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September 12, 2000

VIA FEDERAL EXPRESS

Craig Melodia
Office of Regional Counsel
EPA Region 5
77 West Jackson Boulevard
Chicago, Il 60604-3590

Re: The Dow Chemical Company, et al. v. Acme Wrecking Company, Inc. and The Dow Chemical Company v. Sun Oil Company, d/b/a Sunoco Oil Corp.; Southern District of Ohio Case No. C-1-97-0307 and C-1-97-0308

Dear Mr. Melodia:

Enclosed please find the redacted portion of the report issued by the Allocator, John Barkett, concerning my client Sealy, Inc.

Thank you for your attention to this matter.

Very truly yours,

Patrick J. Rhoa

PJR/bjr
Enclosure

251395-1

Final Report.

Stearns & Foster's Comments (for Sealy, Inc.) S&F argued that "[t]he allocator's principal use of volume to determine allocation of response costs in this case ignores other relevant criteria and the main cause of contamination to the Site, i.e. the disposal of highly toxic liquid wastes." Citing United States v. Meyer, 932 F.2d 568, 571 (6th Cir. 1991), S&F did not believe that other relevant criteria used to determine an allocation of costs including the amount, degree of toxicity, and degree of care used by the parties with respect to hazardous waste was not given proper consideration in the Preliminary Report.

According to the ROD, the major cause of contamination and cost of remediation at the Site was the disposal of hazardous liquid waste in the lagoon, S&F argued. S&F felt that, except for the presence of highly toxic liquids, remediation may not have been required at all at the Site. The high toxicity of the liquid waste escalated the response costs in two ways: (1) "a more extensive groundwater monitoring and interceptor system has to be implemented, an engineered multi-layer cap must be used, and a combination cut-off wall and groundwater interceptor trench has to be implemented to capture and minimize dilution," and (2) the high level of toxicity placed the Site on the NPL, and influenced the fact that the Site will be closed with a multi-layer cap instead of a less expensive remedy, such as a single layer cap.

S&F feels that "volume is not the genesis of the problems found at the Site. Toxicity is the driving force ...". S&F felt that the waste lagoon "is the driving force of the

contamination and response costs at the Skinner Site." (Citing the Preliminary Report at p. 42, 46, 65). Hence, S&F feels that the greater response costs must properly be attributed to the liquid arrangers and producers. S&F added that the Preliminary Report "fails to fairly allocate the response costs attributed to the Site and falls short of adequately determining the cause of great harm. The generic use of cubic yards of waste ... ignores the true responsible parties ... the clandestine liquid arrangers and transporters." S&F did not identify who those clandestine parties were.

S&F argued that there is a "distinct difference in the potential for harm between a tanker truck loaded with liquid cyanide and an ordinary dump truck containing off spec mattresses or potato chips" and that, "substantive fairness goes to the fairness of the result, and requires that the settlement terms be based upon and roughly correlated with some acceptable measure of comparable fault. It cited U.S. v. Atlas Minerals and Chemical, Inc., 851 F.Supp. 639 (E.D. Pa. 1994), quoting United States v. Cannons Engineering Corp., 899 F.2d 79, 87 (1st Cir. 1990). Citing Cannons, 899 F.2d at 87, S&F insisted that the Allocator was required to "demonstrate a 'plausible explanation' for 'measuring comparative fault and allocating liability' in the amount set forth in the Report."

S&F feels the degree of fault can be clearly divided in this case between the liquid and solid arrangers and transporters. The Skinners and Chem-Dyne were the "driving force" behind the disposal of toxic liquids at the Site, it argued. Hence, "[a] two to one ratio of response costs between liquid and solid arrangers and transporters cannot be supported by the overwhelming evidence found at this site." S&F feels that "[c]ommon sense demands that the liquid arrangers and transporters carry a larger share of the response costs associated with the Site." Considering the extreme toxicity of liquid wastes disposed at the Site in S&F's view, the use of volume as the principal allocating criteria should not be applied here. Aside from the large orphan shares, the majority of the costs will be the responsibility of the solid and liquid arrangers and transporters. S&F suggests a "more reasonable and fact specific divisibility ratio of allocation costs would be a three or four to one ratio of response costs between the liquid and solid arrangers and transporters." S&F "further requests that the apportionment of harm be recalculated between the solid and liquid transporters and arrangers to reflect the greater harm and response costs caused by the disposal of the highly toxic liquid wastes.

SEALY, INC.

Sealy, Inc. ("Sealy") served a comment brief dated December 15, 1998. It was prepared by The Stearns & Foster Company ("S&F"). S&F directs its response to the Preliminary Report to two areas: (1) the apportionment of harm between the parties and (2) the Allocator's actual calculation attributed to S&F. I deal with the first point in the main body of this Final Report.

S&F disagrees with the Allocator that 5,250 cys of waste is the "midpoint of the testimony" for waste from S&F. I have reviewed the analysis and my use of "midpoints" throughout the report. Here the range for midpoint derivation is 300 to 400 loads. I concede that the capacity of the truck could be debated here. However, S&F did not give me any more information about the types of trucks Sealy may have used and the figure used in the Preliminary Report, 15 cys, is well within the range of dump truck capacities in this matter. Hence, I see no reason to make a change in Sealy's waste-in amount.

SEALY INC (STEARNS & FOSTER)	262252	0.00%	Includes possible asbestos, roof tar			Defendant	Yes

SEALY INC (STEARNS & FOSTER)	5250	0	372906	1.4079%	262252	0.0000%

Preliminary Non-Binding Allocation Report

SEALY, INC.

Sealy responded on behalf of The Stearns & Foster Bedding Company (S&F). Sealy explained that it is a sister corporation of S&F and has never owned or operated a facility in or near West Chester, Ohio.

S&F was a mattress assembly/manufacturing facility. Between 1971 and 1980, The Stearns & Foster Co. operated a mattress and box spring assembly and upholstered furniture facility in Mason, Ohio. It was closed or sold in 1980. If sold, the purchaser is unknown. LSF Manufacturing, Inc. operated at another facility in Mason from 1978 - 1986 at which time LSF merged with S&F and the operations were transferred to Lockland, Ohio from 1986 until the present. Its foam encasement operation generated polyurethane foam waste.

Mattress/Box Spring Assembly/Upholstered Furniture Assembly. Sealy explained the assembly of a mattress/box spring and upholstered furniture. Components and raw materials used include: cut wood slats for box spring (foundation) frames; wire coil springs; coil spring units (mattresses and foundations) and wire grids (foundations only); garnetted cotton pads (mattresses only); polyurethane foam pads (mattresses and foundations); cotton/polyester insulator pads (mattresses and foundations); corner guards (mattresses and foundations) and cloth upholstery ticking (mattresses and foundations). Metal wire, metal bands, wire springs, wire coil, nails, staples, clips, etc. are inert components used in mattress assembly in the form purchased. These "metal" components were made of steel, in various gauge strengths, consisting of various metal alloys of varying combinations.

Garnetting operations involved the garnetting of raw cotton using large specialty equipment. Lubricating oil is applied to raw cotton to reduce dust and enhance the application of the boron powder added during the garnet operation so that the product complies with federal flammability standards. Lubricating oil is absorbed into the raw cotton. Once garnetted, the cotton is pressed into padding of various thicknesses, cut, and stored until use.

Mattress and foundation assembly operations involve cutting and sewing cloth ticking into panels (flat side covering) for mattresses and box springs. The tape edge, which is a piece of material used to join (by sewing) the panels to borders, is also cut and made ready for the assembly.

Wood frames for foundations are assembled using a water-based wood glue. The glues used at S&F's Lockland facility "contained non-hazardous components of a polyvinyl acetate - emulsion and chlorinated hydrocarbons." Either individual wire coil springs or a single coil spring unit are attached to the wood frame along the outline of a wire grid using a staple gun. A cheesecloth bottom panel is attached to the wood frame using staples. An insulator pad and polyurethane foam pad are placed on top of the foundation and a panel and border assembly are secured around on top of these pads by staples at the wood frame and by sewing the tape-edge. Corner guards are added using staples.

The mattress assembly process puts all of these pieces together by sewing a tape-edge along the top and bottom perimeters to join the panels to the border. The units are checked for quality and rejected, as necessary. Sometimes, spot cleaning occurs (using a commercial spot remover). Product labeling is attached to each unit and units are wrapped in plastic wrap or boxes.

Foam Encase Mattress Production. The urethane border molding operation (foam encasement process) involved encasing a borderless spring unit with urethane foam by combining two chemicals: a resin and an isocyanate. Flow was supported by a closed loop conveyor system which transported metal mold assemblies from station to station. The spring unit was prepared by placing a cloth band around the perimeter to prevent flow of the foam into the interior. Prepared spring units (two cotton bats and poly-topper coverings) were placed in an open mold. An operator clamped the loaded mold and transported it to the foam injection station. Resin and isocyanate constituents of foam were blended in the nozzle in controlled proportions and injected directly around the mattress components. After hardening, the completed mattress component was removed from the mold.

This process was characterized as a closed process with little chance of spilling and/or emissions. Should any leaks/spills have occurred, the foam would have quickly formed and hardened and been readily removed and disposed. Resin and isocyanate materials were contained in closed tanks until exiting the foam nozzle inside the mold. Complete reaction of the materials in the foam encasement process resulted in CO_2 and water vapor, which was vented to the outside by an exhaust fan. Mold assemblies were recirculated through the process and were prepared to receive each set of mattress components by applying a release agent to the interior of the mold using a low pressure spray gun. The internal surfaces of the mold were conditioned from time to time with a paste wash release agent which was applied manually. Parts were cleaned routinely using a degreasing agent.

The foam encased mattresses were produced for a short period of time, I was told.

Byproducts of Upholstered Furniture Assembly Process. They were: staples; wire; metal banding (packaging); cotton batting; polyurethane foam; polyester fibers; woven and non-woven synthetic and natural fibers; paper packaging; cardboard; plastic bags (packaging); plastic tufting buttons; crating lumber; rope/twine; thread.

Byproducts of the Mattress and Box Spring Assembly Process. They were: Wood Parts; Wire Springs; Manufactured Fiber Pad; Cotton Felt; Polyurethane Foam; Polyester Fiber (911 Fiber); Rubberized Hair Pad; Corrugated Cartons; Plastic for Packing; Thread; Tape; Handles; Nails, Staples, Clips, etc.; Corner Guards; Non-Woven Backing Materials; Paper Product Tickets, Warranty, etc.; Wool.

Sealy identified S&F's waste haulers as including Rumpke Waste Inc. (7/25/91 document), Columbus Steel Drum, and Vulcan Oil Co.

S&F does not have any internal documents and discovered no information from witnesses linking it to the Skinner Site. It seeks a zero or a de minimis share.

Site Witnesses. Ray Skinner gave the most extensive testimony about S&F. He said that S&F "brought lots of mattresses in our place, springs, padding, lots of wood, cardboard boxes and shop trash like, you know, garbage bags and office materials." The waste was hauled in S&F trucks, he said. He also explained that when the facility put a new roof on their plant, "they hauled all the roofing the tar paper and the asbestos was on the roof to our landfill." R. Skinner Depo., p. 225. This exchange then occurred:

Q. Did you know that for a fact?

A. Yes.

Q. The roofing material?

A. Yes.

Q. How do you know that?

A. Because it made good fill cover because it was gravel, tar and dirt.

R. Skinner Depo., p. 225-226. S&F used a dump truck type vehicle. He thought that S&F used three or four different vehicles:

> There was always young boys that drove the truck, they would unload it and sit up there in the woods and eat sandwiches and kill time all day, I do remember that, while they was getting paid.

R. Skinner Depo., p. 226. Ray Skinner said he had been to the facility. He placed S&F's use of the Site at least in the early 1960s and said it was used also while he was running the Landfill. S&F brought in "ground up mattresses, broken up frames, springs" and "office cleaned out stuff," drywall, "regular tear-out demolition." R. Skinner Depo., p. 227-229. With respect to the amount, Ray Skinner gave this testimony:

> Q. Okay. How much of this material, to the extent you can even give us an estimate I want to just hear your reaction to the amount of material that came in.
>
> A. I'd say 3 to 400 loads in a period of four to five years.
>
> Q. You think it was that many?
>
> A. Yes, sir.
>
> Q. *This is while you were running the landfill?*
>
> A. While my dad and I ran it.
>
> Q. You just said over a period of --
>
> A. Five to ten years, I would say. Because you would see them on a weekly basis --
>
> Q. Let me stop you.

A. – every week.

Q. You said you first saw them when you were in school?

A. Yes.

Q. And you saw them when you were running the landfill?

A. Yes.

Q. That covers a lot more than five or ten years, that covers from –

A. Well, I would say easy 3 to 400 loads, easy. That's a lot of material.

Q. And in your lifetime?

A. Yes.

Q. While you have had any familiarity with the landfill?

A. Yes.

Q. You're comfortable that at least 3 to 400 loads came in from Stearns & Foster?

A. Very comfortable, that or more.

R. Skinner Depo., p. 229-230

Waste Types. Ray Skinner said that the roof materials brought to the Site included "asbestos" and tar. Tar contains hazardous substances. I did not press Ray Skinner on how he determined that the roof waste contained asbestos. While it may well have, I do not regard this question as resolved on this record. S&F's other wastes fall well within the discussion of "Hazardous Substances" at the beginning of this report.

Waste-in Amount. The Plaintiffs urge that S&F should be assigned 17,940 cys. I have studied the Plaintiffs' analysis and disagree with a number of the assumptions made.

The vehicle capacity from which the S&F waste-in amount should be derived was not discussed with Ray Skinner. Both the Plaintiffs and S&F appeared to accept 15 cy as a fair average for a drum truck capacity. I will use this figure.

S&F's approach — to take the midpoint of the testimony — is also consistent with the approach that I have been taking throughout this report. Hence, I am assigning S&F a waste in amount of 15 cys x 350 loads, or 5,250 cys.

SEALY INC (STEARNS & FOSTER)	5250	0	363690	1.4435%	259308	0.0000%