

Cause #: 96-19F

Name: Century Pharmaceuticals

Administrative Law Judge: William K. Teeguarden

Date: March 25, 1999

Commission Action: Affirmed

### **FINDINGS OF FACT**

1. The OSFM is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and 675 IAC 22-2.1 (1990 Indiana Fire Code "IFPC")<sup>1</sup> apply to this proceeding.
3. The Fire Prevention and Building Safety Commission (FPBSC) is the ultimate authority with respect to orders of the OFSM.
4. On May 21, 1996, a duly authorized representation of the OSFM wrote an order to Century based on a May 14, 1996, inspection.
5. At all times relevant to this proceeding, Century was involved in the use and storage of chemicals in Fishers, Indiana.
6. The order cites a number of violations. Century only petitioned for review of six (6) violations.
7. Two (2) of the violations involved the use of extension cords and 6 way outlets.
8. The administrative law judge granted summary judgement in favor of Century on the issue of the plug on the grounds that the code section cited (85.106A of the 1988 UFC) only discusses extension cords and not plugs, hence the use of plugs did not violate that code section.
9. At the hearing, Century withdrew its petition for review with respect to extension cords.
10. At issue in the hearing are the following 4 violations:
  - (a) section 10.302A of the IFPC regarding the failure to tag and inspect fire extinguishers.
  - (b) section 10.302A of the IFPC regarding the failure to place fire hoses in a fire cabinet.
  - (c) section 11.201B of the IFPC regarding the disposal of rubbish and waste.
  - (d) section 11.201D of the IFPC regarding dumpsters.
11. Section 10.302A of the IFPC requires all portable fire extinguishers to be properly maintained.
12. 675 IAC 22-2.1-18 adopted section 2.312 of NFPA 10 as its standard for

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<sup>1</sup> The IFPC basically adopts the 1988 Uniform Fire Code ("UFC").

inspection and maintenance of hand held extinguishers.

13. 4-1 of the NFPA requires an annual inspection by a trained person who has the manufacture's service manual, and places the inspection responsibility on the occupant.
14. 4-3.4.1 also requires the occupant to keep a complete record of the inspection.
15. 4-4.3 requires that a tag or label be placed on the extinguisher to record all maintenance activities.
16. There is no requirement that an inspection or maintenance be done by a certified inspector, only a trained person with a copy of the manual.
17. Century's owner produced evidence that inspections were performed in house by his employees.
18. The owner gave the employees a 15-20 minute training session.
19. The owner did not have a manual in 1994, but did have one by 1996.
20. Subsequent to 1996, the owner has instituted a written check list for employees doing inspections.
21. The owner's inspection program was adequate for routine inspections.
22. It was not adequate in 1996 for the annual service inspection required by NFPA 10.
23. The owner himself has a sufficient technical background to examine the service manual and conduct such an inspection.
24. A minimal training session by the owner to other employees is not sufficient to give them the background to perform the required annual inspection.
25. Whether or not the institution of a written check list would bring Century into compliance is not in issue at this time.
26. The annual service testing program was not in compliance with the IFPC.

27. The owner agrees that two (2) fire hoses were not in cabinets and contends that the fire hoses were not required to be protected because they were no longer used as part of the suppression system.
28. Century decided to go to a fire extinguisher system of control and increased the number of extinguishers and stopped using fire hoses.
29. The owner admitted that he had not discussed this switch with the local fire official or the OSFM.
30. The building was apparently designed with fire hoses.
31. The local fire department has the right to expect fire hoses to be available in the event of an emergency.
32. While switching systems may be allowed, it needs to be done with the approval of the local fire department so that it is aware that there no longer are maintained fire hoses at the site.
33. Further, if not used, good practice dictates that the hoses be removed so that no one is fooled into thinking the hose in question is a properly maintained fire hose.
34. Absent a showing that the current system conforms to the IFPC and that the local fire officials are aware of the change, or absent a variance from the FPBSC, the two (2) fire hoses in question must be properly maintained and the failure to enclose them is a violation of the IFPC.
35. Section 11.201(b) of the IFPC requires combustible rubbish to be stored in approved containers or in rooms constructed of noncombustible materials.
36. During the inspection, the inspector noticed cardboard boxes that were not stacked or otherwise organized near the dumpster.
37. The owner admitted the dumpster was overfilled.
38. The failure to empty the approved storage container so that boxes could be thrown away and the container lid remain closed was a violation of the IFPC.
39. Section 11.201(d) of the IFPC requires dumpsters having a capacity of 40.5 cubic feet or more to be stored outside unless protected by an

automatic sprinkler system.

40. At the time of the inspection, the dumpster in the receiving area exceeded 40.5 cubic feet and was inside the building.
41. The owner had removed the dumpster to an exterior location at the time of the hearing so this issue was moot, however he requested review of that portion of the order because the order required him to remove the dumpster.
42. The owner correctly contends he had the option to sprinkle the dumpster area and leave it where it was.
43. In matters such as this, where alternatives are available, it might be better to state the action required to be “removal of the dumpster, or otherwise bring the dumpster area into compliance with the IFPC.”
44. However, it does not change the fact that a violation existed and needed to be abated.

#### **IV. NONFINAL ORDER**

That portion of the order of the Office of the State Fire Marshal of May 21, 1996, which deals with six (6) way plugs is hereby vacated. Insofar as the order of May 21, 1996, implies that routine monthly inspections of fire extinguishers by employees is a violation of the fire code, that portion of the order is vacated. In all other respects, the order of May 21, 1996, of the Office of the State Fire Marshal is affirmed.

