

U.S. Department of Labor
Occupational Safety and Health Administration



Atlanta West OSHA Diary Sheet (Optional)

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|--------------------|--------------------|------------|--------------|----------|--|
| Establishment Name | ConMed Corporation | | | | |
| Inspection # | 1428552 | Site Phone | 770-250-3900 | Site FAX | |

| DATE | COMMENTS | INITIALS |
|--------------------|--|------------|
| 04/22/2020 | Called employer representative to discuss the exposure level values reported by the laboratory. | (b) (7)(C) |
| 04/13 – 05/15/2020 | Duty Officer 04/13/20 – 05/08/20; obtaining/reviewing final response for D.O. and closing files 05/11-05/15/2020 | (b) (7)(C) |
| 06/05/2020 | File submitted for review | (b) (7)(C) |
| 6/29/20 | File reviewed and closed | KDH |
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U.S. Department of Labor
Occupational Safety and Health Administration



Atlanta West OSHA Diary Sheet (Optional)

| | | | | | |
|--------------------|--------------------|------------|--------------|----------|--|
| Establishment Name | ConMed Corporation | | | | |
| Inspection # | 1428552 | Site Phone | 770-250-3900 | Site FAX | |

| DATE | COMMENTS | INITIALS |
|------------|--|------------|
| 09/05/2019 | Opened referral inspection with concurrent complaint inspection 1428553. | (b) (7)(C) |
| 09/06/2019 | On site for employee interviews | (b) (7)(C) |
| 09/09/2019 | On site for employee interviews | (b) (7)(C) |
| 09/10/2019 | Todd Logsdon of Fischer & Phillips sent letter attached to e-mail alleging OSHA is attempting to expand the inspection(s) beyond the limited scope identified in the referral and the complaint and alleging unreasonable disruption to worksite activities due to employee interviews. | (b) (7)(C) |
| 09/11/2019 | On site for employee interviews | (b) (7)(C) |
| 09/13/2019 | Conference call with CSHO, AD, AAD and Regional Office regarding ConMed inspection(s). | (b) (7)(C) |
| 09/16/2019 | Subpoena drafted and e-mailed to AAD for documents and records requested for 1428552 and 1428553 during the opening conference and not provided by ConMed Corporation or its representatives. | (b) (7)(C) |
| 10/09/2019 | Subpoena hand delivered to employer by CSHO to Justin Mills at 9:45 a.m. on inspection site with response due no later than 10:00 a.m. on October 23, 2019 | (b) (7)(C) |
| 10/23/2019 | Employer objections to subpoena received. Employer provided some information and objected to much of the information and documents alleging that the information requested was too burdensome, among other objections. | (b) (7)(C) |
| 10/23/2019 | Whistleblower complaint received for employee alleging termination resulted from interview with CSHO at inspection site. | (b) (7)(C) |
| 10/29/2019 | Conference call at 11:00 a.m. with AAD, AD, CSHO and Regional Office/SOL | (b) (7)(C) |
| 11/13/2019 | Conference call at 1:00 p.m. in AAD office regarding drafting a second subpoena in response to ConMed's refusal to comply with the previous subpoena. | (b) (7)(C) |
| 11/13/2019 | Second subpoena drafted and e-mailed to AAD | (b) (7)(C) |
| 11/21/2019 | Second subpoena e-mailed to employer requesting documents for both inspections 1428552 and 1428553 and having a response due no later than 10:00 a.m. on December 10, 2020. | (b) (7)(C) |
| 01/17/2020 | Employer response to subpoena received indicating that the employer objected to requests under the same objections as previously presented by the employer for the first subpoena. | (b) (7)(C) |
| 02/20/2020 | Contacted employer to coordinate side-by-side sampling | (b) (7)(C) |
| 02/26/2020 | Employee sampling and direct reading samples collected for Ethylene Oxide. Employer performed side-by-side sampling for employee personal exposure monitoring. Opening conference with staffing agency Adecco USA, Inc. for "no-inspection" to mail letter of citations to host employer in the event of over exposures to EtO | (b) (7)(C) |
| 02/27/2020 | Employee sampling and direct reading samples collected for Ethylene Oxide. Employer performed side-by-side sampling for employee personal exposure monitoring. | (b) (7)(C) |
| 04/21/2020 | Sampling results available. Ethylene Oxide detected in some sampling media. However, all levels were below the action level for the days and conditions sampled. | (b) (7)(C) |

(b) (7)(C) - OSHA

From: Hass, Keith - OSHA
Sent: Wednesday, February 26, 2020 4:33 PM
To: (b) (7)(C) - OSHA
Subject: FW: ConMed - forklift documents
Attachments: ConMed.Lithia Springs.[signed, with attachs.] 2020.02.25 LT Karen Mock p....pdf

(b) (7)(C)

Come see me about this response.

Keith

From: Mock, Karen - SOL <Mock.Karen@DOL.GOV>
Sent: Tuesday, February 25, 2020 6:29 PM
To: Stawowy, Jeffery M. - OSHA <Stawowy.Jeffery@dol.gov>; Hass, Keith - OSHA <hass.keith@dol.gov>; Lewis, Jesse W. - OSHA (b) (7)(C) @dol.gov
Cc: Murphy, Kristin R - SOL <Murphy.Kristin.R@dol.gov>
Subject: ConMed - forklift documents

Team ATL West - attached is the response from ConMed to the subpoena for documents related to the PIT. Please review and let Kristin and me know if you believe any other material requested has not been produced. Thanks.

Karen

From: Logsdon, Todd <tlogsdon@fisherphillips.com>
Sent: Tuesday, February 25, 2020 5:36 PM
To: Mock, Karen - SOL <Mock.Karen@DOL.GOV>; Vance, Travis <tvance@fisherphillips.com>
Cc: Murphy, Kristin R - SOL <Murphy.Kristin.R@dol.gov>
Subject: RE: ConMed - outstanding issues re subpoena duces tecum for PIT records

Karen,

Please see attached ConMed's response to your request for additional responses to items 5-7 of the Amended Complaint. Please contact me if you need anything further.

Thanks,

Todd




Todd B. Logsdon

Partner

Fisher & Phillips LLP

220 West Main Street | Suite 1700 | Louisville, KY 40202

tlogsdon@fisherphillips.com | O: (502) 561-3971 | C: (502) 649-3718 | 

vCard | Bio | Website *On the Front Lines of Workplace LawSM*

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From: Mock, Karen - SOL [mailto:Mock.Karen@DOL.GOV]
Sent: Thursday, February 20, 2020 5:08 PM
To: Logsdon, Todd <tlogsdon@fisherphillips.com>; Vance, Travis <tvance@fisherphillips.com>
Cc: Murphy, Kristin R - SOL <Murphy.Kristin.R@dol.gov>
Subject: RE: ConMed - outstanding issues re subpoena duces tecum for PIT records

Thanks, Todd.

Regards,

Karen E. Mock, Esq.
Counsel for Occupational Safety & Health
404.302.5459 (direct)
202.674.4682 (mobile)



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From: Logsdon, Todd <tlogsdon@fisherphillips.com>
Sent: Thursday, February 20, 2020 4:58 PM
To: Mock, Karen - SOL <Mock.Karen@DOL.GOV>; Vance, Travis <tvance@fisherphillips.com>
Cc: Murphy, Kristin R - SOL <Murphy.Kristin.R@dol.gov>
Subject: RE: ConMed - outstanding issues re subpoena duces tecum for PIT records

Karen,

Responses to the three items on the amended subpoena we discussed. I don't know at this time what specifically I will have to produce to you.

Thanks,

Todd




Todd B. Logsdon

Partner

Fisher & Phillips LLP

220 West Main Street | Suite 1700 | Louisville, KY 40202

tlogsdon@fisherphillips.com | O: (502) 561-3971 | C: (502) 649-3718 | 

vCard | Bio | Website *On the Front Lines of Workplace LawSM*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

From: Mock, Karen - SOL [<mailto:Mock.Karen@DOL.GOV>]
Sent: Thursday, February 20, 2020 3:22 PM
To: Logsdon, Todd <tlogsdon@fisherphillips.com>; Vance, Travis <tvance@fisherphillips.com>
Cc: Murphy, Kristin R - SOL <Murphy.Kristin.R@dol.gov>
Subject: RE: ConMed - outstanding issues re subpoena duces tecum for PIT records

Thank you, Tod. Can you be more specific about what ConMed is willing to provide? Thanks.

Regards,

Karen E. Mock, Esq.
Counsel for Occupational Safety & Health
404.302.5459 (direct)
202.674.4682 (mobile)



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From: Logsdon, Todd <tlogsdon@fisherphillips.com>
Sent: Thursday, February 20, 2020 3:08 PM
To: Mock, Karen - SOL <Mock.Karen@DOL.GOV>
Cc: Vance, Travis <tvance@fisherphillips.com>
Subject: RE: ConMed - outstanding issues re subpoena duces tecum for PIT records

Karen,


I will work with my client to provide an updated response to your request. I will do my best to have that to you early next week.

Thanks,

Todd



Todd B. Logsdon
Partner

Fisher & Phillips LLP
220 West Main Street | Suite 1700 | Louisville, KY 40202
tlogsdon@fisherphillips.com | O: (502) 561-3971 | C: (502) 649-3718 | 

vCard | Bio | Website *On the Front Lines of Workplace LawSM*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

From: Mock, Karen - SOL [<mailto:Mock.Karen@DOL.GOV>]
Sent: Wednesday, February 19, 2020 11:56 AM
To: Logsdon, Todd <tlogsdon@fisherphillips.com>
Subject: RE: ConMed - outstanding issues re subpoena duces tecum for PIT records

Hi. I'll give you a call at 1:30p. Please let me know the best number to reach you at that time.

Regards,

Karen E. Mock, Esq.
Counsel for Occupational Safety & Health
404.302.5459 (direct)
202.674.4682 (mobile)



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From: Logsdon, Todd <tlogsdon@fisherphillips.com>
Sent: Wednesday, February 19, 2020 11:43 AM
To: Mock, Karen - SOL <Mock.Karen@DOL.GOV>
Subject: RE: ConMed - outstanding issues re subpoena duces tecum for PIT records

Ms. Mock,

Sorry I missed your call. I've gone from one call to another this morning, and I'm on my way to another meeting now. I can be available at 130pm for call. Will you call me or should I call you?

Thanks,

Todd




Todd B. Logsdon

Partner

Fisher & Phillips LLP

220 West Main Street | Suite 1700 | Louisville, KY 40202

tlogsdon@fisherphillips.com | O: (502) 561-3971 | C: (502) 649-3718 | 

vCard | Bio | Website *On the Front Lines of Workplace LawSM*

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From: Mock, Karen - SOL [mailto:Mock.Karen@DOL.GOV]
Sent: Wednesday, February 19, 2020 10:44 AM
To: Logsdon, Todd <tlogsdon@fisherphillips.com>
Subject: ConMed - outstanding issues re subpoena duces tecum for PIT records

Good morning, Mr. Logsdon. I just called and left you a voicemail. I'd like to confer with you today about the additional PIT documentation that OSHA is seeking. If you could give me a call today before 1:30p I'd appreciate it. Thank you.

Regards,

Karen E. Mock, Esq.
Counsel for Occupational Safety & Health



United States Department of Labor
Office of the Solicitor
61 Forsyth Street, SW
Room 7T10
Atlanta, Georgia 30303
404.302.5459 (direct)
202.674.4682 (mobile)
404.302.5435 (office)
404.302.5438 (facsimile)
mock.karen@dol.gov

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UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OBJECTIONS AND RESPONSES TO SUBPOENA DUCES TECUM

To: ConMed Corporation
c/o Todd Logsdon
Fisher & Phillips LLP
220 West Main Street
Suite 1700
Louisville, KY 40202

Re: OSHA Inspections 1428552 and 1428553

OBJECTIONS TO DOCUMENT ENTITLED *SUBPOENA DUCES TECUM*

Subject to and without waiving any other objections that could be made, the following objections to the document entitled *Subpoena Duces Tecum* (dated November 21, 2019) (hereinafter the "subpoena") are served upon the United States Department of Labor – OSHA (hereinafter "OSHA"):

1. The subpoena is defective to the extent it seeks to impermissibly expand the scope of the investigation and is thus unreasonable and tantamount to a warrantless search.

In light of the above, the purported subpoena is defective creating absolutely no obligation to respond. Notwithstanding, ConMed responds as follows:

1. Copies of documents sufficient to identify all employees of ConMed Corporation as of September 5, 2019, either temporary or permanent, at the site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia and which distinguish which employees are members of management who have or may have control over the daily activities of employees, have authority to independently implement disciplinary actions against employees, or may have authority to hire or terminate employees.

Response: ConMed Corporation ("ConMed") objects to this Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of documents to identify "all employees of ConMed Corporation" would be voluminous and unduly burdensome. Should OSHA wish to clarify and narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving these objections, see the previously produced list of ConMed supervisors located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia from the relevant period (Bates labeled RT_0094).

2. Copies of records documenting all Sterigenics deliveries to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia between September 5, 2019 and November 5, 2019 including delivery dates, delivery times, number of tractor trailers per day, and shipment quantities per trailer, for example the number of pallets per trailer.

Response: ConMed objects to this Request on grounds it is vague, ambiguous, overly broad and requests information irrelevant to OSHA's Inspection. Should OSHA wish to clarify why this information is relevant to OSHA's current limited scope Inspection and narrow the scope of the Request, ConMed will respond as appropriate. Subject to and without waiving these objections, see the redacted copy of the Sterigenics contract previously produced to OSHA (Bates labeled R_0140 to R_0156).

3. Copies of records documenting all deliveries of all EtO sterilized products to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia between September 5, 2019 and November 5, 2019, including delivery dates, delivery times, number of tractor trailers per day, and shipment quantities per trailer, for example the number of pallets per trailer. For the purposes of this Request, "EtO sterilized products" shall include all products which the ConMed Corporation knows or has reason to believe have been treated with ethylene oxide.

Response: ConMed objects to this Request on grounds it is vague and ambiguous for lack of a definition of "records." ConMed also objects to this Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of records of "all deliveries of all EtO sterilized products" to ConMed would be voluminous and unduly burdensome. Should OSHA wish to clarify why this information is relevant to OSHA's Inspection and narrow the scope of the Request, ConMed will respond as appropriate.

4. Copies of documents sufficient to identify all parties, including but not limited to sterilizers, who provide EtO sterilized products to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia (the "Worksite") between September 5, 2019 and November 5, 2019, including the name, address, phone number and email address of the party who shipped or provided EtO sterilized products to the Worksite. For the purposes of this Request, "EtO sterilized products" shall include all products which the ConMed Corporation knows or has reason to believe have been treated with ethylene oxide.

Response: ConMed objects to this Request on grounds it is vague and ambiguous for lack of a definition of "documents." ConMed also objects to this Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of documents to identify "all parties...who provide EtO sterilized products" to ConMed would be voluminous and unduly burdensome. Should OSHA wish to clarify why this information is relevant to OSHA's Inspection and narrow the scope of the Request, ConMed will respond as appropriate. Subject to and without waiving these objections, see the previously

produced redacted copies of contracts with sterilizers who provide EtO sterilized products to ConMed. (Bates labeled R_0101 to R_0156).

5. Copies of documents sufficient to identify all powered industrial truck operators at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019 including the employee names, residential or mailing addresses, phone numbers and e-mail addresses.

Response: ConMed objects to this Request as vague and ambiguous for lack of a definition of “documents.” ConMed also objects to the Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA’s current limited scope Inspection. Producing copies of documents to identify “all powered industrial truck operators” at ConMed would be voluminous and unduly burdensome. Should OSHA wish to clarify and narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving these objections, see the previously produced incident report for (b) (7)(D) ConMed Powered Industrial Truck Operator (RT_0074 to RT_0070).

6. Copies of documents of powered industrial truck operator training, powered industrial truck operator re-training and powered industrial truck operator re-evaluations for all operators of powered industrial trucks working at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019.

Response: ConMed objects to this Request as vague and ambiguous for lack of a definition of “documents.” ConMed also objects to this Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA’s current limited scope Inspection. Producing copies of documents for powered industrial truck operator training “for all operators of powered industrial trucks” working at ConMed would be voluminous and unduly burdensome. Should OSHA wish to narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving these objections, see enclosed a copy of ConMed’s Forklift Operator Safety Training Presentation (RT_0095 to RT_0354), Loading and Unloading Dock Door Training Presentation (RT_0355 to RT_0363), Forklift Operator Test (RT_0364 to RT_0369), and Powered Industrial Truck Safety Training and Management Program (Bates labeled RT_0370 to RT_0392) from the relevant period.

7. Copies of documents sufficient to identify all powered industrial truck accidents and near misses which have occurred between September 5, 2018 and September 5, 2019 at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia

Response: ConMed objects to this Request on grounds it is vague, ambiguous, overly broad, unduly burdensome and requests information irrelevant to OSHA’s current limited scope Inspection. Producing copies of documents of “all powered industrial truck accidents and near misses” would be voluminous and unduly burdensome. Should OSHA wish to narrow the scope of this Request, ConMed will respond as

appropriate. Subject to and without waiving these objections, please see ConMed's response to Request No. 5.

Respectfully submitted,

FISHER & PHILLIPS LLP

Dated 12-10-19

By: 

Todd B. Logsdon

FISHER & PHILLIPS LLP

220 West Main Street, Suite 1700

Louisville, Kentucky 40202

Telephone: (502) 561-3971

Facsimile: (502) 561-3990

E-mail: tlogsdon@fisherphillips.com

(b) (7)(C) OSHA

From: (b) (7)(C) OSHA
Sent: Thursday, November 21, 2019 10:01 AM
To: Logsdon, Todd
Subject: RE: Subpoena regarding OSHA inspections 1428552 and 1428553 at ConMed Corporation
Attachments: 20191121095443223.pdf

Mr. Logsdon:

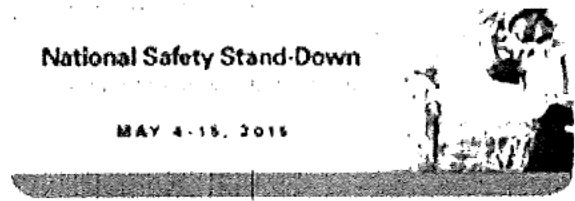
Attached is an amended subpoena for the items requested or referenced in your e-mail.

Thank you,

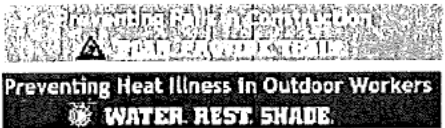
(b) (7)(C)
Industrial Hygienist
US Department of Labor
Atlanta West Area Office
Phone: (678) 903-**(b) (7)(C)**

OSHA

As of January 1, 2015:
All employers must report:
All work-related **fatalities** within 8 hours
Within 24 hours, all work-related:
Inpatient hospitalizations
Amputations
Losses of an eye
How to Report Incident
Call 1-800-321-OSHA (6742)
Call your nearest OSHA area office, during normal business hours
Please visit www.osha.gov for additional information



Please visit www.osha.gov for additional information or follow us



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From: Logsdon, Todd <tlogsdon@fisherphillips.com>
Sent: Thursday, November 21, 2019 9:38 AM
To: (b) (7)(C)
Cc: Hass, Keith - OSHA <hass.keith@dol.gov>; Stawowy, Jeffery M. - OSHA <Stawowy.Jeffery@dol.gov>
Subject: RE: Subpoena regarding OSHA inspections 1428552 and 1428553 at ConMed Corporation

Thanks (b) (7)(C) Not sure if the subpoena needs to be amended for that. Also, it is dated October 20, rather than November 20. I'm ok with this email correcting both issues, but you might want to check with your counsel.

Thanks,

Todd



Todd B. Logsdon
Partner
Fisher & Phillips LLP
220 West Main Street | Suite 1700 | Louisville, KY 40202
tlogsdon@fisherphillips.com | O: (502) 561-3971 | C: (502) 649-3718 |
vCard | Bio | Website *On the Front Lines of Workplace Law™*

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From: (b) (7)(C)
Sent: Thursday, November 21, 2019 9:29 AM
To: Logsdon, Todd <tlogsdon@fisherphillips.com>
Cc: (b) (7)(C) Stawowy, Jeffery M. - OSHA <Stawowy.Jeffery@dol.gov>
Subject: RE: Subpoena regarding OSHA inspections 1428552 and 1428553 at ConMed Corporation

Mr. Logsdon:

Your request for additional time to respond to the subpoena is approved.

You may consider the response date for production of the requested items to be amended to a new deadline of 10:00 a.m. on Tuesday, December 10, 2019.

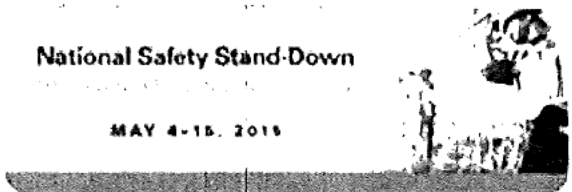
Thank you,

(b) (7)(C)
Industrial Hygienist
US Department of Labor
Atlanta West Area Office
Phone: (b) (7)(C)

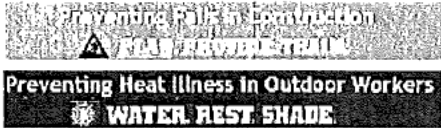
OSHA

As of January 1, 2015:
All employers must report:
All work-related fatalities within 8 hours
Within 24 hours, all work-related:

Inpatient hospitalizations
Amputations
Losses of an eye
How to Report Incident
Call 1-800-321-OSHA (6742)
Call your nearest OSHA area office, during normal business hours
Please visit www.osha.gov for additional information



Please visit www.osha.gov for additional information or follow us



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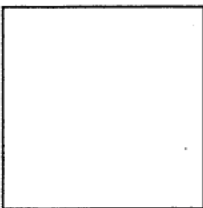
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From: Logsdon, Todd <tlogsdon@fisherphillips.com>
Sent: Wednesday, November 20, 2019 5:28 PM
To: (b) (7)(C)
Cc: Hass, Keith - OSHA <hass.keith@dol.gov>; Stawowy, Jeffery M. - OSHA <Stawowy.Jeffery@dol.gov>
Subject: RE: Subpoena regarding OSHA inspections 1428552 and 1428553 at ConMed Corporation

With the upcoming holidays and other commitments out of the office, could we have until December 10 to respond? If so, I will accept service of the amended subpoena.

Thanks,

Todd



Todd B. Logsdon
Partner
Fisher & Phillips LLP
220 West Main Street | Suite 1700 | Louisville, KY 40202
tlogsdon@fisherphillips.com | O: (502) 561-3971 | C: (502) 649-3718 |
vCard | Bio | Website *On the Front Lines of Workplace Law™*

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From: (b) (7)(C)
Sent: Wednesday, November 20, 2019 11:43 AM
To: Logsdon, Todd <tlogsdon@fisherphillips.com>
Cc: Hass, Keith - OSHA <hass.keith@dol.gov>; Stawowy, Jeffery M. - OSHA <Stawowy.Jeffery@dol.gov>
Subject: Subpoena regarding OSHA inspections 1428552 and 1428553 at ConMed Corporation

Mr. Logsdon:

Please find attached the amended subpoena requesting documents from ConMed Corporation regarding the site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia.

Please respond to this e-mail indicating your willingness to accept this service of the attached subpoena by close of business tomorrow, Thursday, November 21, 2019.

Thank you,

(b) (7)(C)

Industrial Hygienist
US Department of Labor
Atlanta West Area Office
Phone: (678) 903-(b) (7)(D)

OSHA

As of January 1, 2015:

All employers must report:

All work-related fatalities within 8 hours

Within 24 hours, all work-related:

Inpatient hospitalizations

Amputations

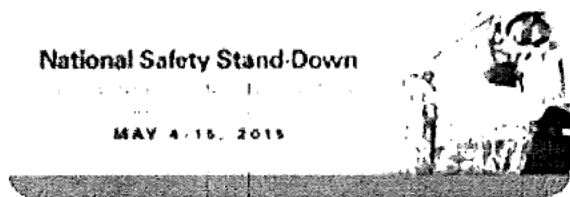
Losses of an eye

How to Report Incident

Call 1-800-321-OSHA (6742)

Call your nearest OSHA area office, during normal business hours

Please visit www.osha.gov for additional information



Please visit www.osha.gov for additional information or follow us



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United States of America

DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SUBPOENA DUCES TECUM

To: ConMed Corporation
c/o Todd Lodgson
Fisher & Phillips LLP
220 West Main Street
Suite 1700
Louisville, KY 40202

Re: OSHA Inspections 1428552 and 1428553

Pursuant to *Section 8(b) of the Occupational Safety and Health Act (29 U.S.C § 657(b))* you are hereby required to produce the following books, papers, diaries, logbooks and documents to Jeffery Stawowy, Area Director, Atlanta West Area Office, or his designated representative(s) of the OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, located at 1995 North Park Place, S.E., Suite 525, in the City of Atlanta, Georgia 30339 at 10 o'clock (AM) on the 10th day of December, 2019.


1. Copies of documents sufficient to identify all employees of ConMed Corporation as of September 5, 2019, either temporary or permanent, at the site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia and which distinguish which employees are members of management who have or may have control over the daily activities of employees, have authority to independently implement disciplinary actions against employees, or may have authority to hire or terminate employees.
2. Copies of records documenting all Sterigenics deliveries to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia between September 5, 2019 and November 5, 2019 including delivery dates, delivery times, number of tractor trailers per day, and shipment quantities per trailer, for example the number of pallets per trailer.

3. Copies of records documenting all deliveries of all EtO sterilized products to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia between September 5, 2019 and November 5, 2019, including delivery dates, delivery times, number of tractor trailers per day, and shipment quantities per trailer, for example the number of pallets per trailer. For the purposes of this Request, "EtO sterilized products" shall include all products which the ConMed Corporation knows or has reason to believe have been treated with ethylene oxide.
4. Copies of documents sufficient to identify all parties, including but not limited to sterilizers, who provided EtO sterilized products to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia ("the Worksite") between September 5, 2019 and November 5, 2019, including the name, address, phone number, and email address of the party who shipped or provided EtO sterilized products to the Worksite. For the purposes of this Request, "EtO sterilized products" shall include all products which the ConMed Corporation knows or has reason to believe have been treated with ethylene oxide.
5. Copies of documents sufficient to identify all powered industrial truck operators at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019 including the employee names, residential or mailing addresses, phone numbers and e-mail addresses.
6. Copies of documents of powered industrial truck operator training, powered industrial truck operator re-training and powered industrial truck operator re-evaluations for all operators of powered industrial trucks working at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019.
7. Copies of documents sufficient to identify all powered industrial truck accidents and near misses which have occurred between September 5, 2018 and September 5, 2019 at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia.

FAIL NOT AT YOUR PERIL



IN TESTIMONY WHEREOF I have hereunto affixed my signature and the seal of the UNITED STATES DEPARTMENT OF LABOR at Atlanta, Georgia *this 21st day of November, 2019.*



Jeffery Stawowy, Area Director, Atlanta West Area Office
Occupational Safety and Health Administration

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was

| | | |
|---|---|--|
| <p>duly served (Indicate by check method used.)</p> | } | <p>in person, by registered mail, <input checked="" type="checkbox"/> by e-mail by facsimile, by leaving at principal office or place of business, to wit:</p> |
|---|---|--|

on the person named herein on

November 21, 2019
(Month, day, year)

(b) (7)(C)

Industrial Hygienist
(Official title)

I certify that the person named herein was in attendance as a witness at

(Month, day, year)

(Name of person certifying)

(Official title)

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OBJECTIONS AND RESPONSES TO SUBPOENA DUCES TECUM

To: ConMed Corporation
Attn: Justin Mills
1250 Terminus Drive
Suite 100
Lithia Springs, GA 30122

OBJECTIONS TO DOCUMENT ENTITLED *SUBPOENA DUCES TECUM*

Subject to and without waiving any other objections that could be made, the following objections to the document entitled *Subpoena Ad Testificandum* (dated, October 7, 2019) (hereinafter the "subpoena") are served upon the United States Department of Labor – OSHA (hereinafter "OSHA"):

1. The subpoena is defective to the extent it seeks to impermissibly expand the scope of the investigation and is thus unreasonable and tantamount to a warrantless search.
2. The subpoena is defective in that the Federal Rules of Civil Procedure, as well as the OSHRC rules (*e.g.*, 2200.57(b)), require subpoenas to be issued "by any person who is not a party. . ." The instant subpoena was attempted to be served by an OSHA agent/representative and thus has not been effectively served in accordance with the applicable rules.

In light of the above, the purported subpoena is defective creating absolutely no obligation to respond. Notwithstanding, ConMed responds as follows:

1. Copies of any and all documents sufficient to reflect all employees of ConMed Corporation as of September 5, 2019, either temporary or permanent, at the site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia and which distinguishes which employees are members of management.

Response: ConMed Corporation ("ConMed") objects to this Request as vague and ambiguous for lack of a definition of "members of management." ConMed also objects to the Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope inspection. Producing copies of "any and all documents sufficient to reflect all employees" would be voluminous and unduly burdensome. Should OSHA wish to clarify and narrow the scope of this Request, ConMed will respond as appropriate. Notwithstanding the above objections, please see attached a list of ConMed supervisors located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia (Bates labeled RT_0094).

6. A copy of the employer's ethylene oxide safety data sheet as of September 5, 2019.

Response: ConMed objects to the Request on grounds it is vague, ambiguous, overly broad unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Subject to and without waiving these objections, please see documents previously produced to OSHA (Bates labeled RT_0077 to RT_0093).

7. Copies of any and all documents that reflect all powered industrial truck operators at the ConMed location site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019.

Response: ConMed objects to this Request as vague and ambiguous for lack of a definition of "documents." ConMed also objects to the Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of "any and all documents that reflect all powered industrial truck operators" would be voluminous and unduly burdensome. Should OSHA wish to clarify and narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving these objections, please see the enclosed previously provided incident report for (b) (7)(D) ConMed Powered Industrial Truck Operator (RT_0074 to RT_0077).

8. Copies of any and all documents of powered industrial truck operator training, powered industrial truck operator re-training and powered industrial truck operator re-evaluations for all operators of powered industrial trucks working at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019.

Response: ConMed objects to this Request on grounds it is vague, ambiguous, overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of "any and all documents" of powered industrial truck operator training would be voluminous and unduly burdensome. Should OSHA wish to narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving these objections, please see ConMed's response to Request No. 7.

9. Copies of any and all documents of powered industrial truck accidents and near misses which have occurred between September 5, 2016 and September 5, 2019 at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia.

HAVE THEY HAD THAT MANY ACCIDENTS?

Response: ConMed objects to this Request on grounds it is vague, ambiguous, overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. ConMed objects to the extent the request seeks information beyond the applicable limitation period. Producing copies of "any and all documents of powered industrial truck accidents and near misses" would be voluminous and unduly burdensome. Should OSHA wish to narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving the objection, please see ConMed's response to Request No. 7.

CONMED/LITHIA SPRINGS MANAGEMENT

Justin Mills – Sr. Manager, Logistics

Erika Arnold – Lead HR Business Partner

Darius Askew – Supervisor, Receiving

Tamika Bryant – Supervisor, Domestic Operations

Teresa Feagins – Supervisor, International Operations

Phil Messner – Quality Engineering

Abdisalam Sheka – Quality Engineering

Bertin Gallo – Sr. Associate – Receiving

Trabian Booker – Sr. Associate – Domestic Operations/LTL

CONMED/LITHIA SPRINGS MANAGEMENT

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UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OBJECTIONS AND RESPONSES TO SUBPOENA DUCES TECUM

To: ConMed Corporation
Attn: Justin Mills
1250 Terminus Drive
Suite 100
Lithia Springs, GA 30122

OBJECTIONS TO DOCUMENT ENTITLED *SUBPOENA DUCES TECUM*

Subject to and without waiving any other objections that could be made, the following objections to the document entitled *Subpoena Ad Testificandum* (dated, October 7, 2019) (hereinafter the "subpoena") are served upon the United States Department of Labor – OSHA (hereinafter "OSHA"):

1. The subpoena is defective to the extent it seeks to impermissibly expand the scope of the investigation and is thus unreasonable and tantamount to a warrantless search.
2. The subpoena is defective in that the Federal Rules of Civil Procedure, as well as the OSHRC rules (e.g., 2200.57(b)), require subpoenas to be issued "by any person who is not a party. . ." The instant subpoena was attempted to be served by an OSHA agent/representative and thus has not been effectively served in accordance with the applicable rules.

In light of the above, the purported subpoena is defective creating absolutely no obligation to respond. Notwithstanding, ConMed responds as follows:

1. Copies of any and all documents sufficient to reflect all employees of ConMed Corporation as of September 5, 2019, either temporary or permanent, at the site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia and which distinguishes which employees are members of management.

Response: ConMed Corporation ("ConMed") objects to this Request as vague and ambiguous for lack of a definition of "members of management." ConMed also objects to the Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of "any and all documents sufficient to reflect all employees" would be voluminous and unduly burdensome. Should OSHA wish to clarify and narrow the scope of this Request, ConMed will respond as appropriate. Notwithstanding the above objections, please see attached a list of ConMed supervisors located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia (Bates labeled RT_0094).

2. Copies of any and all records documenting all Sterigenics deliveries to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100, in Lithia Springs, Georgia between June 1, 2019 and August 31, 2019 including delivery dates and times.

Response: ConMed objects to the Request on grounds it is vague, ambiguous, overly broad and requests information irrelevant to OSHA's current limited scope Inspection. Should OSHA wish to clarify why this information is relevant to OSHA's Inspection and narrow the scope of the Request, ConMed will respond as appropriate. Notwithstanding the above objections, please see the redacted copy of the Sterigenics contract previously produced to OSHA (Bates labeled R_0140 to R_0156).

3. Copies of any and all documents provided by parties who have performed air sampling for ethylene oxide at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia between January 1, 2019 and August 31, 2019.

Response: ConMed objects to the Request on grounds it is vague, ambiguous, overly broad and protected by attorney client and work product privileges, as well as privileges for documents for documents created in anticipation of litigation and as part of a self-critical analysis. ConMed also objects to the Request on grounds that it requests information irrelevant to OSHA's current limited scope Inspection and beyond the applicable limitations period. Subject to and without waiving these objections, please see documents previously produced to OSHA (Bates labeled RT_0026 to RT_0073).

4. A copy of the employer's ethylene oxide compliance program for maintaining employee exposures to ethylene oxide below OSHA's permissible exposure limit and excursion limit as of September 5, 2019.

Response: ConMed objects to the Request on grounds it is vague, ambiguous, overly broad unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Subject to and without waiving these objections, ConMed states that based on air monitoring results, no written program was required.

5. Copies of any and all documents reflecting ethylene oxide training and informational meetings between March 5, 2019 and September 5, 2019 including the names and titles of those providing the training or information, the names of attendants and content of the training.

Response: ConMed objects to the Request on grounds it is vague, ambiguous, overly broad unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Subject to and without waiving these objections, ConMed states that based on air monitoring results, no ethylene oxide specific training was required. Notwithstanding this, ConMed has provided informational meetings to its employees, as well as opportunities for medical screenings.

6. A copy of the employer's ethylene oxide safety data sheet as of September 5, 2019.

Response: ConMed objects to the Request on grounds it is vague, ambiguous, overly broad unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Subject to and without waiving these objections, please see documents previously produced to OSHA (Bates labeled RT_0077 to RT_0093).

7. Copies of any and all documents that reflect all powered industrial truck operators at the ConMed location site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019.

Response: ConMed objects to this Request as vague and ambiguous for lack of a definition of "documents." ConMed also objects to the Request on grounds it is overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of "any and all documents that reflect all powered industrial truck operators" would be voluminous and unduly burdensome. Should OSHA wish to clarify and narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving these objections, please see the enclosed previously provided incident report for (b) (7)(D) ConMed (b) (7)(D)

8. Copies of any and all documents of powered industrial truck operator training, powered industrial truck operator re-training and powered industrial truck operator re-evaluations for all operators of powered industrial trucks working at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019.

Response: ConMed objects to this Request on grounds it is vague, ambiguous, overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. Producing copies of "any and all documents" of powered industrial truck operator training would be voluminous and unduly burdensome. Should OSHA wish to narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving these objections, please see ConMed's response to Request No. 7.

9. Copies of any and all documents of powered industrial truck accidents and near misses which have occurred between September 5, 2016 and September 5, 2019 at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia.

Response: ConMed objects to this Request on grounds it is vague, ambiguous, overly broad, unduly burdensome and requests information irrelevant to OSHA's current limited scope Inspection. ConMed objects to the extent the request seeks information beyond the applicable limitation period. Producing copies of "any and all documents of powered industrial truck accidents and near misses" would be voluminous and unduly burdensome. Should OSHA wish to narrow the scope of this Request, ConMed will respond as appropriate. Subject to and without waiving the objection, please see ConMed's response to Request No. 7.

Respectfully submitted,

FISHER & PHILLIPS LLP

Dated 10/22/19

By: 

Todd B. Logsdon

FISHER & PHILLIPS LLP

220 West Main Street, Suite 1700

Louisville, Kentucky 40202

Telephone: (502) 561-3971

Facsimile: (502) 561-3990

E-mail: tlogsdon@fisherphillips.com

United States of America

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SUBPOENA DUCES TECUM

To: ConMed Corporation
Attn: Justin Mills
1250 Terminus Drive
Suite 100
Lithia Springs, GA 30122

Re: OSHA Inspections 1428552 and 1428553

Pursuant to *Section 8(b) of the Occupational Safety and Health Act (29 U.S.C § 657(b))* you are hereby required to produce the following books, papers, diaries, logbooks and documents to Jeffrey Stawowy, Area Director, Atlanta West Area Office, or his designated representative(s) of the OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR, located at 1995 North Park Place, S.E., Suite 525, in the City of Atlanta, Georgia 30339 at 10 o'clock (AM) on the 23 day of October, 2019.

1. Copies of any and all documents sufficient to reflect all employees of ConMed Corporation as of September 5, 2019, either temporary or permanent, at the site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia and which distinguishes which employees are members of management.
2. Copies of any and all records documenting all Sterigenics deliveries to the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia between June 1, 2019 and August 31, 2019 including delivery dates and times.
3. Copies of any and all documents provided by parties who have performed air sampling for ethylene oxide at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia between January 1, 2019 and August 31, 2019.

4. A copy of the employer's ethylene oxide compliance program for maintaining employee exposures to ethylene oxide below OSHA's permissible exposure limit and excursion limit as of September 5, 2019.
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8. Copies of any and all documents of powered industrial truck operator training, powered industrial truck operator re-training and powered industrial truck operator re-evaluations for all operators of powered industrial trucks working at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia as of September 5, 2019.
9. Copies of any and all documents of powered industrial truck accidents and near misses which have occurred between September 5, 2016 and September 5, 2019 at the ConMed Corporation site located at 1250 Terminus Drive, Suite 100 in Lithia Springs, Georgia.

FAIL NOT AT YOUR PERIL



IN TESTIMONY WHEREOF I have hereunto affixed my signature and the seal of the UNITED STATES DEPARTMENT OF LABOR at Atlanta, Georgia *this 7th day of October, 2019.*



Jeff Stawowy, Area Director, Atlanta West Area Office
Occupational Safety and Health Administration

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was

duly served
(Indicate by check
method used.)



- in person,
- by registered mail,
- by facsimile,
- by leaving at principal office
or place of business, to wit:

on the person named herein on

October 09, 2019

(Month, day, year)

(b) (7)(C)

Industrial Hygienist/Compliance Safety & Health officer

(Official title)

I certify that the person named herein was in attendance as a witness at

(Month, day, year)

(Name of person certifying)

(Official title)