate
24 their agreement to settle this matter:

25 1. Citation 1, Item 1: The classification of Citation 1, Item 1 as Regulatory shall

26
27 ¹ Hereinafter, all code section references are to Title 8 of the California Code of Regulations unless otherwise
28 stated.

1 remain unchanged. The Division agrees to reduce the proposed civil penalty for Citation
2 1, Item 1 to **\$350** by increasing Good Faith to 30%.

3 2. Citation 1, Item 2: The classification of Citation 1, Item 2 as General shall remain
4 unchanged. The Division agrees to reduce the proposed civil penalty of Citation 1, Item 2
5 to **\$0** by authority of section 336(k) of the Director's Regulations as this citation relates to
6 the same hazard as Citation 2, Item 1.

7 3. Citation 1, Item 3: The classification of Citation 1, Item 3 as General shall remain
8 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 1, Item
9 3 to **\$260** by increasing Good Faith to 30%.

10 4. Citation 1, Item 4: The classification of Citation 1, Item 4 as General shall remain
11 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 1, Item
12 4 to **\$350** by decreasing Severity to low and increasing Good Faith to 30%.

13 5. Citation 1, Item 5: The classification of Citation 1, Item 5 as General shall remain
14 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 1, Item
15 5 to **\$260** by decreasing Likelihood to low and increasing Good Faith to 30%.

16 6. Citation 1, Item 6: The classification of Citation 1, Item 6 as General shall remain
17 unchanged. The Division agrees to reduce the proposed civil penalty of Citation 1, Item 6
18 to **\$0** by authority of section 336(k) of the Director's Regulations as this citation relates to
19 the same hazard as Citation 5, Item 1.

20 7. Citation 1, Item 7: The classification of Citation 1, Item 7 as General shall remain
21 unchanged. The Division agrees to reduce the proposed civil penalty of Citation 1, Item 7
22 to **\$0** by authority of section 336(k) of the Director's Regulations as this citation relates to
23 the same hazard as Citation 1, Item 8.

24 8. Citation 1, Item 8: The classification of Citation 1, Item 8 as General shall remain
25 unchanged. The penalty shall remain unchanged at \$210.

26 9. Citation 1, Item 9: The classification of Citation 1, Item 9 as General shall remain
27 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 1, Item
28 9 to **\$350** by increasing Good Faith to 30%.

1 10. Citation 1, Item 10: The classification of Citation 1, Item 10 as General shall
2 remain unchanged. The Division agrees to reduce the proposed civil penalty for Citation
3 1, Item 10 to **\$260** by decreasing Likelihood to low and increasing Good Faith to 30%.

4 11. Citation 2, Item 1: The classification of Citation 2, Item 1 as Serious shall remain
5 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 2, Item
6 1 to **\$6300** by increasing Good Faith to 30%.

7 12. Citation 3, Item 1: The classification of Citation 3, Item 1 as Serious shall remain
8 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 3, Item
9 1 to **\$6300** by increasing Good Faith to 30%.

10 13. Citation 4, Item 1: The classification of Citation 4, Item 1 as Serious shall remain
11 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 4, Item
12 1 to **\$4725** by increasing Good Faith to 30%.

13 14. Citation 5, Item 1: The classification of Citation 5, Item 1 as Serious shall remain
14 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 5, Item
15 1 to **\$6300** by increasing Good Faith to 30%.

16 15. Citation 6, Item 1: The classification of Citation 6, Item 1 as Serious shall remain
17 unchanged. The Division agrees to reduce the proposed civil penalty for Citation 6, Item
18 1 to **\$6300** by increasing Good Faith to 30%.

19 16. Citation 7, Item 1: The Division agrees to re-classify Citation 7, Item 1 from a
20 Repeat Serious to **Serious** based upon new evidence from the Employer that there is no
21 repeat classification. In accordance with the policies and procedures, the Division agrees
22 to reduce the proposed civil penalty for Citation 7, Item 1 to **\$4725** by removing the
23 Repeat factor and increasing Good Faith to 30%.

24 17. The employer withdraws their appeals of all Citations, as amended above in
25 Paragraphs 1 through 16. The new total proposed penalty amount is **\$36,690**.

26 18. The Division agrees to grant Appellant a long term abatement plan as follows:

- 27 a. Citation 1, Item 4: Appellant shall have until November 18, 2010 to
28 develop a schedule for evaluating respiratory hazards in all affected

1 laboratories and associated areas. Appellant shall have until May 2, 2011
2 to complete the hazard evaluation and implementation of the respiratory
3 protection program in all affected laboratories and associated areas.

4 b. Citation 1, Item 6: Appellant shall have until December 20, 2010 to update
5 the Chemical Hygiene Plan, including correcting errors. Appellant shall
6 have until June 1, 2011 to implement the changes and evaluate the
7 effectiveness of the changes in the Chemical Hygiene Plan.

8 c. Citation 2, Item 1: Appellant shall have until December 20, 2010 to
9 develop procedures for inspection of work practices and standard
10 operating procedures. Appellant shall have October 4, 2011 to complete
11 the initial inspections of each laboratory on the standard operating
12 procedures.

13 d. Citation 3, Item 1: Appellant shall have until December 20, 2010 to
14 develop procedures for training and protecting employees when working
15 with particularly hazardous substances. Appellant shall have until
16 February 1, 2011 to train supervisors regarding the training requirements.

17 e. Citation 6, Item 1: Appellant shall have until December 20, 2010 to
18 develop written standard operating procedures for particularly hazardous
19 substances. Appellant shall have until April 4, 2011 to ensure
20 implementation of the standard operating procedures. Appellant shall
21 provide the Division a schedule for inspection of work practices and
22 standard operating procedures.

23 f. Citation 7, Item 1: Appellant shall have until December 20, 2010 to
24 develop a training schedule and to develop written procedures for standard
25 operating procedures for particularly hazardous substances. Appellant
26 shall have until April 4, 2011 to complete the training of employees.

27 g. Appellant shall provide written progress reports to the Division on
28 December 3, 2010; January 17, 2011; February 16, 2011; April 22, 2011;

1 July 1, 2011; and October 4, 2011.

2 i. The progress report shall state Appellant's progress in abating the
3 citations.

4 ii. The progress report shall provide the schedule required and/or
5 evidence of abatement.

6 iii. The progress report shall state Appellant's anticipated date of
7 completion of abatement.

8 h. The written progress reports will be provided to the Los Angeles District
9 Office of the Division at 320 W. 4th Street, Suite 800, Los Angeles, CA
10 90013 and to Deborah Gold, Senior Safety Engineer at 1515 Clay Street,
11 Suite 1901, Oakland, CA 94612 for review.

12 i. The Division will review the progress reports and evaluate
13 Appellant's abatement process and progress.

14 ii. The Division will provide recommendations to Appellant to
15 improve its abatement process and procedures, if necessary.

16 i. A copy of the progress report will also be provided to the UPTE.

17 i. UPTE will provide recommendations to Appellant to improve its
18 abatement process and procedures, if necessary.

19 ii. UPTE will also provide the Division a copy of any
20 recommendations made to Appellant.

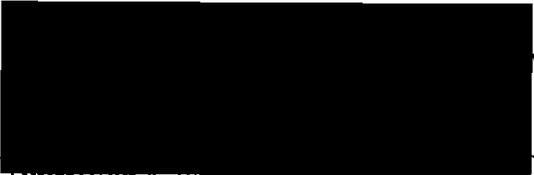
21 19. There will be the following non-admissions clause:

22 "Although the Appellant does not admit that violations or
23 wrongdoing occurred, the final orders resulting from this
24 Agreement shall be fully enforceable under, and may be used for
25 all purposes of administration and enforcement of, the California
26 Occupational Safety and Health Act and in proceedings before the
27 Appeals Board, but the Order will not be used in any other
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1 proceeding between the parties or involving any other person,
2 whether said proceedings be legal, equitable, or administrative in
3 nature. The parties stipulate that Appellant has entered into this
4 agreement in order to avoid protracted litigation and costs
5 associated thereto, and that no findings or conclusions have been
6 made by any trier-of-fact regarding the citations and proposed
7 penalties at issue herein."

8 DATED: September 30, 2010

DIVISION OF OCCUPATIONAL SAFETY
AND HEALTH

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12 By: 

Tuyen Van Tran
Staff Counsel for the Division

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14 DATED: September ____, 2010

MANATT, PHELPS & PHILLIPS, LLP

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18 By: _____

Craig Moyer, Esq.
S. Nancy Whang, Esq.
Attorneys for Appellant UC LOS ANGELES DEPT
OF CHEMISTRY & BIOCHEMISTRY

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21 DATED: September ____, 2010

UNIVERSITY PROFESSIONAL & TECHNICAL
EMPLOYEES (UPTE CWA 9199)

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23
24
25 By: _____

Lindey Cloud
Rita Kern
Judy Sweeney
Representatives for Third Party

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whether said proceedings be legal, equitable, or administrative in
nature. The parties stipulate that Appellant has entered into this
agreement in order to avoid protracted litigation and costs
associated thereto, and that no findings or conclusions have been
made by any trier-of-fact regarding the citations and proposed
penalties at issue herein."

DATED September ____, 2010

DIVISION OF OCCUPATIONAL SAFETY
AND HEALTH

By: _____
Tuyet-Van T. Tran
Staff Counsel for the Division

DATED September 30, 2010

MANATT, PHELPS & PHILLIPS, LLP

By: _____
Craig Miyet, Esq.
S. Nancy Whang, Esq.
Attorneys for Appellant UC LOS ANGELES DEPT
OF CHEMISTRY & BIOCHEMISTRY

DATED September ____, 2010

UNIVERSITY PROFESSIONAL & TECHNICAL
EMPLOYEES (UPTE CWA 9199)

By: _____
Lindey Cloud
Rita Kern
Judy Sweeney
Representatives for Third Party

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proceeding between the parties or involving any other person, whether said proceedings be legal, equitable, or administrative in nature. The parties stipulate that Appellant has entered into this agreement in order to avoid protracted litigation and costs associated thereto, and that no findings or conclusions have been made by any trier-of-fact regarding the citations and proposed penalties at issue herein."

DATED: September ____, 2010

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

By: _____
Tuyet-Van T. Tran
Staff Counsel for the Division

DATED: September ____, 2010

MANATT, PHELPS & PHILLIPS, LLP

By: _____
Craig Moyer, Esq.
S. Nancy Whang, Esq.
Attorneys for Appellant UC LOS ANGELES DEPT OF CHEMISTRY & BIOCHEMISTRY

DATED: September 29, 2010

UNIVERSITY PROFESSIONAL & TECHNICAL EMPLOYEES (UPTC CWA 9199)

By: _____
Lindby Cloud
Rita Kern
Judy Sweeney
Representatives for Third Party

SUMMARY TABLE ORDER

In the Matter of the Appeal of:

UC LOS ANGELES DEPT. OF CHEMISTRY & BIOCHEMISTRY
Docket Nos. 2010-R4D1-0794 THROUGH 0800

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 126203017

Site: 609 Charles E. Young Dr. East, Los Angeles, CA 90095

Date of Inspection: 08/25/2009 ~ 02/23/2010

Date of Citation: 02/24/2010

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	AFFIRMED	VALIDATED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY PARTIES IN STIPULATION	FINAL PENALTY ASSESSED BY BOARD
10-0794	1	1	14300.29(b)(8)	Reg	Penalty reduced 30% due to good faith.	x		\$425	\$350	\$350
		2	3203(a)(6)	G	No penalty, same hazard [336k] as Citation 2. Item 1.	x		\$475	0	0
		3	3380(e)	G	Penalty reduced due to increased good faith.	x		\$315	\$260	\$260
		4	5144(d)(1)(C)	G	Penalty reduced due to increased good faith and decreasing severity.	x		\$635	\$350	\$350
		5	5164(a)	G	Penalty reduced due to increased good faith and decreasing likelihood.	x		\$475	260	\$260
		6	5191(e)(4)	G	No penalty, same hazard [336k] as Citation 5, Item 1.	x		\$635	0	0
		7	5194(f)(4)	G	No penalty, same hazard [336k] as Citation 1, Item 8.	x		\$315	0	0
		8	5194(g)(8)	G	Failure to maintain copies of MSDSs.	x		\$210	\$210	\$210
		9	5202(d)(1)(A)	G	Penalty reduced due to increased good faith.	x		\$425	\$350	\$350
					Sub-Total			\$3,910	\$1,780	\$1,780

		10	5533(d)	G	Penalty reduced due to increased good faith and decreasing likelihood.	x		\$475	\$260	\$260
10-0795	2	1	3203(a)(4)	S	Penalty reduced due to increased good faith.	x		\$7,650	\$6,300	\$6,300
10-0796	3	1	3203(a)(7)	S	Penalty reduced due to increased good faith.	x		\$7,650	\$6,300	\$6,300
10-0797	4	1	3328(a)	S	Penalty reduced due to increased good faith.	x		\$5,735	\$4,725	\$4,725
10-0798	5	1	5191(e)(3)(G)	S	Penalty reduced due to increased good faith.	x		\$7,650	\$6,300	\$6,300
10-0799	6	1	5191(e)(3)(H)	S	Penalty reduced due to increased good faith.	x		\$7,650	\$6,300	\$6,300
10-0800	7	1	5191(f)(4)(A)	R S	Classification reduced, penalty reduced due to increased good faith.	x		\$27,000	\$4,725	\$4,725
					Sub-Total (pg 2)			\$63,810	\$34,910	\$34,910
					Sub-Total (pg 1)			\$3,910	\$1,780	\$1,780
					Total Amount Due*			\$67,720	\$36,690	\$36,690

NOTE: Payment of final penalty amount should be made to:

Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

(INCLUDES APPEALED CITATIONS ONLY)

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4296 if you have any questions.

POS: 10/29/2010

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.

On October 29, 2010, I served the attached **ORDER** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Craig Moyer, Esq.
MANATT, PHELPS & PHILLIPS, LLP
11355 W. Olympic Boulevard
Los Angeles, CA 90064

Ms. Lindsey Cloud, President
UPTC-CWE 9119
1015 Gayley Ave., Ste. 115
Los Angeles, CA 90024

Hassan Adan, District Manager
DOSH - LOS ANGELES
320 W. 4th Street, Suite 850

Tuyet-Van Tran, Staff Counsel
DOSH - LEGAL UNIT
320 W. 4th Street, Suite 400
Los Angeles, CA 90013

Amy Martin, Acting Chief Counsel
DOSH - LEGAL UNIT
1515 Clay Street, Suite 1901
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 2010, at Sacramento, California.



DeWayne T. Holloway