



WORKER RIGHTS CONSORTIUM

To: WRC Affiliate Universities and Colleges
From: Scott Nova
Date: February 27, 2015
Re: Major Safety Incident at Collegiate Supplier in Swaziland

I write to provide you with initial information on an important and disturbing factory case the WRC has been investigating over the last several months. The factory, Tex-Ray Swaziland PTY Ltd. (referred to herein as “Tex-Ray”), located in Matsapha, Swaziland, was a producer of collegiate apparel for VF Imagewear and of non-collegiate apparel for Williamson-Dickie, Carter’s, Academy and Alfred Dunner. Tex-Ray is owned by the Taiwan-based Tex-Ray Industrial Co., Ltd., which owns several garment facilities in Swaziland, as well as Asia and Central America, and which produces apparel for many major brands and retailers. The WRC launched its investigation in response to a complaint from a Swazi union federation representing workers at the plant.

The complaint alleged that Tex-Ray workers were sickened *en masse* in an incident of acute chemical poisoning in September, with hundreds of workers requiring treatment at local hospitals and with some suffering serious and lasting health effects. The WRC investigation, which began in mid-September and is ongoing, has faced significant obstacles, including the permanent closure of the factory only weeks after the incident, the consequent departure of many workers for their home villages, the weak and chaotic healthcare infrastructure in Swaziland, and the failure of the factory to properly notify workers of the chemicals being used in the plant, leading to substantial confusion as to what chemical or chemicals in fact were involved.

The WRC will issue a full report on this case, once additional information is gathered, including information that Tex-Ray’s parent corporation has said it intends to provide. However, because of the serious nature of this incident, which is one of the worst non-fire-related safety emergencies we have encountered in a collegiate factory, we wanted to make you aware of the situation and provide you with preliminary information. We are doing so at this juncture because we have gathered sufficient evidence to be able to report the key facts of the case to you with confidence.

Sources of Evidence

The facts outlined in this memo derive from the following sources of evidence: 1) in-depth interviews with 18 factory employees who were present at the factory on the day of the incident, all conducted off-site; 2) a review of relevant documentation, including medical records from the hospitals where workers were treated; Tex-Ray’s report on the

incident; the initial report of an inspection conducted by an industrial hygiene research organization acting as an agent of the Swazi government (NOSA Occupational Hygiene Service, herein referred to as the “NOSA report”); relevant provisions of Swazi law; and other materials; 3) information provided by VF in response to a request for information from the WRC, which included a number of questions concerning the incident, management’s response to it, management’s overall approach to chemical safety, and VF’s role in these events; and 4) a review of relevant news articles from the Swazi media.

Initial Findings

Chemical Exposure on September 5, 2014 and the Factory’s Response

Detailed and mutually corroborative testimony from Tex-Ray workers, medical records of Tex-Ray workers, local media coverage on the day of the incident, and other evidence all support the conclusion that events at the factory related to this incident transpired as follows:

On the morning of September 5, workers reported to the factory as usual. Shortly after the workday began, workers noticed a strong chemical smell begin to spread through the factory, originating, apparently, from a small shed adjacent to the factory building. Almost immediately, some workers began to feel ill, with a number vomiting and/or losing consciousness. Other symptoms reported by workers included nausea, chest pains and tightening of the chest, a burning sensation in the throat and chest, loss of strength, coughing, severe headache, dizziness and difficulty breathing.

As the fumes spread through the factory, affecting a growing number of individuals, some workers attempted to exit the building to escape the contamination. Management, including Mr. Mathebula, the Senior Personnel Manager and Ms. Beth Espinazzo, a supervisor, responded by ordering workers to return to their workstations, threatening them with disciplinary action if they did not comply. Managers accused workers of faking illness, including one manager who stated, “The women are pretending, all they are looking for is the men,” and referred to them as “cowards” and “animals.” One worker testified to the WRC that when workers in her section (Section B) began to fall ill, she went to speak with a manager about the chemical that was apparently affecting workers. When she told the manager that workers were becoming sick in the factory, he responded by throwing a piece of clothing at her, yelling at her and ordering her to return to her workstation. It was not until the police arrived at the factory, after a member of the factory’s labor union contacted emergency services, that workers were permitted to exit the building.

In its own very brief report on the incident, provided to the WRC by VF, Tex-Ray claims that it closed the factory and removed workers immediately upon workers falling sick. Given the credible, highly-specific and mutually corroborated testimony of workers that management initially refused workers’ permission to exit the building, and given other statements in the Tex-Ray report that are demonstrably erroneous, there is no reasonable basis for crediting management’s denials.

Ambulances, dispatched as a result of calls by workers, the police, and possibly management, along with taxis and other forms of transportation, brought roughly 400 workers in need of medical treatment to nearby hospitals and medical clinics. Because Tex-Ray initially refused to tell employees what chemical or chemicals they had been exposed to, doctors were unable to target their treatment, possibly preventing workers from receiving more effective care. Roughly eleven workers, including a pregnant woman who was admitted to the Intensive Care Unit, were hospitalized for several days following the incident. A number of other workers testified to the WRC that although they were treated by medical personnel and released, many of them experienced significant ongoing symptoms, forcing them to seek additional medical care in the subsequent days.

It is likely, though not certain, that workers were sickened due to acute exposure to benzene, a toxic solvent used as a cleaning agent. Tex-Ray reports that it was benzene, in combination with a less toxic chemical, butyl acetate, that was involved in the incident. The WRC has not, however, ruled out the possibility that other chemicals were involved and is awaiting additional information from Tex-Ray and from a subsequent report by NOSA that we understand has been issued, but which workers have not been provided and which the WRC has not yet been able to obtain.

The Factory's Chemical Safety Practices

The incident itself, including key facts that are undisputed, is sufficient basis for concluding that safety practices at Tex-Ray, with respect to the handling of chemicals, violated both Swazi law and university labor code provisions governing workplace health and safety and compliance with applicable local statutes. When factories select and utilize chemicals properly, when adequate ventilation is installed and properly maintained in areas where toxic chemicals are used, and when workers are provided with appropriate personal protective equipment, mass chemical exposures involving serious health effects do not occur. The very fact that, in this case, such exposures did occur makes clear that Tex-Ray failed to maintain adequate chemical safety practices, with significant consequences for workers, and that VF Corporation failed to detect and correct in advance the noncompliant practices and conditions that led to the incident of September 5.

Substantial evidence points to specific and dangerous flaws in Tex-Ray's handling of chemicals at the facility:

- The NOSA report found that the room in which toxic cleaning agents were being used did not have adequate ventilation.
- The NOSA report also found that respirators provided to employees working in this room with toxic agents were not properly maintained and were incapable of providing effective protection. NOSA stated: "In the Spot Removal room, employees were provided with 3M Respirators. Cartridges were of the ABE1 and

A2 ranges that will provide protection against particulates in the work room air. However, the cartridges were expired (2010) and stored in the room where the chemical is used. The filtration medium will become saturated and no longer provide effective protection.”

- Several workers testified credibly that on September 5, as workers were being evacuated from the factory, management removed containers of chemicals from the factory and discarded them in an outdoor trash bin. According to this testimony, the workers informed police, who had arrived on the scene, that chemical containers had been disposed of and the police then removed some containers from the trash, presumably then supplying them to government health authorities. Tex-Ray management acknowledges that police took chemical containers from the factory, but does not acknowledge that managers had previously attempted to dispose of these containers. The WRC’s conclusion is that management indeed did so, for reasons unknown, but presumably for the purpose of limiting access of outside parties to information about which chemicals were involved. Whether the disposal of the containers was approved by senior management, or carried out by junior managers responding in the moment, is unclear.
- Swazi law requires all garment factories to have functioning Health and Safety Committees, but there was no committee in operation at Tex-Ray at the time of the incident, according to the Tex-Ray union and to credible worker testimony. However, subsequent to the mass chemical poisoning on September 5, management hastily assembled a committee. In doing so, management attempted to appoint the worker representatives, in contravention of Swazi law, which requires that these representatives be elected by workers. The union complained to the Labor Ministry, which told management that elections had to be held. They were held and the committee was formed, but it did not meet prior to the factory’s closure and, specifically, contrary to the claims of both Tex-Ray and VF, never discussed the September 5 incident (see below). The WRC interviewed one of the workers who served on the committee during its short life; she confirms that the committee never met.

The above-listed breaches of applicable Swazi law and workplace health and safety standards further supports the conclusion that Tex-Ray was operating in violation of university labor codes and raises serious concerns about the overall approach to chemical safety, and workplace safety in general, of Tex-Ray’s parent company – which, as noted above, operates factories around the world and employs thousands of workers.

The WRC is continuing to investigate the safety practices of Tex-Ray Swaziland and has requested a number of categories of documents from Tex-Ray. Our purpose is two-fold: to determine the degree and nature of the university code of conduct violations that occurred at Tex-Ray and to determine whether these violations reflect a broader deficiency in Tex-Ray’s global operations; if the latter is the case, it will be essential that Tex-Ray’s buyers globally take meaningful corrective action, in order to ensure that workers at other Tex-Ray factories are not harmed. Because Tex-Ray Swaziland is now

closed, and remedial action vis-à-vis ongoing safety practices at the facility is therefore impossible, the WRC will wait to issue remedial recommendations until a determination has been made on the latter issues.

Legally Mandated Compensation for Medical Treatment

Detailed and mutually corroborative testimony from Tex-Ray workers, medical records of Tex-Ray workers, information and documents provided by the union representing Tex-Ray workers, and a review of relevant Swazi law indicate the following concerning the factory's handling of workers' medical care after the chemical exposure incident:

Under Swazi law, factory management was obligated to pay for all medical care for workers arising from this incident – both immediate medical attention and, where needed, ongoing treatment. For workers who sought treatment from hospitals and medical clinics on the day of the incident, the factory did pay for their care, both for workers who received outpatient treatment and for those who were admitted.

Many workers report that they continued to experience significant health symptoms – including chest pains, vision problems, skin rashes, headaches, sores in the mouth and throat, nose bleeds, inter-menstrual bleeding, dizziness, and memory loss – and sought out additional medical treatment in the days and weeks following the incident. For workers who sought treatment at public hospitals subsequent to the incident, the factory did pay for their care. However, the factory did not pay for medical care for the roughly ten percent of affected workers (30 to 40 individuals) who were treated at private hospitals. The law makes no distinction in this context between public and private hospitals and thus management did not fulfill its legal obligations to these workers. According to worker testimony, when workers who received ongoing treatment at private hospitals provided receipts and medical records for their treatment to Tex-Ray and requested reimbursement for these expenses, the management refused and, in some cases, confiscated or destroyed the documents.

By failing to pay for ongoing medical care for some affected workers, Tex-Ray violated Swazi law and university labor code provisions requiring compliance with domestic statutes. The WRC's ongoing investigation includes efforts to document the current health status of the more seriously affected workers and we hope to be able to report on this in detail in our full report on this case.

Recommendations

Corrective action is required with respect to this category of violations. Tex-Ray's parent company should implement a plan, working with the union federation that represented the Tex-Ray workers, to identify and compensate all workers who were uncompensated, or undercompensated, for medical care related to the chemical exposure incident; should ensure that ongoing medical care, paid for by the company, is made available to all affected workers; and should establish a mechanism to track the health status of the more seriously affected workers over time.

Additional Concerns

While the WRC appreciates VF's having responded to our request for information concerning this matter, and having facilitated communication between the WRC and Tex-Ray's parent company, we continue to have serious concerns about VF's handling of code compliance at Tex-Ray.

First, VF made a number of assertions in its response to the WRC's questions about the incident that were factually erroneous. These appear to be the result of VF, in formulating its response to the WRC, having relied substantially on uncorroborated statements of Tex-Ray and its parent company about the incident, a number of which are demonstrably false, rather than independently confirming the accuracy of its supplier's claims. Given the seriousness of the chemical exposure incident, this does not reflect a sufficiently diligent approach to code compliance on the part of VF.

VF made the following statements in its response to the WRC that are wholly, or partly, contradicted by established facts:

- VF stated that "The Tex-Ray Health And Safety Committee reviewed the September 2014 chemical incident." In fact, no such review was ever conducted. Moreover, the committee, itself, was not established until after the incident, a significant instance of legal noncompliance by the factory that VF failed to acknowledge (and appears not to have been aware of).
- VF stated that "Compensation was paid to affected employees based on an agreement signed with the union and consistent with factory-paid insurance for the workers." In actuality, no such compensation has been paid and there is no such agreement. Workers received severance payments upon the factory's closure and, as noted above, some workers had their medical treatment paid for, but there has been no other form of compensation paid to the affected workers on account of their having been sickened.
- VF stated that "Personal protective equipment provided to the workers included an anti-poison respirator, gloves and glasses." The WRC found that most workers at Tex-Ray were never provided with glasses, gloves or a respirator. With respect to workers who did receive such equipment, the respirators provided to them had been improperly stored, had filter cartridges that had expired in 2010, and were therefore incapable of providing adequate protection.

Especially given the seriousness of this incident, VF should have conducted a swift and thorough inquiry of its own, with the purpose of assessing the veracity of management's claims, not merely transmitting these claims to stakeholders unfiltered.

Second, we are concerned that VF provided no information to the WRC, or, as far as we know, to others in the university community, about this serious incident, prior to

receiving our inquiries. When hundreds of workers making collegiate apparel suffer an acute exposure to toxic chemicals, with health effects serious enough to require emergency medical treatment, and, for some, hospitalization, we would expect a licensee to be proactive in informing its business partners and other stakeholders.

Third, we are concerned that VF's own monitoring program failed to identify substandard safety practices at this facility. For example, the respirators provided to workers using toxic solvents had filter cartridges that expired in 2010. According to VF, it conducted audits of this factory every year, yet, as of January of this year, even after the release of the NOSA report documenting this violation, VF told the WRC that workers were being provided with proper respirators.

VF also did not detect the chronic failure of Tex-Ray to operate a health and safety committee with elected workers' membership – a violation that it is clear was evident in the factory for the entire seven years that VF produced there. Identifying and addressing dangerous deficiencies on issues like chemical management is exactly what such committees are designed to do. VF, in its response to the WRC, cited its regular audits of the facility, but offered no explanation as to why these audits failed to identify serious safety violations and failed to prevent the major chemical poisoning incident of September 5. VF is by no means alone, as a licensee, in having failed to detect labor rights violations at collegiate factories that were subsequently exposed, either by events in the workplace or by an external inquiry, but this does not diminish the company's responsibility nor alleviate concerns about whether such oversights are taking place at other collegiate factories supplying it.

Next Steps

The WRC will continue to gather evidence and will issue a full report on this case, with additional remedial recommendations.