



NOV 22 2011

Mr. Hartford O. Brown, Esq.
Klinedinst PC
777 S. Figueroa Street, 47th Floor
Los Angeles, CA 90017

Dear Mr. Brown:

This letter is in response to your October 6, 2011, letter to the Occupational Safety and Health Administration (OSHA) on behalf of your client, GIB LLC dba Brazilian Blowout. In this letter, you questioned OSHA's use of a 35-minute air sample in determining that Brazilian Blowout Acai Professional Smoothing Solution exceeded the short-term exposure limit (STEL) of 2 parts of formaldehyde per million parts of air (2 ppm). You wrote that the results from a 35-minute test "are invalid and do not support any contention that more than 2 parts of formaldehyde per million have ever been off-gassed during proper testing of Brazilian Blowout."

Your question relates to a citation issued in April 2011 to a salon where OSHA found that workers using Brazilian Blowout Acai Professional Smoothing Solution were exposed to levels of formaldehyde which exceeded the STEL. OSHA stands by the validity of its testing methods and our determination of worker overexposures to formaldehyde. OSHA's compliance sample collected in the breathing zone of a worker applying your product to a customer resulted in a measurement of 2.5 ppm. This measurement was a *time-weighted average* over a 35-minute sampling period. OSHA's analysis of this test result met scientifically accepted statistical confidence requirements that appropriately account for expected sources of variation in the sampling and analytical method. Therefore, OSHA's measurement accurately and scientifically demonstrated that either the air concentration was at a constant level of 2.5 ppm over the entire 35 minutes, or that the air concentration varied above and below this average concentration during the 35-minute sample. In either case, this measurement clearly demonstrated that the worker's exposure exceeded the STEL, in violation of the requirements set forth in 29 CFR 1910.1048(c)(2).

Your assertion that this test was "invalid" and not representative of this worker's 15-minute short-term exposure is incorrect. This is for the two simple facts that our sample was a *time-weighted average* and that our sampling period was not *less* than 15 minutes. The fact that the sampling time was not limited to 15 minutes is irrelevant; the science and math undisputedly establish that the STEL was violated for at least 15 minutes of the sampling period.

Furthermore, as discussed during the September 27, 2011, conference call between OSHA and Brazilian Blowout CEO Michael Brady, the OSHA hazard communication requirements found in the Formaldehyde standard (29 CFR 1910.1048) and the Hazard Communication standard (29 CFR 1910.1200) are aimed at ensuring that chemical manufacturers and importers comprehensively determine the hazards of each product they produce or import. They, as well as intermediate distributors of the chemicals, must then communicate the hazard information and associated protective measures to downstream users through labels (which include appropriate hazard warnings) and material safety data sheets (MSDSs). As confirmed by OSHA's tests for formaldehyde, the evidence is clear that Brazilian Blowout Acai Professional Smoothing Solution is capable of releasing formaldehyde and exposing salon workers who use this product. For that reason, Brazilian Blowout must comply with the appropriate sections of the Formaldehyde standard.

Finally, during this call Mr. Brady indicated that he was unaware of any tests or reports that linked Brazilian Blowout's products to any overexposure in salons, and requested a copy of all OSHA citations and test reports showing such overexposures. He indicated that he would update Brazilian Blowout's website once he received copies of the citations. I informed him that the company must follow those corrective actions outlined in the September 22, 2011, letter from Frank Meilinger, OSHA's Director of Communications, and emphasized that it is prohibited from using OSHA to sell or promote its products in any way.

Subsequently, in November 2011 OSHA issued citations to a salon where a stylist performing the service using Brazilian Blowout Acai Professional Smoothing Solution was sampled for formaldehyde and was found to be exposed in excess of the STEL on two separate instances. The documented exposures were based on separate 15-minute samples. The first instance reported 10.1 ppm, which is over five times the STEL; and the second instance reported 4.7 ppm, which is over 2 times the STEL. Therefore, salons that use products containing or releasing formaldehyde must comply with the requirements of the Formaldehyde standard including, but not limited to, air monitoring, selecting and providing appropriate personal protective equipment, and providing workers information and training on the potential health hazards and the signs and symptoms of exposure to formaldehyde.

As stated in Mr. Meilinger's letter, as well as during the conference call on September 27, 2011, and now reiterated in this letter, OSHA requests that Brazilian Blowout immediately take the following corrective actions. First, OSHA requests that Brazilian Blowout remove from its website any statement that is false, misleading, or that misrepresents OSHA, with regard to any Brazilian Blowout product. In particular, Brazilian Blowout must remove any and all false statements suggesting that OSHA tests have found occupational exposures to Brazilian Blowout to be safe. Second, OSHA requests that Brazilian Blowout send a letter to salon owners that corrects or retracts any and all misrepresentations in your August 24, 2011, letter. This letter should clearly state that OSHA's measurements of formaldehyde exposures to salon workers using the Brazilian Blowout Acai Professional Smoothing Solution have in fact yielded results above permissible exposure limits. Please be advised that OSHA has contacted the Federal Trade Commission and is working with that agency regarding these serious issues, and will be contacting additional state and federal authorities, including the Food and Drug Administration and the Office of the Attorney General for the State of California.

Thank you for your prompt attention to this matter. We hope to resolve this matter without further action on our part.

Sincerely,

Thomas Galassi, Director
Directorate of Enforcement Programs

Cc: Michael Brady, CEO, Brazilian Blowout
Scott Freeman, Director of Operations, Brazilian Blowout
Orlando Pannocchia, Office of the Solicitor, OSH Division, U.S. Department of Labor
Ken Atha, OSHA Regional Administrator, San Francisco Regional Office