BEFORE THE
CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of | ) | |
| | ) | |
| BARRETT CARPET MILLS, | ) | Nos. 75-5 |
| WESTLAND CARPET, INC. | ) | 75-21 |
| NORTHWICK MILLS, INC. | ) | 76-6 |
| | ) | |

ORDER SCHEDULING ORAL ARGUMENT

The above entitled cases are presently pending before the Commission. All three cases involve alleged violations of the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70). All three cases raise common questions of law concerning the Commission's remedial authority. The Commission, in accordance with its interim adjudicative rules section 1025.72(f), has decided to set these cases down for a consolidated oral argument to be held in the Commission's Hearing Room (Room 301) at 1111 18th Street, N.W., Washington D.C., on Monday, March 14, 1977 beginning at 1:30 P.M. One hour will be allotted for each case with each side being permitted one-half hour. Counsel making the initial presentation in each case may reserve up to ten minutes of their time for rebuttal.

Each party shall notify the Secretary of the Commission in writing on or before March 1, 1977 of the names of Counsel who will present oral argument. Any requests for rescheduling must be made in writing setting forth detailed reasons within ten days of the receipt of this notice.

BY THE COMMISSION

Sadye E. Dunn

SADYE E. DUNN
Secretary, Consumer Product
Safety Commission

Dated: January 24, 1977

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

RECEIVED
OFFICE OF THE SECRETARY
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CONSUMER PRODUCT
SAFETY COMMISSION

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| In the Matter of | |
| BARRETT CARPET MILLS, INC. | CPSC Dkts. |
| WESTLAND CARPET, INC. | No. 75-5 |
| NORTHWICK MILLS, INC. | No. 75-21 |
| | No. 76-6 |

TO: Ms. Sadye E. Dunn,
Secretary

REPLY TO ORDER SCHEDULING ORAL ARGUMENT

By Order dated January 21, 1977, the Commission has consolidated oral argument in the three above-captioned cases. This argument is set for 1:30 p.m. on March 14, 1977.

The undersigned is counsel to two of the three sets of respondents. Barrett Carpet Mills, Inc., Roy C. Barrett, Northwick Mills, Inc., and Fred Rosen. While I have considered and determined not to object to the consolidation of oral arguments for these three cases, I consider it essential to the protection of the rights of each of the affected parties that the arguments pertaining to their case not be confusingly commingled with those presented in other cases. This is especial true where there are, as appears to be the case in this instance, fundamental differences in the legal positions advanced by the respondents.

I believe these problems can be minimized by the structure of the agenda. The Northwick appeal essentially involves the single issue of the Commission's legal authority to compel recall of allegedly noncomplying carpet from consumers. The Barrett appeal involves a series of issues specified by the Commission in its Order dated August 5, 1976, only one of which involves this legal authority issue. Moreov

this issue was not the basis for the decision in that case, and was briefed only because of the Commission's Order.

Under these circumstances, it is requested that the arguments in the Northwick and Barrett cases be set to run consecutively and in that order. This approach would appear to offer counsel for both sides, and the Commission, the best opportunity to focus on the so-called "legal authority" issue before becoming involved in the other factual and legal issues raised in the individual cases.

While I have not consulted with Enforcement Counsel, or counsel to Westland, concerning this suggestion, it is made in the belief it will benefit all affected parties, including the Commissioners.

Respectfully submitted,

Richard H. Gimer
BERLINER, MALONEY, GIMER & JAFFE
1100 Connecticut Avenue, N. W.
Washington, D. C. 20036
Tel.: (202) 293-1414

Dated: February 1, 1977.

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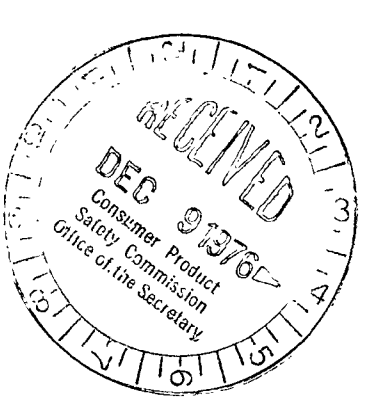
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Order Scheduling Oral Argument was served upon all interested parties by hand delivering a copy thereof to Ronald G. Yelenik, Esq., George J. Miller, Esq., Ms. Enid Rubenstein, and Theodore Hoppock, Esq., Trial Attorneys, Bureau of Compliance, Consumer Product Safety Commission, Washington, D. C. 20207, this 1st day of February, 1977.

Richard H. Gimer




UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of: | |
| BARRETT CARPET MILLS, INC. a corporation, and | |
| ROY C. BARRETT, individually and as an officer of the corporation | CPSC Docket No. 75-5 |

# REPLY BRIEF OF RESPONDENTS

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Attorneys for Respondents

December 9, 1976

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of:<br><br>BARRETT CARPET MILLS, INC.<br>a corporation, and<br><br>ROY C. BARRETT, individually<br>and as an officer of the<br>corporation | CPSC Docket No. 75-5 |

# REPLY BRIEF OF RESPONDENTS

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December 9, 1976

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UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of: | ) | |
| BARRETT CARPET MILLS, INC. a corporation, and | ) | |
| ROY C. BARRETT, individually and as an officer of the corporation | ) | CPSC Docket No. 75-5 |

REPLY BRIEF OF RESPONDENTS

## I. INTRODUCTION

Respondents, Barrett Carpet Mills, Inc. and Roy C. Barrett, submit this brief in reply to Enforcement Counsel's Answering Brief, pursuant to 16 CFR §1025.72(e), Rules of Practice for Adjudicative Proceedings. Pursuant to the Commission's rules, we confine ourselves in this Reply Brief to rebuttal of matters in Enforcement Counsel's Answering Brief. 16 CFR §1025.72(d).

### A. The Role of Briefs and Arguments of Counsel.

The Answering Brief, consisting of eighty pages including appendices, is in large measure a relentless attack on the factual determinations made by the Commission's ALJ, who presided over a two-week trial, and reviewed the extensive briefs of the parties prior to rendering the Initial decision now being reviewed. It is an attack which Enforcement Counsel was, under the Commission's rules and under the Administrative Procedure Act, obligated to make, if at all, during the course of the evidentiary hearing. This Enforcement Counsel did not do.

The most unfortunate aspect of Enforcement Counsel's belated stone-throwing exercise is its untimeliness. It tends, albeit in a carefully disguised and possibly imperceptible way, to set up Enforcement Counsel (and the Bureau of Compliance) as the ultimate expert. While it should not require statement, it apparently must be stressed that CPSC Enforcement Counsel are not experts whose opinions are entitled to greater weight than those of witnesses who have appeared at trial and subjected themselves to the rigors of examination and cross-examination by counsel for the opposing parties.

The trial is over. The Presiding Officer has heard the evidence, made findings based on the record and exercised his discretion in formulating an order. Enforcement Counsel's belated attempts to appear as an expert witness in this case and to usurp the function of the ALJ must be rejected.

B. Sloganeering Has No Proper Role in Commission Decision-Making.

Respondents recognize that sloganeering is a way of life in this day and age. But respondents insist that sloganeering not be permitted to obscure the fundamental issue presented by this proceeding: should Barrett Carpet Mills, Inc., be required to recall installed Paradise Valley (foam) from consumers?

In this proceeding (and contemporaneous proceedings involving other instances of alleged noncompliance with the carpet flammability standard),

the catch-word has become "danger", or "dangerously flammable", or "per se dangerous". Throughout the Answering Brief, Barrett's Paradise Valley (foam) carpet and other rolls of "noncomplying" carpet is repeatedly described as "dangerously flammable", subjecting the public to the risk of "fires started by or contributed to by carpet" (e.g., Ans. Br. at 20) justifying drastic action to "protect the public from serious personal injury, death or property damage" (Ans. Br. at 14)./1/ Such gross misrepresentations of the record cannot be idly countenanced. What we are dealing with here, as is documented fully herein, is a material that is both difficult to ignite and self-extinguishing. Although present in virtually every business and domestic setting, carpeting is not and has never been significantly associated with fire, let alone personal injury or death. For example, in the entire calendar year 1975, the Commission's NEISS system identified exactly one injury from a fire involving, although not started by, carpet./2/

/1/ Enforcement Counsel's Answering Brief is referred to as "Ans. Br." Respondents' Appeal Brief is referred to as "App. Br." The Initial Decision is referred to as "Init. dec." Citations to the records are to pages in the official transcript, referred to as "Tr."

/2/ The carpet involved in this single reported incident was not made by Barrett and the person involved was released from the emergency room without being admitted. Barrett's Paradise Valley (foam) carpet, despite its continued use since Mid-1972, has never been involved in a fire. Tr. 631, 652. Compare Matter of Kelvinator, Inc., et al., CPSC Dkt. No. 75-1, pps. 90-91.

This case presents a clear and propitious opportunity to put the matter of carpet flammability where it belongs -- at the bottom of the list. It is not the time, as Enforcement Counsel urges, to attribute to DOC FF 1-70 presumptions of "danger" which were never intended by the promulgating agency or have now been resoundingly refuted on the record. (App. Br., at 30-49.)

C. The Carpet Flammability Standard Is Not Under Attack In This Proceeding.

Respondents do not now, nor did they at any time during this proceeding, challenge the validity of DOC FF 1-70, the carpet flammability standard. What is under attack is the misguided and totally unsupported conception of the CPSC Bureau of Compliance staff as to the significance, in terms of real-life hazard, of the failure of a given quantity of carpet to comply with that standard. The significance of a "pill test" failure in terms of real-life risk was the subject of intensive inquiry on the record below. The inescapable conclusions reached by the Administrative Law Judge were that passing and failing samples of Respondents' Paradise Valley (foam) react similarly to household ignition sources; that the presence of failing carpet on the floor did not present an unreasonable risk of the occurrence of fire leading to death or serious injury to the consumer in his home; and, therefore, that the drastic and unprecendented remedy of consumer recall of carpet would be unnecessary and inappropriate.

In the context of the Barrett case, there is really little more that needs be said. But Respondents recognize that this case, in which they were fortuitously involved, raises fundamental issues concerning flammable fabrics enforcement, including issues not involved in the Initial decision./3/

D. Summary of Issues Addressed in Reply Brief.

In urging this Commission to sweep aside the thorough findings and sound conclusions of the Administrative Law Judge based on plenary evidentiary hearing, Enforcement Counsel has packed about as much misinformation as imaginable into its Answering Brief. It would not be possible, within the confines of a Reply Brief of tolerable length, to give a full rejoinder to each of Enforcement Counsel's gambits with the facts. Instead, we will essentially confine our reply to exploring and exposing Enforcement Counsel's arguments in the three most critical areas: (1) the lack of Commission authority to order recall under the FFA; (2) the absence of any basis for asserting a per se rule which would justify recall of installed carpet even if such authority existed; and (3) the sufficiency of the evidence supporting the decision of the ALJ to refuse to order recall of installed Paradise Valley (foam) carpet from consumers.

/3/ E.g., the decision not to require recall of installed carpet was based upon the factual record, not a determination of the absence of legal authority. (Init. dec. at 23.)

## II. THERE IS NO AUTHORITY TO ORDER RECALL UNDER THE FLAMMABLE FABRICS ACT.

In the deluge of cases relied upon by Enforcement Counsel to infer recall authority under the FFA, one must not lose sight of two basic points. First, it remains undisputed that neither the FFA nor the FTCA grants the enforcing agency the power to order recall of noncomplying products. Enforcement Counsel has apparently conceded the lack of direct statutory authority, as it has taken no issue with the plain meaning of the legislation nor the legislative history as set forth at pages 16-22 of Respondents' Appeal Brief. The concession that recall has never been part of the statutory enforcement scheme is, we submit, sufficient to dispose of the issue, both as to authority to prescribe such a remedy and its necessity. The law remains that remedial authority is conferred by statute alone. E.g., FTC v. National Lead Co., 352 U.S. 419, 428 (1957); FTC v. Eastman Kodak Co., 274 U.S. 619, 623 (1927).

The second point is so obvious that it risks being overlooked: of all the cases cited by Enforcement Counsel in support of its argument of FTCA authority to order recall, not one involves recall. Nor has Enforcement Counsel come up with a single case imposing the remedy of recall under any other act in the absence of express statutory authorization. Surely, one would have thought, if recall is a remedy which may be inferred and applied at an agency's discretion, sometime is the 50-

odd years of the FTC's existence, or somewhere in the galaxy of agencies comprising the administrative universe, some case would have established support for the proposition urged. The absence of a single judicial determination that recall may be ordered without express statutory authority is a gaping void which is not filled by general bromides on administrative discretion or the specious analogy to corrective advertising.

A. Discretion In Fashioning Appropriate Cease and Desist Orders Does Not Give The Commission Authority To Formulate The Remedy of Recall.

Enforcement Counsel has cited at least nine cases for the unchallenged proposition that "the Federal Trade Commission has consistently been given great latitude in formulating cease and desist orders under the Federal Trade Commission Act." (Ans. Br. at 6-8.) It is true that the Supreme Court on several occasions has reaffirmed that the breadth and scope of a Commission cease and desist order are matters involving Commission expertise and requiring a large measure of discretion./4/ An expansive view of remedial discretion does not, however, mean an expanded remedial jurisdiction. It is most significant that in all

/4/ E.g., Atlantic Refg. Co. v. FTC, 381 U.S. 357 (1965); FTC v. Colgate-Palmolive Co., 380 U.S. 374, 392 (1965); FTC v. Mandel Bros., Inc., 359 U.S. 385, 392-93 (1959); FTC v. National Lead Co., 352 U.S. 419, 428-29 (1957).

such cases, administrative discretion has been given latitude only in the context of the statutorily specified remedy, the cease and desist order. In no case did the Supreme Court sanction the view that the Commission may invoke any remedial power other than cease and desist.

Furthermore, while acknowledging the FTC's flexibility to fashion a cease and desist order to conform to the particular facts of the case, the Court has, at the same time, stressed the limited nature of a cease and desist order. For example, in FTC v. Ruberoid Co., 343 U.S. 470 (1952), partially quoted by Enforcement Counsel (Ans. Br. at 7), the Court stated, immediately prior to the partial quote, the following principle:

> Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future. Congress placed the primary responsibility for fashioning such orders upon the Commission . . . (Id. at 473; emphasis added.)

The prospective/prohibitory nature of Commission cease and desist orders is an essential element of Commission remedial jurisdiction./5/

/5/ On several occasions, Enforcement Counsel in its brief makes reference to a "cease and desist order including full recall" (e.g., Ans. Br. at 5, 18). This terminology reflects a basic misunderstanding of the FTCA. A cease and desist order and a recall are entirely different remedies. The cease and desist order, which is authorized by the FTCA to be used in FFA cases, 15 U.S.C. §1194, is prospective and prohibitory only; it is an administrative injunction, with the sole function being "to prevent illegal practices in the future." FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952). A recall order,

In the only case where the FTC ordered restitution as a remedy, the Court of Appeals reversed. Heater v. FTC, 503 F.2d 321 (9th Cir., 1974). Enforcement Counsel attempts to circumvent the teachings of Heater by suggesting that replacement or refund for recalled carpet is "not intended" to compensate individual purchasers of the carpet. Whether intended or not, however, the replacement or refund sought here would necessarily have this effect. Moreover, such remedies would in fact over-compensate purchasers./6/ It would be an economic windfall to carpet owners and a coextensive penalty to Barrett if Barrett were compelled to offer new carpet for old, or make a full refund of the purchase price of sharply depreciated goods./7/

/5/ continued - no where authorized by the FFA or FTCA, is retrospective and mandatory; it is an administrative order of rescission and restitution, with the sole function of undoing what was done in the past and providing individual relief. The suggestion that a cease and desist order might contain recall provisions is a self-contradiction belying a fundamental misconception of the issues.

/6/ See Respondents' Proposed Findings of Fact and Conclusions, April 2, 1976, p. 109.

/7/ Compare, 15 U.S.C. §2064(d)(3), limiting refund on recall of "substantial product hazards" to the depreciated value of the item recalled. A remedy which would be inappropriate under the CPSA, 15 U.S.C. §2064(d)(3), is all the more inappropriate under the FTCA, 15 U.S.C. §45. For carpets which fail to comply with DOC FF 1-70 do not involve a substantial product hazard, as Enforcement Counsel concedes in its rejection of a suggestion by Judge Pfeiffer that a §30(d) procedure be initiated to enforce carpet flammability under the CPSA instead of under the FFA. See Northwick Mills, Inc., CPSC Dkt. 76-6. (Order granting partial summary judgment, November 9, 1976) and Enforcement Counsel's Petition for Review at p. 15 (filed December 1, 1976).

Indeed, the argument for restitution in Heater was stronger than in the present case. Under the Commission's remedial scheme in Heater, consumers who had been defrauded would only get their money back and not be given a windfall. Furthermore, the remedy of rescission of private contractual agreements is, at least, a traditionally appropriate remedy for the type of intentional fraud perpetrated in Heater. Nevertheless, the U.S. Court of Appeals for the Ninth Circuit rejected such a claim of authority. By contrast, the facts in Barrett established that any such remedy here would be entirely inappropriate. (Init. dec. at 18, 20, 22-24.) Finally, Enforcement Counsel suggests that the past violation (introduction into commerce of noncomplying carpet) is of a continuing nature so long as the carpet is not recalled. (Ans. Br. at 14.) It should be noted that the FTC made the same argument in Heater, urging that the fraudulent practice was a continuing violation so long as the fradulently obtained money was not refunded. The Court made short shrift of that argument, since the effect of the FTC order was to impose an affirmative remedy for past acts, whereas the statute permits only a prohibitory remedy to prevent future practices.

Enforcement Counsel's brief cites three cases for the proposition that the FTCA permits affirmative orders beyond the scope of a cease and desist order (Ans. Br. at 9). The first, L.G. Balfour Co. v. FTC, 442 F.2d 1 (7th Cir., 1971), affirmed a Commission divestiture order in a

monopolization case brought under §5 of the FTCA. That decision, however, overlooked controlling Supreme Court authority that the FTC has no authority to order divestiture in a §5 case. FTC v. Eastman Kodak, 274 U.S. 619 (1927); United States v. Philadelphia National Bank, 374 U.S. 321, 339-40, n. 17 (1963). The precedential value of the Balfour case is therefore dubious.

The second decision cited by Enforcement Counsel is Charles Pfizer & Co., Inc. v. FTC, 401 F.2d 574 (6th Cir., 1968), cert. denied, 394 U.S. 920 (1969). While that decision touches only briefly on the question of FTC remedial authority, an earlier decision in the same litigation, American Cyanamid v. FTC, 363 F.2d 757 (6th Cir., 1966), contained dictum to the effect that an order prohibiting the holders of fradulently obtained patents from refusing to grant reasonable royalty licenses was permissible, while rejecting the FTC's contention that it could order compulsory licensing without payment of reasonable royalties. (363 F.2d at 772.) Nothing in that case suggests that the Commission has the authority to issue orders beyond the prospective prevention of an unlawful practice through the use of a cease and desist order.

The third case, Luria Bros. & Co., Inc. v. FTC, 389 F.2d 847 (3rd Cir.), cert. denied, 393 U.S. 320 (1968), is not on point. There the Court of Appeals expressly noted: "We do not view the order as an affirmative command which seeks to regulate the conduct of business. It calls

for the petitioning mills to cease and desist from purchasing more than 50 percent of their annual scrap requirements for their respective plants from Luria." (Id. at 863, emphasis added.) This case hardly stands as an invitation to issue affirmative and compensatory orders such as the recall and refund sought from Barrett.

Upon analysis, none of the cases cited by Enforcement Counsel support an order of recall and restitution. When presented with the same arguments and case citations in the case of Northwick Mills, Inc., CPSC Dkt. No. 76-6, the Presiding Officer correctly noted that the Heater case stated the applicable law: the FTC Act provides no authority for an order requiring restitution for individuals adversely affected by unfair acts and practices. What is even more compelling in the instant case is the unrefuted evidence, discussed in part III, infra, that purchasers of Paradise Valley (foam) carpet have not been adversely affected.

B. Corrective Advertising Is In No Way Analogous To Recall and Restitution.

Devoid of authority for its claim of recall powers, Enforcement Counsel attempts to construct a theory relying on a line of FTC decisions which have been generally called "corrective advertising" cases. (Ans. Br. at 9-11.) Each of these cases involves a substantial advertising campaign, promoting a consumer product on the basis of false and misleading representations. Upon finding that the misrepresentations will continue to influence purchases in the future, to the detriment of the

public interest and competition, the FTC enters a cease and desist order prohibiting not only repetition of the misleading advertising but also any future advertising which omits a prescribed disclaimer of the previous misleading representations.

Enforcement Counsel's characterization of "corrective advertising" cases as evidence of the FTC's authority to order affirmative acts is misguided. Corrective advertising is not mandatory. A corrective advertising order prohibits future advertising without the prescribed message, but the respondent may comply by not advertising at all. The theory apparently is that future advertising - even without affirmative misrepresentations - tends to reinforce the prior misleading statements. See generally, Note, "Corrective Advertising" Orders of the Federal Trade Commission, 85 Harv. L. Rev. 477 (1971). Since "false advertising" is defined in the FTCA to include the failure to reveal material facts without which the advertising is misleading, FTCA, §15(a)(1), 15 U.S.C. §55(a)(1), new advertising without the prescribed message would contravene the statutory standard. As the FTC pointed out in its recent Warner Lambert decision, cited by Enforcement Counsel: "the continued sale of a product under false pretense is itself a violation of the FTC Act, which, in the case of lingering false beliefs created by discontinued advertisements, can be remedied only by dispelling the false belief." (1976 CCH Trade Reg. Rep., ¶21,066 at 20,935.)

The FTC has shown an awareness of the difference between a corrective advertising order and the kind of affirmative restitution order struck down in Heater. See Warner-Lambert at 20,935. Corrective advertising does not attempt to rescind past sales, refund money expended, or give relief to individual purchasers. Ordering those actions - which are at the heart of the requested recall order - was held in Heater to be beyond the jurisdiction of the FTC.

It may be belaboring the obvious to point out that Barrett has not engaged in the type of advertising campaign which has typified the corrective advertising cases. Nor, of course, has the FTC ever asserted the authority to recall products sold pursuant to false or misleading advertising. In a word, corrective advertising has nothing to do with recall. The authority for corrective advertising - the prohibition of deceptively incomplete advertising - is found in the FTCA; the authority to order recall and restitution, while found in many other Acts of Congress, is signally absent from the FTCA.

C. Neither The Decisions Nor the Policy of This Commission Establish Authority to Order Recall In This Case.

In urging the Commission to assert recall powers despite the absence of statutory authority, Enforcement Counsel relies upon this Commission's policy of "vigorous" enforcement to protect the public from hazards caused by "dangerously flammable products." (Ans. Br. at 14.) This commendable

policy, however, has no bearing on the issues at hand./8/ In the first place, on the unrefuted facts of record, Barrett carpet which failed the pill test is not "dangerously flammable." (Init. dec. at 18, 20, 22-24.) In any event, an Agency policy statement cannot supply lacking legal authority. Quite obviously, it is the remedies of criminal prosecution, injunction, seizure, and the cease and desist order (15 U.S.C. §1194(b), 1195(a), 1195(b), 1196) to which the Commission refers with its reference to "vigorous" enforcement utilizing the "full range of enforcement procedures under the act." Enforcement Policy, 38 F.R. 24923. Why the enforcement staff has chosen instead to channel its vigor into seeking an unauthorized, drastic remedy to impose in cases of de minimis violation and nonexistent hazard is an issue beyond the scope of this brief but, we suggest, not unworthy of consideration by the Commission.

Enforcement Counsel further submits that its Notices of Enforcement in this and similar cases, insofar as they seek recall, reflect Commission policy to effectuate full consumer recall (Ans. Br. at p. 14.) Surely Enforcement Counsel does not mean to suggest that this Commission

/8/ How this reference to "vigorous enforcement" can be construed as Commission authorization for the staff to pursue extreme and novel remedies is a source of considerable puzzlement. For the FTC Enforcement Policy, which the referenced CPSC Policy replaced, also asserted that the FFA was to be enforced "vigorously, effectively, and without compromise." 36 F.R. 21554.

prejudged the issue of the propriety of consumer recall even before any evidence was taken. And for Enforcement Counsel to urge that its request for recall in an initial pleading somehow provides the legal authority for imposing such an order surely sets a new standard in the art of boot-strapping.

Finally, Enforcement Counsel relies on two prior decisions of this Commission to urge that recall has already been found to be a necessary remedy which may be considered inherent in the Commission's powers. In re Charles Castro, CPSC Dkt. 75-2, involved the distribution of mattresses not complying with the FF 4-72 flammability standard. The Order on Initial Decision gave the manufacturer the option of recalling the mattresses, with full refund or replacement, or supplying labels. Suffice it to say that everyone connected with that case knew full well that there would be no recall and that labels would be attached; indeed, this Commission affirmed the initial decision on January 29, 1976, after respondents' counsel gave written notice by letter of October 3, 1975, that labeling would be the only remedy to arise out of that action. That this Commission found labeling to be a sufficient remedy is, in fact, a rejection of Enforcement Counsel's position that recall is absolutely necessary to effectuate the FFA./9/

/9/ Significantly, Enforcement Counsel's construction of In re Charles Castro, has been pointedly repudiated by the Administrative Law Judge who tried and decided that case. See Order Granting Motion for Partial Summary Judgment, Northwick Mills, Inc., CPSC Dkt. No. 76-6, pps. 9-10, November 9, 1976.

Enforcement Counsel relies upon, and simultaneously attempts to distinguish, Congoleum Industries, Inc., CPSC Dkt. 75-3. No matter how Enforcement Counsel attempts to reconstitute the holding of that case, the fact remains that recall from consumers was denied because of legal as well as practical problems./10/ While the issue of the Commission's authority to order recall from the manufacturer's customers is pending appeal in the Ninth Circuit, that issue is not involved in Barrett. Here, all such carpet was voluntarily recalled before the Notice of Enforcement issued. See Rev. Jt. Stip., No.'s 26, 29, Tr. 711-714, 735. On the matter of recall of carpet from the floor, Congoleum stands as the only litigated Commission decision - and it stands four-square opposed to the position of Enforcement Counsel. Congoleum, Init. dec., p. 23; Northwick Mills, Inc., Order Granting Motion, p. 10; Barrett, App. Br. 26-29.

Enforcement Counsel contends that the instant case is factually distinguishable from Congoleum and that these alleged distinctions dictate a fundamental change in the nature of the appropriate remedy (Ans. Br. at 17-18). On the contrary, an examination of the record in both cases leads unavoidably to the conclusion that the cases are vir-

/10/ Congoleum Industries, Inc., CPSC Dkt. No. 75-3, Init. dec., p. 23; Northwick Mills, Inc., CPSC Dkt. No. 76-6, Order Granting Motion for Partial Summary Judgment, Init. dec., p. 9-10.

tually identical with respect to test data/11/, product available for remedial action,/12/ and the appropriateness of recall from consumers./13/ Enforcement Counsel's attempts to distinguish Congoleum also conveniently ignore the fact that in Barrett the product was proven not to present "an unreasonable risk of fire or injury to any consumer in his home." (Init. dec. at 24.)

The holding of Congoleum rejecting recall of installed carpet from ultimate purchasers has been reaffirmed in two recent decisions which Enforcement Counsel has neglected to mention, Westland Carpet Mills, Inc., CPSC Dkt. 75-21, discussed in Respondents' Appeal Brief, and Northwick Mills, Inc., CPSC Dkt. 76-6, Order Granting Partial Summary Judgment for Respondent, Nov. 9, 1976. The decision in Northwick is a particularly well-reasoned exposition on the issue of recall authority and a refutation of the same arguments made before the Commission in the instant case. After analyzing the authorities on both sides of the question, Judge Pfeiffer concluded:

/11/ Congoleum Industries, Inc., CPSC Dkt. No. 75-3, Rx 68, Rx 76; compare Barrett, Rev. Jt. Stip., No. 33. Tr. 355-357, 1364-65, 1388-89, 1432. See also Reply Brief of Respondent, April 19, 1976, pp. 36-38.

/12/ See Brief for Petitioner, Congoleum Industries, Inc. v. CPSC, 9th Cir., No. 75-3112, pp. 11, 40; Transcript of Oral Argument before the Commissioners, CPSC, May 20, 1975, pp. 40-41.

/13/ Initial Dec., p. 21; Tr. 630, 631, 633, 634-38, 641-42, 689, 1330, 1340, 1465, 1466, 1468, 1469.

> It would strain both imagination and credibility to espouse a legal theory that since 1953 the FTC had inherent power to require respondents to recall, replace or refund the purchase price of flammable fabrics where the FTC Commissioners themselves have declared that they had no such power, where the Congress considered but did not grant such power to the FTC, where at least one Federal Court of Appeals has held that the FTC has no refund power in a fraud case; and finally where the Congress decided to grant specific recall power to enforce the FFA, it granted such to the Federal District Courts, rather than the FTC. (Opinion at 7-8; footnotes omitted.)

There is not much to be added to that analysis: as a matter of law it is absolutely correct./14/ If we could underscore just one word in the above quote, that word would be "credibility." The credibility of this Commission's adjudicative processes is an issue extending beyond the merits of the present action but, we submit again, not unworthy of consideration.

After all is said and done, the basic position of Enforcement Counsel is that it ought to assume the power to order consumer recall because it feels that "recall is the only remedy which will adequately protect the public." (Ans. Br. at 5, 14, 18, etc.) As a matter of fact, the record establishes that no witness took such a position, and several witnesses, including experts, took precisely the opposite position (Tr. 305, 631, 679, 686, 777, 912, 913, 939, 940-954, 954-971, 972-978, 1000-1001, 1036-

/14/ The basis for respondents' views on the legal authority issue were set forth in detail in Respondents' Appeal Brief, pps. 4-30.

1038, 1171, 1441-1443, 1463, 1473). The sponsor of the standard did not contemplate recall (Tr. 1160, 1165, 1181, 1188; App. Br. at 37). The FTC did not conclude this remedy was either necessary or available (Respondents' Proposed Findings of Fact and Conclusions, April 2, 1976, pp. 91-94; Reply Brief of Respondents, April 19, 1976, pp. 35-38). Nor has any evidence ever been put forth, in this or any other proceeding, to establish that the CPSC's failure to order recall of installed carpet in any of the numerous carpet cases disposed of by consent or adjudicated since May 1973, has in any way compromised the public interest./15/ Equally significant is the total absence of any data, such as the Commission's NEISS data, even suggesting that this remedy is necessary to protect the public from carpet which does not comply with DOC FF 1-70. In sum, the idea that recall of installed, noncomplying carpet is a necessity, is a belated creation of the staff of the CPSC's Bureau of Compliance and no one else (Tr. 614-616, 835-837).

Even if the facts were otherwise, however, it is fundamental that a perceived need for administrative authority not granted by statute is no justification for exercising such powers. In FTC v. Ruberoid Co., 343

/15/ These cases are set forth in Respondents' Proposed Findings of Fact and Conclusions, April 2, 1976, p. 92, n. 22.

U.S. 470 (1952), the FTC was faced with the same problem, a lack of statutory authority to take actions it deemed necessary for enforcement of the Clayton Act. The Court answered: "Effective enforcement of the Clayton Act by the Commission may be handicapped by the present provisions, but that is a question of policy for Congress." (343 U.S. at 479.)

## III. SUBSTANTIAL EVIDENCE SUPPORTS THE PRESIDING OFFICER'S FINDING THAT RECALL IN THIS CASE WOULD BE UNNECESSARY AND INAPPROPRIATE

Faced with a record establishing isolated non-compliance of the DOC FF 1-70 standard, and having traced the cause to a non-recurring production irregularity at the hands of an independent non-party finisher, the Presiding Officer was then required to exercise his judgment in the formulation of an appropriate order. In reaching his conclusion on the appropriateness of the remedy requested by Enforcement Counsel, Judge Pfeiffer considered the critical threshold question: Does Paradise Valley (foam) carpet which fails the standard present an unreasonable risk of the occurrence of fire to the consumer in his home? The unrebutted evidence, primarily presented by Dr. Bruce LeBlanc, a stipulated expert on textile and carpet flammability, established conclusively that such a risk did not exist. The Presiding Officer accordingly found:

> The LeBlanc results establishing substantial equality between the flammability of failing and passing Paradise Valley samples under home-like ignition conditions stand virtually unchallenged by cross-examination or rebuttal. It follows that, on this record, no sound

> finding can be made that Paradise Valley nylon foam back carpet produced by these Respondents in 1972-3 represents an unreasonable risk of fire or injury to any consumer in his home. Consequently, no order to recall Paradise Valley foam back carpet from the home would be appropriate. (Init.dec. at 24.)

Enforcement Counsel attacks the Presiding Officer's decision by arguing that he should never have inquired as to whether failing samples of Paradise Valley present an unreasonable risk, and, further, after finding no such risk existed, should have ignored the evidence and ordered recall anyway.

The suggestion that this Commission should exclude or ignore evidence relating to hazard in FFA cases stands in marked contrast to the provisions of §15 of the CPSA, 15 U.S.C. §2064(d). Under that provision, recall can never be ordered unless there has been an affirmative finding by the Commission, after notice and hearing, "that a product distributed in commerce presents a substantial product hazard." It is utterly bizarre for Enforcement Counsel to come before this Commission and urge that, where the product in question is carpet, recall should be ordered despite an affirmative showing that the product presents no unreasonable risk.

A. The Evidence Of Lack Of Hazard Was Admitted Without Objection For The Purpose Of Determining The Appropriate Remedy

It comes as no small surprise to hear Enforcement Counsel claim that the admission of the LeBlanc tests and expert testimony was error (Ans.

Br. at 43). A few minutes into Dr. LeBlanc's testimony, Enforcement Counsel inquired as to the import of the testimony and the following colloquy ensued:

> MR. GIMER: Well, Your Honor, I think it is quite clear that the doctor is going to testify as to a hazard analysis that he has performed on both passing and failing samples of Paradise Valley foam carpet and the comparisons between those research efforts and his own conclusions as to the actual hazard posed by the carpet in actual use.
>
> MR. DOUGLASS: I am assuming this testimony is offered for the purpose of guidance of His Honor in selecting the appropriate remedy?
>
> MR. GIMER: That is correct.
>
> MR. DOUGLASS: I have no objection, then. (Tr. 918.)

Enforcement Counsel reiterated its position on the revelance of the LeBlanc testimony at the close of trial, while announcing it had no rebuttal of the LeBlanc tests:

> JUDGE PFEIFFER: None? Do I take it that you accept the validity of the LeBlanc tests, and you are not going to offer any rebuttal as to those?
>
> MR. DOUGLASS: The latter of Your Honor's two propositions is proved. The former, the evidence will speak for itself. Your Honor can give it the weight to which Your Honor feels it is entitled. (Tr. 1510.)

The attack on the relevance of the evidence is an afterthought, with no basis in fact or law.

Equally groundless is Enforcement Counsel's post hoc contention that

Dr. LeBlanc is not an expert on carpet flammability (Ans. Br. at 42, n.5). That, too, was stipulated (Tr. 904) and, indeed, asserted by Enforcement Counsel as the basis for cross-examination by means of hypothetical questions (Tr. 1019). Judge Pfeiffer properly found Dr. LeBlanc to be an expert on carpet flammability (Init. dec. at 18). As a reading of Dr. LeBlanc's testimony reveals, he and his staff have conducted hundreds of flammability tests on carpet (pill tests as well as real-life tests) and Dr. LeBlanc has a thorough working knowledge in the area of carpet flammability.

Even if Enforcement Counsel had objected to the testimony of Dr. LeBlanc, there would be no cause to exclude it. The Presiding Officer was being asked by Enforcement Counsel to impose an enormously expensive and disruptive remedy, fraught with practical and legal deficiencies. Is Enforcement Counsel seriously suggesting that the Administrative Law Judge should make such a decision without knowing the nature and gravity of the hazard - if any - that he is supposed to remedy? How ironic! After devoting page after page of its brief extolling the virtues of administrative discretion in formulating a remedy, Enforcement Counsel now submits that such discretion should be exercised without the benefit of knowing the nature of the consequences of the violation to be remedied. As a matter of law, the exclusion of evidence as urged by Enforcement Counsel runs afoul of traditional concepts of due process and the Admin-

istrative Procedure Act. 5 U.S.C. §554; Patagonia Corp. v. Board of Governors of Federal Reserve System, 517 F.2d 803 (9th Cir. 1975).

Enforcement Counsel seeks to exclude consideration of the LeBlanc testimony by mischaracterizing it as a "collateral attack" on the pill test prescribed in DOC FF 1-70 (Ans. Br. at 39-42). In point of fact, however, no such collateral attack was made./16/ No contention was made that Barrett did not technically violate the Flammable Fabrics Act when carpet it introduced into commerce was found to have failed the pill test. Judge Pfeiffer did not hesitate to find a violation based solely on pill test failures. As was stated repeatedly, the hazard analysis was directed at and relevant to the issue of remedy, not the issue of violation. (Init. dec. at 18; Tr. 1009.)

Indeed, Dr. LeBlanc noted that the pill test was a useful test for manufacturers to apply in assessing product performance at the mill (Tr. 908, 962). What the pill test does not adequately answer, however, is whether the failing carpet presents an unreasonable risk of fire in the home such that recall from ultimate purchasers would be appropriate (Tr. 908, 910, 967-68, 1000-1001), assuming arguendo it is legally authorized. To ascertain that, LeBlanc Research Corporation conducted an

/16/ Although Respondents made no attempt to do so, it is far from clear that a challenge to the continuing validity of the pill test could not have been made. See United States v. Lord-Mott Co., 57 F.Supp. 128, 133-34 (D.Md. 1974).

extensive series of tests under conditions simulating what would actually occur in real-life household situations. It is that evidence, discussed below, which formed the basis for Judge Pfeiffer's formulation of the remedy in this case.

There is a good reason why no one presented a similar analysis, at the time the standard was formulated, showing that a failure of the pill test did not involve a risk sufficient to justify recall. As set out in our Appeal Brief at pages 36-37, at the time the pill test was adopted, no one gave a thought to recall since that remedy was neither authorized nor contemplated (Tr. 1160, 1165, 1181, 1188). We contend that recall still is not authorized, but so long as recall of carpet is being sought, the Administrative Law Judge has every right to know whether the violative carpet presents a risk justifying such a drastic remedy.

B. The LeBlanc Test Results And Testimony Are Clear And Convincing Evidence Of The Absence Of Hazard.

As found by the Presiding Officer, the LeBlanc test results "stand virtually unchallenged by cross-examination or rebuttal" (Init. Dec. at 24.) Displaying the same misdirected sense of timing that undercuts its challenge to the relevance of the LeBlanc testimony, Enforcement Counsel has now decided to make a full-scale attack on the probative value of the tests (Ans. Br. at 46-48). A review of the LeBlanc testimony (Tr. 900-1064) shows that the attack is just as unfounded as it is untimely.

Starting with the observation that a urine test pill burning a few inches on a 9-inch square of carpet was not truly reflective of real-

life hazards, LeBlanc Research set out to run flammability tests in an environment simulating actual household conditions. Thus, LeBlanc used as ignition sources items which might start fires in actual life: wooden matches, cigars, cigarettes, cigarette lighters, burning cooking oil, hot coals and wastebaskets of burning newspaper.

Enforcement Counsel strays far from the record in attempting to discredit the test methods and conditions utilized by the scientists at LeBlanc Research Corporation to assess the hazard potential of Paradise Valley (foam) in real-life fire conditions. The record speaks for itself in amply justifying the procedures and conditions employed: test sample selection (Tr. 916-918); ignition source selection (Tr. 920, 929, 1007); justification for sample size (Tr. 920-922); choice of installation conditions (Tr. 923, 985, 1012, 1013); condition of pile face (Tr. 924-927, 1013, 1014); test objectives (Tr. 938, 940, 968); laboratory conditions (Tr. 943, 999, 1000, 1028); relationship to home conditions (Tr. 920, 925, 930, 938, 986); and bases for judgments rendered (Tr. 968, 1037, 1038, 1050-51, 1054). Inasmuch as Enforcement Counsel declined to present expert testimony of its own (Tr. 1063), never challenged the LeBlanc tests on cross-examination or rebuttal (Init. dec. at 24) and never even objected to their use (Tr. 918, 1510), this last-gasp assault on the expert evidence in the case merits no attention.

Videotapes of the tests were presented at the hearing, and the

results of all the experiments performed by LeBlanc Research Corporation were tabulated and put into evidence. The most significant result of the tests was that, for all intents and purposes, Paradise Valley (foam) carpet which failed the pill test performed no worse than carpet which passed. (Tr. 1000.) In summing up, Dr. LeBlanc stated:

> My conclusion from these experiments is that when these passing and failing carpets were subjected to the same extreme ignition sources, the two types of carpet performed the same within experimental error and under the conditions that we subjected these carpets, neither would constitute an unreasonable flammability hazard. And the pill test is a fair test for manufacturers to use in evaluating product quality from the flammability standpoint but it is completely inappropriate to conclude that simply because a carpet in the marketplace fails this test, it is unreasonably hazardous. (Tr. 1000-1001; emphasis added.) See also, Tr. 1033.

Specifically, Dr. LeBlanc noted that nylon carpet, such as Paradise Valley (foam), is very difficult to ignite and that studies show that carpet is generally the last item to ignite in a household fire. (Tr. 907.) Paradise Valley (foam) carpet, whether from a passing or a failing roll, did not ignite when exposed to burning cigars (Tr. 941), cigarettes (Tr. 941), or hot coals (Tr. 997-98). Even when it does ignite, the flame spreads slowly (Tr. 912), the flame height is an inch or two (Tr. 915), and it is very easy to extinguish (Tr. 913, 991). For all ignition sources except the flaming wastebasket, an ignition source several orders of magnitude greater than that simulated by the pill test (Tr. 906, 920, 929) the fires set on Paradise Valley (foam) carpet self-extinguished (Tr. 912, 1061-62).

In the light of the extensive expert testimony, we cannot comprehend Enforcement Counsel's claim that the findings of Judge Pfeiffer on the absence of unreasonable risk to the consumer are unsupported by substantial evidence. Indeed, the findings represent expert evidence that was never disputed and would not now be disputed had the Commission not noted an appeal on its own initiative. For example, the finding that "[t]hese tests clearly demonstrated that when subjected to a number of ordinary home ignition sources, both failing and passing carpet samples reacted with approximately the same characteristics" (Init. dec.at 18) is merely an accurate recapitulation of the LeBlanc test results and testimony (e.g., Tr. 1000-1001).

Enforcement Counsel's attack on Dr. LeBlanc and his test results at this stage of the proceedings deserve little credence, where, as Judge Pfeiffer noted, "Enforcement Counsel conducted only a minimum of cross-examination of Dr. LeBlanc, none of which diminished the credibility of his presentation." (Init. dec. at 19.) The credibility of witnesses is a matter which the trial judge has a unique position to assess, and great weight should be attached to his findings of credibility. We submit that a reading of the LeBlanc testimony (Tr. 900, et seq.) can leave no doubt as to the correctness of Judge Pfeiffer's findings or the substantiality of the evidence supporting them, and his rejection of consumer recall.

C. There Is No Basis For Presuming That Failing Carpet Is Dangerous Per Se

To rebut respondents' showing that Paradise Valley carpet presents

no unreasonable risk in real-life situations, Enforcement Counsel showed absolutely nothing, even though the ALJ offered to adjourn the hearing to permit the opportunity to prepare rebuttal evidence (Init. dec., p. 19; Tr. 1063, 1510). Despite the fact that the only record evidence on hazard shows the absence of an unreasonable risk, Enforcement Counsel persists in referring to "dangerously flammable" carpet. This is an outright distortion of the record, no doubt intended to prejudice respondents.

Rather than deal with the facts of the case, Enforcement Counsel urges this Commission to presume that Paradise Valley carpet is dangerous. The suggested basis for presuming facts which have been disproved by the evidence is Enforcement Counsel's inventive interpretation of the carpet standard, DOC FF 1-70. Enforcement Counsel refers repeatedly to a determination by the Department of Commerce that carpet which does not conform to the standard is "per se dangerous." (Ans. Br. at 34, 37, 42, 44.) No findings are referenced. No testimony is quoted. No statutes or cases are cited. The reason is simple enough: there was no such determination. There was no such evidence presented. And there are no cases to cite for proposition. Enforcement Counsel has merely created an expression -- "per se dangerous" -- and attributed it to the Department of Commerce.

The fallacy in Enforcement Counsel's contention is comprehensively dealt with in Respondents' Appeal Brief at pages 30-43. Since Enforce-

ment Counsel has presented nothing in response except an alleged "determination" concocted out of thin air, there is no need to repeat respondents' points and authorities.

Determinations of hazard and unreasonable risk are not simple. Rarely is the question black and white, and that is the vice of the per se rule which Enforcement Counsel urges. This point was brought out forcefully by Commissioner Kushner in hearings on the CPSC Improvements Act:

> Only when looking at the specific hazards, do considerations of the technical feasibility and of the likely cost of remedies make sense. One should not confuse hazard and risk. A hazard is a feature of product. Risk refers to the probability of injury. Thus, a lake on a golf course is a hazard. But how much risk it presents depends on factors such as where it is and who happens to be playing. (Hearings before the Subcommittee for Consumers of the Senate Committee on Commerce S.644 and S.1000, Feb. 27, 1975, p. 209.)

On this record, there is not a scintilla of evidence to support Enforcement Counsel's presumption that any carpet which fails that pill test is automatically so dangerous that only recall can protect the public. With respect to the specific product in issue, Judge Pfeiffer correctly based his selection of remedy on the reliable, credible and unrebutted evidence that Paradise Valley (foam) carpet presents no unreasonable risk.

## IV. ENFORCEMENT COUNSEL'S STATEMENT OF THE CASE IS PATENTLY INCORRECT

Throughout its bief, Enforcement Counsel has displayed a disturbing proclivity to play fast and loose with the facts. Whether stemming from excessive zeal or otherwise, distortion and misstatement characterize major portions of the brief. Characteristic too, is the failure to reference the record upon which this case must be ultimately decided.

It would take a reply brief of indecent length to correct each of the misstatements in the Answering Brief. Already we have touched upon some of the major distortions offered by Enforcement Counsel: the unfounded allegation that the Department of Commerce determined that pill test failures mean the carpet is per se dangerous (supra, pp. 29-31); the unsupported attacks on the LeBlanc evidence (supra, pp. 26-29); the misstatement of the Congoleum case (supra, pp. 17-18); and the pervasive mistruth in contending that Paradise Valley (foam) is dangerously flammable (supra, pp. 2-3, 21-31).

There are many more areas where Enforcement Counsel's cavalier disregard for the factual record has led to the creation of false impressions. We would like to comment briefly on a few of these at this point, with citations sufficient to permit this Commission to ascertain the true state of the record.

(1) The statistical evidence.

Enforcement Counsel contends that expert testimony established

that 46% of Paradise Valley (foam) produced would fail the flammability test (Ans. Br. at 7, 18), and that Judge Pfeiffer erred in rejecting this evidence even though the calculations were "unassailable." (Ans. Br. at 26-27.)

In fact, the so-called statistical projection was totally discredited at the trial, in no small part because the statistical expert was not informed of the serious infirmities in the data being supplied for his use in making the projections.

Enforcement Counsel's witness admitted that the analysis contained an over-representation of material from known "bad" days (Tr. 357) which biased the projection (Tr. 355); that certain production considered complying was characterized as noncomplying for purpose of the analysis (Tr. 372); that whenever possible, the worse possible assumption was made to paint the worst case (Tr. 357, 358, 360, 386); and that changes in these assumptions would significantly affect the projection (Tr. 363, 374, 389, 390, 1477, 609, 341, 1356-1360, 1475). Additionally, the statistical projection was discredited for lack of randomness, which all the experts testified is an essential prerequisite to the validity of projections (Tr. 353, 392, 340, 1352, 1364-65, 1432, 1444, 1445, 1446, 1448, 1455, 1459, 1461, 1475, 1380-81, 1388-89).

Enforcement Counsel, claiming an inability to determine the ALJ's objections to their "statistical evidence", charges that the ALJ's

actions would result in a virtual elimination of the use of statistical projections in future cases. (Ans. Br. at 26, 29.) Conceding that Judge Pfeiffer tends to take a critical view of statistical evidence, his objections to the Government's evidence in this case were not left to surmise. (Tr. 1351, 1367, 1375, 1392; Init. dec. at 15.) His well-founded rejection of Enforcement Counsel's contrived figures does not connote a virtual ban on the use of statistics in flammability cases. But if it dissuades the kind of statistical legerdemain offered by Enforcement Counsel in this case, it will be no loss./17/

(2) The cause of the test failures.

Enforcement Counsel states that because the Administrative Law Judge was unable to pinpoint the "exact cause" of maldistribution of the alumina trihydrate filler in certain rolls of Paradise Valley (foam), Judge Pfeiffer erred in accepting the Georgia Tech conclusion that the maldistribution probably caused the test failures and the opinion of other experts that the maldistribution problem was limited to two finishing dates (Ans. Br. at 23). Astonishingly, there is not a single reference to the transcript in Enforcement Counsel's two-and-one-half page argument on this thesis. The reason: total lack of evidence to contradict that offered by Respondents.

/17/ No criticism of Mr. Ralph Madison, the Commission's statistician who appeared as a witness, is intended. Our criticism is instead of the input being provided by the Bureau of Compliance, and of the type of analysis Mr. Madison is being forced to render.

The record unequivocally establishes that the cause of the noncompliance was lack of uniformity in the distribution of the fire retarding alumina trihydrate filler across the backing of the carpet (Rev. Jt. Stip. ¶43; Tr. 352, 760, 761, 775, 1106, 1454); that the likely causes of the maldistribution of ATH were limited in number (Tr. 744, 746, 747-48, 753, 767, 768, 777, 789, 791, 792-5, 806, 807, 812, 1101); and that it is unlikely the causes of instability in the Masterpiece Finishers, Inc., processes were normal (Tr. 584), obtained for long (Tr. 1350-51), or occurred more than rarely (Tr. 1365, 1367, 1448, 792-795). Under the circumstances, Judge Pfeiffer's conclusion that the "failures were the result of production defects on particular days" (July 18, 1973 and December 10, 1973) has ample support in the record. (Init. dec. at 15-16.) Enforcment Counsel's contrary theory is derived wholly out of thin air.

(3) Lot determination.

Enforcement Counsel asserts that "it is the policy of the Consumer Product Safety Commission to characterize the entire style from which a failing sample is obtained as "failing" carpet; that this policy was adhered to in Congoleum; and that no evidence to rebut that view was offered by Respondents (Ans. Br. at 29). As was amply documented in Respondents' Appeal Brief, the alleged policy is that of the staff, not the Commission (App. Br., pps. 51-55; Tr. 867, 1173, 1174, 1317).

This view of the "lot" concept specified in the standard was totally refuted on the record, and not adhered to in Congoleum (Init. dec. p. 16; App. Br. at 51-54; Tr. 49, 867, 1173, 1174, 1184, 1239, 1317; see also transcript in Congoleum Industries, Inc., CPSC Dkt. No. 75-3, Tr. 247, 274, 839, 872, 1419, 1448-49, 1463, 1469, 1477, 1527). Enforcement Counsel implies that the Commission in Congoleum Industries, Inc., ordered broad-based notification of ultimate consumers of the "flammable nature of the carpet" (Ans. Br. at 17) and that the Commission "mandated recall of available carpet from the entire style . . ." (Id. at 21.) On the contrary, under the terms of the Congoleum order only rolls which were available for testing and which failed such tests were "deemed flammable" and subject to recall from distributors or notice. (Congoleum, Init. dec. p. 25; Order, ¶III.) The respondent in that case was not ordered to recall the entire style, but to "obtain a sample" from available rolls (Congoleum, Init. dec., p. 26; Order, ¶II).

Finally, the record evidence in the instant case establishes that the "lot" should be either a finishing date or roll (Init. dec. at 16; Tr. 868, 1234, 1394, 1462, 1482). There is no evidence in the record that "lot" should be defined otherwise. Enforcement Counsel wrongly implies that witness Sidney Greenfeld, the draftsman of the standard, condoned the Bureau of Compliance practice of defining "lot" under the carpet flammability standard as being equivalent to an entire style (Ans.

Br. at 21). On the contrary, Mr. Greenfeld, and other experts expressly repudiated this practice (Tr. 49, 1171, 1172, 1173, 1177, 1178, 1184, 1239, 1394, 1482, 1483-94).

(4) Premarket and Pre-enforcement testing.

Enforcement Counsel attempts to make a major issue of the fact respondents could not establish that they conducted a premarket test on Paradise Valley (foam) prior to its initial production and sale, and on a daily basis thereafter. (Ans. Br. at 25.) What Enforcement Counsel fails to mention, however, is that the Flammable Fabrics Act, as amended, does not require any premarket, much less daily, testing. (Init. dec. at 25; Tr. 532, 883, 1159.)/18/ Furthermore, in the instant case, the evidence established it was respondent's policy to test each style before its introduction (Tr. 528, 530, 536); that Style 222, Paradise Valley, with a jute secondary back, was tested and passed (Tr. 500, 570); that another virtually identical style had been tested and passed (Tr. 541, 543, 544; Rx. 4, 5, 6); that the Paradise Valley (foam) carpet was constructed of fire retardant components (Tr. 505, 546, 596, 678, 511, 512, 513, 516, 549, 550, 555-560); and that an experienced manufacturer can make a judgment as to compliance of a set of specifications without the need for a flammability test (Tr. 976).

/18/ An amendment to the standard to require premarket testing, as part of a sampling plan package which defines noncompliance, lot, and a host of essential concepts, is long overdue. Init. dec., p. 25; 38 F.R. 6212, March 7, 1973.

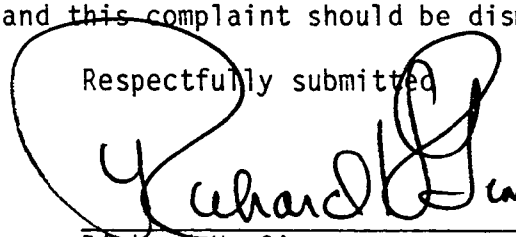
The absurdity of the suggestion that each finishing date should have been tested by Barrett to entitle it to make flammability claims regarding these goods is apparent on the face of the record. The Commission's guarantee regulations, had they been applicable here, would have required only a single test, because of the small yardage of Paradise Valley (foam) produced. That test, if conducted in at the time Paradise Valley (foam) was introduced, would have passed (Tr. 699, 764, 765, 1348-49) and would not have identified the non-complying carpet produced 12 and 18 months later. Daily testing, which Enforcement Counsel now suggests respondent was obligated to conduct, would have necessitated in this instance, 26 tests on 26 finishing dates (Rev. Jt. Stip., ¶¶9, 18), an average of one test every 500 square yards (Tr. 595). Such a program, if mandated, would have been costly, unreasonable, and impracticable (Tr. 593, 594, 648), anticompetitive (Tr. 594, 596), and unprecedented (Tr. 594-596).

Enforcement Counsel further asserts that the absence of preenforcement tests on carpet rolls precludes a respondent from making "any claim regarding the untested carpet." (Ans. Br. at 25.) This is arrant nonsense, directly contrary to the law. Congoleum established that only rolls available for tests and failing such tests are "deemed flammable", a holding totally at odds with Enforcement Counsel's contention that untested carpet is presumptively noncomplying. (Congoleum, Init. dec., p. 26.)

## V. CONCLUSION

Respondents' extensive Appeal Brief dealt fully with each of the issues raised by the Commission in its Order of August 5, 1976, placing this matter on the docket for review. For the reasons stated herein and in Respondents' Appeal Brief, the Commission should adopt the positions urged by respondents, and this complaint should be dismissed.

Respectfully submitted,



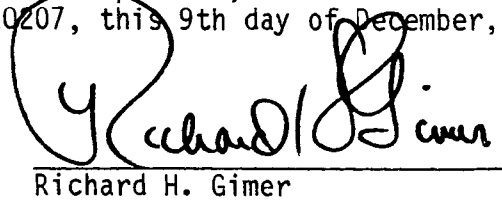
Richard H. Gimer
Richard G. White
BERLINER, MALONEY, GIMER & JAFFE
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Respondents

December 9, 1976

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Respondents was served upon all interested parties by hand delivery to Ronald G. Yelenik, Esq., George J. Miller, Esq., and Alice P. Wegman, Esq., Attorneys, Bureau of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207, this 9th day of December, 1976.



Richard H. Gimer

UNITED STATES OF AMERICA

BEFORE CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation | CPSC Docket No. 75-5 |

PRETRIAL BRIEF

Pursuant to instructions issued by the Administrative Law Judge at the January 6, 1976, prehearing conference in the above captioned matter, respondents hereby submit the names of persons it is presently intended will be called as witnesses, a revised request for production of documents, and a request for stipulation as to certain documents.

I. Proposed Witnesses

At the present time, it is the intention of respondents to call the following individuals as witnesses:

Mr. Roy C. Barrett, President
Barrett Carpet Mills, Inc.
P.O. Box 1943
Dalton, Georgia 30720

Mr. David McMahon, Vice President
Barrett Carpet Mills, Inc.
P.O. Box 1943
Dalton, Georgia 30720

Mr. John Reynolds
Consultant
2615 Selwyn Avenue
Charlotte, North Carolina 28207

Mr. Paul Gottfried
Consultant
9251 Three Oaks Drive
Silver Spring, Maryland 20901

Mr. Sidney Greenfeld
Staff
Consumer Product Safety Commission
Washington, D. C. 20207

Ms. Mary K. Ryan, Director
Bureau of Compliance
Consumer Product Safety Commission
Washington, D. C. 20207

Mr. Edward Finch
Office of General Counsel
Consumer Product Safety Commission
Washington, D. C. 20207

Mr. Melvin Kramer
Trial Attorney
Bureau of Compliance
Consumer Product Safety Commission
Washington, D. C. 20207

It is understood that the following individual will be called as a witness for the plaintiff. If this witness does not testify for the Commission, she will be called as a witness by respondents:

Ms. Elaine Brophy
Consumer Product Safety Commission
Washington, D. C. 20207
(to be called by plaintiff)

Mr. Barrett will testify generally concerning respondent's carpet operations, his functions as President, the carpet manufacturing and distribution process, respondent's testing practices and policies (past and present), the construction, production, and testing of Style 222, and related matters.

Mr. McMahon will testify generally concerning his functions as Vice President, respondent's carpet operations, current testing policies, the actions taken by respondent in response to the facts brought out in the Commission's investigation or Paradise Valley (foam), and related matters.

Mr. John Reynolds and Mr. Paul Gottfried are professional analysts. They will testify generally concerning their analysis of the test data (flammability and product analysis) in the record of this proceeding. These two witnesses will also present testimony concerning the use of probability sampling to determine compliance with the carpet flammability standard and the concept of process averages; application of these principles to certain tests on Paradise Valley (foam); the limitations on projecting the test failures relied upon by the Commission to untested rolls or lots; construction of the standard; quality levels dictated by the standard; the relationship of the sampling procedures employed in this case to the concepts of "representative sampling" and "lots" as contained in the standard; probable cause of the test failures; the nature of the hazard associated with carpet flammability in the context of this case, and related matters.

Ms. Mary K. Ryan, Director, CPSC Bureau of Compliance, will be subpoenaed for the purpose of securing testimony as to the various criterion which have been used by the Bureau of Compliance as the basis for concluding that a violation of the Flammable Fabrics Act has occurred and the extent of the Commissioners' awareness of these various criterion or any of them; whether the Commission staff recognizes the acceptable quality level (AQL) implicit in the carpet flammability standard; the statistical basis for the staff decision to recommend enforcement action in this case; the accuracy of certain representations made to the Commissioners by the BCM as to Barrett's consent order agreement; the characterization of the Order sought as a "standard form order" and evidence of formal Commission sanction of the form of order being sought; the differences in remedies being applied in Flammable Fabrics Act cases and the rationale for these distinctions, and related matters.

Mr. Ed Finch, former Director, CPSC Bureau of Compliance, and former Assistant Director for Textiles and Furs, FTC, will be subpoenaed to testify as to the various criterion which were applied from time to time by the FTC and CPSC in determining whether a Flammable Fabrics Act violation had occurred, and whether enforcement action should be sought; acceptance by the Bureau of the concept that DOC FF 1-70 has an implicit AQL; and application of that concept in determining whether the carpet flammability standard has been met; the Federal Trade Commission policy on the extent of its authority to compel recall of noncomplying carpet, the basis of that policy, and any written evidence thereof; the FTC policy on the necessity of obtaining failing tests on carpet which had been sold in interstate commerce to establish a violation of the Flammable Fabrics Act, as amended; and related matters.

Mr. Melvin Kramer, the CPSC Trial Attorney upon whose recommendation this Notice of Enforcement was brought, will be subpoenaed to testify as to the basis for the sampling procedures employed; the criterion employed in determining to seek a Notice of Enforcement; the circumstances surrounding acquisition of the so-called "Overberg" sample; the propriety, under the standard, of testing the "Overberg" sample; the accuracy of the contents of the memorandum submitted to the Commission which led to issuance of the Notice of Enforcement; and related matters.

Mr. Sidney Greenfeld, former member of the Department of Commerce staff and presently a member of the CPSC staff, a key figure in development of the carpet flammability standard, will be subpoenaed to testify concerning the purpose, functions, and limits of the methenamine pill test; the intent of of the Department of Commerce in promulgating various provisions of the carpet flammability standard; the nature, extent, and severity of the hazards regulated by the standard; and related matters.

## II. Request for Stipulations

Plaintiff is requested to stipulate to the authenticity and admissability of the Flammable Fabrics Act, as amended; the Standards for the Surface Flammability of Carpets and Rugs (DOC FF 1-70); the plaintiff's regulations pertaining to testing for guarantees (16 C.F.R.s302); the Proposed Sampling Plan Amendment to the Carpet Flammability Standard (Federal Register, March 7, 1973); NBSIR 75-697, Consideration in the Use of Sampling Plans for Effecting Compliance with Mandatory Safety Standards (June 1975), by the National Bureau of Standards; and "Sampling Plans -- Need for, Development of, Application to, Compliance" (November 8, 1975), a memorandum prepared by Messrs. Ralph Madison, CPSC Office of Standards Coord. and Appraisal, and Paul Gottfried, CPSC Consultant; Memorandum dated January 1974 from Michael A. Brown, General Counsel, CPSC to the Commissioners, entitled "Congressional sampling plan letter and memorandum; Testimony of Richard Simpson as Deputy Assistant Secretary of Commerce for Science - Technology Standards for the Senate Commerce Committee during hearings on S.3765; Letter from L. James Sharman, Chief, Test Development Section, Fire Technology Division, NBS, to Mr. John Reynolds, dated July 14, 1972, with attachment; Memorandum from James H. Winger, Chief, Product Flammability Section, to Richard Armstrong, Director, Bureau of Engineering Sciences, CPSC, dated September 20, 1973, entitled "Final Amendments to the Carpet and Rug Flammability Standards to Include Sampling Plans"; and Memorandum from Mary K. Ryan, Acting Director, BCM to L. James Sharman, Director, OSCA, CPSC, dated March 25, 1975, entitled Sampling Plan for Carpet and Rug Standards. Copies of any one or all of the above described documents, if not already in the possession of Enforcement Counsel, will be provided upon request.

III. Request for Production of Documents

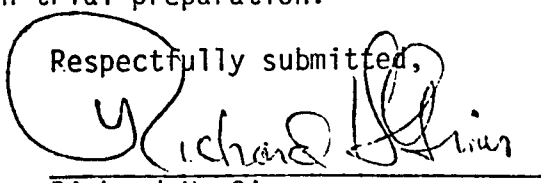
Respondents request that they be provided with all analyses and/or statistical projections prepared by Ralph Madison in connection with the initiation of this action or which will be presented in the course of his testimony on behalf of plaintiff.

IV. Conclusion

Respondents' counsel is in receipt of a letter from Ronald Yelenik, Enforcement Counsel, dated January 13, 1976, which purports to set forth certain understandings as to the instructions of the Administrative Law Judge concerning the closing of discovery. Although the undersigned does not yet have a copy of the transcript of the January 6, 1976, prehearing conference, it is my understanding discovery, including the matter of the taking of depositions or interviews, is to be closed as of January 16, 1976.

Commencement of this hearing on February 2, 1976, will place a serious burden upon respondents, their counsel, and the prospective witnesses. Most of the witnesses will not have their testimony prepared until immediately prior to commencement of respondents' case. Counsel will be absent from Washington during much of the remaining time before the trial begins. Interviews and other efforts by Enforcement Counsel to secure further discovery of these witnesses before trial will seriously interfere with trial preparation.

Respectfully submitted,



Richard H. Gimer
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1100 Connecticut Avenue, N. W.
Washington, D. C. 20036
Tel.: (202) 293-1414

Dated: January 16, 1976.

Counsel to Respondents

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, to wit, by mailing, postage prepaid, a copy to Ronald Yelenik, Trial Attorney, Bureau of Compliance, Consumer Product Safety Commission, Washington, D. C. 20207.

Dated the 16th day of January, 1976.

Richard H. Gimer

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CONSUMER PRODUCT
SAFETY COMMISSION

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of<br><br>BARRETT CARPET MILLS, INC.<br>a corporation, and<br><br>ROY C. BARRETT,<br>individually and as an<br>officer of the corporation | CPSC Docket No. 75-5 |

To: The Honorable Presiding Officer,
Paul N. Pfeiffer
Administrative Law Judge

MOTION FOR DETERMINATION OF APPLICABLE LAW
AND FOR WITHDRAWAL OF CASE FROM LITIGATION

Pursuant to 16 CFR §1025.42 of the Commission's Interim Rules of Practice for Adjudicative Proceedings, respondent Barrett Carpet Mills, Inc. hereby moves (1) for a determination by the Administrative Law Judge that the Opinion of the Commission in Congoleum Industries, Inc. (Docket No. 8896 When Before Federal Trade Commission), is a binding exposition of the Commission's present policy and law as to remedies appropriate in cases of alleged noncompliance with the carpet flammability standard; and (2) withdrawal of the case from litigation and acceptance of the Consent Order Agreement proferred at the September 9, 1975 prehearing conference in settlement of the case against respondent Barrett Carpet Mills, Inc.

## I. BACKGROUND

On July 21, 1975, the Commission issued a Notice of Enforcement against Barrett Carpet Mills, Inc., which alleged that between January 1, 1973, and December 31, 1973, Barrett Carpet Mills, Inc., manufactured a carpet designated Style 222, Paradise Valley (foam back)/1/ and that portions of this carpet failed to comply with the carpet flammability standard. A recommended Order was appended to the Notice.

Almost simultaneously, the Commission issued its Opinion in the Matter of Congoleum Industries, Inc. (Docket No. 8896 When Before Federal Trade Commission), the first and only case involving alleged noncompliance with the carpet flammability standard to be decided following a hearing by either the Federal Trade Commission or the Consumer Product Safety Commission.

In Congoleum, the Commission found, by a vote of 4 - 1, the authority to require "notification and recall as to items that fail to conform (to standards promulgated pursuant to the Flammable Fabrics Act). . . inherent."/2/ The Commission ordered these remedies to be employed "to the extent practic-

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/1/ In total, approximately 8,500 square yards of the carpet was produced.

/2/ Chairman Simpson, in an opinion which Barrett considers to be the better view, stated his belief that "notification, recall, and repurchase under the Flammable Fabrics Act. . . exceeds (the Commission's powers."

able, approving, in toto, the findings, conclusions, and form of Order devised by the Administrative Law Judge as part of the Initial Decision. In substance, the Order required tests of available carpet, notification of customers where these failed, and recall (with reimbursement) of uninstalled carpet from the failing rolls.

The Notice of Enforcement issued against Barrett Carpet Mills, Inc., contained a form of Order described as one "the Commission has reason to believe should be issued. . ." Yet, this Order differed dramatically from the Order approved in Congoleum. In short, the proposed Barrett Order would require that all production of Style 222, Paradise Valley, be presumed noncomplying despite absence of failing tests on particular rolls or production lots; that notice of this noncompliance be given to all of Barrett's customers of the entire style; and that Barrett endeavor to recall all of the carpet, whether or not installed, providing full refunds to all customers.

At the prehearing conference held on September 9, 1975, respondent Barrett Carpet Mills, Inc., tendered a fully executed Consent Order Agreement embodying all of the opera-

tive provisions of the Congoleum Order verbatim, and asked that the case be settled and withdrawn from litigation on that basis./3/

Under the terms of the Order executed by Barrett, the Company would (1) be prohibited from the production and sale of carpet which does not comply with applicable carpet flammability standards; (2) be required to secure samples of all rolls of Paradise Valley (foam back) remaining in commerce and submit these samples for testing by the CPSC or a laboratory designated by it; and, where carpet from the tested rolls fails, (3) the Company be required to notify the purchasers of failing rolls of the "flammable nature" of the carpet and recall all uninstalled carpet from these rolls (refunding the price plus transportation).

## II. STATEMENT OF ISSUES PRESENTED BY THE MOTION

Protracted, expensive, and time consuming litigation can be avoided in this instance by acceptance of the consent

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/3/ As early as January 1975, Barrett had tendered a similar but not identical Order which was not accepted by the Commission, at least in part due to the fact its provisions were seriously misconstrued by the staff in the Commission's briefing package.

settlement tendered by Barrett Carpet Mills, Inc., a settlement which adopts the Congoleum formula for identifying non-complying carpet and for determining the nature and extent of a corporate respondent's obligations in the event carpet manufactured and sold by it is identified as being not in compliance with the standard.

Neither public interest nor the interest of respondent, Barrett Carpet Mills, Inc., will be served by a protracted hearing if the Administrative Law Judge, in the final analysis, concludes that as to law and policy the Congoleum decision is controlling in cases involving the same or similar facts./4/ This disposition of the case respondent has voluntarily proposed. If this settlement proposal is accepted, all parties will be spared the two or more years which would undoubtedly be consumed with the various hearings, arguments and appeals.

On the other hand, if the Congoleum decision does not represent Commission policy and law as it pertains to cases

/4/ Both the Administrative Law Judge and Enforcement Counsel appear to be of the opinion that the Congoleum decision is controlling. Transcript of Prehearing Conference, September 9, 1975 (Tr. 23-26, 28)

involving alleged noncompliance with the carpet flammability standard, then the legal issue of the nature and extent of the Commission's remedial powers under the Flammable Fabrics Act, as amended, can and should be fully briefed and argued during these enforcement proceedings. Whether this opportunity will be available should be known in advance of trial, as the nature and extent of the proofs offered will be tailored to the legal as well as factual issues. The Commission's Rules of Practice clearly contemplate resolution of such issues in advance. In the event Congoleum is not controlling Barrett Carpet Mills cannot be precluded from raising the issues pertaining to the Commission's legal authority./5/ By the same token, Enforcement Counsel would be free to attempt to establish that the Commission's authority under the Flammable Fabrics Act, as amended, extends beyond Congoleum to refunds for installed carpet.

Clearly, respondent cannot be barred from attempting to establish the complete absence of any Commission authority to compel notification, recall, and repurchase under

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/5/ At present, the Administrative Law Judge has expressed the view that these issues must be reserved for the Court of Appeals. See Transcript of September 9, 1975 Prehearing Conference (Tr. 23).

the Flammable Fabrics Act, as amended,/6/ on the ground that Congoleum is binding, while Enforcement Counsel is permitted the opportunity to establish that the Commission's powers in this area are quite different from those elaborated in the Congoleum decision.

Accordingly, this Motion presents the following issues:

(1) Is the Congoleum Industries, Inc. opinion dispositive of the law and policy to be applied by an Administrative Law Judge in an Initial Decision on the matter of remedies in instances of noncompliance with the carpet flammability standard.

(2) If so, should this case as to the corporate respondent be disposed of by acceptance of the settlement proposal proffered by Barrett Carpet Mills, Inc., which embodies the remedies adopted by the Commission in the Congoleum Industries, Inc. case.

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/6/ See Dissenting Opinion of Chairman Simpson, Congoleum Industries, Inc. (Docket No. 8896 When Before Federal Trade Commission).

(3) If the Congoleum decision is not controlling as to the law and policy to be considered in the formulation of the Initial Decision in this case, can either the Government or respondent be precluded, in this hearing, from attempting to establish the limits of the Commission's legal authority under the Flammable Fabrics Act, as amended.

## III. THE FACTUAL DISTINCTIONS BETWEEN THE CONGOLEUM AND BARRETT CASES ARE BOTH FEW AND LEGALLY INSIGNIFICANT

Enforcement counsel admit that the Congoleum decision is precedent in this case/7/ (Tr. 24, 28), and that the Order sought by the Government goes beyond Congoleum in that it seeks to require the corporate respondent Barrett Carpet Mills, Inc. to recall installed carpet and refund the purchase price of that carpet (Tr. 32). The rationale for the Government's position, apparently dictated by the Director of the Bureau of Compliance, is that the "facts

/7/ All references to "transcript" in this Motion are to the transcript of the September 9, 1975 Prehearing Conference in CPSC Docket No. 75.5.

in this case are a bit different" (Tr. 2)8. Quantities of carpet in inventory (Tr. 28) or available for tests (Tr. 28), and numbers of tests (Tr. 35) are cited as possible distinguishing factors resulting in Enforcement counsel's refusal to accept the proffered settlement.

The Congoleum record, Initial Decision and the Commission's Opinion clearly demonstrate that the impediment to settlement in the instant case is not, as alleged, possible factual differences between the two cases. The real controversy is whether the Commissioners of the Consumer Product Safety Commission or the Director of the Bureau of Compliance set flammable fabrics act enforcement policy. It offends fundamental fairness to require a respondent to bear the expense of a legal proceeding to resolve this issue.

Resolution of this Motion involves determining what the Commission actually decided in the Congoleum case by way of law and policy, and applying that case and the applicable law pertaining to decisions in administrative adjudications, not resolving whether one of the Commission's Bureaus is superior to the Commissioners in determining flammable fabrics enforcement policy.

The Commission's decision in Congoleum was handed down pursuant to Part 3.54 of the Rules of Practice of the Federal Trade Commission, which were applicable to the case./8/ P.L. 92-573, §30(e)(3). Under these rules, the Commission was to "adopt, modify, or set aside the findings, conclusions, and rule or order contained in the initial decision . . ." prepared by the Administrative Law Judge presiding over the hearing. The rules also require that the Opinion contain "a statement of the reasons or basis for (the Commission's) action and any concurring and dissenting opinions."

In its Opinion, the Commission majority stated it had "concluded that the findings and conclusions of the Administrative Law Judge in the initial decision adequately and correctly dispose of all the issues in this case and that the order to cease and desist included in the initial decision is appropriate and proper in all respects." Opinion, Congoleum Industries, Inc. (Docket No. 8896 When Before the Federal Trade Commission.

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/8/ The corresponding provision of the Interim Rules under which the instant case is being tried was taken verbatim from the FTC Rules. See 16 C.F.R. §1025.74(b).

As to the law, both the majority and minority opinions considered the extent of the Commission's powers "to require notification and recall of items that fail to conform to Standards. . ." The majority concluded that the Commission possessed such powers.

The Commission majority also explicity accepted the findings and conclusions of the Administrative Law Judge. Among these conclusions was that "significant and substantial quantities (of the carpet) failed to meet the Standard and were flammable." (Initial Decision, Congoleum Industries, Inc., p. 21), and were "sold in interstate commerce." (Initial Decision, p.23). The remedy devised by the Administrative Law Judge and adopted by the Commission made determination of the precise quantity of goods manufactured, sold, or inventoried, or the specific portion of the goods which did not meet standard academic. All rolls not previously tested. . .(were required to) be tested by, or to the satisfaction of, the Consumer Product Safety Commission to determine whether such carpet complies with the Standard. (Initial Decision, p. 23).

The issue of whether a remedial order should extend to the recall of allegedly flammable carpet which had been

installed in the purchasers home, office or other location, was specifically raised and decided. Initial Decision, p. 23. According to Judge Hanscom,

> "Recall of carpet which has been installed is not at this juncture practicable because of the length of time most of it has been laid down, and the legal and practical problems presented by an order contemplating the taking up of carpet now on floors."

In its Opinion, the Commission not only explicitly accepted the findings and conclusions of the Administrative Law Judge, but specifically acknowledged that the portions of the order requiring recall and refund applied only to such rolls as had "not been installed."/9/

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/9/ This position is completely consistent with that taken by the Federal Trade Commission during the period between April 1970 and May 1973 when it exercised enforcement responsibility under the Flammable Fabrics Act. In an article discussing the FTC enforcement policy which appeared in the October 13, 1971 issue of Home Furnishings Daily, Mr. Ed Finch, then FTC Assistant Director for Textiles and Furs, a position equivalent to that of the Director of the CPSC Bureau of Compliance, stated that "as far as who pays the freight on shipments back to the mill and who pays if the consumer insists that carpet be ripped up (after receiving notice), that is something that will have to be worked out between the manufacturer and the retailer. The FTC cannot get involved in that facet of the question." Similarly, the FTC Flammable Fabrics Enforcement Policy subsequently issued by the Commission (36 F.R. 21544, Nov. 10, 1971) referred only to the obligation to "remove and/or recall . . . the flammable fabric from commerce." Installed carpet is not considered in commerce. The standard form flammable fabrics order employed by the Federal Trade

Respondent contends that the factual distinctions between those considered in Congoleum and the instant case, to the extent such distinctions exist, are made irrelevant by the remedial provisions elaborated in that decision and contained in the proffered settlement agreement. By consenting to tests on all available rolls of the allegedly noncomplying style, any distinction between the two cases based upon the difference in total number of tests is mooted. Both cases involve conflicting tests and evidence that some production passed and some failed./10/ The quantity of allegedly flammable carpet in

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/9 cont'd/ Commission (including the order proposed by the Government in the Congoleum case) would have imposed upon the respondent-manufacturer an obligation to recall noncomplying carpet from its "customers," which, due to distribution patterns in the carpet industry, would not include ultimate consumers. By the same token, the Courts have determined that the Federal Trade Commission Act does not authorize the imposition of cease and desist orders which compel restitution for products in use by the consumer. Heater v. Federal Trade Commission, CCH Trade Cas. Para. 75,244 (9th Cir., 1974).

/10/The remedy in Congoleum eliminated any judgment as to the significance of a passing or failing test except as it related to the roll tested. It was predicated on the finding that tests on four rolls failed, therefore an undetermined amount of the carpet did not comply. The settlement agreement proffered by Barrett obviates the need for any finding that any Paradise Valley carpet

Congoleum was ten times the total Barrett production of Paradise Valley (foam back) carpet. The carpet alleged to be noncomplying had been in use for from 2-3 years in each of the two cases. In both cases, the carpet remaining in commerce available for testing is de minimus, and a small percentage of the total production.

Unter the circumstances it is difficult to conceive that the Government will be able to establish factual distinctions between the two cases which will, in and of themselves, cause the Administrative Law Judge to conclude that Congoleum is inapplicable.

## IV THE PRESIDING OFFICER IN AN AGENCY ADJUDICATIVE PROCEEDING IS BOUND TO APPLY THE POLICY OF THAT AGENCY AS REFLECTED IN PAST DECISIONS.

It is a general rule that administrative agencies should apply the doctrine of stare decisis to their own decisions. An agency should both follow the standards set forth in its prior decisoins, and apply the same remedies, unless it finds and articulates a reason for changing the

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/10 cont'd/ failed by the obligating the Company to perform tests on the remaining rolls to determine the extent of compliance or of noncompliance of those rolls. The remedial action to follow depends, as in Congoleum, upon the individual test results, not the number of tests or the pass/fail ratio.

policies involved. To do otherwise is to render §8(b) of the Administrative Procedure Act, which requires agencies to state reasons for actions, a nullity. It follows that changes in policy should be made at the agency level, so that they may be both examined and promulgated in the same way as the original policy. This is especially true where, as in this case, the agency appears to have rendered a decision in which it set a policy as to the limits of its statutory authority. For the Commission, after due analysis and deliberation, to change its mind on such matters and to state its reasons for enlarging its view of its mandate or authority, may be altogether proper, although this particular issue is not presented by this Motion. But for such a decision to be made at a less visible level is quite another matter. Accordingly, an administrative law judge should be bound by previous decisions of the agency in question. Actions inconsistent with past full agency action are justifiable only in exceptional circumstances.

The guiding principle is the need for consistency and rationality in agency action. It would obviously be inappropriate for an administrative law judge to substitute his judgment for that of the Commission, unless in his judgment

that action of the Commission, was arbitrary and capricious. Although it has been held that an agency may impose more severe sanctions if it determines that those recommended by the administrative law judge are inadequate, Sy B. Gaiber & Co., 31 Ad. L. 2d 785 (Dept. Agr. 1972), where the agency has already determined the sanctions appropriate for a given situation, the administrative law judge should be bound by that determination.

The leading case in which a court reversed an agency for changing its remedies without notice is NLRB V. Mall Tool Co., 119 F. 2d 700 (1941), in which the Seventh Circuit held that "to adopt different standards for similar situations is to act arbitrarily." More recently, several courts have either reversed agency actions for inconsistency, or indicated that it was appropriate to examine other decisions to determine whether the action under review was inconsistent with them and therefore impermissibly arbitrary. National Air Carrier Assn. v. CAB, 436 F. 2d 185 (D.C.Cir. 1970); Local 1325, Retail Clerks Int'l Assn., AFL-CIO V. NLRB, 414 F.2d 1194 (D.C. Cir. 1969); City of Lawrence, Mass. v. CAB, 343 F.2d 583 (1st Cir.

1965); Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965); NLRB v. Capital Bakers, Inc., 351 F.2d 45 (3d Cir. 1965); Mary Carter Paint Co. v. FTC, 333 F.2d 654 (5th Cir. 1964). In other cases, the courts have held that an agency may change policies as to almost identical fact situations, but not without reasoned explanation. FTC v. Crowther, 430 F.2d 510 (D.C. Civ. 1970); ABC Air Freight Co., Inc. v. CAB, 23 Ad. L. 2d 80 (2d Cir. 1968); Rayonier, Inc. v. NLRB, 380 F.2d 187 (3d Cir. 1967); T.I. McCormack Trucking Co., Inc. v. United States 18 Ad. L. 2d 922 (D.N.J. 1966) (ICC). And in one case, the Internal Revenue Service was held bound to apply an informal ruling of the Commissioner of Internal Revenue as to the deductibility of certain types of local taxes until the Commissioner had specifically modified his position so that taxpayers aware of the previous position would know of the modification. Brecklein v. Bookwalter, 231 F. Supp. 404 (W.D.Mo. 1964).

These cases quite firmly establish the requirements that an agency abide by its own past decision as to both procedure and remedy, even if its rulings lack the formality of a rule-making procedure. Various agencies have also articulated similar policies, embodying the principle that consistency,

rationality, and the rule of law require similar results in similar cases. Particularly pertinent here is the case of Ash Grove Cement Co., 27 Ad.L.2d 1044 (FTC 1970), where it was held to be error for hearing examiner to adopt new approach without clearly and explicity stating the circumstances distinguishing the present case from almost identical prior cases; Matter of Publishers Development Corp., 24 Ad. L.2d 497 (P.O. Dept. 1968) (prior decision of department should be followed); Milco Specialties, 9 Ad.L. 2d 127 (P.O. Dept. 1967) (hearing examiner should follow department precedent); Insurance Agents' Intl. Union, 7 Ad.L.2d 674, 119 NLRB, No. 103 (1957) (same); General Docket No. 21 (Bit. Coal Div. Examiner's Report, 1941) (division's prior decision binding on examiner); Pacific Power & Light Co., 2 FPC 508 (1941) (power commission follows its own prior rulings).

In this case, the corporate respondent has agreed to enter into a consent order identical to the order imposed by the Commission majority in Congoleum Industries, Inc., over the Chairman's dissent as to the Commission's statutory authority to enter such an order. In Congoleum, the Commission adopted the initial decision and order of the

Administrative Law Judge as its own, holding the order "appropriate and proper in all respects." Enforcement counsel now wish to go beyond the remedy provided by the Congoleum order, and to require respondent to recall carpet already installed -- a remedy which the Administrative Judge and the Commission found in Congoleum to be not "practicable" and to present "legal and practical problems." Initial Decision at 23. The cases are so similar, however, that counsel cannot possibly show that this remedy is any more practicable, or any less fraught with problems, in this case than in Congoleum. Accordingly, the Commission's conclusion in Congoleum must be binding here, unless and until the Commission is able to articulate a policy that would compel a contrary conclusion. And, we respectfully submit, the determination of such a policy is a matter for the Commission and not for an Administrative Law Judge who is required to follow the Commission's present policy until that policy is changed.

## V. CONCLUSION

As is set forth above, while respondent Barrett Carpet Mills, Inc. believes that the proper view of the Commission's authority to compel notification, recall, and repurchase of

items which fail to comply with standards promulgated under the Flammable Fabrics Act, was expressed by Chairman Simpson in his dissent in Congoleum Industries, Inc. (Docket No. 8896), respondent is willing to dispose of the instant case on the basis of the remedies elaborated in the final order in Congoleum. To this end, Barrett Carpet Mills, Inc., the corporate respondent in CPSC Docket No. 75-5, has executed a Consent Order Agreement embodying the terms of the Congoleum Order, and has submitted this order for review and acceptance by the Enforcement counsel. The proffer of settlement has been rejected.

Respondent contends that even after a protracted hearing, the Administrative Law Judge will be bound to apply the Congoleum decision, unless that decision is overturned by the Court of Appeals in the interim./11/ Under these circumstances, a hearing will be wasteful and contrary to the public interest in that it will delay indefinitely respondent's performance under the Order.

On the other hand, if the Congoleum decision is not

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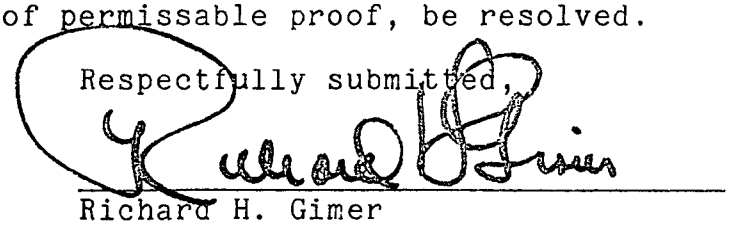
/11/ Appeal noted September 22, 1975. Congoleum Industries, Inc. v. Consumer Product Safety Commission, 9th Cir., No. 75-3112.

binding precedent in this case as to the Commission's legal authority to compel notification, recall, and reimbursement, then respondent should not be deprived the right to demonstrate, in this proceeding, that Chairman Simpson's view on these issues is the most considered view. This respondent is prepared to do so.

For reasons which seem too obvious to need reiteration, these critical issues should be resolved before this hearing proceeds./12/

Wherefore, it is urged that the applicability or inapplicability of the Commission's recent decision in Congoleum Industries Inc., (Docket No. 8896) and the related issues of the scope of permissable proof, be resolved.

Respectfully submitted,



Richard H. Gimer
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1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

COUNSEL TO RESPONDENT

Dated: September 26, 1975

/12/ Disposing of this Motion would not affect other issues raised by the Notice of Enforcement issued against Roy C. Barrett, individually. This Motion does not involve a decision on the final disposition of that case.

11/6/75

UNITED STATES OF AMERICA
BEFORE CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| BARRETT CARPET MILLS, INC. a corporation, and | ) | CPSC Docket No. 75-5 |
| ROY C. BARRETT, individually and as an officer of the corporation | ) | In Corporation - |

To: The Honorable Presiding Officer,
Paul N. Pfeiffer
Administrative Law Judge

PETITION FOR REVIEW

By Order on Reconsideration dated December 19, 1975, the Honorable Paul N. Pfeiffer denied Respondents' Motion for Reconsideration of Denial of Motion for Determination of Applicable Law. The two fold effects of this ruling are (1) to prevent the Commission from being informed that the two respondents in this case have executed and submitted for acceptance a consent order agreement embodying, in all material respects, the terms and conditions of the formal order imposed by the Commission in the Matter of Congoleum Industries, Inc. (CPSC Docket No. 75-3), and (2) to impose upon respondents the burden of preparation for and conduct of a trial throughout which there will be absolute and total uncertainity as to the applicability or nonapplicability of the only decided carpet flammability case, an issue which, if resolved in advance, could render the entire trial unnecessary.

Moreover, if this Order is allowed to stand, the issue of the relevance of Congoleum to cases of this nature (a matter of intense interest to the entire carpet industry) will be left unresolved during the trial and appeal of this case, a period which could consume two or more years.

Respondents Barrett Carpet Mills, Inc. and Roy C. Barrett hereby petition for review of this Order on Reconsideration on the grounds that:

(1) the issue of the applicability or nonapplicability of the Congoleum Decision and Order to this proceeding raises a controlling question of Law and policy as to which there is substantial ground for differences of opinion;

(2) an immediate appeal from the denial of respondent's Motion would materially advance the ultimate termination of the litigation inasmuch as a decision to the effect that Congoleum is controlling would eliminate all need for a hearing; and

(3) the stated grounds for the denial of respondents' Motion would not only deny respondents of rights specified in 16 CFR 1025.41(e), but would, if accepted as precedent, be tantamount to expunging this regulation from the Code of Federal Regulations.

## I. BACKGROUND

On July 21, 1975 the Commission issued a Notice of Enforcement against Barrett Carpet Mills, Inc. and Roy C. Barrett, individually, alleging that the company had manufactured a carpet designated Style 222, Paradise Valley (foam back), portions of which carpet failed to comply with the carpet flammability standard.

At the opening of pretrial proceedings, relying on the Commission's only decided case involving alleged noncompliance with the carpet flammability standard, respondent Barrett Carpet Mills, Inc. offered to settle the case by execution of a consent order agreement identical in all material respects to the Order adopted by the Commission in the Matter of Congoleum Industries, Inc. (CPSC Docket No. 75-3)./1/ As a result of subsequent negotiations Roy C. Barrett agreed to go on the Order in his individual capacity as well as in his capacity as an officer of the Corporation. The fully executed Order is now in the hands of the Commission staff.

The Commission staff, apparently due to the insistance of the Director of the Bureau of Compliance, has vigorously resisted each and every attempt by respondents to bring this proposed consent order agreement to the attention of the Commissioners, insisting instead upon execution or imposition of a markedly different order, one totally unacceptable to respondents.

see transcript of 9/9/75 pp. 38-39

## II. THE RULING INVOLVES A CONTROLLING QUESTION OF LAW AND POLICY WHICH DEMANDS IMMEDIATE RESOLUTION

In Congoleum, the Commission found it possessed the authority to require "notification and recall" as to items that fail to conform (to standards promulgated pursuant to the Flammable Fabrics Act). The Commission ordered these

/1/ Barrett Carpet Mills, Inc. had submitted a similar executed consent order agreement in early February, 1975, five months prior to issuance of the Notice of Enforcement.

remedies to be employed "to the extent practicable, approving, in toto, the findings, conclusions, and form of Order devised by the Administrative Law Judge as part of the Initial Decision. In substance, the Order required tests of available carpet, notification of customers where these tests failed, and recall (with reimbursement) of uninstalled carpet from the failing rolls.

The Notice of Enforcement issued against Barrett Carpet Mills, Inc. and Roy C. Barrett contained a form of Order which differed dramatically from the Order approved in Congoleum. In short, the proposed Barrett Order would require that all production of Style 222, Paradise Valley, be presumed noncomplying despite absence of failing tests on particular rolls or production lots or production units; that notice of this noncompliance be given to all of Barrett's customers of the entire style; and that Barrett endeavor to recall all of the carpet, whether or not installed, providing full refunds to all customers.

The striking disparity between the proposed Barrett Order and that which was adopted almost simultaneously in Congoleum has not only baffled the instant respondents, but has precipatated substantial confusion throughout the entire carpet and textile industries.

The issue raised by respondents' Motion is whether, as a matter of law and policy, the Congoleum decision reflects the Commission's interpretation of its lawful authority under the Flammable Fabrics Act. If so, the Order executed by respondents should be accepted as disposing of this case. Under the terms of the Order executed, respondents would (1) be prohibited from the production and sale of carpet which does not comply with applicable carpet flammability standards; (2) be required to secure samples of all rolls of Paradise Valley (foam back) remaining in commerce and submit these samples for testing by the CPSC or a laboratory designated by it; and, where carpet from the tested rolls fails, (3) would be required to notify the purchasers of failing rolls of the "flammable nature" of the carpet and recall all uninstalled carpet from these rolls (refunding the purchase price plus transportation).

Respondents contend that these remedial actions, which are on all fours and coextensive with those mandated in Congoleum, are the outside limits of remedial actions the Administrative Law Judge in this case would be authorized to impose.

## III. WHATEVER FACTUAL DISTINCTIONS EXIST BETWEEN CONGOLEUM AND THE INSTANT CASE ARE RESOLVED BY THE OPERATIVE PROVISIONS OF THE EXECUTED ORDER

Enforcement counsel admit that the Congoleum decision is precedent in this case and that the Order sought by the Government against Barrett goes

beyond Congoleum in that it seeks to require the corporate respondent Barrett Carpet Mills, Inc., to recall installed carpet and refund the purchase price of that carpet. The rationale for the Government's position is that the "facts in this case are a bit different."

Enforcement counsel have attempted to distinguish Congoleum on the basis of (1) a distinction in the number of rolls of carpet available for testing in the two cases(both before the decision and during the compliance phase), and (2) differences in the pass/fail ratios of tests conducted in the two cases.

Because the total sales of Style 222, Paradise Valley (foam), were only 15,000 square yards, it is understandable that only a small number of rolls of carpet have been available for test. Moreover, because Barrett recalled the carpet from the foaming runs alleged to fail Commission tests, and has voluntarily made samples of all rolls of Style 22, Paradise Valley (foam back) in its possession available for testing, and the Commission staff has tested each such roll, ample reason exists why there is little carpet remaining to be tested. Even so, some additional carpet would probably be located and tested under the proposed order. In fact, Barrett Carpet Mills, Inc.obtained previously unsold material from two additional rolls of carpet which will be available for testing under the proposed Order.

Enforcement counsel has further sought to distinguish the two cases on the basis of the "large number of rolls of the offending carpet. . . (remaining) in the hands of distributors, wholesalers, and retailers" in Congoleum/2. For all practical purposes, the only carpet which remains available for testing under the Commission's order in Congoleum is the inventory seized at two distributors. F.T.C v. Endureze, C.A. No. 4977, D.C.R.I.; F.T.C. v. Endureze, C.A. No. 720C-9245, E.D.N.Y. These inventories contain virtually no carpet from the older of the two carpet formulations in dispute in that case./3/

Alleged differences in the pass/fail ratios on tests performed in the two cases are similarly ill founded, as is the notion that "it is highly possible that the Congoleum order would have provided a broader (style-wise) recall if the ration of failures to passes had been greater."/4/ This is pure speculation

/2/ See Enforcement Counsel's Memorandum in Opposition, dated October 10, 1975 at p. 5.
/3/ In the Matter of Congoleum Industries, Inc., involved two different formulations of carpet both sold under the same name, "Endureze." The "new" formulation contained alumina trihydrate in the latex precoat while the "old" formulation did not. The two were treated by the Complaint counsel and the Administrative Law Judge as distinct carpet styles.
/4/ Motion in Opposition dated October 10, 1975, at p. 6.

on counsel's part, speculation not based upon an accurate understanding or characterization of the Congoleum record./5/

Upon close examination of the facts in both cases there is little to distinguish the facts in Barrett from those which were before the Commission in Congoleum. When these basic facts are set along side the rationale used in Congoleum, any apparent basis for distinquishing the two cases evaporates.

In the Initial Decision Congoleum Industries, Inc., CPSC No. 75-3, Judge Hanscom reached the following primary conclusions as to the facts: (1) that the test results from all laboratories were correct, both passing and failing (Init. Dec. p. 19); (2) that the differences in test results more probably reflected variabilities in respondent's carpet than laboratory or test method variability (Init. Dec. pp. 19-21); and (3) that significant and substantial quantities of respondent Congoleum's carpet failed the Standard and were flammable (Init. Dec. pp. 21, 23).

Based upon these factual findings, with which the Commission subsequently concurred in full, an Order was imposed which: (1) prohibited future violation of the Flammable Fabrics Act and the carpet flammability standard; (2) required tests by the Commission on available rolls of carpet to identify the carpet failing to meet the standard; (3) required notification of members of the public in possession of the premises in which rolls failing tests had been installed; and (4) required recall of uninstalled carpet (from distributors, wholesalers, retailers, or consumers) from rolls failing tests, with provision for refund of the purchase price.

Two aspects of the Congoleum decision are of primary significance in the instant case. First, no remedial action of any kind whatsoever was required as to rolls which either passed tests or could not be tested for whatever reason. Secondly, recall of carpet which had been installed was rejected because (1) it was "not at this juncture practicable" because of the

/5/ Of the two formulations of carpet subject to the Congoleum order, the Commission had tested samples of the so-called "old" formulation only five times on only four different rolls. Tests on two rolls failed 50% and two rolls passed (50%). Of the 5 tests, two failed (40%) and three passed (60%). Compare Respondent's Exhibits RX-68 and RX-76, In the Matter of Congoleum Industries, Inc., CPSC Docket No. 75-3. The pass/fail ratio on the so-called new formulation was much better than on the old. Nevertheless the remedial approach employed by the Commission with respect to the two carpet qualities was identical. No reason exists why the Congoleum remedy would be less suitable in this case.

length of time most of it (the carpet) had been laid down, and (2) "the legal and practical problems presented by any order contemplating the taking up of carpet now on floors."

In the instant case, the Commission staff seeks an Order which presumes non-compliance of every roll of Style 222, Paradise Valley (foam back) not just the rolls failing tests, and seeks to require notice to the purchasers of all Paradise Valley (foam back) carpet, and the total recall of this carpet, even that which has been installed. This action cannot be squared with Congoleum on the basis of the facts before the Commission or the explicit provisions of its Decision or Order.

Enforcement counsel have also sought to obfuscate the issue presented by respondents Motion by use of an extremely selective and totally untenable construction of the Congoleum decision. In essence, it is claimed the Commission merely established the basic authority to compel recall, and left all determinations as to the extent and application of this remedy to posterity.

The Commission's dcision in Congoleum was handed down pursuant to Part 3.54 of the Rules of Practice of the Federal Trade Commission, which were applicable to the case./6/ P.L. 92-573, §30)e)(3). Under these rules, the Commission was to "adopt, modify, or set aside the findings, conclusions, and rule or order contained in the initial decision . . ." prepared by the Administrative Law Judge presiding over the hearing. The rules also require that the Opinion contain "a statement of the reasons or basis for (the Commission's) action and any concurring and dissenting opinions."

In its Opinion, the Commission majority stated it had "concluded that the finding and conclusions of the Administrative Law Judge in the initial decision adequately and correctly dispose of all the issues in this case and that the order to cease and desist included in the initial decision is appropriate and proper in all respects."(Emphasis added.) Opinion, Congoleum Industries, Inc., (CPSC No. 75-3).

As to the law, both the majority and minority opinions considered the extent of the Commission's powers "to require notification and recall of items that fail to conform to Standards. . ." The majority concluded that the Commission possessed such powers and accepted the decision of the Administrative Law Judge as to their extent.

The Commission majority also explicity accepted all other findings and

/6/ The corresponding provision of the Interim Rules under which the instant case is being tried was taken verbatim from the FTC Rules. See 16 C.F.R. §1025.74(b).

The Commission majority also explicity accepted all other findings and conclusions of the Administrative Law Judge. Among these conclusions was that "significant and substantial quantities (of carpet) failed to meet the Standard and were flammable." (Init. Dec., Congoleum Industries, Inc., p. 21) and were "sold in interstate commerce." (Init. Dec. p. 23). The remedy devised by the Administrative Law Judge and adopted by the Commission made determination of the precise quantity of goods manufactured, sold, or inventoried, or the specific portion of the goods which did not meet standard, academic. All rolls not previously tested . . . (were required to) be tested by, or to the satisfaction of, the Consumer Product Safety Commission to determine whether such carpet complies with the Standard. (Init. Dec., Congoleum Industries, Inc., p. 23).

The issue of whether a remedial order should extend to the recall of allegedly flammable carpet which had been installed in the purchaser's home, office or other location, was specifically raised and decided. Init. Dec. Congoleum Industries, Inc., p. 23. According to Judge Hansom:

> "Recall of carpet which has been installed is not at this juncture practicable because of the length of time most of it has been laid down, and the legal and practical problems presented by an order contemplating the taking up of carpet now on floors."

The distinctions between those facts considered relevant in Congoleum and the instant case, to the extent such distinctions exist, are made irrevelant by the remedial provisions elaborated in that decision and contained in the proffered settlement agreement. By consenting to tests on all available

next page

/7/ This position is completely consistent with that taken by the Federal Trade Commission during the period between April 1970 and May 1973 when it exercised enforcement responsibility under the Flammable Fabrics Act. In an article discussing the FTC enforcement policy which appeared in the October 13, 1971 issue of Home Furnishings Daily, Mr. Ed Finch, then FTC Assistant Director for Textiles and Furs, stated that "as far as who pays the freight on shipments back to the mill and who pays if the consumer insists that the carpet be ripped up (after receiving notice), that is something that will have to be worked out between the manufacturer and the retailer. The FTC cannot get involved in that facet of the question." In accord, the Courts have determined that the Federal Trade Commission Act does not authorize the imposition of cease and desist orders which compel restitution for products in use by the consumer. Heater v. Federal Trade Commission, 503 F.2d 321 (9th Cir., 1974).

The distinctions between those facts considered relevant in Congoleum and the instant case, to the extent such distinctions exist, are made irrevelant by the remedial provisions elaborated in that decision and contained in the proffered settlement agreement. By consenting to tests on all available rolls of the allegedly non-complying style, any distinction between the two cases based upon the difference in total number of tests is mooted./8/

In accord, the Courts have determined that the Federal Trade Commission Act does not authorize the imposition of cease and desist orders which compel restitution for products in use by the consumer. Heater v. Federal Trade Commission, 503 F.2d 321 (9th Cir., 1974).

Moreover, neither the public policy or practicality aspects of these cases provides a basis for refusing to apply the Congoleum remedy. The quantity of allegedly flammable carpet in Congoleum was ten times the total Barrett production of Paradise Valley (foam back) carpet. The carpet alleged to be non-complying had been in use for similar periods of time in each of the two cases./9/ In both cases, the carpet remaining in commerce available for testing is de minimus, and a small percentage of the total production.

These then are the relevant factual components as drawn from Congoleum opinion. While it is possibe (as it always is) to point to factual differences between Congoleum and the instant case, the nature of that decision and the remedial order takes these differences into account.

## IV. RESOLUTION OF THE DISPUTED LEGAL ISSUE WOULD MATERIALLY ADVANCE THE ULTIMATE TERMINATION OF THE LITIGATION.

Protracted, expensive, and time consuming litigation can be avoided in this instance by acceptance of the consent settlement tendered by respondents,

/8/ The remedy in Congoleum eliminated any judgment as to the significance of a passing or failing test except as to the roll tested. The settlement agreement proffered by Barrett similarly obligates the Company to perform tests on the remaining rolls to determine the extent of compliance or of non-compliance of these rolls. The remedial action to follow depends, as it did in Congoleum, upon the individual test results, not the number of tests or the pass/fail ratio of these tests.

/9/ Congoleum discontinued production of its Endureze style carpet in August 1973, fourteen months before the Initial Decision was handed down in that case. (Init. Dec., p. 8) Barrett discontinued production of Style 222, Paradise Valley, in January 1974 and the carpet was last sold in March, 1974, 22 months ago.

a settlement which adopts the Congoleum formula for identifying noncomplying carpet and for determining the nature and extent of a corporate respondent's obligations in the event carpet manufactured and sold by it is identified as being not in compliance with the standard.

Neither public interest nor the interest of respondents will be served by a protracted hearing if the Administrative Law Judge, in the final analysis, were to conclude that as to law and policy the Congoleum decision is controlling in cases involving the same or similar facts. This disposition of the case respondent has voluntarily proposed. If this settlement proposal is accepted, all parties will be spared the two or more years which would undoubtedly be consumed with the various hearings, arguments and appeals.

On the other hand, if the Congoleum decision does not represent Commission policy and law as it pertains to cases involving alleged noncompliance with the carpet flammability standard, then the legal issue of the nature and extent of the Commission's remedial powers under the Flammable Fabrics Act, as amended, can and should be fully briefed and argued during these enforcement proceedings. Whether this opportunity will be available should be known in advance of trial, as the nature and extent of the proofs offered will be tailored to the legal as well as factual issues. The Commission's Rules of Practice clearly contemplate resolution of such issues in advance. In the event Congoleum is not controlling respondent cannot be precluded from raising the issues pertaining to the Commission's legal authority to require notice and recall, and the extent of these remedies./10/ By the same token, Enforcement Counsel would be free to attempt to establish that the Commission's authority under the Flammable Fabrics Act, as amended, extends beyond Congoleum to refunds for installed carpet.

## V. THE PRESIDING OFFICER IN AN AGENCY ADJUDICATIVE PROCEEDING IS BOUND TO APPLY THE POLICY OF THAT AGENCY AS REFLECTED IN PAST DECISIONS.

At issue here is whether an Administrative Law Judge must apply the law and policy enunciated by the Agency, or whether he is free to make ad hoc findings of law which differ markedly from past Commission decisions.

/10/ At present, the Administrative Law Judge has expressed the view that these issues must be reserved for the Court of Appeals. See Transcript of September 9, 1975 Prehearing Conference (Tr. 23). Unless Congoleum is determined to be controlling, respondents will contend that the Consumer Product Safety Commission lacks the statutory authority to compel recall under the Flammable Fabrics Act, as amended.

It is a general rule that administrative agencies should apply the doctrine of stare decisis to their own decisions. An agency should both follow the standards set forth in its prior decisions, and apply the same remedies, unless it finds and articulates a reason for changing the policies involved. To do otherwise is to render §8(b) of the Administrative Procedure Act, which requires agencies to state reasons for actions, a nullity. It follows that changes in policy should be made at the agency level, so that they may be both examined and promulgated in the same way as the original policy. This is especially true where, as in this case, the agency appears to have rendered a decision in which it set a policy as to the limits of its statutory authority. For the Commission, after due analysis and deliberation, to change its mind on such matters and to state its reasons for enlarging its view of its mandate or authority is one thing. But for such a decision to be made at a less visible level is quite another matter. Accordingly, an Administrative Law Judge should be bound by previous decisions of the agency in question. Actions inconsistent with past full agency action are justifiable only in exceptional circumstances.

The guiding principle is the need for consistency and rationality in agency action. It would obviously be inappropriate for an Administrative Law Judge to substitute his judgment for that of the Commission, unless, in his judgment, that action of the Commission was arbitrary and capricious. Although it has been held that an agency may impose more severe sanctions if it determines that those recommended by the Administrative Law Judge are inadequate, Sy B. Gaiber & Co., 31 Ad. L.2d 785 (Dept. Agr. 1972), where the agency has already determined the sanctions appropriate for a given situation, the Administrative Law Judge should be bound by that determination.

The leading case in which a court reversed an agency for changing its remedies without notice is NLRB v. Mall Tool Co., 119 F.2d 700 (1941), in which the Seventh Circuit held that "to adopt different standards for similar situations is to act arbitrarily." More recently, several courts have either reversed agency actions for inconsistency, or indicated that it was appropriate to examine other decisions to determine whether the action under review was inconsistent with them and therefore impermissibly arbitrary. National Air Carrier Assn. v. CAB, 436 F.2d 185 (D.C.Cir., 1970); Local 1325, Retail Clerks Int'l Assn., AFL-CIO v. NLRB, 414 F.2d 1194 (D.C. Cir. 1969); City of Lawrence, Mass. v. CAB, 343 F. 2d 583 (1st Cir. 1965); Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965); NLRB v. Capital Bakers, Inc. 351 F.2d 45 (3d Cir. 1965); Mary Carter Paint Co. v. FTC, 333 F.2d 654 (5th Cir. 1964). In other cases, the courts have held that an agency may change policies as to almost identical fact situations, but not without reasoned explanation. FTC v. Crowther, 430 F.2d 510 (D.C. Civ. 1970); ABC Air Frieght Co., Inc. v. CAB, 23 Ad. L.2d 80 (2d Cir. 1968); Rayonier, Inc. v. United States, 18 Ad. L.2d 922 (D.N.J., 1966) (ICC). And in one case, the Internal Revenue Service was held bound to apply an informal ruling of the Commissioner of Internal Revenue as to the deductibility of certain types of local taxes until the Commissioner had specifically

modified his position so that taxpayers aware of the previous position would know of the modification. Brecklein v. Bookwalter, 231 F.Supp. 404 (W.D. Mo., 1964).

These cases quite firmly establish the requirements that an agency abide by its own past decisions as to both procedure and remedy, even if its rulings lack the formality of a rule-making procedure. Various agencies have also articulated similar policies, embodying the principle that consistency, rationality, and the rule of law require similar results in similar cases. Particularly pertinent here is the case of Ash Grove Cement Co., 27 Ad.L.2d 1044 (FTC 1970), where it was held to be error for the hearing examiner to adopt a new approach without clearly and explicitly stating the circumstances distinguishing the present case from almost identical prior cases; Matter of Publishers Development Corp., 24 Ad. L.2d 497 (P.O. Dept. 1968) (prior decison of department should be followed); Milco Specialties, 9 Ad.L.2d 127 (P.O. Dept. 1967) (hearing examiner should follow department precedent); Insurance Agents' Intl. Union, 7 Ad. L.2d 674, 119 NLRB, No. 103 (1957)(same); General Docket No. 21 (Bit. Coal Div. Examiner's Report, 1941) (division's prior decision binding on examiner); Pacific Power & Light Co., 2 FPC 508 (1941)(power commission follows its own prior rulings).

In this case, the respondents have agreed to enter into a Consent Order identical to the order imposed by the Commission majority in Congoleum Industries, Inc. In Congoleum, the Commission adopted the initial decision and order of the Administrative Law Judge as its own, holding the order "appropriate and proper in all respects." Enforcement counsel now wish to go beyond the remedy provided by the Congoleum order, and to require respondents to recall carpet already installed -- a remedy which the Administrative Law Judge and the Commission found in Congoleum to be not "practicable" and to present "legal and practical problems." CPSC Docket No. 75-3, Initial Decision at p. 23. The cases are so similar, however, that Enforcement counsel in the Matter of Barrett Carpet Mills, Inc. (CPSC Docket No. 75-5) cannot possibly show that this remedy is any more practicable, or any less fraught with problems, in this case than in Congoleum. Accordingly, the Commissions's conclusion in Congoleum must be binding here, unless and until the Commission is able to articulate a policy that would compel a contrary conclusion. The determination of such a policy is a matter for the Commission and not for an Administrative Law Judge who is required to follow the Commission's present policy until that policy is changed.

## VI THE BASIS FOR ORDER ON RECONSIDERATION IS INCONSISTENT WITH THE COMMISSION'S RULES AND SHOULD BE OVERTURNED

The Order on Reconsideration denying respondents' Motion, and hence precluding submission of respondents offer of settlement for the Commission's consideration states as its sole basis that "there remain triable issues of material fact.

Nowhere in the Commission's rules, regulations or procedures is their any justification for refusing to submit a settlement offer to the Commission on such a basis.

The Commission's rules are quite clear in this regard. All interested parties "shall have the opportunity for submission to the Presiding Officer of offers of settlement . . . for the Commission's consideration." 16 C.F.R. §1025.41(e) The rule further provide that the Presiding Officer "need not approve or disapprove such offer of settlement. . ." But, under the applicable rules, the Commission has mandated that it be apprised of settlement offers, whether or not these offers are approved by the Administrative Law Judge or Enforcement Counsel. The instant order has the practical effect of giving the Administrative Law Judge or Enforcement Counsel, in any proceeding, a veto power over such submissions.

How can the Commission justify permitting the Presiding Officer to disregard a bona fide offer of settlement, and to refuse to submit such an offer to the Commission on the grounds that "there remain triable issues of material fact." Applying such a prerequisite to the availability of the settlement opportunities specified in 16 C.F.R. §1025.41(e) will render these provisions a nullity.

The essence of settlement in nearly all cases is the determination by the opposing parties that remaining differences of interpretation as to fact and law can be merged into an order which each side can accept. By blocking submission of respondents' Consent order agreement to the Commission, the Administrative Law Judge has thwarted the very policy the rules were designed to encourage.

Nor can the "remaining triable issues of material fact" rationale be squared with the Commission's rules concerning Petitions for Review. The criterion for granting and denying such Petitions are clearly set forth in 16 C.F.R. §1025.43(c). To be sure, a trial in this case would produce factual issues for the Administrative Law Judge to resolve. But this is not the test. What controls is the undeniable fact that a determination by the Commission to the effect that its decision and order in the Matter of Congoleum Industries, Inc. (CPSC Docket No. 75-3) was intended to be controlling in cases involving essentially similar facts, would bring a prompt end to the instant litigation.

The tests to be applied to this Petition are those set forth in 16 C.F.R. §1025.41(e) and §1025.43(c), not the test enunciated in the Order on Reconsideration.

## CONCLUSION

For the reaons set forth above respondents submit that (1) their executed consent order agreement should be sumbitted to the Commission for acceptance, rejection, further negotiation, or such other disposition as the Commission

finds appropriate; and that (2) the Commission should review the Administrative Law Judge's ruling denying respondents' Motion for a Determination of Applicable Law.

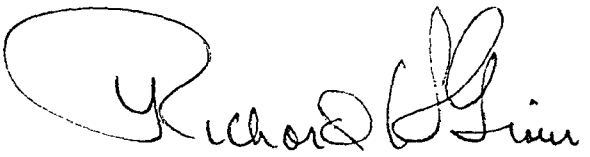
interlocutory appeal

Upon review, the Commission is requested to provisionaly accept respondents' proffered consent order agreement and/or determine the intended applicability of the Decision and Order in the Matter of Congoleum Industries, Inc. to cases involving similar facts.

advisory opinion

Failure to resolve these issues now will not only perpetuate uncertainty throughout the trial of this case but spread confusion throughout the textile industry for the entire duration of this litigation.

Respectfully submitted,



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Dated: January 6, 1976

Counsel to Respondents

10/31/75

OFFICE OF THE SECRETARY
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CONSUMER PRODUCT SAFETY COMMISSION

UNITED STATES OF AMERICA

BEFORE CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of<br><br>BARRETT CARPET MILLS, INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation. | CPSC Docket No. 75-5 |

To: The Honorable Presiding Officer
Paul N. Pfeiffer
Administrative Law Judge

MOTION FOR RECONSIDERATION OF DENIAL OF MOTION FOR DETERMINATION OF APPLICABLE LAW

## I. BACKGROUND

On September 26, 1975, Respondent Barrett Carpet Mills, Inc. (corporate respondent) filed a Motion for Determination of Applicable Law and for Withdrawal of Case from Litigation, a Motion designed to determine the applicability or non-applicability of the Commission's recent decision In the Matter of Congoleum Industries, Inc., CPSC Docket No. 75-3, to the instant case. Respondent Barrett Carpet Mills, Inc., offered to dispose of the case on the basis of a Congoleum-type cease and desist order. Such an order, executed by the corporation but not by Roy C. Barrett in his individual capacity, had been executed and submitted to the Commission staff. This Motion was opposed by Plaintiff's counsel, and by Order dated October 14, 1975, was denied. This denial was reaffirmed at a pre-hearing conference held on October 22, 1975.

The bases for the denial of the Motion were (1) failure to include Roy C. Barrett in his individual capacity, (2) the existence of a dispute between the parties as to the essential facts in this proceeding and whether they are identical with those underlying the Commission's decision in Congoleum Industries, Inc., and (3) the inability of the Commission (on the existing factual record) to decide the proper limits of the remedy to be applied.

At the prehearing conference on October 22, 1975, it was agreed by counsel for respondents that Roy C. Barrett would execute a consent order agreement identical in all respects to the Congoleum order in his individual as well as his corporate capacity. Such an order has been executed and submitted to the Commission staff. 1/

1/ The original of this executed Order is submitted as an attachment to this Motion.

It was further agreed by respective counsel that the parties would endeavor in good faith to develop a joint stipulation of facts, after which the Administrative Law Judge would entertain a Motion to Reconsider the Motion previously denied.

A substantial effort has been made by both sides to develop a joint stipulation of facts. While, not unexpectedly, areas of disagreement remain, a joint stipulation has been prepared and is being submitted for the record. In respondents' view, the essential facts in the case have been stipulated and are not in dispute. They are substantially identical to those in the Congoleum case, and (together with anticipated argument) will place the Commission in a position to decide whether the Congoleum case was intended as an elaboration of law and policy applicable to the instant case.

Having submitted a Consent Order Agreement entered into by both the corporate respondent and Roy C. Barrett, individually, and having entered into a joint stipulation encompassing the essential facts in this case, respondents hereby request reconsideration of their previous Motion for a determination of the applicability or non-applicability of the Congoleum Industries, Inc., case.

## II. SUMMARY OF STIPULATED FACTUAL EVIDENCE AND RESPONDENTS' VIEW OF THE CASE

### A. Production and Testing.

The instant case concerns Style 222, Paradise Valley, a foam backed dense nylon shag carpet manufactured by Barrett Carpet Mills, Inc., over an eighteen-month period ending January 1, 1974.1/ Style 222 was manufactured in a three-stage process, consisting of tufting, dyeing, and foaming 2/, only the first of which was performed under the direct control of Barrett Carpet Mills, Inc.3/. Because Barrett Carpet Mills, Inc., does not have a dyeing or finishing capability, it must, as is the case with most small mills 4/, rely on outside finishers for dyeing and backing of its carpet lines. The tufted greige goods were dyed by Constellation and foamed by Reliance Industries, Inc., and/or Masterpiece Finishing, Inc., on an as needed basis. 5/

1/ Sales of Style 222, Paradise Valley (foam) during this period totalled only $60,026.00, or 0.47 percent of the Company's business.

2/ Foaming involves application of a latex precoat and the foam rubber backing to a carpet. The two coats (precoat and foam) are applied in the same process or "run."

3/ Jt. Stip.No. 11.

4/ Barrett's total sales volume in 1974 was $6.4 million.

5/ Jt. Stip.Nos. 14, 15.

From the outset, Style 222, Paradise Valley, was manufactured from the latest in fire retardant materials1/. The latex precoat utilized by Reliance Industries, Inc., in initial production of Style 222 in August 1973 contained 150 parts of alumina trihydrate per load, a specification also employed by Masterpiece Finishing, Inc., and continued in effect by Barrett Carpet Mills, Inc., throughout the period of the carpet's production.2/

Alumina trihydrate, when used as a filler in carpet latexes, operates as a fire retardant by releasing water vapor when exposed to a flame source. The carpet flammability standard involves exposure of each of eight 9"x9" specimens of a given carpet to a flame source (a burning methenamine pill) and measurement of the extent the spread of the flame.3/ The effectiveness of alumina trihydrate in the test method is dependent upon the presence of an adequate level of alumina trihydrate at the point of contact with the flame source.

In all, Barrett Carpet Mills, Inc., manufactured a total of 15,013.76 square yards 4/ of foam backed Style 222, Paradise Valley 5/. This carpet was latexed and foamed on twenty-six separate dates by two different custom finishers6/. Eight of the foaming runs were by Reliance Industries, Inc., and eighteen were by Masterpiece Finishing, Inc. 7/.

1/ Transcript of Federal Trade Commission hearing held July 18, 1972.

2/ Jt. Stip. Nos. 13, 14 and 15.

3/ Jt. Stip. Nos. 7 and 12.

4/ This carpet consisted of 82 shipping rolls sold as 114 rolls or cuts. As referred to in the Joint Stipulation, the digits in the roll number preceding the (-) indicate the master roll number. The first number following the (-) indicates the cut from the master roll.

5/ Jt. Stip. No. 9.

6/ For convenience, and consistent with the practice in the trade, these finishing periods will be referred to hereinafter as "foaming runs."

7/ Although there is no real dispute between the parties that Style 222, Paradise Valley (foam back), was finished on a total of twenty-six different dates betwee August 1972 and January 1974, counsel for the Commission have refused to concur in the characterization of each day's production as a "foaming run." The primar objection appears to be a fear that acceptance of the terminology would somehow tilt the factual stipulation toward respondents' conception of the case as involving foaming runs rather than individual rolls. Whether there were twenty-s foaming runs or some hypothetical additional number is irrelevant. Respondent has chosen to use the "foaming run" terminology because it is consistent with both industry usage and the probable facts in this case. A "foaming run" is all those goods coated from the same mix of precoat and foam. The latex precoat batches utilized by Reliance Industries, Inc., and Masterpiece Finishing, Inc., would generally finish approximately 13,000 square yards and 10,000 square yard of carpet respectively. Inasmuch as the largest quantity of Style 222 foamed b either of these finishers on any of the finishing dates was 2,207 square yards (masterpiece, January 10, 1973), and most of these runs (16 of 26) involved yar of approximately 300 square yards or less, it is highly unlikely that any of th Style 222, Paradise Valley (foam) finished on a given day was from two differen "foaming runs." Even if true, the point lacks any real significance to the

DOES NOT ANSWER? about using MIX for foam foamy run

Samples of carpet from four of these foaming runs 1/ have been tested by both the Commission and Independent Textile Testing Services, Inc. 2/ All were Masterpiece finished goods. No samples of carpet finished by Reliance Industries, Inc., have been tested to date. There is essential agreement between the two laboratories with respect to the carpet samples tested. The carpet samples tested from the rolls finished on July 18, 1973 (9 tests) and December 10, 1973 (3 tests) did not, for the most part, comply with the acceptance criterion of the standard. 3/ The carpet samples tested from the rolls finished on October 10, 1973 (5 tests), and November 9, 1973 (6 tests), met the acceptance criterion of the standard. 4/

Each of the twenty-two flammability tests performed by the Consumer Product Safety Commission and Independent Textile Testing Services, Inc., on carpet cut from roll goods was conducted in accordance with the test method prescribed in the standard.3a/These tests demonstrate that there was a lack of uniformity in the flammability characteristics of Style 222, Paradise Valley (foam back), as finished by Masterpiece Finishing, Inc. 5/ This variability was caused by a lack of uniformity in the distribution of alumina trihydrate filler in the latex precoat applied to the carpet back during at least a part of the July 18, 1973, and December 10, 1973, foaming runs. 6/

A neutron activation analysis conducted by Georgia Institute of Technology on twenty-four specimens taken from twelve different locations in four rolls (two each from the passing and failing foaming runs) has established that although the average percentage by weight of alumina trihydrate was 10.9% in the passing samples and 9.4% in the failing samples, there was a significant variation in the alumina trihydrate in the failing samples. The total range in the alumina trihydrate level in the passing samples was only 8.6% to 13.9%. The range in the failing samples was 3.2% to 26.3%.7/ Based upon these neutron activiation analyses, the Georgia Institute of Technology concluded that "the failure of Rolls #7048-21 and 10923-12 (rolls foamed on July 18, 1973 and December 10, 1973) to pass the pill test was probably due to the lack of uniformity in addition of [alumina trihydrate] to the carpet backing."

The flammability test results on the rolls of Style 222, Paradise Valley (foam back), from foaming runs in which the alumina trihydrate was adequately mixed in the latex precoat were uniformly favorable in both the Commission's laboratory and at Independent Textile Testing Services, Inc. A total of eleven

1/ The four finishing dates from which carpet has been tested were July 18, 1973, October 10, 1973, November 9, 1973 and December 10, 1973. (Jt. Stip.No, 34,

2/ Independent Textile Testing Services, Inc., is a private testing laboratory located in Dalton, Georgia. Barrett Carpet Mills, Inc., does not have its own flammability testing facilities.

3/ The only two exceptions were passing tests by the Commission on Roll No. 7049-11 (finished July 18, 1973) and by ITTS on Roll No. 10923-12 (finished Dec. 10, 19

3a/ Jt.Stip.Nos. 31 and 32.

4/ The only exception was a single test performed by the Commission on a scrap of carpet containing facial flaws which had been laying exposed to the elements in a consumer's home for six months following installation.

5/ No carpet finished by Reliance Industries, Inc., has been tested either by the CPSC or Barrett.

eight-specimen tests were conducted on carpet from the October 10, 1973 and November 9, 1973, foaming runs. In ten of these tests all eight specimens passed. In the eleventh test, performed on a sample of carpet which had laid exposed to the elements in a consumer's home for six months, two of eight specimens failed, one more than is allowed by the standard.1/ Another roll from this same foaming run had been previously tested and passed by the Commission. 2/ A total of forty-eight individual specimens of carpet from the November 9, 1973, foaming run have been flammability tested. Forty-six passed, two failed. 3/ This ratio is far in excess of the acceptable quality level for a production unit of carpet as specified in the proposed sampling plan amendment to the carpet flammability standard 4/ or the acceptable quality level contained in the current standard.

The evidence in the form of flammability tests and neutron activation analyses indicates that the alumina trihydrate filler in the latex precoat on two Paradise Valley foaming runs (or parts thereof) either settled out or was otherwise inadequately agitated, producing an uneven application of the filler's fire retarding qualities across the carpet back.

There is no evidence, whatsoever, that Style 222, Paradise Valley (foam back) carpet, manufactured according to the Barrett specifications, would fail to meet the acceptance criterion of the carpet flammability standard, absent an irregularity such as inadequate agitation of the latex precoat to insure uniform distribution of the alumina trihydrate. There is no evidence that this irregularity occurred on any other occasions than during the July 18, 1973 and December 10, 1973, Masterpiece Finishing, Inc., foaming runs. There is no evidence of any similar irregularity with respect to any carpet finished by Reliance Industries, Inc. 5/

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1/ According to a memorandum dated December 31, 1974 from CPSC Staff Attorney Melvin I. Kramer, this carpet sample also had a facial flaw. The influence of this flaw on the test result is not presently known. Jt. Stip. No. 33.

2/ Roll No. 10351-21 (CPSC Test Rep. No. C-2454). Jt. Stip. No. 33.

3/ Upon visual examination it also appears the methenamine pill may not have been centered in one of the two failing specimens. This discrepancy, too, would invalidate the test.

4/ 38 Fed. Reg. 6210-6214, March 7, 1973.

5/ Reliance finished 3902.20 square yards of Style 222, Paradise Valley (foam back) between August 23, 1972 and March 1, 1973. Jt. Stip. No. 16.

B. Sales and Distribution.

Style 222, Paradise Valley (foam back), was last manufactured on January 31, 1974 1/. Of the 15,013 square yards produced, all but 974.38 square yards were sold in 1972-73 2/. The last sale of any Style 222, Paradise Valley (foam back) was on March 7, 1974, twenty months ago 3/.

No Style 222, Paradise Valley (foam back) was produced or shipped after the first test failure reported on this carpet style by the Consumer Product Safety Commission 4/. Production of the style had been discontinued prior to the Commission's investigation 5/. When informed of the Commission's test failures on carpet from the July 18, 1973, and December 10, 1973, foaming runs, Barrett Carpet Mills, Inc., contacted each of its known customers of Style 222, informed them of the Commission's test results, asked that no further sales be made of carpet in inventory from these foaming runs. Subsequently, when the Commission reported a third failure, Barrett again contacted its known customers of the style and recalled all inventories of rolls from the affected foaming runs 6/.

## III. THE FACTUAL DISTINCTIONS BETWEEN THE CONGOLEUM AND BARRETT CASES ARE BOTH FEW AND LEGALLY INSIGNIFICANT

Enforcement counsel admit that the Congoleum decision is precedent in this case (Tr. 24, 28), and that the Order sought by the Government against Barrett goes beyond Congoleum in that it seeks to require the corporate respondent Barrett Carpet Mills, Inc., to recall installed carpet and refund the purchase price of that carpet (Tr. 32). The rationale for the Government's position is that the "facts in this case are a bit different." (Tr. 8) 7/

Enforcement counsel have attempted to distinguish Congoleum on the basis of (1) a distinction in the number of rolls of carpet available for testing in the two cases, and (2) differences in the pass/fail ratios of tests conducted. See Transcript of the September 9, 1975, Prehearing Conference (Tr.28, 35) and Memorandum in Support of Opposition to Respondents' Motion, pp. 5-6.

1/ Jt. Stip. No. 10.

2/ Jt. Stip. No. 10.

3/ Jt. Stip. No. 10.

4/ Jt. Stip. Nos. 10 and 20.

5/ Jt. Stip. Nos. 10 and 19.

6/ Jt. Stip. Nos. 24, 25, and 26.

7/ All references to "transcript" in this Motion are to the transcript of the September 9, 1975, Prehearing Conference in CPSC Docket No. 75-5.

Because the total sales of Barrett Carpet Mills, Inc., were only 15,000 square yards, a drop in the bucket compared with the carpet yardage at issue in Congoleum, it is understandable that only a small number of rolls of carpet have been available for test. Moreover, because Barrett recalled the carpet from the foaming runs alleged to fail Commission tests, and has voluntarily made samples of all rolls of Style 222, Paradise Valley (foam back) in its possession available for testing, and the Commission staff has tested each such roll, ample reason exists why there is little carpet remaining to be tested. Even so, Barrett Carpet Mills, Inc., has recently obtained previously unsold material from two additional rolls of carpet which will be available for testing under the proposed Order.

The "large number of rolls of the offending carpet...[remaining] in the hands of distributors, wholesalers, and retailers" alleged to exist in Congoleum 1/ are a figment of Enforcement Counsel's imagination. For all practical purposes, the only carpet which remains available for testing under the Commission's order in Congoleum is the inventory seized at two distributors. F.T.C. v. Endureze, C.A. No. 4977, D.C.R.I.; F.T.C. v. Endureze, C.A. No. 72-C-924, E.D.N.Y. These inventories contain virtually no carpet from the older of the two carpet formulations in dispute in that case. 2/

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1/ See Enforcement Counsel's Memorandum in Opposition, dated October 10, 1975, at p. 5.

2/ In the Matter of Congoleum Industries, Inc., involved two different formulations of carpet both sold under the same name "Endureze." The "new" formulation contained alumina trihydrate in the latex precoat while the "old" formulation did not. The two were treated by the Complaint counsel and the Administrative Law Judge as two distinct carpet styles.

Enforcement counsel's alleged differences in the pass/fail ratios on tests performed in the two cases are similarly ill founded, as is the notion that "it is highly possible that the Congoleum order would have provided a broader (style-wise) recall if the ratio of failures to passes had been greater." 1/ This is pure speculation on counsel's part, speculation not based upon an accurate understanding of the Congoleum record. 2/

Upon close examination of the facts in both cases, it becomes clear that there is little in this record to distinguish the Commission's data from that which was before it in Congoleum. Respondents believe the existing record of tests is sufficient to enable the Commission to determine the applicability or non-applicability of its Congoleum decision to the instant case.

## IV. THE FACTS AS STIPULATED WILL ENABLE THE COMMISSION TO DETERMINE THE SUITABILITY OF DISPOSING OF THIS CASE WITHOUT TRIAL AND ON THE BASIS OF THE PROFFERED CONSENT ORDER AGREEMENT.

In the Initial Decision in the Matter of Congoleum Industries, Inc., CPSC No. 75-3, Judge Hanscom reached the following primary conclusions as to the facts: (1) that the test results from all laboratories were correct, both passing and failing (Init. Dec. p.19); (2) that the differences in test results

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1/ Motion in Opposition dated October 10, 1975, at p. 6.

2/ Of the two formulations of carpet subject to the Congoleum order, the Commission had tested samples of the so-called "old" formulation only five times on only four different rolls. Tests on two rolls failed (50%) and two rolls passed (50%). Of the 5 tests, two failed (40%) and three passed (60%). Compare Respondent's Exhibits RX-68 and RX-76, In the Matter of Congoleum Industries, Inc., CPSC Docket No. 75-3. The pass/fail ratio on the so-called new formulation was much better than on the old. Nevertheless the remedial approach employed by the Commission with respect to the two carpet qualities was identical. There is hardly room to speculate that the Commission would be in a position to view the test results in Barrett in a different light, especially in view of the fact that five of the Commission's tests in Barrett have been made on carpet which has been acknowledged, from the outset, as not having been manufactured to normal specifications.

more probably reflected variabilities in respondent's carpet than laboratory or test method variability (Init.Dec. pp. 19-21); and (3) that significant and substantial quantities of respondent Congoleum's carpet failed the Standard and were flammable (Init. Dec. pp. 21,23).

Based upon these factual findings, with which the Commission subsequently concurred in full, an Order was imposed which: (1) prohibited future violation of the Flammable Fabrics Act and the carpet flammability standard; (2) required tests by the Commission on available rolls of carpet to identify the carpet failing to meet the standard; (3) required notification of members of the public in possession of the premises in which rolls failing tests had been installed; and (4) required recall of uninstalled carpet (from distributors, wholesalers, retailers, or consumers) from rolls failing tests, with provision for refund of the purchase price. Two aspects of the Congoleum decision are of primary significance in the instant case. First, no remedial action of any kind whatsoever was required as to rolls which either passed tests or could not be tested for whatever reason. Secondly, recall of carpet which had been installed was rejected because (1) it was "not at this juncture practicable" because of the length of time most of it (the carpet) had been laid down, and (2) "the legal and practical problems presented by any order contemplating the taking up of carpet now on floors."

In the instant case, the Commission staff seeks an Order which presumes non-compliance of every roll of Style 222, Paradise Valley (foam back), not just the rolls failing tests, and seeks to require notice to the purchasers of all Paradise Valley (foam back) carpet, and the total recall of this carpet, even that which has been installed. This action cannot be square with Congoleum on the basis of the facts before the Commission or the explicit provisions of its Decision or Order.

The Commission's decision in Congoleum was handed down pursuant to Part 3.54 of the Rules of Practice of the Federal Trade Commission, which were applicable to the case. 1/ P.L. 92-573, §30(e)(3). Under these rules, the Commission was to "adopt, modify, or set aside the findings, conclusions, and rule or order contained in the initial decision..." prepared by the Administrative Law Judge presiding over the hearing. The rules also require that the Opinion contain "a statement of the reasons or basis for (the Commission's) action and any concurring and dissenting opinions."

In its Opinion, the Commission majority stated it had "concluded that the findings and conclusions of the Administrative Law Judge in the initial decision adequately and correctly dispose of all the issues in this case and that the order to cease and desist included in the initial decision is appropriate and proper in all respects." Opinion, Congoleum Industries, Inc. (CPSC No. 75-3.)

1/ The corresponding provision of the Interim Rules under which the instant case is being tried was taken verbatim from the FTC Rules. See 16 C.F.R. §1025.74(b).

As to the law, both the majority and minority opinions considered the extent of the Commission's powers "to require notification and recall of items that fail to conform to Standards..." The majority concluded that the Commission possessed such powers.

The Commission majority also explicitly accepted the findings and conclusions of the Administrative Law Judge. Among these conclusions was that "significant and substantial quantities (of the carpet) failed to meet the Standard and were flammable." (Init. Dec., Congoleum Industries, Inc., p. 21) and were "sold in interstate commerce." (Init. Dec. p. 23). The remedy devised by the Administrative Law Judge and adopted by the Commission made determination of the precise quantity of goods manufactured, sold, or inventoried, or the specific portion of the goods which did not meet standard academic. All rolls not previously tested ...(were required to) be tested by, or to the satisfaction of, the Consumer Product Safety Commission to determine whether such carpet complies with the Standard. (Init. Dec. p. 23).

The issue of whether a remedial order should extend to the recall of allegedly flammable carpet which had been installed in the purchaser's home, office or other location, was specifically raised and decided. Initial Decision, p. 23. According to Judge Hanscom,

> "Recall of carpet which has been installed is not at this juncture practicable because of the length of time most of it has been laid down, and the legal and practical problems presented by an order contemplating the taking up of carpet now on floors."

In its Opinion, the Commission not only explicitly accepted the findings and conclusions of the Administrative Law Judge, but specifically acknowledged that the portions of the order requiring recall and refund applied only to such rolls as had "not been installed." 1/

1/ This position is completely consistent with that taken by the Federal Trade Commission during the period between April 1970 and May 1973 when it exercised enforcement responsibility under the Flammable Fabrics Act. In an article discussing the FTC enforcement policy which appeared in the October 13, 1971 issue of Home Furnishings Daily, Mr. Ed Finch, then FTC Assistant Director for Textiles and Furs, stated that "as far as who pays the freight on shipments back to the mill and who pays if the consumer insists that carpet be ripped up (after receiving notice), that is something that will have to be worked out between the manufacturer and the retailer. The FTC cannot get involved in that facet of the question." Similarly, the FTC Flammable Fabrics Enforcement Policy subsequently issued by the Commission (36 F.R. 21544, Nov. 10, 1971) referred only to the obligation to "remove and/or recall ... the flammable fabric from commerce." Installed carpet is not considered in commerce. The standard form flammable fabrics order employed by the Federal Trade Commission

The factual distinctions between those considered in Congoleum and the instant case, to the extent such distinctions exist, are made irrelevant by the remedial provisions elaborated in that decision and contained in the proffered settlement agreement. By consenting to tests on all available rolls of the allegedly non-complying style, any distinction between the two cases based upon the difference in total number of tests is mooted. Both cases involve conflicting tests and evidence that some production passed and some failed. 2/ The instant case has been simplified by a stipulation that all of the tests on unsold roll goods were properly conducted by the respective laboratories.

1/ (contd.) (including the order proposed by the Government in the Congoleum case) would have imposed upon the respondent-manufacturer an obligation to recall non-complying carpet from its "customers", which, due to distribution patterns in the carpet industry, would not include ultimate consumers. By the same token, the Courts have determined that the Federal Trade Commission Act does not authorize the imposition of cease and desist orders which compel restitution for products in use by the consumer. Heater v. Federal Trade Commission, CCH Trade Cas. Par. 75, 244 (9th Cir., 1974).

2/ The remedy in Congoleum eliminated any judgment as to the significance of a passing or failing test except as it related to the roll tested. It was predicated on the finding that tests on four rolls failed, therefore an undetermined amount of the carpet did not comply. The settlement agreement proffered by Barrett obviates the need for any finding that any Paradise Valley carpet failed by obligating the Company to perform tests on the remaining rolls to determine the extent of compliance or of non-compliance of those rolls. The remedial action to follow depends, as in Congoleum, upon the individual test results, not the number of tests or the pass/fail ratio.

The quantity of allegedly flammable carpet in Congoleum was ten times the total Barrett production of Paradise Valley (foam back) carpet. The carpet alleged to be non-complying had been in use for similar periods of time in each of the two cases. 1/ In both cases, the carpet remaining in commerce available for testing is de minimus, and a small percentage of the total production.

## V. THE PRESIDING OFFICER IN AN AGENCY ADJUDICATIVE PROCEEDING IS BOUND TO APPLY THE POLICY OF THAT AGENCY AS REFLECTED IN PAST DECISIONS.

It is a general rule that administrative agencies should apply the doctrine of stare decisis to their own decisions. An agency should both follow the standards set forth in its prior decisions, and apply the same remedies, unless it finds and articulates a reason for changing the policies involved. To do otherwise is to render §8(b) of the Administrative Procedure Act, which requires agencies to state reasons for actions, a nullity. It follows that changes in policy should be made at the agency level, so that they may be both examined and promulgated in the same way as the original policy. This is especially true where, as in this case, the agency appears to have rendered a decision in which it set a policy as to the limits of its statutory authority. For the Commission, after due analysis and deliberation, to change its mind on such matters and to state its reasons for enlarging its view of its mandate or authority, may be altogether proper, although this particular issue is not presented by this Motion for Reconsideration. But for such a decision to be made at a less visible level is quite another matter. Accordingly, an Administrative Law Judge should be bound by previous decisions of the agency in question. Actions inconsistent with past full agency action are justifiable only in exceptional circumstances.

The guiding principle is the need for consistency and rationality in agency action. It would obviously be inappropriate for an Administrative Law Judge to substitute his judgment for that of the Commission, unless, in his judgment, that action of the Commission was arbitrary and capricious. Although it has been held that an agency may impose more severe sanctions if it determines that those recommended by the Administrative Law Judge are inadequate, Sy B. Gaiber & Co., 31 Ad. L.2d 785 (Dept. Agr.1972), where the agency has already determined the sanctions appropriate for a given situation, the Administrative Law Judge should be bound by that determination.

1/ Congoleum discontinued production of its Endureze style carpet in August 1973, fourteen months before the Initial Decision was handed down in that case. (Init. Dec. p. 8) Barrett discontinued production of Style 222, Paradise Valley, in January 1974 and the carpet was last sold in March, 1974, twenty months ago.

The leading case in which a court reversed an agency for changing its remedies without notice is NLRB v. Mall Tool Co., 119 F.2d 700 (1941), in which the Seventh Circuit held that "to adopt different standards for similar situations is to act arbitrarily." More recently, several courts have either reversed agency actions for inconsistency, or indicated that it was appropriate to examine other decisions to determine whether the action under review was inconsistent with them and therefore impermissibly arbitrary. National Air Carrier Assn. v. CAB, 436 F.2d 185 (D.C.Cir., 1970); Local 1325, Retail Clerks Int'l Assn., AFL-CIO v. NLRB, 414 F.2d 1194 (D.C. Cir. 1969); City of Lawrence, Mass. v. CAB, 343 F.2d 583 (1st Cir.1965); Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965); NLRB v. Capital Bakers, Inc., 351 F.2d 45 (3d Cir., 1965); Mary Carter Paint Co. v. FTC, 333 F.2d 654 (5th Cir. 1964). In other cases, the courts have held that an agency may change policies as to almost identical fact situations, but not without reasoned explanation. FTC v. Crowther, 430 F.2d 510 (D.C. Civ. 1970); ABC Air Freight Co., Inc. v. CAB, 23 Ad. L. 2d 80 (2d Cir. 1968); Rayonier, Inc. v. NLRB, 380 F.2d 187 (3d Cir. 1967); T. I. McCormack Trucking Co., Inc. v. United States, 18 Ad.L2d 922 (D.N.J., 1966)(ICC). And in one case, the Internal Revenue Service was held bound to apply an informal ruling of the Commissioner of Internal Revenue as to the deductibility of certain types of local taxes until the Commissioner had specifically modified his position so that taxpayers aware of the previous position would know of the modification. Brecklein v. Bookwalter, 231 F.Supp. 404 (W.D. Mo., 1964).

These cases quite firmly establish the requirements that an agency abide by its own past decisions as to both procedure and remedy, even if its rulings lack the formality of a rule-making procedure. Various agencies have also articulated similar policies, embodying the principle that consistency, rationality, and the rule of law require similar results in similar cases. Particularly pertinent here is the case of Ash Grove Cement Co., 27 Ad.L.2d 1044 (FTC 1970), where it was held to be error for the hearing examiner to adopt new a approach without clearly and explicity stating the circumstances distinguishing the present case from almost identical prior cases; Matter of Publishers Development Corp., 24 Ad. L.2d 497 (P.O. Dept. 1968) (prior decision of department should be followed); Milco Specialties, 9 Ad.L.2d 127 (P.O. Dept. 1967)(hearing examiner should follow department precedent); Insurance Agents' Intl. Union, 7 Ad.L.2d 674, 119 NLRB, No. 103 (1957)(same); General Docket No. 21 (Bit. Coal Div. Examiner's Report, 1941) (division's prior decision binding on examiner); Pacific Power & Light Co., 2 FPC 508 (1941)(power commission follows its own prior rulings).

In this case, the respondents have agreed to enter into a Consent Order identical to the order imposed by the Commission majority in Congoleum Industries, Inc., over the Chairman's dissent as to the Commission's statutory authority to enter such an order. In Congoleum, the Commission adopted the initial decision and order of the Administrative Law Judge as its own, holding the order "appropriate and proper in all respects." Enforcement counsel now wish to go beyond the remedy provided by the Congoleum order, and to require respondents to recall carpet already installed -- a remedy which the Administrative Law Judge and the Commission found in Congoleum to be not "practicable" and to present "legal and practical problems." Initial Decision at p. 23. The cases are so

similar, however, that counsel cannot possibly show that this remedy is any more practicable, or any less fraught with problems, in this case than in Congoleum. Accordingly, the Commission's conclusion in Congoleum must be binding here, unless and until the Commission is able to articulate a policy that would compel a contrary conclusion. And, we respectfully submit, the determination of such a policy is a matter for the Commission and not for an Administrative Law Judge who is required to follow the Commission's present policy until that policy is changed.

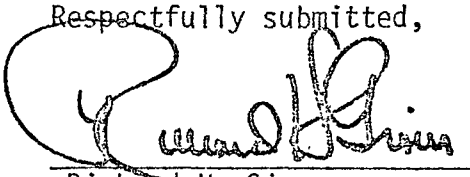
## VI. CONCLUSION

Filing of the Joint Stipulation which has been developed by the parties in this case, and the submission by Barrett Carpet Mills, Inc., and Roy C. Barrett, individually, of a Consent Order Agreement identical in all material respects to that which was imposed in the Congoleum case, have, in respondents' view obviated the objections which led to the denial of its previous Motion for Determination of Applicable Law. All facts of a nature considered essential in the Congoleum decision, including those which had a demonstrable bearing on that Decision and Opinion, have been stipulated. The Commission is now in a position to determine the applicability or non-applicability of its Congoleum decision in this case. A decision in this matter, at this stage, will either completely obviate the need for a trial or free the parties to deal with the significant legal issues of permissible remedies under the Flammable Fabrics Act in the course of trial.

The applicability or non-applicability of the Congoleum case to the case at bar involves a controlling question of law and policy as to which there is substantial ground for differences of opinion. Prompt resolution of this issue would materially advance the ultimate termination of the litigation.

For these reasons, respondents respectfully move for reconsideration of the denial of the Motion for Determination of Applicable Law.

Respectfully submitted,



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COUNSEL TO RESPONDENTS

Dated: November 24, 1975.

UNITED STATES OF AMERICA

BEFORE CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:

BARRETT CARPET MILLS, INC., a corporation, and

ROY C. BARRETT, individually and as an officer of the corporation.

CPSC Docket No. 75-5

To: The Honorable Presiding Officer, Paul N. Pfeiffer, Administrative Law Judge.

REPLY TO OPPOSITION TO MOTION FOR RECONSIDERATION OF DENIAL OF MOTION FOR DETERMINATION OF APPLICABLE LAW

## I. Introduction

On December 8, 1975, Enforcement counsel filed an Opposition to respondents' Motion for Reconsideration of Denial of Motion for Determination of Applicable Law. That Opposition urges rejection by the Administrative Law Judge of the Motion on the grounds of alleged "substantial areas of factual disagreement" between the parties. The Opposition then urges the Commission to reject the proffered settlement agreement and to refuse to render an opinion as to the intended effect of the Congoleum decision on cases of alleged non-compliance with the carpet flammability standard.

As previously stated, respondents' Motion neither raises nor addresses the question of whether the Congoleum decision was a good one or a bad one. This is not the issue before the Administrative Law Judge. Presumably, if the

Motion is accepted and the issue of the general applicability of the Congoleum decision in carpet flammability cases is put before the Commissioners, ample opportunity will be given to both the Government and respondents to present arguments of this nature. For these reasons, this Reply does not attempt to deal with Enforcement counsel's arguments as to why Congoleum was a bad decision and should not be followed in this or any other case involving alleged noncompliance with the carpet flammability standard.

Respondents contend that what are described by Enforcement counsel as "substantial areas of factual disagreement" are not disagreements as to facts essential to determining the applicability or nonapplicability of the Congoleum remedy. Moreover, respondents disagree that the Commission's rules preclude the issuance of an opinion clarifying the law or policy of the Commission, and reject, as circumlocutious, Enforcement counsel's characterization of its Motion as a request for a "declaratory order", not provided for in the Commission's rules.

## II. The Areas of Factual Disagreement Are Irrelevant in the Instant Context.

At the heart of the Government's Opposition to the Motion is the undeniable fact that there are a number of aspects of carpet production in general and the carpet production in this case which are puzzling to or not understood by Enforcement counsel. But what is equally clear is that (1) this will continue to be the case after trial, if a trial is required, and (2) it is not essential to applying the Congoleum decision or determining its applicability for the Administrative Law Judge to make factual determinations as to any of the so-called "areas of factual disagreement."

What Enforcement counsel insist upon confusing are areas of factual and legal disagreement which will exist if a trial must be held as contrasted with the essentiality of particular facts in the context of applying the Congoleum decision. What seems to be overlooked by Enforcement counsel is that it is totally unnecessary to accept respondents' view of the facts in this case to accept the applicability of the Congoleum decision.

If this case is tried, Barrett will prove that, at most, the Commission's evidence would justify a conclusion that a total of four rolls of carpet, produced on two different days, failed to meet the acceptance criterion of the carpet flammability standard. Barrett will also establish the cause of this noncompliance, the Company's lack of direct responsibility, and its de minimus nature. Moreover, Barrett will establish that no substantial hazard exists even if the Commission's alleged facts are accepted as true, and that in any event, the Commission is without legal authority to compel recall (in any form and to any extent) for noncompliance with the carpet flammability standard. In this context, resolution by the Administrative Law Judge of certain areas of current "factual disagreement" between the parties would be necessary.

But the respondents have proposed a voluntary settlement of this case significantly different from that which it believes would be appropriate for the Judge to impose following trial, if a trial is required. For the proposed remedy involves an obligation to recall, an obligation which would extend beyond the two finishing dates rendered suspect by Commission and Barrett tests, if tests required to be made justify extending the agreed upon remedy.

In developing factual stipulations in this case, there are factual issues which would be significant in a trial which are totally irrelevant in the context of the proposed settlement. A primary example is the entire

dispute over "foaming runs." See Opposition, pp.5-8. The Congoleum decision is oblivious to such distinctions. It operates on rolls available for testing, without regard to production sequence, production unit groupings (lots, etc.), yardage, time, or other similar information.

Enforcement counsel enumerates (p.7) what are considered the "three principal areas of actual disagreement", to wit: whether test failure is limited to two foam runs; whether the finishing irregularity caused the failures, and whether its occurrence was limited to two foaming runs; and whether its tests on a facially flawed piece of scrap carpet taken from a consumer's home are valid. Application of the Congoleum remedy makes it totally unnecessary for the Commission or the Administrative Law Judge to resolve any of these issues.[1/]

The Congoleum decision resolves all the uncertainties and frustrations expressed by Enforcement counsel in the Memorandum in Opposition (pp.1-14) by assuming that an indeterminate amount of the carpet style at issue fails to meet the standard, and applying roll-by-roll test requirements on available rolls to identify the extent of noncompliance for which a remedy is required.

Enforcement counsel and counsel for respondents could endeavor, for the rest of their natural lives, to reconcile the factual uncertainties which exist, or, more particularly, the conclusions to be reached on the basis of these facts. This effort would be unsuccessful. Respondents consider the material

1/ Enforcement counsel also enumerate some 11 disputed factual statements (Opposition, pp.7-14). The rebuttal of each of these 11 points would be pointless. If each is laid along side the Initial Decision in Congoleum, it can be readily seen that application of that decision does not require the Administrative Law Judge or the Commission to make a choice between the Government's position and that of respondents as to any one of these points.

contained in these pages (Opposition, pp.1-14) to be so replete with inaccuracy and error as to defy orderly and meaningful rebuttal. Nor is the Government's Memorandum the proper source of evidentiary facts. Therefore, no point-by-point rebuttal will be attempted. The essential point which remains, after examining each of the propositions contained in these pages (pp.1-14), even assuming them true, is that these alleged differences simply do not need to be resolved if the Congoleum remedy is applied. The arguments about customer lists, inventories, test results, variability, production irregularities, causes of failures, statistical projections, foaming runs, specifications (the list could go on ad nauseam), have their relevance only on the context of an evidentiary hearing in which the Commission would have to prove, inter alia, the full extent of any deficiency, and where respondents would be contending that the totality of the Commission's evidence of noncompliance was restricted to two foaming runs.

## III. The Government's Memorandum Contains Misleading Statistical Information.

One of the fundamental inequities of the Commission's enforcement policy is its steadfast refusal to apply legitimate sampling and statistical concepts in determining compliance or noncompliance with the standard. Rather than to select a test sample for what it represents, the Commission makes this decision after the test result is known. What is worse, failing tests are typically considered to represent the universe, while passing tests are of much more limited significance.

The statistical manipulations of the Commission staff are not germane to the Motion before the Administrative Law Judge, but they are so gross that prejudice could result. For this reason, more for purposes of illustration

than rebuttal, several comments on the test data are offered.

First, it must be recognized that both the Government and Barrett have been experimenting with tests on the available inventory. The number, order, duplication, etc., of these tests do not follow a statistical plan and any attempt to attribute a statistical significance to the totality of these tests is objectionable.

The statistical distortions which have been worked into these figures are obvious for all to see. For example, Barrett systematically tested each piece of carpet tested by the Government, including those which failed. Because of the probability that the carpet failing the initial test would fail again, Barrett could have avoided testing these rolls. But the Company was being asked to take costly remedial actions and wanted a confirmation of these results. The repeat tests do not have the statistical significance the Government attributes to them. (Opposition, p.19) Similarly, a number of the Government's tests were made on carpet which had been identified by respondents prior to the tests as having been manufactured in a manner inconsistent with Barrett specifications. Yet, the Government treats these as random and representative tests.

The examples of statistical manipulation go on and on. Enforcement counsel characterize this case as one involving tests on seven rolls, five of which failed. But, four of these rolls were produced back-to-back on the same date, a fact communicated to the Commission field staff before the tests on three of the four rolls were made.[1/] One of the so-called "failing" rolls actually passed the Commission's only test on it.[2/] This is just a game. Both sides can play it. For example, two of the tested foaming runs show consistent passing results. See. Jt.Stip. No. 33. Barrett currently has in its inventory enough carpet from these two runs to make 312 more eight-specimen tests. Based upon the past tests on this carpet, there is a strong likelihood all or virtually all of these tests will again pass. What could 312 passing tests do to the Government's statistical presentation? Suddnely, the talk about pass/fail ratios (e.g., 52.3%, Opposition, p.20) would stop.

1/ At another point, Enforcement counsel argues that carpet from three of five finishing dates failed, conveniently ignoring the fact that carpet produced on one of these dates passed three tests (including one at the Commission) and that the failing test was on a piece of scrap.

2/ Jt. Stip. No. 33, Roll No. 7049-11.

A similar abuse of statistics is employed by Enforcement counsel to argue the Congoleum remedy inapplicable because there are "three times as many failures." The test failures referred to consist in large part of tests run by Barrett on carpet already known to have failed Commission tests, and tests by the Commission on rolls produced at the same time as other rolls previously failing Commission tests. With this type of sampling technique, virtually any type of statistics can be developed.

Enforcement counsel refer repeatedly to the need for "statistical projections of the likelihood of failure", holding out the promise of such projections at trial. Nowhere does the Government contend that it will even attempt to establish which rolls of untested Style 22, Paradise Valley, would fail. Hence this proffer of statistical testimony from the paid staff of the Commission does not promise to contribute to a more informed decision.

The record in Congoleum is replete with testimony from two highly trained, non-captive statistical experts. In reaching his decision, Judge Hanscom ignored their testimony entirely, opting instead for an approach that did not involve assumptions about the extent of noncompliance, but required actual proof on a roll-by-roll basis. The Commission endorsed this approach.

Respondents wish to avoid the temptation in this Reply to engage in statistical manipulation of their own. The temptation is great because it is apparent that respondents, too, are capable of building a case by merely conducting more tests. However, what should come through is the lack of relevance of this data in the context of the Congoleum approach.

IV. An Administrative Complaint Proceeding is not the Place to Resolve Disputes as to Compliance with the Order.

Enforcement counsel contend (Opposition, p.14) that an evidentiary hearing is necessary to resolve the dispute over the veracity of the test on the carpet scrap secured from the home of Jack Vest. Otherwise, it is argued, it would not be known whether the obligations of notice and recall set forth in the Consent Order would be in effect as to this roll.[1/]

An evidentiary hearing cannot be expected to resolve all of what are essentially compliance problems. Regardless of the nature of the final order, some factual disputes over its application can be expected. Where it is concluded that a duly imposed order has not been complied with, the Commission has the authority to seek relief (including civil penalties) in the Federal courts. 15 U.S.C.§56.

Assume arguendo[2/] that an evidentiary hearing is held for the purpose of determining the applicability of the remedy provision to the carpet scrap obtained from Mr. Vest, and that the hearing results in a finding that this piece of carpet was properly subject to the test and failed the standard. If this finding were to go unchallenged, it would have the effect of resolving

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1/ Enforcement counsel assume that because respondents contest the validity of this test in this proceeding, respondents would refuse to take the remedial actions specified in the order as to this roll during the compliance phase. This is speculation at best.

2/ The joint factual stipulation renders it unnecessary for the Administrative Law Judge to make any findings as to the Vest scrap to apply the Congoleum remedy to Style 222 production generally.

just one of a potential 113 or more disputes. Of what applicability would this finding be as concerns any other test on any other roll.[1/]

If the Order proposed by Barrett is adopted, the firm will become legally obligated to make a good faith effort to locate remaining uninstalled carpet in the hands of distributors, retailers, and consumers, and to test this carpet. At this juncture, it cannot be said what number of additional pieces of carpet will be located. Whatever that number, the tests on these rolls, together with the tests previously made, will dictate the remedial obligations of respondents. Disputes as to compliance with the Order will be resolved, as in all other Commission orders, between the parties or by the courts.

## V. The Congoleum Remedy is Suitable Despite Enforcement Counsel's Claims to the Contrary.

It becomes clearer with each successive submission that Enforcement counsel's contentions as to the nonapplicability of the Congoleum decision are based upon (1) a lack of understanding of that decision, or the record upon which it was based, and (2) a deliberate attempt to write that decision off the books except as to its holding on the issue of the existence of recall authority under the Flammability Fabrics Act.

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1/ A similar problem was implicit in Congoleum, a problem which the Commission did not consider it necessary to resolve. One of the rolls which failed a Commission test also passed a Commission test. The opinion does not attempt to resolve whether the notice and recall obligations are in effect as to that roll.

Enforcement counsel speak of "premises" and "assumptions" behind the Congoleum order as to quantities of carpet remaining to be tested. Who made these assumptions? The Bureau of Compliance? Certainly not Judge Hanscom, inasmuch as he clearly and expressly acknowledged the significance of the time factors on his decision. Put simply, there was in fact very little carpet remaining to be tested in Congoleum, and there is no basis whatsoever for Enforcement counsel's speculations as to the Judge's mental processes. This is especially inappropriate here, where it is clear the facts are not as Enforcement counsel presumed them to be.

Similarly, Enforcement counsel contend that there are no rolls (Opposition, p.18) of Style 222, Paradise Valley, available in the marketplace for testing. This, too, is a self-serving proposition. First, a substantial part of the Paradise Valley carpet which has been tested by the Commission had been retrieved by Barrett from the marketplace. Is a manufacturer to be prejudiced because he conducts a voluntary recall to remove products from the chain of distribution? Secondly, as Enforcement counsel know, Barrett has located two or three additional rolls of Paradise Valley carpet in the marketplace just since this proceeding was initiated. These carpets, and any others found, would be subject to the testing and remedial provisions of the proposed Order. To contend that the consumer would be "left completely unprotected" by an Order calling for roll-by-roll testing (Opposition, p.18) requires us to ignore the test results on rolls already tested as well as on any rolls which may be found.

Finally, Enforcement counsel attempt to distinguish this case from Congoleum on the basis of pass/fail ratios. What has been said before about the bizaare use of the statistical data on Style 222 by Enforcement counsel

applies equally well to the exercise (p.19) designed to establish that the pass/fail ratio of tests on both of the styles covered by the Congoleum order was better than that in the instant case. Not only was this distinction considered irrelevant by the Judge in fashioning of the remedy,[1] but it won't withstand close scrutiny.[2]

There are two aspects of the Congoleum decision that are fundamentally at odds with the Commission staff actions in this case. The first deals with extrapolation of failing tests to untested rolls. In Congoleum, the Commission had tested four rolls of "old formulation" carpet, two of which failed. Did the Judge conclude that 50% of the style fails? No. Did he condemn the entire"old" formulation, and order its recall? No. Did he condemn any roll which had not failed a test? No. He ordered that all available rolls (if any) be tested before any conclusion be reached as to appropriate remedial action, with the full knowledge that no "old" formulation carpet had been manufactured for more than three years.[3] The essential point is that not one single roll of carpet was considered presumptively noncomplying unless it had failed a test. Enforcement counsel here seek application of a contrary rule -- guilty until proven innocent.

1/ One remedy was applied to both formulations in the dispute without distinction.

2/ Enforcement counsel develop a 77% passing ratio by adding four tests performed by the respondent on a single roll of carpet!

3/ The carpet formulation was changed in October, 1971; the Initial Decision was dated November, 1974.

The second significant distinction deals with the extent to which the remedy of recall is to be extended through the chain of distribution. Congoleum ruled out recall to the floor regardless of test results, for "practical" and "legal" reasons. Enforcement counsel here seek recall to the floor notwithstanding these practical and legal difficulties, and would apply this remedy even as to untested carpet.

No matter the number of times that decision is reread, it is impossible to find in it any justification for a refusal by the Administrative Law Judge to apply it in this instance if the Commission's past decisions have any binding effect whatsoever in complaint proceedings.

## VI. Enforcement Counsel Confuse the Distinct Roles of Commission and Administrative Law Judge.

The respective parties have briefed the legal authorities concerning the precedental effects of the past Agency decisions on future cases. No purpose would be served in rearguing these authorities. But what is essential to note is the use of the straw-man argument by Enforcement counsel by treating this Motion as if it deals with the limits of the Commission's authority as contrasted with the role of the Administrative Law Judge. Understandably, Enforcement counsel find their own straw-man easier to refute than the legal contention presented by the Motion, but this does not dispose of the issue.

Respondents do not contend that application of the doctrine of stare decisis...requires the entry of a remedial order that is identical to the one issued in Congoleum. (Opposition, p.24) But respondents do contend that, as concerns the actions of the Administrative Law Judge, the Congoleum decision and remedy is binding unless and until the Commission is able to articulate a policy that would compel a contrary conclusion. (Motion, p.14) The issue

here is not the Commission's ultimate authority, but the role of past decided cases of any agency in an Administrative Law Judge's determination. Enforcement counsel contend the Administrative Law Judge is bound only by that portion of a decision which found recall authority under the Flammable Fabrics Act "inherent", but would free him to ignore the legal and practical limits to the exercise of this authority elaborated in that very same decision. Either the decision is law or it isn't. A respondent is entitled to have this issue resolved before he is put in jeopardy.

## VII. A Determination that the Congoleum Remedy is Applicable would End This Controversy and is Appropriate At This Time.

There should be no doubt in anyone's mind (despite claims by Enforcement counsel) that if the Commission were to accept the proffered Consent Order Agreement or determine that the Congoleum remedy is binding in cases involving essentially fimilar facts, this controversy would be over. The compliance phase is all that would remain.

The issue presented is whether, in these circumstances, the Commission can make a decision which has the effect of terminating this litigation. Respondents contend this authority exists, beyond doubt, and that it has been historically exercised. In applying Section 5 of the Federal Trade Commission Act, it was the regular practice of the Federal Trade Commission to permit the withdrawal of cases from litigation following submission of an offer of settlement consistent with a standard form order. The Consumer Product Safety Commission itself has disposed of pending litigation involving alleged carpet flammability in this very manner. See, e.g., Roth Industries, Inc., FTC Docket No.8902.

Respondents have in good faith submitted a settlement offer. The Commission is entitled to know of the existence of this offer and of its terms.

Enforcement counsel are, contrary to the Commission's rules [16 C.F.R. §1025.41(a)(1) and (e)], vigorously engaging in an attempt to prevent Commission consideration of this settlement offer. This conduct renders 16 C.F.R.§1025.41(e) a sham. That rule clearly contemplates development and submission of settlement offers "for the Commission's consideration."

Enforcement counsel seem to feel they have a veto power over which settlement offers may be viewed by the Commission. The rules convey no such power.[1/]

Separate and apart from the fact that the executed Consent Order constitutes an offer of settlement the Commission should review, the operative effect of its acceptance makes resolution of the issues raised concerning applicability of the Congoleum decision particularly appropos at this time.

The Consent Order Agreement is not only a settlement offer, but it is also a device which removes the "theoretical" from the decision which the Commission is being asked to make.

Contrary to Enforcement counsel's memorandum, respondents are presenting a package of issues which will enable the Commission to both "terminate a controversy" or "remove uncertainty." 5 U.S.C.§554(e). For by accepting the proffered Consent Order, the Commission would most assuredly terminate this controversy. By doing so, the Commission would also resolve the uncertainty caused by the Commission staff interpretation of the Congoleum decision. Nor would the decision the Commission is being asked to render be hypothetical, for it would be premised on stipulations pertaining to each broad category of facts considered relevant in the Congoleum case.

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1/ Nor do the rules require that a settlement offer, to be considered by the Commission, dispose of every issue in the proceeding. However, in this case, respondents contend their offer is all encompassing.

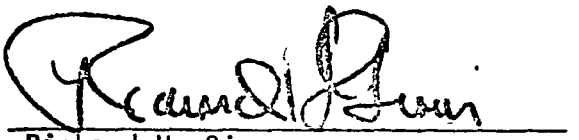
But, even more to the point, it is not necessary to debate the applicability of 5 U.S.C.§554(e). For the Commission's rules contemplate that issues of the sort raised by respondents' Motion are appropriately referrable to the Commission where they involve "a controlling question of law or policy as to which there is substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation...." Respondents contend that the issues being raised by their Motion are precisely of the type contemplated by the Commission's rules pertaining to petitions for review. 16 C.F.R.§1025.43(c).

## VIII. Conclusion.

For all of the reasons set forth in their Motion for Reconsideration, respondents ask that their offer of settlement be submitted for review by the Commission, and that the Commission be asked to rule upon the intended applicability of the Congoleum decision to cases involving essentially similar facts.

Because of the confusion which may have been sown by the Memorandum in Opposition, a continuation of the Prehearing Conference may be desirable, at which oral argument could be held and questions resolved.

Respectfully submitted,



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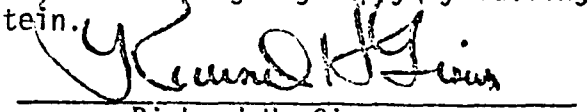
Dated: December 15, 1975

COUNSEL TO RESPONDENTS

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Reply by mailing a copy, postage prepaid, to Enid Rubenstein.



Richard H. Gimer

3/10/76

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of<br><br>BARRETT CARPET MILLS, INC.<br>a corporation, and<br>ROY C. BARRETT, individually<br>and as an officer of the<br>corporation | CPSC DOCKET NO. 75-5 |

TO: The Honorable Paul N. Pfeiffer,
Presiding Officer
Administrative Law Judge

REPLY MEMORANDUM

On February 13, 1976, the final day of the hearing in the above captioned matter, counsel for Respondents stated that tests had revealed that the burning temperature of recently manufactured Methenamine pills (#1588) was not in conformity with the temperature of those pills used in the implementation of the Carpet Standard, DOC FF 1-70. Respondents were allowed until March 1, 1976, to submit evidence in support of their position. Upon request of Counsel for Respondents, said date was extended until March 2, 1976.

In support of the above proposition, Respondents on March 2, 1976, filed a memorandum in the form of a personal affidavit by Richard H. Gimer, counsel for Respondents. Said affidavit alleged that the tablets used by Independent Textile Services, Inc. and the Consumer Product Safety Commission

in testing the flammability of Style 222, Paradise Valley (foam back) carpet (hereinafter Style 222) possessed a burning temperature in excess of the originally approved Methenamine tablet. Respondents contended that, based upon this fact, all failing flammability tests conducted on Style 222 by the laboratories were invalid. Furthermore, Respondents stated that additional research was needed regarding the thermal properties of the pill, implying that the record in the instant case should be kept open for an indefinite period of time.

On the same day, Enforcement Counsel submitted a copy of a study conducted by the National Bureau of Standards entitled, Report of Tests on Methenamine Tablets Used in Carpet Testing. This study concluded that the Methenamine pills used by the Consumer Product Safety Commission laboratory are essentially the same as those which were used in the product performance evaluation which resulted in the promulgation of the Standard For the Surface Flammability of Carpets and Rugs (FF 1-70) 16 C.F.R. 1630, 40 Fed Reg. 59931 (1975 )

In light of this report, Respondents' contention that the Commission staff has refused to produce available test data on the burning temperature of the pills used in the Commission laboratory is without merit. Furthermore, the allegation that the Consumer Product Safety Commission has refused to provide Respondents with Methenamine tablets for the purpose of testing is unfounded.

Neither Respondents nor counsel for Respondents have ever made a formal request to Enforcement Counsel for pill samples. If such a request were made, Enforcement Counsel would comply with it. It is obvious that Counsel for Respondents' eagerness to assume Enforcement Counsel's lack of cooperation resulted in his drawing erroneous conclusions and making unwarranted accusations.

Enforcement Counsel oppose Respondents untimely challenge to the validity of the failing flammability tests for several reasons. First, the parties had entered into a joint stipulation which contains provisions relating to the validity of the tests in question. Second, The National Bureau of Standards study of the Methenamine pill verifies the fact that the pills being used by C.P.S.C. today for their carpet testing program are the same as those used in the development of the Standard. Third, Respondents' memorandum does not contain any independent evidence to indicate that the Methenamine pills used by the two laboratories in question to test Style 222 have a higher burning temperature than those pills originally manufactured for use in accordance with the Standard.

On December 19, 1975, the parties to this proceeding entered into a joint stipulation in which each party agreed that, with the exception of the test on roll 10348-11, all flammability tests conducted by Independent Testing Services, Inc. and by the Consumer Product Safety Commission were performed in accordance with the test procedure specified in Paragraph .4 of DOC FF 1-70. Subsequently, on February 13, 1976, an amended stipulation containing the above mentioned provisions was executed by the parties and introduced into evidence (Jt. Stip. 31 & 32). Said stipulation forms part of the record of this proceeding.

Respondents now seek to challenge the provisions of the aforementioned stipulation which relate to the validity of the tests. They should not be permitted to do so without a showing of good cause. Muller v. Dows, 94 U.S. 277, 24 L.Ed. 76, Wright v. Nagle, 101 U.S. 793, 25 L.Ed. 921, 922, Aurrecoechea v. Bangs, 110 U.S. 217, 28 L.Ed. 125, 3 S.Ct. 639. Unlike the NBS Report of Test on Methenamine Tablets Used in Carpet Testing, the memorandum submitted by Respondents does not contain any independent evidence to substantiate the claim that the burning temperature of recently manufactured pills is in excess of the burning temperature of the tablets that were used in the development of the Standard. Respondents' memorandum consists of a personal affidavit signed by Richard Gimer, counsel for Barrett Carpet Mills, Inc. and Roy Barrett. It is replete with hearsay allegations which are based solely on the information and belief of Respondent's counsel. The affidavit does not contain any empirical evidence that would indicate a change in the burning temperature of the pill or substantiate a challenge to the validity of the flammability tests performed on Style 222 carpet. Respondents have not met the burden of proving their allegation concerning the Methenamine pill.

Notwithstanding Respondents' failure to meet their burden of proof, the Commission staff has, in conformity with the public interest, endeavored to determine the validity of Respondents' claim. On or about February 16, 1976, John Vece, Investigator, Indianapolis Resident Post,

was directed to visit Eli Lilly Company (manufacturer of the pill) to make an inspection of the quality control procedures utilized by the firm in the production of the pill. As a result of his investigation, Mr. Vece determined that no formula changes had been made by the Company. Vece also learned that the use of a "bad" thermocouple in recent temperature tests performed by the Company on the pill, had resulted in inaccurrate readings and invalid test results.1/ Furthermore, the Bureau of Engineering Science of C.P.S.C. requested the National Bureau of Standards to perform tests to determine the thermal characteristics of Methenamine tablets used in the testing of carpets and rugs under the Standard. Comparison tests were performed by N.B.S. on Methenamine pills currently being used by C.P.S.C. laboratories for carpet testing and pills remaining at N.B.S. from tests performed in previous years.2/ An oxygen calorimeter was used to

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1/If additional information becomes available it will be provided to the Presiding Officer.

2/On or about May, 1972, the Federal Trade Commission's Textiles and Fur Laboratory (New Flammability Branch, BESL, CPSC) received a lot of Methenamine pills with an expiration date of February 1, 1977. The laboratory began using the tablets from this batch between six months to a year from the date of receipt. Pills from the batch were used to test Style 222, and the batch is still being used by the laboratory.

obtain the heat combustion of the Methenamine pills furnished by C.P.S.C. and a fine wire thermocouple was used to measure temperatures developed by the burning pills. Standard methods of tests were used for the oxygen bomb heat of combustion measurement and temperature measurements were made by positioning the 30 gaugue thermocouple wire bead above the top of the surface of the test pill. A total of 20 C.P.S.C. and five N.B.S. pills were burned for this study. Based upon the results of the tests, the National Bureau of Standards concluded as follows:

1. "We see no significant difference in the heats of combustion measured for pills tested in 1969 and 1976, 955 cal/gm versus 6,898 cal/gm respectively.

2. Temperature measurements show NBS pills producing values slightly, but not significantly, lower than CPSC pills-- 990 C (CPSC average for burning 20 pills) versus 960 C for the NBS pills.

3. Based on these measurements, it appears that the pills CPSC has been using for their routine carpet testing program are essentially the same (having the same thermal properties) as those used in the implementation of the carpet standards, DOC FF 1-70 and 2-70."

The tests performed by N.B.S. were conducted with precision and care, and according to a standard method of testing. (See Discussion in N.B.S. Report) They demonstrate conclusively that the pills used by the C.P.S.C. laboratory to test the flammability of Style 222 are the same as those used in the development of the Standard.

Enforcement Counsel have provided the proof, requested by Respondents, that the flame source utilized by C.P.S.C. to test the style in question was no greater than that which formed the basis of the selection of the Methenamine tablet (#1588) as the flame source. Thus, the question of the invalidity of the Commission's failing tests should be put to rest. It is incumbent upon the Presiding Officer to make an immediate finding that the thermal properties of the Methenamine pills used to test the flammability of Style 222 carpet are the same as those of the pills used to develop the Standard for the Surface Flammability of Rugs and Carpets.

For the foregoing reasons, we urge that the record in this proceeding be closed.

Ronald G. Yelenik

George J. Miller

Enforcement Counsel
Consumer Product Safety Commission
Washington, D.C. 20207

March 9, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Reply Memorandum by mailing copy, postage prepaid, to Richard H. Gimer, attorney for Respondents, this day 10th day of March, 1976.

Ronald G. Yelenik
Enforcement Counsel
Bureau of Compliance
Legal Division
Consumer Product Safety Commission

TEMPERATURE MEASUREMENTS OF METHENAMINE PILLS  DATE - 2-24-76

NBS 506a—Analysis paper

CHROMEL-ALUMEL THERMOCOUPLE-30 GAUGE - .010" DIA.

* U.S. GOVERNMENT PRINTING OFFICE 1964 O—731-635

| CPSC TEST NO. | PILL NO. | Wt. (GRAMS) | BURN TIME (SECS.) | MV. | °C | °F | | NBS TEST NO. | PILL NO. | Wt. (GRAMS) | BURN TIME (SECS.) | MV. | °C | °F |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1-1 | 1 | .1447 | 113 | 39.1 | 945 | 1732 | | 1-1 | 1 | .1425 | 120 | 40.0 | 968 | 1774 |
| 2-1 | 2 | .1416 | 118 | 40.5 | 980 | 1795 | | 2-1 | 2 | .1490 | 118 | 39.1 | 945 | 1732 |
| 3-1 | 3 | .1472 | 120 | 39.8 | 962 | 1764 | | 3-1 | 3 | .1442 | 125 | 41.0 | 993 | 1820 |
| 4-1 | 4 | .1457 | 122 | 40.0 | 968 | 1774 | | 4-1 | 4 | .1459 | 127 | 38.9 | 940 | 1723 |
| 5-1 | 5 | .1486 | 127 | 41.5 | 1006 | 1843 | | 5-1 | 5 | .1478 | 129 | 39.4 | 952 | 1746 |
| | AVG = | .1456 | 120 | 40.2 | 972 | 1782 | | | AVG = | .1459 | 124 | 39.7 | 960 | 1759 |
| 6-2 | 1 | .1495 | 110 | 43.8 | 1066 | 1950 | | | | | | | | |
| 7-2 | 2 | .1364 | 104 | 42.8 | 1039 | 1903 | | | | | | | | |
| 8-2 | 3 | .1412 | 104 | 40.9 | 991 | 1815 | | | | | | | | |
| 9-2 | 4 | .1468 | 112 | 41.6 | 1009 | 1847 | | | | | | | | |
| 10-2 | 5 | .1462 | 109 | 41.5 | 1006 | 1843 | | | | | | | | |
| | AVG = | .1440 | 108 | 42.1 | 1022 | 1872 | | | | | | | | |
| 11-3 | 1 | .1421 | 119 | 42.4 | 1029 | 1884 | | | | | | | | |
| 12-3 | 2 | .1473 | 111 | 41.1 | 996 | 1824 | | | | | | | | |
| 13-3 | 3 | .1596 | 127 | 41.7 | 1012 | 1852 | | | | | | | | |
| 14-3 | 4 | .1535 | 130 | 42.1 | 1022 | 1871 | | | | | | | | |
| 15-3 | 5 | .1514 | 129 | 41.3 | 1001 | 1833 | | | | | | | | |
| | AVG = | .1508 | 123 | 41.7 | 1012 | 1853 | | | | | | | | |
| 16-4 | 1 | .1438 | 119 | 40.8 | 988 | 1810 | | | | | | | | |
| 17-4 | 2 | .1469 | 128 | 40.7 | 985 | 1806 | | | | | | | | |
| 18-4 | 3 | .1391 | 119 | 39.3 | 950 | 1742 | | | | | | | | |
| 19-4 | 4 | .1373 | 111 | 39.3 | 950 | 1742 | | | | | | | | |
| 20-4 | 5 | .1495 | 120 | 39.3 | 950 | 1742 | | | | | | | | |
| | AVG = | .1433 | 119 | 39.9 | 965 | 1768 | | | | | | | | |

UNITED STATES OF AMERICAN BEFORE THE
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of: | |
| BARRETT CARPET MILLS, INC. a corporation, and | |
| ROY C. BARRETT, individually and as an officer of the corporation. | CPSC Docket No. 75-5 |

TO: The Honorable Presiding Officer, Paul N. Pfeiffer, Administrative Law Judge

ANSWER TO NOTICE OF ENFORCEMENT

COME NOW respondents Barrett Carpet Mills, Inc. and Roy C. Barrett, by their attorneys, and for answer to the Notice of Enforcement served herein on July 22, 1975, allege and say:

PARAGRAPH ONE: It is admitted that respondent Barrett Carpet Mills, Inc. is a corporation organized, existing, and doing business under the laws of the State of Georgia.

It is admitted that respondent Roy C. Barrett is an officer of Barrett Carpet Mills, Inc., but denied that Roy C. Barrett formulated, directed or controlled the acts, practices and policies complained of in the Notice of Enforcement.

Respondent Barrett Carpet Mills, Inc. admits that it is engaged in the manufacture and sale of carpets and rugs with its office and principal place of business located at 2216 Abutment Road, Dalton, Georgia 30720.

PARAGRAPH TWO: Respondent Barrett Carpet Mills, Inc. admits that it is now, and for some time has been, engaged in the manufacture and sale of

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carpet in commerce, as "commerce" is defined in the Flammable Fabrics Act, as amended.

Respondents admit that together with an outside finisher, Barrett Carpet Mills, Inc. manufactured a carpet style designated Style 222, Paradize Valley (foam backed) which carpet was subject to the requirements of the Department of Commerce Standard for the Surface Flammability of Carpet and Rugs (DOC FF 1-70).

Respondents deny that carpet manufactured by Barrett Carpet Mills, Inc. failed to conform to the carpet flammability standard established pursuant to the Flammable Fabrics Act, as amended, or the acceptance criterion set forth in the Standard.

In further answer to PARAGRAPH TWO of the Notice of Enforcement, respondent Barrett Carpet Mills, Inc. alleges that the manufacture of "Style 222", Paradize Valley (foam back), was discontinued in December 1973, prior to the time the respondent was first informed by the Consumer Product Safety Commission that its flammability tests on said carpet style indicated that it was not in compliance with said Standard; thereafter, the sale and distribution of said carpet style was also discontinued.

Except as admitted respondents deny the allegations of PARAGRAGPH TWO of the Notice of Enforcement.

PARAGRAPH THREE. Respondents further deny that its acts or practices were or are in violation of the Flammable Fabrics Act, as amended, or of any Rules and Regulations promulgated thereunder, or that any of its actions constituted or now constitute unfair methods of competition or unfair and deceptive acts or practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

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Affirmative Defenses

For further answer to the Notice of Enforcement, respondents allege:

PARAGRAPH FOUR: The Commission, in issuing this Notice, failed to find that issuance of a complaint with respect to this matter would be "in the interest of the public" as required by Section 5(b) of the Federal Trade Commission Act.

PARAGRAPH FIVE: The procedures utilized by the Consumer Product Safety Commission in concluding that samples of carpet manufactured by respondents failed to meet the requirements of the Flammable Fabrics Act, as amended, or any standard, regulation, policy or procedure promulgated thereunder were not in accord with the procedures permitted under such Act, or procedures, policies or announcements promulgated by the Federal Trade Commission or the Consumer Product Safety Commission.

PARAGRAPH SIX: The procedures utilized by the Commission in concluding that samples of carpet manufactured by respondent Barrett Carpet Mills, Inc. failed to meet the Standard for the Surface Flammability of Carpet and Rugs are not accurate or reliable. Failure of isolated carpet samples to meet the acceptance criteria of said Standard in tests performed by the Commission does not constitute a violation of the amended Flammable Fabrics Act. Compliance with said Standard must be based upon [illegible] of statistically reliable probability sampli[illegible]

PARAGRAPH SEVEN: The [illegible]umer Product Safety Commission has flammability test results which show that the carpet style identified in the Notice of Enforcement is in compliance with the Standard for the Surface Flammability of Carpet and Rugs. The Commission has sought to isolate flammability test failures, while rejecting results of intervening flammability tests which

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show compliance with said Standard. Its refusal to accord the proper weight to contradictory flammability tests of said carpet samples from the Commission's own laboratory and tests conducted by independent testing laboratories using as reliable or more reliable procedures than the flammability test procedure in use by the Commission in its own laboratory, is a denial of respondents' right to due process and a fair hearing.

PARAGRAPH EIGHT: In asserting that the carpet fails to conform to the requirements of Sections .3(b) and (c) of the Standard, the Commission misapplied the provisions of the Act and the standards promulgated pursuant thereto; further, the Commission has improperly conducted tests, not in accordance with law, resulting in unwarranted test failures.

PARAGRAPH NINE: Tests upon which the Commission relies were performed on samples of carpet which were not "in commerce" as that term is used in the Flammable Fabrics Act, as amended, used carpet which is not subject to the Standard, and damaged carpet which cannot be representative as required by the Standard.

PARAGRAPH TEN: The Consumer Product Safety Commission has violated its own policy respecting the test data which it requires as a condition precedent to issuance of a complaint for alleged non-compliance with the Flammable Fabrics Act, as amended, and procedures promulgated thereunder.

PARAGRAPH ELEVEN: All remedial actions which can arguably be required of respondents, including notice to its customers of the Commission's test results, and recall from commerce of rolls of carpet alleged to have failed Commission flammability tests, have been carried out. No additional benefits will inure to the public as a result of this proceeding.

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PARAGRAPH TWELVE: This proceeding is unnecessary and should have been disposed of by the execution of voluntary assurances under Part §2.21 of the Federal Trade Commission's Rules. These Rules are in effect by virtue of the Consumer Product Safety Commission's suspension of the FTC Flammable Fabrics Enforcement Policy, which had precluded use of voluntary assurances in Flammable Fabrics Act cases.

PARAGRAPH THIRTEEN: Respondent Barrett Carpet Mills, Inc. has previously executed a consent order agreement embodying the essential remedial features contained in the cease and desist order approved by the Consumer Product Safety Commission in the Matter of Congoleum Industries, Inc. (Docket No. 8896 When Before the Federal Trade Commission). Imposition upon respondents, in a case involving essentially identical facts and law, of a markedly different form of Order, would violate respondents' rights to equal protection and due process of law as guaranteed by the United States Constitution.

PARAGRAPH FOURTEEN: The hazard purportedly shown by the Commissions tests is not, by reason of pattern, extent, severity of risk or otherwise such that the Commission could conclude a substantial hazard exists, and that the remedies contained in the proposed Order are necessary to adequately protect the public or are in the public interest.

PARAGRAPH FIFTEEN: The extent of respondents' failure to comply with the Flammable Fabrics Act, as amended, or the Standard if any, was de minimus.

PARAGRAPH SIXTEEN: The proposed Order seeks to impose remedies based upon §15(c) and (d) of the Consumer Product Safety Act, when in fact this case is governed by §30(d) of the Consumer Product Safety Act, which requires respondents' conduct to be judged pursuant to the Federal Trade Commision Act and the Flammable Fabrics Act, as amended.

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PARAGRAPH SEVENTEEN: The proposed Order purports to extend to all products subject to the Flammable Fabrics Act, as amended, notwithstanding the fact that only products subject to DOC FF 1-70, the Standard for the Surface Flammability of Carpets and Rugs, gave rise to the allegations of the complaint.

PARAGRAPH EIGHTEEN: The proposed Order purports to bind Roy C. Barrett, individually, as well as an officer of Barrett Carpet Mills, Inc., although Roy C. Barrett as an individual, engaged in no acts whatsoever which gave rise to this complaint.

PARAGRAPH NINETEEN: The proposed Order is ambiguous and purports to extend the jurisdiction and the authority vested in the Consumer Product Safety Commission beyond the authority provided in the Flammable Fabrics Act, as amended, the Federal Trade Commission Act, and the Consumer Product Safety Act.

WHEREFORE, respondents pray that the Notice of Enforcement be dismissed.

Respectfully submitted,

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Dated: August 11, 1975

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UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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CPSC DOCKET NO. 75-5

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IN THE MATTER OF

BARRETT CARPET MILLS, INC.,
a corporation, et al.

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# ENFORCEMENT COUNSEL'S REPLY TO RESPONDENTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND BRIEF IN SUPPORT THEREOF

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Ronald G. Yelenik
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Commission
Washington, D.C. 20207

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Throughout the reply brief, the following abbreviations have been used to refer to various documents and other materials:

| | |
|---|---|
| E.C.FF | Enforcement Counsel's Proposed Finding of Fact |
| Rx. | Exhibit introduced by Respondents |
| Stip. | Amended Joint Stipulation |
| Tr. | Official Transcript of Proceedings |

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UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation | CPSC DOCKET NO. 75-5 |

TO: THE HONORABLE PAUL N. PFEIFFER,
PRESIDING OFFICER

ENFORCEMENT COUNSEL'S REPLY TO RESPONDENTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND BRIEF IN SUPPORT THEREOF

Pursuant to the Presiding Officer's instructions at the Hearing on February 13, 1976, Enforcement Counsel now submit their reply to Respondents' proposed findings of fact, conclusions of law and brief submitted on April 2, 1976.

## PRELIMINARY STATEMENT

No attempt is made here to respond to every assertion contained in Respondents' proposed findings. The majority of Respondents' arguments were addressed in our previous submittal of April 1, 1976, and, to the extent that any of the others are inconsistent with our proposed findings of that date, they are either unfounded, irrelevant, or both.

I. STYLE 222 CARPET SAMPLES WERE SELECTED IN ACCORDANCE WITH THE PROVISIONS OF THE STANDARD AND ARE REPRESENTATIVE OF THE ENTIRE STYLE

On April 10, 1970, the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70) [16 CFR Part 1630] was promulgated. The Standard was published pursuant to a prior finding of need made by the Secretary of Commerce in accordance with Section 4(a) of the Flammable Fabrics Act [15 U.S.C. 1193(a)]. The finding made by the Secretary is contained in the preamble to the notice of promulgation of the Carpet Standard [35 F.R. 6211 (April 16, 1970)], which provides in pertinent part:

> ...[I]t is hereby found that the flammability standard as set out in full at the end hereof:
>
> (a) Is needed for carpets and rugs to protect the public against unreasonable risk of the occurrence of fire arising from the hazards of rapid flash burning or continuous or slow burning or smoldering, and leading to death, personal injury, or significant property damage; .... [Emphasis added.]

By virtue of this finding, the Consumer Product Safety Commission's predecessor agency not only determined that carpet which fails to comply with the acceptance criterion of the Standard presents a "unreasonable risk" to the public, but that such carpet is per se dangerous.

FF 1-70 provides a method that can be utilized by both the manufacturer and the enforcement agency to determine whether the carpet tested presents an unreasonable risk to the public. The test procedure involves the exposure of eight conditioned replicate specimens of a given carpet or rug to a standard igniting source in a draft free environment, followed by the mearsurement of the proximity of each

specimen to the edge of the hole in the prescribed flattening frame. A specimen passes the test if the charred portion does not extend to within one inch of the edge of the hole in the flattening frame at any one point. Section .3(c) (acceptance criterion) provides that "at least seven of the eight specimens shall meet the test criterion in order to conform with this Standard".

The language contained in the acceptance criterion section of the Standard is precise and unequivocal (Tr. 1300). Said terminology provides clear guide lines to the tester (manufacturer or enforcer) for ascertaining whether a carpet sample has passed or failed the pill test. A sample conforms to the Standard if at least seven of the eight specimens pass the test, and fails to conform to the Standard if more than one specimen fails the test. If the technician determines that there has been more than one failing specimen, then the sample fails and it is unimportant to consider the total number of failing specimens. As Mary Kay Ryan, Director of the Bureau of Compliance of the Consumer Product Safety Commission stated, when referring to a sample with two failing specimens, "it is a failure, it is a failure, it is a failure" (Tr. 1302).

In the November 12, 1974 Initial Decision In the Matter of Congoleum Industries, Inc., Docket No. 8896 when before the FTC (adopted in toto by the CPSC 7/14/75), Judge Hanscom concurred with the view that the acceptance criterion is clear and definite and rejected Respondent's contention that the Standard contains an acceptable failure rate of 4.64 percent. The Presiding Officer observed that the Flammable Fabrics Act

and the Standard do not permit the movement of any dangerously flammable carpet in commerce. He further noted that there is a distinction between failing specimens and failing samples, when he stated at page 22:

> Allowing one out of eight specimens to fail does not constitute a system or plan by which 4.64 percent of the samples tested may fail the Standard. ...[N]othing in the Standard permits 4.64 percent of the carpet samples tested to have two or more specimens out of eight fail. All tests must be passing. [Emphasis as in original].

It is apparent that Judge Hanscom recognized that the failure of a carpet sample is not a matter to be taken lightly, and that such failure signifies that the sample presents an unreasonable risk of injury, death, or property damage to the public.

Pursuant to Section 30(b) of the Consumer Product Safety Act [15 U.S.C. 2079(b)] the Consumer Product Safety Commission is charged with the responsibility of administering and enforcing the Flammable Fabrics Act and all applicable Standards promulgated thereunder. In recognition of that responsibility, the Commission has enunciated a Flammable Fabrics Act Enforcement Policy which states that the Commission shall make a vigorous and uncompromising effort to protect the public against the hazards to life, health, and property caused by dangerously flammable products. In order to fulfill its obligation under the Flammable Fabrics Act, and to achieve the goals of its enforcement policy, the Commission must administer the Carpet Standard in a manner that will facilitate effective enforcement in the market place. Since the Standard does not require a manufacturer to test carpet prior to sale in commerce, the Commission's investigators are instructed to

choose carpet samples for testing from ordinary production rolls, on the basis of their availability.

Respondents assert that CPSC investigators did not follow the dictates of Section .4(b)(1) in choosing samples of Style 222 carpet. They specifically rely upon the phrase "select a sample of the material representative of the lot" as the basis for their argument that investigators are required to choose samples in a mathematical and statistically random fashion and are required to define the size of the lot prior to carpet selection. Respondents contend that CPSC investigators did not select Style 222 samples in the above mentioned manner and therefore did not comply with the Standard.

The Consumer Product Safety Commission has held that the choice of carpet samples from available ordinary production rolls conforms to the requirements of the Standard. In the Matter of Congoleum Industries, Inc., supra, 7/14/75 decision. In the initial Congoleum decision (adopted in toto by the Commission), Judge Hanscom concluded that samples chosen from "ordinary production rolls" are representative of the lot within the meaning of the Standard. Furthermore, the Presiding Officer rejected Respondents' contention that the Standard requires enforcement authorities to utilize a "mathematically and statistically perfect system," when he noted at page 16:

> Contrary to Respondents' repeated and emphasized contentions the Standard does not require that carpet samples be obtained totally by chance in a mathematical and statistical sense, i.e., utterly at "random". The samples need only be representative.

Judge Hanscom based this finding upon the fact that Section .4(b)(1) of the Standard was not intended to be interpreted in a manner requiring the selection of a purely random sample. He noted specifically that the provision calling for the selection of a sample that is "free from creases, fold marks, delaminations, or other distortions" and the provision which states that the "most flammable area" of the sample is to be determined by "experience" or "pretesting", are inconsistent with the selection of samples wholly by chance. The Presiding Officer further observed that as a practical matter it would be impossible for the Commission to obtain samples in a purely random manner.

In the instant case, CPSC investigators initially obtained samples of several styles of carpet from Barrett's ordinary production line at its mill in Dalton, Georgia, including a sample of Style 222. All of the samples were then forwarded to the CPSC laboratory for flammability testing, and it was determined that the Style 222 sample failed to meet the acceptance criterion of the Standard. Subsequently, additional samples of the Style were acquired by the investigators from "ordinary production rolls" on the basis of their availability.

In choosing the aforementioned samples, the investigators had no preconceived notion as to whether the samples would pass or fail the flammability test. As was noted by Elaine Brophy, Supervisor of the CPSC laboratory, there is no method of determining carpet flammability without actually conducting a test (Tr. 79). This observation is supported by the fact that only half the samples chosen by the investigators failed the flammability test.

The samples obtained by CPSC investigators were secured from different sources on four different occasions and represent carpet manufactured on four distinct dates. The likelihood that the failing samples selected are the only ones present in the market place is quite remote. As noted by Judge Hanscom at page 20 of the initial Congoleum decision, supra, "it is most improbable for Commission investigators to obtain the only failing sample" of a given style. Based upon the fact that all Style 222 samples were selected from ordinary production rolls of carpet, they are representative of the lot they were chosen from. In the Matter of Congoleum Industries, Inc., supra.

Although the term lot is not defined in the Carpet Standard, Sydney Greenfeld, one of the drafters of the Standard, testified during the hearing that the term was intentionally left undefined to allow those utilizing the Standard the leeway to formulate policy on the basis of need and experience (Tr. 1173). It is the opinion of Mr. Greenfeld that the Carpet Standard can be properly administered on that basis (Tr. 1175).

The Federal Trade Commission, which originally had the responsibility for administering the Carpet Standard, acquiesced in the carpet industry's view and adopted their definition of lot to mean style for purposes of determining conformance with the Standard. In the Matter of Congoleum Industries, Inc., supra at Tr. 248, 249, 274. Like its predecessor agency, the Consumer Product Safety Commission characterizes the entire style from which a failing sample is obtained as failing carpet, unless proof is offered that it represents a smaller quantity.

Contrary to Respondents' contentions, the Standard does not mandate that the lot be defined prior to carpet selection or testing. Neither the Consumer Product Safety Commission nor the Federal Trade Commission have held the view that such an interpretation was necessary under the Carpet Standard nor that it would be beneficial in the administration of the Standard. The policy adopted by both agencies of treating an entire style as failing until proof is offered to indicate that it represents a smaller quantity is fully consistent with the requirements of the Standard and the Commission's duty to protect the public from the hazard of dangerously flammable carpet. That policy enables the enforcing agency to notify the manufacturer that he is producing a suspect style of carpet and gives the manufacturer the opportunity of demonstrating to the agency that failures do not pervade the entire style.

Through testimony and by stipulation, Enforcement Counsel have demonstrated that a substantial portion of the Style 222 samples tested failed to conform to the Standard. A considerable number of flammability tests have been performed and half of the samples tested have failed to meet the acceptance criterion of the Standard. These failures represent samples from seven of the nine rolls tested. Furthermore, samples from four of the five production dates tested have failed to meet the Standard's acceptance criterion. Based upon the aforementioned, Ralph Madison, a statistical expert, testified that at least 52 rolls or 46% of the entire style would fail to conform to the Standard. (E.C.FF 50).

In response to Enforcement Counsel's clear and convincing demonstration of substantial carpet failures, Respondents' advance the theory that such failures are limited to carpet manufactured on two designated production days. They contend that on two days, and two days only, the flame retardant chemical alumina trihydrate (ATH) was not properly added to the latex precoat of the carpet back, and that this caused the carpet to fail to conform to the Carpet Standard. By way of analogy, Respondents assert that ATH was properly added on every other production day and that this resulted in the manufacture of passing carpet on all other dates. In an attempt to support their hypothesis, Respondents cite the results of tests performed by the Georgia Institute of Technology on samples from four rolls of Style 222 Carpet. The aforementioned tests indicated that the failure of the carpet tested was "probably due to the lack of uniformity in the addition of ATH to the carpet backing".

Essential to Respondents' limited failure argument is the assumption that ATH was in fact added on every production date on which Style 222 was finished and that it was uniformly applied. Despite this fact, Respondents have failed to proffer any competent documentary evidence in support of this conjecture.[1/] Therefore, Respondents' theory is without basis in proof or fact.

Assuming that ATH was added to the latex precoat on every production day of Style 222; and assuming that an improper distribution of ATH was the factor that caused the failure of the carpet analyzed by Georgia Tech;

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[1/] See Enforcement Counsel's Opposition To Respondents' Motion for Admission of Certain Documents, filed April 19, 1976.

that does not signify that the quality control problem was not present on other production days nor does it mean that additional failures could not have been caused by other types of aberrations in the production process. Since only four rolls out of the 113 manufactured by Barrett were subjected to the Georgia Tech survey, Respondents' conclusions must be viewed with skepticism. The only fact that remains clear is that a production problem did exist, but the extent of the problem remains unknown.

Although the Carpet Standard does not require manufacturers to test the carpet that they produce, manufacturers are prevented by Section 3(a) of the Flammable Fabrics Act [15 U.S.C. 1192] from manufacturing for sale, selling, or offering for sale, in commerce, carpet that does not conform to the Standard. Since it is impossible to determine the flammable nature of carpet by any means other than by performing an actual test, it is incumbent upon the manufacturer to avail himself of the opportunity of learning whether the carpet he is producing is flammable. As Sydney Greenfeld stated during the course of his testimony, a manufacturer who fails to test carpet prior to manufacture for sale is placing the consuming public in jeopardy (Tr. 79).

In the case at bar, Barrett Carpet Mills, Inc. and Roy C. Barrett did not perform any pre-market flammability tests on Style 222 nor did they avail themselves of the opportunity for learning whether the carpet they were producing presented an unreasonable risk of injury, death, or property damage to the public. Based on their failure to perform the

aforementioned tests and in light of the high percentage of failing samples of Style 222 carpet, Respondents cannot at this time contend that the remainder of the Style would have conformed to the Standard.

II. A STANDARD PROMULGATED PURSUANT TO THE FLAMMABLE FABRICS ACT MAY NOT BE CHALLENGED DURING AN ADMINISTRATIVE HEARING

During the course of the instant proceeding, Respondents have continuously launched an assault upon the validity of the Standard for The Surface Flammability of Carpets and Rugs (FF 1-70). At the Hearing and in their findings of fact and conclusions of law, Respondents have raised several questions concerning the Standard including the need for the promulgation of the Standard, the efficacy of test methods employed under the Standard, and the significance of the results of flammability tests performed in accordance with the Standard.

Federal courts have consistently held that judicial review of a Standard promulgated by an administrative agency may be obtained only by the statutorily prescribed method. Nader v. Volpe, 466 F. 2d 261 (D.C. Cir. 1972); American Paper Institute v. Train, 381 F. Supp. 553 (D.D.C. 1974); Sun Enterprise Ltd. v. Train, 394 F. Supp. 211 (S.D.N.Y. 1975). Section 4(e)(1) of the Flammable Fabrics Act [15 U.S.C. 1193(e)(1)] provides that any person who is adversely affected by the promulgation of a flammability standard may petition the Court of Appeals for review.

Although the abovementioned statutory provision was in effect during the rule making proceeding which eventually resulted in the promulgation of the Carpet Standard, no petitions for review were filed with the various Circuit Courts of Appeals, and very few comments were filed with the Secretary of Commerce in accordance with 15 CFR 7.8(a) [33 F.R. 14642 (Oct. 1, 1968)]. Neither Respondents nor other members of the carpet and rug

industry who might have been adversely affected by the Standard, availed themselves of the opportunity of filing a petition for review with the Court of Appeals. As a matter of fact, the Carpet and Rug Institute (the major lobbying group for the industry) was in favor of the Carpet Standard and supported its promulgation.

In the case of Nader v. Volpe, supra, which involved a motion requesting the District Court to enjoin the Secretary of the Department of Transportation from issuing a final rule on "passive automobile occupant restraint systems" (seat belts), the Court of Appeals affirmed the decision below and held that the District Court did not have jurisdiction to entertain the suit instituted by the appellants. The Court based its decision upon the fact that Section 1394(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1394(a)] entitles any person who is adversely affected by a NHSTA promulgated safety standard to seek judicial review in a Court of Appeals. The court in Nader stated, at page 266 of the decision:

> When Congress has specified a procedure for judicial review of administrative action, courts will not make nonstatutory remedies available without a showing of patent violation of agency authority or manifest infringement of substantial rights irremediable by the statutorily-prescribed method of review.

The principle espoused in the Nader v. Volpe case has been adopted by other Federal Courts. In American Paper Institute v. Train, supra, the District Court denied plaintiff's request for review of water pollution guidelines for the paper industry. The Court, in citing Nader v. Volpe, supra, stated that Section 509(b)(1) of the Federal Water Pollution Act [33 U.S.C. 1369(b)(1)], which provides for Court of Appeals review of

guidelines issued by The Environmental Protection Agency, is dispositive of the issue that review of such guidelines is limited to the Court of Appeals.

In Sun Enterprise Ltd. v. Train, supra, the court reiterated the decisions in the aforementioned cases and held that it did not have jurisdiction to entertain plaintiffs request for review of the issuance of National Pollution Discharge Permits. See also, Ananconda Company v. Ruckelshause, 482 F. 2d 1301 (10th Cir. 1973); Getty Oil Co. v. Ruckelshause, 467 F. 2d 349 (3rd Cir. 1972), cert. denied 409 U.S. 1125; American Paper Institute v. Train, supra; E.I. Dupont de Nemours and Co. v. Train, 383 F. Supp. 1244 (W.D. Va. 1974); Arizona Public Service Co. v. Fri, 3 ELR 20894 (D. Ariz. 1973).

In the instant case, Respondents are specifically challenging the acceptance criterion of the Carpet Standard and the finding by the Secretary of Commerce that failing carpet is dangerous. Respondents initially attacked the acceptance criterion of the Standard by attempting to introduce into evidence a proposed and unadopted sampling plan. Their purpose in proffering the document was to demonstrate that the acceptance criterion of FF 1-70 has a built in acceptable failure rate. In support of this theory, Respondents endeavored to elicit testimony from witnesses concerning the applicability of the proposed plan to the instant proceeding. Notwithstanding the fact that the Presiding Officer ruled that testimony concerning the proposed sampling plan was immaterial, Respondents, in their findings of facts and conclusions of law, have again raised the issue and have attempted to apply the proposed sampling plan to the test results of Style 222.

Respondents' assertions that the acceptance criterion contains an acceptable failure rate are without merit. In the Matter of Congoleum, supra. Furthermore, as Judge Pfeiffer observed, the sampling plan is proposed and unadopted and it is not material to the facts of the instant case. The non-applicability of the proposed plan is further evidenced by the Federal Register Notice of the proposed sampling plan [38 F.R. 6210 (March 7, 1973)] which states:

> This notice and the proposed sampling plan issued hereunder do not affect the existing requirement to comply with the Standard for The Surface Flammability of Carpets and Rugs (DOC FF 1-70) which is presently in effect.

Based upon the aforementioned case law, any testimony elicited or any writing proffered in reference to the proposed sampling plan must be disregarded.

The Carpet Standard was designed to protect the public from the hazards of rapid flash burning or continuous slow burning or smoldering. The methenamine pill was chosen as the ignition source for the flammability test because it most closely simulates what the National Bureau of Standards determined to be the most dangerous "small ignition sources" found in and around the home. The test is indicative of the manner in which carpet exposed to small ignition sources will burn in real life situations.

Respondents offer the tests performed by the LeBlanc Laboratory as authority for the proposition that Style 222 does not present a danger to the public health, safety, and welfare. On the contrary, the tests performed by the LeBlanc Laboratory did not simulate the hazard that the Carpet Standard was designed to guard against. The majority of the

LeBlanc tests were devised to measure the hazards caused by large flame sources. There is only one approved and adopted test method for determining whether large pieces of carpet present a danger to the public. This fact was recognized by the Honorable Paul N. Pfeiffer at the Hearing when, in referring to the Standard, he stated at page 1423 of the transcript:

> It is on the books, it may not have been the greatest Standard that could be devised, but there it is, and that was the Standard that was operative in this case.

Based upon the holdings of the previously cited cases, the Presiding Officer, in reaching his decision, should disregard all evidence relating to an attack on the Standard.

III. THE PRESIDING OFFICER MUST FOLLOW THE COMMISSION'S ENFORCEMENT POLICY IN FASHIONING A REMEDY

Responsibility for enforcement of the Flammable Fabrics Act, as amended [15 U.S.C. 1191 et seq.] (hereinafter FFA), was transferred from the Federal Trade Commission (hereinafter FTC) to the Consumer Product Safety Commission (hereinafter CPSC) on May 17, 1973 and, shortly thereafter, pursuant to Section 30(e)(2) of the CPSA [15 U.S.C. 2079(e)(2)], the CPSC adopted its own enforcement policy substituting it for that of the FTC [38 F.R. 24923 (Sept. 11, 1973), subsequently codified as 16 CFR Part 1602.1, 40 F.R. 59885 (Dec. 30, 1975)]. CPSC's Flammable Fabrics enforcement policy provides, in pertinent part, that the Commission intends to discharge its responsibilities "vigorously, expeditiously, and without compromise in order to protect the public from the hazards to life, health and property caused by dangerously flammable products" [16 CFR 1602.1(b), 40 F.R. 59885 (Dec. 30, 1975)] and that in each case, it will use any and all appropriate enforcement procedures available under the act without qualification or modification [16 CFR 1602.1(c), 40 F.R. 59885 (Dec. 30, 1975)].

In the Matter of Congoleum Industries, Inc. was the first fully "litigated" Carpet Standard case in the history of FFA enforcement. That case was initiated by the FTC and was subsequently transferred to the CPSC in conjunction with the FFA enforcement responsibility. On July 14, 1975, the CPSC issued its Opinion in the Congoleum case and, at pages 2 and 3, stated, for the record, its more refined FFA enforcement policy:

> The Commission can only adequately protect the public from serious personal injury, death, or property damage associated with the violative items if it can ensure that, to the extent practicable, the public is notified of the flammable nature of the items and that the items are recalled to the fullest extent practicable from consumers, distributors, and retailers.
>
> By requiring notification and recall, the Commission prevents the continuing danger to the public from items that have been found to violate the Flammable Fabrics Act. If it were otherwise, innocent consumers would be subjected in the future to harmful effects of the past violations of the Act.
>
> The purpose of the notification and recall provisions is not punitive. Although recall and notification may entail some cost to the respondent, the cost involved is only incidental to the need to protect the public.

The instant case is one of the first FFA cases commenced by the Commission subsequent to its policy statement in Congoleum. The Commission reviewed the Barrett Notice of Enforcement and the Proposed Order attached to it and then approved their issuance. It is important to note that the Proposed Order reflected the CPSC's policy of seeking recall of violative items from ultimate purchasers/consumers. Since that time, the Commission has approved the issuance of similar papers in two other carpet cases -- In the Matter of Westland Carpet Mills, Inc., et al., Docket No. 75-21 and In the Matter of O.N. Jonas Co., Inc., et al., Docket No. 75-20; and it has authorized the Bureau of Compliance to seek Consent Agreements in three additional cases. The Consent Agreements recently offered to each of three carpet manufacturers contain a provision for recall of installed carpet.

Aside from the specific Congressional grant in Section 30(e)(2) of the CPSA [15 U.S.C. 2079(e)(2)] for the CPSC to modify, terminate, supersede, set aside, or repeal all FTC orders, determinations, rules,

regulations, privileges, etc. that were issued, made, granted, or allowed by the FTC when that agency was carrying out the FFA enforcement responsibilities, courts of law have consistently held that administrative agencies, on their own initiative, may decline to follow their own precedents in decided (i.e., litigated) cases as long as they explain the reasons for the departure in their final Opinion. FTC v. Crowther, 430 F.2d 510, 513 - 14 (D.C. Cir. 1970); ABC Air Freight Co., Inc. v. CAB, 391 F.2d 295, 302 (2nd Cir. 1968); Rayonier, Inc. v. NLRB, 380 F.2d 187, 189 (5th Cir. 1967); City of Lawrence, Mass. v. CAB, 343 F.2d 583 (1st Cir. 1965) [remanded for CAB to supply a rationale for its departure from precedent]; T.I. McCormack Trucking Co., Inc. v. U.S., 251 F.Supp. 526, 539 (D.N.J. 1966). Davis, in volume 2 of his Administrative Law Treatise (1958) at page 528, states that such reasons may be "changes in conditions, objectives, attitudes, understanding, personnel, programs, pressures, political climate, as well as, even in absence of changes in such factors, sheer inability to avoid inconsistencies in dealing with complex subject matter."

As was so aptly pointed out by opposing counsel, there is a pausity of litigated FFA matters in the FTC docket. Indeed, all the cases cited as precedent by opposing counsel (with the exception of Congoleum) were resolved not by litigation but by a Consent Agreement; and matters handled by Consent Agreement are not considered precedent for the purpose of stare decisis. Such matters are not decided cases -- they are not accompanied by findings of fact and a Commission Opinion. There is then no record to take up on appeal and that is why the Supreme Court stated in NLRB v. Ochoa Fertilizer Corp., 368 U.S. 318 (1961), at page 323, "A decree rendered by

consent 'is always affirmed, without considering the merits of the cause.' Nashville, C. & St. L.R. Co. v. United States, 113 US 261, 266, 28 L ed 971, 973, 5 SCt. 460."

At the 1970 hearings before the Consumer Subcommittee of the Senate Committee on Commerce, Caspar Weinberger, then Chairman of the FTC, explained that because of the time-consuming proceedings involved when employing the statutory enforcement tools enumerated in the FFA, the FTC had developed a procedure, outside the scope of the statutory processes, whereby that agency would routinely seek signed Consent Agreements from proposed respondents. [Hearings on S.3765 and S.3766 Before the Consumer Subcommittee of the Senate Committee on Commerce, 91st Cong., 2nd Sess. at 43 - 48 (1970)]. The CPSC follows a similar procedure; however, this agency has expanded the FTC's Consent Agreement provision for recall from customers to include recall from the ultimate consumer. Often, by the time CPSC is made aware of FFA violations, a good many of the violative products have already reached the ultimate consumer. Therefore, it is only with this expanded recall provision that the agency can carry out its mandate of preventing consumers from being injured as a result of flammable fabrics. Where the CPSC Staff has felt that the facts of a given situation require recall from the ultimate consumer, the Commission has not accepted proffered Consent Agreements calling for less. In the Matter of Barrett Carpet Mills, Inc., et al., Docket No. 75-5; In the Matter of O.N. Jonas Co., Inc., et al., supra.

Respondents herein appear to be arguing that because at one time the FTC had a policy of offering a certain form of Consent Agreement, Respondents have somehow acquired an absolute right to require the CPSC to accept

Respondents' own offer of what Respondents' claim is a similar form of Consent Agreement. There is no such right. (Moreover, Respondents' proposed Consent Agreement was, in fact, unlike those offered by the FTC.)

As Mr. Weinberger stated at the Senate Consumer Subcommittee Hearings, the consent agreement procedure was merely an FTC improvisation [Hearings on S.3765 and S.3766, supra at 47 - 48]. There is no statutory provision which requires a consent agreement procedure in all cases let alone a provision which specifies the exact form to be followed. Moreover, the proposed Consent Agreement Respondents wished to push on the Commission was nothing more than a counter offer to the Staff's original offer of a Consent Agreement.

It is a well established point of law that evidence of unaccepted offers for settlement is inadmissible at trial. Southern Railway Co. v. Madden, 235 F.2d 198, 201 (4th Cir. 1956); Maulding v. Louisville & N.R. Co., 168 F.2d 880, 882 (7th Cir. 1948); U.S. v. Plaza De Flor Land Improvement Co., 160 F.2d 131, 136 (5th Cir. 1974). However, over the objection of Enforcement Counsel [Tr. 836], Respondents continue to argue that they were promised a consent agreement would be offered them upon completion of certain corrective actions and that because of this, they were unfairly enticed into taking some remedial steps. When the Staff made the request for corrective action, there was no mention made of what the terms of such an Agreement would be. Respondents, in fact, never fully cooperated with the Commission.[2/]

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2/ Respondents did not turn over their customer lists as they were requested to do in a March 21, 1974 letter from the Bureau of Compliance nor did they undertake to recall all of Style 222 Paradise Valley (foam backed) carpet as was requested by letter of April 18, 1974 from the Bureau of Compliance. [These letters are referred to in Rx. 20.]

In spite of that, they were offered the aforementioned Consent Agreement which they chose to reject.

This is not a case of detrimental reliance for all Respondents could fairly rely on was the fact that if they carried out the corrective action requested, they would be offered a consent agreement. Moreover, Respondents chose to undertake some of the corrective action requested when they were informed that samples of Style 222 Paradise Valley (foam backed) carpet had been tested in the CPSC laboratory and failed to conform to the Standard. Respondents, at that point, were on notice that they were most likely in violation of the FFA.

It is not incumbent on Enforcement Counsel, at an administrative hearing, to justify why the Commission has chosen to follow a particular policy for preventing injury to the public. The Commission's enforcement policy is not open to attack at the initial hearing stage of a proceeding. The sole purpose of such a hearing is for Enforcement Counsel to present evidence to the trier of fact which evidence tends to prove that carpet manufactured by the Respondents failed to conform to the Carpet Flammability Standard. Having done that, Enforcement Counsel are then compelled by the precepts of the administrative process to request the Presiding Officer to order remedial action which reflects the Commission's stated FFA policy and statutory objectives.

It is the Presiding Officer who must consider the probative value of the facts adduced at hearing. If he determines that Enforcement Counsel have sustained their burden of proof, then it is his responsibility to fashion an appropriate remedy that conforms in all respects to the

Commission's policy. As is clearly pointed out in the Manual For Administrative Law Judges[3/] at page 67:

> It is the Judge's duty to decide all cases in accordance with agency policy. Even when court decisions (other than those of the Supreme Court) have found the agency's position to be erroneous, he is bound to apply the agency view if the agency has authoritatively declared its nonacquiescence in the decisions.

See Iowa Beef Packers, Inc., 144 NLRB No. 64 (1963), 14 Ad. L.2d 449; Milco Specialties, P.O.D. Docket No. 1/96 (1959), 9 Ad. L.2d 127; Insurance Agents' International Union, 119 NLRB No. 103 (1957), 7 Ad. L.2d 674.

The salient facts presented in the instant case are that: 1) half of the samples tested failed to meet the acceptance criterion of the Carpet Flammability Standard; 2) a large portion of Style 222 Paradise Valley (foam backed) carpet is flammable; and 3) the entire production run of Style 222 (approximatley 13,000 square yards) has already been installed in at least 325 homes (Tr. 651). Enforcement Counsel urge that, considering these facts, the Presiding Officer must issue a cease and desist order which takes into account the full panoply of remedies available to the Commission. CPSC policy is, after all, recall down to the ultimate consumer in order to prevent continuing danger to the public.

It is probably appropriate at this juncture to discuss Respondents' assertion that the Commission's policy does not serve the public interest but rather serves to right a private wrong by exacting compensatory damages. The theory on which the later type of case would have to proceed is that distributors, retailers and consumers contracted to buy non-flammable

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3/ Merritt Ruhlen, Manual For Adminstrative Law Judges (prepared for the Administrative Conference of the United States, 1974).

carpet but by mistake were sold flammable carpet. If the Commission were set up to award money damages, under that theory of the case, it would simply order Respondents to remunerate consumers for the difference between what they thought they were buying (i.e., non-flammable carpet) and what it actually turned out they paid for. Indemnification of wronged consumers is not, however, what the CPSC was created for. The Commission's mandate is to protect the health and safety of the general public and actions brought to enforce the FFA are initiated with that mandate in mind. In fact, if this administrative case were designed to indemnify consumers, there would be no need for a policy calling for recall of carpet with an option for either replacement or refund. The Commission clearly stated in Congoleum, supra at page 3, and In the Matter of Charles Castro, CPSC Docket No. 75-2, 1/29/76 Final Decision of the Commission, at page 4, that the purpose of requiring recall, with a provision for replacement or refund, is to get flammable products out of the hands of consumers and thereby prevent future harmful effects from a continuing hazard.

In their brief, Respondents attempt to equate Heater v. FTC, 503 F.2d 321 (9th Cir. 1974), and the instant case[4/] but in Heater, the court fairly characterized what the FTC was doing as ordering recission with provision for actual damages. Heater v. FTC, supra at page 326. The court in that case suggested that the FTC, through its administrative process, could not

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4/ It must be noted that the Commission, in its decision In the Matter of Charles Castro, supra at page 4, footnote 6, specifically declared that the Ninth Circuit's decision in the Heater case is not relevant to a recall order under the FFA. Therefore, it is not even appropriate to consider Heater when fashioning a remedy in the instant case.

cancel contracts between companies and individuals and at the same time award actual damages. The reason for that decision was that Respondent in the Heater case had no prior notice that his conduct (the fraudulent procurement of contracts) came within the statutory purview of the FTCA and was therefore proscribed. Heater v. FTC, supra at page 323.

In the instant case, however, Section 3 of the FFA [15 U.S.C. 1192] clearly enumerates the specific types of conduct that violate the Act. Failure to comply with an applicable safety standard is prominent in the list of enumerated violations. Furthermore, the Commission's enforcement policy can in no way be seen as an attempt to rescind contracts between private parties. Quite to the contrary, the Commission is not entering into disputes between private parties or the contractual rights of private parties. Indeed, even if the rights and obligations which arose under a contract for sale of carpet had terminated, the Commission would still have jurisdiction and the statutory duty to protect consumers from the dangers arising from that piece of flammable carpet. An order calling for recall of carpet with provision for replacement or refund cannot be viewed as a cancellation of the original contract between the parties. The Commission would be satisfied if Respondents chose to replace the violative carpet with non-flammable carpet. It is only in an effort to be fair to Respondents that the Commission gives them the option of refunding the original purchase price.

Enforcement Counsel here reiterate what was stated as page 34 of their initial brief, "The requirement of recall ... is not punitive but rather is purely preventive and the refund/replacement provision is merely an ancillary tool to achieving an effective preventive recall."

See In the Matter of Congoleum Industries, Inc., supra at pages 2 - 3; In the Matter of Charles Castro, supra at pages 4 - 5.

At one point in his initial brief, Opposing Counsel cites several court cases for the proposition that the FTC may consider certain "mitigating" factors when fashioning remedies to deal with violations of the anti-trust laws. Although the FTC may take certain facts into consideration when dealing with such a highly uncertain area of the law as anti-trust, there is no requirement that CPSC do likewise in what is admittedly an easily understood area -- the FFA. In fact, the Commision did render its opinion on this specific point In the Matter of Charles Castro, supra, when it stated at page 3 of its Final Decision,

> ...[T]he Commission does not believe that any claims that Respondent's violation of the law was unintentional or that Respondent acted in good faith are relevant with respect to the imposition of civil remedies under the Flammable Fabrics Act. Nor does the Commission, having decided that an order contain provisions essential to protect the public health and safety, believe that those provisions should then be weakened for the purpose of minimizing the order's economic impact on one who has violated the Act.

At Hearing before the Presiding Officer in the Castro case, the question of an allowance for use of the matteresses did come up. However, both the Initial Decision and the Final Decision in that case called for Respondent to offer his customers a full refund of the original purchase price of the non-conforming mattresses.

At last, Enforcement Counsel must dispense with Respondents' spurious argument that the CPSC has no authority to fashion a remedy which involves flammable products that are no longer in commerce. The Commission did affirm such remedies fashioned by the Presiding Officers in both Congoleum and Castro and with good reason. In each

of those cases, jurisdiction was established under Section 3 of the FFA [15 U.S.C. 1192]. In the instant case, jurisdiction has been similarly established. After manufacturing their carpet, Respondents shipped it in commerce. If the law were to be interpreted as Respondents allege it should be, there would be constant races between the CPSC and manufacturers of flammable fabrics. For example, carpet manufacturers would be able to put flammable carpet on the market in the hope that it would avoid detection until all or most of it were sold to ultimate consumers. Then, once it was sold, the Commission would be unable to pursue the manufacturer or do anything to protect the general public who would be coming in constant contact with the hazardous product.

## CONCLUSION

Enforcement Counsel submit that the record herein contains substantial, reliable, probative evidence to support their Proposed Findings of Fact, Conclusions of Law, and Order, and accordingly move that the Presiding Officer accept their Findings and issue the Order therein requested.

Respectfully submitted,

Ronald G. Yelenik

George J. Miller

Anette B. Seltzer

Enforcement Counsel
Consumer Product Safety
Commission
Washington, D.C. 20207

(301) 492-6626

Dated: April 19, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Enforcement Counsel's Reply to Respondents' Proposed Findings of Fact, Conclusions of Law, and Brief in Support Thereof upon designated legal counsel for all parties of record in this proceeding, by mailing, postage prepaid, a copy to Richard H. Gimer.

Dated: April 19, 1976

Enforcement Counsel
Bureau of Compliance
For the Consumer Product
Safety Commission

3/3/76

UNITED STATES OF AMERICA

BEFORE CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of: | |
| BARRETT CARPET MILLS, INC., a corporation, and | |
| ROY C. BARRETT, individually and as an officer of the corporation. | CPSC Docket No. 75-5 |

To: The Honorable Presiding Officer, Paul N. Pfeiffer, Administrative Law Judge.

MEMORANDUM

On February 13, 1976, at the conclusion of the evidentiary hearing in the above captioned case, the undersigned made a statement for the record concerning the possibility a significant change had occurred in the burning temperature of the Methenamine Tablet (#1588), the flame source specified in DOC FF 1-70. At the time there was not sufficient information to be tendered for the record.

Respondent was given until March 1, 1976, to supplement the record in this regard, a date which was subsequently extended to March 2, 1976, by agreement of counsel.

During the interim, a substantial amount of research has been undertaken, and it is now apparent this research must be continued.

It is respondent's position, as documented in the attached affidavit, with exhibits, that:

#7330

1. The original Methenamine Tablet (#1588) was specified in the standard on the belief it had the approximate heat intensity of a lighted match or cigarette, to wit: 860°F. to 935°F.

2. The tablets utilized by Independent Textile Testing Services, Inc., in the "failing" tests put in evidence in this case, are likely to have had burning temperatures substantially in excess of this figure, to wit: 1557°F. to 1643°F.

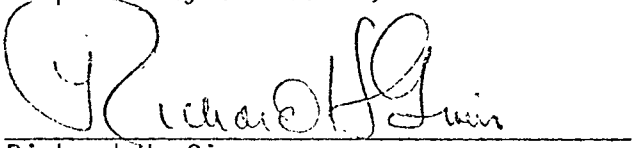
3. The tablets utilized by the Consumer Product Safety Commission in the "failing" tests on Style 222, Paradise Valley (foam), are likely to have had burning temperatures of a similar magnitude.

The Consumer Product Safety Commission has refused to make any of its tablets available for testing, effectively preventing respondents from verifying the above stated belief. Unless there has been a reversal of the traditional adjudicative rules, the Commission has the burden, in this case, of proving that Barrett Carpet Mills, Inc., violated the statute by manufacturing and selling carpet which, when subjected to valid tests, would not meet the carpet flammability standard. See, e.g., Federal Trade Commission Rules of Practice, 16 C.F.R. 3.43(a). Clearly this burden cannot be met by suppression of evidence. Where, as is the situation here, a party has exclusive control over relevant evidence (CPSC methenamine table supply), that party is held to have the burden of coming forward with the evidence, and his failure to do so may give rise to a presumption that such evidence...would be adverse. See, e.g., NLRB v. Mastro Plastics Corp., 354 F.2d 170 (2nd Cir., 1965). Instead of coming forward, the Commission staff has simply enshrouded itself in the bureaucratic veil.

Respondents hope to be able to bring the full facts concerning this issue into the record of this proceeding, without the necessity of delaying the final resolution of this case. However, the Government has apparently determined not to cooperate because of the possibility all of its failing carpet flammability tests over the past several years may be invalid. This decision will not facilitate speedy determination of the facts.

Under the circumstances, respondents submit that the Administrative Law Judge should, on his own initiative, order the Commission staff to produce the available test data on the burning temperature of the pills used in the Commission's laboratory. Absent proof the flame source utilized by the CPSC to test Style 223, Paradise Valley (foam), was no greater than that which formed the basis of the selection of Methenamine Tablet #1588 as the flame source, all of the Commission's failing tests on this carpet should be assumed to be invalid.

Respectfully submitted,



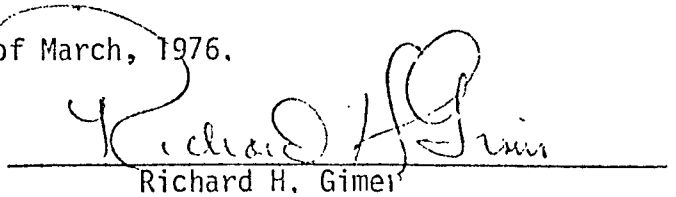
Richard H. Gimer
BERLINER, MALONEY, GIMER & MUIR
1100 Connecticut Avenue, N. W.
Washington, D. C. 20036
Tel.: (202)293-1414

Counsel to Respondents

Dated: March 2, 1976.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Memorandum and Affidavit on all parties by mailing a copy thereof, postage prepaid, to Ronald Yelenik, Esq., Trial Attorney, Bureau of Compliance, Consumer Product Safety Commission, Washington, D. C. 20207, this 2nd day of March, 1976.



Richard H. Gimer

UNITED STATES OF AMERICA

BEFORE CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation. | CPSC Docket No. 75-5 |

AFFIDAVIT

DISTRICT OF COLUMBIA ) SS:

I, RICHARD H. GIMER, being duly sworn, do hereby depose and state:

1. That the undersigned is legal counsel to the Carpet and Rug Institute and has acted in this capacity since 1970.

2. That the undersigned is legal counsel to Barrett Carpet Mills, Inc., the respondent in CPSC Docket No. 75-5, a case involving alleged violation of the carpet flammability standard, which is currently pending before an Administrative Law Judge of the Consumer Product Safety Commission.

3. That, in the course of this litigation, counsel for the respective parties entered into a joint stipulation in which each party agreed that, with the exception of the test on Roll No. 10348-11, each of the samples tested in the CPSC lab and in the Independent Textile Testing Services, Inc., laboratory, which were to be entered into evidence, "were tested...in accordance with the test procedure specified in Paragraph .4 of DOC FF 1-70..." (Jt. Stip. Nos. 31,32.)

4. That, at the time this stipulation was entered into, counsel for respondents had no knowledge of any information relating to the possibility that one or both of these laboratories, while conducting the test "in accordance with the test procedure", was utilizing a flame source (methenamine pill) with burning characteristics different from those upon which the carpet flammability standard was based.

5. That on February 13, 1976, the final day of hearing in CPSC Docket No. 75-5, counsel for respondents learned for the first time that responsible laboratories had made evaluations tending to indicate that, for reasons unknown, the Methenamine Tablet#1588, the flame source utilized in DOC FF 1-70, was burning at a temperature substantially in excess of the tablets which were used in product performance evaluations which led up to promulgation of the carpet flammability standard on April 16, 1970. 35 F.R. 6211-12.

6. That since February 13, 1976, the historical record leading up to the promulgation of DOC FF 1-70 has been, and is being, researched; that tests have been made on lots of Methenamine Tablet#1588 manufactured between July 1971 and the present and are continuing.

7. That, upon information and belief, the carpet flammability standard, including the specified acceptance criterion, was promulgated following a series of experiments utilizing a variety of flame sources and test methods, and an assessment of the performance of then available carpet products under these test methods and conditions.

8. That industry associations such as the Man-Made Fiber Producers Association and the American Carpet Institute, Inc. (now the Carpet and Rug Institute), and various textile laboratories, such as those of Phillips Fibers Corporation, conducted interlaboratory tests to evaluate the proposed method

of test for ease of ignition of finished textile floor covering materials.

9. That, upon information and belief, during this evaluation period, a number of flame sources evaluated, including some timed burning tablets with burn characteristics different from the Methenamine Tablet#1588, were rejected as flame sources for use in the Federal standard on the basis that they were too severe and resulted in the rejection of an unacceptably high percentage of available carpet products.

10. That, in the course of these evaluations, the American Carpet Institute, Inc., solicited specification data concerning Methenamine Tablet #1588 from Eli Lilly and Company, the manufacturer of this Tablet.

11. That American Carpet Institute, Inc., was informed by Eli Lilly and Company, by letter dated September 25, 1968, that "the maximum temperature created by Table #1588 is 965°F. or 518°C." Letter from George W. Gard to William H. Rockwell, attached as Exhibit A. That upon information and belief the industry and Government relied upon these representations in determining to recommend Tablet #1588 as the flame source in DOC FF 1-70.

12. That, at a temperature of 965°F., the methenamine table+ would approximate the temperature of a lighted match or cigarette, two of the small ignition sources the carpet flammability standard was intended to protect against. See Notice of Standard, attached as Exhibit B, and Phillips Fibers laboratory entries dated September 25, 1968, attached as Exhibit C.

13. That the U. S. Department of Commerce, in promulgating the carpet flammability standard, specified the flame source to be employed as "Product No. 1588 in Catalog No. 79, December 1, 1969, by the Eli Lilly Company of Indianapolis, Ind. 46206, or an equal table." See DOC FF 1-70.1(f), 35 F.R. 6211.

14. That, in the course of evaluating various test methods and flame sources during this period, Phillips Fibers Corporation conducted tests to determine the burning times and temperatures of the Methenamine Tablet #1588, and determined the tablets tested to be in the range of 1125°F. to 1360°F. Memorandum from Loraine Hardegree to D. R. Gentry, Manager, Textile Testing, Phillips Fibers Corporation, dated September 26, 1968, and accompanying data sheets, attached as Exhibits D and C.

15. That the carpet flammability standard (including the acceptance criterion) was promulgated and determined to be "reasonable, technologically practicable, and appropriate" based upon evaluations utilizing a flame source of the magnitude being distributed at the time the above described evaluations were being made.

16. That, at the request of the Carpet and Rug Institute, the Georgia Institute of Technology conducted a series of tests on lots of Methenamine Tablets produced between July 1971 and October 1975, utilizing, upon information and belief, a test apparatus and method patterned after that utilized in the 1968 experiments conducted by Phillips Fibers Corporation, referred to above.

17. That, upon information and belief, the results of all such tests made to date are set forth in Exhibit E, and show that the tablets available for testing are yielding average maximum temperatures ranging from 1557°F. to 1645°F, all substantially above the burning temperature represented by the source, or as determined in laboratory experiments, at the time of its selection.

18. That, upon information and belief, utilizing a flame source with a higher temperature in conjunction with the test method specified in DOC FF 1-70 could have no other effect than to subject the test specimen to a more rigid test than was contemplated when DOC FF 1-70 was promulgated, both as a result

of direct heat transfer into the carpet backing and the increase in radiated heat across the face of the carpet.

19. That the manufacturing dates of the Methenamine Tablets utilized by Independent Textile Testing Services, Inc., in the tests performed by that laboratory between April 2, 1974 and December 1, 1975, are not presently known; but that it is believed these pills were produced after the July 1971 batch which has been tested by Georgia Tech and found to have an average maximum temperature of 1584°F. The basis of this belief is the practice of Independent Textile Testing Services, Inc., to purchase its Methenamine Tables from Dalton, Georgia area pharmacies in relatively small quantities, frequently replenished.

20. That, upon information and belief, the Dalton, Georgia area pharmacies purchased the bulk of these pills from either McKessin & Robbins or Duff Bros., suppliers of various pharmaceuticals located in Chattanooga, Tennessee. At such time as the lot numbers and production dates of the Methenamine Tablets sold by Eli Lilly and Company to these two firms can be determined, this information will be provided.

21. That, upon information and belief, all flammability tests performed by the Consumer Product Safety Commission on Style 222, Paradise Valley (foam), were made with methenamine tablets shipped to the Federal Trade Commission on April 7, 1972 and May 18, 1972; and that, upon information and belief, these tablets were likely to have been manufactured after the earliest of the lots tested by Georgia Institute of Technology and determined to have temperatures of 1560°F. and above.

22. That, in the course of conducting this burning temperature evaluation, the Carpet and Rug Institute, through its Technical Director, William Wald, requested to be provided with samples from the Consumer Product Safety Commission

stock of these tablets; and, upon information and belief, that this request was refused.

23. That no other source of pills from the batches utilized by the Consumer Product Safety Commission for its tests is presently known.

24. That, upon information and belief, the National Bureau of Standards has or is conducting tests on the burning temperature of the Consumer Product Safety Commission methenamine tablet supply.

25. That failing flammability tests made utilizing a flame source as extreme as the methenamine pills tested by Georgia Institute of Technology, regardless of the laboratory making the test or the procedures utilized, are invalid.

26. That, upon information and belief, except by testing a carpet with a flame source of the intensity contemplated by the Department of Commerce in promulgating the standard, there is no known way of establishing that a product would fail the standard.

Richard H. Gimer

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 2nd day of March, 1976.

Notary Public

My commission expires: My Commission Expires September 30, 1

ELANCO PRODUCTS COMPANY
A DIVISION OF ELI LILLY AND COMPANY
INDIANAPOLIS, INDIANA 46206 • TELEPHONE (317) 635—8400

September 25, 1968

Mr. William H. Rockwell
American Carpet Institute, Inc.
Empire State Building
New York, New York 10001

Dear Mr. Rockwell:

In response to your letter of September 19, we are pleased to give you the following date.

The maximum temperature created by Tablet #1588 is 965°F. or 518°C. The average burning time of this tablet is 130 seconds with a minimum of 117 seconds and maximum specifications of 143 seconds. We do not have data available on the rate of heat flow. The chemical composition of the tablet is essentially Methenamine with .1% of sucrose to improve the binding characteristics.

I am informed by our Product Technical Service Department that some of your member companies have also inquired as to the weight and thickness of the Methenamine Tablet #1588. Ten tablets equal 1.65 to 1.70 inches thick and weigh 1.49 Grams

While we will be happy to work with you and provide all possible assistance, the present Methenamine Tablet #1588 is a standard size and a larger tablet would require assurance of considerable volume to be economically practical.

I am in New York quite frequently; however, I am not scheduled to be there during the week of November 5, 1968. Should my schedule so change, I will certainly be in touch with you.

Very truly yours,

ELANCO PRODUCTS COMPANY

George W. Gard
Industrial Sales Associate

GWG:sdz

## Office of the Secretary

## CARPETS AND RUGS

### Notice of Standard

n December 16, 1969, there was pub-d in the FEDERAL REGISTER (34 F.R. 2) a notice of finding that a flamma-y standard was needed for carpets rugs, to protect the public against asonable risk of the occurrence of leading to death, injury, or signifi-property damage, arising from the rds of rapid flash burning or con-ous slow burning or smoldering. A osed standard, which was prelimi-ly found to protect the public against unreasonable risk, was published in same FEDERAL REGISTER. It was also iminarily found that the proposed dard was reasonable, technologically ticable and appropriate and stated bjective terms, and that the proposed dard was limited to carpets and rugs h present unreasonable risk.

ter review and consideration of the ments received pursuant to the above renced publication of a proposed dard for the flammability of carpets rugs; after review and consideration he reports of the National Advisory mittee for the Flammable Fabrics on the proposed standard for the mmability of carpets and rugs; and n having made appropriate changes e proposed standard for the flamma-y of carpets and rugs based on those ews and considerations, it is hereby d that the flammability standard as ow in full at the end hereof:

) Is needed for carpets and rugs to ect the public against unreasonable of the occurrence of fire arising from hazards of rapid flash burning or con-ous or slow burning or smoldering, leading to death, personal injury, or ificant property damage;

) Is reasonable, technologically ticable and appropriate and is stated bjective terms; and

) Is limited to carpets and rugs, h currently present the unreasonable s specified in (a) above.

*tent of the Standard.* There has here-re existed no flammability standard carpets and rugs affording protection he general public from an unrea-ble risk of the occurrence of fire. This ndard will provide a measure of that ection, in that it is particularly gned to protect the public from the rrence of fire from small ignition ces, such as glowing fireplace embers nadvertently discarded lighted ciga-es, cigars, or matches. These sources usually affect only the surface of the pet or rug, hence the Standard is one the surface flammability of carpets or s. The Standard affords to the general lic greater protection than is pre-ly provided in federally owned or ed buildings, the rugs purchased for h must comply with Federal pur-se specification DDD-C-95, Carpets Rugs, Wool, Nylon, Acrylic, dacrylic.

he effects of underlayments are not ifically considered in this Standard. Such effects, as well as the production of toxic fumes and the behavior of rugs in well-established fires in which drafts and heat transfer from walls and ceilings are important, will be the subject of further research and possibly other standards.

*Small carpets and rugs.* Several of the comments received in response to the notice of proposed flammability standard for carpets and rugs (34 F.R. 19612), including several from the National Advisory Committee for the Flammable Fabrics Act, pointed out that carpets and rugs of sizes less than 1.83 meters (6 feet) in major dimension and less than 2.23 square meters (24 square feet) in area may represent less risk to the public because of their smaller size and, thereby, less probability that they will be used in a manner whereby they could spread fire to other combustibles in the room, such as drapes, tablecloths, or furniture. For many uses, particularly as bath mats in bathrooms, they are not used under or near other combustible interior furnishings.

Therefore, carpets and rugs smaller than the above size limits are excluded from the definitions of "Carpet" and "Rug" given therein. Indiscriminate use of smaller carpets and rugs does represent unreasonable risk to the public, but the appended Standard is not appropriate for them. A notice of need and proposed complementary standard for small carpets and rugs is published in this issue of the FEDERAL REGISTER.

*Effective date.* The appended Standard, DOC FF 1–70, Standard for the Surface Flammability of Carpets and Rugs (Pill Test), shall become effective 12 months from the date of its publication in the FEDERAL REGISTER, and all carpets and rugs, as defined in the Standard, and all materials which may reasonably be expected to be used as carpets and rugs, manufactured for sale on or after that date shall comply with the Standard. Carpets and rugs, and materials which may reasonably be expected to be used as carpets and rugs, in inventory or with the trade as of the effective date shall be exempt from the Standard. All concerned parties may be required to provide records proving that carpets and rugs offered for sale after the effective date are eligible for the exemption.

Issued: April 10, 1970.

MAURICE H. STANS,
*Secretary of Commerce.*

CARPETS AND RUGS (PILL TEST)

STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS

DOC FF 1–70


.1 Definitions
.2 Scope and Application
.3 General Requirements
.4 Test Procedure
.5 Labeling


.1 *Definitions.* In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (sec. 1, 81 Stat. 568; 15 U.S.C. 1191), and § 7.2 of the Procedures (33 F.R. 14642, Oct. 1, 1968), the following definitions apply for the purposes of this Standard:

(a) "Acceptance Criterion" means that at least seven out of eight individual specimens of a given carpet or rug shall meet the test criterion as defined in this Standard.

(b) "Test Criterion" means the basis for judging whether or not a single specimen of carpet or rug has passed the test, i.e., the charred portion of a tested specimen shall not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

(c) "Carpet" means any type of finished product made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used as a floor covering which is exposed to traffic in homes, offices, or other places of assembly or accommodation, and which may or may not be fastened to the floor by mechanical means such as nails, tacks, barbs, staples, adhesives, and which has one dimension greater than 1.83 m. (6 ft.) and a surface area greater than 2.23 m.² (24 sq. ft.). Products such as "carpet squares", with one dimension less than 1.83 m. (6 ft.) and a surface area less than 2.23 m.² (24 sq. ft.), but intended to be assembled upon installation into assemblies which may have one dimension greater than 1.83 m. (6 ft.) and a surface area greater than 2.23 m.² (24 sq. ft.), are included in this definition. Mats, hides with natural or synthetic fibers, and other similar products in the above defined dimensions are included in this definition, but resilient floor coverings such as linoleum, asphalt tile and vinyl tile are not.

(d) "Rug" means the same as carpet and shall be accepted as interchangeable with carpet.

(e) "Traffic Surface" means a surface of a carpet or rug which is intended to be walked upon.

(f) "Timed Burning Tablet" (pill) means the methenamine tablet, weighing approximately 0.149 gram (2.30 grains), sold as Product No. 1583 in Catalog No. 79, December 1, 1969, by the Eli Lilly Company of Indianapolis, Ind. 46206, or an equal tablet.

(g) "Fire-Retardant Treatment" means any process to which a carpet or rug has been exposed which significantly decreases the flammability of that carpet or rug and enables it to meet the acceptance criterion of this Standard.

.2 *Scope and application.* This Standard provides a test method to determine the surface flammability of carpets and rugs when exposed to a standard small source of ignition under carefully prescribed draft-protected conditions. It is applicable to all types of carpets and rugs used as floor covering materials regardless of their method of fabrication or whether they are made of natural or synthetic fibers or films, or combinations of or substitutes for these.

One of a kind, carpet or rug, such as an antique, an Oriental, or a hide, may be excluded from testing under this Standard pursuant to conditions established by the Federal Trade Commission.

.3 *General requirements*—(a) *Summary of test method.* This method involves the exposure of each of eight conditioned, replicate specimens of a given carpet or rug to a standard igniting source in a draft-protected environment, and measurement of the proximity of the charred portion to the edge of the hole in the prescribed flattening frame.

(b) *Test criterion.* A specimen passes the test if the charred portion does not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

(c) *Acceptance criterion.* At least seven of the eight specimens shall meet the test criterion in order to conform with this Standard.

.4 *Test procedure*—(a) *Apparatus*—(1) *Test chamber.* The test chamber shall consist of an open top hollow cube made of

ombustible material [1] with inside dimen- 30.48 x 30.48 x 30.48 cm. (12 x 12 x 12 nd a minimum of 6.35 mm. (¼ in.) thickness. The flat bottom of the box be made of the same material as the and shall be easily removable. The sides be fastened together with screws or kets and taped to prevent air leakage the box during use.

TE: A minimum of two chambers and extra bottoms is suggested for efficient ation.

) *Flattening frame.* A steel plate, 22.86 .86 cm. (9 x 9 in.), 6.35 mm. (¼ in.) with a 20.32 cm. (8 in.) diameter hole s center is required to hold the carpet g flat during the course of the test. It commended that one be provided for each chamber.

) *Standard igniting source.* No. 1588 enamine timed burning tablet or an tablet. These tablets shall be stored in siccator over a desiccant for 24 hours to use. (Small quantities of sorbed r may cause the tablets to fracture first ignited. If a major fracture occurs, results from that test shall be ignored, it shall be repeated.)

) *Test specimens.* Each test specimen be a 22.86 x 22.86 cm. (9 x 9 in.) section e carpet or rug to be tested. Eight speci- s are required.

) *Circulating air oven.* A forced cir- tion drying oven capable of removing moisture from the specimens when ntained at 105° C. (221° F.) for 2 hours.[2]

) *Desiccating cabinet.* An airtight and uretight cabinet capable of holding the covering specimens horizontally with- contacting each other during the cooling d following drying, and containing silica esiccant.

*Gloves.* Nonhygroscopic gloves (such r polyethylene) for handling the after drying, and raising the pile on rens prior to testing.

) *Hood.* A hood capable of being closed having its draft turned off during each and capable of rapidly removing the ucts of combustion following each test. front or sides of the hood should be sparent to permit observation of the in progress.

) *Mirror.* A small mirror mounted above test chamber at an angle to permit rvation of the specimen from outside of hood.

0) *Vacuum cleaner.* A vacuum cleaner move all loose material from each speci- prior to conditioning. All surfaces of vacuum cleaner contacting the specimen be flat and smooth.

) *Sampling*—(1) *Selection of samples.* t a sample of the material representa- of the lot and large enough to permit g eight test specimens 22.86 x 22.86 cm. 9 in.), free from creases, fold marks, minations, or other distortions. The test imens should contain the most flam- le parts of the traffic surface at their ers. The most flammable area may be rmined on the basis of experience or ugh pretesting.

the carpet or rug has had a fire- rdant treatment, or is made of fibers ch have had a fire-retardant treatment, selected sample or oversized specimens eof shall be washed, prior to cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1967 of the American Association of Textile Chemists and Colorists [washing procedure 6.2(III) with a water temperature of 60°±2.8° C. (140°±5° F.), drying procedure 6.3.2(B), maximum load 3.64 kg. (8 pounds)],[3] or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Federal Trade Commission. Alternatively, the selected sample or oversized specimens thereof may be washed, dry-cleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Federal Trade Commission is normally used for that type of carpet or rug in service.

(2) *Cutting.* Cut eight 22.86±0.64 cm. (9±¼ in.) square specimens of each carpet or rug to be tested to comply with section .4(b)(1).

(c) *Conditioning.* Clean each specimen with the vacuum cleaner until it is free of all loose ends left during the manufacturing process and from any material that may have been worked into the pile during handling.[4] Care must be exercised to avoid "fuzzing" of the pile yarn.

Place the specimens in the drying oven in a manner that will permit free circulation of the air at 105° C. (221° F.) around them for 2 hours.[5] Remove the specimens from the oven with gloved hands and place them horizontally in the desiccator with traffic surface up and free from contact with each other until cooled to room temperature, but in no instance less than 1 hour.

(d) *Testing.* Place the test chamber in the draft-protected environment (hood with draft off) with its bottom in place. Wearing gloves, remove a test specimen from the desiccator and brush its surface with a gloved hand in such a manner as to raise its pile. Place the specimen on the center of the floor of the test chamber, traffic surface up, exercising care that the specimen is horizontal and flat. Place the flattening frame on the specimen and position a methenamine tablet on one of its flat sides in the center of the 20.32 cm. (8 in.) hole.

Ignite the tablet by touching a lighted match or an equivalent igniting source carefully to its top. If more than 2 minutes elapse between the removal of the specimen from the desiccator and the ignition of the tablet, the conditioning must be repeated.

Continue each test until one of the following conditions occurs:

(1) The last vestige of flame or glow disappears. (This is frequently accompanied by a final puff of smoke.)

(2) The flaming or smoldering has approached within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

When all combustion has ceased, ventilate the hood and measure the shortest distance between the edge of the hole in the flattening frame and the charred area. Record the distance measured for each specimen.

Remove the specimen from the chamber and remove any burn residue from the floor of the chamber. Before proceeding to the next test, the floor must be cooled to normal room temperature or replaced with one that is at normal room temperature.

(e) *Report.* The number of specimens of the eight tested in which the charred area does not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame shall be reported.

(f) *Interpretation of results.* If the charred area does not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point for at least seven of the eight specimens, the carpet or rug meets the acceptance criterion.

.5 *Labeling.* If the carpet or rug has had a fire-retardant treatment or is made of fibers which have had a fire-retardant treatment, it shall be labeled with the letter "T" pursuant to conditions established by the Federal Trade Commission.

[F.R. Doc. 70-4657; Filed, Apr. 15, 1970; 8:50 a.m.]

35 mm. (¼ in.) cement asbestos board suitable material.

ption 1 of ASTM D 2654-67T, "Methods Test for Amount of Moisture in Textile erials," describes a satisfactory oven. 969 Book of ASTM Standards," Part 24, lished by the American Society for Test- and Materials, 1916 Race Street, Phila- hia, Pa. 19103.)

[3] Technical Manual of the American Association of Textile Chemists and Colorists, Vol. 45, 1969, published by AATCC, Post Office Box 12215, Research Triangle Park, N.C. 27709.

[4] The vacuum cleaning described is not intended to simulate the effects of repeated vacuum cleaning in service.

[5] If the specimens are moist when received, permit them to air-dry at laboratory conditions prior to placement in the oven. A satisfactory preconditioning procedure may be found in ASTM D 1776-67, "Conditioning Textiles and Textile Products for Testing." ("1969 Book of ASTM Standards", Part 24, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103.)

EXHIBIT C

PHILLIPS FIBERS CORP.

TECHNICAL DEPARTMENT

NOTE BOOK NO. ARTS - EST - 16

DATE ASSIGNED 6-7-68

DATE RETURNED [illegible]

[illegible]

52887—C

PROJECT 1355 - 1341 (Con't)

Vials containing Eli Lilly and Company #1588 Methenamine Reagent Tablets For Timed Burning were obtained from the General Felt and Sears and Roebuck Company supply for determining pill variations.

| OURCE | Burning Time (Minutes : Seconds) | | Burning Temperature (°F) |
|---|---|---|---|
| s, Roebuck | 1:45 | 1:44 | 1175 |
| 9BA31A | 1:40 | 1:35 | 1300 |
| | 1:38 | 1:48 | 1360 |
| | $\boxed{\bar{X} = 1:42}$ | | 3\|3835 1278 |
| nd Felt | 1:45 | 1:29 | 1298 |
| X34A | 1:48 | 1:45 | 1236 |
| | 1:38 | 1:30 | 1198 |
| | $\boxed{\bar{X} = 1:39}$ | | 3732 |
| C | 1:33 | 1:52 | 1125 |
| X34A | 1:35 | 1:54 | 1254 |
| | 1:47 | 1:43 | 1290 |
| | $\boxed{\bar{X} = 1:44}$ | | 3\|3669 1223 |

Match = 935°F  Cigarette = 860°F

DED BY D. Lorraine Vardegna DATE 7/17/68 WITNESSED BY [signature] DATE 9-25-68

EXHIBIT D

September 26, 1968

GLH-61-68

TO: Mr. D. R. Gentry

FROM: Loraine Hardegree

SUBJECT: General Felt 18d Carpets: Flammability

Carpet samples representing recent FOUR-SEASONS production were submitted to PFC for flammability evaluation. General Felt sent specimens from same rolls to SEARS for same evaluation.

PFC tests were performed according to method described in Federal Specification DDD-C-001173 (CSA-FSS) with the following exceptions: Conditioning time and relative humidity of specimens were varied. Specimens were tested with the burning box placed in a closed hood to minimize possibility of drafts (exhaust fan off).

RESULTS:

1. Specimens reached equilibrium after conditioning in a 94°F oven for 30 minutes (room conditions = 70°F, 65% RH). No additional loss of moisture was noted in specimens conditioned overnight (16 hours).

2. Moisture level of the polypropylene carpets had no significant effect on test results (15% RH to 65% RH).

3. When tested according to DDD-C-001173 (CSA-FSS), all samples conditioned at 94°F for 30 minutes, one hour, and overnight met the requirements of this specification, with char lengths less than two inches.

4. No correlation was found between physical characteristics and flammability of carpet specimens.

5. Burning time of PFC Timed Burning Tablet (Lot 2FX34A) was 1-minute and 44-seconds; General Felt (Lot 2FX34A), 1-minute and 39-seconds; and Sears (Lot 9X131A), 1-minute and 42-seconds.

6. Temperature of PFC Timed Burning Tablet flame was in the 1125-1200°F range; General Felt, 1190-1290°F; and Sears, 1175-1360°F.

Loraine Hardegree

LH/jb

cc: Messrs. R. Baker
D. Fiedler
L. Schlosberg
E. Wright
Central Files

SUMMARY OF MAXIMUM RECORDED TEMPERATURES
ON METHENAMINE PILLS TESTED BY
GEORGIA INSTITUTE OF TECHNOLOGY
February 1976

| Source | Lot No. | Manufacturing Date | Average Maximum Temperature [1] | 99% Confidence Limits (F°) [2] |
|---|---|---|---|---|
| Lilly | 5FT82 | July 1971 | 1584° | ± 16° |
| Lilly | 5JF35 | Oct. 1971 | 1560° | ± 46° |
| Lilly | 5JF36 | Oct. 1971 | 1560° | ± 21° |
| Lilly | 5JF37 | Oct. 1971 | 1618° | ± 14° |
| Lilly | 5JF38 | Oct. 1971 | 1606° | ± 18° |
| CRI | 6WF08A | Dec. 1972 | 1572° | ± 18° |
| CRI | 7LH09A | Aug. 1973 | 1560° | ± 41° |
| CRI | 8DG50A | Apr. 1974 | 1597° | ± 32° |
| CRI | 8FM07A | June 1974 | 1607° | ± 18° |
| CRI | 8KE29A | Nov. 1974 | 1595° | ± 18° |
| CRI | 9SG24A | July 1975 | 1636° | ± 25° |
| CRI | 9UH25A | Oct. 1975 | 1645° | ± 12° |
| Phillips (Greenville,S.C.) | 9UH25A | | 1559° | ± 21° |
| Phillips (Greenville,S.C.) | 5AD99A | | 1557° | ± 9° |

1/ Each reading is an average for five pills.

2/ In 99 of 100 burns, one could expect the average would fall within the stated range applied to the Average Maximum Temperature.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 78-1611

---

BARRETT CARPET MILLS, INC., et al.

Petitioners

and

THE CARPET AND RUG INSTITUTE

Intervenor-Petitioner

v.

CONSUMER PRODUCT SAFETY COMMISSION

Respondent

---

Petition for Review of a Final Order of
The Consumer Product Safety Commission

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# REPLY BRIEF FOR PETITIONERS

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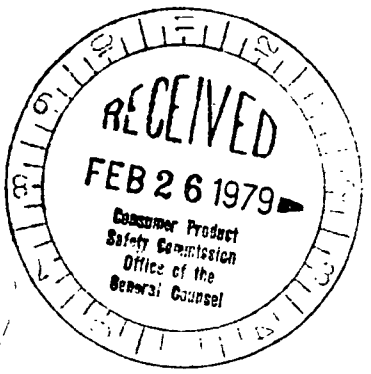


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# REPLY BRIEF FOR PETITIONERS

Notwithstanding the wild inaccuracies in the Commission's brief, this appeal is limited to an inquiry into the propriety of the Commission's imposition of remedies for a de minimis violation of the Flammable Fabrics Act (FFA). The Commission would marshal the forces of the Federal Government to order that all carpet not meeting the federal standard be recalled, not just returned from commerce, but ripped up from the floors of end users; would order notification that the carpet is

violative; would subject Barrett to unlimited warrantless inspections of its premises; would impose an undetermined and indeterminable quality control program on Barrett; and, for good measure, would make Mr. Roy Barrett individually accountable for the entire matter.

The legal standards to be applied to this case are familiar: no remedy can be imposed in excess of statutory authority, and no remedy can be imposed unless it has a reasonable relation to the offense. Petitioners' thesis is quite simple: (1) as a matter of law, the remedies imposed by the CPSC's final order are unauthorized; and (2) on this record, which established without dispute that the carpet in question was not hazardous, the remedies imposed are sheer lunacy.

## I. RECALL IS UNAUTHORIZED AS A MATTER OF LAW

In a commendably forthright assessment of its position, the Consumer Product Safety Commission acknowledges that its authority to order recall under the Flammable Fabrics Act depends on whether "the Trade Commission under Section 5 of the FTCA may order recall" (Ans. Br. 10). The statute is unmistakable on that point: the FTCA's sole administrative remedy is an order to "cease and desist". No matter how broadly one construes the Commission's authority to enter a cease and desist order, the law remains that a cease and desist order is negative and prohibitory, looking to control future conduct, not to mete out individual remedies to undo

past conduct. Upon close examination, nothing in the Commission's brief is to the contrary.

A. FTCA § 5 Does Not Authorize Recall

First, the Commission submits that there is a split of authority on whether the FTC has the authority to order recall, citing Universal Credit Acceptance Corp., 82 FTC 570 (1973), for the proposition that FTCA § 5 authorizes recall, while noting that Heater v. FTC, 503 F.2d 321 (9th Cir. 1974), went the other way (App. Br. 13). Incredibly, the Government neglects to point out that the Heater decision reversed the Commission decision in Universal Credit: they are one and the same case!

To argue that a Court of Appeals decision and the opinion it reversed constitute a split of authority is an affront to this Court. The Government persists, however, that the agency's interpretation of its own authority is entitled to great weight, mistakenly relying on Udall v. Tallman, 380 U.S. 1 (1965). Udall involved only the agency's interpretation of a regulation which it had itself promulgated. By contrast, it is settled law that the courts have the "ultimate responsibility to construe the language employed by Congress". Zuber v. Allen, 396 U.S. 168, 193 (1968); Fairmont Foods Co. v. Hardin, 442 F.2d 766 (D.C. Cir. 1971). The Udall doctrine is further limited to long-standing administrative interpretations. See, e.g., Yellen v. Hickel, 352 F. Supp. 1303 (S.D. Cal. 1972). No judicial deference is due to the Commission's radical

interpretation of its authority to order consumer recall under FTCA § 5, an interpretation that is contrary to every other prior construction of FTCA § 5, including the Commission's own ruling in Congoleum Industries, Inc., CPSC Dkt. No. 75-3, appeal pending, No. 75-3112 (9th Cir.), and the Court of Appeals' holding in Heater. To say the least, it takes a great deal of courage to urge this Court to show deference to an agency interpretation which has been held unlawful.

Foreclosed by the statute and its legislative history from arguing that "cease and desist" means "recall", and faced with a Court of Appeals decision squarely rebuffing that contention, the Government is reduced to arguing an analogy to the line of so-called "corrective advertising" cases. Recall, the Government contends, is like corrective advertising, because "in each instance the remedy requires a manufacturer to spend money to undo a public harm he has done" (Ans. Br. 13). Not only is that statement erroneous, but in addition the corrective advertising issues have been thoroughly distinguished by the courts from the question of recall.

Contrary to the Government's description of the corrective advertising cases, a corrective advertising order does not affirmatively require the offending party to do anything. The order under review in Warner-Lambert Co. v. FTC, 562 F.2d 749 (D.C. Cir. 1977), cert. denied, 435 U.S. 950 (1978), upon which the Government relies, was issued under FTCA § 5 and, as with all such orders, was a cease and desist order. Having

found that the deception created by Warner-Lambert's advertising of Listerine would be reinforced by future advertising unless it contained an express disclaimer, the Commission prohibited the future dissemination of such misleadingly incomplete advertising. The "corrective" provision of the FTC order required Warner-Lambert to:

> cease and desist from disseminating any advertisement for Listerine unless it is clearly and conspicuously disclosed in each such advertisement: ["Contrary to prior advertising], Listerine will not help prevent colds or sore throats or lessen their severity". (562 F.2d 749, 753; bracketed portion of order struck by Court of Appeals).

The Warner-Lambert decision followed a long line of cases holding misleadingly incomplete advertising an unfair trade practice and prohibiting future use of such advertising without a prescribed disclaimer. See, e.g., Waltham Watch Co. v. FTC, 318 F.2d 28 (7th Cir. 1963); Feil v. FTC, 285 F.2d 879 (9th Cir. 1960); Keele Hair & Scalp Specialists, Inc. v. FTC, 275 F.2d 18 (5th Cir. 1960). The important point to note, for purposes of this case, is that the offending advertisers were not required to do anything. As is evident on the face of the Warner-Lambert cease and desist order, respondent would be in complete compliance by doing nothing.

Heater, not the Universal Credit decision which it set aside, and not the Warner-Lambert decision, states the law on the authority to order recall under FTCA § 5. The Government's confusion of the law on recall and corrective advertising is illustrated by its statement (App. Br. 13, n. 15) that

"Heater has been both questioned and distinguished by the only Court of Appeals to cite it", supporting that assertion by reference to Warner-Lambert, 562 F.2d at 757, n. 33. That footnote, set forth in full, reveals the error in the Commission's position:

> It is true that one Court of Appeals has relied on this [legislative] history [of FTCA § 5] in concluding that the Commission does not have power to order restitution of ill-gotten monies to the injured consumers [citing Heater]. But restitution is not corrective advertising. Ordering refunds to past consumers is very different from ordering affirmative disclosures to correct misconceptions which future consumers may hold. Moreover, the Heater court itself recognized this distinction and expressly distinguished corrective advertising, which it said the Commission is authorized to order, from restitution. 503 F.2d at 323, n. 7 and 325, n. 13. (Emphasis by the Court).

In fact, the Heater decision has never been questioned, not even by the FTC, which declined to seek Supreme Court review, but rather sought legislative relief. The Magnuson-Moss Warranty-FTC Improvements Act did, in fact, authorize the imposition of restitution -- but by the courts, not the Commission. 15 U.S.C. § 57b(b).

In short, the Courts of Appeals for the District of Columbia and for the Ninth Circuit both agree that recall and restitution have nothing to do with corrective advertising. One would have hoped that the Consumer Product Safety Commission would have spared this Court an argument so thoroughly discredited.

While the Commission's main argument is the twice-rejected analogy to corrective advertising, the Commission also appears to argue an analogy between recall and divestiture (citing L. G. Balfour Co. v. FTC, 442 F.2d 1 (7th Cir. 1971)) and patent licensing (citing Charles Pfizer & Co. v. FTC, 401 F.2d 574 (6th Cir. 1968), cert. denied, 394 U.S. 920 (1969)) (Ans. Br. 12). The Balfour case affirming a divestiture order under FTCA § 5, is of questionable validity, since it overlooked controlling Supreme Court cases holding that no such authority existed under § 5. See United States v. Philadelphia National Bank, 374 U.S. 321, 339-40, n. 17 (1963); FTC v. Eastman Kodak, 274 U.S. 619 (1927). At any rate, an order prohibiting a monopolist from maintaining its monopolistic position in the future is quite different from ordering refunds and restitution to past customers. The Heater court noted its awareness of the Balfour opinion (503 F.2d at 327, n. 7) but found the situation so entirely distinguishable as to merit no precedential value. The Commission in Balfour did not, for instance, order a refund of monopoly profits to damaged consumers.

The Pfizer case, also relied on by the Commission, barely touched on the question of the FTC's remedial authority. However, an earlier decision in the same litigation, American Cyanamid v. FTC 363 F.2d 757 (6th Cir. 1966), contained dictum to the effect that the refusal of a holder of a fraudulently-obtained patent to license the patent on a reasonable-royalty basis could be an unfair practice subject to prohibition

through the cease and desist mechanism. At the same time, the court rejected the FTC's contention that it was authorized to compel royalty-free licensing of patents under FTCA § 5. (Id. at 772). Again, the cases were dealing with a prospective remedy only. There was not the slightest suggestion, for instance, that the offending party could be ordered to pay damages to those who had been unlawfully deprived of the patented process in the past.

Finally, the Commission appears to argue that the prospective-only limitation on § 5 orders should be waived in FFA cases because the violative conduct has already been defined by regulation (Ans. Br. 14-15). Such an argument is misdirected at this Court. What the Commission is challenging is not the construction of remedial authority under FTCA § 5 -- which, in view of the legislative history and the case law is quite clear -- but rather the wisdom of Congress' decision to limit FFA administrative remedies to the prospective-only cease and desist order. If a change in the law is necessary (and we could offer myriad reasons why it is not, beginning with the record in this case), the CPSC should be told to take its arguments to Congress. As a matter of law, new authority cannot be arrogated by the Commission or granted by the Court. 5 U.S.C. § 558(b); FTC v. Ruberoid Co., 343 U.S. 470 (1952).

### B. The Absence of Express Recall Authority Precludes its Inference

The Commission purports not to understand the relevance of the fact that Congress has expressly authorized the remedy

of recall for violations of statutes other than the FFA, but did not do so when it enacted the FFA (Ans. Br. 16-17). The relevance would be quite clear if the Commission had considered the case law cited in Petitioners' Brief. Alcoa Steamship Co. v. FMC, 348 F.2d 756 (D.C. Cir. 1965) and Textile and Apparel Group, American Importers Ass'n v. FTC, 410 F.2d 1052 (D.C. Cir.), cert. denied, 396 U.S. 910 (1969), are leading cases establishing that the failure of Congress expressly to grant authority which is elsewhere granted by express language is to be construed as a purposeful denial of that authority. That Congress expressly delegated recall authority in many other acts of Congress (see App. Br. at 27), but not the FFA, confirms what was really already known and reiterated by witnesses in this case: recall was never contemplated as a remedy for violations of the Carpet Standard (Tr. 1160, 1165, 1181, 1188; JA _____).

Failure to comment on or refute case authority

The Commission's brief does not deign to comment on the Alcoa or Textile and Apparel cases. Nor is there any recognition in the brief of United States v. C.E.B. Products, Inc., 380 F. Supp. 663 (N.D. Ill. 1974), holding recall to be such an extraordinary remedy as to be beyond the power of a district court to order without express statutory authorization. The conspicuous absence of any refutation is interrupted only by a deceptive mischaracterization of the case of United States v. Diapulse Corp., 457 F.2d 25 (2d Cir. 1972). To read the Government's description, one might be misled into believ-

ing the Court had held that the violation of the statute by the offending product would, in itself, "justify its removal from commerce" (Ans. Br. at 19, n. 21). In fact, the case had nothing whatsoever to do with recall. Under the Food, Drug and Cosmetic Act (FDCA), the Government was moving to enjoin future distribution, not to recall past distribution. Having concluded that "violations [of the FDCA] will harm the public", the Court added: "and ought, if necessary, be restrained" (457 F.2d at 28; emphasis added to portion omitted from Ans. Br.). Since recall is not expressly authorized under the FDCA, that remedy may not be imposed, as the Agency, the courts, and the Government have long recognized. See, e.g., C.E.B. Products, supra; Comptroller General, Report to the Congress, Sept. 14, 1972 (FDA "lacks the authority to take steps required to withdraw" defective products from the market).

Even if the relevance of the unrefuted authority cited in petitioners' brief is "not apparent" to the Commission, surely it is conclusive on this Court. The most remarkable omission from the Commission argument on recall, however, is any justification of its assertion of new "inherent" recall powers under the FFA when Congress has spelled out explicitly how and when the Commission may order recall of products violative of the FFA. First, the Commission must determine in a rulemaking proceeding that the public interest requires that any risk of injury associated with carpet flammability be regulated under the Consumer Product Safety Act rather than the

FFA. CPSA § 30(d), 15 U.S.C. § 2079(d). Second, the Commission would be required to establish that the carpet in question creates "a substantial risk of injury to the public". CPSA § 15, 15 U.S.C. § 2064(a)(2). Then, and only then, can the Commission order recall of products violative of an FFA standard.[1/]

For the Commission to duck this issue under the guise of not understanding its relevance is intellectually dishonest. The real reason for the CPSC's evasion of the statutorily prescribed avenue to recall, as was pointed out in opening brief (p. 29) and nowhere refuted, is that the carpet does not present a "substantial risk of injury". For reasons which have never been made clear, the Commission staff is groping for a way to recall non-hazardous carpet from the floors of end users. As a matter of law, the invention of recall powers to accomplish this dubious objective is grossly in excess of the Commission's authority.

## II. EVIDENCE ESTABLISHING THE INAPPROPRIATENESS OF RECALL DOES NOT CONSTITUTE A COLLATERAL ATTACK ON THE CARPET STANDARD

Rather than decide the recall issue as a matter of law, the Administrative Law Judge (ALJ) found, on undisputed scien-

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1/ The related procedure for ordering notification of purchasers follows the same process of § 30(d) rule-making and § 15 "substantial product hazard" determination. The Commission's presentation on the issue of authority and appropriateness of ordering notification is limited to a footnote in its brief, relying on the shopworn corrective advertising analogy (Ans. Br. 16, n. 18).

tific evidence, that Barrett's Paradise Valley carpet did not present a risk sufficient to justify recall in any event. Three points should be noted about the evidence: (1) it was offered and received solely for the purpose of assisting the ALJ in formulating a remedy; (2) the Commission's lawyers stipulated to its admissibility for that purpose; and (3) the evidence, while establishing conclusively that failing Paradise Valley carpet did not present a risk sufficient to justify recall, in no way affected the ALJ's determination that the Standard (and therefore the FFA) was violated.

In spite of the fact that the Carpet Standard makes no reference to remedies, the Commission argues that to submit evidence relevant to the ALJ's selecting a remedy would constitute a collateral attack on the Standard. On a primary level, the Commission's position is merely a non sequitur, arising perhaps out of a misunderstanding of the record. In its brief, however, the Commission takes up the cudgel for the far more troublesome contention that any evidence showing that recall is an inappropriate sanction for violation of the Standard is an attack on the Standard itself. The rationale is roughly akin to the prosecutor condemning an argument against capital punishment in a shop-lifting case as a collateral attack on the shop-lifting law. Predictably, the Commission found a receptive audience for its argument, since it acts in these cases not only as prosecutor, but also as judge, jury and executioner.

At the risk of repetition, we do not attack the Standard, although it is far from clear that the invalidity of a regulatory measure may not be asserted as a defense to alleged violation at any time, unless the issue is res judicata.[2/] Here, Barrett was not even in existence when the Carpet Standard was promulgated, and, as the Commission points out, the Standard has never been judicially reviewed (Ans. Br. 21). But Barrett chose not to attack the Standard. Instead, it put on expert witnesses who all agreed that the Standard is a good test for manufacturers' quality control (Init. Dec. at 13; JA _____). The flammability risk associated with carpet, all agreed, was minimal; but compliance with the would-be standard was thought to be so simple that it would be unreasonable to incur even the minimal risk of flammability (Tr. 1131; JA _____). At the time the Standard was written, no tests were run to determine whether non-complying carpet actually presented a hazard in use, since the Standard was not intended to reflect such a determination and its validity did not turn on any such finding. In short, the contention that non-complying carpet must be viewed as per se hazardous is the product of

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2/ The judicial review section of the FFA states "[t]he remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law". 15 U.S.C. § 1193(e)(6). Under identical review provisions in the Food, Drug and Cosmetic Act, 21 U.S.C. § 371(f), it was held that a defendant charged with violation of a regulatory standard "had a right to be heard, ab initio, in this proceeding with respect to the validity of the regulation. . . ." United States v. Lord-Mott Co., 57 F. Supp. 128, 131 (D. Md. 1944).

the imagination of the Commission lawyers, totally refuted by the drafters of the Standard and totally disproved by the scientific evidence in this record.

The Commission's appellate lawyers, disagreeing with its trial counsel, now submit that the ALJ should not hear evidence on the appropriateness of recall as an FFA remedy -- understandably, in this case, because the undisputed evidence exposed recall, even if authorized, as an absurdly inappropriate sanction. As detailed in our opening brief, the LeBlanc studies proved without refutation that complying and non-complying samples of Barrett's Paradise Valley carpet acted indistinguishably when exposed to potential household ignition sources, and neither presented an unreasonable risk in use (TR. 1000-1001, 1036-1037; JA _____).

Even where recall is expressly authorized by statute, the proponent of a recall order cannot rest on the establishment of a violation. Under every statute, something more must in fact be shown, e.g., "imminent hazard" under the Federal Hazardous Substances Act, 15 U.S.C. § 1274, "significant risk of injury" under the Radiation Control Act, 42 U.S.C. § 2632, and "substantial product hazard" creating a "substantial risk" under the Consumer Product Safety Act, 15 U.S.C. § 2064(d). Here, without statutory authorization, the Commission thinks it can order recall, which, as discussed above, is an indefensible position. The Commission compounds the error by asserting that it needs to make no showing of hazard or substantial

risk to support a recall order, and then apparently goes one step further to bar the accused violator from showing the absence of hazard or substantial risk. The Commission's prescription for decision-making in a vacuum violates the fundamental principle that the remedy bear a reasonable relationship to the violation. Even assuming, arguendo, any authority to order recall under the FFA, how in the world is the ALJ supposed to know when recall is appropriate, if evidence on that point is to be excluded?

Nothing in the Commission's brief addresses the point. Indeed, it is fair to say that the Commission itself is in a state of confusion over what evidence should be admitted on the issue of remedy. Its decision below does not identify what evidence should have been excluded as a so-called "collateral attack", although the brief at least implies that what the Commission had in mind were the LeBlanc studies establishing absence of hazard in this particular case (Ans. Br. 20). Yet, in ruling on the same issue in a case argued on the same day, the Commission held that "expert testimony" of the kind introduced by Barrett "may also be considered, not as a collateral attack on the Carpet Standard but as factors to be considered and weighed in fashioning appropriate relief". Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21 (JA ____). Similarly, under the theory espoused in the Commission's brief, the undisputed evidence showing the absence of any fire involving the carpet would be excluded as a collateral attack

on the Standard. Yet, the importance of evidence of a record of safe use has been recognized by the Commission, White Consolidated Industries, Inc., CPSC Dkt. 75-1 (November 3, 1975), JA___ and by the courts, Clever Idea Co., Inc. v. CPSC, 385 F. Supp. 688, 693 (S.D.N.Y. 1974).

Finally, at the same time when the Commission's appellate lawyers were laboring to persuade this Court to uphold the exclusion of evidence on remedy, the Commission promulgated a Policy Statement on recall which undercuts the already dubious logic of their position. On January 10, 1979, by Federal Register notice, the Commission announced that it would be exercising its newly-discovered authority to order recall under the FFA "where the facts, including the number and pattern of test failures, indicate that such action is necessary and appropriate". 16 C.F.R., Part 1630, as amended, 44 F.R. 2169 (January 10, 1979). In the case at bar, however, there has been no finding, or even any evidence, that the remedy of recall is "necessary and appropriate". The sole evidence on this point, which by Policy Statement the Commission concedes is pertinent, is that recall is wholly unnecessary and inappropriate. That, apparently, is not what the Commission wanted to hear.

The exclusion of evidence on remedy as a "collateral attack" on the Standard is, at best, a poorly thought-out pretext for keeping out of the record evidence showing how utterly inappropriate recall is in a case such as this. If the Court reaches this point at all, and if the Court can discern without remand for clarification what evidence is to be

excluded, it should be apparent that the Commission's position is totally antithetical to rational administrative decision-making.

## III. THE INSPECTION PROVISIONS OF THE ORDER ARE CONTRARY TO LAW

In defending the provision of the Final Order authorizing the staff to make unlimited inspections, the Commission states that its inspections will be limited to those necessary to ascertain compliance with the Order. For support, it quotes only that part of the Order which states: "Staff may conduct inspections to determine compliance with this Order. . . ." (Ans. Br. 23). The Commission's brief omits any reference to the rest of the Order, which adds: ". . . and it may direct Respondents to submit, or permit Commission staff to select, samples of any carpet or rug in Respondents' inventory or in production" (Para. VII; JA _____). Presumably, this omission is a tacit concession that the Order's apparent license for the staff to rummage through Barrett's premises and inventory for any purpose relating to "any carpet or rug" is excessive and unwarranted.

Contrary to the Commission's position, the challenge to the inspection provision of the Order is not belated or untimely. Such a provision was written into the Initial Decision over Barrett's objection that there should be no order at all. The appeal to the full Commission was not initiated by

Barrett, but rather by the Commission sua sponte, and the specification of the issues to be briefed did not include inspection. On appeal, Barrett again contended that no order should be entered, relying on the authority of CCM: Arts and Crafts, Inc., FTC Dkt. 8817, 3 Trade Reg. Rep. ¶ 19,608 (Feb. 16, 1972) and J. J. Newberry Co., FTC Dkt. No. 8849, 3 Trade Reg. Rep. ¶ 20,217 (June 21, 1973). Thus, the argument that Barrett is foreclosed from asserting its objections to the Order (Ans. Br. 23, n. 23) is contradicted by the record.

The entry of an Order giving the staff inspection powers far beyond those in the Act was nowhere justified in the Commission's Order or opinion. The Commission, in its brief to this Court, attempts to cure that defect by suggesting what the Commission's reasoning might have been. As the Supreme Court has pointed out on several occasions, however, this kind of post hoc rationalization is unacceptable and entitled to no credence. See, e.g., Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 419 (1971); Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168-69 (1962) ("the courts may not accept appellate counsel's post hoc rationalizations for agency action").

Not only is appellate counsel's rationalization post hoc, it is also completely wrong. In attempting to distinguish the line of cases holding warrantless inspections of business premises unconstitutional, e.g., Marshall v. Barlow's Inc., 436 U.S. 307 (1978), the Commission's brief points out that in

those cases "there was no traditional probable cause to believe that the person inspected was violating any law". (Ans. Br. 24). What it neglects to mention, however, is that in this case likewise there is no probable cause to believe that Barrett will be violating the law. On the record, the ALJ and the Commission both concluded that the non-compliance arose from a one-time malfunction in an independent contractor's distribution of fire-retardant in the latex backing (Final Dec. at 6-7; JA_____). Repetition of the malfunction was considered so unlikely that the Commission saw no need to enter a broad cease and desist order (Init. Dec. 24; Final Dec. 6; JA _____). On this record, the Commission's attempt to justify a sweeping provision for inspection of Barrett's premises, based on some putative continuing "probable cause", is revealed as vacuous.3/

The Commission is correct, however, in identifying probable cause as the indispensible prerequisite of entry and inspection under the Flammable Fabrics Act. That prerequisite is written into § 5(d)(1) of the Act, 15 U.S.C. § 1194(d)(1), and has been enforced against the CPSC in United States v. Aladdin Mills, Inc., Civ. No. C-76-30-R (N.D. Ga., July 13,

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3/ The reference to National Society of Professional Engineers v. United States, 435 U.S. 679 (1978), (Ans. Br. 24) is not at all on point. There, a court was responsible for framing an injunctive order under the Sherman Act, a circumstance in no way analogous to an administrative agency of statutorily limited powers framing an inspection order.

1977) to prevent inspections without "reason to believe" that the target company is violating the Act. The Commission is absolutely incorrect in its assertion that Aladdin involved an "initial inspection" (Ans. Br. 25, n. 25). The inspection held unlawful there was pursuant to a cease and desist order. In Re Aladdin Mills, FTC Dkt. No. 8912. There is nothing in this case, either in the record or offered post hoc, to support a deviation from that rule of law.

## IV. THERE IS NO BASIS FOR HOLDING ROY C. BARRETT INDIVIDUALLY RESPONSIBLE

The Commission, for reasons nowhere set forth, determined that Roy C. Barrett, in his individual capacity, would be a respondent in the Order. For the reasons detailed in the opening brief, this action was singularly inappropriate and totally unjustified on the record. The Commission's brief attempts to rationalize the determination to go after Mr. Barrett individually. As with the argument on the inspection provision, the rationalization is impermissibly post hoc and incredibly misguided.

The rule of law guiding the determination of whether to name an individual respondent is not seriously in dispute. As explained in Doyle v. FTC, 356 F.2d 381 (5th Cir. 1966):

> [T]he orders of the Commission differ in purpose from the penal provisions of the Sherman Anti-Trust Act. Therefore, whereas many corporate officials have been joined as individual defendants in Sherman Act prosecutions, this has

> not been the practice in the issuance of cease and desist orders. In the latter area, where future corporate activities are the sole concern of the Commission, individuals have only been included in the orders, in almost all instances, when deemed necessary to prevent evasion. (Id. at 383, footnotes omitted).

In support of that rule of law, the Doyle Court cited ten cases, and noted that the Supreme Court had recognized the "threat of evasion" test. (Id. at 383-84).

The Commission relies on several cases which, while sustaining the naming of an individual respondent, are not inconsistent with the Doyle case. For example, this Court's opinion in Pati-Port, Inc. v. FTC, 313 F.2d 103 (4th Cir. 1963) is cited as support for the Commission's position. In that case, however, the evidence established that the individual respondent personally reviewed and authorized the dissemination of deceptive advertising (Id. at 105); that his testimony was "contradictory, evasive to the point of contemptuousness, and at times patently contrary to fact" (Id. at 104); and, perhaps most significantly, that the individual respondent asserted his intention to liquidate the company (Id. at 105). The individual respondent was, in short, the embodiment of "threat of evasion".

Roy C. Barrett, by contrast, exemplified good faith in both the conduct of the business and in his actions when the problem with Paradise Valley carpet turned up. At his direction, production of that style was voluntarily stopped, long before the complaint proceeding was brought

(Tr. 608; JA ____), and the return of that style carpet from commerce was voluntarily effected (Tr. 610; JA _____). The record shows that the carpet was properly designed to meet the Standard, and that only a one-time malfunction by an independent contractor led to the production of a small amount of non-complying carpet (Init. Decis. 13, 24, 25; JA _____). The Commission, clutching at straws, would blame Mr. Barrett personally for the mistake of one of the company's contractors, because he had final responsibility for letting the contract (Ans. Br. 26). Yet, Mr. Barrett's bona fides is established as a matter of record, and his credibility as a witness was never in the least impeached. Next, the Commission falsely accuses Mr. Barrett of designing a deficient quality control system (Ans. Br. 26), whereas the record shows that the testing program he implemented was completely reasonable and easily met the pre-market testing requirements of the Government. (Tr. 528; JA _____)

The Commission reveals its misunderstanding of the issue when it argues that "no remedial order will be effective unless he [Mr. Barrett] commits himself to making it so" (Ans. Br. 27). What the Commission overlooks is that "orders running against a corporation are automatically binding on the officials 'responsible for the conduct of its affairs'." Doyle v. FTC, 356 F.2d at 384, quoting Wilson v. United States, 221 U.S. 361, 376 (1911). Roy C. Barrett, in his capacity as president of Barrett Carpet Mills, will perforce be responsible for compliance with the Order. There is nothing in this record that even remotely

suggests that he will shirk that responsibility. Naming Mr. Barrett as an individual respondent, with the attendant stigma, is administrative overkill without justification and should be set aside.

## V. THE PROVISIONS OF THE FINAL ORDER DIRECTING BARRETT TO SATISFY THE STAFF ARE IMPROPER

In our opening brief, we pointed out that Paragraphs VI and VII of the Order should be set aside on the fundamental grounds that (1) they were not asked for the Notice of Enforcement and (2) they do not contain a clear and definite statement of the obligations imposed. The answering brief does not deal at all with Paragraph VII, directing Barrett to file whatever reports the Enforcement staff requires. With regard to Paragraph VI, directing Barrett to develop a quality control plan "acceptable to the Directorate for Compliance and Enforcement", the Commission suggests that there is no cause to believe the staff will be unreasonable.

Without presuming for an instant to know whether the staff will be reasonable in its demands, the Commission's response is truly unresponsive. Because of the serious consequences which flow from non-compliance with an administrative order, the Courts have consistently demanded that such an order define the obligations of the respondent in clear and definite terms. See, e.g. Asheville Tobacco Bd. of Trade, Inc. v. FTC, 294 F.2d 619 (4th Cir. 1961). Ordering Barrett to do whatever

the Staff tells them to do by way of quality control and compliance reporting falls rather short of the prescribed standard. Against the backdrop of the radical positions the Staff has taken in this case alone, the Order's provisions directing Barrett to satisfy the Staff are prescriptions for arbitrary action which this Court should set aside.

## CONCLUSION

For the foregoing reasons, and for the reasons set forth in Petitioners' opening brief, Paragraphs I, II, VI, and VII of the Order should be set aside with respect to petitioner Barrett Carpet Mills, Inc., and the entire Order should be set aside with respect to petitioner Roy C. Barrett in his individual capacity.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 78-1611

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Petitioners

and

THE CARPET AND RUG INSTITUTE

Intervenor-Petitioner

v.

CONSUMER PRODUCT SAFETY COMMISSION

Respondent

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# BRIEF FOR PETITIONERS

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# BRIEF FOR PETITIONERS

## ISSUES PRESENTED FOR REVIEW

1. Whether the Consumer Product Safety Commission ("Commission") exceeded its authority under the Flammable Fabrics Act by ordering Barrett Carpet Mills, Inc. ("Barrett") to recall carpet determined not to comply with the carpet flammability standard?

2. Whether the Commission's order of recall, even if authorized, was arbitrary and unsupported by substantial evidence, in view of the undisputed finding that the noncomplying

carpet presented no unreasonable risk of fire or injury to any consumer?

3. Whether the Commission exceeded its authority by ordering Barrett to notify customers and persons in possession that certain amounts of its carpet were noncomplying?

4. Whether the Commission's notification order, even if authorized, was arbitrary and unsupported by substantial evidence, in view of the undisputed finding that the noncomplying carpet presented no unreasonable risk of fire or injury to any consumer?

5. Whether the Commission arbitrarily or contrary to law disregarded evidence establishing the absence of hazard?

6. Whether the Commission's ruling that certain evidence constituted an unacceptable collateral attack on the carpet standard should be set aside for vagueness and failure to enunciate its basis in violation of the Administrative Procedure Act [5 U.S.C. § 557(c)]?

7. Whether the Commission exceeded the statutory and constitutional limits of its authority by subjecting Barrett to unlimited warrantless inspection?

8. Whether the Commission's order improperly makes Roy C. Barrett, individually, a respondent?

9. Whether the Commission's order naming Roy C. Barrett, individually, should be set aside for failure to enunciate its reasons in accordance with the Administrative Procedure Act [5 U.S.C. § 557(c)]?

10. Whether those portions of the Commission's order requiring Barrett to satisfy the Commission staff improperly subject Barrett to civil penalties?

## STATEMENT OF THE CASE

Barrett Carpet Mills, Inc. ("Barrett") and its president, Roy C. Barrett, appeal from a final order of the Consumer Product Safety Commission ("CPSC" or "Commission"), issued under Section 5 of the Flammable Fabrics Act ("FFA"), 15 U.S.C. § 1195. Barrett does not appeal the finding of an FFA violation, but urges the Court to set aside provisions of the order for which the Commission lacks authority or substantial evidentiary support.

In the face of an undisputed record establishing that the carpet in question was not hazardous, and despite a total absence of statutory authority, the Commission ordered Barrett to recall noncomplying carpet and ruled that it has inherent authority to order recall of installed carpet from the floors of ultimate consumers. Not only is the decision of the Commission to arrogate recall power an administrative excess of the first magnitude, but also virtually every other provision of the order is deficient as a matter of fact or law. Because of the enormous impact of this radical decision on the carpet industry as a whole, The Carpet and Rug Institute, a nonprofit trade association whose 80 manufacturer members account for approximately 70% of the total carpet and rugs manufactured in

the United States annually, has joined its member Barrett in urging this Court to set aside the Commission's order.

### A. The Flammable Fabrics Act and the Carpet Standard

The Flammable Fabrics Act, 15 U.S.C. § 1191 et seq., originated in the 83rd Congress as H.R. 5059, "An Act to Prohibit the Introduction and Movement in Interstate Commerce of Articles of Wearing Apparel and Fabrics which are so Highly Flammable as to be Dangerous when Worn by Individuals, and for other Purposes". The original Act was limited in its application to wearing apparel, and contained a Congressionally mandated standard for such products. Subsequently, the Act was amended, so as to extend to both "wearing apparel" and "interior furnishings". Pub. L. 90-189 (1967). Under the amended Act, the Secretary of Commerce was authorized to promulgate standards to protect against "unreasonable risk of the occurrence of fire". 15 U.S.C. § 1193. This standards-making authority replaced the concept of Congressionally-promulgated standards. Additionally, the thrust of the statute was changed from "highly flammable" or "dangerous" products, to regulation of "unreasonable risks". Enforcement of the Act was entrusted to the Federal Trade Commission, which was authorized to conduct administrative complaint proceedings with authority coextensive with its authority under the Federal Trade Commission Act. 15 U.S.C. § 1194. In addition, the Act could be enforced by criminal prosecution (15 U.S.C. § 1196);

seizure and condemnation (15 U.S.C. § 1195(b)); or judicial injunction (15 U.S.C. § 1195(a)).

Exercising the authority granted in the 1967 amendments to regulate "interior furnishings", the Department of Commerce promulgated a standard for the surface flammability of carpet and rugs, designated as DOC FF 1-70, which went into effect on April 16, 1971. 16 C.F.R. § 1630.1-.5. The standard prescribes a test method to ascertain compliance, the so-called "pill test".[1/]

The carpet flammability standard did not arise out of an emergency, as was the case with products regulated by earlier textile flammability standards. (Tr. 1127, 1131; JA ).[2/] Carpet was not a specific target of Congress when the Flammable Fabrics Act was initially adopted or subsequently amended. (Tr. 1126; JA ).

Prior to the time the carpet standard was promulgated "carpet . . . historically had a relatively low incidence of involvement in fire". (Tr. 1120, 1130; JA ). This low level of carpet involvement with fire was true despite the existence in the marketplace of large quantities of carpet

---

1/ Under DOC FF 1-70, eight 9" x 9" squares of carpet are cleaned, oven-dried, and dessicated. The specimens are then placed under a flattening frame with a hole four inches in radius and subject to ignition from a burning methenamine "pill" in a draft-protected environment. Unless 7 of the 8 specimens self-extinguish within three inches of the point of ignition, the carpet does not meet the Standard.

2/ All record citations are to the Joint Appendix ("JA "); transcript references ("Tr. ") are to the transcript of proceedings before the Administrative Law Judge.

which would not pass the test method specified in the carpet flammability standard. According to a Department of Commerce official intimately involved in setting the carpet standard: "We know that . . . perhaps 15 to 30 percent of the carpet on the market prior to the standard going into effect would not have passed this standard, and yet no one was getting burned by carpet. So the hazard was not really very great". Testimony of William Segall, O.N. Jonas Company, CPSC Dkt. No. 75-20 (Jonas Tr. 923; JA ).

Nor was the decision to promulgate a carpet flammability standard made because of the severity of injuries associated with carpet or the frequency of those injuries. (Tr. 1129, 1130; JA ). According to Mr. Sidney Greenfeld, the reason the carpet standard was adopted was a "combination of probably a medium level of risk, but it could be determined to be unreasonable because there was a relatively simply solution to the problem". (Tr. 1131; JA ). Mr. Greenfeld, currently an employee of the Consumer Product Safety Commission, was, at the time the carpet flammability standard was developed and promulgated, the Project Leader in the development of the standard and had "day to day responsibility more than any other person" for the development of the standard. (Tr. 1122; JA ).

This is not merely the view of one man who was intimately involved with the promulgation of the carpet flammability standard. It was echoed by Mr. William Segall, who, at the

same time, had direct responsibility with respect to the standard as Special Assistant to the Assistant Secretary of Commerce. Mr. Segall has testified, in another recent hearing, that the development of the carpet flammability standard was not the result of an "emergency situation"; and that there were "no great numbers of accidents involving carpet". O.N. Jonas Company, CPSC Dkt. 75-20. (Jonas Tr. 912-913; JA ). According to Mr. Segall:

> "It was primarily a situation in which there was an existent standard which certainly some carpet on the market did not meet . . . and it appeared to be a standard that would not cause a tremendous amount of burden. . . ." (Jonas Tr. 912-913; JA ).

The factors which combined to cause carpet flammability to be described by the Department of Commerce as an "unreasonable risk", were described similarly, but perhaps more graphically, in Congressional testimony by Mr. George Buck, in Hearings before the Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, House of Representatives, concerning H.R. 5698. Serial No. 92-36, pp. 38-39, June 30, 1971. (JA ). According to Mr. Buck:

> Since practically all textiles burn, and can under certain circumstances be involved in injury, death, or significant property loss, what constitutes "unreasonable risk"? There are at least three situations in which an unreasonable risk might be deemed to exist.
>
> The first is that in which the risk is small but can be eliminated or reduced without adversely affecting the general public or industry in a major way. Carpets and rugs are an example . . . [C]arpets and rugs present a very low-risk potential for personal injury, death, or property

> damage. However, it was believed that even this degree of risk could be further reduced at relatively modest cost by changes in carpet construction and finish, and that this could be done without depriving consumers of a reasonably wide choice of materials.
>
> The point is this: The carpeting standards came about not because carpeting is a high-risk use, but because it was thought the existing risk could easily be reduced.

Enforcement of the Flammable Fabrics Act was transferred to the Consumer Product Safety Commission in May, 1973. 15 U.S.C. § 2079. Subsequent to this transfer, the Consumer Product Safety Commission, in a series of cases involving the carpet flammability standard, has asserted various "inherent" enforcement powers. In Congoleum Industries, Inc., CPSC Dkt. No. 75-3, appeal pending, No. 75-3112 (9th Cir.), the Commission claimed the "inherent" power to compel recall of non-complying carpet from wholesalers and retailers, but, citing "practical" as well as "legal . . . problems", decided that it could not order recall of installed carpet from the floors of end users. Within the past year, however, the Commission has disavowed the limitation on recall power established in Congoleum. In Northwick Mills, Inc., CPSC Dkt. No. 76-6, the Commission, claiming "inherent" power to enforce the FFA as it sees fit, reversed the Administrative Law Judge's summary judgment holding recall of installed carpet to be beyond the Commission's authority. (JA ). In Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, the Commission decided that "pill test" failures alone could justify recall of installed carpet,

but added that "[e]xpert testimony . . . may also be considered, not as a collateral attack on the Carpet Standard but as factors to be considered and weighed in fashioning appropriate relief". (JA ).

The Barrett case here under review was placed on the Commission's docket, sua sponte, to resolve "important questions concerning the Commission's administration of the Flammable Fabrics Act". (Order, dated August 5, 1976, p. 1; JA ). At the heart of the issues here for review, we submit, is the Commission's fundamental misunderstanding of the carpet standard, which has led it to assert authority which was never contemplated when the standard was promulgated and which Congress, for good reason, did not grant when it enacted the Flammable Fabrics Act.

B. Statement of Facts

On 26 widely separated production dates between August 23, 1972 and January 31, 1974, Barrett Carpet Mills, Inc. manufactured carpet Style 222, a dense nylon shag with foam rubber backing, called "Paradise Valley". (Final Dec. at 3; JA ). Because Barrett is not equipped to perform dyeing and finishing (application of the latex precoat and foam backing), these steps in the carpet manufacturing process were performed by outside contractors. (Final Dec. at 4; JA ).

On February 24, 1974, after the production of Paradise Valley (foam) had ceased, the Commission initiated an investigation into Barrett's compliance with the Flammable Fabrics

Act, 15 U.S.C. § 1191, et seq. ("FFA"). (Final Dec. at 4, fn. 3; JA ). The Commission obtained samples of several Barrett carpet styles and tested them in the Commission's laboratory in accordance with the Standard for Surface Flammability for Carpets and Rugs, DOC FF 1-70, the so-called "pill test. All passed, with the exception of Paradise Valley finished on July 18, 1973 and December 10, 1973, by Masterpiece Finishers, Inc., an outside contractor. Commission tests on Paradise Valley finished on other dates produced passing results.

Since Barrett suspected that the fire retardant component of the latex (alumina trihydrate) may have been omitted or maldistributed on those two dates, Barrett contracted with the Georgia Institute of Technology to have a neutron activation analysis run on samples of both passing and failing rolls. (Final Dec. at 6; JA ). This analysis revealed the presence of alumina trihydrate in all samples specified by Barrett. (Final Dec. at 6; JA ) However, the dispersion of alumina trihydrate in the failing samples was far less uniform than in the passing samples, leading to the conclusion that a production error at Masterpiece Finishers, resulting in non-uniform application of alumina trihydrate, caused the noncompliance of carpet finished on July 18 and December 10, 1973. (Final Dec. at 6-7; JA ) Barrett, concededly, is answerable under the FFA for the noncompliance of its carpet even though the production discrepancy occurred outside of Barrett's control.

In order to determine whether the marginal noncompliance of the carpet presented a hazard of fire to consumers in the home, Barrett contracted with LeBlanc Research Corporation to conduct a comparative analysis of the flammability characteristics of passing and failing samples of Paradise Valley Carpet. (Tr. 778-781; 916-918; 900-1001; JA ) Under laboratory control conditions, potential household ignition sources -- cigars, cigarettes, matches, cigarette lighters, charcoal briquettes, flaming cooking oil and burning plastic wastebaskets -- were placed on 8 x 4-foot samples of carpet, and the flammability characteristics compared. (Tr. 920, 929, 995, 996, 1059, 1212; JA ) The results: "when subjected to a number of ordinary home ignition sources, both failing and passing carpet samples reacted with approximately the same characteristics". (Init. Dec. at 18; JA ).

C. Administrative Complaint Proceeding

On July 21, 1975, pursuant to 15 U.S.C. § 1194(b) of the FFA, the Commission commenced an administrative complaint proceeding by the filing of a Notice of Enforcement, alleging that Barrett had sold Paradise Valley (foam) in violation of the FFA. Among the remedies sought were a broad cease and desist order; an order compelling Barrett to recall the carpet from its customers and from consumers; and an order requiring Barrett to notify customers and consumers that Paradise Valley was hazardous. (Notice of Enforcement; JA )

After a number of prehearing conferences, leading to a partial stipulation of the operative facts, an administrative hearing was commenced on February 2, 1976 and concluded on February 13, 1976. In view of the stipulated pill tests on Paradise Valley finished on two days, the fact of a technical violation of the FFA was not seriously in issue. The hearing focused instead on two related issues: the nature and severity of the violation, and more importantly, the appropriate remedial order. The evidence on these two points is reflected in Administrative Law Judge Pfeiffer's thorough Initial Decision. (JA ).

On the first issue, the facts described above led inexorably to the conclusion that the test failures were directly attributable to an uneven application of the fire-retardant alumina trihydrate by Barrett's finishing subcontractor. (Final Dec. at 6-7; JA ). There was no design defect; the specifications for Paradise Valley were adequate to produce complying carpet. (Final Dec. at 7; JA ). Further, the evidence showed that the production discrepancies by the finishers were limited to two days, July 18 and December 10, 1973. (Init. Dec. at 15, 16, 24, 25; JA ).

The second and most critical issue was "the propriety of requiring recall of some quantity of defective carpet from the consumer's home". (Init. Dec. at 13; JA ). The position urged by the Commission staff was that carpet which did not pass the pill test set forth in the Standard (DOC FF 1-70) was

hazardous, and the manufacturer should be ordered to recall it wherever located. On the basis of the evidence, however, Judge Pfeiffer knew better than to equate noncompliance with hazard. From the testimony of witnesses who were instrumental in the development of DOC FF 1-70, Judge Pfeiffer concluded:

> [T]he Standard was designed primarily as a manufacturer's quality control test rather than as a test measuring an unreasonable degree of risk of fire in the home. In 1970, when the Standard was drafted, no Federal agency had statutory authority to recall flammable carpet either from a wholesaler/retailer or from the consumer's floor. The limit of the then known authority in a contested proceeding was a Federal Trade Commission order to the manufacturer to cease and desist from further manufacture of failing carpet. (Init. Dec. at 13, 14; JA ).

Judge Pfeiffer continued with the observation that "[n]either the Flammable Fabrics Act nor the Federal Trade Commission Act contain any expressions of Congressional intent concerning recall, replacement, or refund of the purchase price from the ultimate consumer". (Init. Dec. at 22; JA ). However, rather than rule that a consumer recall order was beyond the Commission's authority (as he subsequently ruled in Northwick Mills, Inc., CPSC Dkt. No. 76-6), Judge Pfeiffer concluded that such an order would be inappropriate whether or not authorized. (Init. Dec. at 23, 24; JA ). The totality of the evidence established that there was no hazard to consumers which required a remedy so drastic as recall. (Init. Dec. at 24; JA ).

The LeBlanc studies, establishing that failing and passing carpet acted similarly under identical exposure to typical

household ignition sources, were admitted into evidence, without objection, for the sole purpose of assisting the Administrative Law Judge in fashioning an appropriate remedy. (Tr. 778, 918, 1510; JA ; Init. Dec. at 18-20; 23-24; JA ). Dr. Bruce LeBlanc, stipulated to be an expert in carpet flammability, testified at length regarding the findings from his analysis, concluding that neither passing nor failing Paradise Valley carpet would constitute "an unreasonable flammability hazard". (Tr. 1000-1001; 1036-1037; JA ). "Enforcement counsel conducted only a minimum of cross-examination of Dr. LeBlanc, none of which diminished the credibility of his presentation. No rebuttal evidence was produced even though an opportunity for an adjournment to prepare such was afforded". (Init. Dec. at 19; JA ). Accordingly, Judge Pfeiffer held: "on this record, no sound finding can be made that Paradise Valley nylon foam back carpet produced by these Respondents in 1972-73 represents an unreasonable risk of fire or injury to any consumer in his home". (Init. Dec. at 24; JA ).

Judge Pfeiffer made it absolutely clear, however, that the absence of hazard did not absolve Barrett from its statutory violation, which was proven by showing no more than that carpet failing the pill test was produced and sold in commerce by Barrett. "The results of the [LeBlanc] tests were offered not to contradict or impeach the carpet standard, but rather to demonstrate that the recall of failing carpet from the home

would represent an unnecessary and inappropriate remedy". (Init. Dec. at 18; JA ).

The proposed order in the Initial Decision rejected Enforcement Counsel's request for an order requiring recall from consumers. In addition to a cease and desist provision concerning future sales of Paradise Valley carpet, however, the order required Barrett to give written notice of the test failures to all known purchasers or persons in possession of Paradise Valley foam back carpet produced on the failing days (July 18, 1973 and December 10, 1973) and to recall Paradise Valley (foam) from the failing finishing days from wholesalers and/or retailers.

D. Final Order

Although neither Barrett nor Enforcement Counsel appealed the Initial Decision, the Commission invoked the provisions of 16 C.F.R. § 1025.73 to place the case on its own docket to review "important questions concerning the Commission's administration of the Flammable Fabrics Act". (Order dated August 5, 1976, p. 1; JA ). The issues to be briefed and argued are specified by the Commission. (Id. at 2). Briefs were filed and the case was argued to the full Commission.

In its decision and order, dated July 11, 1978, the Commission agreed with Judge Pfeiffer as to the cause and the extent of the production defect. (Final Dec. at 6-7; JA ). Nor was there any way to dispute the results of the LeBlanc tests, since it was uncontradicted that failing and passing

samples of Paradise Valley reacted similarly to the home ignition sources used in the tests and "neither would constitute an unreasonable flammability hazard". (Tr. 1000-1001; 1036-1037; JA ; Init. Dec. at 19, 23, 24; JA ).

Nevertheless, the Commission decided to order Barrett to "recall all carpet from failing finishing days from wholesalers and/or retailers" and further decided that "the Commission has authority to order a recall of installed carpet". (Final Dec. at 12, 13; JA ) In its opinion, the Commission made no attempt to justify its assertion of recall power, but referred to its recent decision in Northwick Mills, Inc., CPSC Dkt. No. 76-6, which had been consolidated for argument with the instant case. In Northwick, a divided Commission reversed Judge Pfeiffer's summary judgment that the Commission lacked authority to order consumer recall, on the grounds that limiting the Commission to the remedies authorized by the FFA "could severely limit the Commission's ability to protect the public from the risks associated with flammable fabrics". (Northwick, Order at 12; JA ). To overcome the irrefutable fact that Congress had not granted such authority under the FFA, the Commission simply announced that it has "the inherent authority under the FFA and FTCA to order relief in the form of a recall from the ultimate purchaser of items that violate a Flammable Fabrics Act standard". (Id. at 14).

While declining to order recall of installed Paradise Valley (foam), the Commission ruled that "the failure of the

carpet standard's 'pill test' may require the recall of installed carpet" (Final Dec. at 11; JA ), and that it may exercise its newly-announced authority "where the facts, including the number and pattern of pill test failure, indicate that such action is necessary and appropriate". (Final Dec. at 12, 13; JA ) The Commission held, however, that certain portions of the evidence presented by Barrett (presumably that portion establishing that pill test failure was not necessarily equivalent to product hazard) constituted an unlawful "collateral attack on the Carpet Standard". (Final Dec. at 9; JA ) While never identifying what evidence was deemed a collateral attack, or how it reached such a conclusion, the Commission held that such evidence "must be disregarded". (Final Dec. at 9, 11; JA ).

While the assertion of consumer recall power and the apparent decision to disregard evidence bearing on the exercise of that power were the central features of the Commission's decision, the Order went on, without explanation, to impose several other remedies. First, without authority in the FFA, the Commission ordered Barrett to notify "all known purchasers or persons in possession of Paradise Valley foam back carpet produced by respondents on the failing days (July 28, 1973 and December 10, 1973) to the effect that said carpet failed the Commission's Flammability Carpet Standard". (Order, Para. I; JA ). Next, Barrett was ordered to develop a quality control program "acceptable to the Directorate for

Compliance and Enforcement of Commission", leaving Barrett's exposure to a civil penalty action dependent on what the staff deems "acceptable". (Order, Para. VI; JA ) Then, in an effort to circumvent statutory and constitutional limitations on the Commission's intrusion into the business premises, the Commission gave the staff an unrestricted right to conduct inspections and to take samples of any carpet or rug Barrett may ever have in inventory or production. (Order, Para. VII; JA ) Finally, without rationalization, the Commission directed that the Order run against Roy C. Barrett individually, as well as against Barrett Carpet Mills, despite the fact that the production defect giving rise to the violation occurred outside of Barrett's control. (Order, Paras. I-VIII; JA ).

A petition for review of this final Agency action was timely filed by Barrett. By Order of September 25, 1978, The Carpet and Rug Institute ("CRI") was granted permission to intervene. For the reasons set forth hereinafter, Barrett and CRI join in urging this Court to set aside the Commission's Order.

## ARGUMENT

### I. THE COMMISSION HAS NO AUTHORITY TO ORDER RECALL UNDER THE FLAMMABLE FABRICS ACT

The Commission radically departed from the governing statute and judicial precedent by ordering Barrett to recall carpet from its customers and declaring that it had the autho-

rity to order Barrett to recall carpet from subsequent purchasers. The Flammable Fabrics Act contains no authority for such drastic action, nor is there any room to infer the existence of recall power. The legislative history and controlling case law both stand unequivocally for the proposition that authority to order recall can only derive from an express grant of that authority by Congress. Thus, aside from the fact that there was no evidence of hazard justifying recall, it is clear that there was no legal basis for recall.

### A. The Authorized Remedies for Violation of the Flammable Fabrics Act do not Include Recall

In enacting the Flammable Fabrics Act, Congress set forth with specificity the limits on the Commission's enforcement powers. The Commission may initiate criminal proceedings under 15 U.S.C. § 1196; seizure and condemnation under 15 U.S.C. § 1195; or, as it chose in this case, proceed by way of administrative complaint proceeding under 15 U.S.C. § 1194(b). That section speaks explicitly in terms of the Commission's authority:

> The Commission is authorized and directed to prevent any person from violating the provisions of section 1192 of this title in the same manner, by the same means and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter . . .

If, as the Commission claims, it has authority to order recall, refund or restitution under the FFA, that authority must be found in the Federal Trade Commission Act (FTCA). The refe-

renced Federal Trade Commission Act, however, contains authorization for one and only one remedy against a person, partnership or corporation found in violation of the Act, namely, "an order requiring such person, partnership or corporation to cease and desist from using such [unfair] method of competition or such [unfair or deceptive] act or practice". 15 U.S.C. § 45(b). The legislative history and case law alike establish beyond preadventure that the recall order under review exceeds the scope of legal authority under FTCA § 5.

1. Legislative History

The legislative history of the Flammable Fabrics Act does not even remotely suggest that the enforcing agency would have authority to order recall and restitution, but reflects a conscious limitation on the scope of remedy to the cease and desist order provision of FTCA § 5. See Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 5059, 83rd Cong., 1st Sess. (1952); H. Rep. No. 425, 83rd Cong., 1st Sess. (1952). Nor do the 1967 amendments authorizing standards-making for interior furnishings (including carpet) in any way reflect an expansion of remedial authority under the FFA beyond the limitations of FTCA § 5.

The limitation on the authority available to remedy violations of § 5 was a central point in the enactment of the FTCA. The operative language of § 5, "unfair method of competition", was left intentionally broad, so as to give the Commission maximum flexibility in defining the substantive

offense. Yet, because of the latitude given the Commission in defining violations of the law, Congress determined that the remedy must be prospective only and non-punitive. Proposals to add retrospective and punitive measures were expressly rejected after extended debate. See 51 Cong. Rec. 13116, 63rd Cong., 2d Sess. (1914). Similarly, it was stressed that the FTCA was never intended to afford compensatory remedies to those who may be adversely affected by acts and practices found to violate FTCA § 5. See, e.g., 51 Cong. Rec. 13050, 63rd Cong., 2d Sess. (1914).

While the Wheeler-Lea amendment subsequently expanded the scope of § 5 to include "unfair or deceptive acts and practices", the limitation on the nature of the remedy was preserved. Indeed, when Congress added a civil penalty provision in 1938, the courts, and not the Commission, were authorized to impose the penalties. Even then, the penalties were limited to circumstances of violation of a pre-existing order and were in no way compensatory. 15 U.S.C. § 45(1).

Congress continues to recognize that the Commission lacks the power to order retrospective relief to those affected by FTCA § 5 violations. See e.g., S. Rep. No. 91-1124, 91st Cong., 2d Sess. (1970), at 9: "The Commission's consumer protection powers . . . are now limited to cease and desist orders having only prospective effect and providing no redress to persons injured by unfair or deceptive practices". In opposing legislation which would have authorized the Commis-

sion to make compensatory orders, such as refunds, to consumers adversely affected by violations of § 5, the Department of Justice noted that the bill "would convert the Commission from a body whose orders are designed to operate prospectively into one whose orders are designed to redress injury and to punish". Id. at 61.

Most recently, the issue was raised before the 93rd Congress. Again, Congress purposely retained the prospective-only limitation on the Commission's remedial power, expressly rejecting a proposal that the Commission be allowed to award damages through an administrative order. Instead, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act left it up to the federal district courts to award whatever relief may be necessary "to redress injury to consumers" resulting from violations of FTCA § 5. 15 U.S.C. § 57b(b); P.L. 93-637 (1975).

The rigid limitation on the kind of order authorized by the FTCA has not gone unnoticed by the commentators. For example, Professor Henderson, in his authoritative work on the FTC, wrote:

> The Act does not expressly confer any general power, of the kind possessed by a court of equity, to compel restitution, or otherwise so mold the decree as to do substantial justice under the circumstances. Of course, no damages can be awarded, or mandatory order entered. Henderson, The Federal Trade Commission, at 71.

When the Flammable Fabrics Act was enacted in 1953, incorporating the remedial authority of FTCA § 5, the nature

of the available cease and desist order was already well established. Not only were the language and legislative history of FTCA § 5 unambiguous, but the Supreme Court had ruled that "the effect of the Commission's order is not to punish or to fasten liability on respondents for past conduct, but to ban specific practices for the future in accordance with the general mandate of Congress". FTC v. Cement Institute, 333 U.S. 683, 706 (1948). The decision to limit the Commission's administrative orders under the FFA to the same extent was made knowingly, while at the same time the more drastic remedies of seizure and condemnation, temporary injunction and criminal prosecution were left to the courts.

2. Case Law on Remedial Authority Under Section 5

As clear as the legislative history is, the case law establishes beyond dispute that a cease and desist order under FTCA § 5 is prospective and prohibitory only, in effect an administrative injunction. The sole purpose of a cease and desist order is "to prevent illegal practices in the future". FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952); FTC v. Cement Institute, supra. Although the Commission has been given latitude in fashioning the cease and desist order to fit the particular circumstances, the Supreme Court has never approved any order under FTCA § 5 other than a prospective cease and desist order. This Court, among others, has shown its awareness of the limitations on remedial authority written into the FTC Act, and incorporated into the Flammable Fabrics Act.

See, e.g., P. Lorillard Co. v. FTC, 186 F.2d 52, 58 (4th Cir. 1950) ("orders of the Commission have relation to the future, not to the past"); United Corp. v. FTC, 110 F.2d 473, 475 (4th Cir. 1940) ("the power of the FTC is purely regulatory and not punitive").

The most instructive case on point is Heater v. FTC, 503 F.2d 321 (9th Cir. 1974), where the Court of Appeals flatly rejected the Commission's contention that it has the authority under FTCA § 5 to order affirmative relief in the form of restitution and refund to defrauded consumers. Reviewing the legislative history of § 5 and controlling precedent, the Court concluded that "[t]he power to attach consequences to prior conduct was thought inconsistent with the Commission's contemplated quasi-legislative and educational function". (Id. at 324).

While recognizing the importance of the consumer protection role which the FTC was attempting to perform, the Court held that a construction of § 5 allowing affirmative and retrospective relief "impermissibly expands the Commission's remedial power beyond that contemplated by Congress or written into the Act". (503 F.2d at 327). Because "the Commission's endeavors must be limited to the exercise of powers granted by Congress" (id.), the refund and restitution order was stricken. "If there exists a deficiency in the Act", the Court reminded the Commission, "the cure must come from Congress". (Id.). As noted above, when refund and restitution power was written

into the FTC Act in 1975, Congress gave that authority to the courts, not to the Commission. 15 U.S.C. § 57b(b); P.L. 93-637 (1975).

The Consumer Product Safety Commission itself has shown an understanding of the limitation on the kind of order authorized by FTCA § 5 (and, therefore, by the FFA). As will be discussed more fully below, the CPSC also enforces the Consumer Product Safety Act, which expressly grants the Commission authority to make retrospective and compensatory orders including recall. CPSC § 15, 15 U.S.C. § 2064. In White Consolidated Industries, Inc., CPSC Dkt. No. 75-1, the Commission noted the significant difference in its authority under the two different grants of authority:

> With cease and desist orders or prospective injunctions, "future corporate activities are the sole concern. . . ." Doyle v. FTC, [356 F.2d 381, 383 (5th Cir. 1966)]. Section 15 orders, however, do not look solely to the future. Instead, they focus on corporate activities, the ill effects of which they seek to remedy by requiring action aimed with precision at the very persons who suffered those past effects. (Order, at 24-25).

The Commission's decision in that case was based substantially on "this difference in the nature of the relief secured by a Section 15 order as distinguished from a cease and desist order. . . ." (Id. at 25).

How soon they forget.

### B. Recall may not be Ordered Without Express Statutory Delegation of Authority

The response of the Consumer Product Safety Commission to the acknowledged absence of recall authority is symptomatic of

nothing less than a breakdown of law within the administrative state. In the face of (1) unambiguous statutory language lacking any authority to order recall, (2) unambiguous legislative history underscoring the intention of Congress that the Commission may enforce the FFA administratively only through prospective cease and desist order, (3) unambiguous admissions on the part of enforcement officials as to the lack of authority to issue administrative orders beyond the cease and desist order, and (4) unambiguous decisions from the Federal Courts rebuffing administrative attempts to assume remedial power under FTCA § 5 beyond the cease and desist order, the Consumer Product Safety Commission has unabashedly announced that its power to compel recall, including consumer recall, is "inherent". If the Commission can get away with simply granting itself whatever powers it desires, then the whole body of administrative law is rendered a hollow joke.

Congress showed its awareness of the problem typified by the Commission assertion of recall power in this case. To curb the natural instincts of any institution toward aggrandizement of power, Congress enacted 5 U.S.C. § 558(b) of the Administrative Procedure Act which states: "A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law". Regardless of whether this Court feels the Commission should or should not have the authority to order recall, the controlling fact is that Congress did not authorize the

Commission to order recall under the FFA. As the Supreme Court held in CAB v. Delta Air Lines, 367 U.S. 316, 322 (1961), "the Board is entirely a creature of Congress and the determinative question is not what the Board thinks it should do but what Congress has said it can do". To base the decision in this case on any other consideration would be to disregard the law of the land.

Because of the enormous impact of a recall order, Congress has considered carefully when to grant such authority, and where it has found recall appropriate, Congress has stated so expressly. For example, the National Traffic and Motor Vehicle Safety Act expressly provides for "repurchase" of defective items involving "unreasonable risk of death or injury to persons". 15 U.S.C. § 1391(1), 1400. The Federal Hazardous Substances Act expressly authorizes the issuance of administrative orders to repurchase products found to be an "imminent hazard to the public health". 15 U.S.C. § 1274. The Radiation Control Act expressly provides for refund, replacement or repair of defective products where a "significant risk of injury" is found. 42 U.S.C. § 2632. Recently, the Medical Device Amendments to the Federal Food, Drug and Cosmetic Act expressly authorized the FDA to order recall of a medical device which "presents an unreasonable risk of substantial harm to the public health". 21 U.S.C. § 306h(b)(1)(A). Congress clearly knows how to grant an agency authority to order recall, or, as with the FFA, how not to.

What is most telling, however, is that Congress expressly delegated recall authority to the Commission as a permissible remedy for certain violations of the Consumer Product Safety Act. CPSA § 15, 15 U.S.C. § 2064. The CPSA contains provisions for enforcement by means of administrative cease and desist orders (15 U.S.C. § 2069), judicial injunction (15 U.S.C. § 2071(a)), and seizure (15 U.S.C. § 2071(b)), just as in the FFA (15 U.S.C. §§ 1194(b), 1195(a) and 1195(b)), and then provides for the additional remedy of recall under carefully proscribed circumstances.[3/]

While Congress has made it quite clear that recall was not to be an available remedy under the FFA, it did prescribe a mechanism by which the Commission could regulate flammable fabrics under the CPSA and thereby obtain the additional Section 15 enforcement powers, including recall. To do so, the Commission must determine in a rule-making proceeding that

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3/ It is noteworthy that under the CPSA a violation of a product safety rule (analogous to an FFA standard), in itself, is an insufficient basis for imposition of recall; there must be a further determination that the particular facts of record prove the existence of a "substantial product hazard" creating a "substantial risk of injury to the public". 15 U.S.C. § 2064(d) and (e), 2051. Furthermore, the amount of the refund to the consumer is limited to the depreciated value of item recalled. 15 U.S.C. § 2064(d)(3). In this case, carpet was not only shown not to be a substantial product hazard, but also that there is no significant risk of injury. (Init. Dec. at 24; JA ). Yet, here, under its invented recall authority, the Commission has determined that it may order full refund or replacement, a far more severe penalty than could have been imposed under the express recall authority reserved for truly hazardous products.

"it is in the public interest to regulate such risk of injury" under the CPSA rather than the FFA. CPSA § 30(d), 15 U.S.C. § 2079(d), as amended. Indeed, in the Northwick decision, upon which the Commission relied for recall authority in the instant case, the Commission declined to order recall, but instead invited the staff to come forward with the requisite public interest showing under § 30(d). No such proceeding has been initiated. The reason for this failure to seek recall through the approved means is obvious. Aside from the problems the staff would have in making a § 30(d) showing, it is absolutely clear that the "substantial product hazard" standards of § 15 would not be met with respect to carpet. (Tr. 1160, 1165, 1181, 1188; JA ). The Commission and the staff know full well that carpet which does not meet DOC FF 1-70, such as Barrett's carpet in this case, does not create "a substantial risk of injury to the public". 15 U.S.C. § 2064 (a)(2). In fact, the staff, knowing it could not obtain recall of carpet under the standards and through the procedures established by Congress in the CPSA, opposed Judge Pfeiffer's suggestion that regulation of carpet be considered under the CPSA through § 30(d) proceedings. That, they urged, would prevent the Commission from ordering recall of "marginally-non-compliant carpet". Northwick Mills, Inc., CPSC Dkt. No. 76-6, Petition for Review, p. 15.

The sheer hubris in asserting recall authority where none was granted, while eschewing the statutorily-sanctioned

approach to obtaining recall, is matched by the Commission's disregard of the controlling principle of law. "Where Congress has consistently made express its delegation of a particular power, its silence is strong evidence that it did not intend to grant the power". Alcoa Steamship Co. v. Federal Maritime Commission, 348 F.2d 756, 758 (D.C. Cir. 1965), quoted with approval in State Highway Commission v. Volpe, 479 F.2d 1099, 1114 (8th Cir. 1973).

A particularly instructive case on point is Textile and Apparel Group, American Importers Association v. FTC, 410 F.2d 1052 (D.C. Cir.), cert. denied, 396 U.S. 910 (1969). There, the FTC concluded that it should have the power under the Wool Act to detain imports which do not comply with Commission standards. Although the Wool Act authorized the Commission to promulgate rules "necessary and proper for administration and enforcement" of the Act, 15 U.S.C. § 68d, the enforcement tool of detention of imports was not specifically authorized. In upholding the challenge to detention of imports, the Court noted that Congress, in other legislation, had expressly authorized that method of enforcement. In the Federal Hazardous Substances Act, 15 U.S.C. § 1273, and the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 381, detention of imports was made part of the statutory enforcement scheme. In the Wool Act, it was not, leaving the inescapable conclusion that Congress knowingly denied the Commission that authority.

In the case at bar, the intention to deny the Commission the authority to order recall is even clearer. The enforcement sections of the Flammable Fabrics Act authorize only the enumerated remedies and do not contain any further general authority such as the "necessary and proper" clause relied on in the Textile and Apparel Group case. Coupled with the fact that Congress did set forth a procedure by which the Commission could order recall of a limited class of consumer products under the CPSA, the Commission's attempt to arrogate recall power under the FFA has no basis in law or logic.

At most, the Commission's assertion of authority is an unsubstantiated claim by the Commission that it needs to have recall available for maximum enforcement of the Flammable Fabrics Act. A perceived need for authority not granted, however, is no justification for exercising such power. In FTC v. Ruberoid Co., 343 U.S. 470 (1952), the FTC was in the same situation, lacking statutory authority to take actions it deemed necessary for enforcement of the Clayton Act. In rejecting the Commission's assumption of the enforcement power as inherent and necessary, the Court held: "Effective enforcement of the Clayton Act by the Commission may be handicapped by the present provisions, but that is a question of policy for Congress". Id. at 479.

Recall is such a drastic remedy that no court, to our knowledge, has ever held that an agency has the implied or inherent power to compel recall. In one case where recall was

sought without express legislative direction, a Federal District Court found that recall was such an extraordinary remedy that its own plenary equitable power was insufficient to support a recall order. In United States v. C.E.B. Products, Inc., 380 F. Supp. 663 (N.D. Ill. 1974), the FDA petitioned the Court to order the recall of an adulterated cosmetic article containing a "poisonous or deleterious" substance posing an imminent risk to consumers. Since the Food, Drug and Cosmetic Act, 21 U.S.C. § 321 et seq., was silent on recalls, while expressly providing for enforcement through other means, the FDA recognized that it had no authority to order recall on its own. The petition, however, urged the Court to use its inherent equitable powers to issue a mandatory injunction prescribing recall. After reviewing the development of the law on authority to impose remedial orders, the Court concluded: "This court has determined that its inherent equitable jurisdiction is not available to support the issuance of a recall order". 380 F. Supp. at 671 (emphasis added). Accord: United States v. An Article of Drug . . . (X-O Tag Plus Tablets), 441 F. Supp. 105, 115 (D. Colo. 1977). If a United States District Court, exercising unrestricted equitable powers, could not order recall of a dangerously adulterated product, it is inconceivable that the Commission, a creature of limited remedial jurisdiction, can compel recall of carpet.

While not strictly relevant to the issue of the Commission's legal authority, the record in this case demonstrates rather clearly why recall was not authorized under the FFA, and even more forcefully why recall authority cannot be inferred. Those statutes which authorize recall reflect Congress' concern that recall be used only as a last resort in situations of substantial hazard. Here, the product which the Commission ordered recalled was shown beyond dispute to carry no significant risk of injury to the consumer and, as indicated above, the Commission intentionally avoided proceedings which would have permitted recall upon a showing that the product constituted a substantial product hazard. If ever there were to be a case when recall authority could be inferred in the absence of express authority, there could hardly be a more inappropriate candidate.

## II. RECALL, EVEN IF A PERMISSIBLE REMEDY, IS NOT REASONABLY RELATED TO THE VIOLATION

Administrative Law Judge Pfeiffer was well aware of the lack of authority to order recall under the FFA. As he would subsequently write in the Northwick case:

> It would strain both imagination and credibility to espouse a legal theory that since 1953 the FTC had inherent power to require respondents to recall, replace or refund the purchase price of flammable fabrics where the FTC Commissioners themselves have declared that they had no such power, where the Congress considered but did not grant such power to the FTC, where at least one Federal Court of Appeals has held that the FTC has no refund power in a fraud case; and finally where the Congress decided to grant specific recall

> power to enforce the FTCA, it granted such to the Federal District Courts, rather than the FTC. (Northwick, Initial Decision at 7-8; footnotes omitted; JA ).

On the record developed in the instant case, however, Judge Pfeiffer avoided the issue of legal authority to order consumer recall, because the evidence establishes that such a remedy, whether authorized or not, would be wholly inappropriate. While a definitive ruling from this Court on the issue of authority would be more than welcome, the overwhelming evidence of the absence of hazard would be sufficient grounds to set aside the Commission's recall order for lack of rational relationship to the violation.

Recall is an extraordinary remedy which Congress has only authorized to protect the public from substantial hazards. In the Commission's own organic act, the violation of a product safety standard alone will not justify recall without the additional finding of a "substantial product hazard" creating a "substantial risk of injury to the public". CPSA § 15, 15 U.S.C. § 2064. Similarly, under the Federal Hazardous Substances Act (also enforced by the Commission), recall of violative products is limited to situations of "imminent hazard to the public health". 15 U.S.C. § 1274. Products violative of the National Traffic and Motor Vehicle Safety Act cannot be recalled without an additional finding of "unreasonable risk of death or injury to persons". 15 U.S.C. § 1400, 1391(1). Recall orders under the Radiation Control Act require an additional finding that the violative product repre-

sents a "significant risk of injury". 42 U.S.C. § 2632. Surely these limitations on the exercise of recall authority expressly granted are not waived when the recall authority is invented or declared "inherent".

Accordingly, Judge Pfeiffer opened the record for the parties to submit evidence on whether failing Paradise Valley (foam) presented a hazard to the consumer in his home. Barrett put into evidence the LeBlanc studies, establishing, without refutation, that failing and passing samples of carpet reacted similarly to identical household ignition sources (Tr. 1000-1001; JA ). Both passing and failing samples were difficult to ignite. Repeatedly, burning cigars, cigarettes and hot coals failed to ignite samples from either passing or failing rolls (Tr. 941, 997-98; JA ). Dr. LeBlanc specifically noted that nylon carpet such as Paradise Valley (foam), is very difficult to ignite and that studies show that carpet is generally the last item to ignite in a household fire (Tr. 907; JA ). Even when ignited by exposure to extreme flame sources, such as burning cooking oil, the carpet (both passing and failing) was observed to burn with a very low flame, which spread slowly and was easy to extinguish (Tr. 912-915, Init. Dec. at 23, 24; JA ).

In summing up, Dr. LeBlanc stated:

> My conclusion from these experiments is that when these passing and failing carpets were subjected to the same extreme ignition sources, the two types of carpet performed the same within experimental error, and under the conditions that we sub-

> jected these carpets, neither would constitute an unreasonable flammability hazard. (JA ; emphasis added).

Echoing the sentiments of witness Sidney Greenfeld, who took the leading role in the development of the Carpet Standard, Dr. LeBlanc deemed the pill test "a fair test for manufacturers to use in evaluating product quality from the flammability standpoint". (Tr. 1000-1001, Init. Dec. at 13; JA ). Based on his analyses of passing and failing carpet, however, Dr. LeBlanc added: "it is completely inappropriate to conclude that simply because a carpet in the marketplace fails this test, it is unreasonably hazardous". (Tr. 1001; JA ).

The credibility of this witness was in no way impeached by Enforcement Counsel's cross-examination (Init. Dec. at 19, 23, 24; JA ). Given an opportunity, including an adjournment, to submit refutation or rebuttal of Dr. LeBlanc's evidence, Enforcement Counsel presented nothing (Tr. 1510; JA ). The record in this case, on undisputed evidence, is that Paradise Valley (foam) has never been involved in any fire and presents no unreasonable risk of fire in the home. (Tr. 912, 939, 940-80, 986, 992, 997-1001, 1036-37, 1317, 1320, 1442, 1463; Init. Dec. at 22, 24; JA ).

There is, of course, no case law on the issue of when a recall order is an appropriate remedy absent statutory authorization. In every instance where recall has been authorized the circumstances under which recall may be imposed (e.g., "imminent hazard") have been set forth along with the express

grant of authority. Even if this Court were to acquiesce in the Commission's assumption of a recall authority Congress never granted, the application of general principles governing an agency's power to fashion remedies dictates that the recall order in this case be set aside.

It is established that a court reviewing the provisions of a cease and desist order under FTCA § 5 must determine whether the remedy is reasonably related to the violation. See, e.g., FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965); Chrysler Corp. v. FTC, 561 F.2d 357 (D.C. Cir. 1977); Spiegel, Inc. v. FTC, 540 F.2d 287 (7th Cir. 1976); ITT Continental Baking Co., Inc. v. FTC, 532 F.2d 207 (2nd Cir. 1976). It is clear from the legislation granting recall authority that the remedy of recall is reasonably related only to those violations which carry a substantial risk of significant injury to the consumer. For the Commission to assert its invented recall authority without such a showing is simply preposterous.

A roughly analogous circumstance was presented in United States v. Spectro Foods Corp., 544 F.2d 1175 (3rd Cir. 1976). There, a district court granted the request of the Food and Drug Administration for a temporary restraining order requiring Spectro Foods, the manufacturer of an unapproved pharmaceutical product, to notify all recipients of the product to return it. In reversing a contempt order for failure to do so, the Court of Appeals found it did not need to reach the

issue in C.E.B. Products, supra. Whether or not mandatory recall could ever be an available judicial remedy absent express authorization, the district court order could not stand because it "made no finding that the public would be irreparably harmed absent a recall order. In fact, the court made no specific findings of irreparable injury other than that resulting from defendant's violation of the Act itself". (594 F.2d at 1181). Under those circumstances, the Court held, a recall order would be unsupportable.

By the same token, a recall order under the FFA, if available at all, cannot be supported by showing no more than a violation of the Act. As Judge Pfeiffer correctly concluded, where consumer recall is being sought, Enforcement Counsel must "sustain its burden of proof to establish that carpet which fails the standard presents an unreasonable risk of the occurrence of fire leading to death or serious injury to the consumer in his home". (Init. Dec. at 23; JA ).[4/]

Even if there had been no evidence showing the absence of hazard, a recall order would still have no basis in the record. Where, as here, the undisputed evidence established

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4/ The same reasoning would preclude issuance of a wholesaler/retailer recall order as well. However, Judge Pfeiffer apparently considered himself bound by a prior decision of the Commission to order recall of non-complying carpet still in commerce. Congoleum Industries, Inc., CPSC Dkt. No. 75-3, appeal pending, No. 75-3112 (9th Cir.). Inasmuch as neither the Initial Decision nor Final Decision articulate the basis for ordering wholesaler/retailer recall, Paragraph II of the Order is invalid for this reason as well. 5 U.S.C. § 557(c).

beyond any question that there is no hazard, the Commission's recall order bears no reasonable relation to the violation.

## III. THE NOTIFICATION ORDER IS UNAUTHORIZED AND UNSUPPORTED

The final order requires Barrett to notify all known purchasers or persons in possession of Paradise Valley (foam) carpet manufactured on July 18, 1973 and December 10, 1973 that such carpet failed the Carpet Flammability Standard. (Order, Para. I; JA ). This provision should be set aside for basically the same reasons the recall order should be set aside: it is not authorized by the FFA; nor reasonably related to the violation established; nor supported in the decision by a statement of basis and purpose.

Notification, like recall, is nowhere to be found in the FFA, but is an additional remedy for which Congress gave express authorization in the CPSA. Section 15(c) of the CPSA, which is limited to "substantial product hazards" creating a "substantial risk of injury to the public", authorizes the Commission to order notification of persons in possession of non-complying products, if the Commission, after notice and hearing, determines "that notification is required in order to adequately protect the public from such substantial product hazard. . . ." 15 U.S.C. § 2064(c).

Notification of purchasers and consumers is an extraordinary remedy that goes hand-in-hand with recall or repurchase. In the CPSA, for instance, the notification provision

of § 15(c) immediately precedes and is incorporated by reference into the recall provision of § 15(d)(3). For the reasons stated above in connection with the Commission's assertion of recall power, express authority for notification of customers is the only authority for notification. Congress has made that clear by granting the authority expressly where it considered such a remedy necessary and appropriate.

The Commission has not offered any justification in its decision for asserting the power to order notification or for ordering notification of persons in possession of failing Paradise Valley (foam) carpet produced on two days in 1973. In itself, this absence of any rationale violates the Administrative Procedure Act, which requires that "the reasons or basis [for all decisions] on all material issues of fact, law, or discretion" be presented on the record. 5 U.S.C. § 557(c).

Furthermore, an order to give notification of the failure of a product to comply with a standard can only be rationally related to a finding of substantial product hazard. On this record, there is no possible justification for requiring notification, any more than there is for recall, since the evidence proved an absence of hazard. (Init. Dec. at 24; JA ).

## IV. THE COMMISSION ERRED IN DETERMINING THAT BARRETT CARPET MILLS, INC. UNLAWFULLY COLLATERALLY ATTACKED THE CARPET FLAMMABILITY STANDARD AND IN EXCLUDING EVIDENCE

The Commission's determination that Barrett Carpet Mills collaterally attacked the carpet flammability standard, and

the resulting exclusion of evidence introduced at trial, violate basic requirements of the Administrative Procedure Act, as amended, 5 U.S.C. § 551, et seq. Section 557(c)(1) mandates that "[a]ll decisions . . . shall include a statement of . . . findings and conclusions, and the reasons or basis therefor. . . ." The Supreme Court provided the rationale for such a requirement when it enunciated "a simple but fundamental rule of administrative law":

> . . . the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained. SEC v. Chenery Corp., 318 U.S. 80, 94 (1943) .

Other courts have recognized that the policies embodied in § 557 are at least fourfold: (1) to prevent arbitrary and capricious decisions; (2) as an explanation to the parties involved as to the basis of the decision; (3) to give guidance to parties similarly situated; and (4) to provide a basis for judicial review of the courts. See e.g., People of the State of Illinois v. United States, 371 F. Supp. 1136 (N.D. Ill. 1973). In the instant case, the portions of the final decision and order which pertain to collateral attack and exclusion of evidence are so impermissibly vague that the "fundamental rule" elaborated in Chenery is violated.

Moreover, the Commission's collateral attack determination is not supported by substantial evidence. Section 706 dictates that a "reviewing court shall . . . [h]old unlawful and set aside agency action, findings and conclusions . . .

unsupported by substantial evidence". 5 U.S.C. § 706(2)(E). The record in the instant case fails to contain substantial evidence to support the CPSC's determination that Barrett collaterally attacked the carpet standard.

A. The Commission's Determination that Barrett Collaterally Attacked the Carpet Standard is Impermissibly Vague

The portions of the Commission's final decision which pertain to collateral attack and exclusion of evidence are impermissibly vague. Both the courts and the mandates of the Administrative Procedure Act have long required that the findings and conclusions of agencies such as the CPSC be supported by reasoning and be set forth with sufficient clarity and completeness to permit informed judicial review. SEC v. Chenery, supra; Alabama Great Southern Railroad v. United States, 340 U.S. 216 (1951); Great Lakes Screw Corp. v. NLRB, 409 F.2d 375 (7th Cir. 1969); 5 U.S.C. § 667(c)(e)(1). This Court itself has recognized that "[c]ourts ought not have to speculate as to the basis for an administrative agency's conclusion". Austin v. Jackson, 353 F.2d 910, 911 (4th Cir. 1965), citing, Northeast Airlines, Inc. v. CAB, 331 F.2d 579 (1st Cir. 1964). The Commission's decision in the case at bar improperly places this Court squarely in that position.

The Commission fails to adequately disclose and sustain the reasons for its determination that Barrett collaterally attacked the carpet standard and that evidence introduced at trial should be excluded. While the record indicates that

Barrett never questioned the validity of the standard at trial or anywhere else, and expressly disclaimed any intention to do so, the Commissioners concluded to the contrary. The substance of the Commissioners' conclusion consists only of a general statement that Barrett introduced "evidence of tests conducted by their expert, Dr. LeBlanc, intended to show that recalling failing carpet from consumers is an unnecessary and inappropriate remedy" (emphasis added). Final Dec. at 8. In this characterization, the Commission accurately reflects the intent with which the hazard evidence was offered by Barrett, stipulated by Enforcement Counsel, and received by Judge Pfeiffer, since remedy was the primary issue in the case. (Tr. 918; JA ) (Init. Dec. at 18; JA ). From that statement, the Commission leaps to the astonishing conclusion that Barrett collaterally attacked FF 1-70! The Commission's opinion continues in form by finding that evidence submitted at trial must be disregarded, without indicating what evidence must be rejected; or the manner in which this action affected either its decision or order.

This Court and Barrett are left to speculate as to the effects of the Commission's actions on its final order. Neither can assess the propriety of the Commission's legal conclusion that Barrett engaged in a collateral attack or determine whether the exclusion of evidence prejudiced

Barrett.[5/] The court-supported mandate of § 557(c)(1) of the Administrative Procedure Act precludes decision-making which requires such speculation. People of the State of Illinois, supra. To hold otherwise invites arbitrary and capricious decision-making. Moreover, in excluding evidence in the manner used here, the Commission has run afoul of traditional concepts of due process and the Administrative Procedure Act. 5 U.S.C. § 554. Patagonia Corp. v. Board of Governors of Federal Reserve System, 517 F.2d 803 (9th Cir. 1975). Given the incomprehensible nature of the Commission's collateral attack/exclusion of evidence determinations, this Court must find that those portions of the final decision are impermissibly vague and, hence, invalid.

B. The Commission's Determination that Barrett Collaterally Attacked the Carpet Standard is not Supported by Substantial Evidence

The Commission's conclusion that Barrett collaterally attacked the carpet flammability standard is not supported by substantial evidence and should be set aside under 5 U.S.C. § 706(2)(E). That section of the APA requires a reviewing court to ". . . [set] aside an agency decision when it cannot

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5/ The Final Order contains a requirement that Barrett give notice . . . to purchasers of failing Paradise Valley (foam), and to recall such carpet from wholesalers and/or retailers. Final Dec. p. 13; Order, Paras. I, II. Neither provision is based upon evidentiary findings. Both Barrett and this Court are left to speculate that the Commission reached these conclusions by obliterating all of the expert testimony concerning the issue of hazard from the record!

conscientiously find the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view". Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951). The evidence on the record in the instant case dictates that this Court overturn the Commission's determination that Barrett engaged in a collateral attack on the carpet flammability standard. That determination not only fails the substantial evidence test, it is wholly contrary to the record evidence.

The trial of this case on the basis of the issue deemed critical by all of the parties; the statements of counsel setting forth the purpose and limits of hazard evidence; the Government's concurrence with the introduction of the evidence; and the manner in which the evidence was received and used by the Administrative Law Judge; and the manner in which Barrett framed its appeal before the Commission, all militate against the conclusion that Barrett's evidence constituted a collateral attack on the carpet flammability standard. The record indicates that none of the parties to the trial believed that the validity of DOC FF 1-70 was at issue. Based on the arguments posed by opposing counsel, Judge Pfeiffer accurately stated that "[t]he critical issue in this case is the propriety of requiring recall of some quantity of defective carpet from the consumer's home". (Init. Dec. at 13, 21; JA ).

Petitioners do not now nor did they at any time during this proceeding, challenge the validity of FF 1-70 as a test method or standard (Tr. 1009; JA ; Init. Dec. at 18; JA ). Nor did Barrett contend that its actions did not constitute a technical violation of the Flammable Fabrics Act. On the contrary, Barrett's evidence was directed at and relevant

> . . . to establish[ing] that passing and failing samples [of Paradise Valley (foam) carpet] react similarly to a variety of typical household ignition sources and that the absolute level of hazard is not high enough to justify recall from the consumer's home. (Init. Dec. at 3).

Barrett's evidence consisted, inter alia, of sworn testimony by individuals who had participated in promulgating the standard for the Department of Commerce.[6/] Their testimony evi-

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6/ The burden of proof was on the CPSC, the proponent of the order seeking recall, 5 U.S.C. § 556(d). Init. Dec. at 23. However, all of the evidence on the significance of the Standard and on hazard was offered by Barrett. Barrett introduced expert testimony from Department of Commerce officials responsible for development of the carpet standard as to the meaning of the published findings which accompanied its promulgation. Mr. Sidney Greenfeld, currently an employee of CPSC; was the Project Leader in the development of the standard at Commerce. (Tr. 1122; JA ). He testified that in promulgating the carpet flammability standard, the Department of Commerce was not declaring that the individual consumer whose carpet failed the pill test was being exposed to an unreasonable risk. According to Mr. Greenfeld, "I believe the Department considered the case in general rather than a specific case". (Tr. 1203; JA ). Similar testimony was offered in a subsequent hearing by Mr. William Segall, who testified that it was not the intention of the Department of Commerce to focus on the carpet in hands of each individual consumer, but to focus on the general total quality level of the product being produced and marketed. (O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 925; JA ).

denced that the Department of Commerce, in passing the standard, was not declaring that an individual consumer who owned a carpet style which had failed the pill test was being exposed to an unreasonable risk of harm. (Tr. 1203; JA ). Barrett also offered as evidence research by the widely-recognized LeBlanc Research Corporation (Tr. 904; JA ), which demonstrated that Paradise Valley (foam) carpet did not create such a risk to consumers that recall was appropriate (Final Dec. at 8; JA ). So much for any argument that Barrett collaterally attacked the standard or that Judge Pfeiffer countenanced an unlawful collateral attack. The record is clearly contrary.

Counsel for the CPSC understood that Barrett was not collaterally attacking the flammability standard. Enforcement Counsel did not object to the introduction of the hazard research conducted by the LeBlanc Corporation. Rather Enforcement Counsel stipulated to its relevance and materiality. (Tr. 918, 1510; JA ). A few minutes into the testimony of Dr. Bruce LeBlanc, a nationally-recognized expert in textile flammability, Enforcement Counsel inquired as to the import of the testimony. (Tr. 904; JA ). The following colloquy ensued:

> MR. GIMER: . . . [Dr. LeBlanc] is going to testify as to a hazard analysis that he has performed on both passing and failing samples of Paradise Valley foam carpet and the comparisons between those research efforts and his own conclusions as to the actual hazard posed by the carpet in actual use.

> MR. DOUGLASS: I am assuming this testimony is offered for the purpose of guidance of His Honor in selecting the appropriate remedy?
>
> MR. GIMER: That is correct.
>
> MR. DOUGLASS: I have no objection then. (Tr. 918; JA ).

Enforcement Counsel reiterated its position on the relevance of the LeBlanc testimony at the close of the trial, while announcing at the same time that the Government had no rebuttal of the expert testimony on hazard.

> JUDGE PFEIFFER: None? Do I take it that you accept the validity of the LeBlanc tests, and you are not going to offer any rebuttal as to those?
>
> MR. DOUGLASS: The latter of Your Honor's two propositions is proved. The former, the evidence will speak for itself. Your Honor can give it the weight to which Your Honor feels it is entitled. (Tr. 1510; JA ).

Enforcement Counsel's indisputable understanding, and concurrence in the use of the hazard evidence, serves to underscore the lack of record evidence for the Commission's conclusion that this evidence constituted an unlawful collateral attack on the standard.

The record also demonstrates that Judge Pfeiffer received and considered Barrett's evidence in a manner that is inconsistent with the conclusion that the standard was collaterally attacked. Judge Pfeiffer did not hesitate to find a violation of the standard and the statute based solely on the stipulated pill test failures. (Init. Dec. at 13, 15; JA ). Moreover, he explicitly stated that:

> . . . The results of the [LeBlanc Research] tests were offered, not to contradict or impeach the carpet standard, but rather to demonstrate that the recall of failing carpet from the home would represent an unnecessary and inappropriate remedy. (Init. Dec. at 18; JA ).

Thus, Judge Pfeiffer, like Barrett and Enforcement Counsel for the CPSC, recognized that the carpet flammability standard was not under attack. Only the appropriate remedy which flows from a violation of the standard was at issue.

The authorities relied upon by the Commission dramatize the fact that what the Commission has characterized as a collateral attack is not a collateral attack at all, but evidence that the CPSC is misconstruing the intent of a standard promulgated by another Federal agency. (Final Dec. at 10; JA ). See Standard Forge and Axle Co., Inc. v. Coleman, 551 F.2d 1268 (D.C. Cir. 1972); Nader v. Volpe, 466 F.2d 261 (D.C. Cir. 1972). These cases have no application whatever to the circumstances of the present case. Standard Forge involved a petition to the Administrator of the National Highway Traffic Safety Administration for repeal of a Federal Motor Vehicle Standard. The petitioners' clear purpose in Standard Forge was to dispute the validity of the standard itself. However, since the petitioners did not seek review of the standard in the Court of Appeals as required by the statute in question, the District Court dismissed the petition for lack of subject matter jurisdiction.

Similarly, Nader, supra, also involved a challenge to the NTHSA action. As had been the case in Standard Forge, the

petitioners' were involved in challenging a modification of a standard. Rather than seeking judicial review in the Court of Appeals as the statute required, the petitioners sought an injunction in the District Court.

The case at bar is fundamentally different. Barrett does not now and has never sought review, in any manner, of the carpet flammability standard. 16 C.F.R. § 1630. On the contrary, in the complaint proceeding brought by the Commission, Barrett stipulated as to certain violations of the standard, but objected to remedial relief sought by the government -- relief which was extraneous to the standard and the statute.[7/] Barrett questioned the legal authority of the CPSC to order recall and the necessity of that remedy on the facts. The validity of a standard under the Flammable Fabrics Act, and the appropriateness of remedies developed ad hoc by the enforcing agency, are separate issues. Evidence on the

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7/ Neither Barrett nor any other manufacturer had reason to challenge the Commission's authority to order recall under the FFA at the time the carpet standard was promulgated. That such a remedy would ever be sought did not cross the mind of the Department of Commerce officials responsible for promulgating the standard. (Tr. 1160, 1165, 1181, 1188; JA ) (Testimony of William Segall, O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 926-927; JA ).

latter does not, by any stretch of the imagination, constitute an unlawful attack on the former.[8/]

The Commission's "collateral attack" determination is really nothing more than a thinly, albeit cleverly, veiled attempt to disguise its lack of legal authority to order recall and to avoid its statutory burden of proof. The Commission cannot point to any source other than its own decisions for its purported authority to order recall as a remedy under the FFA. It seeks to rely on the declaration of the Department of Commerce that a national standard was needed "to protect the public against unreasonable risk of occurrence of fire . . ." as its justification for the remedy it seeks to impose. Yet, any fair reading of the Commission's basic pro-

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8/ The history of enforcement of DOC FF 1-70 dramatizes the distinction between the carpet flammability standard, which the Commission claims was impermissibly subjected to collateral attack by Barrett and Judge Pfeiffer and the remedy which the Commission sought in this case and has declared it has the authority to impose. (Final Dec. at 11, 12; JA ). The carpet standard was published on April 16, 1970. 35 F.R. 6211. Prior to the filing of the Barrett complaint in 1975, in excess of 65 carpet manufacturers had been subjected to cease and desist orders pertaining to the carpet standard. Not one of these orders, including the order in Congoleum, supra, included a consumer recall provision. In fact, though the remedy had not been sought by the Government, the Commission in Congoleum raised and rejected consumer recall, citing "practical" and "legal" problems. (Init. Dec. at 21; JA ). The Barrett complaint represented the first instance of a Commission attempt to seek consumer recall for alleged violation of the carpet standard, despite the fact that the standard had been in effect for five (5) years and scores of firms had been adjudged to have violated the standard. It is the remedy, not the standard, which was put in issue by the evidence the Commission refused to consider.

duct safety statutes establishes that the "unreasonable risk" finding, which is a prerequisite to standards-making, does not carry with it the authority to impose any particular remedy. Something more is required.

In giving the Department of Commerce's determination the kind of construction it does, the Commission has created an astonishing anomaly between the two basic statutes it administers: the Consumer Product Safety Act, 15 U.S.C. § 2051, et seq., and the Flammable Fabrics Act, 15 U.S.C. § 1191, et seq. As Judge Pfeiffer recognized (Init. Dec. at 18), the Commission must make a finding that any standard it proposes to promulgate is "reasonably necessary to eliminate or reduce an unreasonable risk of injury . . ." under the Consumer Product Safety Act. 15 U.S.C. § 2058(b)(2). Compare FFA, § 3, 15 U.S.C. § 1193. However, in order to secure the remedies of recall or notice, which are expressly authorized under the Consumer Product Safety Act, the Commission must affirmatively demonstrate in its complaint proceeding that any such violation also represents a substantial product hazard, i.e., a substantial risk of injury to the public. 15 U.S.C. §§ 2064 (a)(1); 2064(c); 2064(d). By contrast, the Commission, in Barrett, appears to declare that the Department of Commerce finding vis-a-vis "unreasonable risk", also a prerequisite to each FFA standard, abrogates its burden of proof under the APA, 5 U.S.C. § 556(d); and that it has no burden in FFA cases, analogous to that imposed by the CPSA, § 15, 15 U.S.C.

§ 2064, to make special findings where the extraordinary remedy of recall is sought. It does so by the expedient of declaring certain testimony relating to hazard inadmissible. 9/

In other words, the type of proof which the Commission may have expunged from the record in this case (as a "collateral attack" on the carpet flammability standard) is obligatory evidence which must be offered by the Government in any case involving a CPSA standard where the Government seeks remedies similar to those sought and imposed in the instant case. 15 U.S.C. § 2064(c)(d). It is utterly bizzare for the Commission to claim in contradistinction to such requirement under the CPSA, that where the product in question is carpet, recall can be ordered without express statutory authority, based upon "inherent" authority, and despite an affirmative showing that the product does not present risk meriting such relief. The Commission had ample opportunity to show that Paradise Valley (foam) carpet presented such a risk and failed to do so. To cover for this failure, by the post hoc rationalization that evidence relating to hazard or risk constitutes an unlawful collateral attack on the standard itself, is the sheerest form of sophistry.

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9/ Petitioners' problem in this aspect of the appeal is the absolute impossibility of devining, from the Final Decision, just what evidence was excluded. This uncertainty is compounded by the fact that, in a companion decision, the Commission declared that expert testimony on hazard "may also be considered . . . and weighed in fashioning appropriate relief". Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, Final Dec. at 7; JA . This, as the Barrett record demonstrates, is precisely the basis of the LeBlanc evidence.

## V. THE COMMISSION'S APPARENT GRANT OF UNLIMITED AUTHORITY OF ITS STAFF VIOLATES THE FFA AND THE CONSTITUTION

After adopting Judge Pfeiffer's finding that the isolated pill test failures were traceable to a production error on the part of Barrett's outside contractor (Final Dec. at 6; JA ), the Commission entered an order providing, incredibly, for unlimited inspections of Barrett Carpet Mills and sampling of Barrett's products. Paragraph VII of the Order provides, in part, that:

> The Commission Staff may conduct inspections to determine compliance with this Order and it may direct Respondents to submit, or permit Commission Staff to select, samples of any carpet or rug in Respondents' inventory or in production. (Order, Para. VII; JA ).

On its face, the Order would authorize unlimited entry and inspection of Barrett's records, test laboratories, production facilities and inventory. Nor is this provision limited to Paradise Valley (foam) carpet. The Commission specifically made this part of the Order applicable to "any carpet or rug". The lack of rational relation to the violation is apparent. See, e.g., American Home Products Corp. v. FTC, 402 F.2d 232, 237 (6th Cir. 1968); Libbey-Owens-Ford Glass Co. v. FTC, 352 F.2d 415, 418 (6th Cir. 1965).

As with so many parts of the Commission's Order, there is not a clue in the decision as to the justification for this provision, nor a single fact that would suggest the appropriateness of such an Order. The proposed Order issued by

Judge Pfeiffer had no parallel provision, nor was the scope of inspection or sampling one of the issues certified by the Commission for briefing and argument. For lack of explanation or rationale, this part of the Order is invalid. 5 U.S.C. § 557 (c)(1).

The more serious vice of this part of the Order, however, is that the Commission here purports to authorize entry and inspection powers which far transcend the limits set by the Flammable Fabrics Act and the Fourth Amendment of the Constitution. For these reasons, Paragraph VII, as it now reads, must be set aside.

A. Paragraph VII of the Order Violates the Fourth Amendment

Paragraph VII of the Order, which seeks to give the Commission authority to conduct inspections without probable cause and without a warrant issued by a neutral judicial officer, violates the Fourth Amendment. The Supreme Court has repeatedly held that warrantless searches are generally unreasonable and that this rule applies to commercial premises as well as homes. Marshall v. Barlow's, Inc., 436 U.S. 307 (1978); Camara v. Municipal Court, 387 U.S. 523 (1967); See v. City of Seattle, 387 U.S. 541 (1967). In See and Camara, the Court firmly established the general rule that non-consensual administrative inspections are permissible only when conducted pursuant to a warrant founded on probable cause. The doctrine of See and Camara was recently unequivocally reaffirmed in

Barlow's. Drawing on the reasoning of the earlier decisions, the Court stated that:

> If the government intrudes on a person's property the privacy interest suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards. 436 U.S. at 312-13.

The principles enunciated in Barlow's, Camara and See are directly applicable to the case at bar. The provisions of Paragraph VII of the Order are constitutionally impermissible.

### B. Paragraph VII of the Order is Contrary to the Mandate of Section 5(d)(1) of the Flammable Fabrics Act, 15 U.S.C. § 1194(d)(1)

Paragraph VII of the Commission's Order also exceeds the Commission's authority under § 5(d)(1) of the Flammable Fabrics Act, 15 U.S.C. § 1194(d)(1). Under that section, the Commission is authorized only to

> "cause inspections, analyses, tests, and examinations to be made of any product, fabric, or related material which it has reason to believe falls within the prohibitions of [the Act]".

The plain statutory language establishes two fundamental limitations on the CPSC's authority under the FFA: (1) the Commission may only inspect "product, fabric or related material", not the manufacturer's premises;[10/] and (2) the CPSC is

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10/ Although the Order does not specify the Commission's intention with regard to areas of inspection, there is nothing in Paragraph VII to prevent the Staff from repeated entry and inspection of Barrett's manufacturing premises. It may be that the Commission can offer another construction of the language of Paragraph VII. If so, the Order must be fatally flawed for vagueness. See FTC v. Cement Institute, 333 U.S. 683 (1948); Asheville Tobacco Bd. of Trade, Inc. v. FTC, 294 F.2d 619, 628 (4th Cir. 1961).

entitled to inspect such items only when "it has reason to believe" such item falls within the prohibitions of the Act.

The absence of express authority under the FFA to enter and inspect the premises defeats any claim to such authority. Where Congress has authorized an administrative agency to inspect premises, it has said so in no uncertain terms. See, e.g., Clean Air Act, 42 U.S.C. § 1857f-5(c). Of particular note is Section 16(a) of the Consumer Product Safety Act, 15 U.S.C. § 2065(a), which expressly authorizes agents of the Commission "to enter" and "to inspect" the manufacturing, storage and distribution areas of the company's premises. No such authority is to be found in the FFA. Under familiar principles of statutory construction, the omission of the grant of such authority bespeaks the absence of such authority. See Textile and Apparel Group, American Importers Ass'n. v. FTC, 410 F.2d 1052 (D.C. Cir.), cert. denied, 369 U.S. 910 (1969).

In the instant case, Paragraph VII of the Order is nothing but a naked attempt to skirt the limitations of § 5(d)(1). The District Court for the Northern District of Georgia has essentially already passed on this issue. See United States v. Aladdin Mills, Inc., Civ. No. C-76-30-R, (N.D. Ga., Order dated July 13, 1977). In Aladdin, a case involving the Commission's authority to gain access to premises, test facilities, and records, and to take product samples, the Court found it unnecessary to decide whether the CPSC had the right

to access to defendant's plant because there was no evidence that the Commission found the necessary "reason to believe" to support its exercise of authority under § 1194(d)(1). Id. at 5. In the instant case, the Commission, in effect, is claiming that the isolated pill test failures, which resulted from a mistake in the production process of an independent finisher on two production days in 1973, constitute a perpetual "reason to believe" that Barrett is violating the Flammable Fabrics Act. Patently, this is not the case. To the contrary, such a conclusion is belied by Judge Pfeiffer's findings that the failures were unintentional, not the result of negligence, and "not likely to reoccur". (Init. Dec. at 24, 25; JA ). Paragraph VII, in short, is devoid of factual or legal support.

## VI. TO THE EXTENT THE ORDER EXTENDS AGAINST ROY C. BARRETT, INDIVIDUALLY, IT SHOULD BE SET ASIDE

For reasons which are neither stated in the Order nor discernible from the record, the Commission named Roy C. Barrett as a respondent in his individual capacity. As a matter of fact and law, the inclusion of Mr. Barrett individually is totally without justification.

### A. The Order Violates the Administrative Procedure Act, 15 U.S.C. § 557(c)

The first flaw in the individual respondent aspect of the Order is the absence of any explanation of basis or purpose. As discussed previously, pp. 40 - 44, the Administrative Procedure Act makes it obligatory for an agency to disclose the

justification for its decisions. 5 U.S.C. § 557(c). SEC v. Chenery, supra; Greater Boston Television Corp. v. FCC, 444 F.2d 481 (D.C. Cir. 1970). This is hardly a case, however, which requires a remand to the agency for clarification. Measured against the standard for inclusion of individual respondents, the record leaves no doubt that an order against Roy C. Barrett, individually, could not be supported on any theory.

Enforcement Counsel, in bringing the instant action, sought an order against Barrett, individually, on the ground that the "Commission's general policy has been to require the inclusion of an individual respondent in all Flammable Fabrics Act cease and desist orders".[11/]

Apparently both Judge Pfeiffer and the Commission accepted this rationale, although neither the Administrative Law Judge nor the Commission gave reasons for this aspect of the order, rendering this action legally deficient.[12/]

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11/ Interestingly, an examination of Commission FFA cases fails to support this claim. No general policy respecting the naming of individual respondents can be derived from an examination of the Flammable Fabrics orders accepted or imposed by the Consumer Product Safety Commission and, in fact, none exists (Tr. 839, 840, 1263, 1265-1267, 1264).

12/ In a subsequent proceeding involving the carpet flammability standard, ALJ Pfeiffer stated that the Commission wants "a body" and indicated his concurrence with that view. Prehearing Conference, November 29, 1978, Tr. pp. _____, Salem Carpet Mills, et al., CPSC Dkt. 78-3. That is the closest thing to a rationale for this decision to include an "individual" respondent which can be found!

B. Inclusion of an Individual Respondent in this Case was Contrary to Law

A leading case on point under the FTC Act (incorporated by reference into the FFA) is Doyle v. FTC, 356 F.2d 381 (5th Cir. 1966). In setting aside an FTC order against the individual respondent, the court relied on the prospective and prohibitory nature of the cease and desist order. Id. at 383. Since future corporate activities are the sole concern of the Commission, a cease and desist order may look to an individual respondent only when deemed necessary to prevent evasion of the order. In reaching its conclusion, the court pointed to the rationale offered by the FTC in The Lovable Co., FTC Dkt. 8620, CCH Trade Reg. Rep. ¶ 17,282 (June 29, 1965):

> To justify naming an officer as an individual, there must be something in the record suggesting that he would be likely to engage in these practices in the future as an individual. To argue otherwise would be to hold that in every order running against a corporation the officers who control its policies, acts and practices should be named. If acts are done as an officer, they are done for the corporate respondent, and the order against the corporation will run against the officer as an officer.

The holding of the Doyle court reflects the prevailing view on individual respondents. See, e.g., Coro, Inc. v. FTC, 338 F.2d 149 (1st Cir. 1964), cert. denied, 380 U.S. 954 (1965).

The CPSC itself has declared that there are differences between retrospective orders and prospective cease and desist orders of the type sanctioned by FTCA § 5 which dictate different results on the "individual respondent" issue. In the matter of White Consolidated Industries, Inc., CPSC Dkt.

No. 75-1, the Commission laboriously distinguished cases brought under § 15 of the Consumer Product Safety Act, 15 U.S.C. § 2064, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in order to avoid the application of Doyle. White Consolidated Industries, Inc., supra, pp. 24-30; JA . . The Commission also recognized that an FTCA § 5 order could act as a "brand for life" or an "albatross" around an individual respondent's neck, a consequence which it did not believe would follow from a CPSC § 15 "retrospective" order. The instant case was brought under the Flammable Fabrics Act, under which remedial powers are expressly limited to those authorized under the FTCA § 5, 15 U.S.C. § 45. Doyle therefore governs the case at bar. Accord: Coro, Inc. v. FTC, supra. The Commission is not free to ignore willy-nilly the precedents of the Federal Trade Commission with respect to construction of either FTCA § 5 or the Flammable Fabrics Act. Such orders and determinations "continue in effect . . . until modified, terminated or superseded, . . . or repealed. . . ." 15 U.S.C. § 2079(3)(2).

### C. Imposition of an Order Against Roy Barrett in his Individual Capacity was Contrary to the Evidence

There is not a shred of evidence in the record which would justify imposition of an order against Roy C. Barrett in his individual capacity, branding him for life. The corporate respondent, Barrett Carpet Mills, Inc., is a viable business organization which has recently moved into new facilities.

Tr. 492, 493. The corporation bears the name of its founder, principal owner and chief executive officer, who himself is a young businessman with every intention of remaining in charge of the business he built. Tr. 490. Neither termination of the business nor its corporate identity is a likely occurrence. Tr. 490-494. Under these circumstances, it is hardly necessary to name an individual respondent to insure compliance with the order.

Moreover, Roy Barrett's good-faith conduct in the instant case, which is a matter of record, militates against his inclusion in the Order. The record indicates that Roy Barrett designed his firm's products to meet the pertinent flammability standards (Tr. 505; JA ). He established a flammability testing program to insure compliance (Tr. 528; JA ). He promptly discontinued the production and sale of Paradise Valley (foam) when the Commission staff questioned its compliance; and conducted a voluntary recall of all Paradise Valley (foam) from commerce. (Rev. Jt. Stip., ¶ 10; Tr. 608, 610; JA ).

Unlike the circumstances present in Pati-Port, Inc. v. FTC, 313 F.2d 103 (4th Cir. 1963), the Commission is not seeking to bind by order "individuals who were responsible for the illegal practices" or who "knew of and approved of them". (Id. at 105). Both the Commission and the Administrative Law Judge concluded that this was not a case of noncompliance resulting from a negligent or deliberate act of Roy Barrett or

any person under his direct control. Rather, it was an isolated production error on the part of an independent subcontractor. (Init. Dec. at 13, 24, 25; JA ) (Final Dec. at 6, 7; JA ). Yet, the CPSC's response to these facts has been to direct its Order at Roy C. Barrett in his individual capacity -- an action that will inevitably stigmatize him, (see Doyle, supra, at 385) -- without so much as a word of explanation for its actions.

It should be stressed that Barrett Carpet Mills recognizes its responsibility under the Act for the malfeasance of its subcontractor and its further responsibility under the Order to take steps to minimize the risk of repetition of this kind of mistake. Roy C. Barrett, as president of Barrett Carpet Mills, Inc., will be instrumental in carrying out the requirements of the Commission's Order, just as he is instrumental in carrying out all of Barrett's business. But Roy C. Barrett, in his individual capacity, really has nothing to do with this case. To name him as an individual respondent is agency action which is unexplained, unthinking, unnecessary, and, ultimately, unsupportable.

## VII. PARAGRAPHS VI AND VII OF THE ORDER ARE INVALID

Paragraphs VI and VII of the Order respectively require Barrett (1) to develop quality control plans "acceptable to the Directorate for Compliance and Enforcement" and (2) to file reports detailing proposed compliance intentions as are

"required by the Directorate for Compliance and Enforcement". (JA ). Barrett's objection to these provisions is not that they require development of quality control plans or submission of compliance intentions, but that the Order gives no clear directive as to what is required and apparently equates compliance with whatever the staff, in its unfettered judgment, considers acceptable.

It should be noted, initially, that neither of these provisions was asked for in the Notice of Enforcement or included in the Proposed Order accompanying the Initial Decision. They were apparently an afterthought by the Commission which, for reasons unknown, seems determined in this case to test out the most onerous remedial order it could conceive. Yet, the state of the law has long been that such afterthoughts have no place in administrative adjudications where notice and hearing are indispensible elements of due process. As the Supreme Court held in FTC v. Gratz, 253 U.S. 421, 427 (1920), an order under FTCA § 5 "should follow the complaint; otherwise, it is improvident, and, when challenged, will be annulled by the court".

It is elementary that an administrative order must contain a clear and definite statement of the obligations of the resppondent. FTC v. Colgate-Palmolive Co., 380 U.S. 374 (1965); Asheville Tobacco Bd. of Trade, Inc. v. FTC, 294 F.2d 619 (9th Cir. 1961). Here, however, Barrett is given no guidance whatsoever as to what will be an "acceptable" quality control plan

or what reports will be required. As a practical matter, Barrett is left at the mercy of the Commission staff, since, as the Order is written, the displeasure of the staff alone will result in Barrett's violating the Order. With no criteria for compliance other than the Staff's approval, Barrett's exposure to civil penalties under 15 U.S.C. § 45(1) is based on a totally subjective and undisclosed standard of conduct. Such provisions are blatantly improper. FTC v. Cement Institute, 333 U.S. 683, 726 (1948); Giant Food, Inc. v. FTC, 307 F.2d 184 (D.C. Cir.), cert. denied, 372 U.S. 910 (1962).

## CONCLUSION

For the foregoing reasons, Paragraphs I, II, VI, and VII should be set aside with respect to petitioner Barrett Carpet Mills, Inc., and the entire order should be set aside with respect to petitioner Roy C. Barrett in his individual capacity.

Respectfully submitted,

Richard H. Gimer
Richard G. White
Nicky Calio

SANTARELLI & GIMER
2033 M Street, N.W., Suite 700
Washington, D.C. 20036
202/466-6800

Dated: December 26, 1978

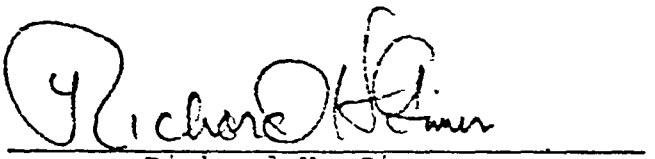
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief for Petitioners was mailed, first class, postage prepaid, on this 26th day of December, 1978, to the following:

Robert B. Nicholson, Esq.
J. Mark Manner, Esq.
Appellate Section
Antitrust Division
Department of Justice
Washington, D. C. 20530

Hon. Morton Hollander
Chief, Civil Division
Appellate Section
Department of Justice
Washington, D. C. 20044

Ms. Margaret Freeston
Acting General Counsel
Consumer Product Safety Commission
1111 18th Street, N.W.
Washington, D. C. 20207



Richard H. Gimer

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC.,<br>a corporation, and<br>ROY C. BARRETT, individually and as<br>an officer of the corporation. | CPSC DOCKET NO. 75-5 |

NOTICE OF ENFORCEMENT

The staff of the Consumer Product Safety Commission (Commission) believes that Barrett Carpet Mills, Inc. and Roy C. Barrett, individually and as an officer of the corporation, (respondents), have violated the provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the rules and regulations promulgated under the Flammable Fabrics Act (16 CFR, Part 300), and the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70). Commission jurisdiction over this matter is based on the transfer of functions under the foregoing Acts to the Commission by section 30 of the Consumer Product Safety Act (15 U.S.C. 2051, 2079).

The Commission has reason to believe, on the basis of evidence presented by the staff, that violations of the Acts may have occurred. It appears to the Commission that it would be in the interest of the public to issue this Notice of Enforcement to commence adjudicatory proceedings. Therefore, pursuant to the provisions of the Federal Trade Commission Act, the Flammable Fabrics Act, and the Proposed and Interim Rules of Practice promulgated thereunder (16 CFR 1025, 39 FR 26848, July 23, 1974), the Commission has authorized the staff to issue this Notice of Enforcement.

The staff of the Commission states its charges as follows:

(1) Respondent Barrett Carpet Mills, Inc. is a corporation organized and doing business under the laws of the State of Georgia. Respondent Roy C. Barrett is an officer of the corporate respondent. He formulates, directs, and controls the acts, practices and policies of the corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs with their office and principal place of business located at 2216 Abutment Road, P.O. Box 2045, Dalton, Georgia 30720.

(2) Respondents are now and have been engaged in the following: the manufacture for sale, sale or offering for sale in commerce, and the introduction, delivery for introduction, transportation and causing to be transported in commerce, and the sale or delivery after sale or shipment in commerce of products, as the terms "commerce" and "product" are defined in the Flammable Fabrics Act as amended (15 U.S.C. 1191 et seq.), which products are subject to the requirements of the Flammable Fabrics Act, the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70), and the Rules and Regulations issued under the Standard and the Act. Among such products mentioned above were carpets and rugs in Style 222, Paradise Valley (foam backed), manufactured by respondents between January 1, 1973 and December 31, 1973, which are subject to the Department of Commerce Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70), but which failed to conform to the requirements of the standard, as required by Section 3(a) of the Flammable Fabrics Act (15 U.S.C. 1192), in that they did not meet the criteria set out in § .3(b) and (c) of the Standard.

Attached hereto are copies of the following documents, which the staff considers to constitute a prima facie case:

(1) CPSC laboratory test report, No. C-2438, showing a sample swatch of Style 222, Paradise Valley (foam back) carpet, roll # 7048-21, color Copper Glow, secured at Barrett Carpet Mills, not to meet the test and acceptance criteria for carpets and rugs.

(2) Barrett Carpet Mills invoice # 15412, dated 7/19/73, showing the acquisition by David C. Gibson, Inc., 2553 Rock Hill Industrial Court, St. Louis, Missouri 63144 of Style 222, Paradise Valley (foam back) carpet, roll # 7048-11, color Copper Glow, from Barrett Carpet Mills, Inc.

(3) CPSC laboratory test report, No. C-2455 showing a sample swatch of Style 222, Paradise Valley (foam back) carpet, roll # 10923-12, color Antique Satin, secured at Barrett Carpet Mills, not to meet the test and acceptance criteria for carpets and rugs.

(4) Barrett Carpet Mills invoice # 18594, dated 12/14/73, showing the acquisition by David C. Gibson, Inc., 2553 Rock Hill Industrial Court, St. Louis, Missouri 63144 of Style 222, Paradise Valley (foam back) carpet, roll 10923-21, color Antique Satin, from Barrett Carpet Mills, Inc.

(5) CPSC laboratory test report, No. C-2673, showing a sample swatch of Style 222, Paradise Valley (foam back) carpet, roll # 10348-11, color Fiesta Red, secured at Overberg Decorating Center, Festus, Missouri, not to meet the test and acceptance criteria for carpets and rugs.

(6) Barrett Carpet Mills invoice # 18411, dated 12/7/73, showing the acquisition of Style 222, Paradise Valley (foam back) carpet, roll # 10348-11, by Overberg Decorating Center from David C. Gibson, Inc, St. Louis, Missouri, distributor for Barrett Carpet Mills.

The aforementioned Commission Exhibits shall not preclude Enforcement Counsel from offering further evidence bearing on the subject matter.

(3) The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

THEREFORE, the staff of the Consumer Product Safety Commission, with approval of the Commission, hereby issues this Notice of Enforcement on the 18th day of July, 1975.

Sadye E. Dunn

Sadye E. Dunn, Secretary
Consumer Product Safety Commission

The following is the form of Order which the Commission has reason to believe should be issued if the facts are found to be as alleged in the Notice of Enforcement. If, however, the Commission concludes from the record developed in any adjudicative proceedings in this matter that the provisions of the proposed Order would not be adequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

## ORDER

### I

IT IS ORDERED that Barrett Carpet Mills, Inc. (corporation), its successors and assigns, and its officers, and Roy C. Barrett, (Barrett), individually and as an officer of the corporation and their agents, representatives and employees directly or through any corporation, subsidiary, division or other instrumentality, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act (Act), as amended, (15 U.S.C. 1191 et seq.), which product, fabric or related material fails to conform to the requirements of an applicable standard or regulation issued under the provisions of the Act.

### II

IT IS FURTHER ORDERED that the corporation and Barrett, shall, within fifteen (15) days after service upon them of this Order, file with the Commission a special written and notarized report which:

(A) Sets forth the manner in which they intend to comply with this Order. Specifically, the steps taken to insure that all carpets and rugs manufactured will conform to the requirements of DOC FF 1-70.

(B) Advises the Commission fully and specifically concerning (1) the identity of the products to be recalled as provided in Paragraph III of this Order, (2) the identity of the purchasers of the products, (3) the amount of the

products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of the products and effect the recall of the products from customers, and of the results thereof, (5) any disposition of the products since March 19, 1974, and (6) any action taken or proposed to be taken to bring the products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy the products, and the results of such action. The report shall include a complete description of each style of carpet or rug currently in inventory or production.

III

IT IS FURTHER ORDERED that the respondents notify all of their customers who have purchased or to whom have been delivered carpet style 222, Paradise Valley (foam back), that the Commission has found that this carpet failed to meet the flammability standard for carpets and rugs and effect the recall of the carpeting from such customers.

1. Where the Style 222, Paradise Valley (foam back) carpet is in the possession of distributors, wholesalers, or retailers, prior to sale or delivery to the public, notify such persons of the flammable nature of the carpet and endeavor in good faith to recall it, making provision for the refund or crediting to such distributor, wholesaler, or retailer, of the invoice price of such carpet plus transportation costs if the carpet is returned.

2. Where the Style 222, Paradise Valley (foam back) carpet has been purchased for installation, but has not been installed, notify the person(s) or firm(s) in possession of such carpet and endeavor in good faith to recall it, making provision for the return to such person(s) or firm(s) of the purchase price of such carpet plus transportation costs.

3. Where the Style 222, Paradise Valley (foam back), carpet has been installed, notify the purchaser(s) thereof of the flammable nature of the carpet and inform him (them) that such carpet may be returned for replacement or refund; that if the carpet is returned, the respondents will pay transportation costs. In the event that the original purchaser of such carpet is no longer in possession of the premises where it was installed, notify the person(s) or firm(s) in possession of the premises in lieu of the original purchaser(s).

IV

IT IS FURTHER ORDERED that the respondents herein either process the products recalled or in inventory so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy the products.

V

IT IS FURTHER ORDERED for a period of 10 years from the date that this Order is issued that the corporation and Barrett notify the Commission at least 30 days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VI

IT IS FURTHER ORDERED for a period of 10 years from the date that this Order is issued that Barrett promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include his current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

VII

IT IS FURTHER ORDERED that the corporation shall distribute a copy of this Order to each of its operating divisions.

VIII

The Commission may conduct inspections to determine compliance with this Order and may direct the corporation and Barrett to submit, or permit the Commission to select, samples of any carpet or rug in their inventory or in production.

CONSUMER PRODUCT SAFETY COMMISSION
Flammability Laboratory

Request for Laboratory Test

Date February 20, 1974

Garrett Carpet Mills, Inc. 404-226-1637

File Numbers ATL-FF-4-002

216 Abutment Road : P.O. Box 2045

Dalton, Georgia 30720

Exhibit Source J. E. Swanson, Assistant Plant Manager

Address Same as the Respondent

Investigator Cecil O. Smith Office Atlanta

Swanson Physical Exhibit B Represented as Being

Description REportedly 26 ozs. per square yard pile tufted and backed by the respondent with 45 ozs. per ~~square yard foam.~~

Style: 222, Paradise Valley
Color: Copper Glow
Pile: 100% Nylon
Roll: 7048-21
Prinary: Olefin
Secondary: H.D. Foam
Size: 1' X 12'

Test Required:

Garments CS 191-53 ☐

Carpets DOC FF 1-70 ☒

Small Carpets DOC FF 2-70 ☐

Sleepwear DOC FF 3-71 ☐

Plastic Film CS 192-53 ☐

Mattresses CPSC FF 4-72 ☐



Additional Instructions Please forward copy of test results to Atlanta Area Office.

Sample also identified as Sample No. A-810-0103.

Attorney

3-15-74

Swanson B (C-2438) was tested for flammability in accordance with Carpet and Rug Standard DOC FF 1-70 and was found NOT to meet the acceptance criterion in original state.

(CX 3)

Elaine Bradley

Flammability Laboratory

DATA SHEET

Carpet and Rug Standard DOC FF (1-70) 2-70

Respondent Name: Barrett Carpet Mills Inc

Exhibit Name: Swanson B copper "nylon" shag w/ foamback

Laboratory Test Results:

Original state:

| | | | |
|---|---|---|---|
| 1. | Fail 0.0 | 5. | Fail 0.0 |
| 2. | Fail 0.0 | 6. | Fail 0.0 |
| 3. | Fail 0.0 | 7. | Fail 0.0 |
| 4. | Pass 2.7 | 8. | Fail 0.0 |

3-15-74
pcs

Comments:

After cleaning:

| | | | |
|---|---|---|---|
| 1. | | 5. | |
| 2. | | 6. | |
| 3. | | 7. | |
| 4. | | 8. | |

Comments:

DOES (DOES NOT) meet the acceptance criterion

(CX 3a)

Approved by: Elaine Bradley

CONTINUING GUARANTY UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT FILED WITH THE FEDERAL TRADE COMMISSION."

# Barrett CARPET MILLS INCORPORATED

PHONE (404) 226-1637 • P. O. BOX 1943 • DALTON, GA. 30720

INVOICE NO. 15412

PAGE # 1

SOLD TO: David C. Gibson, Inc.
9553 Rock Hill
Industrial Court
St. Louis, Mo. 63144

SHIP TO: same

| DATE: | P.O. # | F.O.B. | ROUTING |
|---|---|---|---|
| 7/19/73 | 7373 | Mill | Royal & [illegible] David C. Gibson, Inc. B/L 11689 |

| DEPT. # | TERMS: | SIDEMARK | SLSM # |
|---|---|---|---|
| 22109, 2[illegible], 22324 [illegible], [illegible], [illegible], | 5/30 4/60 | Overberg Dec.-Fashion Festus, Mo. | 9500 |

| ITEM # | STYLE NAME | COLOR | BACK | ROLL # | WIDTH FEET | WIDTH IN. | LENGTH FEET | LENGTH IN. | SQ. YDS. UNITS | | PRICE | TOTAL | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 19 | Chaminade | 31 Celadon | H | 7934-2 | 12 | | 100 | | 133 | 34 | 2.98 | 4397 | 35 |
| 2 | Paradise Valley | 158 Lemon Lime | S | 4702-22 | 12 | | 50 | 6 | 67 | 34 | 4.89 | 329 | 29 |
| ) | Chaminade | 94 WesternSunset | H | 6870-1 | 12 | | 115 | | 153 | 34 | 2.98 | 456 | 95 |
| | " | 94 " | H | 7639 | 12 | | 111 | 3 | 148 | 34 | " | 442 | 03 |
| | " | 77 Ruby Red | H | 7932-2 | 12 | | 118 | | 157 | 34 | " | 468 | 87 |
| " | " | 77 " | H | 7932-1 | 12 | | 115 | | 153 | 34 | " | 456 | 95 |
| " | " | 77 " | H | 7710-1 | 12 | | 80 | | 106 | 67 | " | 317 | 88 |
| 22 | Paradise Valley | 57 Bronze Olive | J | 6930-12 | 12 | | 99 | 8 | 132 | 90 | 4.29 | 570 | 14 |
| " | " | 112 Crest Gold | J | 7055-2 | 12 | | 113 | 2 | 150 | 90 | " | 647 | 36 |
| " | " | 135 Prussian Blue | S | 7051-1 | 12 | | 86 | | 114 | 67 | 4.89 | 560 | 74 |
| " | " | 135 " | S | 7050-21 | 12 | | 85 | 6 | 114 | 01 | " | 557 | 51 |
| " | " | 135 " | S | 7050-11 | 12 | | 84 | 6 | 112 | 67 | " | 550 | 96 |
| " | " | 57 Bronze Olive | S | 7049-11 | 12 | | 121 | | 161 | 34 | " | 788 | 95 |
| " | " | 104 Copper Glow | S | 7040-11 | 12 | | 120 | 6 | 160 | 67 | " | 785 | 68 |
| " | " | 112 Crest Gold | S | 7045-11 | 12 | | 120 | | 160 | 01 | " | 782 | 45 |
| " | " | 144 Fiesta Red | S | 7046-11 | 12 | | 119 | 3 | 159 | 01 | " | 777 | 56 |
| 19 | Chaminade | 39 Avocado | H | 7930-1 | 12 | | 115 | | 153 | 34 | 2.98 | 456 | 95 |

"NO UNAUTHORIZED RETURNS ACCEPTED. CARPETS SHOULD BE INSPECTED BEFORE CUTTING OR INSTALLING. CLAIM FOR VISIBLE DEFECTS CANNOT BE ENTERTAINED AFTER CARPET HAS BEEN CUT OR LAID." GOODS DELIVERED TO COMMON CARRIERS OR SENT BY PARCEL POST ARE AT RISK OF PURCHASER.

[illegible] 7/16/74

[illegible] NATIONAL BANK

[illegible] THIS INVOICE TO [illegible]

CONSUMER PRODUCT SAFETY COMMISSION
Flammability Laboratory

Laboratory Test Number C-2455

Request for Laboratory Test

Date 3-29-74

Respondent: Barrett Carpet Mills, Inc.
Address: 2216 Abutment Road P.O. Box 2045, Dalton, Georgia 30720
File Numbers ATL-FF-4-002

Exhibit Source: J. E. Swanson, Assistant Plant Manager

Address: Same as the Respondent

Investigator: Cecil O. Smith Office Atlanta Area Office

Swanson Physical Exhibit E Represented as being

Description: Reportedly 26 ozs. per sq. yd. nylon pile tufted by the Respondent onto 8 ozs. per square yd. olefin primary backing. Pile was dyed at another firm and backed with 45 ozs. per square yd. Super HD foam at a third firm.

Style: Paradise Valley, 2
Color: Antique Satin, 48
Pile: 100 % Nylon
Roll: 10923-12
Primary: Olefin
Secondary: HD Super Foam Rubber

Test Required:

[ ] Garments CS 191-53 [X] Carpets DOC FF 1-70 [ ] Small Carpets DOC FF 2-70

[ ] Sleepwear DOC FF 3-71 [ ] Plastic Film CS 192-53 [ ] Mattresses CPSC FF 4-72

Additional Instructions: Sample of this style and backing, Roll #7048-21 on Sample No. A-810-0103, failed F.F. testing. Forward results of test to Melvin I. Kramer, BCM and to Atlanta Area Office.

This sample is also identified as Sample No. "A-810-0131". Attorney

Laboratory Test Results: Date 4-15-74

Swanson E (C-2455) was tested for flammability in accordance with Carpet and Rug Standard DOC FF 1-70 and was found NOT to meet the acceptance criterion in original state.



Edna Brophy

(CX 4)

Commission

Test Number C-2455

Flammability Laboratory

DATA SHEET

Carpet and Rug Standard DOC FF (1-70) 2-70

Respondent Name: Barrett Carpet Mills Inc

Exhibit Name: Swanson E gold, brown "nylon" shag, foambac

Laboratory Test Results:

Original state:

1. Fail 0.0
2. Fail 0.0
3. Pass 3.0
4. Fail 0.0
5. Fail 0.0
6. Fail 0.0
7. Fail 0.0
8. Fail 0.0

jaw 4/12/74

Comments:

After cleaning:

1.
2.
3.
4.
5.
6.
7.
8.

Comments:

DOES (DOES NOT) meet the acceptance criterion

(CX 4a)

Approved by: Edwin Bragg

"...GUARANTY UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND WITH THE FED... TRADE COMMISSION."

# Barrett
CARPET MILLS
INCORPORATED

PHONE (404) 226-1637 • P. O. BOX [illegible] • DALTON, GA. 30720

INVOICE NO. 16784

PAGE # 1

SOLD TO: David C. Gibson, Inc.
2553 Rock Mill
Industrial Court
St. Louis, Mo. 63144

SHIP TO: same

| DATE | P.O. # | F.O.B. | ROUTING |
|---|---|---|---|
| 12/14/73 | 22153, [illegible] | Mill | Boyd & David C. Gibson, Inc D/L 15795 |

| TERMS | SIDE MARK | SLSM # |
|---|---|---|
| 5/30 4/60 | | 9509 |

24239, 24791

| STYLE # | STYLE NAME | COLOR | BACK | ROLL # | WIDTH FEET | WIDTH IN. | LENGTH FEET | LENGTH IN. | SQ. YDS. UNITS | PRICE | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 751 | La Salle | 136 Smalit Blue | D | 20590-1 | 15 | | 115 | | 191 67 | 4.42 | $847 18 |
| 222 | Paradise Valley | 43 Antique Satin | 3 | 10923-21 | 12 | | 111 | 10 | 149 12 | 4.89 | 729 20 |
| | | | | | | | | | | | $1576 38 |

Order #24239 is complete

BALANCE OF ORDER #24701 TO FOLLOW

CLAIMS FOR SHORTAGES OR RETURNS ACCEPTED. CARPETS SHOULD BE INSPECTED BEFORE CUTTING OR INSTALLING. CLAIM FOR DAMAGES CANNOT BE ENTERTAINED AFTER CARPET HAS BEEN CUT OR LAID." GOODS DELIVERED TO COMMON CARRIER ARE AT RISK OF PURCHASER.

REMIT FOR THIS INVOICE TO [illegible] THE [illegible] NATIONAL BANK [illegible]

CONSUMER PRODUCT SAFETY COMMISSION
Flammability Laboratory

Test Number C-2673
A 835-0057

Request for Laboratory Test

Date Aug 20, 1974

Respondent: Barrett Carpet Mills

Address: P.O. Box 2045 Dalton Ga.

File Numbers

Exhibit Source: Overberg Decorating Center

Address: 405 Main St. Festus, MO

Investigator: Earl G. Strauther Office Kansas City

Overberg Physical Exhibit A Represented as being Paradise Valley
144 Fiesta Red

Description: red & orange shag foam backing Style 222
Roll # 10348-11

Test Required:

☐ Garments CS 191-53 ☒ Carpets DOC FF 1-70 ☐ Small Carpets DOC FF 2-70

☐ Sleepwear DOC FF 3-71 ☐ Plastic Film CS 192-53 ☐ Mattresses CPSC FF 4-72

Additional Instructions:

Melvin Kramer
Attorney

Laboratory Test Results: Date August 21, 1974

**Seal broken by** ACO 8-20-74

Overberg A (C-2673) was tested for flammability in accordance with Carpet and Rug Standard DOC FF 1-70 and was found NOT to meet the acceptance criterion in original state.



(CX 1)

Elaine Brophy

Flammability Laboratory

DATA SHEET

Carpet and Rug Standard DOC FF (1-70) 2-70

Respondent Name: Barrett Carpet Mills

Exhibit Name: Overberg A red & orange shag foam back

Laboratory Test Results:

Original state:

| | |
|---|---|
| 1. Pass 2.0 | 5. Pass 3.0 |
| 2. Fail 0.6 | 6. Pass 2.6 |
| 3. Pass 3.1 | 7. Fail 0.0 |
| 4. Pass 3.4 | 8. Pass 3.0 |

fw 8/21/74

Comments:

After cleaning:

| | |
|---|---|
| 1. | 5. |
| 2. | 6. |
| 3. | 7. |
| 4. | 8. |

Comments:

DOES (DOES NOT) meet the acceptance criterion (CX 12.)

Approved by: Elaine Brophy

8-6-74
E. S.

ORIGINAL INVOICE

"CONTINUING GUARANTY UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT FILED WITH THE FEDERAL TRADE COMMISSION."

# Barcett CARPET MILLS INCORPORATED

PHONE (404) 226-1637 • P. O. BOX [redacted] 2043 • DALTON, GA. 30720

INVOICE NO. 184

PAGE # 1

SOLD TO: Overberg Dec. Center
405 Main St.
Festus, Mo. 63028

SHIP TO: David C. Gibson, Inc.
2553 Rock Hill
Industrial Court
St. Louis, Mo.

| DATE | P.O. # | F.O.B. | ROUTING |
|---|---|---|---|
| 12/7/73 | | Mill | Boyd % David C. Gibsn, Inc. B/L 13657 |

| CK. # | DEPT. # | TERMS | SIDEMARK | SLSM # |
|---|---|---|---|---|
| 24588 | | 5/30 4/60 | | 99 |

| STYLE # | STYLE NAME | COLOR | BACK | ROLL # | WIDTH FEET IN. | LENGTH FEET IN. | SQ. YDS. UNITS | PRICE | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| 222 | Paradise Valley | 144 Fiesta Red | S | 10348-11 | 12 | 74 6 | 99 34 | 5.33 | $529 |
| | | | | | | | | -5% | 26 |
| | | | | | | | | | 503 |

ORDER COMPLETE

"NO UNAUTHORIZED RETURNS ACCEPTED. CARPETS SHOULD BE INSPECTED BEFORE CUTTING OR INSTALLING. CLAIM FOR VISIBLE DEFECTS CANNOT BE ENTERTAINED AFTER CARPET HAS BEEN CUT OR LAID." GOODS DELIVERED TO COMMON CARRIERS OR SENT BY PARCEL POST ARE AT RISK OF PURCHASER.

REMIT FOR THIS INVOICE TO

This Account Has Been Assigned To, Is Owned By, and Is Payable In Par Funds To Our Factors Only
P. O. Box [redacted] CITIZENS & SOUTHERN [redacted] FACTORS, INC.
[redacted] Atlanta, Georgia 30348
To Whom Notice Must Be Given Of Any Merchandise Returns Or Claims For Shortage, Non-Delivery Or For Other Grounds.

(CX 2)

[illegible] GUARANTY [illegible] TEXTILE FIBER PRODUCTS IDENTIFICATION ACT [illegible] FED- [illegible] COMMISSION."

# Barrett CARPET MILLS INCORPORATED

PHONE (404) 226-1627 • P. O. BOX [illegible] • DALTON, GA. 30720

INVOICE NO. 10411

PAGE # 1

SOLD TO: Overberg Doc. Center
405 Main St.
Festus, Mo. 63028

SHIP TO: David C. Gibson, Inc.
2555 Rock Hill
Industrial Court
St. Louis, Mo.

| DATE | P.O. | F.O.B. | ROUTING |
|---|---|---|---|
| 12/7/73 | | Mill | Boyd & David C. Gibson, Inc. B/L 13657 |

| ACK # | DEPT. # | TERMS | SIDEMARK | SLSM # |
|---|---|---|---|---|
| 24598 | | 5/30 4/60 | | 99 |

| STYLE # | STYLE NAME | COLOR | BACK | ROLL # | WIDTH FEET | WIDTH IN. | LENGTH FEET | LENGTH IN. | SQ. YDS. UNITS | | PRICE | TOTAL | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 222 | Paradise Valley | 144 Fiesta Red | S | 10340-11 | 12 | | 74 | 6 | 99 | 34 | 5.33 | 8529 | 48 |

Credit # 122
issued 31257

ORDER COMPLETE

[illegible] UNAUTHORIZED RETURNS ACCEPTED. CARPETS SHOULD BE INSPECTED BEFORE CUTTING OR INSTALLING. CLAIM FOR [illegible] DEFECTS CANNOT BE ENTERTAINED AFTER CARPET HAS BEEN CUT OR LAID." GOODS DELIVERED TO COMMON [illegible] CARRIERS OR SENT BY PARCEL POST ARE AT RISK OF PURCHASER

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties of record in this proceeding by mailing, postage prepaid a copy to each such party.

Dated this 21st day of July, 1975.

Enforcement Counsel
For Consumer Product Safety
Commission Staff

UNITED STATES OF AMERICA
BEFORE CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| BARRETT CARPET MILLS, INC. a corporation, and | ) | CPSC Docket No. 75-5 |
| ROY C. BARRETT, individually and as an officer of the corporation | ) | |

TO: The Honorable Presiding Officer, Paul N. Pfeiffer, Administrative Law Judge

MEMORANDUM CONCERNING ISSUES TO BE HEARD

Pursuant to an Order executed by the Honorable Paul N. Pfeiffer, Administrative Law Judge, respondents Barrett Carpet Mills, Inc. and Roy C. Barrett, individually, submit this Memorandum outlining the issues, in addition to those set forth in the Notice of Enforcement, upon which evidence should be received in this proceeding. It is anticipated that the allegations of the Government or the proof offered might raise other issues not enumerated below, which the interests of justice, should be considered in this proceeding.

As presently viewed by respondents, the primary issues to be resolved in this proceeding are as follows:

1. Whether the Commission, in issuing this Notice, was required to and failed to find that issuance of a complaint with respect to this matter would be "in the interest of the public" under Section 5(b) of the Federal Trade Commission Act.

2. Whether the Consumer Product Safety Commission is guilty of laches by not commencing this enforcement action until July 21, 1975, although it had prior notice of all the facts and acts of Respondent upon which the Notice relies by August, 1974.

3. Whether the CPSC Enforcement Policy on Flammable Fabrics (38 Fed. Reg. 24923) terminating and setting aside the FTC Flammable Fabrics Enforcement Policy (36 Fed. Reg. 21544), which had precluded the disposition of flammability cases by voluntary assurances, had the effect of making §2.21 of the FTC's Rules of Practice applicable to this case.

4. Whether the Respondent was effectively denied the opportunity to dispose of this case by Consent Order Agreement as the result of a factually and legally erroneous staff analysis of a consent order executed by Respondent and submitted to the Commission for its acceptance.

5. Whether the Commission is authorized to apply statistically invalid and varying compliance market sampling plans as the basis for issuance of a Notice of Enforcement.

6. Whether the Consumer Product Safety Commission violated its own policy respecting the test data which it requires as a condition precedent to issuance of a complaint for alleged noncompliance with the Flammable Fabrics Act, as amended, and procedures promulgated thereunder.

7. Whether the procedures utilized by the Consumer Product Safety Commission in concluding that samples of carpet manufactured by Respondent failed to meet the requirements of the Flammable Fabrics Act, as amended, or any standard, regulation, policy or procedure promulgated thereunder were in accord with the procedures permitted under such Act, or procedures, policies or announcements promulgated by the Federal Trade Commission or the Consumer Product Safety Commission.

8. Whether the procedures utilized by the Commission in concluding that samples of carpet manufactured by Respondent Barrett Carpet Mills, Inc. failed to meet the Standard for the Surface Flammability of Carpet and Rugs were accurate or reliable.

9. Whether the test method specified in the Standard for the Surface Flammability of Carpet and Rugs (DOC FF 1-70) was intended to be or can lawfully be applied to carpet samples which contain facial flaws or damage, and which have been exposed to handling during installation, unknown contaminants, and possible traffic from persons or animals.

10. Whether a carpet sample, obtained in commerce, which has been exposed to traffic, installation and other damage, and unknown contaminants, is representative of other production of that same carpet style for purposes of applying the carpet flammability standard.

11. Whether proof of noncompliance with the Carpet Flammability Standard (DOC FF 1-70) must be based upon the statistically reliable probability sampling.

12. Whether the failure of isolated carpet samples to meet the acceptance criteria of the carpet flammability standard in tests performed by the Commission constitutes a violation of the Flammable Fabrics Act, as amended. If so,whether the statute, as so construed, is constitutional.

13. Whether carpet manufactured by Barrett Carpet Mills, Inc., failed to conform to the carpet flammability standard.

14. Whether failing tests on distinct production runs of carpet are evidence of noncompliance of other, untested production runs of that same style of carpet.

15. Whether, to establish that a violation of the Flammable Fabrics Act, the Federal Trade Commission Act, or the Standard for the Surface Flammability of Carpet and Rugs (DOC FF 1-70) has occurred, the Government must establish that carpet in fact sold in interstate commerce failed

the applicable standard, or whether it is sufficient for the plaintiff to merely establish that carpet of the style alleged to be noncomplying was sold in interstate commerce.

16. Whether the Flammable Fabrics Act, as amended, and the carpet flammability standard authorize all carpet of a single quality or style, regardless of the production period, quantity, or circumstances of production, to be classified as a single lot for purposes of determining whether the carpet meets or fails the Standard.

17. Whether the Consumer Product Safety Commission has the statutory authority pursuant to Section 30 of the Consumer Product Safety Act to issue a cease and desist order under the Federal Trade Commission Act which is broad enough to require the Respondents to notify all of their customers who have purchased carpet of the allegedly noncomplying style (or portion thereof) that the Commission has found the carpet to have failed to meet the Standard, as proposed in the Notice of Enforcement.

18. Whether the Consumer Product Safety Commission has the statutory authority, pursuant to Section 30 of the Consumer Product Safety Act, to issue a cease and desist order under the Federal Trade Commission Act which is broad enough to require Respondents to notify purchasers of carpet which has been installed that it may be returned for replacement or refund, as proposed in the Notice of Enforcement.

19. Whether the Consumer Product Safety Commission has the statutory authority, pursuant to Section 30 of the Consumer Product Safety Act, to issue a cease and desist order under the Federal Trade Commission Act which is broad enough to require the Respondents to recall the allegedly noncomplying carpet style (or portion thereof) and to refund or credit distribu-

tors, wholesalers, retailers or consumers with the invoice price or, where applicable, retail purchase price, plus transportation, of carpet returned, as proposed in the Notice of Enforcement.

20. Whether, if it is determined the Commission has the authority to issue a cease and desist order pursuant to Section 30 of the Consumer Product Safety Act broad enough to require refund, Respondents can avail themselves of the provisions for deduction of reasonable allowances for use contained in Section 15(d)(3) of the Consumer Product Safety Act, and if so, upon what basis should such refunds be made.

21. Whether production runs of carpet tested and passed by both the Consumer Product Safety Commission and Respondents can be required to be described as flammable and whether the Respondents can be required to recall and/or make refund for carpet from such production runs or any other production run of the same quality which has not been shown to have failed flammability tests.

22. Whether the Order proposed in the Notice of Enforcement is ambiguous and purports to extend the jurisdiction and the authority vested in the Consumer Product Safety Commission beyond the authority provided in the Flammable Fabrics Act, as amended, the Federal Trade Commission Act, and the Consumer Product Safety Act.

23. Whether the Flammable Fabrics Act, as amended, the Federal Trade Commission Act, the Consumer Product Safety Act, and each and every existing regulation pertaining to flammability promulgated under any of said Acts, are ambiguous, vague and uncertain in that they fail to give adequate notice to manufacturers subject to the Flammable Fabrics Act of the penalties which might be imposed for noncompliance with the Flammable Fabrics Act.

24. Whether any noncomplaince with the carpet flammability standard which might be shown to exist in this case is, by reason of pattern, extent, severity of risk or otherwise, such that the Commission could conclude a substantial product hazard exists, and that the remedies contained in the Order proposed in the Notice of Enforcement are necessary to adequately protect the public or are in the public interest.

25. Whether a Commission order in this case which sought to preclude the export of products recalled or in inventory would violate §15(a) of the Flammable Fabrics Act, as amended.

26. Whether the Commission's imposition upon different Respondents in cases involving essentially similar facts and law, of Orders prescribing significantly different remedial obligations, would contravene the equal protection and due process clauses of the U.S. Constitution.

27. Whether the Consumer Product Safety Commission has the authority to issue an Order, as proposed in the Notice of Enforcement, which extends to all products subject to the Flammable Fabrics Act, as amended, notwithstanding the fact that this case involves only products subject to the Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70).

28. Whether an Order, such as is proposed in the Notice of Enforcement, binding Roy C. Barrett, individually, as well as an officer of Barrett Carpet Mills, Inc., would be appropriate where Roy C. Barrett, as an individual, engaged in no acts whatsoever which gave rise to this complaint.

29. Whether, under the Federal Trade Commission Act, when all remedial actions which can arguably be required of Respondents, including notice to its customers of the Commission's test results, and recall

of such portions of the allegedly noncomplying carpet from commerce, have been carried out, imposition of a cease and desist order of any nature would be appropriate.

30. Whether the extent of Respondents' failure to comply with the Flammable Fabrics Act, as amended, or the Standard, if any, was de minimus; and, if so, whether imposition of a cease and desist order would be justifiable under Section 5 of the Federal Trade Commission Act.

Respectfully submitted,

Richard H. Gimer
BERLINER, MALONEY, GIMER & MUIR
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 293-1414

Counsel to Respondents

Dated: September 5, 1975

Filed Oct 20 '76
2:55 P.M.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC.,<br>a corporation, and<br><br>ROY C. BARRETT, individually and as<br>an officer of the corporation. | ) | CPSC DOCKET NO. 75-5 |

To: The Commission

ENFORCEMENT COUNSEL'S ANSWER
TO RESPONDENTS' MOTION FOR
LEAVE TO FILE BRIEF
IN EXCESS OF PAGE LIMIT

The Respondents were required by an Order of the Commission, dated October 7, 1976, to file their appeal brief in the above-captioned action on October 14, 1976, but they failed to do so. On October 15, 1976, Respondents filed a motion for leave to submit an appeal brief in excess of the sixty page limitation provided for in 16 C.F.R. §1025.72(e). Together with their motion, Respondents filed the appeal brief in question, consisting of seventy pages.

In the interest of avoiding further delay in this matter, Enforcement Counsel do not oppose Respondents' motion.

The motion and brief were not filed by Respondents until late Friday afternoon, October 15, 1976. As a consequence of the late filing, Enforcement Counsel did not receive a copy of the brief until the following week. Therefore, if the Commission elects to grant Respondents' motion, Enforcement Counsel respectfully request that they be permitted to file their answering brief thirty days from the date of this answer.

For the foregoing reasons, we urge that the relief requested be granted.

Respectfully submitted,

Ronald G. Yelenik

George J. Miller

Enforcement Counsel
Consumer Product Safety
Commission
Washington, D.C. 20207

Dated: October 20, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Enforcement Counsel's Answer to Respondents' Motion for Leave to File Brief in Excess of Page Limit upon legal counsel for all parties of record in this proceeding, by mailing, postate prepaid, a copy to Richard H. Gimer, Esq., BERLINER, MALONEY, GIMER & JAFFE, Suite 420, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated: October 20, 1976

George J. Miller

Enforcement Counsel
For the Consumer Product
Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | |
| BARRETT CARPET MILLS, INC., a corporation, and | ) | CPSC Docket No. 75-5 |
| ROY C. BARRETT, individually and as an officer of the corporation | ) | |

To: The Commission

MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE ANSWERING BRIEF

Enforcement Counsel hereby move for an extension of time to November 30, 1976, in which to file their answering brief in the above captioned matter. The basis for this request is that Ms. Anette B. Seltzer, a member of the Commission legal staff, who had been integrally involved in the preparation of briefs previously submitted in this case, and who had been assigned the task of preparing a major portion of the answering brief, left the employ of the Commission on November 5, 1976, and therefore was not able to complete her assignment. Moreover, Enforcement Counsel will require an additional period of time in which to answer Respondents' seventy page, single spaced appeal brief.

Counsel for Respondents has been apprised of this request and has authorized the undersigned to state that he does not object to the granting of the motion.

WHEREFORE, it is respectfully requested that the Commission extend the date for the filing of Enforcement Counsel's answering brief to November 30, 1976.

Respectfully submitted,

Ronald G. Yelenik

Enforcement Counsel
Consumer Product Safety Commission
Washington, D. C. 20207

Dated: November 9, 1976

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of:<br><br>BARRETT CARPET MILLS, INC.,<br>a corporation, and<br><br>ROY C. BARRETT, individually and<br>as an officer of the corporation | CPSC Docket No. 75-5 |

O R D E R

Enforcement Counsel have moved for an extension of time in which to file their answering brief in the above-captioned matter.

The Commission, having considered the motion, it is

ORDERED that the date for filing said answering brief be extended until November 30, 1976.

This _____ day of _____, 1976.

_____

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Enforcement Counsel's Motion for Extension of Time in Which to File Answering Brief upon legal counsel for all parties of record in this proceeding, by mailing, postage prepaid, a copy to Richard H. Gimer, Esq., BERLINER, MALONEY, GIMER & JAFFE, Suite 420, 1100 Connecticut Avenue, N.W., Washington, D. C. 20036.

Dated: November 9, 1976

Ronald J. Yolen

Enforcement Counsel
For the Consumer Product
Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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MAY 4 4 54 PM '76
CONSUMER PRODUCT
SAFETY COMMISSION
OFFICE OF SECRETARY

| | | |
|---|---|---|
| In the Matter of | ) | |
| BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation | ) | CPSC DOCKET NO. 75-5 |

To: The Honorable Presiding Officer,
Paul N. Pfeiffer

ENFORCEMENT COUNSEL'S MOTION REQUESTING THE PRESIDING OFFICER TO CERTIFY TO THE COMMISSION THE QUESTION OF WHETHER OR NOT TO ALLOW POST-HEARING ORAL ARGUMENT

Pursuant to Section 1025.42(a) of the Commission's Interim Rules of Practice for Adjudicative Proceedings (hereinafter Rules), Enforcement Counsel hereby move that, in order to prevent detriment to the public interest, the Presiding Officer certify the instant motion to the Commission forthwith and stay the oral argument scheduled for May 11, 1976, pending a resolution by the Commission of this question.

The grounds for this Motion are as follows:

1. The Rules contain no provision for oral argument before the Presiding Officer. Section 1025.72(f) is the only section of the Rules which authorizes oral argument, and that section specifically limits oral argument to cases on appeal before the Commission. As stated in

Section 1025(f), "The purpose of oral argument is to emphasize and clarify the written argument in the briefs and to answer of the Commission." (Emphasis supplied). The oral argument provision of Section 1025.72(f) serves to allow Commission members to pose questions to counsel and further clarify the written record to which the Commission is exposed on appeal. The allowance of oral argument in front of the Presiding Officer would be in direct contradiction to the specific language of section 1025.72(f).

Even if the Rules provided for oral argument before the Presiding Officer, such argument would serve no useful purpose in the instant case at the post-hearing stage of the proceeding. Both sides in the case at issue have had full opportunity to present their positions to the Presiding Officer during the course of the hearing and in writing, through the submission of both an initial brief and a reply brief. Further, the Presiding Officer availed himself of the opportunity to extensively question both counsel and witnesses as to the issues involved in the case.

2. The Presiding Officer is given general authority under 1025.62(a) to take appropriate action to avoid unnecessary delay in the disposition of proceedings. Moreover, the mandate of the Commission, as set out in section 1025.1 of the Commission's Rules, is as follows:

> The Commission believes that administrative adjudicative proceedings should be an expeditious manner of settling disputes. Delay does not benefit the public or any party. Therefore, in the conduct of such proceedings, the Presiding Officer and all parties and their representatives shall make every effort at each stage of a proceeding to avoid unnecessary delay. (Emphasis supplied)

In the case at issue, where a public health and safety statute is involved, the prompt and expeditious handling of matters is important to the public welfare. To allow further argument at this stage in the proceeding would not only be contrary to the Commission's policy of expediting matters, but could ultimately affect CPSC practice and procedure. The end result for the consumer in this instance is not a clarification of the record or an expedited proceeding, rather, a delay in decision making that serves no useful purpose. For this reason, Enforcement Counsel urge that this question be presented to the Commission for its consideration.

3. The request for oral argument is yet another in a long series of dilatory tactics by Respondents. In the instant case, hearing was begun on February 2, 1976, and continued through February 13, 1976. During that time, Respondents had ample opportunity to present their arguments through direct examination and cross examination as well as in their Initial and Reply Briefs. Throughout the proceedings, Enforcement Counsel have attempted to protect the public interest by acting in a expeditious and responsive manner. The increased delay caused by an oral argument at this particular stage of the proceedings would be a detriment to the public interest in this case.

4. There is no statutory or constitutional right to oral argument before the Presiding Officer in an administrative proceeding. FCC v. WJR, The Goodwill Station, Inc., 337 U.S. 265 (1949); Davis, 1 Administrative Law Treatise (1958), Section 7.08, 8.17.

5. The scope of oral argument, as outlined in the Presiding Officer's April 30, 1976 Notice of Oral Argument, is so broadly set out that the uselfulness of such an opportunity for argument is doubtful. The pertinent passages of the Notice of Oral Argument state:

> ...[T]he argument will be limited to legal issues <u>including but not restricted to the following questions</u>:
>
> (1) Does the finding in 1970 by the Secretary of Commerce that carpet which fails FF 1-70 is unreasonably dangerous to consumers <u>per se</u> justify the imposition of the remedy of recall from the ultimate consumer?
>
> (2) What legislative history, if any, exists authorizing the Commission to excercise the power of recall from the ultimate consumer under either the Flammable Fabrics or the Federal Trade Commission Act?
>
> (3) Is a separate finding that the remedy of recall from the consumer is required in the public interest a necessary prerequisite in ordering such a remedy? [Emphasis supplied]

Where CPSC Rules already provide for oral argument at the appellate level, and where a full opportunity has been given in the instant matter for the Presiding Officer to compile a complete record of all issues of concern, Commission policy should not be altered to work to the detirment of any member of the consuming public. The Commission must hold to its mandate to protect the public by providing an expeditious manner of settling disputes.

For the foregoing reasons, we urge the Presiding Officer to certify the instant Motion to the Commission and, stay the oral argument scheduled for May 11, 1976 pending a resolution of this question by the Commission.

Respectfully submitted,

Ronald G. Yelenik

Anette B. Seltzer

George J. Miller
Enforcement Counsel
Consumer Product Safety
Commission
Washington, D.C. 20207

Dated: May 4, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Enforcement Counsel's ~~Motion Requesting the Presiding Officer to Certify to the Commission the Question of Whether or not to Allow Post-Hearing Oral Argument~~ Answer in Opposition to Respondents' Motion for Clarification of Order or Enlargement of Issues to be Briefed, upon legal counsel for all parties of record in this proceeding, by mailing, postage prepaid, a copy to Richard H. Gimer, Berliner, Maloney, Gimer & Muir, Suite 420, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated: ~~May 4, 1976~~ new date

Ronald G. Sebril

Enforcement Counsel
For the Consumer Product Safety Commission

RECEIVED
AUG 20 4 27 PM '75
CONSUMER PRODUCT
SAFETY COMMISSION
OFFICE OF SECRETARY

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of | |
| BARRETT CARPET MILLS, INC., a corporation, and | CPSC DOCKET No. 75-5 |
| ROY C. BARRETT, individually and as an officer of the corporation. | |

To: The Commission

ENFORCEMENT COUNSEL'S ANSWER
IN OPPOSITION TO RESPONDENTS'
MOTION FOR CLARIFICATION OF ORDER OR
ENLARGEMENT OF ISSUES TO BE BRIEFED

Respondents' Motion for Clarification of Order or Enlargement of Issues to be Briefed should be denied. 5 U.S.C. 557(b) and 706; Section 1025.72 and 1025.73 of the Commission's Interim Rules of Practice for Adjudicative Proceedings [39 F.R. 26848, 26856 (July 23, 1974)]; Federal Trade Commission Rules of Practice for Adjudicative Proceedings, 16 C.F.R. Section 3.53; Federal Communications Commission Rules of Practice and Procedure, 47 C.F.R. Sections 1.276, 1.279;

Barrus Construction Company v. National Labor Relations Board, 483 F.2d 191 (4th Cir. 1973); Veterans Broadcasting Co., Inc., 29 F.C.C. 1105, 10 Ad. L.2d 844 (1960).

Respectfully submitted,

Ronald G. Yelenik

Anette B. Seltzer

George J. Miller
Enforcement Counsel
Consumer Product Safety
Commission
Washington, D.C. 20207

Dated: August 20, 1976

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of<br><br>BARRETT CARPET MILLS, INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation. | CPSC DOCKET NO. 75-5 |

TO: The Commission

ENFORCEMENT COUNSEL'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MOTION FOR CLARIFICATION OF ORDER OR ENLARGEMENT OF ISSUES TO BE BRIEFED

On August 10, 1976, Respondents filed a Motion for Clarification of Order or Enlargement of Issues to be Briefed. In that Motion, Respondents allege that their rights on appeal from an administrative agency decision will be prejudiced because the Commission, pursuant to Section 1025.73 of the Interim Rules of Practice for Adjudicative Proceedings [39 F.R. 26848, 26856 (July 23, 1974)], delineated the issues it wishes to consider when reviewing the initial decision of the Presiding Officer. Respondents cite no authority in support of this assertion. In fact, there is none. Section 557(b) of the Administrative Procedure Act [5 U.S.C. 557(b)] specifically states:

> ... On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. (Emphasis supplied)

The procedure set forth in Section 1025.73 of the Interim Rules of Practice is thus expressly authorized by the Administrative Procedure Act. Therefore, the Commission may limit the issues it wishes to consider.

Administrative agencies other than the CPSC have adopted similar rules for docketing cases on the agency's own motion and for limiting the issues to be considered by the Commission, Board, Administrator, etc. See Federal Trade Commission Rules of Practice for Adjudicative Proceedings, 16 CFR Section 3.53; Federal Communications Commission Rules of Practice and Procedure, 47 CFR Section 1.276(b), 1.279. In Veterans Broadcasting Co., Inc., 29 F.C.C. 1005, 10 Ad.L.2d 844, the Federal Communications Commission held that the agency could limit the scope of review to specific issues. It cited as authority Sections 1.155 and 1.154(a) of its rules which provide that "the issues to be reviewed may be limited to those findings and conclusions to which exceptions have been filed."

In this case presently before the Commission, Respondents chose not to exercise their right to appeal the initial decision of the Presiding Officer. The Commission could only surmise from Respondent's failure to appeal that they were satisfied with the initial decision.

Implicit in its choice of issues is the fact that the Commission is satisfied with the state of the record regarding all other issues presented.

Despite respondents' claim to the contrary, the Commission's action in delineating specific issues for review, will not prejudice any future appeal to the Court of Appeals. Appellate Courts have often held that where a reviewing body has a sufficient record before it, a party is not prejudiced by a lower tribunal's choice to limit the issues to be considered. Barrus Construction Company v. National Labor Relations Board, 483 F.2d 191 (4th Cir. 1973). In Barrus, the Court of Appeals held that the petitioner was not prejudiced at the agency level merely because the trial examiner limited the issues that he would consider. The Court based its decision upon the fact that a sufficient record was presented to the Board to enable the Board to adopt the company's contentions, if it so desired.

In the instant case, the Commission and not the Administrative Law Judge limited the number of issues to be considered. In fact, the Presiding Officer was extremely liberal and allowed in a great deal of evidence dealing with a variety of issues. Thus, the record which will be reviewed by the Commission and possibly by the Court of Appeals is full and complete and does contain substantial evidence on each of the issues Respondents now wish to raise.

The standard for scope of review of an agency decision by an Appellate Court is dictated by Section 706 of the Administrative Procedure Act, [5 U.S.C. 706] which provides in pertinent part that the "...whole record or those parts cited by a party... shall be considered by the reviewing court." In the instant case, if an appeal is perfected, a complete and voluminous record will be forwarded to the Court of Appeals. The record in question consists of, but is not limited to: (1) a hearing transcript and exhibits (2) findings of fact, conclusions of law and memoranda in support thereof, submitted by both parties; (3) reply briefs submitted by both parties; (4) a transcript of an oral argument; (5) Enforcement Counsel's brief to the Commission; (6) Respondents' answering brief; and (7) Enforcement Counsel's reply brief to the Commission. Therefore, Respondents in accordance with section 706 will have the opportunity to raise all issues contained in the record when they are before the Court of Appeals.

It is the position of Enforcement Counsel that an expansion of the issues to be considered by the Commission would not only prolong an already protracted proceeding but would result in a rehash of issues fully briefed and argued at the administrative hearing level. However, if the Commission decides that the issues should be enlarged, Enforcement Counsel respectfully request that

the Commission specify the issues to be briefed and that it extend the time period in which to respond to the issues.

In conclusion, the Commission has the authority, in the absence of appeal by either party, to docket a case for review and to limit the number of issues to be considered. Furthermore, in the event of an appeal of the Commission's Decision, Respondent's will not be prejudiced by the Commission's limitation of the issues. Therefore, for the foregoing reasons, Enforcement Counsel respectfully request that Respondent's Motion for Clarification of Order and Enlargement of Issues to be Briefed be denied.

Respectfully submitted,

Ronald G. Yelenik

Anette B. Seltzer

George J. Miller,
Enforcement Counsel
Consumer Product Safety
Commission
Washington, D.C. 20207

Dated: August 20, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Enforcement Counsel's Answer in Opposition to Respondents' Motion for Clarification of Order or Enlargement of Issues to be Briefed upon legal counsel for all parties of record in this proceeding, by mailing, postage prepaid, a copy to Richard H. Gimer, Berliner, Maloney, Gimer & Muir, Suite 429, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated: August 20, 1976

George J. Mills

Enforcement Counsel
For the Consumer Product Safety Commission

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation | CPSC DOCKET NO. 75-5 |

To: The Honorable Presiding Officer,
Paul N. Pfeiffer

ENFORCEMENT COUNSEL'S OPPOSITION TO
RESPONDENTS' MOTION FOR ORAL ARGUMENT

Pursuant to Section 1025.42(c) of the Commission's Interim Rules of Practice for Adjudicative Proceedings (hereinafter Rules), Enforcement Counsel hereby oppose Respondents' Motion for Oral Argument1/ before the Presiding Officer in the above-captioned matter.

The grounds for this Opposition are as follows:

1. The Rules contain no provision for oral argument before the Presiding Officer.

1/The Motion was made in the form of a "Request for Oral Argument," found at Roman Numeral V, page 41, of Respondents' Reply Brief. No reasons for the request were stated.

2. There is no statutory or constitutional right to oral argument before the Presiding Officer in an administrative proceeding. FCC v. WJR, The Goodwill Station, Inc., 337 U.S. 265 (1949); Davis, 1 Administrative Law Treatise (1958) Sections 7.08, 8.17.

3. Oral argument at this stage of the proceedings would serve no useful purpose. Both sides already have had a full opportunity to present their positions to the Presiding Officer during the course of the Hearing and in their Briefs; the Presiding Officer has questioned both counsel and witnesses extensively; the issues have been fully joined and developed. While oral argument is available as a matter of right in appeals before the Commission (Rules, Section 1025.72(f)), the procedural posture of an appeal is not comparable to that of the case at bar. In an appeal, the Commissioner's exposure to the case commences with their review of the Initial Decision, the appeal brief, and the hearing record; there is no prior opportunity for the Commissioners to question counsel on areas of concern that may not have been addressed in the briefs. In contrast, the Presiding Officer in the instant case has availed himself of the opportunity to fully explore the issues from the very beginning of these proceedings.

4. The request for oral argument is yet another in a long series of dilatory tactics by Respondents. The Notice of Enforcement in this matter was filed in July, 1975, some nine months ago. Every effort should be made to hasten the resolution of this matter. Oral argument would only cause increased delay.

For the foregoing reasons, we urge that Respondents' Motion for Oral Argument be denied.

Respectfully submitted,

Ronald G. Yelenik

Enid Rubenstein by RGY

Enid Rubenstein
Enforcement Counsel
Consumer Product Safety
Commission
Washington, D.C. 20207

Dated: April 28, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Enforcement Counsel's Opposition to Respondents' Motion for Oral Argument upon legal counsel for all parties of record in this proceeding, by mailing, postage prepaid, a copy to Richard H. Gimer, Berliner, Maloney, Gimer & Muir, Suite 420, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated: April 28, 1976

Enforcement Counsel
For the Consumer Product
Safety Commission

Ron

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC.,<br>a corporation, and<br>ROY C. BARRETT, individually<br>and as an officer of the<br>corporation. | CPSC DOCKET NO. 75-5 |

To: The Honorable Presiding Officer
Paul N. Pfeiffer

ENFORCEMENT COUNSEL'S REQUEST TO APPEND THE ENTIRE VEST AFFIDAVIT TO THE RECORD IN ORDER TO COMPLETE THE RECORD IN THIS PROCEEDING

On May 11, 1976, at the post-hearing oral argument in the above-captioned matter, the Presiding Officer ruled that Exhibit D attached to Respondents' Initial Brief would not be excluded from the record. That exhibit is only one page of the two page affidavit signed by John Vest, Jr. on September 27, 1974. Since that affidavit was never received in evidence during the Hearing, Enforcement Counsel hereby submit the entire original Vest affidavit and request that it be appended to the record in order to complete the record in this proceeding. Enforcement Counsel, however, wish to state that the submission of this complete affidavit in no way changes or contradicts Enforcement Counsel's objection to introduction into the

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation. | ) | CPSC DOCKET NO. 75-5 |

To: The Honorable Presiding Officer
Paul N. Pfeiffer

ENFORCEMENT COUNSEL'S REQUEST TO APPEND THE ENTIRE VEST AFFIDAVIT TO THE RECORD IN ORDER TO COMPLETE THE RECORD IN THIS PROCEEDING

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**AFFIDAVIT**

SAMPLE NO.

STATE OF Missouri

COUNTY OF Jefferson

Before me, Sandra J. Williams, a duly authorized employee of the Consumer Product Safety Commission, appropriately designated by the Chairman of said Commission pursuant to provisions of the Consumer Product Safety Act (sec. 27(b)(2), 86 Stat. 1228; 15 U.S.C. 2076 (b)(2)), to administer or take oaths, affirmations, and affidavits, personally appeared John Vest, Jr. in the county and State aforesaid, who, being first duly sworn, deposes and says:

That, I John Vest Jr. reside at (b) (6), (b) (6) Missouri

That, in December 1973 I ordered from Overberg Decorating Center, 405 Main Festus, Mo. one whole roll, which I think was 100 sq. yards, of a red & orange shag, 100% nylon, foam backed carpet. That I was told that the carpet was Barrett Mills Style 222 & was called Paradise Valley.

That approximately 1 week later the carpet was delivered by the installer used by Overberg & he unloaded the wrapped roll onto the driveway of my home. That it was inspected, rewrapped & stored on the floor of my locked garage overnight. That while it was in my

AFFIANT'S SIGNATURE & TITLE John Vest Jr., an individual

FIRM *(Name and address, include ZIP Code)*

Subscribed and sworn to before me at Crystal City, Missouri *(City and State)*

this 27th day of September, 1974.

Sandra J. Williams *(Employee's Signature)*

EMPLOYEE OF THE CONSUMER PRODUCT SAFETY COMMISSION ACTING IN ACCORDANCE WITH AUTHORITY GRANTED IN THE ABOVE STATED DECLARATION.

CPSC FORM NO. ( )

Pg 2 of 2

**AFFIDAVIT**

SAMPLE NO

STATE OF Missouri

COUNTY OF Jefferson

Before me, Sandra C Callazier, a duly authorized employee of the Consumer Product Safety Commission, appropriately designated by the Chairman of said Commission pursuant to provisions of the Consumer Product Safety Act (sec. 27(b)(2), 86 Stat. 1228; 15 U.S.C. 2076 (b)(2)), to administer or take oaths, affirmations, and affidavits, personally appeared John West Jr in the county and State aforesaid, who, being first duly sworn, deposes and says:

garage, it came in contact with no foreign substance.
That the next day the installer returned & laid the carpeting in my family room, game room & hallway. The remainder of the carpeting was taken to my son's bedroom where about 1 week later, I installed it myself. The left over carpeting was stored under the bed in my son's room, ontop of the installed carpeting. This room is dry, heated & air conditioned & at no time either prior to installation or after installation did any foreign matter come into contact with this carpeting.
That about 2 months ago I gave a piece of this same left over carpeting to Mr Overking at his request. I understood that it was to be tested for flammability

AFFIANT'S SIGNATURE & TITLE
John West Jr. an individual

FIRM *(Name and address, include ZIP Code)*

Subscribed and sworn to before me at Crystal City, Missouri
*(City and State)*

this 27th day of September, 1974.

Sandra C Callazier
*(Employee's Signature)*

EMPLOYEE OF THE CONSUMER PRODUCT SAFETY COMMISSION ACTING IN ACCORDANCE WITH AUTHORITY GRANTED IN THE ABOVE STATED DECLARATION.

CPSC FORM NO. ( )

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon legal counsel for all parties of record in this proceeding a copy of Enforcement Counsel's Request to Append the Entire Vest Affidavit to the Record in Order to Complete the Record in this Proceeding by mailing, postage prepaid, a copy to Richard H. Gimer, Berliner, Maloney, Gimer & Muir, Suite 420, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated: May 21, 1976

Arnetta B. Nelson
Enforcement Counsel
For the Consumer Product
Safety Commission

Ron

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the Matter of | ) | |
| BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation. | ) | CPSC DOCKET NO. 75-5 |

To: The Honorable Presiding Officer
Paul N. Pfeiffer

ENFORCEMENT COUNSEL'S MOTION TO EXCLUDE CERTAIN EXHIBITS ATTACHED TO RESPONDENTS' INITIAL BRIEF AND REPLY BRIEF

On April 2, 1976, Respondents filed their Proposed Findings of Fact and Conclusions and on April 19, 1976, Respondents filed their Reply Brief. Each of these filings had exhibits attached to them which exhibits had not been admitted into evidence during the Administrative Hearing in the above-captioned matter. Enforcement Counsel strenuously object to Respondents' attempt to introduce exhibits into the record through the back door. Exhibits that were either refused admission during the Hearing or were never even offered at the Hearing may not simply be appended to the record. For the most part, Respondents' appended exhibits are irrelevant, immaterial, and not probative of any of the facts at issue in the instant case. Moreover, the information contained in the documents is not reliable because Respondents have

failed to offer the exhibits through witnesses and have failed to lay a foundation for them. Therefore, pursuant to 16 CFR Section 1025.63(b) of the Interim Rules of Practice, Respondents' appended exhibits must be excluded from the record.

The appended exhibits, offered as they were for the truth of the testimony contained in them, do not meet the established criteria for the taking of official notice. Official notice is reserved exclusively for those facts of which there is common knowledge and/or those facts which are readily and indisputably ascertainable. Lumley v. Gye , 118 Eng. Rep. 749. That is why a judge may officially take notice of a fact without the necessity of having to present evidence to prove the fact. Such proof is done away with because there is no real necessity for it. Varcoe v. Lee, 181 P. 223; Neville v. Kenney, 28 So. 452. It is often said that if the fact is one which "everybody knows," there is no reason to require evidence to establish it. Id. Such facts may be given official notice because there can be no question that they are true. In the case of testimony given by individuals before Congressional Committees, the only thing of which the court may take official notice, is the fact that the Committee received testimony from named witnesses. Without having those individual witnesses present at an Administrative Hearing to testify first-hand and undergo cross-examination, there is no way to ascertain the true import of their statements or to determine what weight should be given them.

On February 9, 1976, during the Administrative Hearing in the above-captioned matter, the Presiding Officer did take official

notice of what were referred to by Respondents as RX. 11, 12, and 13 1/; however, the court refused to accept the proffered exhibits in evidence (Tr. 629, 647). Judge Pfeiffer stated,

> They are not evidence. They are matters of which official notice can be taken. They don't have to be offered and will not be received in evidence but they can be referred to in the briefs . . . . [Emphasis supplied] (Tr. 629).

Despite this specific exclusion as evidence, Respondents have attached to each of their briefs what appear to be selected portions of the previously excluded documents. Excluded exhibit RX. 11 appears to have been attached to Respondents' Initial Brief as Exhibit C and to Respondents' Reply Brief as Exhibit E. Excluded exhibit RX. 12 appears to have been attached to Respondents' Initial Brief as Exhibit B and to their Reply Brief as Exhibit D. Excluded exhibit RX. 13 appears to have been attached to Respondents' Initial Brief as Exhibit A and to their Reply Brief as Exhibit C.

Not one on the aforementioned documents was appended to the Briefs in its entirety and, in fact, it is difficult to ascertain just where the selected pages may be located in the entire document.

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1/RX.11 was referred to by Respondents' Counsel as "Consideration in The Use of Sampling Plans for Effecting Compliance with Mandatory Safety Standards published by the U.S. Department of Commerce, National Bureau of Standards, June 17, 1975" (Tr. 625) and was refused admission into evidence. RX. 12 was referred to by Respondents' Counsel as "a copy from the official hearing record of the testimony of Mr. William Murane, acting general counsel, U.S. Department of Commerce in a letter dated August 27, 1970" (Tr. 626) and was refused admission into evidence . RX. 13 was referred to by Respondents' Counsel as "a portion of the hearing record of the Consumer Sub-Committee Committee on Commerce, United States Senate" (Tr. 627) and as "testimony delivered by Mr. Richard Simpson, standing in for Assistant Secretary Trivis (?)" (Tr. 628).

For example, with regard to Exhibit D, the Murane letter, attached to Respondents' Reply Brief, there is no page designation on the first page.

Similar objections may be made to Exhibit E attached to Respondents' Initial Brief and to Exhibit A attached to Respondents' Reply Brief. Exhibit E is the title page of 1973 Appropriations Hearings before the House Committee on Appropriations, 92nd Congress, Second Session. Immediately following that labeled page, there is an unidentified, unnumbered page containing what appears to be a question posed by a named, but otherwise unidentified, individual and answered by a named, but otherwise unidentifed, individual. It is impossible to tell where in the over-all testimony these paragraphs came from. Moreover, no foundation was ever laid for the exhibit's introduction into evidence. Exhibit A, selected pages from Hearings on FFA Premarket Testing before the House Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, 92nd Congress, First Session, does not represent all of the testimony presented to the Subcommittee. The pages offered by Respondents are taken out of context and there is no way of knowing who is testifying or even what the speaker's qualifications are. Respondents have also taken it upon themselves to underline and otherwise highlight those specific passages of the testimony they consider to be favorable to them. The mere presence of such highlighting on a document offered in evidence is sufficient to exclude it from the record.

Exhibit D attached to Respondents' Initial Brief is only one page of the two page affidavit signed by John Vest, Jr. on September 27, 1974. When Enforcement Counsel attempted to introduce the entire affidavit into evidence, Respondents' Counsel objected on the ground that Mr. Vest should be required to take the witness stand (Tr. 156 - 57). In fact, Mr. Vest did testify as one of Enforcement Counsel's witnesses at the Hearing and he was subjected to direct examination, cross-examination, redirect examination, and recross-examination. Still that affidavit was never received in evidence during the Hearing and it is, therefore, highly inappropriate to attach an unaccepted exhibit to a post-Hearing Brief. Nevertheless, Enforcement Counsel have no objection to the admission into evidence of the entire original Vest affidavit.

What is attached to Respondents' Initial Brief as Exhibit F, identified by Respondents as an October 14, 1971 article from "Home Furnishings Daily," was previously referred to by Respondents during the Hearing as RX. 10 (Tr. 616). That proffered exhibit was specifically excluded from evidence by the Presiding Officer (Tr. 646) and was not even placed in the category of those documents to which official notice would be given (Tr. 647).

In continuing our line of objections to Respondents' appended exhibits, Enforcement Counsel must point out that Exhibit B, attached to Respondents' Reply Brief and identified by Respondents as a June 12, 1972 article from "Floor Covering Weekly," has not been sponsored by a witness; nor has there been an opportunity to question the reporter who wrote the article as to how he gathered his information,

what his statistics are based on, or even how scientific the gathering of the statistics was. Furthermore, neither the court nor Enforcement Counsel can be sure that Exhibit B represents the entire article. If the court is inclined to take official notice of this exhibit, Enforcement Counsel submit that the only thing of which official notice may be taken is that there is such a periodical.

Exhibit F attached to Respondents' Reply Brief appears to be a copy of the Federal Register Notice of Proposed Amendment to the Standard for the Surface Flammability of Carpet and Rugs. The document is irrelevant to the issues presented in this case. There was no sampling plan in effect at the time Respondents manufactured their violative carpet.

Respondents have also appended to their Reply Brief exhibits labeled "G" and "H". Exhibit G is one portion of the oral argument before the Commission In the Matter of Congoleum Industries, Inc. The selected passages consist solely of one section of Respondent Congoleum's oral argument before the Commission. There was no evidence being presented at that point in the Congoleum proceeding. Furthermore, Respondents have once again taken it upon themselves to highlight those passages which they consider to be beneficial to them. In fact, those underlined portions of the argument do not support Respondents' contention that, "[o]nly a handful of seized rolls were available for tests." Respondents' Reply Brief, page 37. Counsel for Respondent Congoleum merely stated that all as yet unsold rolls of the carpet in question in that case were located in two different

warehouses. There is, at that point in the argument, no mention of the number of rolls of carpet in each warehouse. Exhibit H is a Final Order issued by the Commission In the Matter of J.J. Newberry Co. The Order is not probative of anything and, in fact, Enforcement Counsel have been unable to determine why Respondents even thought it necessary to attach such an exhibit to their Reply Brief.

Enforcement Counsel move that the exhibits attached to Respondents' Initial Brief and Reply Brief be excluded from the record in the above-captioned matter because Respondents' appended exhibits are irrelevant, immaterial, unreliable and not probative of any of the facts at issue in the instant case, and are taken out of context, underlined and highlighted, and offered without a foundation having first been laid.

Respectfully submitted,

Ronald G. Yelenik

George J. Miller

Anette B. Seltzer

Enforcement Counsel
Consumer Product Safety
Commission
Washington, D.C. 20207

(301) 492-6626

Dated: May 5, 1976

CERTIFICATE OF SERVICE

I hereby certify that I have this day served upon legal counsel for all parties of record in this proceeding a copy of Enforcement Counsel's Motion to Exclude Certain Exhibits Attached to Respondents' Initial Brief and Reply Brief by mailing, postage prepaid, a copy to Richard H. Gimer, Berliner, Maloney, Gimer & Muir, Suite 420, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated: May 5, 1976

Enforcement Counsel
For the Consumer Product
Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the Matter of | |
| BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation | CPSC DOCKET NO. 75-5 |

TO: THE HONORABLE PAUL N. PFEIFFER,
PRESIDING OFFICER

ENFORCEMENT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR ADMISSION OF CERTAIN DOCUMENTS

Pursuant to Section 1025.42(c) of the Commission's Interim Rules of Practice for Adjudicative Proceedings, Enforcement Counsel hereby oppose Respondents' Motion to Admit Certain Documents, dated April 7, 1976.

The grounds for this Opposition are as follows:

1. The documents are not admissible in evidence because they are not reliable, in that Respondents have failed to authenticate them or otherwise lay a foundation for their admission. CPSC Rule 1025.63(b).

2. The documents are irrelevant and immaterial because they are not probative of the fact that alumina trihydrate was used by Masterpiece Finishing, Inc. in the finishing of Style 222 Paradise Valley (foam backed) carpet. CPSC Rule 1025.63(b).

3. Enforcement Counsel have never agreed to the admission into evidence of Respondent's Proposed Exhibit No. 36.

In suppport of this Opposition, the Presiding Officer's attention is directed to the memorandum annexed hereto.

Respectfully submitted,

Ronald G. Yelenik

Enid Rubenstein

Enforcement Counsel
Consumer Product Safety Commission
Washington, D.C. 20207

Dated: April 19, 1976

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of | ) | |
| BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation | ) | CPSC DOCKET NO. 75-5 |

ORDER

Upon review and consideration of Respondents' Motion for Admission of Certain Documents, Enforcement Counsel's Opposition to Respondents' Motion, the supporting memoranda, and the documents themselves, the undersigned hereby denies Respondents' Motion on grounds that Respondents' Proposed Exhibit 36 is not admissible under CPSC Rule 1025.63(b) because the documents contained therein are unreliable, irrelevant and immaterial.

Paul N. Pfeiffer
Administrative Law Judge

Dated:

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of | ) | |
| BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation | ) | CPSC DOCKET NO. 75-5 |

MEMORANDUM IN SUPPORT OF ENFORCEMENT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR ADMISSION OF CERTAIN DOCUMENTS

## STATEMENT OF FACTS

### A. Background

Respondents, on April 7, 1976, moved the admission 1/ of Proposed Exhibit 36(1-92), consisting of four sets of "compounding reports," including two sets of "Daily Mix Sheets" for 1972 and 1973, and two sets of "Weekly Inventory Sheets" for 1972 and 1973. Allegedly, these documents support Respondents' position that "Masterpiece was using a minimum of 150 parts of alumina trihydrate in its latex precoat batch mix throughout the period in which that firm was finishing Style 222, Paradise Valley (foam)".

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1/Apparently, Respondents previously had assumed the admission in evidence of these documents, which are referred to throughout Respondents' Post-Hearing Brief as Respondent's Exhibit 36.

These documents apparently are intended to supplement and clarify both Amended Joint Stipulation No. 15 and the testimony of Mr. Louie Bartenfeld, Supervisor of the Coating Division, Masterpiece Finishers, Inc. Amended Joint Stipulation No. 15 states that "[p]roduction records from Masterpiece Finishing, Inc. are not available for the period during which Paradise Valley foam-backed carpeting was produced. Masterpiece has stated, by affidavit, that to the best of its knowledge and belief, the latex precoat on all Paradise Valley foam-backed carpeting finished during 1972 and 1973 contained 150 parts of alumina trihydrate...."

During his testimony, Mr. Bartenfeld refreshed his recollection by referring to handwritten 1974 compounding records of Masterpiece Finishing, Inc., prepared by a subordinate, which were not introduced into evidence and which are not included in Respondents' Proposed Exhibit 36. The 1972 and 1973 records presently being offered in evidence were not available at the Hearing. However, Mr. Bartenfeld testified that he had no records for 1972 which indicated that 150 parts of alumina trihydrate was added to Style 222. He further testified that all carpet finished by Masterpiece in 1972-1973 contained 150 parts of alumina trihydrate, but that finishing records for the period do not show the use of 150 parts because it was always present in all latex backing made by Masterpiece at that time. Tr. 1072, 1074-75, 1092-93, 1099. Respondents'

counsel stated, apparently in contradiction of the witness, that he had personally examined Masterpiece records for 1972-1973 "which establish that throughout the entire period in question the company was using consistently and only 150 part load (sic) of aluminum trihydrate in their latexes until . . . January 1974." Tr. 1110 [emphasis supplied]. The transcript contains no reference to the use of 300 parts of ATH during the period when Paradise Valley was finished. Tr. 1065-1116; but c.f. Respondents' Memorandum In Support of Motion For Admission at Certain Documents (hereinafter Respondents' Memorandum) at page 3.

At the Hearing, Respondents' counsel proposed to furnish Enforcement Counsel with records of Masterpiece's daily mixing of latex precoat batches during the period in which it finished Paradise Valley for "examination . . . and for the possible inclusion in the record...." The Presiding Officer assented to the proposal. Enforcement Counsel offered no comment. Tr. 1114. However, Enforcement Counsel had previously objected to the introduction of the 1974 records on grounds that no foundation had been laid for their introduction. Tr. 1073-1074.

On March 5, 1976, Respondents' counsel profferred copies of Masterpiece's 1972 and 1973 compounding records to Enforcement Counsel, together with a draft joint stipulation stating that "the latex precoat in all Paradise Valley foam-backed carpeting finished by Masterpiece in 1972 and 1973 contained 150 parts of alumina

trihydrate." No records were furnished for 1974. Enforcement Counsel declined to enter into the stipulation after examining the records, but suggested that Respondents' counsel submit the documents for the record.

B. The Proposed Exhibit

The proposed exhibit consists of 92 pages of copies of hand-written data, on looseleaf paper, legal paper, and bond paper, all without company insignia. No original documents have been furnished. In the absence of the originals, it is impossible to tell whether the same ink was used throughout all columns of each document.

In general, the 1972 and 1973 "daily mix sheets" present data in five untitled columns, containing: 1) an unidentified two-digit figure (after 11/20/72); 2) an unidentified three-digit figure; 3) a date; 4) an unidentified five-digit figure; and 5) a statement with respect to "parts ATH" (Both 150 and 300). In some instances, the order of presentation of the data varies, so that the "number of parts ATH" precedes rather than follows the unidentified five-digit figure. The numerals representing "parts ATH" appear to the naked eye to be somewhat smaller than the figures in the surrounding or preceding columns.

In general, the "weekly inventory sheets" contain two columns of data. The left-hand column separately lists various components and inventories thereof, in unidentified five-digit units. The right-hand column is designated "mixed latex" and includes separate entries for "Hyd. 150 parts" and "Hyd. 300 parts". The source of the initial figure, to which an unidentified amount (in unidentified five-digit units) is generally added, and from which combined total the "amount used" (in unidentified five-digit units) is generally subtracted, is not stated. Examination of the documents in succession reveals that in some, but not all, instances the final figure from each computation is carried over to the next page and appears thereon as the initial unidentified figure.

None of the data sheets contains any reference to Barrett Carpet Mills or to Paradise Valley foam-backed carpet or any individual rolls thereof. There are no "daily mixing sheets" for seven of the 16 dates on which Masterpiece finished Paradise Valley carpeting in 1972 and 1973.

## ARGUMENT

### I. THE PROPOSED EXHIBIT IS NOT ADMISSIBLE IN EVIDENCE BECAUSE THE DOCUMENTS CONTAINED THEREIN ARE UNRELIABLE AND IRRELEVANT

#### A. Introduction

Under both the CPSC Rules of Practice and the Administrative Procedure Act, the power to receive and reject evidence at adjudicative hearing is vested in the Presiding Officer. CPSC Rules 1025.62(a)(4); 5 U.S.C. 556(c)(3). The standard for admissibility under the Commission rules is that "Relevant, material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, cumulative, and unduly repetitious evidence shall be excluded." CPSC Rule 1025.63(b). We show below that the documents comprising Respondents' Proposed Exhibit No. 36 are inadmissible under this Rule.

#### B. The Proposed Exhibit Is Unreliable

"Reliable" evidence is evidence which is trustworthy and deserving of confidence. Black's Law Dictionary; National Dairy Products, 15 Ad. L.2d 125, 132 (FTC 1964). We submit that Respondents' Proposed Exhibit No. 36 satisfies neither criterion.

Initially, the bona fides of the proposed exhibit are highly questionable. As shown above, the originals of the documents have not been introduced; the copies that were submitted are undated, unsigned and on unofficial paper; the penmanship used in the ATH entries appears different from that in the remainder of the documents,

thereby suggesting that the ATH entries were inserted at a date subsequent to the initial preparation of the documents; handwriting analysis and comparison of inks are impossible because the originals have not been furnished.

Moreover, the sudden appearance of these documents has never been explained. Before the Hearing, Respondents' counsel informed Enforcement Counsel that Masterpiece Finishing, Inc. records for the period in question were "not available." Amended Joint Stip. No. 15. At the Hearing, the documents were not produced and Respondents' witness testified that documents containing the information presented did not exist. Now Respondents are offering documents that purport to record the "non-existent" information.2/ We submit that this belated proffer merits no credence.

Furthermore, the documents constitute incompetent evidence. As Enforcement Counsel noted in objecting to the admission of the 1974 records, no foundation has been laid for their admission. The documents are unsigned, undated, and unsponsored. If their

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2/In the event of a decision to admit Proposed Exhibit 36, we believe that its sole function can be impeachment of the credibility of witness Bartenfeld.

author has been identified,3/ he has never come forward to testify and withstand cross-examination. In light of the importance of the issue of authenticity, the documents should be excluded because of the unavailability of the preparer. C.F. Woody Fashions, Inc., 4 Ad. L.2d 507, 508 (FTC 1954).

Nor are the documents admissible as business records, as Respondents apparently contend. Tr. 1074. Three pre-requisites must be satisfied to permit admission of business records: (1) The offeror must establish that the records were kept in the regular course of business; (2) a custodian must testify to adequately authenticate their accuracy and explain the efforts employed to ensure such accuracy; and (3) the entries must be made contemporaneously with the transactions recorded. United States v. Blake, 488 F.2d 101, 105 (5th Cir. 1973), and cases cited therein; Hiram Ricker & Sons v. Students Int'l. Meditation Society, 501 F.2d 550, 554 (1st Cir. 1974); see also 5 Wigmore, Evidence § 1522-1528. Respondents have failed to satisfy any of these pre-requisites. There is no indication from the records as to who made the entries, when they were made,

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3/At the Hearing, witness Bartenfeld testified that the 1974 records to which he referred were prepared by his subordinate, "compounder" Ralph Houston. It is not clear whether Mr. Houston is also alleged to have prepared the 1972 and 1973 documents.

or what procedures were employed to verify the entries. No custodian has testified about their contents. Thus, in the absence of even minimal authentication, the reliability of the documents has not been established. Blake, supra at 105.

C. The Proposed Exhibit is Not Probative

The Federal Rules of Evidence define relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, Federal Rules of Evidence. Similarly, "materiality" has been defined as "the property of substantial importance and it has been said that evidence is material where it is relevant and goes to the substantial matters in dispute or has a legitimate effect on the decision of the same." U.S. v. DeLucia, 256 F.2d 487, 491 (7th Cir. 1958). Thus, in effect, the test of both relevancy and materiality is probative value.

Respondents contend that Proposed Exhibit 36 establishes that "there was no possibility that Style 222, Paradise Valley, was finished without alumina trihydrate...." Respondents' Memorandum at pp. 1-2. To the contrary, we submit that the proposed exhibit completely fails to demonstrate that alumina trihydrate was ever used on Paradise Valley carpet and that accordingly, it should be excluded from evidence because it is not probative.

As indicated above, none of the 92 documents included in Proposed Exhibit 36 contains any reference to Barrett Carpet Mills, Paradise Valley carpet, or any individual rolls thereof. At best, the documents indicated that Masterpiece Finishing, Inc. was using alumina trihydrate at some times during the period when it finished Paradise Valley carpet. We submit that the absence of a direct link between these records and Paradise Valley carpet negates their probative value.

In addition, the documents cannot stand on their own. They are illegible, unclear, and unidentifiable. The absence of titles, unit descriptions, legends, or other identifying indices renders them incomprehensible. Thus, if admitted, the documents would only serve to obfuscate rather than to clarify the record.

Indeed, if anything, these documents establish that alumina trihydrate was not used on all Paradise Valley foam-backed carpet. The Amended Joint Stipulation establishes that Paradise Valley Carpet was finished by Masterpiece on 16 dates in 1972 and 1973. Amended Joint Stipulation No. 33. But the daily mixing sheet for September, 1972 contains no statement with respect to use of ATH. The daily mixing sheets that allegedly pertain to six additional finishing dates (January 10, 1973; February 14, 1973; March 21, 1973; July 18, 1973; December 5, 1973; December 10, 1973) show that the

last use of alumina trihydrate occurred at least five days (and as much as seven weeks) before the finishing date.4/ Respondents' witness Bartenfeld testified that Masterpiece did not ordinarily retain possession of unfinished carpet for more than a day or two. Tr. 1070-1071. Thus, either no ATH was used on Paradise Valley carpet finished on any of the seven dates enumerated above, or the daily mixing sheets are incomplete. In either event, the records are not probative of the use of ATH in Paradise Valley carpet finished on the dates in question.

Finally, Respondents' failure to authenticate these documents negates their probative value. The Administrative Procedure Act requires that orders must be "...supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. 556(d). Incompetent, unauthenticated documents, even if admitted into evidence "for what they are worth", cannot serve as the basis for findings in the absence of corroboration. As the Supreme Court has noted, "the assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence

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4/It is not our intention here to question the stipulated fact that Masterpiece finished Paradise Valley carpet on the dates enumerated in Amended Joint Stipulation No. 33. We contend only that the documents are not probative of the use of alumina trihydrate on the finishing dates in question.

having rational or probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence." Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 230 (1938). Plainly, these documents are unreliable and insubstantial. Since they cannot be relied upon as a basis for decision, there is no reason to confuse the record by admitting them into evidence.

## II. ENFORCEMENT COUNSEL HAVE NEVER AGREED TO THE ADMISSION INTO EVIDENCE OF RESPONDENTS' PROPOSED EXHIBIT 36

Respondents suggest that Enforcement Counsel agreed at the Hearing to the admission into evidence of all available Masterpiece "compounding records." Respondents' Motion at p. 1, para. 2. In fact, Enforcement Counsel specifically objected to the introduction of testimony concerning Masterpiece's 1974 records because no foundation had been laid for their introduction. Tr. 1073-1074. The transcript of the hearing further indicates that Enforcement Counsel took no part in any "agreement" to submit such records. Rather, Respondents' counsel proposed to provide the documents to Enforcement Counsel for "examination...and for the possible inclusion in the record...." The Presiding Officer assented to the proposal. Enforcement Counsel offered no comment. Tr. 1114.

Respondents further imply that Enforcement Counsel agreed to the admission of the documents during discussion of a proposed stipulation based upon the documents. Respondents' Motion at p. 3 para. 1. This suggestion lacks any basis in fact. Enforcement

Counsel did suggest that the documents be submitted for the record. However, this suggestion did not constitute an agreement to the admission of the documents into evidence.

The facts are as follows. On March 5, 1976, Respondents, furnished copies of the documents to Enforcement Counsel and proposed entry of the following stipulation, to be based on the documents: "the latex precoat in all Paradise Valley foam-backed carpeting finished by Masterpiece in 1972 and 1973 contained 150 parts of alumina trihydrate." Enforcement Counsel declined to enter into the stipulation because they believed that the documents did not substantiate Respondents' contention. In refusing to stipulate, Enforcement Counsel suggested that Respondents submit the documents for the record.5/ However, Enforcement Counsel did not indicate that they agreed to the admission of the documents.

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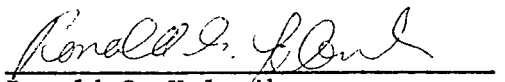
5/We note that Respondents failed to act on Enforcement Counsel's suggestion for a month. Meanwhile, on March 10, 1976, Respondents' Counsel submitted a post-hearing brief in which he referred to and relied on the now-proposed exhibit. Somewhat belatedly, on April 7, 1976, Respondents' Counsel moved the admission of the Exhibit.

## CONCLUSION

For the foregoing reasons, Enforcement Counsel urge that the Presiding Officer reject Respondents' Proposed Exhibit No. 36, and that he strike all portions of Respondents' post-hearing brief which refer to or rely on the proposed exhibit.

Respectfully submitted,



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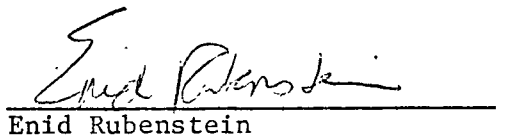

Enid Rubenstein

Enforcement Counsel
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Washington, D.C. 20207

Dated: April 19, 1976

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a copy of Enforcement Counsel's Opposition to Respondents' Motion to Admit Certain Documents and the supporting memorandum by mailing a copy, postage prepaid, to Richard H. Gimer, Esq.

Enid Rubenstein

Enid Rubenstein

Dated: April 19, 1976

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

CPSC DOCKET NO. 75-5

IN THE MATTER OF

BARRETT CARPET MILLS, INC.,
a corporation, and
ROY C. BARRETT, individually
and as an officer of the
corporation

# ENFORCEMENT COUNSEL'S ANSWERING BRIEF

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## PRELIMINARY STATEMENT

On July 18, 1975, the Consumer Product Safety Commission issued a Notice of Enforcement charging Barrett Carpet Mills, Inc., a corporation, and Roy C. Barrett, individually and as an officer of respondent corporation, with the manufacture for sale, offer for sale and/or sale, in commerce, of carpet known as Style 222 Paradise Valley (foam-back) (hereinafter, Paradise Valley or Style 222) which failed to meet the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70), 16 CFR Part 1630 (hereinafter the Carpet Standard or Standard), in violation of Section 3(a) of the Flammable Fabrics Act, 15 U.S.C. 1192(a), and Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45(b). Respondents filed their Answer to the Notice of Enforcement on August 11, 1975, denying the charges and raising several affirmative defenses. A hearing was held in Washington, D.C. from February 2 to 13, 1976.

The Initial Decision and Order of the Presiding Officer was issued on July 8, 1976. The Order requires Respondents:

(1) to cease and desist from the sale of Paradise Valley (foam back) carpet;

(2) to notify known purchasers and/or possessors of carpet produced by Respondents of Style Paradise Valley on July 18 and December 10, 1973, that such carpet had failed flammability testing;

(3) to recall carpet finished on July 18 and December 10, 1973 from wholesalers and/or retailers;

(4) to sample for testing, carpet from each finishing day not previously tested, which remains in the channels of commerce; and

(5) to submit certain specified production data to the Commission. The Order failed to require Respondents to recall all carpet of Paradise Valley style from distributors, retailers and the ultimate consumer, despite Enforcement Counsel's urging that such recall is essential. Although the decision contains no express finding to this effect, the decision and order necessarily imply that the Presiding Officer concluded that Respondents violated Section 3(a) of the Flammable Fabrics Act by manufacturing for sale, selling and/or offering for sale in commerce carpet which failed to conform to the requirements of the Carpet Standard.

By an Order dated August 5, 1976, the Commission placed the case on its docket and certified seven issues to be briefed by the parties (Appendix 1). Respondents subsequently filed a Motion for Clarification of Order or Enlargement of Issues to be Heard. The Commission ruled on September 7, 1976 that Respondents' motion would be treated as a Notice of Intention to Appeal. Enforcement Counsel intend this brief to provide a complete response to the seven issues certified by the Commission, while at the same time addressing those matters raised by Respondents in their appeal brief.

The Issues fall into two broad categories: First, whether the Commission has the authority to order a recall of products which fail to meet a safety standard, and, if so, to what extent and under what circumstances? Second, whether the record below warrants the issuance of a broader or narrower cease and desist order against Respondents, and, if so, in what respects? The sixth of the seven issues is, "Whether the findings, conclusions and

order of the Administrative Law Judge are in conformity with the evidence presented." As we interpret Issue #6, it must be answered in the context of the other six issues. In addition, a complete response to Issue #6 requires consideration of possible errors in the record below which might be the subject of an appeal.

Section I contains Enforcement Counsel's response to Issue #1, 5 and 7. (Appendix 1).

Section II supports the conclusion of the Presiding Officer that the record below establishes that Respondents violated the Flammable Fabrics Act and should be placed under a cease and desist order.

Section III contains Enforcement Counsel's response to Issues 2 and 3.

Sections IV and V contains Enforcement Counsel's response in part to Issues 4, 6 and 7.

Section VI contain Enforcement Counsel's response to Issue 6.

Attached hereto as Appendix 2 are Enforcement Counsel's Proposed Findings of Fact in this matter which were originally filed in the Office of the Secretary on April 1, 1976. Such proposed findings are a part of the record and are provided here to present the Commission with the facts as Enforcement Counsel view them and to assist the Commission with pertinent page references to the record as a whole.

## SUMMARY ARGUMENT

Enforcement Counsel maintain that the two issues before this Commission are "Did Barrett Carpet Mills violate the law?" and "What the appropriate remedy is when the law has been violated?" As discussed subsequently, a violation of a standard is a violation of the law. There is no dispute that Barrett Carpet Mills manufactured and sold carpet which did not comply with the law (Stip. paras. 31, 32, 35). Given this fact, the Commission must decide whether a manufacturer like Barrett Carpet Mills who introduces carpet into commerce, which violates the federal flammability standards and thereby creates an unreasonable risk of injury to the public, must bear the burden of recalling that carpet from its customers. If the Commission decides that the manufacturer should not recall such carpet, the Commission has decided that the unreasonable risk created by the manufacturer must be born by the unsuspecting consumer. Enforcement Counsel maintain that the burden must fall on the manufacturer under whose control the unsafe carpeting was manufactured. Enforcement Counsel maintain that the Presiding Officer erred in his ruling to the contrary.

This Commission has been entrusted with broad authority to frame remedies for unlawful practices which leave the consuming public vulnerable to unsafe products. As the Supreme Court stated in Jacob Siegel Co. v. F.T.C., 327 U.S. 608 (1946):

> . . . the Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist. 327 U.S. at 612-13.

In the case of Barrett Carpet Mills, where expert testimony was introduced that approximately 46% of the carpet of Paradise Valley style would fail flammability testing; recall of the failing Paradise Valley carpet style from distributors, retailers and the ultimate consumer is the only remedy which will adequately protect the public. A cease and desist order including full recall is consistent with the responsibilities and restrictions imposed on the Commission by law, with Commission policy and precedent, and with the specific facts which gave rise to this proceeding.

As will be pointed out subsequently the Commission is not bound by the Presiding Officer's decision and is free make its own decision based upon substantial evidence in the record.

## I. THE PRESIDING OFFICER SHOULD HAVE ORDERED RECALL OF ALL CARPET OF STYLE 222 PARADISE VALLEY FROM DISTRIBUTORS, RETAILERS AND THE ULTIMATE CONSUMER. (Responses to Issues # 1, 5 and 7)

### A. The Commission has legal authority to order recall from distributors, retailers and the ultimate consumer.

Enforcement Counsel maintain that an order to recall Style 222 Paradise Valley carpet, whether in the hands of distributors or consumers, and whether installed or uninstalled, is within the authority of this Commission and is the only relief, under the circumstances of this case, which will effectively protect the safety and welfare of the general public. The Presiding Officer failed to reach this question below because of his conclusion that:

> Staff Counsel was unable to sustain its burden of proof to establish that carpet which fails the standard presents an unreasonable risk of occurrence of fire . . . . Initial Decision at p. 23.

The Presiding Officer was in error when he reached the conclusion quoted above. As discussed in this brief at pp. 34, infra, and in the two earlier briefs submitted by Enforcement Counsel, the Department of Commerce determined as a prerequisite to the issuance of the Standard that carpet which does not conform to the Standard creates an unreasonable risk of fire. Therefore, Enforcement Counsel had the burden of proving only that carpet produced by Respondents failed to meet the acceptance criterion of the Standard. And that burden was met. Since the risk posed by Paradise Valley carpet was established by substantial evidence below, the cease and desist order imposed by the Presiding Officer should have included recall.

#### 1. The Commission has broad authority to fashion remedies

The Federal Trade Commission has consistently been given great latitude in formulating cease and desist orders under the Federal Trade Commission Act.

The judgment of the Agency has not been disturbed unless the remedy selected was clearly unrelated to the wrong. Since violations of flammability standards are enforceable pursuant to the Federal Trade Commission Act, 15 U.S.C. 1194, this Commission's authority is as broad as that exercised by the Federal Trade Commission.

The classic statement by the Supreme Court regarding such agency authority appears in Jacob Siegel Co. v. F.T.C., 327 U.S. 608 (1946), where the Supreme Court states at page 612-13:

> . . . The Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist.

The Supreme Court reaffirmed the existence of this broad power in F.T.C. v. Ruberoid Co., 343 U.S. 470 (1952), where it states:

> Congress placed the primary responsibility for fashioning such orders upon the Commission, and Congress expected the Commission to exercise a special competence in formulating remedies to deal with problems in the general sphere of competitive practices. Therefore we have said that 'the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist.' 343 U.S. at 470, 473.

The Court has continually affirmed the F.T.C's authority to devise remedies to achieve the statutory policy of the statutes which it administers. F.T.C. v. Colgate-Palmolive Co., 380 U.S. 374 (1965); F.T.C. v. Mandel Bros., 359 U.S. 385 (1959); Moog Industries v. F.T.C., 335 U.S. 411 (1948); F.T.C. v. National Lead Co., 352 U.S. 419 (1957); Carter Products, Inc. v. F.T.C., 268 F.2d 461 (9th Cir.), cert. denied, 361 U.S. 884 (1959).

In the Carter Products case, supra, the Ninth Circuit Court of Appeals stated at page 498 that:

> Shaping a remedy is essentially an administrative function. Congress has entrusted the Commission with the responsibility of selecting the means of achieving a statutory policy -- the relation of remedy to policy is peculiarly a matter for administrative competence.

The supremacy of administrative selection of a remedy is not a new concept. In Herzfeld v. F.T.C., 140 F.2d 207 (2d Cir. 1944), Judge Learned Hand stated that:

> . . . administrative tribunals possess competence in their special fields which forbids us to disturb the measure of relief which they think necessary. In striking that balance between the conflicting interests involved which the remedy measures they are for all practical purposes supreme . . . .

The Presiding Officer's concern that "in 1970, when the Standard was drafted, no Federal Agency had statutory authority to recall flammable carpet . . . ." (Initial Decision at p. 14), is without justification. The drafters of the Standard did not draft a document which dictated specific remedies for its violation. Rather, in keeping with the tradition of administrative agency practice, they created the standard of conduct but left the remedy to the agency's discretion.

2. The Federal Trade Commission has consistently exercised the cease and desist power to require affirmative conduct by those who have violated the FTCA.

The Federal Trade Commission has long recognized in its cease and desist orders that a mere prohibition against the repetition of past misconduct is often insufficient to "eliminate the unfair or deceptive trade practices" on the part of a respondent. Frequently, although respondents' act of misconduct

is complete, the harm which it has generated continues to affect the public. Consequently, the FTC has considered and effectuated a wide variety of remedies pursuant to its cease and desist power, which have involved corrective action on the part of the law violator. A long line of cases confirms the authority of the Federal Trade Commission, and consequently of the Consumer Product Safety Commission, its successor in administering the Flammable Fabrics Act, to promulgate such orders. See e.g., L.G. Balfour Co. v. F.T.C., 442 F.2d 1 (7th Cir. 1971) (order requiring divestiture); Charles Pfizer and Co., Inc. v. F.T.C., 401 F.2d 574 (6th Cir. 1968), cert. denied, 394 U.S. 920 (order requiring compulsory licensing of a patent on a reasonable royalty basis); Luria Bros. & Co., Inc. v. F.T.C., 389 F.2d 847 (3d Cir.), cert. denied, 393 U.S. 829 (1968) (order limiting the purchases of certain products between respondents).

The Federal Trade Commission has also issued cease and desist orders requiring affirmative disclosures where respondents have been found to have published false advertising. The Federal Trade Commission has consistently asserted its authority to require corrective advertising. In Campbell Soup Co., 77 F.T.C. 664 (1970), the FTC stated:

> We have no doubt as to the Commission's power to require such affirmative disclosure [corrective advertising] when such disclosures are reasonably related to the deception found and are required in order to dissipate the effects of that deception. Id. at 668.

A year later, it stated again that it was well within its authority to issue a corrective advertising order

> if its purpose and effect is to terminate continuing injury to the public. This continuing injury may be in the form of lingering effects which a misrepresentation may have on

> consumers' minds or in the form of a lessening of competitive vigor in the marketplace due to the deceptive practices. Under such circumstances, the appropriate relief is that which will terminate the continuing injury to the public. The Firestone Tire & Rubber Co., 81 F.T.C. 398, 470 (1972), aff'd, 481 F.2d 246 (6th Cir. 1973), cert. denied, 414 U.S. 1112 (1974). (Commission's emphasis)

The power of the FTC in corrective advertising cases has been upheld by the courts. Waltham Watch Co. v. FTC, 318 F.2d 28 (7th Cir. 1963), for example, involved an American watch manufacturer which sold its trade name and trademark to a new corporation. The new owner of the name "Waltham" sold imported watches under that name without disclosing their foreign origin. The FTC's order required respondents

> to cease and desist from using or authorizing any person to use the name of "Waltham" in connection with the sale of clocks or other products unless the public is clearly warned by a statement immediately in connection therewith that the product is not manufactured by the Waltham Watch Company of Waltham, Massachusetts. Id. at 31.

In upholding this order, the court commented that:

> . . . we should keep in mind the well-established general principle that the Commission may require affirmative disclosure for the purpose of preventing future deception, and the Commission may fashion orders broad enough to close all roads to the prohibited goal. Id. at 32.1/

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1/ See also, J.B. Williams Co. v. FTC, 381 F.2d 884 (6th Cir. 1967) (Geritol ads must affirmatively disclose, inter alia, that a great majority of persons who experience advertised symptoms do not do so because of iron deficiency); Feil v. FTC, 285 F.2d 879 (9th Cir. 1960) (anti bed-wetting device ads must affirmatively disclose that device only works in bed-wetting cases not involving organic diseases or defects); Ward Laboratories, Inc. v. FTC, 276 F.2d 952 (2d Cir.), cert. denied, 364 U.S. 827 (1960) (anti-baldness preparation ads must affirmatively disclose that product is ineffective for nearly all cases of baldness).

The FTC has recently utilized its authority to command affirmative action through a cease and desist order in Warner-Lambert Co., Trade Reg. Rep. Para. 21,066, at 20,926 (F.T.C. 1975). In that case, Respondents were charged with falsely advertising that Listerine mouthwash, which it manufactured, cures colds and sore throats and/or minimizes their severity. The evidence showed both that the claims were untrue, and that they were believed by a high percentage of the consuming public. The evidence further demonstrated that the residual effect of the Listerine advertisements would linger for years after the advertisements were discontinued. To remedy this continuing injury, the FTC ordered corrective advertising:

> Since this injury cannot be averted by merely requiring Respondent to cease disseminating the advertisement, we may appropriately order Respondent to take affirmative action designed to terminate the otherwise continuing ill effects of the advertisement. Id. at 20,935.

3. The Commission has recognized in its past decisions that it possesses recall authority

The opinions of this Commission, and indeed, of the Presiding Officer herein, have recognized that the Consumer Product Safety Commission does have the legal authority to order recall of a product which fails to comply with a flammability standard. In In the Matter of Congoleum Industries, Inc., Docket No. 8896 (CPSC decided July 14, 1975) (Final Decision of the Commission), the Commission stated that it considers authority to order a recall to be one of its "inherent powers." Id. at 2. The Commission further stated that:

> (it) can only adequately protect the public from serious personal injury, death, or property damage associated with the violative items if it can ensure that, to the extent practicable, the public is notified of the flammable nature of the items and that the items are recalled to the fullest extent practicable from consumers, distributors, and retailers. Id. at 202 (Emphasis added.)

The Presiding Officer in the Congoleum case, whose opinion was adopted in toto by the Commission on review, recognized that:

> [f]or the Commission to carry out the purpose of the Act effectively, the recall of flammable carpet is a requisite . . . . Congoleum, Nov. 12, 1974 at 24.

He states at a later point in his opinion that "the statutory scheme must contemplate recall."

The Commission has also utilized its recall authority with respect to mattresses which failed to meet the Standard for the Flammability of Mattresses (and Mattress Pads) (FF 4-72), 16 CFR Part 1632. In In the Matter of Charles Castro, Docket 75-2 (CPSC, decided Sept. 19, 1975) (Initial Decision), the Presiding Officer issued the following order:

> IT IS FURTHER ORDERED that Respondent elect between offering all such consumers a full refund of their purchase price or the replacement of said mattresses, or making arrangements for the attachment of the missing labels required by FF 4-72 . . . . Id., Order at 4.

The Commission upheld the view of the Presiding Officer with respect to recall in the Castro case. In the Matter of Charles Castro, Docket No. 75-2 (CPSC, decided Jan. 29, 1976) (Final Decision of the Commission). In so doing, it stated that the

> purpose of a recall and repurchase order is to get violative products out of the hands of purchasers and, thereby, to prevent future personal injury. Id. at 4.

Respondents erroneously rely on Heater v. FTC, 503 F.2d 321 (9th Cir. 1974) to support their argument that the Commission lacks recall authority. In that case, the federal court set aside a Federal Trade Commission order directing Respondent to give restitution of money obtained throughout the fradulent procurement of a contract. The court was influenced by the con-

siderations that (1) the FTC Act was not designed to provide redress to individuals wronged by unlawful trade practices; and (2) such an order would subject respondent to retroactive liability for conduct determined after the fact to have been unlawful. Neither of these factors characterize the Barrett case. The order proposed by Enforcement Counsel, including recall to the floor, is not intended to compensate the carpet owner but to provide future protection to the consuming public. Moreover, unlike the Heater case, in Barrett the unlawful conduct is clearly delineated in a published Federal Standard.

Respondents make the specious argument that the CPSC has no authority to fashion a remedy which extends to flammable products that are no longer in commerce. The Commission affirmed such remedies ordered by the Presiding Officers in both Congoleum and Castro. In each of those cases, jurisdiction had been established under section 3 of the FFA, 15 U.S.C. 1192. In the instant case, jurisdiction has been similarly established. After manufacturing their carpet, Respondents shipped it in commerce. If the law were to be interpreted as Respondents suggest, there would be constant races between the CPSC and manufacturers of flammable fabrics. Carpet manufacturers would be able to put flammable carpet on the market in the hope that it would avoid detection until all or most of it were sold to ultimate consumers. Then, once it was sold, the Commission would be unable to pursue the manufacturer or do anything to protect the general public who would be coming in constant contact with the hazardous product. The Commission's jurisdiction cannot be interpreted so as to create such an anomalous situation.

B. Recall is consistent with Commission policy and is warranted on the facts of this case

Recall of failing carpet is fully consistent with the Commission's enforcement policy and is compelled by the factual record below. On May 17, 1973, responsibility for the enforcement of the Flammable Fabrics Act, as amended, was transferred from the Federal Trade Commission to the Consumer Product Safety Commission. Shortly thereafter, pursuant to Section 30(e)(2) of the CPSA, 15 U.S.C. 2079(e)(2), the CPSC substituted its own enforcement policy for that of the FTC (38 F.R. 24923) (September 11, 1973), which was subsequently codified as 16 CFR Part 1602.1, 40 F.R. 59885, December 30, 1975. CPSC's flammable fabrics enforcement policy provides, in pertinent part, that the Commission intends to discharge its responsibilities:

> Vigorously, expeditiously, and without compromise in order to protect the public from hazards to life, health and property caused by dangerously flammable products . . . . 16 CFR 1602.1(b), 40 F.R. 59885 (Dec. 30, 1975).

In every instance, it will use any and all appropriate enforcement procedures available under the act without qualification or modification, 16 CFR 1602.1(c), 40 F.R. 59885 (Dec. 30, 1975).

The Commission can only adequately protect the public from serious personal injury, death, or property damage associated with the violative items if it can ensure that, to the extend practicable, the public is notified of the flammable nature of the items and that the items are recalled to the fullest extent practicable from consumers, distributors, and retailers.

By requiring notification and recall, the Commission prevents the continuing danger to the public from items that have been found to violate the Flammable Fabrics Act. If it were otherwise, innocent consumers would be subjected in the future to harmful effects of the past violations of the Act.

In the Matter of Congoleum Industries, Inc. was the first fully "litigated" carpet standard case in the history of FFA enforcement. That case was initiated by the F.T.C. and subsequently transferred to the CPSC when the CPSC acquired responsibility for enforcement of the FFA. On July 14, 1975, the CPSC issued its Opinion in the Congoleum case and, at pages 2 and 3, stated, for the record, its more refined FFA enforcement policy:

> ...The Commission can only adequately protect the public from serious personal injury, death, or property damage associated with the violative items if it can ensure that, to the extent practicable, the public is notified of the flammable nature of the items and that the items are recalled to the fullest extent practicable from consumers, distributors, and retailers.
>
> By requiring notification and recall, the Commission prevents the continuing danger to the public from items that have been found to violate the Flammable Fabrics Act. If it were otherwise, innocent consumers would be subjected in the future to harmful effects of the past violations of the Act.
>
> The purpose of the notification and recall provisions is not punitive. Although recall and notification may entail some cost to the respondent, the cost involved is only incidental to the need to protect the public.

The Presiding Officer's decision not to order recall from the ultimate consumer is inconsistent with the law and without logical justification. His decision gives no factual or legal rationale for ordering partial recall from distributors and retailers but no recall from the ultimate consumer. Moreover, if the carpet should no longer

be manufactured, and if it should be recalled from retailers and distributors, it surely must be recalled from the consumer's home for it is there that the risk will materialize, that the fire might take place.

There is no basis for Respondents' assertion that the imposition of a recall order against Barrett Carpet Mills would constitute a sudden change in this Commission's enforcement policy. The Proposed Order attached to the Notice of Enforcement against Respondents reflects the Commission's consistent policy to effectuate a recall of violative items from purchasers and consumers. Since the Notice of Enforcement and Proposed Order was issued, other similar documents have been authorized by the Commission. See, for example, In the Matter of Westland Carpet Mills, Inc., Docket No. 75-21 and In the Matter of O. N. Jonas Co., Inc., Docket No. 75-20. The Commission has also authorized the Staff to enter into negotiations with a view to obtaining consent agreements against three other carpet manufacturers, all of which agreements include recall provisions.

Respondents misconstrue the decision in Congoleum as establishing "the outer limit to compel recall in cased involving carpet." Respondents' Appeal Brief at p. 26. Although the Commission has authority in every case to compel

a respondent in an FFA case to notify the public of the violative nature of the product, and at the same time, offer recall of the product from the ultimate consumer, it is not necessary to utilize such a remedy in every such case. 2 / In In the Matter of Congoleum Industries, Inc, supra, for example, although the Commission ordered the Respondent to notify ultimate consumers, distributors, wholesalers, and retailers of the flammable nature of the carpet, it decided against requiring recall of carpet that had already been installed. In arriving at that decision, the Commission was clearly influenced by the proportion of passing to failing samples. Out of the 118 tests performed in Congoleum, only 4 samples failed to meet the Standard. Judge Hanscom concluded from this evidence (at page 23 of his Initial Decision) that the preponderance of the already marketed carpet in question complied with the Standard. Moreover, in the Congoleum case, a large number of rolls of the carpet in question were still in the distribution chain and could be recalled from distributors, wholesalers, and retailers to undergo roll-by-roll testing.

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2/ An administrative agency need not claim all the authority legally available to it at one time. See FTC v. Dean Foods Co., 384 U.S. 597, 610-11 (1966); United States v. du Pont & Co., 353 U.S. 586, 590 (1957).

Given that set of circumstances, the Commission determined that notification to ultimate consumers would suffice and that recall from the ultimate consumer was not imperative to protect the public.

A substantial number of samples of Paradise Valley carpet were subjected to testing in the CPSC flammability laboratory and half of the samples tested failed to meet the requirements of the Carpet Standard. According to expert testimony at the trial, at least 46% of the untested Paradise Valley carpet would, if tested, fail to meet the Standard. Moreover, unlike the situation in Congoleum, the entire production run of Style 222 has already been installed in the homes of consumers (Tr. 651) and cannot be recalled for roll by roll testing. Based on these facts, the Commission must issue a cease and desist order which utilizes the full range of remedies available to it, including the remedy of recall. The objective of the FFA is to prevent consumers from being injured as a result of flammable products. There is no way that this goal can be achieved without recall.

C. The purpose of recall is to protect the public from harm, not to compensate the purchaser of the unsafe product.

A mere warning to owners of Paradise Valley carpet that their product is unsafe will not be effective to remove this flammable product from the floors where it has been installed. While such a notice would -- and should -- gravely concern the recipient, it is unrealistic to conjecture that the Government could achieve its objective of eliminating the safety hazard when the initiative and expense is left to the consumer. The poor

can ill afford safety when it requires disposal of an item which cost hundreds and often thousands of dollars. Where the purchaser of the carpet is a commercial establishment or common carrier, the risk of danger directly affects its patrons, who are powerless to require that the carpet be safe. But wholly apart from the impracticality of this solution and of far greater significance is the inequity of such a solution. The question was posed earlier, who should bear the risk of the unsafe product, the manufacturer or the consumer? Can there be any other answer than that it should be the manufacturer? The manufacturer alone is in the position to protect against the risk, both in his manufacturing process and by testing his product to measure its safety.

Enforcement Counsel do not dispute Respondents' contention that the Commission's authority "does not extend to punitive sanctions or to the award of compensatory redress." Respondents' Appeal Brief at p. 5. However, the purpose of a recall order is not to impose a penalty on the manufacturer or to provide compensation to a consumer for the risk he unknowingly sustained in the past. Although recall does impose a cost on the Respondent, it is a cost arising out of the need to eliminate a continuing hazard and to prevent future injury. The only equitable way to ask purchasers to return their flammable carpet is by accompanying recall with an offer for the refund of the full purchase price or for replacement of the carpet with a like carpet which conforms to the Standard.

There is no basis in the record for Respondents' assertion that the Commission's policy of recall is intended to impose compensatory damages, rather than to serve the public interest. If the Commission intended to impose a damage award, it would have ordered Respondents to compensate owners

based on the difference in value between complying and non-complying carpet -- to quantify in dollars the risk to which they had been exposed during their period of use of the carpet. It is clear, however, that the Commission's sole objective has been to get flammable products out of the home and to prevent the possibility of fires started by or contributed to by carpet.

The Presiding Officer raises several arguments against recall to the ultimate consumer. He states, first, that recall of non-conforming carpet would inconvenience the consumer. (Initial Dec. at p. 21) To say this is to suggest that recall would be imposed on the consumer as well as the manufacturer. It must be emphasized that Enforcement Counsel uses the term "recall" to mean the removal of non-complying goods <u>at the purchaser's option</u>. There is no obligation on the part of a consumer to participate in a recall campaign. The order would require the respondent to make recall available to consumers. Second, the Presiding Officer comments that refund of the 1972 purchase price of the carpet will probably not permit consumers to replace the carpet without substantial additional expense. There is no doubt that there would be a substantial discrepancy between the original purchase price and the replacement cost of carpet. While there may be differences between the original price and the replacement cost, this should not provide the manufacturer with a means of escaping responsibility for his unlawful conduct.

D. Recall should extend to all Paradise Valley carpet since it constitutes a "lot" within the meaning of the Carpet Standard.

1. The Presiding Officer's interpretation and application of the term lot is not in conformity with Commission precedent and policy.

Although the term lot is not defined in the Carpet Standard, Sydney Greenfeld, one of the drafters of the Standard, testified during the hearing that the term was intentionally left undefined to allow those utilizing the Standard the leeway to formulate policy on the basis of need and experience (Tr. 1173). It is the opinion of Mr. Greenfeld that the Carpet Standard can be properly administered on that basis (Tr. 1175).

The Federal Trade Commission, which originally had the responsibility for administering the Carpet Standard, acquiesced in the carpet industry's view and adopted their definition of lot to mean style for purposes of determining conformance with the Standard. In the Matter of Congoleum Industries, Inc., supra at Tr. 248, 249, 274. Like its predecessor agency, it is the policy of the Consumer Product Safety Commission to characterize the entire style from which a failing sample is obtained as failing carpet, unless competent proof is offered that the failures represent a smaller quantity of carpet. In the case at bar, no such evidence was offered by Respondents.

In the Initial Decision, In the Matter of Congoleum Industries, supra Judge Hanscom adhered to the Commission policy of equating lot with style. The Presiding Officer's adherence to such policy is reflected by the cease and desist order issued against the Respondents, which mandated the recall of available carpet from the entire style of Endureze 9133. The Commission, in adopting the Initial Decision in toto, expressed its continued

approval of the policy that lot equals style by denoting the entire style as failing.

> The Administrative Law Judge entered an order to cease and desist the unlawful practices and to obtain a sample from every roll of the violative style. Congoleum, Commission Decision, p. 1 (Emphasis supplied)

Respondents contend that the inclusion in the cease and desist order of a provision providing that samples from all available rolls are to be tested, and that the rolls from which failing samples are obtained are to be considered as failing rolls, signifies that the Presiding Officer adopted an order which defined lot as equivalent to roll instead of style. In taking this position, Respondents fail to take into consideration the facts upon which the Administrative Law Judge rested his decision. In Congoleum, there were a significant number of passing flammability tests. In light of this special set of circumstances, Judge Hanscom ordered the testing of available carpet rolls, in order to afford Respondents the opportunity to demonstrate that the remaining untested rolls were not violative, and that they should not be subject to the recall order. The inclusion of roll by roll testing by the Presiding Officer was merely an effort on his part to reduce the economic impact on the Respondents from recall or replacement and did not indicate that he equated lot with a roll of carpet.

In the instant case, Judge Pfeiffer erroneously concluded that a lot of Style 222 is equivalent to a finishing day rather thanthe entire style. He rested his decision primarily upon the grounds that the "evidence tended to show" that Style 222 flammability test failures were caused by a product defect which occurred during the finishing process on particular days; and that according to the Georgia Institute of Technology, the failures were apparently

caused by an uneven distribution of the flame retardant chemical, alumina trihydrate (ATH), to the backing of the carpet. In deciding that lot should be limited to finishing day, the Presiding Officer predicated his decision upon insufficient and unsubstantial evidence.

The record in the instant case is devoid of a direct clue as to the origin of the maldistribution of ATH. At page 12 of the Initial Decision, Judge Pfeiffer recognized this fact and acknowledged that the evidence is inconclusive as to what caused the problem. He suggested that the uneven distribution of ATH might have been caused by the settling of the latex precoat, a misalligned "doctor bar", a tight or loose weave, or other unknown factor. At a later point in the decision, the Administrative Law Judge dismissed the importance of determing the cause of the uneven distribution, when he stated at page 13, "It is not possible on this record, nor critical to the decision, to pinpoint the exact cause of the ATH maldistribution." Thus, without knowing the cause of the uneven distribution of ATH, Judge Pfeiffer accepted the Georgia Tech conclusion that the test failures were apparently produced by an uneven distribution of ATH. He did so despite the fact that the laboratory could not provide a better answer than to state that the failure of the carpet was "probably due to the lack of uniformity in the addition of ATH to the carpet backing" (Emphasis supplied).

At page 10 of the Initial Decision, Judge Pfeiffer acknowledged that "For Paradise Valley to pass the standard consistantly, it is necessary not only that a sufficient amount of ATH be present in the latex precoat, but that it be evenly distributed. In determining that the failures were caused by a

product defect which resulted in an uneven distribution of ATH, and that the failures were limited to two finishing days, the Presiding Officer assumed that ATH was in fact added to the latex precoat of the carpet on all other untested production dates on which Style 222 was finished and that it was uniformly applied. He made this assumption despite the fact that the record remains cloudly as to the addition and application of ATH. As late as two months subsequent to the close of the hearing, the Respondents in an effort to clarify the ATH question moved to introduce records regarding the finishing process of Style 222. In denying Respondents' motion, Judge Pfeiffer ruled that the proffered records were not properly authenticated and therefore did not possess sufficient probative value to warrant their admission into evidence. Morever, as Enforcement Counsel pointed out in their Opposition to Respondents' Motion for Admission of Certain Documents, the proposed exhibit consists of 92 pages of illegible hand written data; containing no reference to Barrett Carpet Mills, Style 222 carpet, or any of the individual rolls.

Assuming arguendo that ATH was added to the latex precoat of Style 222 on every day on which it was finished; and assuming that an improper distribution of ATH was the factor that caused the failure of the carpet analyzed by Georgia Tech; this does not signify that this same carpet problem was not present on other untested finishing days, nor does it mean that additional failures could not have been caused by other types of aberrations in the entire production process. This point is graphically illustrated by the results of the Georgia Tech neutron activation analysis which revealed that

both failing and passing Style 222 carpet samples contained an uneven distribution of the flame retardant chemical; the only difference being, that the average range in the ATH level of the failing samples somewhat exceeded the level in the passing samples. It is further exemplified by the lack of meaningful quality control precautions taken by Masterpiece Finishing Company during the finishing process and by Respondents generally throughout the carpet's production.

The only quality control measure employed during the finishing process was a viscosity check which was intended to determine whether the latex precoat as a whole was properly mixed. Such a test only indicates whether the filler containing the ATH is evenly distributed and not whether the ATH itself is evenly distributed. As Judge Pfeiffer stated at page 11 of the Initial Decision, "Respondents employed no quality control which would consistently insure the even distribution of ATH across the back of the carpet."

During the production process, Respondents did not perform any premarket flammability testing on Style 222. Since it is impossible to determine the flammable nature of carpet by any means other than by performing an actual test, Respondents failed to avail themselves of the opportunity for learning whether or not they were producing flammable carpet and placed the consuming public in possible danger (Tr. 1236). If Barrett had conducted flammability tests on the carpet it produced and could isolate the failures to specific finishing dates, it could rightfully make a claim that the failures were limited to those dates; since no such test were conducted, they cannot be heard to make any claim regarding the untested carpet.

The results of the neutron activation analysis and the inferior type of quality control measures employed by Respondents leads one to conclude that a quality control problem existed; however, from the state of the record it is impossible to conclude, as Respondents contend, that the failures were confined to two production days.

2. The statistical evidence introduced demonstrates that a substantial percentage of the lot would fail if tested for flammability

In the instant case, Ralph Madison, a statistical expert, testified that within a 95% level of certainty, at least 46% of the entire style would fail to conform to the flammability standard (Tr. 340). Although Judge Pfeiffer conceeded that the calculations contained in the statistical projection are unassailable, he nevertheless rejected the projection. He implied that the basis for his negation of the projection is that the underlying assumptions and, therefore, the ultimate conclusions, are in dispute. The Administrative Law Judge failed to describe the exact nature of the dispute referred to, but his reasoning can be gleaned from the context of the decision. Apparently, Judge Pfeiffer discounted the projection because he is of the opinion that a valid statistical survey of untested carpet cannot be made from failures caused by a production defect.

In drawing the conclusion that a statistical projection cannot be made from a production defect to a larger universe, Judge Pfeiffer ignored a principle which has been firmly rooted in statistical theory since the early part of the century. It is a basic precept of statistics that as long as a sample is selected in a random matter, a quantifiable factor (such as failures) can be statistically projected within certain levels of accuracy

through the use of statistical computation techniques. 3/ The aforementioned levels of accuracy are known as confidence intervals. In the instant case, Mr. Madison utilized the Newman-Pearson method in arriving at his statistical projections.

In making statistical projections regarding failures, the cause of the failure of the sample is unimportant; however, what is important is the randomness of the selection. Randomness is achieved by virture of the method by which the samples are obtained. The goal is to choose samples which will be representative of the larger universe or lot.

In the instant case, the samples obtained by CPSC investigators were secured from different sources on four different occasions and represent carpet manufactured on four distinct dates. Furthermore, the investigators who selected the samples had no preconceived notion as to whether the samples would pass or fail the flammability test. Thus, the manner in which the investigators selected the samples resulted in an unbiased and random selection of samples which were representative of the entire style.

Federal Courts of Appeals have held that facts may be proven by the use of statistical projections, when the sample is selected at random and when the level of confidence in making the projection is very high. Preston v. Mandeville, 428 F.2d 1392 (5th Cir. 1970). In Preston, supra, the Court of Appeals relied upon a statistical projection as grounds for reversing the decision of the District Court which had held that plaintiffs had failed to meet their burden of proving jury discrimination. In

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3/ Alexander McFarlane Mood, Introduction to the Theory of Statistics (New York: McGraw Hill Book Company, Inc., 1950), P. 127.

determining that Plaintiffs had proved a prima facie case of jury selection discrimination, the Court commented that the statistical projection upon which it had based its decision was predicated upon a random selection of the names on the master jury roll, and that the confidence level in making the projection was 98%. See Whitus v. Georgia, 385 U.S. 545 (1967). See also, Finkelstein, "The Application of Statistical Decision Theory to the Jury Discrimination Cases," 80 Harv. L. Rev. 338 (1966).

Similarly, Federal Courts have ruled that it is proper to use statistics based upon a random selection to project the number of untested goods that might fail to comply with a flammability standard. The recent CPSC case United States v. Jackets, et al., Civil Action No. C-75-0010 L(A)(W.D.Ky. 1967) involved a violation of an FFA standard. The District Court held that on the basis of testing 54 jackets, the government had met its burden of proof by demonstrating that a substantial portion of the remaining 34,946 jackets would have failed the appropriate standard. The District Court Judge in support of his position stated at page 3, that the government which had obtained the jackets from several sources; "selected the 54 jackets at random and did not take them from any one carton."

In the instant case, notwithstanding the fact that the statistical projection was based upon a random sampling, and that the level of confidence in making such projection was 95%, the Presiding Officer rejected the survey on the grounds that it did not demonstrate exactly which portion of the untested carpet would be likely to fail the Standard. If the Commission were to adopt the interpretation of the Administrative Law Judge, Enforcement counsel would be required to pinpoint exactly which

segment of the untested product would be likely to fail the Standard. Such a requirement would place an onerous burden upon the staff and result in the virtual elimination of the use of statistical projections in future cases.

The policy of the Commission has been to regard the entire style from which a failing sample is obtained as failing carpet, unless proof is offered that it represents a smaller quantity. In the case at bar, Respondents failed to offer sufficient and substantial proof to show that the failing samples tested by both the CPSC laboratory and an independent laboratory were not representative of the entire style. Furthermore, Enforcement Counsel introduced statistical evidence which demonstrated that approximately one half of the style would fail to pass the flammability test. Thus, by limiting lot to a finishing day, the Presiding Officer failed to conform to Commission precedent and policy.

II. BARRETT CARPET MILLS AND ROY C. BARRETT, ITS CONTROLLING OFFICER, VIOLATED SECTION 3 OF THE FLAMMABLE FABRICS ACT, AND THEREFORE, ARE SUBJECT TO A CEASE AND DESIST ORDER. (Partial Response to Issue #4)

A. Barrett Carpet Mills manufactured for sale, sold and offered for sale in interstate commerce, carpet which failed to meet the acceptance criterion of the Carpet Standard

Through testimony and by stipulation, Enforcement Counsel have demonstrated that Barrett Carpet Mills, Inc., and Roy C. Barrett manufactured for sale, sold and offered for sale in commerce, Style 222 Paradise Valley (foam back) carpet, which failed to conform to the acceptance criterion of the Carpet Standard. The Carpet Standard specifies a flammability test which is calculated to determine the surface flammability of carpets and rugs when exposed to a standard ignition source under carefully prescribed draft-free conditions. The test procedure involves the exposure of eight conditioned 9" x 9" replicate specimens of a given carpet or rug sample to a Methenamine incendiary pill. The pill is placed in the center of the specimen and is ignited with a match. The progress of the flame is observed from the center outward. A specimen passes the test if the charred portion does not extend to within one inch of the edge of the hole in the prescribed flattening frame at any one point. In order to conform to the Standard, at least seven of the eight test specimens in each sample tested must meet the test criterion.

In the instant case, the carpet in question was obtained from Respondents' mill in Dalton, Georgia and from Barrett's out of State customers and was subsequently tested in accordance with the Standard at the CPSC Flamma-

bility Laboratory and at the Independent Textile Service, Inc. Laboratory (Stip. paras. 31, 32; Tr. 62-67). One half of the samples tested failed to meet the acceptance criterion of the Standard (Stip. paras. 31, 32, 35). These failures represent seven of the nine rolls tested (Stip. paras. 31, 32). Furthermore, samples from four of the five production dates tested failed to pass the flammability test.

The samples of Paradise Valley carpet tested by the flammability laboratories were selected in accordance with the requirements of the Carpet Standard. Section .4(b)(1)(i) of the Carpet Standard, 16 CFR 1630(b)(1)(i), mandates the selection of a sample of material that is "representative of the lot." However, the Standard doesn't define lot. The Consumer Product Safety Commission has held that the selection of carpet samples from ordinary production rolls conforms to the requirements of the Standard. (In the Matter of Congoleum Industries, Inc., Docket No. 8896 when before the FTC, 11/12/74 Initial Decision of the Presiding Officer, aff'd. 7/14/75 Final Decision of CPSC). In the Initial Congoleum Decision, Judge Hanscom concluded in his Findings of Fact, that samples chosen from "ordinary production rolls" are representative of the lot within the meaning of the Standard (#30 at pp. 15-16).

In the instant case, Commission investigators selected samples of Style 222 from ordinary production rolls on the basis of their availability. In accordance with the decision in Congoleum, the Honorable Paul N. Pfeiffer concluded at page 14 of the Initial Decision and Order (hereinafter, Initial Decision), that the samples chosen for testing purposes by CPSC investigators were representative. (In the Matter of Barrett Carpet Mills, Inc., Docket No. 75-5 (CPSC, decided July 8, 1976).)

Contrary to Respondents' contentions, the Carpet Standard does not mandate that the lot be defined prior to carpet selection or testing. Neither the Consumer Product Safety Commission nor the Federal Trade Commission has held the view that such an interpretation is necessary under the Standard nor that it is beneficial in the administration of the Standard. Where an agency has interpreted a statute or standard which it is responsible to administer or enforce, Federal Courts have consistently deferred to the expertise and policy goals of the administrative agency. Power Reactor Development Company v. International Union of Electricians, 367 U.S. 396 (1961). Furthermore, if it were necessary to define the lot prior to carpet selection or testing, it would require a detailed investigation and a review of the manufacturers' quality records and would ultimately interfere with the quick and effective administration of the standard.

B. Violation of the Flammable Fabrics Act mandates the issuance of a cease and desist order

Section 3(a) of the Flammable Fabrics Act, 15 U.S.C. 1192(a), prohibits the manufacture for sale, the sale or the offering for sale ... of any product (including carpet and rugs) which fails to conform to an applicable standard. The statutory scheme of the FFA is that the doing of any of the acts enumerated above is unlawful and constitutes an unfair method of competition and an unfair and deceptive act or practice. Once the unlawful act is proven, Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 5(b) (hereinafter FTCA) requires that a cease and desist order be issued.

The proposition stated above was recognized by Judge Hanscom at page 23 of the Initial Decision, In the Matter of Congoleum Industries, supra, when in commenting upon the need for the issuance of a cease and desist order against the Respondents, he stated:

> Having been found to have manufactured, transported and sold carpet in violation of the Flammable Fabrics Act, the public interest requires the entry of an order preventing such conduct in the future. (Emphasis supplied)

Therefore, since Enforcement Counsel have proven that Barrett Carpet Mills, Inc. and Roy C. Barrett manufactured for sale, sold and offered for sale in commerce, carpet which failed to conform to the acceptance criterion of the Carpet Standard, a cease and desist order must be issued against them. As discussed in a subsequent section of this brief, it is essential that the cease and desist order issued in this case be broad in scope, and pertain not only to carpet or rugs which fail to conform to an applicable standard, but to any product, fabric or material which fails to conform to an applicable standard promulgated under the Flammable Fabrics Act. Only by issuing a broad cease and desist order, can the Commission be assured, that Barrett Carpet Mills, Inc. will take the necessary precautions in the future to prevent the production of carpet or other products which present an unreasonable risk to the public.

III. THE RECORD BELOW SUPPORTS BY SUBSTANTIAL EVIDENCE THE FINDING THAT PARADISE VALLEY CARPET POSES AN UNREASONABLE RISK OF HARM TO THE CONSUMING PUBLIC. (Response to issues # 2 and 3)

A. Failure of carpet to conform to the Carpet Standard is in and of itself sufficient proof that it presents an unreasonable risk to the public

1. The legislative history of the Carpet Standard demonstrates that it was intended to measure unreasonable risk

On April 10, 1970, the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70), 16 CFR Part 1630, was promulgated. The Standard was published pursuant to a prior finding of need made by the Secretary of Commerce in accordance with Section 4(a) of the Flammable Fabrics Act, 15 U.S.C. 1193(a). The finding made by the Secretary is contained in the preamble to the notice of promulgation of the Carpet Standard, 35 F.R. 6211 (April 16, 1970):

> ...[I]t is hereby found that the flammability standard as set out in full at the end hereof:
>
> (a) Is needed for carpets and rugs to protect the public against unreasonable risk of the occurrence of fire arising from the hazards of rapid flash burning or continuous slow burning or smoldering, and leading to death, personal injury, or significant property damage; .... [Emphasis added.]

By virtue of this finding, the Department of Commerce determined that there is an unreasonable risk of fire arising from carpet which does not conform to the Standard and, therefore, carpet which does not conform to the Standard is per se dangerous.

The aforementioned determination of unreasonable risk and per se danger from failing carpet made by the Department of Commerce, is supported by the testimony of witnesses who appeared at the Barrett hearing. Mr. Sydney

Greenfeld, one of the draftsmen of the Standard, stated at page 1210 of the transcript:

> I think the pill test, by definition of the Secretary of Commerce, does define an unreasonable risk when exposed to small ignition sources.

In addition, Ms. Mary Kay Ryan, former Director of the Bureau of Compliance of the Consumer Product Safety Commission testified that:

> There was a formal finding of need by the Department of Commerce, ... society agreed that failing carpet was a hazard. Tr. 1322

It is well settled that a regulation reasonably adapted to the administration of a congressional act and not inconsistent with any statute has the force and effect of law. Maryland Casualty Co. v. U.S. 251 U.S. 342, 349 (1920). See also American Trucking Associations v. U.S., 298 (1953).

When Congress enacted the Flammable Fabrics Act it expressly delegated to the Secretary of Commerce the power to promulgate regulations and standards. The Secretary was authorized to promulgate standards if he found that a standard or other regulation is needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage. (Section 4 of FFA.) The Carpet Standard was promulgated because the Secretary of Commerce made this finding of need. Thus the regulation has the force and effect of law.

Respondents rely on United States v. Ford Motor Company, Civ. No. 75-1343 (D.D.C. Oct. 1, 1976), as authority for the proposition that in order to prove an unreasonable risk to the public from a defective product, the Government has the burden of demonstrating not only the existence of the defect, but that such defective product will cause a significant number of serious accidents and injuries in the future. In that case, the Government sought to compel the defendants to comply with a notification and recall order regarding defective car seats, which had been issued by the National Highway Traffic Safety Administration. The District Court granted the Government's motion for summary judgment on the grounds that it had demonstrated the likelihood that the defective car seats would cause a significant number of serious accidents and injuries in the future.

Respondents reliance upon the Ford decision is erroneous. The facts in Ford are clearly distinguishable from the facts in the instant case. In the former, there was no safety standard governing the product, and, therefore, there was no yardstick by which to judge unreasonable risk.

However, in the instant case, the Respondents violated an existing flammability safety standard (the Carpet Standard) by manufacturing carpet which failed to conform to the acceptance criterion of such standard. Moreover, the Department of Commerce in promulgating the Carpet Standard, specifically determined that carpet which fails the flammability test

presents an unreasonable risk to the public and is per se dangerous. Therefore, no further proof is necessary to demonstrate that Style 222 carpet presents an unreasonable risk to the public.

The Standard became effective on April 16, 1970, one year after the date of its promulgation. The fact that the Department of Commerce did not accelerate the effective date of the Standard does not signify, as Respondents contend, that the Department did not view non-conforming carpet as presenting an unreasonable risk to the public. On the contrary, the effective date of the Standard was not advanced in order "... to permit people or industry to adjust its production so that it could comply to the Standard." (Tr. 1214). Similarly, the fact that the Commerce Department did not exclude carpet in inventory at the time of the Standard's promulgation from the exemption of the Carpet Standard, does not indicate that the Department did not regard failing carpet as presenting a danger to the public. It is more reasonable to assume that the draftsmen of the Standard contemplated that the carpet then in inventory, would be exhausted during the short period of time extended to the industry to adjust to the Standard. If the draftsmen had anticipated that carpet in inventory in 1971 would continue to be sold in 1976, it is likely that they would have excluded the carpet then in inventory from the Standard's exemption.

2. The Methanamine pill test was designed to measure a real life hazard and not to function merely as a quality control test

The Carpet Standard was designed to protect the public from the hazards of rapid flash burning or continuous slow burning or smoldering of carpet and the spread of flame to other combustible material. (Tr. 1169). The National Bureau of Standards (hereinafter, NBS) chose the Methenamine pill as the ignition source for testing purposes because NBS considered the pill to be representative of small ignition sources; NBS concluded that the test was a reasonable and inexpensive means of determining the hazard caused by such sources. Before making its decision. NBS reviewed and analyzed "38 or 39 different test procedures that [had] been used at one time or another." (Tr. 1125)

Prior to the promulgation of the Standard, the pill test was exposed to a statistically planned interlaboratory study conducted by the American Society for Testing and Materials, the Carpet and Rug Institute, and the National Bureau of Standards. The study involved twelve flammability testing laboratories which used the test method on a selected sample of carpets obtained from retail outlets. The results of the tests indicated that the method was repeatable within a laboratory and reproducible between laboratories.

The Methenamine pill test is a safety performance test which is designed to demonstrate the manner in which carpet exposed to small flaming sources of ignition will ignite and spread fire under real life condtions (Tr. 1142, 1158). This fact is evidenced by the response of Sydney Greenfeld to a question by counsel for Respondents regarding whether the pill test conclusively reveals how a carpet will react in real life situations, or whether the results are more valuable as a manufacturers' quality control tool. At page 1204 of the transcript, Mr. Greenfeld stated:

> We felt when we were developing the Standard that [the results] were indicative of how carpet would perform in real life situations.

Thus, Judge Pfeiffer's conclusion on page 13 of the Initial Decision, that the Carpet Standard was designed primarily as a manufacturers' quality control test rather than a test measuring unreasonable risk is not based upon substantial guidance. The Presiding Officer does not cite the hearing testimony upon which he relied upon in drawing this conclusion. Moreover, the only testimony in the record from which such a conclusion could be inferrred, is that of Respondents' witness, Dr. LeBlanc.[/]

B. The Presiding Officer improperly considered evidence which was intended to demonstrate that the Carpet Standard is ineffective in measuring real life risk

1. The introduction of the results of an unauthorized flammability test constituted a collateral attack upon the Standard

During the course of the instant proceeding, Respondents launched an assault upon the validity of the Carpet Standard. At the hearing and in their findings of fact and conclusions of law, Respondents generally questioned the need for the promulgation of the Standard and the efficacy of the test methods employed under the Standard and specifically challenged the significance of the results of flammability tests performed in accordance with the Standard.

Federal courts have consistently held that judicial review of a Standard promulgated by an administrative agency may be obtained only by the statutorily prescribed method. Nader v. Volpe, 466 F.2d 261 (D.C. Cir. 1972); American Paper Institute v. Train, 381 F. Supp. 555 (D.D.C. 1974); Sun Enterprise Ltd. v. Train, 394 F. Supp. 211 (S.D.N.Y. 1975). Section 4(e)(1) of the Flammable Fabrics Act, 15 U.S.C. 1193(e)(1), provides that any person who is adversely affected by the promulgation of a flammability standard may petition the Court

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[/] Dr. LeBlanc was not a member of the team which developed the Carpet Standard.

of Appeals for review.

Although the above mentioned statutory provision was in effect during the rule-making proceeding which eventually resulted in the promulgation of the Carpet Standard, no petitions for review were filed with the various Circuit Courts of Appeals, and very few comments were filed with the Secretary of Commerce in accordance with 15 CFR 7.8(a), 33 F.R. 14642 (Oct. 1, 1968). Neither Respondents nor other members of the carpet and rug industry who might have been adversely affected by the Standard, availed themselves of the opportunity of filing a petition for review with the Court of Appeals. The fact is that the Carpet and Rug Institute (the major lobbying group for the industry) was in favor of the Carpet Standard and supported its promulgation.

The comments of Mr. George E. Paules, then President of the Carpet and Rug Institute, regarding the proposed Carpet Standard are indicative of the attitude of the Carpet and Rug Industry concerning the Standard. In his letter of comment dated January 16, 1970, Mr. Paules stated:

> The most important advantage of the Proposed Standard for the Resistance of Flammability of Carpets and Rugs (Methenamine Pill) are:
>
> (1) The proposed standard will provide the basis of a National Flammability Standard.
>
> (2) The test method clearly differentiates between pass and fail specimens.
>
> (3) The test is very easy to perform requires a minimum of equipment and trained personnel, and can be performed in any draft protected environment.
>
> (4) The test is reproducible and yields consistent results.

Subsequently, on April 9, 1970, Mr. Paules wrote a letter commenting on the final draft of the Standard, in which, he stated that his association represented 95% of the carpet and rug industry and that the industry wholeheartedly supported the Standard.

In the case of Nader v. Volpe, supra, which involved a motion requesting the District Court to enjoin the Secretary of the Department of Transportation from issuing a final rule on "passive automobile occupant restraint systems" (seat belts), the Court of Appeals affirmed the decision below and held that the District Court did not have jurisdiction to entertain the suit instituted by the appellants. The Court based its decision upon the fact that Section 1394(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1394(a)(1), entitles any person who is adversely affected by a NHSTA promulgated safety standard to seek judicial review in a Court of Appeals. The court in Nader stated, at page 266 of the decision:

> When Congress has specified a procedure for judicial review of administrative action, courts will not make nonstatutory remedies available without a showing of patent violation of agency authority or manifest infringement of substantial rights irremediable by the statutorily-prescribed method of review.

The principle espoused in the Nader v. Volpe case has been adopted by other Federal Courts. In American Paper Institute v. Train, supra, the District Court denied plaintiff's request for review of water pollution guidelines for the paper industry. The Court, in citing Nader v. Volpe, supra, stated that Section 509(b)(1) of the Federal Water Pollution Act, 33 U.S.C. 1369(b)(1), which provides for Court of Appeals review of guidelines issued by the Environmental Protection Agency, is dispositive of the issue that review of such guidelines is limited to the Court of Appeals.

In Sun Enterprise Ltd. v. Train, supra, the court reiterated the decisions in the aforementioned cases and held that it did not have jurisdiction to entertain plaintiffs request for review of the issuance

of National Pollution Discharge Permits. See also, Ananconda Company v. Ruckelshause, 482 F.2d 1301 (10th Cir. 1973); Getty Oil Co. v. Ruckelshause, 467 F.2d 349 (3rd Cir. 1972), cert. denied, 409 U.S. 1125; American Paper Institute v. Train, supra; E.I. Dupont de Nemours and Co. v. Train, 383 F. Supp. 1244 (W.D. Va. 1974); Arizona Public Service Co. v. Fri, 3 ELR 20894 (D. Ariz. 1973).

Despite the fact that the Standard has the force and effect of law and that a collateral attack is impermissible, Respondents in the instant case challenged the determination of the Secretary of Commerce that carpet which fails to comply with the acceptance criterion of the Carpet Standard is per se dangerous.[4/] Respondents attacked the aforementioned determination by introducing into evidence alleged "real life tests" conducted by the LeBlanc Laboratories on samples of Style 222 Paradise Valley (foam back) carpet.[5/] Their purpose in proferring this evidence was to demonstrate that failing Style 222 samples which were tested in accordance with the test criterion of the Carpet Standard do not present a danger to the public, health, safety and welfare.

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4/ In attempting to refute the determination of the Department of Commerce that carpet which does not conform to the Standard presents an unreasonable risk to the public and is per se dangerous, Respondents on fifteen different occasions cited the testimony of a Mr. William Segal, who was not a witness at the instant proceeding. By utilizing this highly irregular procedure, Counsel for Respondents deprived Enforcement Counsel of their right to be present and to cross-examine the witness. Moreover, the fact that the Presiding Officer made very few specific references to the Barrett hearing testimony, brings into question, the fact whether he impermissibly relied upon this testimony in reaching his decision.

5/ Dr. LeBlanc testified on behalf of the LeBlanc Laboratories. LeBlanc's area of expertise is textile flammability rather than carpet flammability. Despite Respondents' inferences, Enforcement Counsel maintain thea Dr. LeBlanc is not an expert in carpet flammability testing.

Based upon the above cited cases, it is evident that the introduction of the LeBlanc videotape during the administrative hearing constituted a challenge to the significance of the results of flammability tests performed in accordance with FF 1-70 and further amounted to an impermissible collateral attack upon the Carpet Standard.

More significant than Respondents' collateral attack upon the Standard, is the fact that the Presiding Officer went beyond the scope of his jurisdiction by sanctioning the introduction of the LeBlanc videotapes and by mistakenly relying upon such evidence as the basis for his findings. Furthermore, he, himself engaged in a collateral attack upon the Standard.

In commenting upon the LeBlanc tests, Judge Pfeiffer stated at page 19 of the Initial Decision, that "the tests conducted by Dr. LeBlanc are not officially sanctioned standards in contrast to the FF 1-70 pill test." Although the Administrative Law Judge was cognizant of the fact that the LeBlanc tests are not authorized for the purpose of determining compliance with the Standard nor for the purpose of ascertaining the risk to the public from failing carpet, he erroneously relied upon the results of the tests and decided at page 3 of the Initial Decision, that "the level of hazard [of Style 222 carpet] is not high enough to justify recall from the consumer's home." In relying upon such evidence to reach this conclusion, the Presiding Officer disregarded the precept that once a Standard has been promulgated, it has the effect of law, and is not subject to challenge except under the prescribed statutory method. See Maryland Casualty Company v. U.S., supra, and Nader v. Volpe, supra. Moreover, the Presiding Officer disregarded the significance of the failing Style 222 samples and more importantly, ignored

the fact that the Secretary of Commerce had determined that failing carpet samples present an unreasonable risk to the public and are per se dangerous.

By ignoring the finding of the Secretary of Commerce, Judge Pfeiffer collaterally attacked the Standard as an adequate method to determine the danger inherent in flammable carpet, and unilaterally substituted in its place, the unapproved LeBlanc Test. A cogent example of the Presiding Officer's attack upon the Standard is evidenced by his statement which is found on page 24 of the decision and which provides in pertinent part:

> ... a standard which measures only a four inch spread of the flame front in a draft free environment, does not establish that an unreasonable risk of fire in the home environment chargeable to the manufacturer exists. (Emphasis added.)

It is evident from the above that the Presiding Officer committed error by predicating his findings and conclusions regarding the danger of Style 222 upon the unauthorized LeBlanc test results.

2. The results of the LeBlanc tests are not relevant to a determination of a violation of the Standard, the Flammable Fabrics Act or the remedy of recall

The pill test is the only approved and adopted method for determining whether large pieces of carpet present a danger to the public. This fact was recognized by the Honorable Paul N. Pfeiffer at the Hearing when, in referring to the Standard, he stated at page 1423 of the transcript:

> It is on the books, it may not have been the greatest Standard that could be devised, but there it is, and that was the Standard that was operative in this case.

Although the development of new technology may result in the adoption of a different Carpet Standard and test in the future, it must be recognized that at the time the pill test was selected, it was regarded to be the most effec-

tive and economical method for testing carpet. Moreover, to date, sufficient evidence has not been produced to indicate the need for another test (Tr. 1159).

In issue three framed by the Commission, Enforcement Counsel have been directed to respond to the question of whether extrinsic evidence which may bear upon the flammability characteristics of carpet, is relevant to a determination of a violation of the standard, the Flammable Fabrics Act and remedial relief. As stated above, FF 1-70 is the only authorized means of testing carpet and ascertaining whether it presents an unreasonable risk to the public. Therefore, the results of any unauthorized test methodology are irrelevant if introduced for the purpose of demonstrating a violation of the Standard. Likewise, since a violation of the Flammable Fabrics Act results from a failure to comply with the Standard, extrinsic test evidence is irrelevant for the purpose of determining a violation of the Flammable Fabrics Act.

Moreover, since the purpose of recall is to separate dangerous and violative goods from the public, Congoleum, supra, and the Carpet Standard is the only approved method for making a determination regarding the danger of carpet; the introduction of unauthorized test results regarding the hazard from carpet is irrelevant to a determination of the remedy of recall.

In predicating his decision regarding the danger of Style 222 Carpet upon irrelevant evidence, the Presiding Officer failed to follow the dictates of Section 1025.71(b) of the Commission's Interim Rules of Procedure, 39 F.R. 26856 (July 23, 1974), which provides in pertinent part:

> The initial decision should be based upon consideration of the entire record and should be supported by reliable, probative and substantial evidence (Emphasis supplied).

For this and the foregoing reasons regarding collateral attack, the Presiding Officer's Findings of Fact regarding the danger of Style 222 should be overturned.

C. The LeBlanc test methodology does not impeach the validity of the Carpet Standard

Even if the Commission were to consider the LeBlanc test results, it should conclude from the face of the tests that there are serious deficiencies in the test methodology. In particular, the test itself cannot be considered to be one performed under "real life" conditions. This is based upon the fact that the conditions in the LeBlanc laboratory during the testing did not approximate conditions found in a home environment. The carpet tested was not room size and the testing compartment did not contain furnishings normally found in a room, such as curtains and upholstered furniture. As confirmed by the testimony of Dr. LeBlanc, no consideration was given to the ignition source temperatures of curtains, pieces of furniture, or other household items with which a burning carpet might come in contact. (Tr. 994)

Moreover, conditions such as temperature, draft and humidity were not adequately controlled during the experiments. The lack of sufficient control conditions during the tests caused Judge Pfeiffer to state at page 19 of the Initial Decision, that there is no basis to assume that the types of variables which are controlled in the pill test, such as draft, water content of the carpet and standardization of the ignition source are equally controlled in the LeBlanc test.

Another example of an inadequacy in the testing process concerns the selection of ignition sources. Cigars, cigarettes, and charcoal briquettes were chosen as three of the ignition sources used in the experiments. Although the premable to the Carpet Standard mentions smoldering ignition sources, such as cigars, cigarettes and smoldering embers, it is a well known fact, confirmed by Dr. LeBlanc during his testimony at the hearing,

that carpet will not ignite from these types of ignition sources (Tr. 913,11 Therefore, the utilization of the aforementioned ignition sources is highly questionable and the results of the tests should be regarded accordingly.

In another test, a waste paper basket filled with paper was utilized as the ignition source. Although in this case, a non smoldering ignition source was used, the results of the tests are inconclusive because the test operator suppressed the flame with a carbon dioxide fire extinguisher and did not allow the flame to self extinguish. In commenting upon the waste paper basket experiments, Dr. LeBlanc stated:

> We don't know whether the carpet would continue burning or for how long or whether the carpet would eventually self extinguish .... Tr. 980

Respondents place great weight upon the fact that when some carpet samples were ignited they evidenced a slow rate of flame spread. From this fact, Respondents conclude that such carpet does not present a hazard because someone will be present to take corrective action and extinguish the flame. (Tr. 912, 913). This assumption by Respondents fails to take into consideration that fires do not only occur while a residence is occupied or while the members of the household are awake, but may break out when there is no one home or while the household is asleep. The drafters of the Standard were cognizant of this point and in the Notice of Finding that Flammability Standard or other Regulation May be Needed and Institution of Proceedings, 15 CFR Part 7, they emphasized that a flame caused by continuous slow burning or smoldering "may easily remain undetected while the members of a household either go to bed or leave the premises."

Moreover, Respondents' assumption does not take into account the fact that the aged and the handicapped may not possess the physical capabilities necessary to extinguish a flame caused by a failing candle or an electric short and that the flame may spread from the carpet to other flammable items, thereby causing a fire resulting in death or serious injury. As stated by Dr. LeBlanc at page 926 of the transcript, "if the flame reaches the drapery and is touching the drapery, that definitely is going to be a hazard." Similarly, a small child left unattended for a short period of time, might ignite a carpet with a cigarette lighter and become engulfed in the flames of the fire.

Based upon the facts outlined in the proceeding section, the conclusion must be drawn that the introduction of the LeBlanc test results constitutes a collateral attack upon the Carpet Standard. If, despite this realization, the Commission decides to consider the results of such tests, the Commission should carefully weigh the following factors in making a judgment about the test result: that the test itself is not a real life test; that the testing variables are not adequately controlled; and that the utilization of the ignition sources employed are highly questionable.

IV. THE CEASE AND DESIST ORDER SHOULD BIND ROY C. BARRETT, THE CORPORATE OFFICIAL WHO DIRECTS, FORMULATES AND CONTROLS THE PRACTICES AND POLICIES OF BARRETT CARPET MILLS, INC., IN HIS INDIVIDUAL CAPACITY.

The Supreme Court has held that administrative agencies have the authority to include individual corporate officials as respondents in actions to obtain cease and desist orders. FTC v. Standard Education Society, 302 U.S. 112 (1937). The inclusion of such corporate officials in a cease and desist order has been recognized as particularly appropriate where public health and safety statutes are involved. United States v. Park, 421 U.S. 277 (1975); United States v. Dotterweich, 320 U.S. 277 (1943). Corporate officials have an affirmative duty to ensure that their companies are not in violation of such statutes and those officials can be held accountable for failure to uphold that duty, whether or not they possess actual knowledge of the Commission of the offense. United States v. Park, supra.

The Consumer Product Safety Commission has consistently followed the policy of naming individual corporate officials as respondents in both administrative and judicial actions brought under the statutes which the Commission administers.6/ Once a decision has been rendered against a corporate respondent, the Commission must be able to look to specific individuals whom it can hold responsible for formulating and implementing the remedial action program. White Consolidated Industries, Inc., et al, CPSC Docket No. 75-1, 11/3/75 Initial Decision of the Presiding Officer became Final Decision of the Commission, 12/3/75. Only in this manner can the Commission succeed in protecting the general public from safety hazards with the required speed and efficacy. The burden of correcting the hazard must fall on those who have the power to take corrective action, or

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6/ Testimony of Mary K. Ryan, formerly Director, CPSC Bureau of Compliance, Tr. 1263, 1266.

> who have at least the opportunity to inform themselves of the existence of conditions imposed for the protection of consumers . . . rather than to throw the hazard on the innocent public who are totally helpless. United States v. Dotterweich, supra, p. 285.

The need to bind a corporate officer to a cease and desist order is especially critical when a closely held corporation is involved. An officer of such a corporation who is also the major stockholder can evade responsibility through structural changes in the corporation. If an individual respondent has not been named in a cease and desist order and such a corporate restructuring is accomplished, there might not be responsible party to carry out the dictates of the order.

Barrett Carpet Mills, Inc. is a closely held corporation chartered in 1970. Mr. Roy C. Barrett is the founder, President and major shareholder of the corporation (Tr. 490). In his capacity as president and major shareholder, Barrett formulates, directs, and controls the acts, practices and policies of the corporation and reviews its practices (Stip. para. 4; Tr. 490). Mr. Barrett testified that he was personally involved in the decision making process of the corporation, and that he selected Masterpiece Finishing, Inc. to apply the foam rubber backing to the carpet (Tr. 502-503, 550). Masterpiece was responsible for the uneven application of alumina trihydrate, which Respondents claim to be the cause of the flammability test failures.

Barrett Carpet Mills, Inc. violated the Flammable Fabrics Act by manufacturing for sale, offering for sale and selling in commerce carpet which failed to conform to the Carpet Standard. Mr. Barrett was, at the

time of the violations, and remains the controlling officer of the corporation. He is the proper corporate official to accept the responsibility of formulating and supervising a remedial action program pursuant to a final Commission order. Therefore, in order to provide the public with adequate protection from the risk of failing carpet, Roy C. Barrett must be named in the cease and desist order.

## V. THE CEASE AND DESIST ORDER AGAINST RESPONDENTS SHOULD EXTEND TO ALL PRODUCTS SUBJECT TO FFA SAFETY STANDARDS

Enforcement Counsel requested the Presiding Officer to effectuate Commission policy by issuing a broad order requiring Respondents to cease and desist from engaging in the acts enumerated in Section 3 of the FFA with respect to all products which fail to conform to standards or regulations issued under the FFA. The practice of issuing broad orders was adopted by the Commission to assure that one-time violators of a standard would make greater efforts in the future to comply with the requirements of the FFA. Pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), violation of a Final Commission Order could subject a respondent to a civil penalty action in federal court.

The Order of the Presiding Officer requires merely that Respondents "shall cease and desist from further sales of Paradise Valley foam back carpet." It does not extend to other styles of carpet manufactured by Barrett Carpet Mills and it does not extend to other products subject to flammability standards which might at some future time be manufactured by the company. A cease and desist order must obligate Barrett Carpet Mills to manufacture all carpet so that it complies with the flammability standard. Moreover, Respondents' counsel admitted on the record (Transcript of Prehearing Conference at 17) that although Barrett Carpet Mills presently manufactures only carpet, it may someday expand its production line to include other textile products. A broad cease and desist order is needed to provide for such a contingency. If and when a firm, such as Barrett Carpet Mills, diversifies its product lines to include other products subject to flammability standards, the original order would remain in effect and give the respondent an incentive toward scrupulous adherence to the requirement of the FFA.

The courts have upheld the exercise by administrative agencies of wide discretion in drafting orders so as to best achieve statutory policies. In FTC v. Ruberoid Co., supra, the Court stated:

> . . . if the Commission is to attain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal; so that its order may not be bypassed with impunity . . . .

The cease and desist order in the instant case must be tailored to protect the interests and well being of the consumer. As the court stated in FTC v. Mandel Bros., 359 U.S. 385 (1959), a Fur Products Labeling Act case, an agency has extensive discretion in drafting orders to fit the needs of a particular situation. The court stated:

> . . . One cannot generalize as to the proper scope of these orders. It depends upon the facts of each case and a judgment as to the extent to which a particular violator should be fenced in. 359 U.S. at 392.

The Presiding Officer expressed the view that:

> . . . the considerable litigation expense and risk which Respondents have already undergone, or will be subjected to before this proceeding is completed, would appear to be a sufficient deterrent . . . to future violations of the FFA. (Initial Decision at p. 25)

Enforcement Counsel urge that one of the strong justifications for a cease and desist order is to relieve the Government of the burden of such protracted and expensive litigation by encouraging a higher level of compliance. The heavy burden of time and expense which Respondents have suffered in this litigation have fallen on the Government as well. The Presiding Officer's statement overlooks the basic purpose of the cease and desist order to impose restrictions on the law violator of sufficient breadth to protect the public

safety. The suggestion that a firm can violate the law with impunity, reined in solely by the prospect of attorneys' fees, is not a supportable policy for a federal law enforcement agency. The Presiding Officer refers to "the risk" which Respondents have undergone -- presumably the calculated risk that they might have to bear the expense of litigation and/or recall. But he overlooks the more important risk at issue here--the risk to the consuming public of injury from violative carpet.

The Presiding Officer states in the Initial Decision that there was no evidence of a "consistently negligent pattern of failing carpet." (Initial Decision at p. 24. It must be emphasized that all manufacturers of carpet are held to the statutory duty of providing the public with carpet which meets the safety standard and their failure to do so is a violation of law. Evidence of good faith, reasonable care, or sound manufacturing and/or business practices is not relevant and should not be considered by the Commission in making its decision.

The Commission clearly stated in its decision in In the Matter of Charles Castro, supra,:

> . . . (T)he Commission does not believe that any claims that Respondent's violation of the law was unintentional or that Respondent acted in good faith are relevant with respect to the imposition of civil remedies under the Flammable Fabrics Act. Nor does the Commission, having decided that an order contain provisions essential to protect the public health and safety, believe that those provisions should then be weakened for the purpose of minimizing the order's economic impact on one who has violated the Act. (Final Decision at p. 3.)

The Presiding Officer's decision concerning the scope of the order is clearly inconsistent with Commission's past policy and decisions and should be reversed.

Lastly, the Presiding Officer questioned the need for a general cease and desist order for the reason that:

> (a) cease and desist order based on such inadvertencies could hardly be the subject of substantial civil or criminal penalties if violated. Initial Decision at p. 25.

However, in the event of a future violation, the penalties would flow from the gravity of the future violations, not from the present one on which the order is based.

## VI. THE RECORD BELOW CONTAINS SUBSTANTIAL EVIDENCE IN SUPPORT OF ENFORCEMENT COUNSEL'S PROPOSED FINDINGS, CONCLUSIONS AND ORDER.

### A. The Commission should adopt Enforcement Counsel's proposed findings, conclusions and order

The record in the instant case contains ample evidence to support the factual and legal conclusions:

(1) that carpet known as Style 222 Paradise Valley failed to meet the Carpet Standard;

(2) that Paradise Valley carpet poses an unreasonable risk to consuming public;

(3) that Barrett Carpet Mills and Roy C. Barrett violated the Flammable Fabrics Act when they manufactured for sale, offered for sale and/or sold in commerce Paradise Valley carpet; and

(4) that the public interest requires that Respondents should be placed under a broad cease and desist order, which includes a provision requiring them to recall all Paradise Valley carpet from distributors, retailers and the ultimate consumer.

All of the above findings and conclusions are amply supported by substantial evidence in the record below and the Commission should so find.

The Commission has asked Enforcement Counsel to state in what respects the findings, conclusions and order of the Presiding Officer are not supported by the evidence. In response to that question, Enforcement Counsel attempt to provide the Commission with a full discussion of all matters with respect to which it is contended that error was made below.

However, the Commission has primary responsibility to make findings of fact and to reach conclusions of law based upon its own perception of the record in this case. It has full responsibility for making independent findings on all matters raised herein, and this responsibility cannot be delegated to the Presiding Officer.

Counsel urge the Commission not to evaluate the Presiding Officer's findings and conclusions below, but to evaluate the record below. Counsel maintain that the record contains ample support for the Government's case and urges the Commission to so find.

The Administrative Procedure Act provides in Section 557(b) that:

> On appeal from or review of the initial decision of such officers, the agency shall, except as it may limit the issue upon notice or by rule, have all the powers which it would have in making the initial decision. 5 U.S.C. 557(b).

In Davis' Administrative Law Text, he comments that the powers of Presiding Officers in administrative hearings

> remain almost entirely subordinate. The examiners may make determinations that have a temporary effect until recourse can be had to the agency, but the effective power remains in the agency in each instance. Davis, Administrative Law Text Ch. 10 pp. 209-10 (1960).

He comments further that the Administrative Law Judge:

> lacks power comparable to that of a trial judge. The examiner's power with respect to the decision of cases remains in essence the power to recommend, not the power to make a decision which is subject to a limited review. Id. at p. 210.

Judicial authority on this point is extensive. Alcoa Steamship Company v. Federal Maritime Commission, 321 F.2d 756 (D.C. Cir. 1963), for example, involved an order of the Federal Maritime Commission approving a pooling agreement, despite the view of the hearing examiner that approval

of the agreement be withheld. The court noted that, while the examiner's view should be given great weight:

> . . . the Examiner's decision is recommendatory only, and the Commission was fully entitled to reject it if it had reason to view the evidence in a different light. 321 F.2d at pp. 758-59 (fn. 5).

N. Sims Organ & Co., Inc. v. SEC, 293 F.2d 78 (2d Cir. 1961), involved a petition to review an order of the SEC revoking Respondents' registration as a broker and dealer in securities. The SEC differed with the examiner as to the inference to be drawn from certain factual evidence introduced at the hearing. The reviewing court held that the Commission's decision was supported by substantial evidence, and stated:

> It is the Commission's responsibility to decide the question and the fact that it differed with the examiner does not matter. 293 F.2d at 80.

In American Federation of Television and Radio Artists v. NLRB, 395 F.2d 622 (D.C. Cir. 1968), the court upheld another NLRB decision despite a difference of opinion between the Board and the examiner, and despite the court's view that

> the case was close on the facts and the record contained evidence substantial enough to support a finding like that of the Examiner. 395 F.2d at 628.

The court said that it had given "particular attention to the question whether the Board's findings are vulnerable for failure to reflect attentive, consideration of the Examiner's decision," and had concluded that the Board had "exercised its permissible discretion to reach a contrary result." 395 F.2d at 628.

B. The Commission Should Reject Those Findings and Conclusions of the Presiding Officer Which Are Not Supported by Substantial Evidence.

Even if the findings, conclusions and order below are supported by substantial evidence, the Commission is not bound by them and is free to reach a different conclusion as to any of them. However, where the conclusions of the Presiding Officer are not supported by substantial evidence, the Commission has no choice but to reject them.

In the instant case, the Presiding Officer relied heavily on irrelevant and unreliable evidence as a basis for the findings and conclusions reached herein. Such evidence must be disregarded by the Commission in reaching its own conclusions based on the record below.

Although it has been judicially established that the rules of evidence which prevail in courts of law are not controlling in administrative hearings, administrative agencies must not as a matter of policy, rely upon irrelevant or immaterial evidence. The decisions of administrative agencies must be supported by substantial evidence that is relevant, reliable and has rational probative force. Administrative Procedure Act, 5 U.S.C. 556(d); John W. McGrath Corp. v. Hughes, 246 F.2d 314, cert. denied, 360 U.S. 931 (1959); NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292 (1939).

The Presiding Officer made virtually no findings of fact in his Initial Decision. It is difficult, therefore, to identify with certainty the testimony and/or authority on which he relies for his decision. The Presiding Officer concluded, generally, that Respondents violated the Flammable Fabrics Act by marketing in commerce carpet which failed to

conform to the Carpet Standard; and that, based on such violation, a cease and desist order should be issued. The Presiding Officer further concluded, however, that, in order to warrant the inclusion of a recall provision in such a cease and desist order, Enforcement Counsel had the burden of demonstrating that carpet which fails to meet the Standard presents an unreasonable risk of the occurrence of fire. He stated that:

> on this record, no sound finding can be made that Paradise Valley nylon foam carpet produced by these respondents in 1972-3 represents an unreasonable risk of fire or injury to any consumer in his home. Initial Decision at p. 24.

The conclusions of the Presiding Officer with respect to recall appear to be based in large measure on the following factual statements:

1. that the Standard was designed primarily as a manufacturer's quality control test rather than as a test measuring an unreasonable degree of risk of fire in the home. Initial Decision at p. 14.

2. that passing and failing carpet samples react similarly to typical household ignition sources. Initial Decision at pp. 6, 20.

3. that the failures were the results of production defects on particular days. Initial Decision at p. 15.

4. that the test failures were caused by an uneven distribution of ATH. Initial Decision at p. 6.

Counsel for Respondents made each of the assertions enumerated above but failed to introduce substantial evidence as to any of them. The Presiding Officer does not support these findings by references to the record below. Additionally, the Presiding Officer appears to have been influenced by the factors that:

(1) there is no record of any fire involving Paradise Valley foam back carpet. Initial Decision at p. 22; and

(2) that the hazard posed by nylon carpet is "relatively minor" compared to polyurethane mattresses and children's sleepwear. Initial Decision at p. 23.

Enforcement Counsel maintain that these factors are irrelevant and should not have been considered by the Presiding Officer in reaching his decision. With respect to (1), Enforcement Counsel has met its burden of proof that Paradise Valley carpet presents an unreasonable risk of injury to the public by proof that the Carpet Standard was violated. Evidence of actual fires would not have been relevant, and certainly the absence of such evidence at trial creates no inference as to the safety of the carpet. With respect to (2), the Presiding Officer erroneously attempted to compare the hazard of flammable carpet to the hazard associated with other flammable products. There is no evidence in the record on which to base such a comparison. Moreover, such evidence would not have been pertinent if it had been introduced. Surely the Presiding Officer does not intend the Commission to evade its duty to protect the public against a product hazard because there may be other hazards which are more severe.

VII. CONCLUSION

The record in the instant case contains ample evidence to support the factual and legal conclusions:

(1) that Style 222 Paradise Valley carpet failed to meet the Carpet Standard;

(2) that Paradise Valley carpet poses an unreasonable risk to the consuming public;

(3) that Barrett Carpet Mills and Roy C. Barrett violated the Flammable Fabrics Act when they manufactured for sale, offered for sale and/or sold in commerce Paradise Valley carpet; and

(4) that the public interest requires that Respondents should be placed under a broad cease and desist order, which includes a provision requiring them to recall all Paradise Valley carpet from distributors, retailers and the ultimate consumer.

Therefore, we respectfully request the Commission to find accordingly and to adopt Enforcement Counsel's Proposed Findings of Fact, Conclusions of Law and Order, incorporated herein by reference.

Respectfully submitted,

Ronald G. Yelenik

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Enforcement Counsel
Consumer Product Safety Commission
Washington, D.C. 20207
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Dated: November 30, 1976

(Served Aug. 5, 197

APPENDIX 1

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of<br><br>BARRETT CARPET MILLS INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation. | CPSC DOCKET NO. 75-5 |

ORDER

On July 8, 1976 an initial decision in the above entitled proceeding was issued and served on the parties. The Commission's Interim Rules of Practice for Adjudicative Proceedings section 1025.72(a), permit the parties to file a notice of intention to appeal within ten days after service of the initial decision. The ten day period has expired and no notice of intention to appeal has been filed by any party.

Section 1025.73 of the interim rules permits the Commission to review an initial decision in the absence of an appeal by the parties. Because this case presents important questions concerning the Commission's administration of the Flammable Fabrics Act, 15 U.S.C. 1191 et seq. and the Standard for Surface Flammability of Carpets and Rugs (FF 1-70), 16 CFR 1630, the Commission has decided to place the matter on its

docket for review. The review will encompass the findings, conclusions and order of the Administrative Law Judge and will be directed to the following issues:

1. Whether the Commission possesses the authority to order recall of carpet already installed or otherwise in the possession of the ultimate consumer and if so under what conditions and circumstances should such a recall be ordered.

2. Whether a violation of the flammability test requirements of the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70) may be considered per se to constitute an unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage under the provisions of the Flammable Fabrics Act.

3. Whether evidence extrinsic to compliance with the Standard for the Surface Flammability of Carpets and Rugs (FF 1-70) which might bear on certain flammability characteristics of carpet is relevant or material to a determination of a violation of the standard, the Flammable Fabrics Act or any remedial relief ordered by the Commission.

4. Whether the evidence presented in this proceeding warrants the issuance of a cease and desist order from any further violation of the Flammable Fabrics Act and standards promulgated thereunder.

5. Whether the Administrative Law Judges' interpretation and application on the term "lot" is in conformity with Commission precedent and policy.

6. Whether the findings, conclusions and order of the Administrative Law Judge are in conformity with the evidence presented.

7. Whether the evidence presented in this case warrants relief different or greater than that ordered by the Administrative Law Judge.

The parties to this proceeding will be permitted to file briefs under the following schedule: Opening brief of staff counsel within 30 days after service of this order; answering brief by respondents within 30 days after service of the opening brief; and reply brief of staff counsel within 7 days after receipt of respondents' answering brief. The form and content of all briefs shall conform as close as possible to the requirements of section 1025.72(b) through (e) of the Commission's Interim Rules of Practice. The Commission will by further order notify the parties of any further submissions or oral argument which the Commission may deem necessary and appropriate.

BY THE COMMISSION

Sadye E. Dunn

DATED: August 5, 1976 SADYE E. DUNN, Secretary

I. Identity of Respondents

1. Respondent Barrett Carpet Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal place of business located at 2616 Abutment Road, Dalton, Georgia 30720 (Stip. para. 2; Ans. para. 1).

2. Respondent Barrett Carpet Mills, Inc., now and for some time has been engaged in the manufacture and sale of carpet in commerce, as "carpet" and "commerce" are defined in the Flammable Fabrics Act (Stip. para. 3).

3. Respondent Roy C. Barrett is president of Barrett Carpet Mills, Inc. and as such, he formulates, directs, and controls the acts, practices, and policies of the corporation (Stip. para. 4; Tr. 654). Mr. Barrett is also the principal stockholder and chief executive officer of the corporation (Tr. 490).

4. Roy C. Barrett is involved in the overall management of Barrett Carpet Mills, Inc., having principle responsibility in the areas of marketing, management, and finances (Tr. 491). In fact, Mr. Barrett personally chose the companies that Barrett Carpet Mills, Inc. used to finish Style 222 (Tr. 502-503, 550).

II. The Flammable Fabrics Act and the Standard Promulgated Thereunder

5. The Flammable Fabrics Act, 15 U.S.C. §1191-1204, was approved June 30, 1953, and was amended and revised on December 14, 1967, 81 Stat. 568. The Act, as amended, prohibits the manufacture for sale, the sale, or the offering for sale ... of any product (including carpet and rugs) which fails to conform to an applicable standard. In order

to provide a basis for determining whether particular fabrics are flammable within the prohibitions of the Act, Section 4 thereof delegates to the Secretary of Commerce authority, subject to applicable administrative procedures, to promulgate standards of flammability (Stip. para. 6).

6. Pursuant to such authority, the Secretary of Commerce, on April 15, 1970, promulgated the "Carpets and Rugs (Pill Test)", "Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70)." This Standard sets out in technical detail a test method calculated to determine the surface flammability of carpets and rugs when exposed, under carefully prescribed draft free conditions, to the type of standard ignition source generally found to be present in the home and office environment. The test method provided by the Standard involves the exposure of eight conditioned 9" x 9" replicate specimens of a given carpet or rug sample to a standard igniting source. A Methenamine incendiary pill is placed in the center of the specimen and serves as the aforementioned ignition source. The tablet is ignited with a match and the burning is observed from the center outward. A specimen passes the test if the charred portion does not extend to within one inch of the edge of the hole in the prescribed flattening frame. In order to conform to the Standard, at least seven of the eight specimens in each sample tested must meet the acceptance criterion (Stip. para. 7).

7. The pill test was designed to determine whether or not a carpet sample when exposed to a small ignition source will ignite and whether the flame will spread. The hazard measured is the ignition of the carpet

and the spread of fire to other combustible materials (Tr. 1158, 1169).

8. The purpose of the Standard is to protect the public against the danger of unreasonable risk of exposure to small flame sources and to reduce the risk of carpet fires to a reasonable level. The protection afforded by the Standard is intended to last for the life of the carpet (Tr. 1159, 1229).

9. The drafters of the Standard believe that a manufacturer should stand behind defective material because he/she is exposing the public to a danger (Tr. 1205).

10. At the time the standard was passed, it was considered to be a reasonable and inexpensive means of determining the hazard caused by small ignition sources. The drafters believed that the pill test was indicative of how carpet would perform in a real life situation. To date, sufficient evidence has not been produced to indicate that a more severe ignition source requirement is necessary (Tr. 1159, 1204).

11. The Standard does not differentiate between the testing of new and used carpet, or the testing of carpets with or without contaminants (Tr. 1158).

12. The tests performed by the LeBlanc Laboratory are not dispositive of the issue of whether the carpet met the acceptance criterion of the Standard (Tr. 1442).

III. Production and Finishing of Style 222

13. Between August 23, 1972 and January 31, 1974, Respondents manufactured 15,000 square yards (113 rolls) of Style 222 for sale in commerce (Stip. paras. 3, 8, 9, 10; Sc. 12A, 12B, 12C).

14. After the carpet was produced, it was shipped to either Reliance Industries, Inc. or Masterpiece Finishing, Inc. for the application of latex pre-coat and foam rubber backing (Stip. para. 11).

15. The carpet was finished on twenty-six different dates by Reliance and Masterpiece (Stip. para. 18).

16. Between August 23, 1972 and March 1, 1973, Reliance finished a total of 3,902 square yards (25 rolls) on eight different dates (Stip. para. 16). Masterpiece finished the remaining 10,080 square yards (81 rolls) on eighteen different dates between August 29, 1972 and January 31, 1974 (Stip. para. 17).

17. Alumina trihydrate (hereinafter referred to as ATH) is a fire retarding chemical used in carpet latex adhesives, pre-coats and foams (Stip. para. 12).

18. Although Respondents claim that the specifications for Style 222 called for the use of ATH in the latex pre-coat, they did not directly give specifications to Masterpiece Finishing, Inc., indicating the amount of ATH to be used in the latex pre-coat. An unnamed finisher who had previously been retained by Barrett passed on the specifications to Masterpiece (Tr. 516).

19. Respondents and Masterpiece Finishing Company did not enter into a written agreement as to the amount of ATH to be added (Tr. 514). No competent documentary evidence exists which specifically indicates that ATH was mixed in the latex pre-coat and applied to Style 222 during the entire time that Masterpiece finished the carpet (Tr. 52-53, 1074, 1075, 1089).

20. Neither Masterpiece Finishing, Inc. nor the Respondents performed any tests to measure the distribution of ATH in Style 222 (Tr. 671, 1105).

21. The Georgia Institute of Technology indicated that the failure of the carpet they tested was "probably due to the lack of uniformity in addition of ATH to the carpet backing" (emphasis supplied); however, Georgia Institute's tests were limited in scope. Only two rolls out of the approximately 113 produced were tested (Stip. para. 42).

22. The Georgia Tech tests are not dispositive of the issue of the cause of the failing carpets. They only demonstrate that there was in fact a quality control problem, but not the extent of the problem (Tr. 865).

## IV. Investigation and Testing of Style 222

### A. In General

23. On February 20, 1974, a CPSC investigator obtained a sample of Style 222, roll No. 7048-21, from the Respondents' mill in Dalton, Georgia. On March 15, 1974, the sample was tested for flammability at the CPSC laboratory (Test Rep. No. C-2438), and it failed the test (Stip. paras. 19, 30, 31; Sc. 13C).

24. On March 29, 1974, a CPSC investigator obtained a sample of Style 222, roll No. 10923-12 from the Respondents' mill in Dalton, Georgia. On April 12, 1974, the sample was tested for flammability at the CPSC laboratory (Test Rep. No. C-2455), and it failed the test (Stip. paras. 21, 30, 31; Sc. 13E).

25. On September 17, 1975, a CPSC investigator obtained a sample of Style 222, roll No. 7045-111 from Respondents' mill in Dalton, Georgia. On September 23, 1975, the sample was tested for flammability at the CPSC Laboratory (Test Rep. No. C-3057), and it failed the test (Stip. paras. 30, 31; Sc. 13A).

26. On September 17, 1975, a CPSC investigator obtained a sample of Style 222, roll No. 7048-11 from Respondents' mill in Dalton, Georgia. On September 23, 1975, the sample was tested for flammability at the CPSC Laboratory (Test Rep. No. C-3058), and it failed the test (Stip. paras. 30, 31; Sc. 13B).

27. The samples of Style 222 secured by CPSC investigators were chosen from ordinary production rolls and are representative of the Style (Stip. paras. 19, 21; Tr. 340).

B. Overberg-Vest Sample

28. On December 7, 1973, Overberg Decorating Center of Festus, Missouri purchased a roll of Style 222 carpet (roll No. 10348-11) from Respondents (Stip. para. 25). The roll had been finished by Masterpiece Finishing, Inc. on November 9, 1973 (Stip. para. 33).

29. A portion of roll No. 10348-11 was sold to John Vest, Jr., a private home owner, and was subsequently installed throughout his residence (Stip. para. 25; Tr. 417).

30. Mr. Vest personally installed a piece of the carpet in his son's room, wall to wall. The room was located in the basement portion of the house, on a different level, and on the opposite side of the house

from the kitchen. It was centrally heated and air conditioned (Stip. para. 25; Tr. 418, 420, 421, 475).

31. Several excess pieces which remained after said installation were stored under the bed in the boy's room, and on top of the already installed carpet (Stip. para. 25; Tr. 419).

32. The samples were continuously stored under the son's bed, and that bed was covered by a full-length bedspread (Tr. 419-420).

33. During the time that the excess pieces were stored under the bed, they were never walked on or vacuumed; nor did they come into contact with contaminants. The sample in question was not used carpet (Tr. 420, 427, 441).

34. In August, 1974, Mr. Vest delivered a piece of the remaining uninstalled pieces to Overberg Decorating Center. Subsequently, Mr. Overberg turned over the samples of the roll to Earl G. Strauther, a CPSC Investigator. Strauther marked and labeled the samples and forwarded them to CPSC headquarters for flammability testing (Stip. paras. 25, 30; Tr. 32-36; Sc. 1, 2, 3).

35. On August 21, 1974, the sample taken from roll No. 10348-11 was tested for flammability and failed the test (Stip. para. 31; Sc. 8).

36. The Overberg-Vest sample is representative of the Style (Tr. 873).

37. The strands which appeared on the surface of specimens of the Overberg-Vest sample did not influence the passing or failing of the flammability test prescribed by the Standard (Tr. 257-258, 287, 288).

38. In accordance with the requirements of the Standard, the CPSC lab vacuumed the specimens from the Overberg-Vest sample. That procedure removed any dust that may have accumulated on a carpet as a result of its lying in a house for a period of seven months (Tr. 188-89, 243, 255, 314).

39. The specimens from the Overberg-Vest sample were appropriate for flammability testing and were tested in accordance with the Standard for the Surface Flammability of Carpets and Rugs (Tr. 62-71, 181-189, 220, 884).

C. Laboratory Flammability Tests On Style 222 Paradise Valley Carpet Were Performed In Accordance With the Procedures Set Out In The Standard

40. All flammability tests on Style 222 conducted by both the CPSC laboratory and the Independent Textile Testing Service, Inc. laboratory were performed in accordance with the procedure specified in paragraph .4 of DOC FF 1-70 (Stip. paras. 31, 32).

41. Ms. Elaine Brophy, a textile technologist and supervisor of the Consumer Product Safety Commission's laboratory, vouched for the procedures followed by the Commission's laboratory in conducting flammability testing in general and specifically for the Overberg-Vest test sample (Tr. 62-71).

a) The ignition source for the carpet tests conducted by the laboratory was a methenamine tablet which had been dessicated for twenty-four hours (Tr. 62,63).

b) The test chamber for conducting the test was made of cement asbestos and consisted of a hollow cube with no top and several removable bottoms. Dimensions were 12 by 12 by 12 inches (Tr. 61).

c) The test included the use of a flattening frame made of steel. The frame was 9 by 9 inches square and had a circle of 8 inches in diameter cut from the middle of it (Tr. 62).

d) Carpet test samples were cut in dimensions of 9 by 9 inches (Tr. 59).

e) The carpet samples were placed in a drying oven in a horizontal position where they were maintained on separate shelves at a temperature of 105°C. for a period of 2 hours (Tr. 60).

f) The samples were then placed in an air-tight, moisture-tight dessication chamber. A tray in the bottom of the chamber contained a silica gel that absorbed moisture. The samples remained in the dessicator for one hour and were allowed to cool to room temperature (Tr. 60).

g) The carpet samples were handled during the conditioning process with a gloved hand (Tr. 60).

h) The testing cube was placed inside an individual exhaust fume hood which was equipped with exhaust fans. The purpose of this hood was to exhaust fumes and smoke from the test chamber following the completion of the test (Tr. 61).

i) The samples were cleaned prior to testing by means of a vacuum cleaner in order to remove any loose fiber materials and loose yarns (Tr. 59).

j) A linking device was placed in the middle of the flattening frame upon completion of the conditioning process and, with the aid of this device, the test pill was placed in the center of the carpet sample (Tr. 63).

42. Ms. Jean Williams, a textile technologist, performed the flammability tests on Sc. 2, the Vest Sample, in accordance with the Standard for Surface Flammability of Carpets and Rugs (FF 1-70) (Tr. 181-189).

D. Overall Test Results on Style 222

43. A total of 26 flammability tests have been conducted on Style 222, resulting in 13 failures and 13 passes. Independent Testing Service, Inc. has tested eighteen of the samples, and the Commission laboratory has tested eight (Stip. paras. 31, 32, 35).

44. Between March 15, 1974 and August 21, 1974, the CPSC laboratory conducted flammability tests on samples of eight rolls of Style 222, which were manufactured for sale, sold, and offered for sale in commerce. Samples from five of the eight rolls tested failed to pass the acceptance criterion of the Standard (Stip. para. 31; Sc. 13A, 13B, 13C, 13E).

45. Between April 2, 1974 and December 1, 1975, the Independent Textile Testing Service, Inc. laboratory of Dalton, Georgia conducted flammability tests on samples of eight rolls of Style 222, which were manufactured for sale, sold and offered for sale, in commerce. Samples from six of the eight rolls tested failed to pass the acceptance criterion of the Standard (Stip. para, 32; Sc. 14A, 14B).

46. A total of nine rolls of Style 222 have been tested, and samples of seven of the rolls have failed to conform to the acceptance criterion of the Standard (Stip. paras. 31, 32).

47. The entire production run of Style 222 was "finished" on approximately 28 different days. Samples for testing were acquired from the only available rolls and those rolls represent carpet finished on 5 different days -- September 18, 1972; July 18, 1973; October 10, 1973; November 9, 1973; December 10, 1973 (Stip. paras. 31, 32, 33).

48. All failing rolls of carpet were manufactured for sale, sold or offered for sale, in commerce (Tr. 655, 656-57; Sc. 12A, 12B, 12C).

V. Application of Test Results to Entire Style

49. A total of twenty-six flammability tests have been conducted on nine rolls of Style 222. Samples of seven of the nine rolls tested have failed to pass the acceptance criterion of the Standard (Stip. para. 35).

50. The fact that samples from seven of the nine rolls tested failed to pass the acceptance criterion of the Standard, demonstrates that at a minimum 46%, or 52 rolls, of Style 222 would fail the Standard for the Surface Flammability of Carpets and Rugs (Tr. 324; Sc. 9, 10).

51. The risk factor or the probability that less than 52 rolls out of the 113 rolls manufactured would fail the acceptance criterion of the Standard is 5% (Tr. 324; Sc. 9, 10).

52. The sampling of carpet of Style 222, upon which the statistical projection of a 46% failure rate is based, consists of a valid random sampling (Tr. 340).

53. CPSC investigators had no preconceived notion as to whether the carpet samples they selected would fail the flammability test. The samples were selected in a random and unbiased manner (Tr. 79, 297).

54. The Standard requires that samples tested should be representative of the lot [16 CFR 1630.4(b)(1)(i)].

55. Within a reasonable range of sample fluctuation, the samples of Style 222 used to make statistical projections are representative of the population or lot (Tr. 340).

56. For the purposes of determining the rate of failure in all rolls of Style 222, the term lot as used in the Standard is the same as the manufacturer's style (Tr. 324).

57. On other production dates, the process of putting ATH in the backing of Style 222, may have been out of control in essentially the same way as the carpet samples on which Georgia Tech. conducted tests (Tr. 350).

VI. The Ultimate Consumer

58. Style 222 was offered for sale and sold in commerce by Respondents between January, 1973 and March, 1974 (Stip. paras. 3, 8, 11; Tr. 655-656; Sc. 12A, 12B, 12C).

59. Thirteen thousand (13,000) square yards of Style 222 were sold to distributors and retailers outside the State of Georgia (Stip. para. 9; Tr. 651).

60. The distributors and retailers subsequently sold all the carpet in their supply to ultimate consumers who installed same in their homes. Approximately three hundred fifty square yards of carpet remain at the Barrett Mill (Stip. para. 9; Tr. 714).

61. Thirteen thousand (13,000) square yards of Style 222 is installed in approximately 325 homes; however, the consumers in question are unaware that samples of Style 222 have failed to pass the Standard (Stip. para. 26; Tr. 630, 651, 714, 786).

62. Barrett Carpet Mills has a general policy of testing its carpet samples for flammability at intervals of approximately 25,000 square yards; however, there were no flammability tests performed by Barrett on Style 222, prior to sale (Tr. 531, 651, 1372).

63. At present, there is no formal testing method which measures the surface flammability of carpet installed in the homes of consumers (Tr. 1442).

VII. Test Performed by LeBlanc Laboratories

64. The Carpet Standard calls for the use of a methenamine pill as an ignition source because its effect on carpet simulates, in the laboratory, the fire hazards the public is exposed to in every day life (Tr. 906).

65. The experiments performed are based on the assumption that someone will be present to take corrective action if an ignition source comes in contact with the carpet (Tr. 912, 913).

66. The results of any kind of fire experiment are difficult to predict ahead of time (Tr. 960).

67. Respondents' experiment on the "real life hazard" of Style 222 carpet did not take into account or attempt to reproduce the presence of substances or materials which in the ordinary course of household use might affect the flammability of the carpet (Tr. 1015, 1016).

68. Dirt would not have a significant effect on the flammability of carpet in a household situation (Tr. 1018).

69. Lint that might have collected on carpet kept under a bed would be picked up by the prescribed vacuuming process performed prior to the pill test and therefore would have no effect on the flammability of Style 222 carpet (Tr. 1020, 1021, 1026).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing, postage prepaid a copy to each such party.

Dated this 30th day of November, 1976.

Ronald G. Yelenik

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the Matter of:<br><br>BARRETT CARPET MILLS, INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation. | CPSC Docket No. 75-5 |

# APPEAL BRIEF OF RESPONDENTS

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Dated: October 14, 1976

Attorneys for Respondents

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BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of:<br><br>BARRETT CARPET MILLS, INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation. | CPSC Docket No. 75-5 |

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UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the Matter of:<br><br>BARRETT CARPET MILLS, INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation. | CPSC Docket No. 75-5 |

APPEAL BRIEF OF RESPONDENTS

## I. STATEMENT OF THE CASE/1/

Between August 23, 1972 and January 31, 1974, respondent Barrett Carpet Mills, Inc., Dalton, Georgia, manufactured a carpet style designated Style 222, Paradise Valley (foam). A total of 15,013 square yards of this dense nylon shag carpet with an integral foam-rubber back was produced, on a total of 26 widely separated dates. Because Barrett is not equipped to perform these functions in-house, the dying and finishing (application of the latex precoat and foam backing) of Paradise Valley (foam) was performed by outside contractors.

On February 20, 1974, after the production of Paradise Valley (foam) had ceased, the Commission initiated an investigation into Barrett's compliance with the Flammable Fabrics Act, as amended, and the carpet flammability standard (hereinafter "DOC FF 1-70"). Flammability tests were performed in the Commission's laboratory on several of Barrett's lines, all of which passed, except Paradise Valley (foam).

During the follow-up-investigation which ensued, both Barrett and the Commission obtained flammability test failures on rolls of carpet finished by Masterpiece Finishers, Inc. on July 18, 1973 and December 10, 1973. Tests by both labs on available carpet finished

/1/ A substantial number of the background facts in this case are contained in a Revised Joint Stipulation which is a part of the hearing record.

on other days passed.

In an effort to determine the cause of the test failues on the two dates, respondents contracted with the Georgia Institute of Technology to have a neutron activation analysis ("NAA") run on samples of both passing and failing rolls. The NAA established the presence of alumina trihydrate, the fire retardant latex filler specified by respondent, in both passing and failing specimens, at approximately the same average level. However, the between-specimen variability in specimens from the failing rolls was substantial, causing the Georgia Tech scientists to conclude the "pill test" failures were "probably due to the lack of uniformity in addition of (alumina trihydrate) to the carpet backing."

In an effort to establish the hazard to consumers which might exist as a result of this production discrepancy, Barrett contracted with LeBlanc Research Corporation, East Greenwich, Rhode Island, to conduct research consisting of exposing samples of passing and failing Paradise Valley (foam) carpet to a series of real life flame sources, equivalent to or more severe that the "methenamine pill" used as the ignition source in the carpet flammability standard.

At an early stage of the investigation, Barrett had voluntarily recalled all uninstalled Paradise Valley (foam) from distributors and retailers, and had determined that no additional Paradise Valley (foam) remained in commerce.

Prior to the issuance of the Notice of Enforcement, Barrett had executed a consent order agreement identical in all relevant respects to order which had been recently adopted in Congoleum Industries, Inc., CPSC Dkt. No 75-3, including a wholesaler/retailer recall of uninstalled carpet. This proffer was rejected by the staff of the Bureau of Compliance.

An administrative action was commenced by the filing of a CPSC Notice of Enforcement on July 21, 1975, alleging that respondents had sold carpet style 222, Paradise Valley (foam) which failed to conform to the Flammable Fabrics Act, as amended, 15 U.S.C. §§1191 et. seq., and seeking to compel respondents to recall the carpet from consumer's floors.

Following an extended hearing before Administrative Law Judge Paul N. Pfeiffer, Judge Pfeiffer issued an Initial Decision on July 8, 1976. In brief, the proposed order contained in the Initial Decision required respondents to give written notice of test failure to customers of Paradise

Valley (foam) rolls finished on the two "suspect" dates; to cease selling Paradise Valley (foam); to recall Paradise Valley (foam) from the "failing finishing days from wholesalers and/or retailers"; and to obtain samples for testing from rolls remaining in commerce produced on previously untested finishing dates. Enforcement counsels request for an order requiring recall of installed carpet was rejected by Judge Pfeiffer largely on the basis of the record evidence on lack of hazard, the Administrative Law Judge having found it unnecessary to reach the issue of whether the Commission has the legal power to recall noncomplying carpet from the consumer's floor.

Neither party appealed the Initial Decision under 16 C.F.R. §1025.72, Rules of Practice for Adjudicative Proceedings. Recognizing the case "presents important questions concerning the Commission's administration of the Flammable Fabrics Act, 15 U.S.C. §1191 et. seq., and the (carpet flammability standard)", the Commission, pursuant to 16 C.F.R. §1025.73, placed the matter on its docket for review, specifying a series of issues to be encompassed in the review. Order dated August 5, 1976. Subsequently, in response to a Motion for Clarification of Order or Enlargement of Issues to be Heard, the Commission issued an Order treating respondents Motion as a Notice of Intention to Appeal, authorizing review of any issue decided by the Administrative Law Judge and setting a new trial schedule. Order dated September 7, 1976.

## II. POSITIONS URGED

In this appeal, respondents Barrett Carpet Mills, Inc. and Roy C. Barrett, urge the following positions:

1. That the Commission lacks the legal authority to order recall of carpet already installed.

2. That the Commission lacks the legal authority to order recall of carpet from wholesalers and/or retailers.

3. That violation of the flammability test requirements of the Standard for the Surface Flammability of Carpets and Rugs should not be considered per se to constitute an unreasonable risk of the occurrence of fire.

4. That evidence extrinsic to compliance with the Standard bearing on the flammability characteristics of carpet is relevant and material to a determination of any remedial relief ordered by the Commission.

5. That the evidence presented does not warrant issuance of a cease and desist order from any further violations.

6. That the Administrative Law Judge's interpretation and application of the term "lot" is essentially in conformity with Commission precedent and policy.

7. That the findings conclusions and order of the Administrative Law Judge should be modified in certain respects.

8. That the evidence presented in this case warrants dismissal of the action without a cease and desist order against either the corporate or individual respondent.

## III. THE COMMISSION LACKS AUTHORITY TO ORDER RECALL OF CARPET ALREADY INSTALLED OR OTHERWISE IN THE POSSESSION OF THE ULTIMATE CONSUMER

### A. Introduction

The Commission's authority with respect to remedies in this and any administrative complaint proceeding involving alleged violation of the carpet flammability standard is derived from §5 of the Flammable Fabrics Act, as amended, 15 U.S.C. §1194(b), and §5(b) of the Federal Trade Commission Act, 15 U.S.C. §45(b). These statutes control litigation by the Commission under the Flammable Fabrics Act unless and until the Commission determines the risk of injury

from carpet flammability cannot be "eliminated or reduced to a sufficient extent by action taken under (them)." U.S.C. §2079(d)./2/ No such determination has been made by the Commission. Init. dec., p.22; Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, Init. dec., p. 28.

B. Federal Trade Commission Act.

Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45, provides that if the Commission determines that a method of competition is unfair, or that an act or practice is unfair or deceptive, the Commission shall issue an order requiring the offender to "cease and desist from using such method of competition or such act or practice." It is this provision, considered in the context of §5 of the Flammable Fabrics Act 15 U.S.C. §1194, which governs the type of remedy the Consumer Product Safety Commission is empowered to impose in this case.

Under this section, the Commission has wide discretion to determine the remedy necessary to eliminate a violation, and can select any remedy having a reasonable relationship to the wrong found to exist. However, it must select a remedy within its jurisdictional and constitutional authority. This authority is limited to prohibitions against future conduct, and does not extend to punitive sanctions or to the award of compensatory redress (recall, replacement or refund) to private parties for past infractions. This has been clearly and repeatedly confirmed in the cases construing the Act and its legislative history, and by commentators and the Commission itself. Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, Init. dec., p. 25.

1. The Cases Uniformly Hold that The Commission Has no Authority To Order Compensatory Relief

It is undoubtedly correct that the Commission has a broad choice of enforcement methods or remedies available to it in framing orders reasonably related to violations found to exist. FTC v. National Lead Co., 352 U.S. 419 (1957). However, the same cases which establish this point also make it clear the the Commission may not proceed beyond its statutory

/2/ Subsequent to the initiation of this case, Congress modified the statute so as to require a finding of "public interest" based upon hearings subject to 5 U.S.C. §553. P.L. 94-284, sec. 16.

authority. Ibid. Attempts by the Commission to do so have been repeatedly rejected. See e.g., Federated Nationwide Wholesalers Service v. FTC, 398 F.2d 253 (2d Cir. 1968) (Commission may not enter orders which would shift burden of proof in compliance action); American Motors Corp. v. FTC, 384 F.2d 247 (6th Cir. 1967), cert. denied, 390 U.S. 1012 (1968) (Commission's Robinson-Patman Act order requiring respondent to obtain advance approval of all preferential pricing systems was beyond Commission enforcement powers because it would improperly require advance Commission approval of lawful practices); American Cyanamid Co. v. FTC, 363 F.2d 757, 772 (6th Cir. 1966) (Commission cannot directly or indirectly invalidate patent); cf. FTC v. Ruberoid Co., 344 U.S. 470 (1952) (availability of statutory defenses under Robinson-Patman Act need not be stated in an order, because FTC cannot lawfully deprive respondent of such defenses).

A Commission order compelling recall and refund in this case would involve nothing more than an attempt to extract money damages, and would constitute a punitive sanction beyond the Commission's authority under the Federal Trade Commission Act.

By attempting to achieve this result by means of an order to cease and desist, the Commission is operating contrary to the Supreme Court's long-standing mandate that §5 of the Federal Trade Commission Act may not be used by the Commission to redress a private wrong. Amalgamated Workers v. Con Edison, 309 U.S. 261 (1940); FTC v. Klesner, 280 U.S. 19 (1929). Section 5 is "prescribed in the public interest as distinguished from provisions intended to afford remedies to private persons." Amalgamated Workers, supra at 268.

This statutory limitation on the scope of Commission orders has been repeated again and again by the courts. Thus, in FTC v. Ruberoid Co., supra, at 473, the Supreme Court stated:

> "Orders of the Federal Trade Commission are not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future." (Emphasis supplied.)

And in FTC v. Cement Institute, 333 U.S. 683, 706 (1948), the Court again stressed:

> "(T)he effect of the Commission's order is not to punish

> or to fasten liability on respondents for past conduct, but to ban specific practices for the future in accordance with the general mandate of Congress." (Emphasis supplied.)

Perhaps the classic statement of this doctrine was made by Mr. Justice Brandeis in his famous dissent in FTC v. Gratz, 253 U.S. 421, 432 (1920).

> "(I)t is necessary to bear in mind the nature of the proceeding under review. The proceeding is not punitive. The complaint is not made with a view to subjecting the respondents to any form of punishment. It is not remedial. The complaint is not filed with a view to affording compensation for any injury alleged to have resulted from the matter charged, nor with a view to protecting individuals from any such injury in the future. The proceeding is strictly a preventive measure taken in the interest of the general public." (Emphasis supplied.)

See also National Harness Mfr's Ass'n v. FTC, 268 Fed. 705, 712 (6th Cir. 1920): "(T)he remedy afforded by the statute is preventive, not compensatory"; Royal Baking Powder Co. v. FTC, 281 Fed. 744, 745 (2d Cir. 1922): "It is not intended that compensation is to be made for any injuries which may have been suffered. The intent of the (Federal Trade Commission) Act is the prevention of injury to the general public"; 'United Corp. v. FTC, 110 F.2d 473, 475 (4th Cir. 1940): "(T)he power of the Federal Trade Commission is purely regulatory and not punitive . . ."; California Lumbermen's Council v. FTC, 115 F.2d 178, 184 (9th Cir. 1940), cert. denied, 312 U.S. 709 (1941): orders are intended "not to punish for past acts, but to prevent the occurrence" of illegal conduct; Ford Motor Co. v. FTC, 120 F.2d 175, 182 (6th Cir. 1941), cert. denied, 314 U.S. 668 (1941): "The Federal Trade Commission Act was intended to afford a preventative remedy, not a compensatory one . . ."; P. Lorillard Co. v. FTC, 186 F.2d 52, 58 (4th Cir. 1950): "Orders of the Commission have relation to the future, not to the past"; Erickson v. FTC, 272 F.2d 318, 322 (7th Cir. 1959), cert. denied, 362 U.S. 940 (1960): "Orders of the Federal Trade Commission are intended to prevent illegal practices in the future"; Regina Corp. v. FTC, 322 F.2d 765, 768 (3d Cir. 1963): "The purpose of the Federal Trade Commission Act is to protect the public, not to punish a wrongdoer"; Benrus Watch Co. v. FTC, 352 F.2d 313, 322 (8th Cir. 1965), cert. denied, 384, U.S. 939 (1966): "Cease and desist orders are not

punitive and they operate prospectively"; Doyle v. FTC, 356 F.2d 381, 383 (5th Cir. 1966): FTC orders are "not intended to impose criminal punishment or exact compensatory damages for past acts, but to prevent illegal practices in the future."

Indeed, until the case of Heater v. FTC, 503 F.2d 321 (9th Cir. 1974) the Federal Trade Commission recognized these limitations./3/ In Vanity Fair, 60 FTC 568, 577 (1962), modified in other respects, 311 F.2d 480 (2d Cir. 1962), the Commission stated:

> "It must be remembered that a cease and desist order does not punish or impose compensatory damages for past acts. Its purpose is to prevent illegal practices in the future." (Emphasis supplied.)

Accord, HMH Publishing Co., Inc., 62 FTC 1036, 1043 (1963).

Other federal administrative agencies have deferred to clear limits on their statutory authority despite a desire to award "dramatic" forms of relief. Thus, in Ex-Cell-O-Corp., 185 NLRB No. 20 (8/25/70), 74 LRRM 1740, the National Labor Relations Board overruled a trial examiner who had "ordered the (respondent) to compensate its employees for monetary losses incurred as a result of its unlawful conduct", apart from the "back pay" remedy expressly provided for by Statute. 74 LRRM at 1741. This was done despite the very broad express remedial authority of the NLRB, as distinguished from the Commission's authority contained in §5(b) of the Federal Trade Commission Act. As the NLRB stated in Ex-Cell-O:

> "Section 10(c) of the Act directs the Board to order a person found to have committed an unfair labor practice to cease and desist and 'to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.' This authority is extremely broad and was so intended by Congress. It is not so broad, however, as to permit the punishment of a particular respondent or a class of respondents." 74 LRRM at 1741-2.

/3/ The Heater case is discussed supra.

The Board concluded:

> "Much as we appreciate the need for more adequate remedies in 8(a)(5) cases, we believe that, as the law now stands, the proposed remedy is a matter for Congress, not the Board." 74 LRRM at 1743.

In short, the NLRB disclaimed its authority to provide a common law remedy -- damages -- not specifically authorized by statute. 29 U.S.C. §151 et seq. An attitude equally deferential to Congress is required here.

The first case involving a departure from this traditional view of the limitations of §5 to reach the Court of Appeals was that of Heater v. FTC, 503 F.2d 321 (1974). In the Heater case, petitioner was directed by the Commission to discontinue unfair and deceptive business practices . . . and to make restitution of monies secured by these practices./4/

Upon appeal from imposition of the order, the Court of Appeals considered the "principal question" to be "does the Commission under the 'cease and desist' provision possess power to order the refund in question." Having reviewed the legislative history and case authorities on the scope of §5, the Court of Appeals concluded:

> "The power to attach consequences to prior conduct was thought inconsistent with the Commission's contemplated quasi-legislative and educational function. As a result recourse for harm suffered before the Commission enters a cease and desist order was left to private suits." 503 F.2d at 324.

In elaborating its rationale for rejecting use of the Commission's cease and desist powers as a device for redressing private rights, the Court reasoned:

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/4/ The analogy to Barrett Carpet Mills, Inc., CPSC Dkt. No. 75-5 is complete. Under the terms of the order proposed by Enforcement counsel, respondents were to be ordered to cease and desist from selling "product . . . which fails to conform . . . to applicable standards . . ." (Paragraph I) and further ordered to recall carpet sold in the past and refund the purchase price or replace it.

> "Moreover, the Congressionally mandated Commission procedures are designed for the determination and expression of the public interest in a particluar factual context; they become suspect if employed to adjudicate private rights. The Commission acts as both prosecutor and judge in its own proceeding. The Commission issues the original complaint, a Commission attorney prosecutes, a Commission Hearing Examiner hears the evidence, makes factual findings, and makes the initial judgment of whether the Act is violated. An appeal may then be had back to the full Commission, which originally issued the complaint. Court review of the final Commission judgment is limited -- the Commission's factual findings are conclusive if supported by substantial evidetor. We are certain that had Congress contemplated displacement of a private suit for rescission, under traditional judicial procedures, by an administrative proceeding, under §5(b) procedures, as the remedy for fraud in the procurement of a contract, it would have said so more explicitly." 503 F.2d at 325-6.

Setting aside the refund provisions of the Commission's final order, the Court of Appeals concluded:

> "The construction the Commission places on its power to define 'unfair acts and practices' impermissibly expands the Commission's remedial power beyond that contemplated by Congress or written into the Act. Consumer protection is an important task. However, the Commission's endeavors must be limited to the exercise of powers granted by Congress. If there exists a deficiency in the Act, the cure must come from Congress, not by judicial enlargement transcends the judicial function.' Iselin v. United States, 270 U.S. 245, 251, 46 S. Ct. 248, 250, 70 L.Ed. 566 (1926) (Brandeis, J.)." (Emphasis added). 503 F.2d at 327.

The Heater decision was not appealed, and the Federal Trade Commission has indicated in a recent series of cases it does not intend to pursue the issue.

## 2. Legislative History Confirms That The Commission is Attempting To Overreach The Limits of the Authority Granted By Congress

If additional support were needed for the conclusion that Congress did not intend the Commission to have the authority to effect compensatory or punitive relief by way of awarding refunds for past injuries, one need only consider the legislative history of §5 of the Federal Trade Commission Act, and the numerous unsuccessful attempts which have been made to amend that provision to confer the very authority which the Commission here would arrogate to itself.

The operative language of §5(a) was intentionally made unusually broad in order to permit the Commission to evolve and apply new principles of law in particular situations on the basis of full knowledge of the facts. Consistent with that principle, and largely because of it, Congress determined that the relief to be granted under §5(b) of the Act had to be limited, and prospective, in nature. Thus, when Congress initially considered the Act, proposals to add punitive provisions were expressly rejected after extended debate. Similarly, a proposal to provide a treble-damage remedy was also rejected. In opposing such provisions, Senator Newlands of Nevada, Chairman of the Senate Committee on Interstate Commerce and the bill's sponsor, stated:

> "Here we hold the sword of Damocles above every businessman in the country, and either compel him to abandon a practice which perhaps he thinks is right, or to pursue litigation to the bitter end, when we want through this instrumentality not to punish, but to secure higher standards of conduct, by rules that will be laid down by this commission and sustained by this court, and which have an educational effect upon the commerce of the country." 51 Cong. Rec. 13116, 63rd Cong. 2d Sess. (1914).

Another member of the Interstate Commerce Committee Senator Cummins, declared:

> "This is not a statute intended to afford remedies in damages to those who may be injured by wrongdoings of trust and monopolies***. We are trying here to

> make the regulation effectual, not for the benefit of an individual, but for the benefit of society." 51 Cong. Rec. 13050, 63rd Cong., 2d Sess. (1914).

While the Wheeler-Lea amendment thereafter expanded the scope of §5 to cover unfair or deceptive acts or practices in commerce, it made no change with respect to the orders which might be entered by the Commission. Indeed, when Congress sought to add penalties in 1938, it specifically added §12 et seq., describing with particularity the situations in which such penalties may be imposed, and by whom - the courts.

Congress to this day continues to view the Commission as presently without the power it seeks to exercise in this case. On August 14, 1970, the Senate Committee on Commerce commended that:

> "(T)he Commission's consumer protection powers * * * are now limited to cease and desist orders having only prospective effect and providing no redress to persons injured by unfair or deceptive practices." S. Rep. 91-1124, p.9, 91st Cong. 2d Sess. (Emphasis supplied.)

When the same Committee, during 1971, reported out S.986, a bill which would have authorized the very type of relief being sought in this case, it was noted in the Committee Report issued July 16, 1971 that:

> "At the present time cease and desist orders have prospective application only and afford no specific consumer redress to consumers already injured." S.Rep. No. 92-269, p. 24, 92d Cong. 1st Sess. (Emphasis supplied.)

The Department of Justice concurs that the Federal Trade Commission Act does not convey the power the Commission here seeks to assert. In opposing a bill in the 91st Congress that would have permitted the Commission to offer redress (including damages, refunds, etc.) of injuries to consumers resulting from violations of §5 of the Federal Trade Commission Act, the Department noted that the bill

> "would convert the Commission from a body whose orders are designed to operate prospectively into one whose orders are designed to redress injury and to punish."

Letter, Department of Justice to Hon. Warren E. Magnuson June 26, 1970, reprinted in S.Rep. No. 91-1124, p. 61, 91st Cong., 2d Sess. (1970).

Thus, not only are the judicial precedents express and unanimous that the Commission has no power to award private damages, but Congress itself expressly regards its creation (the Federal Trade Commission) as being without such power.

The issue was again brought before the 93rd Congress. This time, again, Congress specifically rejected the concept of empowering the Commission to award damages directly in its own proceedings. Instead, §206(a) of P.L. 93-637, 88 Stat. 2183, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, authorized the Federal Trade Commission to seek "such relief as (a U.S. district court) finds necessary to redress injury to consumers" resulting from (a) rule violation or the unfair or deceptive act or practice, as the case may be." 15 U.S.C. §41 et. seq. The Federal Trade Commission is required by virtue of §206(a) to act solely in a prosecutorial role, seeking such relief in plenary actions instituted in federal district courts after it first obtains a final cease and desist order in its own proceedings./5/

### 3. The FTC and Its Commissioners and the Commentators Have Consistently Held That the FTC Act Confers No Power To Award Money Damages

Virtually from its inception, the Trade Commission has recognized that it "is not a court and, therefore, cannot award damages, costs, or reparations", FTC, Annual Report to Congress for Fiscal 1920, p.21, and

/5/ The issue of whether the authority conveyed to the Federal Trade Commission in §206(a) of P.L. 93-637, a statute adopted subsequent to the enactment of the Consumer Product Safety Act, is now possessed by the CPSC is not raised by this Brief. But see Order dated March 18, 1976 in CPSC v. Jonas Company, Inc., C.A. No. C-75-114-R, N.D.Ga., which holds the Commission is not given additional powers by such amendments to the FTCA. The issue here is simply whether the Commission has the authority to impose such relief in its own complaint proceedings.

that an FTC complaint "does (not) seek to adjust matters between parties."/6/

In 1967, in discussing the need for legislation, the Commission's Annual Report to Congress stated:

> "While the Commission issues orders to preclude further violations of the provisions of the Act, it cannot accord pecuniary redress to those injured by such violations." FTC, Annual Report to Congress for Fiscal 1967, p.74. (Emphasis supplied.) See also Id. p. 17.

More recently, in statements made to Congress, present Commissioners and recent past Commissioners have recognized that the Commission lacks the authority to award damages to third parties and that new legislation would be needed to obtain such power. As shown above, the quest for such a power has been rejected by Congress. See testimony of FTC Commissioner Jones, Hearings on S.2246, S.3092, and S.3201, before Consumer Subcom. of S. Commerce Comm., pp. 105-6, 91st Cong., 2nd Sess. (1970), (hereinafter "Senate Hearings"); Commissioner Elmon, Senate Hearings December 17, 1969, p.65; Commissioner Paul Rand Dixon, Senate Hearings, December 17, 1969, p.39; see also testimony of FTC Chairman Weinberger, Hearings on H.R. 14931 and H.R. 14585, before Subcomm. on Commerce and Finance of H. Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess. pp. 54-55 (1970) (hereinafter "House Hearings"); testimony of FTC Chairman Kirkpatrick, Hearings on H.R. 4809, pp. 11-13.

The Federal Trade Commission has explicitly recognized that the Commission does not have authority to award money damages or restitution. Moreover, Congress has now expressly rejected proposals by which the Commission's power would be expanded to award the type of relief sought in this proceeding. See 206(a), P.L. 93-637.

/6/ Annual Reports for the Commission to Congress for the fiscal years: 1924, pp.24-25; 1925, pp. 23-24; 1926, p.8; 1927, p.41; 1928, p.41; 1929, pp.18 and 73; 1930, pp. 18-19; 1931, p.39; 1932, pp. 58-59; 1933, p.64 1934, p.46; 1935, p.45; 1936, p.45; 1937, pp.38-39; 1938, p.37; 1939, p.35; 1940, pp.26-27; 1941, pp. 32-33; 1942, p.26; 1943, p.28; 1944, p.21; 1945, p.28; 1946, p.22; 1947, p.36; 1948, p.30; 1949, p.25; 1950, p.35; 1951, p.116; 1952, p.121; 1953, p.89.

The commentators have consistently shared this view of the limitations on the Commission's cease and desist powers. An early extensive study in the administrative law area was Professor Henderson's well-known study of the Commission sponsored by the Commonwealth Fund's Legal Research Committee. Henderson, The Federal Trade Commission (1924). Professor Henderson stated:

> "* * *The act does not expressly confer any general power, of the kind possessed by a court of equity, to compel restitution, or otherwise to so mold the decree as to do substantial justice under the circumstances. Of course, no damages can be awarded, or mandatory order entered." Id. at 71.

In discussing the Commission's power to proceed under §5 against the "pirating" or infringing of another's trade name, he stated:

> "Moreover, the Commission has no power to award damages for past infringement, or even for willful infringement, after the order has been issued, nor can its order be made the basis for a suit for damages in the courts." Id. at 174.

Recognizing the similarity of orders under the Federal Trade Commission Act and under §2 of the Clayton Act, he observed:

> "* * *In view of the limitations of its procedure, the Federal Trade Commission is not capable of prompt action, and it has no power to inflict punishment or award damages." Id. at 260.

And, the American Bar Association's 1969 report on the FTC recommended that "private rights of action for damages and injunctive relief be created for and on behalf of consumers" injured by §5 violations, and noted that such a right might be made to

> "accrue, not directly to individual consumers but, instead, for their benefit, to some public authority like the FTC as parens patriae* * *." Report of the ABA Commission to Study the Federal Trade Commission, 63 (1969).

Clearly implicit in such a recommendation is an awareness that the FTC does not presently stand in such position. A fortiori, neither does the Consumer Product Safety Commission.

Even critics of the Federal Trade Commission, who have complained of its alleged failure to do enough to protect consumers, have conceded that in this area the Commission is without power:

> "The only coercive legal enforcement tool generally available to the FTC is the 'cease and desist order', which imposes no retroactive sanctions, but merely prohibits future repetition of the sort of conduct against which it is aimed." 115 Cong. Rec. Pt. 2, 1540, 91st Cong., 1st Sess., Extension of Remarks (Jan. 22, 1969) ("Nader Report").

Not only is restitution not an authorized remedy under the FTC Act, but it is also obvious that restitution is not necessary on any sort of theory of restoration of competitive balance. One need only look at the volume of Paradise Valley (foam) sales in the context of total industry carpet sales during the same period, or the respondent's profit on these sales, to appreciate the insignificance of these sales in the context of their impact on competition.

Thus, it is clear on the basis of all of the relevant cases, as well as the legislative history of §5 of the Federal Trade Commission Act and the statements which have consistently been made by the Commission, its Commissioners and commentators, that the Commission is totally without authority to award restitution to private parties in Commission compliant proceedings under §5.

C. Flammable Fabrics Act

1. Statutory Provisions.

The Flammable Fabrics Act expressly spells out the procedures which the Commission may adopt to enforce the Act. The very explicitness of this statutory enactment negates any possible claim of authority to require notice or product recall.

Section 3 of the Flammable Fabrics Act, as amended and revised December 14, 1967, 15 U.S.C. §1192, declares that the sale in commerce of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued by the Secretary of Commerce

under §4 of this Act shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice under the Federal Trade Commission Act.

Section 5(a) of the Flammable Fabrics Act provides that §§3, 5, 6 and 8(b) thereof shall be enforced by the Federal Trade Commission under the rules, regulations and procedures provided for in the Federal Trade Commission Act. 15 U.S.C. §1194(a). Section 5(c) of the Act authorizes and directs the Commission to prescribe rules and regulations relating to products subject to the Act and further specifies that "violation of such rules and regulations shall be unlawful and shall be an unfair method of competition . . . under the Federal Trade Commission Act." 15 U.S.C. §1194(c).

The remedies which the Commission is authorized to seek were explicitly limited by Congress to those of a Commission proceeding looking to the entry of a cease and desist order and district court proceedings for temporary injunction, seizure and condemnation and criminal sanctions. 15 U.S.C. §1194(b), §1195(a), §1195(b), §1196.

Section 6(a) of the Flammable Fabrics Act provides that whenever the Commission has reason to believe that any person is violating, or is about to violate, §3 of the Act or any rule or regulation prescribed under §5(c) of the Act and that it would be in the public interest to enjoin such violation until a proceeding under the Federal Trade Commission Act is completed, the Commission may bring suit against any such person to enjoin such violation in any district court of the United States for the district in which such person resides or transacts business. 15 U.S.C. §1195(a).

Section 6(b) of the Act provides that whenever the Commission has reason to believe that any fabric, related material or product has been introduced in commerce in violation of §3 of the Act, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. 15 U.S.C. §1195(b). The authority contained in §6(b) is the exclusive means provided by Congress for securing the removal of allegedly noncomplying products from the marketplace after their entry

into commerce./7/

Section 7 of the Flammable Fabrics Act provides that any person who willfully violates §§3 or 8(b) of the Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned, or both. 15 U.S.C. §1196.

In short, there is not one word in the Flammable Fabrics Act, as amended, which authorizes the Commission to require manufacturers to recall carpet from the market, much less, to recall used carpet from the marketplace or from the homes of consumers. Where, as here, a statute is clear and unambiguous on its face, an administrative agency cannot claim powers which have not been delegated by Congress.

2. Legislative History

The legislative history of the Flammable Fabrics Act is devoid of any suggestion that the Commission has authority to effectuate the recall of a product claimed or "found" to fail flammability standards promulgated under the Act.

The Flammable Fabrics Act was introducted in the First Session of the 83rd Congress as H.R. 5059, "An Act to Prohibit the Introduction and Movement in Interstate Commerce of Articles of Wearing Apparel and Fabrics which are so Highly Flammable as to be Dangerous When Worn by Individuals, and For Other Purposes," and passed by the House and Senate in June 1952 (P.L. 88, 83rd Cong.). The hearings before the House Committee on Interstate and Foreign Commerce, and that Committee"'s Report, H.R. 425, 83rd Cong., 1st Sess., show that Congress never intended to give the Commission the power which it now claims.

When the Flammable Fabrics Act was amended to authorize promulgation of standards on "interior furnishings," in 1967, the Commission did not ask for any of the powers which it presently seeks to invoke.

/7/ Respondents recognize that the Commission has claimed the "inherent" power to compel recall of non-complying product from wholesalers and/or retailers. Congoleum Industries, Inc., CPSC Dkt. No. 75-3. On the same theory, which respondents reject, the Commission's power might be considered unlimited.

Indeed, it was not until 1970 that Chairman Caspar Weinberger first informed Congress that "the existing enforcement tools are inadequate . . . ." Chairman Weinberger conceded, before the Consumer Subcommittee of the Senate Commerce Committee, that the Commission had adopted unauthorized procedures in order to shore up what he classified as "statutory deficiencies." He stated:

> . . ."The Flammable Fabrics Act provides as enforcement tools four compulsory processes: temporary injunction, seizure and condemnation, adminsitrative cease and desist orders, and criminal sanctions."

Weinberger further admitted that the FTC was relying on "improvised procedure(s)" as a "stop gap until the legislative changes we have recommended are enacted." Hearings before the Consumer Subcomm. of the Comm. on Commerce, U.S. Senate, 91st Cong., 1st Sess., on S.3765 and S.3766, S.Rep.No. 91-93, p. 49. In accord with that testimony, and in recognition that it did not have the authority which it was exercising, the Commission advocated amendments to the Flammable Fabrics Act, which proposals did not include a request for recall authority. H.R. 5968, 92nd Cong., 1st Sess., June 30 and July 6, 1971. The Congress has not approved these limited revisions of the statute, much less the so-called "administrative procedure" which included a Commission demand for a product recall.

Thus, the legislative history demonstrates that the Federal Trade Commission itself did not believe it had the authority to compel product recall under any statutory grant.

That the Commission has no authority under the Flammable Fabrics Act, as amended, or the Federal Trade Commission Act, to require a respondent to recall carpeting or to provide refunds to purchasers of such carpeting was explicitly pointed out by Chairman Richard O. Simpson, dissenting in the Congoleum case:

> . . . It is my belief that the Consumer Product Safety Commission does not possess the authority under the Flammable Fabrics Act to order notification, recall, and repurchase of products that fail to conform to standards issued under that Act; and therefore the Administrative Law Judge exceeded his authority in ordering notification and recall by Congoleum Industries, Inc.

> Although the Flammable Fabrics Act is a public safety statute, neither it nor the Federal Trade Commission Act (15 U.S.C. 41 et seq.) provides the specific authority to require notification, recall and repurchase of items that do not conform to standards issued under the Flammable Fabrics Act. Those provisions of the FTC Act that are incorporated into the Flammable Fabrics Act (15 U.S.C. 1194) provide only for the issuance of cease and desist orders upon the finding of a violation of law. The Flammable Fabrics Act only authorizes the extraordinary remedies of seizure and injunction (15 U.S.C. 1195).
>
> The Commission's actions must be limited to the exercise of those powers granted by Congress. I believe notification, recall, and repurchase under the Flammable Fabrics Act of items that fail to comply with flammability standards exceeds those powers. (Comm. Op., p.4).

Even the Federal Trade Commission's "improvised procedure" did not extend to recall of installed carpet. Edward B. Finch, Assistant Director for Textiles & Furs, FTC, who had initial enforcement responsibility for the carpet flammability standard, stated that "as far as who pays . . . if the consumer insists a carpet be ripped up . . . (t)he FTC cannot get involved in that facet of the question."/8/ Mr. Finch's stated justification for the FTC's limited claim of recall power was consistent with the view that only such portions of a nonconforming product as remained in commerce were affected./9/

A continuous line of consent orders adopted by the Federal Trade Commission and the Consumer Product Safety Commission in carpet flamm-

/8/ Home Furnishings Daily, October 14, 1971.

/9/ In responding to a written inquiry from counsel as to the authority under which the Federal Trade Commission sought to compel recall of a carpet style alleged to fail applicable flammability standards, the Assistant Director of the Commission's Division of textiles and Furs replied by letter dated August 19, 1971, as follows:

ability cases reflect a similar construction. In all such orders, the obligation to give notice and effect recall has extended only to the respondents' "customers", which, in the case of carpet, are not consumers but wholesalers, distributors, dealers or retailers./10/ No

/9/ cont'd: While there is no specific language contained in the Flammable Fabrics Act which uses the term "recall" we are of the opinion that the authority to require a recall is implicit in other authority granted to the Commission such as the use of injunction and seizure procedures, both of which have the effect of removing a questionable product from the market as does a recall.

If, as Mr. Finch claimed, the authority for recall stemmed from the analogy to seizure, this analogy is not available as concerns installed carpet. Seizure runs against products in commerce within the Court's jurisdiction, not against products which have left the channels of commerce and are in the hands of consumers. 15 U.S.C.§1195(b).

/10/ See e.g. Steven-Leedom 75-C-0006; The Golden Fleece 75-C-0004; Decorative Imports 75-C-0003; Roth Industries 8902; Gross Point 75-C-0011; Courier Industries 75-C-0010; V&L Manufacturing Co. 75-C-0021; ACS Industries, Inc. C-2380; Burlington Industries C-2144; Creative Accent C-2382; Howard Carpet Mills 8894; Vanguard Industries, Inc., et al. C-2232; Egetaipper, Inc., et al. C-2241; Zioris Imports, Inc., et al. C-2254; Cavalier Carpets, Inc., et al. C-2258; Peach Rug Company C-2264; Commander Carpet Mills, Inc., et al. C-2270; Wellco Carpet Corporation C-2278; Virginia Crafters, Inc., et al. C-2288; Conseenee Carpets, Inc., et al. C-2296; Playfield Industries, Inc., et al. C-2300; Danube Carpet Mills, Inc., et al. C-2303; Davis Felt & Carpet Co. C-2313; Tuftes, Inc., et al. C-2314; Lanier Carpets, Inc., et al. C-2322; California Textures, Inc., et al. C-2332; MICA, Inc., et al. C-2334; Scott Carpet Mills, Inc., et al. C-2336; Foundation Carpet Mills, Inc., et al. C-2337; Spring Mills, Inc. C-2338; Moonglow Carpet Mills, Inc., et al. C-2340; Corinthian Carpets, Inc., et al. C2341; Colonial Carpet Mills, Inc., et al. C-2342; Marnacraft Carpet Company, Ltd., et al. C-2343; Pan Pacific Carpets, Inc., et al. C-2344; Villa Carpet Mills, Inc., et al. C-2346; Davis Tile Company, Inc., et al. C-2347; K & J Carpets, et al. C-2348; Cameo Carpet Mills

such orders have been construed to impose a legal obligation upon the respondent to recall from consumers.

This limitation was preserved in the cases of Congoleum Industries, Inc., CPSC Dkt. No. 75-3, Barret Carpet Mills, Inc., CPSC Dkt. No. 75-5, and Westland CArpet Mills, Inc., CPSC Dkt. No. 75-21, the only litigated cases on the subject. In these decisions the Commission and ALJ respectively limited the recall to demonstrably noncomplying rolls of uninstalled carpet. See Congoleum, Init. dec. p.26; Comm. Op., p.2.. The Initial Decision in the instant case is consistent with Congoleum in limiting recall to nonconforming uninstalled carpet, rejecting recall from the floor. Init. dec. pps. 22-23. See also, Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, p. 29.

D. Where Congress Has Granted an Administrative Agency the Power to Compel Notice or Product Recall, It has Expressly Delineated That Power

While the Commission acknowledges that it does not have specific authority under the Flammable Fabrics Act or the FTC Act to require notification and recall, it nevertheless concluded in Congoleum that it has "inherent" power to order such relief because the Flammable Fabrics Act is "a public safety statute" and the Commission "must be able to protect consumers and the general public from the continuing risk of injury that is presented by the violative items" (Comm. Op. 2)./11/

/10/ cont'd: C-2355; Atlantic Carpet Corp., et al. C-2364; Danish Imports Center, Inc., et al. C-2365; Horizon Industries, Inc., et al. C-2371; Craft Rug Mills, Inc., et al. C-2376; Sweetwater Carpet Corp. C-2385; Concord Carpet Corp., et al. C-2386; Southland Chemical & Carpet Finishing, Inc., et al. C-2387; Outside Carpets, Inc., et al. C-2388; Lane Carpet Mils, Inc., et al. C-2391; James Carpets 8876; Alladin Mills 8912; Charter Carpet Corp. 7914; Carpet Mills of Dalton 75-C0002; Majestic Carpet Mills 75-C0005; Calcraft Carpet Mills, Inc. 75-C0008; Chilton Carpet Mills, Inc. 75-C0009; K.O.B. Carpets, Inc. 75-C0013; Apollo Carpets, Inc. 75-C0024; Keller Industries, Inc.,

/11/ The U.S. Court of Appeals for the District of Columbia Circuit has rejected this rationale. See Textile and Apparel Group, American Importers Association v. FTC, 410 F.2d 1052 (D.C. Cir., 1969), cert. denied, 396 U.S. 910 (1969). See also, Hall et al. v. Lemke. 1962 Trade Cases ¶70,388 (N.D.Ill., 1962).

This claim of inherent authority for a safety-related statute has no basis in fact or law. In other statutes dealing with safety where Congress has thought it necessary to grant power for recall and restitution, it has explicitly granted the authority provided.

Legislation specifically treating the matter of public notice, withholding of products from the market, and recall in the event of safety-related defects, reflects a clear and consistent attitude that such powers are exceptional and are not to be brought into play merely because a violation of a product safety standard has been demonstrated. When such unusual powers have been granted, Congress has spelled them out in clear and concise language and has imposed substantial limitations upon their exercise. In the face of the very clear, specific, and limited grants of such power to other agencies, and to the Commission itself in other statutes, it is absurd for the Commission to claim that it has been granted such powers sub silentio by the Flammable Fabrics Act or §5 of the Federal Trade Commission Act. See, for example, the Radiation Control Act, 42 U.S.C. §262 et seq., National Motor Vehicle Safety Act, 15 U.S.C. §1381, §1391(1), §1400; Federal Hazardous Substances Act, 15 U.S.C. §1274.

Of particular pertinence is the statutory grant of authority found in §15(c) and 15(d) of P.L. 92-573, the Consumer Product Safety Act, 15 U.S.C. §2064(c) and (d). While this Act specifically authorizes the issuance of orders compelling public notice and personal notice concerning certain defects or noncompliance with standrads, 15 U.S.C. §2064(c), as well as orders relating to repair, replacement or refund, 15 U.S.C. §2064(d), these remedies are authorized under specifically limited circumstances. Under 15 U.S.C. §2064(c), the Consumer Product Safety Commission is authorized to order public notice only in instances where the defect found to exist "presents a subtantial product hazard" and where it is further found "that notification is required in order to adequately protect the public from such substantial product hazard." Likewise, while the Consumer Product Safety Commission is specifically authorized, 15 U.S.C. §2064(d), to prescribe orders directing the manufacturer of a product to conform products to standards, repair defects, replace products, or refund the purchase price, these orders can be issued only following a hearing in which it is determined that "a product distributed in commerce presents a substantial product hazard and that . . . (such remedial action) is in the public interest." To constitute a "substantial product hazard" under 15 U.S.C. §2064(a), the failure to comply with an applicable consumer product safety standard must be of such a nature as to create a "substantial risk of injury to the public."

Mere noncompliance of a product with a standard or product safety rule is not a "substantial product hazard."

The Consumer Product Safety Act, in addition to its provisions expressly authorizing and delineating the exercise of notice and recall functions, also contains enforcement provisions consisting of civil and criminal penalties for violation of its cease-and-desist orders, 15 U.S.C. §2069, 15 U.S.C. §2070, injunctions 15 U.S.C. §2071(a), and seizure 15 U.S.C. §2071(b), as does Flammable Fabrics Act, a further indication that the Congress does not contemplate that authority to compel notice and recall is somehow "inherent" in the powers enumerated in the Flammable Fabrics Act, as amended.

If authority to require public notice and to compel product recall were inherent in statutes providing for promulgation and enforcement of product safety standards, then quite clearly the Congress has been wasting time and effort in tailoring these remedies in specific statutory grants. The Congress should not be presumed to act in a needless fashion.

Clearly, the Commission has no authority to enter a cease-and-desist order requiring that purchasers of carpets alleged or "found" to violate DOC FF 1-70 provide written notice of such alleged failure to purchasers of such products, or to compel product recall.

E. The Commission's Administrative Law Judge Has Determined the Commission Lacks the Legal Authority to Compel Recall of Installed Carpet.

First pull

The issue of whether the Commission possessed the legal authority to compel recall of noncomplying carpet from the consumers floor was extensively briefed by respondents below. Nevertheless, Judge Pfeiffer found that:

> "It is not necessary on the state of this record to reach a final conclusion as to whether the Commission possesses the legal power to recall (the noncomplying carpet)" because "no sound finding can be made that Paradise Valley nylon foam back carpet . . . represents an unreasonable risk of fire or injury to any consumer in his home. "Init. dec., p. 24.

The finding was based upon the substantial and unrefuted evidence that

the product was not hazardous. Subsequently, Judge Pfeiffer presided over yet another carpet flammability trial, in which no similar hazard research was introduced. Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21.

Relying substantially on the legal authorities advanced by respondents in the instant case, Judge Pfeiffer ruled that, as a matter of law, the CPSC lacks the power to compel recall of carpet from the floor. According to Judge Pfeiffer:

> "Section 3(a) of the FFA and Section 5(b) of the FTC, when read together merely provide the remedy of a cease and desist order for engaging in an unfair method of competition or an unfair or deceptive act or practice -- in this case the interstae sale of violative carpet to an unsuspecting consumer. To transform language authorizing a mere prohibition against future conduct into an affirmative order requiring restitution on the grounds of "inherent" or "implied" power to protect consumer safety strains credibility. It may be desirable to reach this result, but a regulatory agency cannot properly create powers which have been consciously omitted by Congress. (Citations omitted.) Init. dec., pps. 24-25.

Respondents submit this is the state of existing law.

F. The Courts have Construed the Commission's Powers Narrowly

It may well be that Congress in its wisdom should have enacted legislation to give the Federal Trade Commission, the Consumer Product Safety Commission, or some other Federal agency the power to recall allegedly flammable textile products. However, it did not do so. As was said by the Court of Appeals for the District of Columbia Circuit in Alberty, et al. v. FTC, 182 F.2d 36 (D.C. Cir. 1950), cert. denied, 340 U.S. 818, concerning the power of the Federal Trade Commission under §5:

> There is a limit to the Commission's power. It is not given a general power to police the expenditure of the public's money or generally to do whatever is considered by it to be good and beneficial.

Yet, in the face of Alberty, the Government in this case, through

its Notice of Enforcement, asserts a virtually unlimited power to define what is "good and beneficial" and to impose a burden upon a carpet manufacturer to accomplish that objective.

Here, the Commission has attempted to "replace the statutory scheme with a . . . procedure of its own invention," an attempt which contravenes the express teachings of the Supreme Court. See N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759, at 764 (1969). The Courts have frequently ruled that the Commission has no power to establish novel methods of enforcement which are unspecified by statute. See e.g., Textile and Apparel Group, American Importers Association v. FTC, 410 F.2d 1052 (D.C. Cir. 1969), cert. denied, 396 U.S. 910 (1969); and Hall, et al. v. Lemke, Civil Action No. 62-C-942 (N.D. Ill. E.D.; Complaint filed May 3, 1962).

The authority given the Commission to seek injunctive relief or criminal sanctions, impose appropriate cease and desist orders, and to institute proceedings by process of libel for the seizure and confiscation of a product, in no sense implies the authority to require recall of used carpet.

G. The Commission's Own Controlling Law Is That It Lacks Authority to Require Recall of Noncomplying Carpet From Consumers

Notwithstanding numerous protestations to the contrary in this record by Enforcement counsel, (e.g., Tr 1291-1292), the Commission, in deciding Congoleum Industries, Inc. DPSC Dkt. No. 75-3, established, as a matter of law, the outer limit of its authority to compel recall in cases involving carpet. Despite efforts of some to construe the decision as holding only that recall from consumers was not "practical" in the particular circumstances, Judge Hanscom's decision, which was subsequently accepted by the Commission, went much further. Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, Init. dec., p.29. In finding that recall authority must have been contemplated, Judge Hanscom analogized the situation to "seizure and condemnation" and then predicated his holding on the "purpose of the Act to 'prohibit' the movement in interstate commerce of flammable fabrics including carpet."/12/ The seizure powers

/12/ Another anticipated rationale for the imposition of an order compelling recall of carpet from the consumers floor, the so-called "continuing risk" rationale, was raised and rejected by the Commission

contained in the statute, 15 U.S.C.§1195(b), are applicable only against a noncomplying product which remains in commerce, not products which have come to rest, a distinction also contained in the statutes purpose, as recited. Init. dec. p.24. These are the legal constraints to which Judge Hanscom referred as the "legal . . . problems" presented by "any order contemplating the taking up of carpet now on floors." Init. dec. p.23. These are the constraints accepted by the Commission in its final order in that case.

As for the "practical problems" of "taking up of carpet now on floors", they are no less present here than in Congoleum./13/ Barrett Carpet Mills, Init. dec., p.21.

Removal of carpet (whether glued-down or taped) will destroy it and leave major clean-up problems in its wake. There will be massive waste because there is no market for the product, once removed. The process would be complicated and the implications indeterminant (Tr. 689, 1465, 1469). The inconvenience to the Consumer would also be considerable, and in some instances could cause substantial economic loss. Barrett, Init. dec., p.21.

The practicability problems of removal are even more extreme in this case than in Congoleum due to the greater period of time which has

/12/ cont'd: as the basis for ordering recall of installed carpet in deciding Congoleum. In Congoleum it was argued by Enforcement counsel that recall of the noncomplying carpet was necessary lest the order "not prevent (the) continuing risk . . . ." Transcript of Oral Agrument, p. 50-51. The Commission, in deciding Congoleum, accepted the "continuing risk" rationale, but, significantly, imposed an order which neither required nor contemplated the recall of as much as a single square yard of installed carpet from a consumer. If the "continuing risk" rationale was not sufficient, in Congoleum, to override the "practical" and "legal . . . problems", it is difficult to understand how this rationale can be the basis for such a recall in the instant case.

/13/ A fair reading of that decision is that identifying the consumers or their number was not the "impracticability" factor. For all consumers who received failing carpet were to be notified of its "flammable nature", which presupposed they could be identified.

elapsed since the carpet was installed. Congoleum discontinued production of its carpet in August 1973, fourteen months before the Initial Decision was handed down in that case. (Init. dec., p.8). Barrett discontinued production of Paradise Valley (foam) in January, 1974 and the carpet was last sold in March,1974, more than two and one-half years ago.

It is a general rule that administrative agencies should apply the doctrine of stare decisis to their own decisions. An agency should both follow the standards set forth in its prior decisions, and apply the same remedies, unless it finds and articulates a reason for changing the policies involved. To do otherwise is to render §8(b) of the Administrative Procedure Act, which requires agencies to state reasons for actions, a nullity. The guiding principle is the need for consistency and rationality in agency action.

The leading case in which a court reversed an agency for changing its remedies without notice is NLRB v. Mall Toll Co., 119 F.2d 700 (1941), in which the Seventh Circuit held that "to adopt different standards for similar situations is to act arbitrarily." More recently, several courts have either reversed agency actions for inconsistency, or indicated that it was appropriate to examine other decisions to determine whether the action under review was inconsistent with them and therefore impermissibly arbitrary. National Air Carrier Assn. v. CAB, 436 F.2d 185 (D.C. Cir. 1970); Local 1325, Retail Clerks Int'l Assn., AFL-CIO v. NLRB, 414 F.2d 1194 (D.C. Cir. 1969); City of Lawrence, Mass. v. CAB, 343 F.2d 583 (1st Cir. 1965); Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965); NLRB v. Capital Bakers, Inc., 351 F.2d 45 (3d Cir. 1965); Mary Carter Paint Co. v. FTC, 333 F.2d (5th Cir. 1964). In other cases, the courts have held that an agency may change policies as to almost identical fact situations, but not without reasoned explanation. FTC v. Crowther, 430 F.2d 510 (D.C. Civ. 19700); ABC Air Freight Co., Inc. v. CAB, 23 Ad.L. 2d 80 (2d Cir. 1968); Rayonier, Inc. v. NLRB, 380 F.2d 187 (3d Cir. 1967); T.I. McCormack Trucking Co., Inc. v. United States, 18 Ad.L. 2d 922 (D.N.J., 1966) (ICC). And in one case, the Internal Revenue Service was held bound to apply an informal ruling of the Commissioner of Internal Revenue as to the deductibility of certain types of local taxes until the Commissioner had specifically modified his position so that taxpayers aware of the previous position would know of the modification. Brecklein v. Bookwalter, 231 F.Supp. 404 (W.D.Mo., 1964).

These cases quite firmly establish the requirement that an agency abide by its own past decisions as to both procedure and remedy, even if

its rulings lack the formality of a rule-making procedure. Pacific Power & Light Co., 2 FPC 508 (1941) (Power Commission follows its own prior rulings).

The Notice of Enforcement issued in this case represents an attempt by Enforcement counsel to go dramatically beyond the remedy provided by the Congoleum order, and to require respondents to recall carpet already installed -- a remedy which the Administrative Law Judge and the Commission found in Congoleum to be not "practicable" and to present "legal and practical problems", Congoleum, Init. Dec. at p.23. These factors the ALJ found "apply equally" in this case. Init. dec., p.21. Because of the identity of the pertinent facts, the Commission's conclusion in Congoleum must be considered to set the outer limit on the remedy which can be imposed in this case, unless and until the Commission is able to articulate a policy that would compel a contrary conclusion yet still be within the statutory framework.

## IV THE COMMISSION LACKS THE LEGAL AUTHORITY TO COMPEL RECALL OF NONCOMPLYING CARPET FROM WHOLESALERS AND/OR RETAILERS

On the basis of the legal authorities set forth in the preceding section of this brief, respondents submit that the Commission lacks the legal authority to compel recall of noncomplying carpet from wholesalers and/or retailers. While the "practicality" problems associated with recall of carpet from consumers are admitted less compelling in the context of recall limited to wholesalers and/or retailers, from the legal standpoint, the objections to the exercise of this power are identical in both contexts.

Respondents submit that the Commission erred in deciding Congoleum Industries, Inc., CPSC Dkt. No. 75-3, and that the dissenting opinion of then Chairman Simpson was and remains the proper view of the law. For reasons made apparent in subsequent sections of this Brief, it is in the public interest for the Commission to reverse its previous opinion, and abandon its efforts to compel recall, to any extent, on the basis of the carpet flammability standard.

## V. VIOLATION OF THE FLAMMABILITY TEST REQUIREMENTS OF THE STANDARD FOR THE SURFACE FLAMMABILITY STANDARD SHOULD NOT BE CONSIDERED, PER SE, TO CONSTITUTE AN UNREASONABLE RISK OF THE OCCURRENCE OF FIRE

### A. Introduction

The Flammable Fabrics Act, as amended, 15 U.S.C. §1191 et seq., authorized the Secretary of Commerce to adopt appropriate flammability standards whenever he determined a standard was needed "to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage." Exercising that authority, the Department of Commerce promulgated a standard for the surface flammability of carpet and rugs designated as DOC FF 1-70, which standard went into effect on April 16, 1971. 16 C.F.R. §1630.1-.5. In simplest terms, the standard prescribes a test method to which samples consisting of eight specimens are to be subjected, 16 C.F.R. 1630.4, and specifies that unless at least seven of the eight specimens pass, the "carpet" is nonconforming. 16 C.F.R. §1630.3(b), (c); 1630.4(f).

The question raised by the Commission is whether a "violation of the test requirement" . . . may be considered per se to constitute an unreasonable risk . . . ." This question must be considered in the context of this appeal, and the arguments advanced by the Commission's legal staff throughout the course of this litigation, to the effect that a carpet which fails the standard is "dangerous per se" and should be recalled from the consumers floor.

In this context, the answer to the question whether a violation of the "test requirements . . . may be considered per se to constitute an unreasonable risk . . ." is a resounding "NO".

### B. Background of Promulgation of the Carpet Flammability Standard

The carpet flammabiity standard did not arise out of an emergency, as was the case with products regulated by earlier textile flammability standards. Tr. 1127, 1131. Carpet was not a specific target of Congress when the Flammable Fabrics Act was initially adopted or subsequently amended. Tr. 1126.

Prior to the time the carpet standard was promulgated "carpet . . . historically had a relatively low incidence of involvement in fire." Tr. 1120, 1130. According to sworn testimony of Mr. William Segall,/14/ "The instances (of carpet related burns) are so rare that those of us who follow the subject identify them by name, not the subject by name, but the incidence by name." Transcript, O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 948.

Carpet's "relatively low propensity for ignition" was true even prior to the effective date of the standard. Testimony of Dr. Bruce LeBlanc, Tr. 907./15/ This low level of carpet involvement with fire was true despite the existence in the marketplace of large quantities of carpet which would not pass the test method specified in the carpet flammability standard. "We know that . . . perhaps 15 to 30 percent of the carpet on the market prior to the standard going into effect would not have passed this standard, and yet no one was getting burned by carpet. So the hazard was not really very great."/16/ Testimony of William Segall, Transcript, O.N. Jones Company, CPSC Dkt. No. 75-20, Tr. 923.

According to the National Bureau of Standards there had been "only eight actual injuries related to carpets and rugs"/17/ at the time the Department promulgated the carpet flammability standard.

Nor was the decision to promulgate a carpet flammability standard made because of the severity of injuries associated with carpet or

/14/ Mr. William Segall was Special Assistant to the Director, Office of Textiles, U.S. Department of Commerce, and Special Assistant to the Assistant Secretary for Science and Technology during the period when the carpet standard was developed and promulgated.

/15/ Dr. Bruce LeBlanc, President of LeBlanc Research Corporation, East Greenwich, Rhode Island, and a Ph.D in Chemistry from Tulane University, whose expertise in the field of flammability of textiles was acknowledged by Enforcement counsel. Tr. 904,981.

/16/ By 1970, American consumers were purchasing broadloom carpet alone at the rate of 575,000,000 square yards per year.

/17/ See testimony of Miles Kirkpatrick, Chairman, Federal Trade Commission, in hearings before a Subcommittee of the Committee on Appropriations, U.S. House of Representatives. See also, Testimony of William Segall, O.N Jonas Company, CPSC Dkt. No. 75-20, Tr. 949.

the frequency of those injuries. Testimony of Sidney Greenfeld /18/ Tr. 1129, 1130. According to Mr. Greenfeld, the reason the carpet standard was adopted was a "combination of probably a medium level of risk, but it could be determined to be unreasonable because there was a relatively simple solution to the problem." Tr. 1131.

This is not merely the view of one man who was intimately involved with the promulgation of the carpet flammability standard. It was echoed by Mr. William Segall, who, that the same time, had direct responsibility with respect to the standard as Special Assistant to the Assistant Secretary of Commerce.

Mr. Segall has testified, in another recent hearing, that the development of the carpet flammability standard wasn't the result of an "emergency situation;" and that there were "no great numbers of accidents involving carpet." Transcript, O.N. Jonas Company, CPSC Dkt. 75-20.

According to Mr. Segall:

> "It was primarily a situation in which there was an existent standard which certainly some carpet on the market did not meet . . . and it appeared to be a standard that would not cause a tremendous amount of burden . . ." Transcript, O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 912-913.

The factors which combined to cause carpet flammability to be described by the Department of Commerce as an "unreasonable risk", were described similarly, but perhaps more graphically, in Congressional testimony by Mr. George Buck, technical consultant to the National Cotton Council, in Hearings before the Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, House of Representatives, concerning H.R. 5698. ~~June 30, 1971~~, Serial No. 92-36, pp. 38-39. According to Mr. Buck:

Standard promulgated 4/16/71 + effective 4/16/71

/18/ Mr. Sidney Greenfeld, currently an employee of the Consumer Product Saftey Commission, was, at the time the carpet flammability standard was developed and promulgated, the Project Leader in the development of the standard. Mr. Greenfeld had "day to day responsibility more than any other person" for the development of the standard. Tr. 1122.

> Since practically all textiles burn, and can under certain circumstances be involved in injury, death, or significant property loss, what constitutes "unreasonable risk"? There are at least three situations in which an unreasonable risk might be deemed to exist.
>
> The first is that in which the risk is small but can be eliminated or reduced without adversely affecting the general public or industry in a major way. Carpets and rugs are an example. . . [C]arpets and rugs present a very low-risk potential for personal injury, death, or property damage. However, it was believed that even this degree of risk could be further reduced at relatively modest cost by changes in carpet construction and finish, and that this could be done without depriving consumers of a reasonably wide choice of materials.
>
> The point is this: The carpeting standards came about not because carpeting is a high-risk use, but because it was thought the existing risk could easily be reduced.

C. Contemporaneous Commerce Department Actions were Consistant with the View Nonconforming Carpet was Not Considered Dangerous.

Actions of the Commerce Department in promulgating the standard were consistent with the view that this standard was being promulgated, not out of urgency, but because the "pill test" was thought to be a simple solution and the hazard from carpet was a relatively low level priority. Tr. 1127, 1130.

The Department had it in its power to bring about near immediate compliance with the standard. Section 4 of the Flammable Fabrics Act, as amended, 15 U.S.C. §1193(b), provides that a "standard . . . shall become effective twelve months from the date . . . (of promulgation), unless . . . an earlier . . . effective date is in the public interest . . . ." Despite the presumed volume of noncomplying carpet being produced and the presumed ease of compliance with the standard (Tr. 1130), there was insufficient evidence that the standard should become effective

in less than one year./19/ See Testimony of Sidney Greenfeld, Tr. 1213, 1217, 1218.

The inventory exemption provisions of the statute provided an additional opportunity for the Department of Commerce to accelerate the elimination of noncomplying carpet from the market. Section 4 provides that each standard shall "exempt . . . products in inventory or with the trade . . . except . . . (where) the product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended . . .", (in which event) the exemption may be withdrawn or limited. 15 U.S.C. §1193(b). No such finding was made, and the standard, as promulgated contained a complete exemption for "carpet and rugs in inventory or with the trade as of the effective date." 35 F.R. 6211./20/ Prior to the promulgation of the carpet flammability standard, the Federal Trade Commission had sought to have the Department of Commerce refuse an inventory exemption for carpet produced prior to the effective date on the basis of the statutory criterion that these products were "so highly flammable as to be dangerous," an effort which was rejected. See Testimony of William Segall, O.N. Jones Company, CPSC Dkt. No. 75-20, Tr. 924-925. Exempt carpet, manufactured prior to April 16, 1971, some of which does not meet the acceptance criterion of the standard, is being sold by manufacturers, distributors and retailers even today, with absolutely no adverse effects upon the public. Tr. 1214./21/

### D. A Per Se Rule Ignores the Nature of the Methenamine Test and Its Purpose

From the above, it should be readily appreciated that the carpet flammability standard was not directed at a "danger", but instead at a low priority hazard with what appeared to be an easy solution. This,

/19/ Standard promulgated April 16, 1970; effective April 16, 1971; 35 F.R. 6211 et seq.

/20/ This exemption was reflected in regulations subsequently promulgated by the Federal Trade Commission. 36 F.R. 13328-9, July 20, 1971.

/21/ Aside from its pertinence to the historical perspective on the carpet standard, it is important to recognize that a Commission determination that noncompliance per se creates an unreasonable risk would be tantamount to a reversal of this earlier DOC determination.

on its face, should be enough to eliminate any serious consideration of a "per se dangerous" rule by the Commission. But there are further reasons why such a rule would be inappropriate with respect to this particular standard.

1. The Scope of the Standard is Limited

According to the testimony of the draftsman of the carpet flammability standard, "[E]very carpet on the market today would be ignited by some magnitude of ignition source. This standard just deals with small ignition sources." Testimony of Sidney Greenfeld, Tr. 1159. "The problem is not eliminating all risk; it is reducing the risk to a reasonable level . . ." Greenfeld, Tr. 1159, 1171, 1218, 1229. See similar testimony of William Segall, O.N. Jones Company, CPSC Dkt. No. 75-20, Tr. 925.

2. The Standard is Not Directed at Individual Consumers

While proponents of a "per se" rule take refuge in the statutory reference to "unreasonable risk of the occurrence of fire . . .", claiming it represents a judgment that each and every consumer of noncomplying carpet is exposed to an "unreasonable risk", the expert testimony contradicts this conception. Mr. Sidney Greenfeld testified that in promulgating the carpet flammability standard, the Department of Commerce was not declaring that the individual consumer whose carpet failed the pill test was being exposed to an unreasonable risk. According to Mr. Greenfeld,

> "I believe the Department considered the case in general rather than a specific case." Tr. 1203.

Similar testimony was offered in a subsequent hearing by Mr. William Segall, who testified that it was not the intention of the Department of Commerce to focus on the carpet in hands of each individual consumer, but to focus on the general total quality level of the product being produced and marketed. O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 925.

In short, in promulgating this standard, the Department of Commerce did not determine that a noncomplying roll of carpet represents an "unreasonable risk of injury . . . ." This fact was recently explicitly recognized in another case involving construction of the carpet standard. Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, Init. dec., p. 22.

3. The Pass/Fail Criterion in the Standard were not Established on the Basis of Hazard

Another obvious prerequisite to a "per se dangerous" rule when applied to a safety standard must be an accept/reject criterion based upon hazard. Yet, in promulgating the carpet flammability standard, and setting the accept/reject criterion, the Department of Commerce was not determining that a carpet which passed (8-0) or (7-1) was safe and a carpet which failed 6-2 (or worse) was "too hazardous." According to witness Sidney Greenfeld, the decision to draw the line between pass at (7-1) and fail at (6-2) "was a mathematical exercise." Tr. 1203. An identical view has also been expressed by William Segall. Transcript, O.N. Jonas Company, CPSC Dkt. 75-20, Tr. 920.

Surprising as it may seem, and as hard as it may be for the Commission to accept according to Mr. William Segall, in developing the carpet flammability standard the Department of Commerce did not conduct research which established that any given individual carpet installation which failed the pill test would, in actual use, be an unreasonable hazard to the consumer. Transcript, O.N. Jonas Company, CPSC Dkt. 75-20, Tr. 920.

4. The Purpose of the Carpet Flammability Standard is not to Establish Hazard Per Se

It is fundamental to the rendering of a proper decision in this case, and in the numerous other carpet flammability cases presently pending hearings or in the process of investigation, that the Commission draw a clear line between its conception standards being presently anticipated or promulgated under sections 7 and 9 of the Consumer Product Safety Act, 15 U.S.C. §2056, 2058(c), and preexisting standards promulgated under the transferred acts. The evidentiary record in this case makes abundantly clear that carpet flammability is not now and never could have been a priority item for regulation on the basis of hazard./22/

/22/ The low incidence of carpet related fire injuries which prevailed in 1970-1971 parallels todays experience. For example, a case by case examination of each of the reports involving carpet generated by the 1974 CPSC Household Fire Survey reveals that no injuries traceable to carpet related fires are identified. Moreover, in 95% of the cases reported in which carpet was in any way involved the homeowner was able to extinguish the fire himself; and in 50% of the cases there was no monetary loss involved.

Despite the fact this standard cannot be justified on any conceivable hazard priority basis, respondents do not ask that the Commission wipe the carpet flammability standard off the books. However, you are most respectfully requested to recognize two overriding fundamentals:

(1) the standard was never intended to be used as the basis for compelling the recall of carpet. Testimony of Sidney Greenfeld, Tr. 1160, 1165, 1181, 1188; Testimony of Mr. William Seqall, O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 926-927.

(2) the standard was principally intended to serve as a quality control guide. Init. dec., p. 13.

As expressed by Mr. Sidney Greenfeld, where a defined quantity of carpet is shown to be defective through a "recognized sampling procedure you could properly say to the manufacturer: "Don't make any more carpet of that type like that." Tr. 1184.

Mr. William Segall has testified that essentially the pill test is good for a sort of notice to a manufacturer . . . "to exert some control over the manufacturing level so that by and large conforming carpet is produced." Testimony, O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 924.

According to Dr. Bruce LeBlanc, a widely recognized nongovernment expert on textile flammability, the primary function of the pill test is a guide to the manufacturer in whether or not he might make specification changes. Tr. 908. The pill test is

> "a good test for screening in a mill, for a manufacturer to know whether his operation is running consistently good - and if something shows up different in the pill test, he might know something has changed." Tr. 962.

### 5. Carpets Which do not Comply With DOC FF 1-70 are not Per Se Dangerous

Of all those with interests in the application of the carpet flammability standard from an enforcement context, the CPSC Bureau of Compliance stands alone as the advocate of a "per se dangerous" doctrine. And that advocacy lacks either evidentiary or scientific support.

In developing the carpet flammability standard, it was the objective

of the Department of Commerce to establish a test that was "indicative of how a carpet would perform in a real life situation. Greenfeld, Tr. 1204. But this is a far cry from the position that any product which fails the test is per se dangerous.

The hazard posed by a particular carpet is not determined solely by the result of a methenamine pill test. Other factors such as the speed of burn or the height of flame are also relevant, and other types of real-life flame sources (than the methenamine pill) can be used to assess the hazard potential. Greenfeld, Tr. 1185, 1186, 1187. Failure of a carpet to meet the pill test is an "entirely different question" than "hazard to the consumer", because "hazard to the consumer . . . involves the possibility of ignition, the possibility of the user not . . . taking action at the time of ignition and a lot of other things." Testimony of William Segall, O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr.923.

While acknowledging that the standard provides "a rapid method of . . . evaluating the relative flammability of carpets," Dr. Bruce LeBlanc testified that

> the mere fact that a given carpet might fail the pill test does not mean that it will be hazardous in use. Tr. 908.

According to Dr. LeBlanc,

> "There is no way of really telling whether [a] carpet would be hazardous from (pill test) data alone." Tr. 910.
>
> * * *
>
> [T]he pill test is a fair test for manufacturers to use in evaluating product quality from the flammability standpoint but it is completely inappropriate to conclude that simply because a carpet in the marketplace fails this test, it is unreasonably hazardous." Tr. 1001.

A further inllustration of the inapplicability of a per se rule is found in Judge Pfeiffer's recently rendered Initial decision in Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, p. 17-18. According to Judge Pfeiffer:

of the standard and the recall remedy being sought by Enforcement counsel on the carpet represented by the test. Mr. Greenfeld replied:

> "Within the intent of the Standard I would find it difficult to call that an unreasonable risk. That is what we are trying to eliminate in these Standards, not all risk but unreasonable risk. The probability of one small area in a large carpet being the area where an ignition source is, is very low. Tr. 1171.

The factual context of the instant case provides a further excellent backdrop on the question of whether a pill test failure on a roll of carpet makes that carpet roll an unreasonable hazard. For here, the record establishes that some rolls of carpet finished on two days have an uneven distribution of the fire retarding alumina trihydrate across the back, causing them to fail the pill test. The defect, being a local variation, has a direct bearing on how the product would be expected to perform in real-life fire conditions. Testimony of S. Greenfeld, Tr. 1194, 1195, 1196, 1197; Dr. LeBlanc, Tr. 1038-1040.

### E. A Per Se Rule Cannot Be Justified With Respect To Standards Promulgated Under The Flammable Fabrics Act.

The issue of unreasonable risk is not one which is appropriately determined summarily without inquiry into the relevant circumstances. As shown in the recent case of United States v. Ford Motor Co., Civ. No. 75-1343 (D.D.C., Oct. 1, 1976), even under the National Traffic and Motor Vehicle Safety Act (15 U.S.C. §1381, et seq.) where recall is an expressly legislated remedy, it was not sufficient for the Government to show the existence of a defect. In order to establish an "unreasonable risk of accidents . . . and . . . of death or injury to persons in the event accidents do occur [15 U.S.C. §1391(1)], the Government was called upon to "demonstrate on the record a likelihood that a significant number of serious accidents and injuries will occur in the future." Such a showing can be made only on evidence, not on presumption.

What makes a per se dangerous approach to flammable fabrics enforcement all the more unjustifiable is the dichotomy which it would create between CPSA and FFA enforcement actions.

> "Expert testimony demonstrated that carpet may fail the pill test, but, nevertheless, may not create an "unreasonable risk of the occurrence of fire leading to death or personal injury or significant property damage in the home. An employee of the U.S. Testing Company testified that whether a carpet fire will spread throughout a home will be determined by other factors than merely the size of the burn mark. For example, where the carpet is located, what fabric adjoins the carpet, how large the flame is, and how fast it burns, each may have a bearing on the unreasonable character of the risk.

It is important to note that while the expert witnesses have uniformly rejected anything approximating a "per se dangerous" rule in application of DOC FF 1-70, the test affords significant consumer protection. This position was perhaps best summed up by Dr. LeBlanc, who testified:

> "If carpet passes the pill test, I would say the consumer is adequately protected.
>
> * * *
>
> If a carpet would fail the pill test, I don't think it necessarily means that the carpet is [u]nreasonably hazardous."/23/ Tr. 967-968.

The fallacy of attempting to apply a "per se" rule in a case of this nature was dramatically illustrated by testimony from Mr. Sidney Greenfeld, who, during the trial was, confronted with the physical test specimens from a roll of Paradise Valley (foam) which had failed a CPSC test. Mr. Greenfeld was asked by Judge Pfeiffer to render an opinion on application

/23/ Among the reasons for this distinction is the fact that DOC FF 1-70 is predicated on the assumption that a carpet which will propogate flame three inches (failing specimen) will propogate flame indefinitely. This assumption is false as was amply proven in this case. Tr. 912, 1061-62. Moreover, the fact the flame persists for three or more inches does not per se establish the existence of an unreasonable home fire hazard. Init. dec, p. 23-24.

The Commission cannot impose a remedy of product recall under the CPSA without making a finding that the "failure to comply with an applicable (standard), 15 U.S.C. §2064(b) was such (in the case being litigated) as to create a "substantial product hazard",/24/ and that "action (consisting
of repair, replacement, or refund) is in the public interest." 15 U.S.C. 2064(d).

Similarly, before the Commission can order personal notice under the CPSA, it must make a finding that the failure to comply with the standard creates a "substantial risk of injury" such as to constitute a "substantial product hazard", and that "notification is required in order to adequately protect the public from such substantial product hazard." U.S.C. §2064(c).

It would seem both novel and unnecessary for the Commission to assert that a finding of "unreasonable risk of injury" under the FFA, 15 U.S.C. §1193 creates a per se determination of danger, while a corresponding finding of unreasonable risk of injury under the CPSA, 15 U.S.C. §2058(c)(2), cannot be the basis of affirmative remedial action (notice and recall) without proof beyond that of a mere violation of an applicable standard. 15 U.S.C. §2064(c),(d).

It is respondent's position that although the Consumer Product Safety Act cannot be invoked in this proceeding as the basis for imposing new and more far-reaching remedial action than is authorized under the Flammable Fabrics Act, the explicit authorities contained in the Consumer Product Safety Act, P.L. 92-573, operate as limits on the authority the Commission considers "inherent" in the Flammable Fabrics Act. Congoleum Industries, Inc., CPSC Dkt. No. 75-3.

### F. Adoption of a Per Se Rule Will Cause Interminable Delay and Uncertainty In Flammable Fabrics Act Enforcement

A "per se" unreasonable risk approach was also recently rejected in yet another complaint proceeding involving the carpet flammability stan-

/24/ To qualify as a substantial product hazard, a failure to meet a standard must be such as to create a "substantial risk of injury to the public", 15 U.S.C. §2064(1).

dard. Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21. In deciding that case, Judge Pfeiffer went to considerable lengths to articulate his view of the governments evidentiary burden in these cases. According to Judge Pfeiffer, the issue is whether the particular non-complying carpet

> "represents such a clear and present danger in the home, or, in the words of the FFA, such an unreasonable risk of death, injury, or significant property damage, as to justify recall from consumers." Westland, Init. dec., p. 20.

Put another way:.

> "the exercise of recall power in the case of installed carpet would seem to require . . . substantial proof that the particular carpet either has caused or foreseeably will cause an unreasonable risk of fire on the consumer's floor." Westland, Init. dec., p. 20.

As to who has the burden of establishing the nature of the hazard where recall from the consumer's floor is sought, Judge Pfeiffer is quite explicit:

> Such an unequivocal order . . . cannot be justified unless there is convincing proof that the particular carpet in the consumer's home or on the convention floor represents an unreasonable risk of fire, death, injury, or significant property damage. Westland, Init. dec., p. 21; see also Barrett, Init. dec., p. 23.

Presumably, a "per se dangerous" rule in carpet flammability enforcement would spare the Bureau of Compliance the burden of proving unreasonable hazard with convincing studies sponsored by expert witnesses withstanding cross-examination. Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, Init. dec., p.21. Such a mandate would be required to be followed by the Agency's administrative law judge(s), unless determined by him to be arbitrary and capricious. Ash Grove Cement Co., 27 Ad. L.2d 1044 (FTC 1970); Matter of Publishers Development Corp., 24 Ad.L.2d 497 (P. O. Dept., 1968); Milco Specialties, 9 Ad.L.2d 127 (P. O. Dept., 1967); Insurance Agents' Intl. Union, 7 Ad. L.2d 674, 119 NLRB, No. 103 (1957); General Docket No. 21 (Bit. Coal Div. Examiner's Report, 1941); Pacific Power & Light Co., 2 FPC 508 (1941).

At the bottom of this litigation, and other cases pending in the wings, are the twin issues of definition of "lot" and "recall". When the Bureau position that "style" is equivalent to "lot" is combined with a remedy of recall, especially recall of installed carpet, the economic implications are so horrendous that few if any respondents will ever voluntarily enter into such orders or comply with such orders without appealing them to the highest available court./25/

The far better course is for the Commission to instruct its staff (as it surely will be required to do in actions brought under 15 U.S.C. §2064) to abandon the quest of affirmative remedial action (wholesaler/retailer recall, etc.) in carpet flammability cases except where creditable technical evidence of a bona fide hazard is available. Barrett Carpet Mills, Inc., Init. dec., p.23; Westland Carpet Mills, Inc., CPSC Dkt. No. 75-21, Init. dec., p. 21.

## VI. EVIDENCE EXTRINSIC TO COMPLIANCE WITH THE STANDARD BEARING ON A PRODUCTS FLAMMABILITY CHARACTERISTICS IS RELEVANT AND MATERIAL

### A. Introduction

In its Order, the Commission instructed the parties to brief the issue of whether evidence "extrinsic to compliance with the standard . . . which might bear on certain flammability characteristics of carpet is relevant or material to a determination of a violation of the (1) standard, (2) the Flammable Fabrics Act or (3) any remedial relief ordered by the Commission. The question itself suggests there may be a fundamental misconception as to the testimony offered in the instant case, its purpose, and the manner in which it was employed by the administrative law judge in the Initial Decision.

/25/ An enforcement strategy with such results could postpone final resolution of any contested case for years. See e.g., Congoleum Industries, Inc. v. CPSC, No. 75-3112, 9th Cir. In the instant case, Roy C. Barrett testified that the cost to comply with the remedy sought by the staff would be approximately $206,000.00. Respondents total profit on all sales of Paradise Valley (foam) by comparison, was a mere $1650.00. Tr. 634.

While there may be circumstances where such extrinsic evidence might preclude a determination that the Flammable Fabrics Act had been violated, or that the carpet flammability standard had been violated, this was not the purpose or intent of the extrinsic evidence offered in this case, i.e., the LeBlanc study. Tr. 900-1001. As was stated by Paul Gottfried: "The [LeBlanc] test has no bearing on (whether there was compliance with the standard)." Tr. 1442-43.

In relying on these studies as the primary basis for rejecting the staff quest for recall of the carpet from the consumers' floor, Judge Pfeiffer clearly appreciated this distinction. Init. dec. pp. 18, 23-24. See also Westland Carpet Mills, Inc., CPSC Dkt. 75-21, pp. 22-23. The issue being addressed in these administrative proceedings is not that of compliance with the statute or standard, but of remedy./26/

B. The Thrust of the Government's Case Made Extrinsic Evidence Relevant and Material

Were this a case in which the government had restricted its proposed remedy to a simple cease and desist order prohibiting the "sale . . . of carpet . . . (which) fails to conform to an applicable standard or regulation . . . .", the relevance of extrinsic evidence of flammability characteristics would be debatable. But that is not the case.

The Notice of Enforcement issued against Barrett Carpet Mills, Inc. represented the first instance of an attempt by any agency of the Federal government to coerce recall of noncomplying carpet from the consumers' floor.

As one key tool in this strategy, the Bureau of Compliance, scared the hell out of a consumer owner of Paradise Valley (foam) carpet, and brought him all the way to Washington, D.C. to testify about his concern and his desire to have the carpet replaced. Testimony of John Vest, Tr. 428, 429. Judge Pfeiffer properly recognized that in this combination

/26/ This summary treatment does not do justice to the question of relevance of extrinsic evidence to the issue of compliance with the statute and standard. However, it is assumed that, with this clarification, the Commission's primary interest is whether such evidence is relevant or material to remedy.

of circumstances, extrinsic evidence was relevant and material "to demonstrate that the recall of failing carpet from the home would represent an unnecessary and inappropriate remedy." Init. dec. 18./27/

C. The Government Stipulated to the Relevance and Materiality of Extrinsic Evidence

Clearly, the Consumer Product Safety Commission, through enforcement counsel, had several opportunities to preclude the introduction of the LeBlanc study. Prior to the trial, respondents had executed and filed a Congoleum type order obligating themselves to wholesaler/retailer recall. Had this consent agreement been accepted, the issue would have been mooted.

Similarly, at any time during the trial, the pursuit of recall from the consumers' floor could have been abandoned, but it was not. Instead the staff was "adamant" in its demands. Init. dec., p. 21.

Finally, Enforcement counsel could have objected to the introduction of this evidence at the trial, where the relevance and materiality issues could have been decided, and, if necessary, appealed. They did not.

Instead, Enforcement counsel, prior to the proffer of the LeBlanc hazard analysis, concurred in its use "for the purpose of guidance . . . in selecting the appropriate remedy." Statement of W. Douglas, Tr. 918.

At the conclusion of the hearing, in response to questioning from Judge Pfeiffer on this same subject, Enforcement counsel responded: "Your Honor can give it (the LeBlanc tests) the weight to which your Honor feels it is entitled." Tr. 1510.

/27/ Respondents contend that this extrinsic evidence is relevant and material on recall from wholesalers and/or retailers as well. Judge Pfeiffer did not use the evidence in this manner, apparently considering himself bound by Congoleum to order a recall from wholesalers and/or dealers. While admittedly (legal issues aside) there is a balancing process involved, and the mandated recall has already taken place, on the state of this record it is impossible to justify any recall of nonconforming Paradise Valley (foam). Init. dec. p.20.

Judge Pfeiffer concurred, spelling out the reason for his determination that the evidence was relevant and material. Tr. 778. The Initial decision reflects the use of the evidence for the purpose it was offered and received. Init. dec., pps. 18-20, 23-24.

D. No Expert Witness Disputed With the Relevance and Materiality of the Extrinsic Evidence on Hazard.

During the course of the extended hearing in this case, each of the witnesses (including the consumer witness) was asked as to the relevance of the hazard research conducted by LeBlanc Research Corporation on the remedy being sought. Each concurred. See Testimony of Vest, Tr. 461, 462, 477; Greenfeld, Tr. 1185-1187; LeBlanc, Tr. 920-922, 968-969; Gottfried, Tr. 1142-43, 1473. According to Mr. Gottfried,/28/

> "[T]hey are valid in Your Honor's interpretation of whether the carpet is potentially excessively hazardous." Tr. 1442.
>
> * * *
>
> "[I]t bears (upon) Your Honor's estimate of the level of hazard that might be associated with carpet of this kind." Tr. 1443.

E. The Extrinsic Evidence Received in This Case is the Best Evidence of its Relevance and Materiality in Cases of this Nature

In contrast to the total lack of evidence on hazard presented by the Government, Init. dec., p.19, respondents went to considerable effort and expense to develop facts upon which a proper decision on remedy could be reached.

/28/ Mr. Paul Gottfried, formerly consultant to the National Bureau of Standards, Office of Flammable Fabrics, and the Consumer Product Safety Commission, developed the proposed sampling plan amendment to the carpet flammability standard while under contract with NBS. Tr. 1400-1403, 1412.

To establish the actual level of hazard in real life exposures represented by samples of Style 222, Paradise Valley (foam) carpet from both passing and failing rolls (Tr. 778), respondent selected complying and noncomplying carpet and submitted it for testing to LeBlanc Research Corporation (Tr. 778-781, 916-918), a textile flammability research firm recognized around the world. The carpet submitted for test was in its original form and was not treated or altered in any manner, and consisted of pieces from the very rolls which had passed and failed CPSC tests. Tr. 781.

In designing the experiments, later presented as evidence in the case, a team of scientists headed by Dr. Bruce LeBlanc, a noted authority on textile flammability, selected a series of real life flame sources including matches, cigarettes, cigars, charcoal briquettes, cigarette lighters, burning cooking oil, and plastic wastebaskets stuffed with newspaper. Tr. 920, 929. A number of the ignition sources were deliberately selected as being more severe sources than are simulated by the methenamine pill. Tr. 920, 929, 995, 996, 1059, 1212.

Dr. LeBlanc testified extensively as to his observations of the tests, exhibiting a video tape of a portion of the experiments and submitting data on all experiments conducted. Rx 27-30. Among the findings of the LeBlanc researchers were the following:

1. Matches exhibited a tenous flame, and the carpets were adjudged nonhazardous because of the size of flame and area of burn Tr. 939.

2. Cigars and cigarettes failed to ignite either the passing or failing carpet, Tr. 953, which evidenced no afterburning. Tr. 950. The burns on passing and failing samples were identical for all practical purposes Tr. 954. The same was true for the newspaper, Tr. 986, 992, flaming cooking oil, and charcoal briquettes. Tr. 997-1000.

3. Zippo lighters, filled to the brim with lighter fluid, were placed on samples of passing and failing carpet. Tr. 954-964, 964-969. When the lighter fluid spills from the lighter, it constitutes yet another real life flame source - flammable liquid. Tr. 965. Both the passing and failing Paradise Valley (foam) samples self-extinguished in these experiments. None of the samples exhibited any propensity to burn rapidly. Tr. 966.

4. The experiments established that the nylon in Style 222, Paradise Valley (foam) has no tendency to smolder, and cannot be considered to be hazardous merely because it does not meet the methenamine pill test. Tr. 945, 962.

5. The experiments also established that the flame height of a match on Style 222, Paradise Valley (foam) would be from one to two inches, the same height whether the specimen would pass or fail the standard. Tr. 915.

6. LeBlanc concluded that neither the passing nor failing samples of Style 222, Paradise Valley (foam) carpet were hazardous when exposed to matches (Tr. 912, 939), cigars or cigarettes (Tr. 940-954), Zippo lighters or lighter fluid (Tr. 954-971, 967), burning plastic wastebaskets (Tr. 972-980), burning newspaper or charcoal briquettes.

Among the reasons cited (Tr. 1037-38) for these conclusions were the height and tenuousness of flames (Tr. 913, 939); the ease of extinguishing flames (Tr. 966, 978); the small area of burn (Tr. 939); the absence of tendency to reignite (Tr. 950, 978, 984, 991, 996); the absence of smoldering (Tr. 945, 978, 946, 996); the slow rate of burn (Tr. 978, 972-3, 980, 1060-61) and the fact that the carpet self-extinguished in all exposures except the plastic wastebasket (Tr. 912, 1061-62), which was easily extinguished (Tr. 977, 978, 984, 991).

At the conclusion of his testimony Dr. LeBlanc was able to state that:

> "My conclusion from these experiments is that when passing and failing carpets were subjected to the same extreme ignition sources, that the two types of carpet performed the same within experimental error and under the conditions that we subjected these carpets, neither would constitute an unreasonable flammability hazard. (Tr. 1000-1001; 1036-1037).

Witness Paul Gottfried, following a review of all of the research, data, and films submitted by LeBlanc Research concluded that Style 222, Paradise Valley (foam) was not "excessively hazardous" (Tr. 1442), that there had been no showing of "hazard" (Tr. 1463) and that he would have no safety concern if his home were carpeted with either passing or failing rolls of Style 222, Paradise Valley (foam). Tr. 1473.

## F. Conclusion

When one considers the historical basis for the imposition of a carpet flammability standard, and the selection of the accept/reject criterion, it is apparent that for the Commission to prosecute carpet flammability cases without extrinsic evidence, of actual hazard, or to attempt to preclude introduction of such evidence by respondents, would be to act as the perverbial ostrich with his head stuck in the sand. Going further, to adopt such a course in a case which was tried with Enforcement counsel having conceded the relevance of extrinsic evidence, would be manifestly unfair to the respondents.

Most importantly, for the Commission to adopt such a posture, in the face of the evidence in this case and the findings of Judge Pfeiffer, would be to (1) exhault form over substance, (2) encourage initiation of needless complaint proceedings by the CPSC staff, and (3) result in numerous judicial appeals.

Chairman Byington has, in recent weeks, emphasized the need of the Commission to

> "effect an attitudinal change as quickly as possible. The Agency had to recognize and always remember that people, not 'things' must be our number one concern."/29/

This case affords the Commission a classic opportunity to act consistant with these words--or to make them a mokery. A determination that (1) the Commission has the "inherent" legal authority to compel recall of carpet from consumers, (2) that noncompliance with the standard is considered "per se to constitute an unreasonable risk", and (3) that extrinsic evidence of flammability characteristics is neither relevant nor material to remedy, would not only be legally unsupportable, but a clear contradiction of these newly stated Commission objectives.

## VII. THE DECISION OF THE ALJ NOT TO IMPOSE AN ORDER IN GENERAL TERMS TO CEASE AND DESIST WAS APPROPRIATE

As the Commission has recognized in its August 5, 1976 Order, the Proposed Order in the instant case is somewhat unique in that it does not

/29/ Remarks before FBA/BNA Briefing Conference on Product Safety and Liability, Oct. 1, 1976, p.2.

include an order in general terms to cease and desist manufacturing carpet which fails the flammability standard. Such a provision has been more or less standard operating procedure in flammable fabrics consent orders for several years. The significance of the omission is that should Barrett Carpet Mills, Inc. or Roy C. Barrett ever have the misfortune of being found in noncompliance with the Flammable Fabrics Act, as amended, again, that finding will not carry with it an automatic liability for civil penalties.

Respondents contend, as shown elsewhere in this brief, that this case should have been dismissed without an order. See Section IX, B. J.J. Newberry Co., FTC Dkt. No. 8849, 3 TRR ¶20, 217. Judge Pfeiffer did not accept this view. He did, however, recognize, that to expose manufacturers to civil penalties, where noncompliance was unintentional, evidence of negligence was absent, and where the likely course of the noncompliance was an accident not likely to reoccur, would "make little sense". Init. dec., pp.24-25.

Judge Pfeiffer recognized, we think properly, that respondents costly experience with the instant litigation would be a sufficient deterrent." Init. dec., p.25. Judge Pfeiffer's deliberate decision to omit the general prohibitory provision is supported by the evidentiary record which shows (1) the care with which Barrett designs, manufacturers, inspects and tests its products; (2) impracticability or the impossibility of preventing all instances of noncompliance; Tr. 501, 524, 525, 526, 527, 528, 530, 531, 592-597, 613, 623, 624; (3) the noncompliance to have been the result of an inadvertant production defect; Rev. Jt. Stip. No. 41; Tr. 574, 575, 576, and (4) that Barrett promptly discontinued the sale of the suspect style upon being informed of a possible flammability problem. Rev. Jt. Stip. No. 20; Tr. 608. This aspect of the order also recognizes the case did not involve significant violations of the standard. Gottfried, Tr. 1474.

This case is clearly distinguishable from Westland Carpet Mills, Inc., et al., CPSC Dkt. 7521, 1 CCH-CPS, ¶75, 116, p. 60, 116, decided on September 1, 1976, where Judge Pfeiffer concluded that respondents should be ordered to cease and desist from all future violations

> "since the failures were caused by conscious management decisions rather than inadvertant production defects and there is evidence that sales of violative carpet persisted despite notice of failing tests . . . ."

While respondents continue to urge the outright dismissal of this action, should the Commission reject this view, there is no basis in the record for exposing Barrett Carpet Mills and Roy C. Barrett to substantial civil penalties for the possible reoccurrence of an FFA violation.

As the record indicates, regardless of the stringency of the quality controls employed, noncompliance with this standard is a mathematical certainty. As a result of this single, inadvertant error, this firm should not be forced to conduct business, in perpetuity, with the perverbial sword of Damocles hanging over its head. R. Barrett, Tr. 592, 596, 597.

In the same regard, Mr. William Segall has testified that even utilizing quality control tests on frequencies substantially in excess of those required by the CPSC guarantee requirements, it is not possible for a carpet company to be sure every carpet sold in commerce will always pass.

This witness further testified that is was his "understanding of the standard" that (100% passing) was not required by the standard. Transcript, O.N. Jonas Company, CPSC Dkt. No. 75-20, Tr. 944-945.

## VIII. COMPATABILITY OF THE DEFINITION OF "LOT" EMPLOYED WITH PAST POLICY AND PRECEDENT.

### A. Introduction

In its Order dated August 5, 1976 docketing this case for review, the Commission instructed the parties to brief the issue of "whether the ALJ's interpretation and application on the term lot is in conformity with Commission precedent and policy." The question assumes there is Commission "precedent and/or policy", an assumption about which there is substantial doubt. If there is a Commission (as opposed to staff) policy, it must be constructed from (1) the standard, (2) the past published regulations and policies, and (3) the decided cases.

### B. Evidence of Precedent and Policy

In applying the carpet and rug standard, whether from a manufacturing, enforcement or other context, the person or party administering the test is instructed to "select a sample of the material representative of the lot" for testing. 16 CFR §1630.4(b)(1)(i). Once the conditioning and test procedure has been applied to the eight specimen sample, the standard provides for interpretation of results:

> "If the charred area does not extend to within . . . one inch) of the edge of the hole in the flattening frame . . . for at least seven of the eight specimens, the carpet or rug meets the acceptance criterion. 16 CFR §1630.4(f).

The standard does not define "lot". Congoleum, Init. dec., finding 30; Cong., Tr. 1475, 1484-85, 1530; Tr. 1173-74, 1239, 1317. Neither the Federal Trade Commission nor the Consumer Product Safety Commission has ever adopted a specific definition of "lot" to be used either for quality control or compliance purposes./30/ Tr. 1173, 1174, 1317; Congoleum, Tr. 1419, 1527.

The staff of both the Federal Trade Commission and the CPSC, without public notice or opportunity for comment, concocted the position that after a test failure occurs, the entire carpet quality, regardless of yardage, production period, or circumstances, is to be considered a single "lot". Barrett, Tr. 867; Congoleum, Tr. 247, 274. This means of defining "lot" has been rejected by expert witnesses both inside and outside the government. Congoleum, Tr. 839, 872, 1419, 1448-49, 1463, 1469, 1477. Barrett, Tr. 49, 1184, 1239, and is not a Commission sanctioned policy or precedent. Congoleum, Tr. 274. It was explicitly rejected by the ALJ in the instant case. Init. dec., p. 16.

The objection to this staff practice is both to the timing and the scope. To properly apply the standard, the "lot" must be defined in advance of the test. Greenfeld, Tr. 1172, 1177, 1178; Testimony, William Segall, O.N. Jonas Company, CPSC Dkt. No. 75-20. Tr. 919. Failure to define the lot in advance of the test, according to Mr. Greenfeld, has the following consequence: ". . . Now, if you haven't defined anything than the particular piece of carpet (sample) then that is the only thing you can really say is definite (when a test fails)." Tr. 1183, 1186.

/30/ FTC promulgated regulations establishing maximum test intervals for test purposes where a flammability guaranty is in effect. 16 CFR 1630.31(c). The Department of Commerce published a proposed amendment to the carpet flammability standard which would have specified maximum production unit sizes for test purposes on the basis of yardage and time span. 38 F.R. 6211. Although neither of these actions define "lot" in terms of specific yardage, both impose specific limits on the production a given test can be considered to represent.

As to the quantity of carpet which can be considered a single lot, Mr. William Segal has testified that "it wouldn't be correct to characterize the whole style as a lot. I don't think there is any backing for that in ASTM or in any standards making procedure whatsoever." Testimony, O.N. Jonas Company, CPSC Dkt. 75-20, Tr. 917. Mr. Greenfeld also testified it is not proper to call an entire carpet style a lot, Tr. 1171, and that the standard does not suggest such a definition. Tr. 1239. According to Greenfeld, you cannot call "a style a lot for the purposes of this standard, because in a style you are getting new shipments of material, you are having new dialogues, you are having new quantities of material dyed, your machines are shut down and started up again, you have all these variables. Let's say it is very difficult for any set taken one day to be representative of production some other time." Tr. 1184-5.

The FTC's Flammable Fabrics Enforcment Policy, 36 F.R. 21544, failed to define "lot". When this Policy was revoked by the CPSC, no definition of lot was offered. 38 F.R. 24923. Tr. 1317, 1481. Failure of the Commission to promulgate the sampling plan amendment, originally published on March 7, 1973, has left a void in this entire area, with the result that both manufacturers and judges must construe the standard on an ad hoc, case by case, basis.

In this context, in Matter of Congoleum Industries, Inc., complaint counsel argued that the entire carpet style was equivalent to the "lot". Congoleum, Tr. 247, 274. Under this view the initial failing test on the allegedly noncomplying style would have required the conclusion that the "lot" (entire style) failed to meet the acceptance criterion. By contrast, Congoleum argued that because the lot or lots had not been defined in advance of the tests, the samples tested were not representative of any "lot", and hence, no portion of the production of the style could be adjudged noncomplying on the basis of the failing tests. See Brief for Petitioners, pps. 16-23, Congoleum Industries, Inc. v. CPSC, No. 75-3112, 9th Cir. In rendering his initial decision, which was subsequently adopted by the Commission, Judge Hanscom declined to adopt either view. Instead, he concluded that because all of the samples tested were "taken from ordinary production rolls of (the carpet)" they were representative (in the broad sense) of their respective formulations. Congoleum, Init. dec., findings 30, 33. Concluding that "all tests must be passing", Congoleum, Init. dec. p.22, Judge Hanscom went on to adopt an order which defined "lot" as the equivalent of a roll of carpet. Congoleum, Init. dec., p. 23. Rolls failing tests were to be considered "flammable", and subject to the remedial provisions of the cease and desist order. Congoleum, Init. Dec., pps. 23, 26. Rolls

which either passed tests, or were not available for tests, were considered passing and exempt from the order. Had Judge Hanscom accepted the concept of "lot" advocated by the government, all the rolls produced would have been classified as nonconforming, and each would have been required to be recalled from commerce.

This was the state of the "precedent and policy", such as it was, when the Notice of Enforcement was issued in the instant action. Once again, Enforcement counsel had failed to define the "lot" before the initial CPSC tests were conducted, or prior to the conduct of any of the subsequent tests (Tr. 49, 50, 606).

C. Application of Existing "Precedent and Policy" To The Facts In This Case.

As in Congoleum, once the initial test failure occurred, the agency staff adopted the posture that the entire production of style 222, Paradise Valley (foam) was the "lot", and should be recalled. Tr. 867.

This view was rejected by all the other witnesses, including Mr. Sidney Greenfeld, presently a member of the CPSC staff, but originally the draftsman of the carpet flammability standard. Tr. 1171, 1184, 1239, 1419-1421. The rejection of the lot = style concept was especially pointed as concerns carpet demonstrably not made to specification. Tr. 1177. Instead, the expert witnesses recommended that "lots" in the instant case be defined in small quantities, by roll or finishing date. Tr. 1462, 1482.

The initial decision in this case adopts the essence of the Congoleum rationale but employs a lot definition of "finishing day" rather than "roll". See Init. dec., p. 15, and Proposed Order ¶¶I, III and IV. Both administrative law judges rejected the staff position that the "style" was equivalent to "lot". Init. dec., p. 16. In this respect, Judge Pfeiffer's Proposed Order is in conformity with Commission "precedent and policy".

A technical application of Congoleum in the instant case would necessitate (1) restricting the notice requirements of ¶I of the Proposed Order to the rolls produced on July 18, 1973 and December 10, 1973 which were available for tests and which had failed tests; (2) restricting the recall from wholesalers and/or retailers prescribed in ¶III to the failing rolls only; and (3) requiring the sampling prescribed by ¶IV to be conducted on a roll by roll rather than finishing date basis.

Respondents witnesses testified that either of these two bases would be appropriate for defining "lot" on the facts of this case. Tr. 1234, 1462, 1482.

While reserving the position that the Commission lacks the authority to compel notice of noncompliance and recall, without regard to the appropriateness or inappropriateness of "lot" definition employed, respondents submit that the ALJ was (1) correct in rejecting the staff position that the "lot" was equivalent to all Paradise Valley (foam) production; (2) is supported by the record in defining lots of Paradise Valley (foam) on a "finishing date" basis; (3) should have, in applying Congoleum, restricted recall and notice to the tested rolls which failed.

D. Application of the Lot Concept

The "lot" definition problem resulting from the absense of explicit treatment in the standard, arises in two distinct contexts; in sample selection to determine if the "lot" meets the acceptance criterion; and in defining the scope of remedial action where noncompliance is established. In Congoleum, the entire thrust of the respondents case was directed not at defining "lots" for remedial purposes, but in determining whether there had ever been a valid sample selection upon which to base the "accept/ reject" decision. It was an "all or nothing" approach by both parties. Either all Endureze carpet was noncomplying and subject to recall, or no "lots" had failed. By contrast, in the instant case, the parties stipulated to test results which established a pattern of test failures on two production days and respondents offered substantial evidence that these test fialures resulted from a specific production irregularity. Rev. Jt. Stip. No. 41; Rx. 9; Tr. 574-75, 576, 587. The issue was not whether any goods failed but which goods failed. Tr. 567, 1389.

Under these circumstances, the ALJ's threshold choice of "lot" (finishing days) was reasonable and substantiated by the record. Init. dec., p. 16. Tr. 1172, 1177, 1185, 1394, 1462, 1482, 1493-94. Given the testimony that Paradise Valley (foam) was finished on 26 widely separated dates spanning over 18 months, and the strength of the evidence of failure cause, this choice of lot definition was more appropriate than the available alternatives. Init. dec. 15-16. Setting aside the issues of legal authority on notice and recall, this definition of lot provides a reasonable threshhold definition of "lot" for test purposes. By con-

trast, were it not for the fact there was virtually no carpet to be tested under the order adopted in Congoleum, the lot definition (individual roll) employed in that case would have produced absurd results./31/ Imagine having to test every roll of a style produced simply because one roll failed, in a case where thousands of rolls remain in distribution./32/

In sum, Judge Hanscom's "conclusion" in Congoleum that "every roll must pass", which renders the mandate to select a sample "representative of the lot" a nullity, and the decision to require testing of each available roll, are decisions which render the carpet flammability standard unreasonable and invalid,/33/ and lead to totally unnecessary test requirements./34/

Once it has been determined by appropriate means that some production of a carpet quality is to be considered failing/35/, and that a

/31/ Although the Congoleum order required testing of a sample of each individual roll available for testing, the record revealed there were no rolls in commerce except a small number of rolls previously seized by the Commission. See Brief for Petitioner, Congoleum Industries, Inc. v. CPSC, No. 75-3112, p. 11, 40; see also, Transcript of Oral Agrument before the Commission, CPSC, May 20, 1975, pps. 40-41.

/32/ In Congoleum, roll by roll testing was predicated on 4 test failures in 118 tests. The result would have been the same had only one test failed in light of Judge Hanscom's conclusion that "all tests must be passing." Init. dec., p. 22.

/33/ Compare the criterion for test result assessment in the proposed sampling plan amendment in which every test need not pass. ¶.4 (b)(1), 38 F.R. 6212.

/34/ Compare with the provisions of the proposed sampling plan amendment in which roll by roll testing is only required once it has been determined the predefined lot has been "rejected." See ¶.4(b)(5)(b), 38 F.R. 6212.

/35/ The procedure used by the staff for sample selection in Congoleum Industries, Inc., was patently unreasonable, and should be reputiated by the 9th Circuit on appeal. In the instant case it was not necessary for Judge Pfeiffer to rely on an unlawful construction of the standard, or to condone the unlawful sampling procedures employed by the staff, to make a finding that some Paradise Valley carpet was failing. This fact was stipulated.

testing program on available carpet is appropriate, the approach to testing outlined in Judge Pfeiffer's proposed order in the instant case is far more rational /36/ than that adopted in Congoleum, the only other conceivable basis for Commission policy and precedent.

The objective in any such testing program is to define as accurately as possible, the scope of noncompliance. Tr. 868. Where a flammability test program is to be used for this purpose, considerations of practicability and cost must be weighed. Viewed in this light, testing, at least initially, on the basis of finishing days is more practicable and economical than roll by roll testing. Where such tests result in failure, then it is appropriate to provide other means to sort out the complying from noncomplying goods in the lot. Greenfeld, Tr. 1197.

In the instant case, because there are no uninstalled rolls of carpet in commerce, whether testing is mandated on a roll-by-roll or finishing date basis, there will be no practical difference in the reasonableness or technical soundness of the testing program. However, if the Commission is to mandate such test programs in its carpet flammability orders pending a final decision by the 9th Circuit in Congoleum Industries Inc. v. CPSC, No. 75-3112, then all such test programs should be reasonable, not arbitrary. There is nothing in the Act, or standard, which dictates roll-by-roll testing./37/ Testing on a roll-by-roll basis, on a high volume, recently marketed style, would involve substantial numbers of tests. Unless there is strong evidence of roll-by-roll variability, such testing would be patently excessive.

The instant case is illustrative. The evidence presented established not roll-by-roll variability, but a production irregularity related to specific dates. Init. dec. 7, 15-16. As stated by Judge Pfeiffer:

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/36/ Presumably, were the first test on a roll from a previously untested finishing date to fail, the respondent would be afforded the opportunity to test the remaining rolls from that lot on a roll-by-roll basis. Tr. 1197. Compare ¶.4(b)(5)(b), 38 FR 6212.

/37/ On the contrary, the standard speaks only of selecting a sample "large enough to permit the cutting of eight test specimens. 35 F.R. 6212. In the proposed sampling plan amendment the test specimens comprising any eight specimen test are required to be taken from four different rolls. 38 F.R. 6212.

"[I]t is reasonable to assume that the failures were the result of production defects on particular days." Init. dec. p.15.

Even though the total production of Paradise Valley (foam) produced was very small (15,013.76 square yards) a total of 106 separate rolls were produced, on 26 different dates, by two separate finishers. Rev. Jt. Stip. No's 9, 13, 16, 18. The number of shipping rolls produced was even greater. Under the circumstances, defining "lot" for initial test purposes as "finishing day" rather than "roll" was quite appropriate. Tr. 1462, 1482.

The order is objectionable, however, in imposing a notice and recall provision (Paragraphs I and II) on the basis of finishing days rather than rolls failing tests. Tr. 1234. Congoleum held that only available rolls failing tests were to be considered flammable, subject to notice and recall. Congoleum, Init. dec., pp.23, 26. The record in this case contradicts a conclusion that all the rolls produced on the two suspect dates were failing. Tr. 350, 795.

Moreover, especially in the face of the ALJ's opinion that "no sound finding can be made that Paradise Valley nylon foam back carpet . . . represents an unreasonble risk of fire or injury to any consumer in his home," reliance upon Congoleum for a requirement of notice to consumers of failing rolls honors form over substance. A broad based notice requirement to all purchasers of carpet manufactured on the two dates in question is even more objectionable in that it extends to rolls of carpet which have not failed tests. The difference in this case, is significant. Under the proposed order, the notice and recall obligation extends to 1635 square yards finished on July 18 and 311 square yards on December 10, 1973. One of the two cuts finished on December 10, 1973 was tested. The other is not available for testing. Only four of twelve cuts finished on July 18, 1973 were tested by the Commission, three of which failed. In constrast with the proposed order, applying the roll-by-roll approach in Congoleum to these facts, the purchasers of 4 of the 14 cuts finished over these two days would be entitled to notice. No remedial action would be required as to the other 10 cuts. See Rev. Jt. Stip., No. 33.

## IX. THE PROPOSED ORDER IS NOT IN CONFORMITY WITH THE EVIDENCE IN SEVERAL RESPECTS

### A. Introduction

The Proposed Order should be modified in several respects to bring

it into conformity with the evidence and applicable authorities. Initially, respondents contend that the public benefit will not be served by imposition of a cease and desist order against either the corporate or individual respondent, and according to Commission precedent in such cases, no order should be imposed.

In the alternative, if it is determined that imposition of some cease and desist order is to be imposed in this case, the Proposed Order is objectionable in that it

(1) requires notice to consumers of the Commission's test failures;

(2) requires recall of carpet from distributors and/or retailers, despite the fact the record establishes that no carpet remains in the channels of commerce;

(3) purports to extend to Roy C. Barrett, individually, as well as in his capacity as an officer of the corporate respondent;

(4) requires Barrett to produce production documents pertaining to other carpet styles despite the lack of any evidence that the production defect causing Paradise Valley (foam) to fail would have caused any other Barrett style to be nonconforming; and

(5) prohibits the further sale of Paradise Valley (foam) carpet.

B. The Commission Cannot Justify the Imposition of a Cease and Desist Order in This Case

In construing the Flammable Fabrics Act, the Federal Trade Commission recognized that imposition of a cease and desist order was not the automatic consequence of a finding that the statute had been involved. According to the Commission, in cases involving an "unusual set of facts", such orders are not required.

Although finding that respondent had "technically violated the provisions of the Flammable Fabrics Act, and the Federal Trade Commission Act", the Federal Trade Commission dismissed a complaint against both the corporate and individual respondents in CCM: Arts and Crafts Inc., et al., FTC Dkt. 8817, 3 TRR §19,608, Final Order February 16, 1972. Respondents in that case were accused of marketing dangerously flammable wood fiber square sheets and precut fiber flower petals, which are "fabrics" under the statute. Among the factors cited for the dismissal by the Administrative Law Judge was respondent's voluntary discontinuance of the sale of the noncomplying item; removal of the product from respondent's catalogue prior to the issuance of the complaint; the time and effort of respondents in conducting a voluntary recall; the absence of a likelihood sales of the offending item would be resumed; and the fact taht the offending item represented only one-half of 1% of respondent's sales during the relevant period, a percentage the judge considered "negligible." These facts are on all fours with those in the instant case, as was the rationale for dismissal of the complaint:

> "The main purpose of a cease and desist order is to prevent repetition of acts in the future which have been found to be in violation of law and against the public interest." 3 TRR §19,608

The Complaint was also dismissed following trial in another recent Flammable Fabrics Act case, for reasons bearing significantly on the decision in the instant case. In the Matter of J.J. Newberry Co., FTC Dkt. No. 8849, Init. Dec. p. 13-16, 3 TRR §20,217, Final Order, June 21, 1973./38/ In this case, respondent was found to have marketed fabrics which failed to conform to the applicable standard (Comercial Standard 191-53), Init. Dec., p.13. It was further found these acts were unfair and deceptive acts and practices in commerce.

Acknowledging that a cease and desist order is the "usual corollary" to a violation of the Flammable Fabrics Act, the ALJ concluded that "as a matter of discretion, (the) complaint should be dismissed without the entry of an order to cease and desist." Init. Dec. p.14.

/38/ This case was initiated by the Federal Trade Commission, but the final decision and order was issued by the Consumer Product Safety Commission subsequent to the transfer of functions.

In Newberry, as in CCM: Arts and Crafts, Inc., et al., the Commission recognized that there should be a purpose to be served before a cease and desist order is imposed.

Applying this criterion, the Commission in that case found "the primary reason for ordering dismissal is that the basic objectives of this proceeding have already been achieved by the voluntary actions of respondent" in that the "dangerously flammable fabric . . . was immediately withdrawn from sale" and steps were taken "to insure" against the sale of noncomplying products in the future./39/

As was the case in Newberry, the practice complained of in the instant case has been stopped and surely "stopped without any cognizable likelihood of resumption." Init. Dec., p.16. See Respondents' Proposed Findings of Fact and Conclusions, pp. 137-138. The legitimate objectives of the Commission in this proceeding have been obtained, and imposition of a cease and desist order is not necessary to safeguard the public in the future. J.J. Newberry, Init. Dec., p.15.

In the instant case, the record establishes that respondents exercised good faith in the design of Paradise Valley (foam) carpet, Tr. 505, 511, 512, 546, 549, 550, 555, 556 and in the manufacture and testing of its products generally. Tr. 501, 525, 526, 527, 528, 530, 531, 572. Sale and distribution of the allegedly noncomplying carpet was terminated promptly when the flammability problem first surfaced, making an order mandating cessation of production unnecessary. Rev. Jt. Stip. No. 10. Not a single yard of Paradise Valley (foam) remains in commerce, it having been voluntarily recalled, making a recall from distributors and retailers unnecessary. Tr. 714.

Under the circumstances, it is not "in the public interest" to impose a cease and desist order upon respondents in the sense traditionally employed by the Federal Trade Commission in interpreting 15 U.S.C.

/39/ Among the factors considered significant were expansion of respondent's test program beyond that "required under the statute at the present time" and execution by respondents of voluntary assurance of compliance. Respondent Barrett maintains a test program much more stringent than that required by the Commission (Tr. 531), and executed a consent order agreement, which, if it had been accepted, would be tantamount to a legally binding voluntary assurance.

§45(b). Until such time as the FTC's construction of this provision is modified, suspended, set aside, or repealed by the CPSC, the FTC's determinations as to the appropriateness of imposing cease and desist orders under 15 U.S.C. §45(b) govern 15 U.S.C. §2079(e)(2).

C. If the Proposed Order Is to be Imposed It Should Be Modified in Several Respects.

1. & 2. The Provision of the Order Requiring Notice to Consumers and Recall From Distributors Should be Deleted

In obvious reliance on the final order in Congoleum Industries, Inc., CPSC Dkt. No. 75-3, the ALJ has proposed an order which would require respondents to "give notice . . . to all known purchasers . . . of Paradise Valley (foam) . . . produced on . . . the (two) failing days . . . to the effect said carpet failed . . . (and) recall all carpet from the failing finishing days from wholesalers and/or retailers.

Congoleum is not controlling precedent in this case for these notice and recall provisions because the factual record in the two cases is distinguishable.

(a) Notice Provision Inappropriate

Judge Hanscom, in deciding Congoleum, assumed a roll of carpet which failed the pill test was "dangerous" (Init. dec., p. 21). No specific evidence as to the actual flammability characteristics of the carpet style at issue in Congoleum was offered or received in evidence. Given this state of the record, the provision for notice to persons in possession of the failing rolls was consistant with Judge Hanscom's opinion as to on the facts and the Commission's remedial powers. Order, Paragraph III(1); Init. dec., p. 24.

The instant case is not by any means analygous. The Barrett record is repleat with specific factual evidence and expert opinion that even the rolls of Paradise Valley (foam) which failed to comply with DOC FF 1-70, does not represent a danger in actual use. LeBlanc, Tr. 1063, 939, 953, 950, 966, 945, 962, 940-954, 954-971, 967, 972-980, 978; Gottfried, Tr. 1463; Greenfeld, Tr. 1171, 1195-1197.

Among the reasons cited (Tr. 1037-38) for these conclusions were the height and tenuousness of flames (Tr. 913, 939); the ease of extinguishing

(b) No Order Requiring Recall From Distributors and/or Retailers Should be Imposed

The Proposed Order requires, in part, that respondents recall all carpet from the failing finishing days from wholesalers and/or retailers. Proposed Order, Paragraph III. This requirement was imposed because of a factual determination by Judge Pfeiffer to the effect that some rolls of Paradise Valley (foam) carpet remained with hands of distributors and/or dealers. Init. dec., p.26.

On the contrary, Enforcement counsel argued repeatedly during the pretrial phase of this case that no Paradise Valley (foam) carpet remained in commerce. See, e.g. Memorandum in Support of Opposition to Respondents' Motion dated December 8, 1975, pps.2, 17, 18. The parties stipulated that no Paradise Valley (foam) remained in commerce. Rev. Jt. Stip. No's. 26, 29. Moreover, during the hearing, Mr. David McMahon, Vice President of Barrett Carpet Mills, Inc., testified in considerable detail concerning the thoroughness of the company's voluntary recall of Paradise Valley (foam). Tr. 711-714, 735. According to Mr. McMahon,

> "No customer indicated to me that he had any additional Paradise Valley foam at all. So to me this implies there is none left in the channels of distribution. Tr. 714.

Under the circumstances, no purpose can be served by imposing a requirement that Barrett again, for the third time, conduct a wholesaler/retailer recall. Matter of J.J. Newberry Co., FTC Dkt. No. 8849, Init. dec. p.13-16, 3 TRR ¶20, 217, Final Order, June 21, 1973. Compare Matter of Westland Carpet Mills, Inc., et al., CPSC Dkt. No. 75-21, p. 23, where no recall provision was included in the proposed order because respondents "did not deal through retail outlets." Ibid, at p.60, 109.

3. Individual Respondent

The provisions of the Prosposed Order dealing with notice, cessation of production, recall, sample retrieval, production information, compliance reports, dissolution and employment changes either expressly or impliedly apply to Roy C. Barrett in his individual as well as corporate capacity.

flames (Tr. 966, 978); the small area of burn (Tr. 939); the absence of tendency to reignite (Tr. 950, 978, 984, 991, 996); the absence of smoldering (Tr. 945, 978, 946, 996); the slow rate of burn (Tr. 978, 972-3, 980, 1060-61) and the fact that the carpet self-extinguished in all exposures except the plastic wastebasket (Tr. 912, 1061-62), which was easily extinguished. Tr. 977, 978, 984, 991.

Dr. LeBlanc also testified that lack of uniform distribution of the alumina trihydrate in the failing rolls of Style 222, Paradise Valley (foam) would not present an unreasonable hazard in the home, Tr. 1038-1040. See also testimony of Mr. Sidney Greenfeld, Tr. 1171, 1195-1197.

At the conclusion of his testimony Dr. LeBlanc was able to state that:

> "My conclusion from these experiments is that when passing and failing carpets were subjected to the same extreme ignition sources, that the two types of carpet performed the same within experimental error and under the conditions that we subjected these carpets, neither would constitute an unreasonable flammability hazard. Tr. 1000-1001; 1036-1037.

Conversely, there is not one scintilla of evidence the noncomplying rolls are hazardous in use. Tr. 1317, 1320; Init. dec., p. 24.

Under these circumstances, the rationale for the notice provision in Congoleum is absent in the Barrett case. The notice required would have no remedial value, would be punitive only./40/ Accordingly, this provision of the order should be deleted. Bay Area Mattress Company, CPSC Dkt. No. 75-2, Op., p. 5.

/40/ The "notice" provision and the "recall" provision are not be to confused. In Congoleum (as in Barrett), identifiable consumers were to receive "notice" of the "flammable nature of the carpet" (Congoleum, ¶III,1) or that "said carpet failed the Commission's Carpet Flammability Standard" (Barrett, ¶I). This is not a recall requirement. Both orders contain separate provisions mandating recall of failing rolls or finishing dates (Congoleum, ¶III, 3; Barrett, ¶III) from distributors.

Enforcement counsel, in bringing the instant action, sought an order against Roy C. Barrett, individually, on the basis that "Commission's general policy has been to require the inclusion of an individual respondent in all Flammable Fabrics Act cease and desist orders." The Administrative Law Judge apparently accepted this rationale though the Initial decision contains no explanation for the inclusion of Roy C. Barrett, individually.

No general policy respecting the naming of individual respondents can be derived from an examination of the flammable fabrics orders accepted or imposed by the Consumer Product Safety Commission and, in fact, none exists (Tr. 839, 840, 1263, 1265-1267, 1264). Many of the Commission's orders, including several of those most recently adopted, do not run to individual respondents. See, e.g., James Carpets, Inc. (FTC Dkt. No. 8876); Alladin Mills, Inc. (FTC Dkt. No. 8912); Charter Carpet (FTC Dkt. No. 8914); Majestic Carpet Mills (FTC File No. 722 3134); Ann Taylor, Inc. (FTC File No. ); Champion International Corporation (Trend Mills of California (Dkt. No 75-C0020)); Plymouth Shops, Inc. (Dkt. No. 75-C0015); Pomeizia Textiles (Dkt. No. 75-C0016); Siber Hegner & Co, Inc. (Dkt. No. 75-C0018); Colony Carpet Mills, Inc. (76-C0023); Jorges Carpet Mills, Inc. (76-C0022); Venture Industries, Inc. ( ); and General Felt Industries (76-C0021).

Litigation against James Carpets, Inc. (FTC Dkt. No. 8876) was originally initiated primarily as a result of FTC staff insistance that the corporate respondent's president execute the order individually. Subsequently, following recommendations by Commission counsel and the Administrative Law Judge, the Commission accepted an order in which the individual originally named was deleted. Similarly, in two other cases recently withdrawn from adjudication, the Commission approved deletion of the individual respondents. See Alladin Mills, Inc. (Dkt. No. 8912) and Charter Carpet (Dkt. No. 8914).

No individual respondent was named in the only carpet flammability case ever to be fully litigated, nor was any attempt made by the government in the pleadings or during the trial of that case of affix individual responsibility for the alleged wrongful acts. Congoleum Industries, Inc., CPSC Dkt. No. 75-3.

Final acceptance of many of these orders was by the Consumer Product Safety Commission. True, some involved orders originally proffered (with and without individual respondents being named in the proposals) by the Federal Trade Commission. In others the original order was proffered by the CPSC. See e.g., Plymouth Shops, Inc. (Dkt. No. 75-C0015). The ultimate disposition of the cases cannot be distinguished on this basis.

There are a number of instances where individual respondents have been named in such orders. The reasons for their inclusion, beyond mere acquiesence of the litigant, are generally not discernible from the record. See Denzil E. Miskell (Dkt. No. 75-C0019) (case involving an individual trading as a business); Calcroft Carpet Mills, Inc. and James H. Boghosian (company no longer manufacturing); Gross Point Mills, Inc. and Joseph G. Ouseley (Dkt. No. 75-C0011) (corporation no longer exists.)

In deciding whether to include an individual respondent, the Commission (and its predecessor) purport to rely on public interest considerations. Where no greater protection will be afforded to the public an individual respondent is not required. The bases for distinguishing the cases, and the Commission's rationale, are set forth in a November 5, 1973 staff memorandum to the Commissioners, prepared by Mr. George J. Miller, who was coincidentally one of the Enforcement counsel in the instant case. Writing in support of his recommendations that no individual respondents be named in Champion International Corporation (Trend Mills of California) (Dkt. No. 75-C0020)), Mr. Miller stated:

> Under the Federal Trade Commission policy/41/ in effect on April 3, 1973 when the consent agreement was accepted, the inclusion of an individual respondent was a descretionary matter depending upon the facts of each case. In this matter, it was the opinion of the staff that the naming of an individual in the consent agreement was not essential to the effectiveness of the order in protecting the public. The staff remains of that opinion.
>
> All the traditional reasons for requiring the naming of an individual respondent in a consent agreement do not exist in this case. Champion International has been in business for many years and is one of this nation's industrial giants. There is absolutely no suspicion that the company may attempt to evade the requirements of a cease and desist order which affects only a small percentage of its total sales. The order will remain effective against a successor or reorganized corporation since the order is framed to extend to "successors and

/41/ The CPSC has taken no action to abrogate this policy, which remains in effect by virtue of §30(c)(2) of P.L. 92-573.

assigns". In short, no greater protection will be afforded to the public by seeking an order with an individual named.

Respondent Barrett Carpet Mills is hardly a corporation the size of Champion International. But, mere size cannot and clearly has not been the determining factor in these cases. In all other respects, not the least of which is the good faith demonstrated by Roy C. Barrett in designing products to meet flammability standards (Tr. 505), in establishing a flammability testing program (Tr. 528), in prompt discontinuance of production and sale of Style 222, Paradise Valley (foam) (Rev. Jt. Stip., ¶10; Tr. 608), and in conducting a voluntary recall of all Paradise Valley (foam) from commerce (Tr. 610), the record establishes the public will not benefit from placing the onus of a cease and desist order upon the shoulders of Roy C. Barrett in his individual capacity.

As additional support for its argument that Roy C. Barrett be included in the order in his individual capacity, Enforcement counsel contended (Comm. Br., pps. 26-29) that a cease and desist order should be imposed upon Roy C. Barrett in this instance because "the Commission has to have specific individuals whom it can hold responsible for formulating and directing an immediate and effective remedial action program", and for the further reason that Barrett (as major stockholder) could effect rapid structural changes in the corporate respondent leaving no responsible party to "carry out the dictates of the order."

This rationale ignores the practical effect of a Commission cease and desist order. For example, it is the corporate respondent, not the individual respondent, which has the functional responsibility to carry out the terms of the typical fabric flammability order, including the proposed order./42/

/42/ No attempt has ever been made to force an individual respondent to conduct a recall. Nor did Enforcement counsel contend that should Roy C. Barrett be named in his individual capacity, he would be personally responsible for the refund of the purchase price of the carpet to be recalled in the event the corporation could not perform. The case of Grosse Pointe Mills, Inc., CPSC Dkt. 75-C0011 (June 1975), is illustrative. In that case, an individual respondent was named in the order because the corporation was bankrupt. The individual respondent was required to submit a compliance report, but the Commission accepted as full satisfaction of the individual respondent's obligations a report in which he described the corporation's inability to notify customers.

Mere structural changes do not enable a corporate respondent to avoid the implications of a flammability order, which by its terms, applies to the corporations "successors or assigns". Only by total dissolution could Barrett Carpet Mills avoid compliance with prospective provisions of the proposed cease and desist order. The record is totally devoid of evidence this is even a remote possibility. On the contrary, Barrett Carpet Mills, Inc. is a young but viable business organization which has recently moved to new facilities. The corporation bears the name of its founder and owner, who, himself is a young businessman likely to be connected with this company for many years to come. Neither termination of the business or its corporate identity is a likely occurence. Under these circumstances, the claim that naming an individual respondent is necessary to insure the carrying out of any cease and desist order imposed in this case, if any, simply won't hold water.

But most importantly, the respondents have already carried out the primary provisions of the proposed order. Production of the allegedly nonconforming product has been stopped and will not be resumed. All available rolls have been returned and have been tested. Except for the filing of a compliance report, little remains for the respondents. Certainly, what does remain by way of compliance reports is not of such monument as to make corporate structural revamping even remotely possible.

Finally, it is important for the Commission to recognize that this was not a case of noncompliance resulting from a negligent or deliberate act of Roy Barrett or any person under his direct control, but the failure of a contract finisher to apply alumina trihydrate properly on two finishing dates. Init. dec., p. 13. To stigmatize Roy Barrett for acts or omissions which he could not prevent would be unjust in the extreme.

4. Production Information

The Proposed Order requires that respondent provide "complete production information concerning any other Barrett . . . foam backed carpet finished by Masterpiece . . . on any failure days . . . for appropriate remedial action."

Notwithstanding the fact that the production documents, in the form of receipts, were provided voluntarily to the CPSC staff prior to the hearing, this requirement is objectionable because it lacks an evidentiary basis and is vague.

There is not one scintilla of evidence in the record that any other Barrett carpet (or any other mill's carpet) finished on the same dates as the suspect Paradise Valley (foam) carpet would fail to comply with DOC FF 1-70. On the contrary, witnesses testified that the most likely cause of the failures would be intermittant and short lived. Tr. 748, 753, 766, 767, 768, 789, 791, 806, 807, 812, 1350, 1351, 1365, 1371, 1387, 1448. Additionally, the carpet styles finished before and after Paradise Valley (foam) would belong to the third parties, not Barrett. Bartenfield, Tr. . In sum, this provision in the order raises suspicions about other Barrett production which are not justified on the record.

Finally, in its reference to "appropriate remedal action", the order is unlawfully vague. There is no "appropriate remedial action" unless the Commission determines, through flammability tests, that carpet produced by Barrett failed to comply with the standard. The order should be modified to clarify this abiguity. Hamilton Mfg. Co. v. FTC, 194 F.2d 346 (D.C. Cir. 1952); Bork Mfg. Co. v. FTC, 194 F.2d 611 (9th Cir. 1952); U.S. Printing & Novelty Co. v. FTC, 204 F.2d 737 (D.C. Cir. 1953). Might determine future

5. Prohibition Against Further Sales of Paradise Valley (foam)

This case was tried on a stipulation that rolls of Paradise Valley (foam) carpet finished on two dates failed flammability tests. Rev. Jt. Stip. No. 33. Init. dec., p.15. No proof of noncompliance on other dates exists. On the contrary, there is substantial probative evidence that when Paradise Valley (foam) is produced according to its specifications, and the latex adhesive is uniformly applied, it complies with DOC FF 1-70. Rev. Jt. Stip. No. 33; Tr. 577, 578, 581.

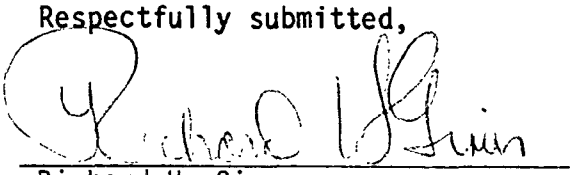
Although Barrett Carpet Mills, Inc. has discontinued (Tr. 608) the production of its Paradise Valley (foam), and has no present intention of resuming the production of this style with future, there is no basis for barring its production and sale if it complies with DOC FF 1-70. While the instant proceeding has destroyed the value of the name "Paradise Valley", for the Commission to impose a perpetual ban on the style name Paradise Valley is in excess of its statutory authority, and is clearly not required in the public interest. In concluding that similar test data in Congoleum had been found adequate to sustain a cease and desist order "banning future sales of the style", the ALJ erred. Init. dec., p. 14-15. The Congoleum order contains no such ban.

Broad order provision

## X. CONCLUSION

For the reasons stated, the Commission should adopt the positions urged by respondents, and this complaint should be dismissed.

Respectfully submitted,



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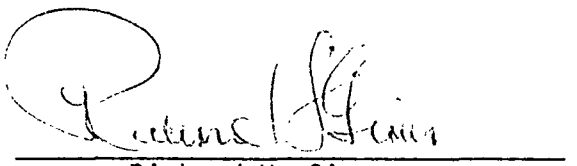
(202) 293-1414

Attorneys for Respondents

October 14, 1976

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appeal Brief of Respondents was served upon all interested parties by hand delivery, to Ronald Yelenik, Esq., George Miller, Esq., Ms. Annette Seltzer, Ms. Enid Rubenstein, and Jere Glover, Esq., Attorneys, Bureau of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207, this 15th day of October , 1976.



Richard H. Gimer

10/10/75

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| BARRETT CARPET MILLS, INC. a corporation, and | ) | CPSC Docket No. 75-5 |
| ROY C. BARRETT, individually and as an officer of the corporation. | ) | |

To: The Honorable Presiding Officer,
Paul N. Pfeiffer
Administrative Law Judge

OPPOSITION TO RESPONDENTS' MOTION FOR DETERMINATION OF APPLICABLE LAW AND FOR WITHDRAWAL OF CASE FROM LITIGATION

Enforcement Counsel oppose Respondent's Motion of September 26, 1975 for the following reasons:

1. The Respondent's Motion is not responsive to the Presiding Officer's stated instructions.

2. The Order proposed by Counsel for the Respondents differs from the Order proposed by Enforcement Counsel in the following respects:

a. The remedial order limits recall to individual failing rolls of uninstalled Style 222 Paradise Valley (foam-backed) carpet.

b. The individual respondent has been deleted from the proposed Consent Agreement and Order.

c. The cease and desist order is limited to violations involving carpets and rugs and does not include all products, fabrics, or related material subject to an applicable standard to the Flammable Fabrics Act.

3. Because of these differences, the proposed Agreement and Order do not adequately resolve the issues presented by this case.

In support of this Opposition, the Commission's attention is directed to Fnforcement Counsels' Memorandum of Points and Authorities annexed hereto.

Enid Rubenstein

George J. Miller

Ronald G. Yelenik

Fnforcement Counsel
Consumer Product Safety Commission
Washington, D. C. 20207

October 10, 1975

UNITED STATES OF AMERICA
BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| BARRETT CARPET MILLS, INC., a corporation, and ROY C. BARRETT, individually and as an officer of the corporation. | ) | CPSC DOCKET NO. 75-5 |

TO: The Honorable Presiding Officer,
Paul N. Pfeiffer

MEMORANDUM IN SUPPORT OF OPPOSITION TO RESPONDENTS' MOTION

I. RESPONDENTS' MOTION IS INAPPROPRIATE AND NOT RESPONSIVE TO THE PRESIDING OFFICER'S AUTHORIZATION

At the prehearing conference, counsel for respondents proferred a revised consent agreement executed solely by the corporate respondent, and requested that the agreement be certified to the Commission for consideration. In response, Enforcement Counsel stated their opposition to the proposed agreement.

Speaking to the request for certification, the Presiding Officer suggested that the proposed settlement agreement be revised to include the individual respondent as well as the corporate respondent, and authorized counsel for the respondent to file a motion on or before September 26, 1975, supporting the proposed agreement. (Tr. 38-39).1/ In addition, the Presiding Officer stated that he would certify respondent's proposed settlement to the Commission, without recommendation, after receiving Enforcement Counsels' response to respondents' motion.

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1/ References to "Tr. " are to the transcript of the prehearing conference of September 9, 1975.

On September 26, 1975, counsel for Respondents filed a "Motion for Determination of Applicable Law and for Withdrawal of Case from Litigation." The Motion in essence seeks a declaratory judgment from the Presiding Officer stating that the Commission's decision in Congoleum Industries, Inc. (CPSC Docket No. 75-3) is finally dispositive of all issues raised in the case at bar. In addition, the Motion seeks a settlement of the case against the corporate respondent only.

In a letter to the Presiding Officer, filed on the same date, counsel for Respondents states that he views the case against the individual respondent as distinct from the case against the corporate respondent. Further he makes it clear that Commission acquiescence in his proposed settlement agreement would not result in dismissal of the case against Roy C. Barrett in his individual capacity.

Enforcement Counsel submit that the agreement proferred by Respondents is not responsive to the Presiding Officer's authorization, and that in the absence of any proposal to dispose of this case in its entirety it is not appropriate to certify this matter to the Commission. Respondents' purported purpose of avoiding protracted litigation in this matter cannot be served unless all issues can be resolved through the mechanism of the settlement agreement. The resolution of questions concerning the liability of the individual respondent will doubtless turn on factual evidence identical to that required for determining the issue of corporate liability. Thus, contrary to Respondents'

suggestion, little if any time will be saved even by the Commission's granting of the motion prior to trial. Rather, the certification procedure will serve merely as a vehicle for delay of the ultimate resolution of this matter.

In addition, we submit that the declaratory judgment sought by Respondents is both unavailable under the Commission's Rules of Practice2/ and improper as a matter of law. Respondents request that the Presiding Officer determine that the Congoleum decision is a binding exposition of the Commission's policy with respect to all cases involving violation of the carpet standard. (Motion, P. 1). However, if the Presiding Officer grants this request, he will bind the Commission to a decision. Respondents' counsel in his memorandum (p. 15) concedes that this result is not permissible. On the contrary, the judge himself is bound by declarations of the Commission until the Commission changes its mind.

It is true, as Respondents contend, that the remedy requested by Enforcement Counsel in this matter goes beyond that fashioned in Congoleum. But the very fact that the Commission approved the issuance of this Notice of Enforcement, seeking recall of installed carpeting, on the same date that it approved the Congoleum decision,3/ suggests that

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2/ The Rules contain no provision for declaratory judgments. See 16 C.F.R. Part 1025, passim.

3/ Minutes of the Commission's Executive Session of July 10-11, 1975 record both of these actions.

the Commission did not consider Congoleum to be finally dispositive of the issue of the limits of permissible recall.

Enforcement Counsel believe that the Congoleum decision is not dispositive of this question. The issue of the propriety of recall "to the floor" was not raised in the Congoleum appeal by counsel for either side, and was not addressed specifically in the Commission's decision. Thus, Enforcement Counsel believe that the remedy in Congoleum should be limited to the factual situation presented by that case, and that the Presiding Officer in the case at bar may fashion a different remedy.

But even assuming, arguendo, that the Presiding Officer is bound by the remedial order in Congoleum, the Commission is free to fashion a more extensive remedy if it believes such a course of action to be warranted by the facts.4/ A determination on this question cannot be made until the facts are on the record. The issue is prematurely raised in advance of trial.

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4/ We do not agree with the Presiding Officer's statement that "the court of appeals" is the only proper forum for a challenge by Respondents to the Commission's Congoleum decision. (Tr. 23). Respondents may brief this issue to the Commission following issuance of the Presiding Officer's Initial Decision in this matter. But Respondents' attempt to obtain a pre-trial declaration of the operation and effect of Congoleum is premature.

II. THE PROPOSED AGREEMENT DOES NOT ADEQUATELY RESOLVE THE ISSUES PRESENTED BY THIS CASE

A. The Congoleum Order Is Not A Suitable Remedy In This Case.

Respondent proposes that the Order in Congoleum Industries, Inc., be adopted verbatim herein. In Congoleum, (CPSC Docket No. 75-3) this Commission held that recall was an appropriate remedy under the Flammable Fabrics Act and adopted the Administrative Law Judge's Order calling for roll-by-roll testing of all available rolls of the suspect carpeting, recall of all failing rolls of uninstalled carpeting, and notification to members of the public in possession of the installed carpeting. Under the roll-by-roll testing scheme, samples of all rolls remaining in the marketplace were ordered to be tested at an authorized laboratory. Failing tests were to be followed by notification to consumers and recall of uninstalled carpeting.

In Congoleum, a large number of rolls of the offending carpeting remained in the possession of distributors, wholesalers, and retailers. In the instant matter, there are no rolls of the Style 222 Paradise Valley carpeting available in the marketplace. Approximately 8700 square yards of the carpeting have been installed and only an additional 387 square yards remain in inventory at the Respondents' warehouse. Efforts by the Commission's staff to locate additional rolls of the suspect carpeting in the marketplace have been unsuccessful.

Since no rolls of Style 222 Paradise Valley carpeting are available in the marketplace for testing, the adoption verbatim of the Congoleum order would serve no useful purpose. Because no carpeting can even be tested, no carpeting will be withdrawn from the channels of commerce, and no ultimate consumers of the carpeting will be notified of its flammable nature or given the option of replacement or refund. Thus, the consumer will be left completely unprotected by an order for roll-by-roll testing.

Moreover, the roll-by-roll testing order in Congoleum was based on results of 117 tests that showed only 3 failures and 114 passes. Available test results on Barrett style 222 Paradise Valley (foam-backed) carpeting5/ show seven failures and eight passes. Thus, both the absolute number of failing tests and the proportion of failures to passes are greater in the instant case than in Congoleum. It is significant that even on the basis of the small number of failures found in Congoleum, testing of all remaining available rolls of the carpeting was ordered. It is highly possible that the Congoleum order would have provided for broader (style-wide) recall if the ratio of failures to passes had been greater. The facts in the instant case support the formulation of a broader remedy.

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5/ Enforcement Counsel have been advised that respondents have conducted additional failing tests, but have not been provided with the numbers or results of such tests.

B. The Omission Of The Individual Respondent Is Unacceptable

At the prehearing conference, counsel for Respondents intimated that Roy C. Barrett would sign the proposed settlement agreement in his individual capacity before the agreement was filed for certification to the Commission. (Tr. 33, 34, 38.) He appeats to have recanted this decision and has instead submitted an agreement that has been executed by Mr. Barrett for the corporate respondent only. Counsel for the respondents now states that he intends to litigate the issue of the liability of the individual respondents as a separate case. Letter from Richard H. Gimer to Hon. Paul N. Pfeiffer, dated September 26, 1975, annexed hereto as Exhibit 1.

The evidence available to Enforcement Counsel shows that the responsible official who formulates the acts, practices and policies of Barrett Carpet Mills Inc. is Roy C. Barrett, the President of the company. Indeed, counsel for Respondents appears to have conceded this at the prehearing conference (Tr. 34) in response to questions from the Presiding Officer:

> JUDGE PFEIFFER: There was a request for a stipulation or an admission, was there not?
>
> MR. GIMER: Yes.
>
> JUDGE PFEIFFER: That Mr. Barrett was responsible for the operating decisions of the company, and so forth. You will concede that?
>
> MR. GIMER: Yes.
>
> JUDGE PFEIFFER: You will.

Thus, we believe that the inclusion of the individual respondent in the settlement agreement is necessary.

Nor do we agree that the case against the individual respondent is "separate" from the case against the company. Respondents' counsel has failed to state any reason why the cases are separate. The mere fact that

an action names more than one respondent does not necessarily mean that it includes more than one case. And where, as here, the identical evidence will establish violation of the Act by both the individual and the corporate respondent, we submit that the cases can not be severable.

C. The Cease and Desist Order Should Not Be Limited To Carpets And Rugs

Respondents contend that because this case is predicated upon the alleged failure of a single style of carpet to meet the carpet flammability standard, the cease-and-desist order in this case should be limited to future violations of the carpet standard. Enforcement Counsel contend that a broader order, covering all products made of fabric or related materials, is necessary to protect consumers.

Respondents' counsel has admitted (Tr. 17) that although Barrett Carpet Mills presently manufactures only carpets, it may someday diversify its product line to include other textile products. He contends that it is unfair to expose his clients to possible civil penalties for violation of other flammability standards in the future. But it is precisely because Respondents may expand their operations that Enforcement Counsel seek a broader order.

Cease-and-desist orders under the Flammable Fabrics Act operate only prospectively. The statutory enforcement scheme imposes no penalties for the initial violation of the Act, but permits the recovery of civil penalties for subsequent violations. Section 5, FFA, 15 U.S.C. 1194; Section 5(b)(1), Federal Trade Commission Act, 15 U.S.C. 45(b)(1). Allegedly, Respondents have already committed their "free" violation. Any future failures to comply with flammability standards should result in penalties.

III. THE DOCTRINE OF STARE DECISIS DOES NOT REQUIRE THE VERBATIM ADOPTION OF THE CONGOLEUM REMEDIAL ORDER IN THIS CASE

Stare decisis, as defined in Black's Law Dictionary (4th Ed.), means: "To abide by, or adhere to, decided cases." It is further defined as a doctrine requiring a court which has once declared a principle of law applicable to a certain state of facts to apply the same principle to all future cases where the facts are substantially the same. Ibid.

Respondents contend (Motion, p. 14), that application of this doctrine to the case at bar requires the entry of a remedial order that is identical to the one issued in Congoleum. Enforcement Counsel submit that the doctrine does not require this result.

Initially, we note that the facts of the case at bar are not, in our view, substantially the same as those in Congoleum. Respondents, however, characterize the facts as "virtually identical." We believe that a hearing to establish the facts must be held before this issue can be resolved. For if the facts are not substantially similar, it appears that Respondents would concede that the Congoleum remedy need not be ordered herein.

Moreover, our view of the implications of the doctrine of stare decisis differs from that advanced by Respondents. Respondents in effect contend that the doctrine of stare decisis requires verbatim application of all aspects of a prior decision to subsequent cases. We contend that the doctrine requires only that an agency apply the holding of its past decisions to the facts in subsequent matters.

The holding of Congoleum is that recall is an available remedy under the Flammable Fabrics Act. The reasoning of the opinion is limited to the issue of recall authority, which a Commission majority found to be "inherent" in the Act. Slip opinion at p.2. The issue of the permissible limits of recall was not decided by the Commission. Indeed, the opinion states that there must be recall "to the fullest extent practicable from consumers, distributors, and retailers." Slip opinion at pp. 2-3. The question of the "practicability" of more extensive recall has thus been left open for resolution in subsequent cases.

Respondents' position is particularly inappropriate with respect to a decision like Congoleum. Congoleum is the first decision by a new Commission interpreting the remedial authority of a statute. To construe this decision as an authoritative, dispositive, final pronouncement of the parameters of such authority would unduly hamstring the Commission in its attempt to protect the public. On the contrary, the Commission must retain the flexibility to adapt the decision in accordance with experience, fashioning individual remedies for individual cases.

The courts have consistently upheld an agency's right to apply different remedies to seemingly analogous factual patterns. In FCC v. WOKO, 329 U.S. 223 (1946), which involved the denial of a broadcasting license because of misrepresentation, the Supreme Court rejected the argument that similar deceitfulness by other licensees had not been dealt with so strictly. A unanimous Supreme Court said:

> The mild measures to others and the apparently unannounced change of policy are considerations

> appropriate for the Commission in determining whether its action in this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable

Similarly, in Shawmut Ass'n v. SEC., 146 F2d, 791, 796-797 (1st Cir. 1945), the Court of Appeals rejected a contention that the SEC had changed its policy without notification and had treated the complainant differently from others under like circumstances. Judge Wyzanski stated:

> Flexibility was not the least of the objectives as sought by Congress in selecting administrative rather than judicial determination of the problems of security regulation... The administration is expected to treat experience not as a jailer but as a teacher.

See also, e.g., Butz v. Glover Livestock Co., 411 U.S. 182, 187 (1973); American Trucking Ass'n. v. Atchison, Topeka and S. Fe RR, 387 U.S. 397, 416 (1967); Larus and Brother Co. v. FCC, 447 F. 2d 876, 897 (4th Cir. 1971).

Moreover, "(a)n administrative agency may always change its mind." Mester v. United States, 70 F. Supp. 118, 122 (E.D. N.Y. 1947), aff'd, 332 U.S. 749 (1947). As Respondents concede, (Motion p. 18), administrative agencies may depart from past precedent if they identify the reasons for the departure and articulate a rationale for the change. Greater Boston Tel. Corp. v. FCC, 444 F. 2d 841, 852 (D.C. Cir., 1970); F.T.C. v. Crowther, 430 F. 2d 510 (D.C. Cir. 1970). Thus, even assuming arguendo that Congoleum holds that recall is limited to uninstalled carpeting, this Commission could reconsider Congoleum and reach a different conclusion in disposing of the case at bar.

With few exceptions, the cases cited at pp. 16-17 of Respondents' memorandum confirm this analysis. In numerous instances, the courts have condoned agency departures from precedent that are supported by reasoned explanation. FTC v. Crowther, supra; ABC Air Freight Co., Inc. v. CAB, 391 F. 2d 295, 302 (2d Cir. 1968); Rayonier, Inc. v. NLRB, 380 F. 2d 187 (3rd Cir. 1967); T.I. McCormack Trucking Co., Inc. v. United States 251 F. Supp. 526, 539 (D.N.J. 1966). Where, however, an agency fails to articulate the reason for its decision, the courts will overturn it on grounds that it is arbitrary. National Air Carrier Assn. v. CAB, 436 F. 2d 185 (D.C. Cir. 1970); Local 1325, Retail Clerks Int'l Assn, AFL-CIO v. NLRB 414 F. 2d 1194 (D.C. Cir. 1969); City of Lawrence, Mass. v. CAB, 343 F. 2d 583 (1st Cor. 1965); Melody Music, Inc. v. FCC, 345 F. 2d 730 (D.C. Cir. 1965); N.L.R.B. v. Capital Bakers, Inc. 351 F. 2d 45, (3rd Cir. 1965). But this is true even in instances where an agency's decision does not represent a departure from earlier precedent, since the Administrative Procedure Act requires that all agency decisions be supported by a statement of reasons. 5 U.S.C. 557(c); see also S.E.C. v. Chenery Corp., 332 U.S. 194, 196-197.

N.L.R.B. v. Mall Tool Co., 119 F. 2d 700 (1941), cited by Respondents as "the leading case" in which a court reversed an agency for changing its remedies without notice (Memorandum, p. 16) is not controlling here. The court's finding of arbitrary inconsistency was based on comparison with numerous decisions in which the Board had "quite generally ruled" the other way. 119 F. 2d at 702. Similarly, in Mary Carter Paint Co. v. FTC, 333 F. 2d 654 (5th Cir. 1964), rev'd on other grounds, 382 U.S. 46, the

FTC had departed from "established rules" (333 F. 2d 657) which had been incorporated into a regulation of general applicability. See 333 F. 2d 660 (concurring opinion of Brown, C.J.). The single precedent with which we are dealing here is of far less conclusive effect.

Finally, Respondents' view of the binding effect of precedent is at odds with the American common law system. As Professor Davis has noted, "since time immemorial", our judicial system has operated through "(e)xtension of old principles to new circumstances, application of existing standards in a way they have not previously been applied, use of a recognized "climate of opinion" as a basis for expansion of established protections, (and) development of new law through the process of adjudication. . . .". Davis, Administrative Law Treatise, Volume 2, §17.08. The Supreme Court has recognized the power of administrative agencies (as well as courts) to develop law through "case-by-case evolution." SEC v. Chenery Corp., 332 U.S. 194, 202 (1947). Respondents are seeking stasis rather than evolution. This is neither an achievable nor an appropriate goal.

## CONCLUSION

For the foregoing reasons, we urge that Respondents' Motion be denied.

Enid Rubenstein

George J. Miller

Ronald G. Yelenik

Enforcement Counsel
Consumer Product Safety Commission
Washington, D. C. 20207

Dated: October 10, 1975

EXHIBIT 1

LAW OFFICES

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OF COUNSEL

*ADMITTED MD. BAR; D. C. APPLICATION PENDING


September 26, 1975


SEP 29 PM '75


The Honorable Paul N. Pfeiffer
Administrative Law Judge
Consumer Product Safety Commission
Washington, D.C.

Re: Barrett Carpet Mills, Inc.
CPSC Docket No. 75-5

Dear Sir:

On this date I have filed, on behalf of Barrett Carpet Mills, Inc., the corporate respondent in the above-entitled cause, a Motion designed to secure a determination as to the application of the Congoleum Industries, Inc. case to this proceeding.

During this prehearing conference (Tr.39) I was asked to explain in my Motion my position as to the individual responsibility of Mr. Barrett. Upon careful consideration I have concluded that the two issues are very distinct; and that to address them both in the same Motion, especially if said Motion were to be referred directly to the Commission, would prejudice the corporate respondents opportunity to receive a clear ruling on the primary issue.

The Motion as presented, explicitly states that its resolution does not involve any decision with respect to the individual respondent. I view the pleadings as if two lawsuits were filed, but were combined in a single Notice of Enforcement.

If it is determined that the suit against Barrett Carpet Mills, Inc. is to be settled on the basis of the executed order, this would not have the effect of dismissing those particulars of the case directed at Roy C. Barrett, individually, unless the Government were to agree to such a disposition. I am prepared to file a brief to support such an action if and when the case is placed in this posture.

I hope this decision is not construed as being contrary to your request.

Respectfully submitted,

Richard H. Gimer
Counsel to Barrett Carpet Mills, Inc.
and Roy C. Barrett, Individually

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I have served the foregoing Opposition to Respondents' Motion, with annexed Memorandum, by mailing postage prepaid, a copy to each party.

Enid Rubenstein

Enid Rubenstein

October 10, 1975

In the Matter of
CONGOLEUM INDUSTRIES, INC.,
a corporation

DOCKET NO. 8896 WHEN BEFORE FEDERAL TRADE COMMISSION

CPSC 75-3

CONCURRING IN PART AND DISSENTING IN PART: RICHARD O. SIMPSON, CHAIRMAN. I dissent from that portion of the Commission's decision and order that concerns the extent of the Commission's authority to require notification and recall of items that fail to conform to standards issued under the Flammable Fabrics Act. It is my belief that the Consumer Product Safety Commission does not possess the authority under the Flammable Fabrics Act to order notification, recall, and repurchase of products that fail to conform to standards issued under that Act; and therefore the Administrative Law Judge exceeded his authority in ordering notification and recall by Congoleum Industries, Inc.

Although the Flammable Fabrics Act is a public safety statute, neither it nor the Federal Trade Commission Act (15 U.S.C. 41 et seq.) provides the specific authority to require notification, recall, and repurchase of items that do not conform to standards issued under the Flammable Fabrics Act. Those provisions of the FTC Act that are incorporated into the Flammable Fabrics Act (15 U.S.C. 1194) provide only for the issuance of cease and desist orders upon the finding of a violation of law. The Flammable Fabrics Act only authorizes the extraordinary remedies of seizure and injunction (15 U.S.C. 1195).

The Commission's actions must be limited to the exercise of those powers granted by Congress. I believe notification, recall, and repurchase under the Flammable Fabrics Act of items that fail to comply with flammability standards exceeds those powers.

This is not to say, however, that the Commission does not possess authority to require corrective action, in appropriate situations, for items that do not comply with flammability standards issued under the Flammable Fabrics Act. In those situations where failure to comply with a standard under the Flammable Fabrics Act result in defects which create or could create a substantial product hazard, and the risk of injury associated with the product could not be eliminated or reduced to a sufficient extent by action taken under the Flammable Fabrics Act because of the lack of notification and recall authority under that Act, it is my opinion that the Commission could, pursuant to section 30(d) of the CPSA (15 U.S.C. 2079(d)) undertake regulatory action pursuant to section 15 of the CPSA (15 U.S.C. 2064).

Thus, although I concur in that portion of the Administrative Law Judge's initial decision which concludes that Congoleum Industries, Inc., manufactured, transported and sold quantities of Endureze 9113 carpet in interstate commerce which failed to conform to the requirements of the Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70), and which violated the Flammable Fabrics Act, I believe the Administrative Law Judge's order in regard to notification and recall adopted by the majority exceeds the Commission's statutory authority under the Flammable Fabrics Act.

DATE: July 14, 1975 Signature: _____

RIchard O. Simpson, Chairman

SERVED: July 8, 1976

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of<br><br>BARRETT CARPET MILLS INC., a corporation, and<br><br>ROY C. BARRETT, individually and as an officer of the corporation.<br><br>FLAMMABLE FABRICS ACT ENFORCEMENT PROCEEDING | CPSC DOCKET NO. 75-5 |

INITIAL DECISION AND ORDER

SERVED UPON:

Ronald Yelenick, Esquire, George Miller, Esquire, Annette Seltzer, Esquire, Enid Rubenstein, Esquire, and Jere Glover, Esquire, Attorneys, Bureau of Compliance, Consumer Product Safety Commission, 5401 Westbard Ave., Bethesda, Maryland 20207.

Richard Gimer, Esquire, Thomas Lumbard, Esquire, Respondents' Counsel, Berliner, Maloney, Gimer and Muir, Suite 420, 1100 Connecticut Ave., N.W., Washington, D. C. 20036.

N.B. Pursuant to Rule 72 of the Commission's Interim Rules of Practice for Adjudicative Proceedings (Part 1025.72) a notice of appeal from this initial decision must be filed within 10 days of the service date above. An appeal brief may be filed 30 days after said service date.

# I

## PRELIMINARY STATEMENT

A Notice of Enforcement was issued by the Secretary in this case on July 18, 1975, in which the Commission's Bureau of Compliance charged Respondents Barrett Carpet Mills Inc., and Roy C. Barrett, individually and as an officer thereof, with the manufacture and sale of carpet in interstate commerce which did not comply with the Standard for Surface Ignition of Large Carpets and Rugs (DOC FF 1-70) in violation of Section 3 of the Flammable Fabrics Act. The Notice also alleges that this failure constituted an unfair and deceptive practice under Section 5 of the Federal Trade Commission Act. The remedies sought are: (1) an order to cease and desist from all future violations; (2) notice of the hazard to all Respondents' customers; and (3) recall of all violative carpet from distributors, retailers, and ultimate consumers.

Respondents answered by denying all the substantive allegations of the Notice and, in addition, asserting affirmative defenses, inter alia, of improper sampling, improper Commission Staff action in negotiating a proposed settlement, and lack of due process in enforcing the Standard.

In addition Respondents allege that they have notified their customers (wholesalers/retailers) and have recalled from commerce all failing carpet rolls.

A prehearing conference was held on September 9, 1975. At that time, Respondents proposed a settlement agreement alleged to be identical to that ordered In Re Congoleum, Docket No. 75-3[1/] which directed notification to purchasers in possession of installed failing Endureze carpet style and recall of all uninstalled Endureze carpet from distributors and retailers for testing but not recall "from the floor" (from the home of a consumer). This agreement was rejected by the Staff. A further prehearing conference was held on October 22, 1975, when both parties indicated that a stipulation of some of the facts could be consummated with further negotiations. Such stipulation was entered into and a further prehearing conference was held on January 6, 1976. The hearing commenced February 2, 1976, and concluded on February 13, 1976. At the hearing Respondents asserted that no Paradise Valley nylon fat foam backed carpet remained in the channels of commerce.

Thereafter, an opportunity was afforded for the submission of proposed findings and conclusions. Upon request of Respondents' counsel, an oral argument on legal issues was held on May 11, 1976, on which date the case was submitted for initial decision.

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1/ Commission final decision, July 14, 1975.

## II

## THE OPPOSING CONTENTIONS

The failing carpet known as Style 222, Paradise Valley (foam back) was produced on 26 widely separated days in 1972, 1973, and 1974. Enforcement Counsel's position is that the failing DOC FF 1-70 tests conducted on the carpet produced on September 18, 1972, July 18, 1973, November 9, 1973, and December 10, 1973 are sufficient to condemn the entire style and that recall from the consumer's floor is required.

Respondents claim that the September 18, 1972 sample was finished by Reliance Finishing Inc., a different sub-contractor, and is not representative of the later production finished by Masterpiece Finishing Inc., and that the November 9, 1973 sample (hereinafter called the Vest sample) is defective used carpet and properly should not be tested under DOC FF 1-70. While admitting failures on the other two dates named above, Respondents have presented passing tests from other production days to oppose the Staff's allegation that the entire style is defective. In addition, Respondents have conducted so-called "real life" tests tending to establish that passing and failing samples react similarly to a variety of typical household ignition sources and that the absolute level of hazard is not high enough to justify recall from the consumer's home.

## III

## THE EVIDENCE

Much of the evidence is contained in an amended stipulation of facts relating to the collection of carpet samples and the results of the flammability tests. The stipulation may be summarized as follows: Roy C. Barrett controls the operation of Barrett Carpet Mills which produces carpet in interstate commerce subject to the Flammability Standard which is in full force and effect. A total of 15,013.76 square yards of style Paradise Valley, nylon, fat foam, was produced of which 13,430 square yards were sold. Paradise Valley was last manufactured on January 31, and last sold on March 7, 1974. Respondent does not manufacture the entire carpet. The operation of applying the foam to the carpet back is described as finishing and is performed by subcontractors pursuant to specifications prepared by Barrett. Paradise Valley foam was designed to be manufactured with aluminum trihydrate (ATH) in its latex precoat to provide the necessary flame resistant characteristics. The following chart displays the finishing days, finisher, amounts, and flammability tests for all Paradise Valley:

PARADISE VALLEY FOAM PRODUCTION

Reliance 3,902.20 square yards

6 finishing days (dates not available)

Test Results

7-1, 6-2
2 tests, 1 pass
1 fail

Masterpiece 10,079.84 square yards

18 finishing days

09-29-72 (100 sq yds)
12-20-72 (312 sq yds)
12-22-72 (547 sq yds)
12-28-72 (315 sq yds)
01-05-73 (93 sq yds)
01-10-73 (2207 sq yds)
02-14-73 (297 sq yds)
03-21-73 (308 sq yds)
05-03-73 (287 sq yds)
05-15-73 (309 sq yds)
06-01-73 (401 sq yds)
07-18-73 (1635 sq yds)

The criteria for passing DOC FF 1-70 is that no more than 1 specimen out of 8 fails. All results labeled 8-0 or 7-1 are passes. All others fail.

6-2, 6-2, 4-4, 6-2, 6-2, 5-3, 1-7, 6-2, 8-0, 5-3

10 tests - 9 fail, 1 pass

10-10-73 (913 sq yds)
5 tests - all pass

8-0, 8-0, 8-0, 8-0, 8-0

11-09-73 (817 sq yds)

8-0, 8-0, 8-0, 8-0, 8-0, 6-2 (Vest sample)

6 tests - 5 pass, 1 fail

12-05-73 (302 sq yds)
12-10-73 (311 sq yds)
3 tests - 1 pass, 2 fail

4-4, 1-7, 7-1

01-24-74 (310 sq yds)
01-31-74 (615 sq yds)

The Georgia Institute of Technology conducted a Neutron Activation Analysis upon two samples of each of two passing and two failing rolls of Paradise Valley foam backed carpeting. The analysis showed the presence of alumina trihydrate in both the passing and the failing samples. The range in alumina trihydrate level in the passing rolls was 8.6% to 13.9%; the range in the failing samples was 3.2% to 26.3%. The average level of alumina trihydrate in the passing samples was 10.9%; the average level in the failing samples was 9.4%. The Georgia Institute of Technology has concluded that the failure of the two rolls "was probably due to the lack of uniformity in addition of $Al_2O_3 . 3H_2O$ (alumina trihydrate) to the carpet backing."

The remainder of the Stipulation was concerned with the actual facts of investigation and initial enforcement action leading up to this proceeding.

The Bureau of Compliance presented evidence supplementing the stipulation as follows: (1) that samples of Paradise Valley foam back failed the standard; (2) that based on statistical projections, at least 46% of Paradise Valley could be expected to fail the flammability standard at a confidence level of 95%; (3) that a sample secured from the home of a consumer by the name of Vest had never been actually installed; (4) that alleged flaws in the Vest sample (polypropylene fibers on the face) did not prevent it from being selected as a representative sample for flammability testing.

Respondents' evidence tended to show (1) that the defect which caused Paradise Valley to fail the flammability standard occurred in the finishing process performed by an independent subcontractor; (2) that, according to tests performed by the Georgia Institute of Technology the failures were caused by an uneven distribution of ATH; (3) that the flammability standard was not intended to be applied to installed carpet; (4) that it is inherent in the nature of carpet manufacturing that some quantity of carpet will fail the flammability standard; (5) that the production failures

which occured in this case were very rare and are not expected to be repeated; (6) that Paradise Valley was finished on 26 separate days and there is no evidence of any failing carpet produced on any other dates than those listed in the stipulation; and (7) that tests performed by an independent laboratory indicate that passing and failing samples react similarly to "real life" ignition sources.

The resolution of this case requires a detailed understanding of the production pattern of Paradise Valley foam back carpet. According to the creditable testimony of Respondents' production manager, McMahon, and of their finisher's converter manager, Mr. Bartenfeld, the following represents an outline of the production process of Paradise Valley foam: The initial stage of production involves taking nylon yarn and weaving it into polypropylene backing in a tufting machine at Respondents' plant. The loosely woven carpet known as greige goods was finished with any one of several backs, e.g., jute, thin foam, fat foam. Paradise Valley was finished in one-half inch fat foam. The backing apparently directly affects the flammability characteristics of the carpet. The same greige goods with jute backing passed the flammability test consistently.

Greige goods are normally stored at the mill until an order is received for a particular lot of carpet dyed to customer specifications. The carpet is then shipped to the finisher, who first dyes it, and then applies the foam backing. The finisher's process of foaming the carpet is a continuous one involving greige goods from many manufacturers. The goods are attached to one another end-to-end and fed into the converter. The first stage in the process is the attachment of the latex precoat to the back of the greige goods.

The precoat in Paradise Valley foam backed nylon carpet has three functions: first, to lock the strands of the greige goods which are otherwise loose in place; second, to provide an appropriate surface for the attachment of the backing; and third, as a carrier for aluminum trihydrate, the fire-retarding agent which acts by releasing water when heated.

The latex precoat for the first six production days of Paradise Valley consisted of a premixed batch delivered by the precoat manufacturer to the finisher, Reliance Industries Inc. All subsequent finishing was performed by Masterpiece Finishers Inc. (Masterpiece). Respondents' production manager and the Masterpeice converter supervisor testified that during the entire time of production, Masterpiece compounded (mixed) its own latex precoat.

The compounding process involves a mixing of the necessary components of the latex precoat consisting mainly of water, carboxylated latex rubber and filler. The filler traditionally used in the carpet industry is whiting (ground up Georgia marble calcium carbonate). This whiting is necessary, both as an extender of the latex and to give the latex the appropriate consistency. Since the carpet standard was promulgated, the filler has usually consisted of varying proportions of whiting and ATH commonly referred to as parts. For example, a specific formulation of a particular consistency might have 500 parts of filler which could be composed of 150 parts of ATH and 350 parts of whiting.

According to the Respondents' production manager, the water, latex, filler and some other minor chemicals are mixed in a large tank. The mixing is performed by sequentially adding each ingredient and then agitating the batch. After mixing for some time, the viscosity of the mix is checked and, if not correct, it is altered by the addition of thickening agents, since otherwise the precoat will not properly flow onto the carpet in the converter. The viscosity check, performed several times, is the only quality control measure employed by Respondents to check the complete mixing of the latex precoat. Significantly, there is no check made to

ascertain whether the two components of the filler (whiting and ATH) have been properly mixed throughout the batch. Respondents' production manager testified that he saw no reason why these two components would react differently to the mixing process. Therefore, the viscosity check does not indicate that the ATH is evenly distributed throughout the mixing batch--only that the filler as a whole is evenly distributed. In addition, the witness testified that if the viscosity was not correct, it would be adjusted by adding thickening agents. This, however, would have no effect upon assuring the even distribution of ATH.

The Standard for Large Carpet and Rugs, DOC FF 1-70, is commonly referred to as the "pill test." The test method requires eight replicate 9" X 9" carpet speciments. The speciments are dried in an oven and placed in a draft free environment. A flattening frame with a hole four inches in radius is placed on the specimen. A small methenamine tablet is then placed in the center of the hole and ignited. If the flame front burns within one inch of the flattening frame, the specimen fails. If two specimens of the eight tested fail, the sample is considered as failing.

For Paradise Valley to pass the standard consistently, it is necessary not only that a sufficient amount of ATH be present in the latex precoat, but that it be evenly distributed.

This is because the pill test ignites a very small area of carpet and any area with a deficiency of ATH would be more likely to ignite and burn even if the carpet as a whole had the specified amount of ATH. Respondents employed no quality control which would consistently insure the even distribution of ATH across the back of the carpet.

In the finishing process the greige goods are spread to its full width, attached to other carpet and, in a continuous process, are fed over an applicator to pick up the latex precoat. The precoat is then scraped by an iron "doctor bar" to even it out and force it into the fibers. The carpet is then heated to "drive" the excess water from the latex precoat and then coated with a latex foam which does not have ATH added, heated again, and cooked in a carpet oven.

The carpet oven at Masterpiece is a very large machine holding approximately 300 linear feet of carpet at one time. Greige goods from different manufacturers are joined together. Paradise Valley would normally be processed at a rate between 10 to 20 linear feet per minute and since it was fat foam backed it would move closer to 10 feet per minute.

It is clear that a large quantity of carpet was manufactured which did not contain the appropriate distribution of ATH. This is not only reflected in the passing and failing carpet tests, but in the Georgia Institute of

Technology study which showed that although the total amount of ATH in the failing carpet was approximately the same as that in the passing carpet, it was completely maldistributed.

Respondents' production manager McMahon, proposed several possible causes for uneven or irregular ATH application: (1) settling out of the latex precoat in the holding tanks could induce improper viscosity; (2) a misaligned "doctor bar" could cause irregularities in the backing; (3) tight or loose fabric selvage[2/] could cause the carpet to take up the precoat unevenly. However, in the witness's opinion, settling of the latex precoat was the least likely cause of failure since improper viscosity would be noticed immediately because the precoat would not flow evenly onto the carpet.

As to which of these three possible production defects caused the ATH maldistribution: settling of the latex precoat, a misaligned "doctor bar," or tight or loose fabric selvage, the testimony is inconclusive. Other causes of failure are possible. For example, it is equally conceivable that incomplete mixing of the whiting and ATH in the original precoat batch was the primary cause of the ATH maldistribution. An analogy can be drawn to a can of black paint poured into a can of white paint and stirred only once. The mixture would

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2/ Selvage is the weave of the carpet fabric itself.

not be of a consistent color and painting on a wall would result in an extremely irregular color pattern, even though a viscosity test would show the paint to be properly mixed.

It is not possible on this record, nor critical to the decision, to pinpoint the exact cause of the ATH maldistribution. It is sufficient that the production defect occurred within the control of the finishing subcontractor for whom Respondents are admittedly legally responsible under the Act.

Following the finishing process, the carpet was trucked back to Barrett for storage on the same day or within at the most, a day or two later. Carpet was not normally retained at the finisher. Significantly, nothing which occurred in the manufacturing process after finishing involved improving the flame resistant quality of the carpet.

The critical issue in this case is the propriety of requiring recall of some quantity of defective carpet from the consumer's home. According to witness Greenfeld, who was active in the development of DOC FF 1-70, this Standard was designed to insure that passing carpet would remain safe throughout its lifetime. However, with respect to failing carpet, the effects of home usage or contamination were not taken into account in formulating the Standard. Moreover, the Standard was designed primarily as a manufacturer's quality control test rather than as a test measuring an

unreasonable degree of risk of fire in the home. In 1970, when the Standard was drafted, no Federal agency had statutory authority to recall flammable carpet either from a wholesaler/retailer or from the consumer's floor. The limit of the then known authority in a contested proceeding was a Federal Trade Commission order to the manufacturer to cease and desist from further manufacture of failing carpet. However, in several consent order settlements the FTC did obtain voluntary recalls from wholesalers/retailers, but none from a consumer's floor.

In an effort to project the effect of the sample test failures upon the entire carpet style, the Staff presented a statistical witness, Mr. Ralph Madison, who testified that in his opinion, within a 95% level of certainty, 46% of Paradise Valley foam back would, if tested, fail to meet the flammability standard.

This estimate involves an assumption that the samples tested were selected by the Staff at random from the entire carpet style. Respondents were unable to present evidence of any conscious attempt by the Staff to select unrepresentative carpet samples for testing purposes. There is no dispute as to the calculations contained in the projection. However, the underlying assumptions and, therefore, the ultimate conclusions are in dispute.

In Re Congoleum supra, holds that for the purpose of preventing future sales of violating carpet, a small number of failing tests reasonably projected to encompass an entire

carpet style, is adequate to sustain a cease and desist order banning future sales of the style, recalling samples of all shipped untested carpet of the style in question from distributors and retailers for testing roll-by-roll, and notifying the original purchaser or person in possession of the premises of the hazard. However, no other recall action was taken with respect to the untested rolls. Since the remedy demanded in this case is recall of the entire carpet style from the consumer's floor, it is vital that the statistical projection be accurate in forecasting which carpet is likely to fail the standard.

The key difficulty with the Staff's statistical projection is the fact that it is the only evidence that any Paradise Valley carpet produced on the untested days would actually fail the standard. Some of the tested carpet apparently passed without any failure whatever; other carpet failed repeatedly. The passing and failing carpet tests were concentrated among separate production days. Rarely was there a significant mix of passes and failures within the same production day. Therefore, considering the testimony concerning the method of carpet production, it is reasonable to assume that the failures were the result of production defects on particular days.

In essence, the evidence discloses that there were two days on which the production clearly failed, two days on which the production clearly passed, and a large number of

days for which there is no proof of failures other than the statistical presentation. Inasmuch as the evidence is persuasive that the failures were caused by a production rather than a design defect, it is reasonable to conclude that the "lot" to be subject to a cease and desist and/or recall order, if any be found required by the public interest, is properly a finishing day rather than the entire Paradise Valley style, as the Staff contends. To adopt the Staff position in this case that "style" is equivalent to "lot" would be to completely disregard the evidence that the most probable proximate cause of the carpet failures was one or a combination of several possible finishing errors.

The other major evidence presented at the hearing concerned the so-called Vest sample. The Vest sample consisted of Paradise Valley foam back carpet from an identifiable roll which had been shipped to the Overberg Decorating Center in Festus, Missouri, subsequently purchased by Mr. Vest, and personally installed by him in his home. For approximately six months a two-piece carpet remnant left over from the installation was stored under the bed of Mr. Vest's son in the basement. This bed contained a skirt around the frame and the carpet lay underneath partly rolled and partly face up for those six months. There was no direct testimony as

to whether the carpet had ever been vacuumed while it was in that location. Mr. Vest testified that the carpet was not used; it was not walked on; and it had never been installed. However, there was evidence that the sample contained some facial imperfections which could affect its flammability. The sample failed the flammability standard 6-2. Other portions of the same carpet roll produced on the same day were tested five other times by Respondents and they passed all five tests 8-0 each.

Mr. Greenfeld testified that he perceived no reason why the test in DOC FF 1-70 could not be applied to used carpet. However, the witness was unclear as to exactly what lot the Vest sample roll represents.

Assuming the facial flaws were present in the Vest sample at the time it was produced and did in fact adversely affect flammability, this would be either a design or production defect for which Respondents would bear responsibility. In the event the facial flaw was caused during installation by Mr. Vest, or in another manner during his custody, Respondents would not bear any responsibility for the failure.

As indicated above, other portions of the roll from which the Vest sample was derived passed the tests without

exception. Also, since the Vest sample failed marginally (6-2), it is more likely that the failure was due to the condition of the carpet in the home (dust, grease, etc.) than to a production defect.

It is, therefore, concluded that the Vest sample is unrepresentative and that the roll sold to Mr. Vest need not be the subject of a cease and desist/recall order, if any is required herein.

Respondents presented videotape evidence as to the flammability characteristics of Paradise Valley when exposed to so-called "real life" tests designed and conducted by Dr. Le Blanc, stipulated to be an expert in carpet flammability. These tests clearly demonstrated that when subjected to a number of ordinary home ignition sources, both failing and passing carpet samples reacted with approximately the same characteristics. The results of the tests were offered not to contradict or impeach the carpet standard, but rather to demonstrate that the recall of failing carpet from the home would represent an unnecessary and inappropriate remedy.

The tests consisted of subjecting 8 X 4 ft failing and passing samples of Paradise Valley taped down on plywood to ignition sources including cigarettes, matches, cigars, cigarette lighters, burning plastic waste paper baskets, charcoal briquettes, and flaming cooking oil. With the

exception of the Zippo lighter there was no noticeable difference in performance between the passing and failing carpet samples. All samples except those ignited by the plastic waste paper basket extinguished without outside help, burning approximately the same distance. The nylon yarn[3/] appeared to melt rather than burn extensively.

However, the tests conducted by Dr. Le Blanc are not officially sanctioned standards in contrast to the FF 1-70 pill test. No one from the Staff was present to observe the tests to determine, for example, whether all the results were actually depicted in the videotape recording submitted in evidence. In addition, there was no evidence that certain variables which are controlled in the pill test, such as draft, water content of the carpet, and standardization of the ignition source were similarly controlled in the Le Blanc tests.

Enforcement Counsel conducted only a minimum of cross-examination of Dr. Le Blanc, none of which diminished the credibility of his presentation. No rebuttal evidence was produced even though an opportunity for an adjournment to prepare such was afforded. Nor was the pill test rehabilitated as representing typical household ignition conditions by appropriate expert testimony. Counsel chose instead merely

3/ The record contains testimony that nylon is one of the least flammable of carpet materials.

to rely upon the admitted flammability standard failures as justifying recalling carpet from the home. Consequently, the Le Blanc test results were received into evidence virtually unchallenged. The state of the record remains that passing and failing carpet samples react similarily to typical household ignition sources.

## IV

## FINDINGS AND CONCLUSIONS

The Staff is adamant in demanding recall of the entire Paradise Valley carpet style from the consumer's floor because of the failing samples. In Congoleum, supra, the Administrative Law Judge held that "Recall of carpet which has been installed is not at this juncture practicable because of the length of time most of it has been laid down, and the legal and practical problems presented by any order contemplating the taking up of carpet now on floors."[4/] Judge Hanscom's decision was affirmed by the Commission without extended comment on this issue.

The reasons underlying the Judge's decision apply equally to this case. The carpet in question was produced during 1972 and 1973. Presumably, some of it has been installed for at least three years. The inconvenience to the consumer of ripping carpet from the floor of his home in 1976 or possibly 1977 would be considerable. If the consumer were a hotel instead of an individual homeowner, such rip-out and reinstallation could cause a substantial economic loss through interruption of occupancy.

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4/ Initial Decision of Federal Trade Commission Chief Administrative Law Judge Daniel H. Hanscom, December 12, 1974, p.23.

If a refund of the 1972 price were made, the effects of inflation would render such relief inadequate and not likely to permit replacement. There is no record of any fire involving Paradise Valley foam back in any consumer home or place of business.

Carpet in the home may be substantially different than carpet in the showroom. After shag carpet has been walked upon repeatedly, the strands become packed down eliminating oxygen and consequently the carpet is less flammable.[5/] On the other hand, household conditions normally produce dirt, dust, grime and grease from cooking or from shoes traversing driveways where automobiles are parked, or fuzzing of the carpet fibers by pedestrian traffic, any of which may render the carpet more flammable, but not due to any act of the manufacturer.

Neither the Flammable Fabrics Act nor the Federal Trade Commission Act contain any expressions of Congressional intent concerning recall, replacement, or refund of the purchase price from the ultimate consumer. This Commission has not made the necessary Section 30(d) finding to invoke the remedies available under the Consumer Product Safety Act.

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5/ Witness Greenfeld explained the Section 1630 4(d)(1), FF 1-70 requirement that the pile be raised before testing "because it was determined during early testing that the carpet is more flammable with the pile standing up than when crushed." Tr. 1156

Under that Act a carpet manufacturer would have the option to elect between repair (impracticable), replacement, or purchase price refund less an allowance for use for more than one year at the time of notice of the hazard. On this basis a consumer owning carpet for three or more years would not likely receive as much as 50% of his original purchase price as a refund plus installation which would hardly justify his replacing the carpet.

It is not necessary on the state of this record to reach a final conclusion as to whether the Commission possesses the legal power to recall the failing Paradise Valley carpet from the consumer's floor. Staff Counsel was unable to sustain its burden of proof to establish that carpet which fails the standard presents an unreasonable risk of the occurrence of fire leading to death or serious injury to the consumer in his home. The Standard does not measure the height nor speed of the flame. The fact that the flame persists for three or more inches does not per se establish the existence of an unreasonable home fire hazard. The hazard posed by nylon carpet is relatively minor compared to polyurethane mattresses and children's sleepwear. Since nylon carpet, as shown by the evidence in this case, is

difficult to ignite, has a tendency to melt, and propagates a low flame slowly if at all, proof of failing a standard which measures only a four inch spread of the flame front in a draft free environment, does not establish that an unreasonable risk of fire in the home environment chargeable to the manufacturer exists.

The Le Blanc results establishing substantial equality between the flammability of failing and passing Paradise Valley samples under home-like ignition conditions stand virtually unchallenged by cross-examination or rebuttal. It follows that, on this record, no sound finding can be made that Paradise Valley nylon foam back carpet produced by these Respondents in 1972-3 represents an unreasonable risk of fire or injury to any consumer in his home. Consequently, no order to recall Paradise Valley foam back carpet from the home would be appropriate.

An order in general terms to cease and desist manufacturing carpet which fails the flammability standard similarly makes little sense. The failures were not shown to be due to any intentional act, such as deliberately reducing the amount of aluminum trihydrate in the foam backing. Nor is there evidence of a consistent pattern of failing carpet which could constitute a generally negligent operation. The failure

on two production days to properly mix the latex batch, or improper operation of the "doctor bar," or settling out the latex precoat in the holding tanks are operational accidents which are not likely to reoccur, certainly not intentionally. A cease and desist order based on such inadvertencies could hardly be the subject of substantial civil or criminal penalties if violated.[6/] The considerable litigation expense and risk which Respondents have already undergone, or will be subjected to before this proceeding is completed, would appear to be a sufficient deterrent to inhibit careless production in the future.

An appropriate solution to the problem posed by this case would be to amend FF 1-70 to require the manufacturer to test appropriately designated lots (for example carpet design, production unit, or materials lots) before shipment to wholesalers/retailers similar to the requirements of the Mattress Standard (FF 4-72) and to promptly report failing results to the Commission. In this manner public safety and manufacturing quality control would be better

6/ Chairman Casper Weinberger, in Hearings before the Consumer Sub-Committee of the Senate Committee on Commerce at p.45 stated: "Experience has also shown that when an effective order is eventually obtained civil penalty proceedings for violations of such orders have been so infrequent, so protracted, and involve such minimal monetary penalties that they are hardly a real deterrent to future violations of the act." June 2, 1970

assured. Premarket testing would be substantially more effective and economical from the standpoint of the manufacturer than post-sale recall. The increased cost to the manufacturer of such a requirement, which naturally would be passed on to the consumer in the form of slightly high prices, is justifiable in the interest of public safety.

Respondents have asserted that all Paradise Valley foam carpet style has been recalled from the channels of commerce. The Staff was unconvinced. To assure adequate public protection the order to be issued herein will contain the following provisions:

(1) Respondents shall give notice by certified mail, return receipt requested, to all known purchasers or persons in possession of Paradise Valley foam back carpet produced by Respondents on the failing days (July 18, 1973 and December 10, 1973) to the effect that said carpet failed the Commission's Flammability Carpet Standard;

(2) Respondents shall cease and desist from further sales of Paradise Valley foam back carpet;

(3) Respondents shall recall all carpet from failing finishing days from wholesalers and/or retailers;

(4) Respondents shall obtain a sample of Paradise Valley foam back from every finishing day not previously tested which remains in the channels of commerce and submit same to the Commission's Staff for testing; and

(5) Respondents shall submit to the Commission's Staff complete production information concerning any other Barrett Carpet Mills Inc., foam back carpet finished by Masterpiece Finishing Inc., on any failing days for appropriate remedial action.

In view of the foregoing considerations and upon all the substantial evidence of record considered as a whole, it is concluded that, in accordance with Section 3(a) of the Flammable Fabrics Act and Section 5(b) of the Federal Trade Commission Act, a cease and desist order including the provisions above set forth should be issued herein.

Paul N. Pfeiffer

PAUL N. PFEIFFER
Administrative Law Judge

DATE: July 8, 1976

APPENDIX A - Statutory References

## APPENDIX A

## FLAMMABLE FABRICS ACT

### PROHIBITED TRANSACTIONS

"Sec. 3(a) The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 4 of this Act, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 4 of this Act, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

### REGULATION OF FLAMMABLE FABRICS

Sec. 4(a) Whenever the Secretary of Commerce finds on the basis of the investigations or research conducted pursuant to section 14 of this Act that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, he shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

(b) Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms.***"
(Emphasis added.)

FEDERAL TRADE COMMISSION ACT

"Proceeding by Commission; modifying and setting aside orders

Sec. 5(b): Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by sections 41 to 46 and 47 to 58 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice.***"
(Emphasis added.)

RECEIVED
CPSC
OFFICE OF COMPLIANCE

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

2002 DEC 23 PM 2:49

SBP cc

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | CPSC Docket No. : 02-1 |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

## ORDER

Upon consideration of the Joint Motion of Complaint Counsel and Respondents Chemetron Corp., Chemetron Investments, Inc., Sunbeam Corporation, Grucon Corp., and Sprinkler Corporation of Milwaukee, Inc. for a continuation of the stay of discovery in this matter to complete work on proposed settlements, it is this 18th day of December, 2002, hereby ORDERED that the Motion is granted and that, by December 31, 2002, the parties are to submit to the court a Joint Motion to Transmit Consent Agreement and Proposed Order to the Consumer Product Safety Commission (in Camera) for each settlement. If such Motions cannot be filed by that date, the parties are to file a status report with the Court explaining the reasons that they cannot be filed and the anticipated date of such filing. The Motions or status report must be transmitted to the Court by facsimile as well as in compliance with the procedural rules.

**So Ordered.**

William B. Moran

William B. Moran
United States Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2002, I served the attached **Order** upon all parties of record in these proceedings by facsimile and mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Karyn A. Temple, Esquire
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael J.Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway, Rm. 613
Bethesda, MD 20814

Michael A. Brown, Esquire
Margaret A.Freeston, Esquire
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esquire
Bert L. Wolff, Esquire
Skadden, Arps, Slate, Meager & Flom, LLP
Four Times Square
New York, NY 10037

Ralph A. Weber, Esquire
Kurt D. Dykstra, Esquire
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Mr. Todd Stevenson, Secretary
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, MD 20814

_____
Nelida Torres
Legal Staff Assistant

Dated: December 18, 2002

SBP cc

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

2002 DEC 17 P 3:03
CPSC/OFFICE OF THE SECRETARY

| | |
|---|---|
| In the matter of<br><br>Chemetron Corporation,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>Chemetron Investments, Inc.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>Sunbeam Corporation<br><br>and<br><br>Sprinkler Corporation of Milwaukee, Inc.,<br>f/k/a Star Sprinkler Corporation, f/k/a<br>Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>Grucon Corporation | CPSC Docket No.: 02-1 |

**STATUS REPORT AND JOINT MOTION FOR CONTINUATION OF STAY TO PERMIT COMPLETION OF PROPOSED SETTLEMENTS**

Pursuant to the Court's order of November 22, 2002, Complaint Counsel and Respondents hereby provide this report on the status of their negotiations of proposed settlements between Complaint Counsel and the Sunbeam/Chemetron Respondents, on the one hand, and between Complaint Counsel and the Sprinkler Corporation of Milwaukee (SCM)/Grucon Respondents, on the other hand. Complaint Counsel and Respondents further move the Court for continuation of the stay of litigation until and including December 31, 2002,

to enable them to complete their efforts to finalize proposed settlements. As a report to the Court in support of this motion, the parties state:

**Complaint Counsel and the Sunbeam/Chemetron Respondents hereby report on the status of their negotiations as follows:**

Complaint Counsel and the Sunbeam/Chemetron Respondents have reached agreement on the substance and text of all provisions of a proposed consent agreement and proposed order to be presented to the Court for transmission to the Commission. They have also reached agreement on a press release that would ultimately announce the resolution of this matter, if the Commission approves the resolution. At present, all that remains to be completed are drafts of letters that will be sent to various entities who are to be notified of the resolution. The parties anticipate that those letters will be attached as exhibits to the proposed consent agreement and order.

On November 27, 2002, the U.S. Bankruptcy Court for the Southern District of New York approved Sunbeam's plan for emerging from bankruptcy. The effective date of the Court's order confirming the Sunbeam Corporation bankruptcy plan has not yet been established, although the parties expect that date to be sometime this month. However, as it is currently drafted, the proposed consent order and agreement in this matter contemplate that the Bankruptcy Court's order will be in effect prior to issuance of an order by the Commission approving a resolution involving Sunbeam. Accordingly, the parties believe that it would be premature to present the proposed consent order and agreement to this Court until the bankruptcy confirmation effective date has been established.

**Complaint Counsel and the SCM/Grucon Respondents report on the status of their negotiations as follows:**

Complaint Counsel and the SCM/Grucon Respondents have reached agreement on the substance and text of all provisions of a proposed consent agreement and proposed order to be presented to the Court for transmission to the Commission. They have also reached agreement on the text of a notice that would ultimately announce the resolution of this matter, if the Commission approves the resolution, and are finalizing the details of a public notice program.

Complaint Counsel believes that it would be in the public interest to present both settlements – that of the Sunbeam/Chemetron Respondents and that of the Grucon/SCM Respondents – to the Court simultaneously. If the Court elects to forward those settlements to the Commission and the Commission accepts them, this will permit both programs to go forward at the same time in a manner that minimizes confusion to the public and allows the Respondents to make the most efficient use of their resources.

As the parties complete the final details of the agreements discussed above, they respectfully request that the Court continue the stay of all proceedings in this matter until December 31. By that time, the parties believe that they will be able to file with the Court a Joint Motion to Transmit Consent Agreement and Proposed Order to the Consumer Product Safety Commission (In Camera) for each of the two proposed settlements. In the event that the parties are unable to meet this deadline, the parties will file a status report with the Court explaining the reasons that the Motions cannot be filed and the anticipated date of such filing.

For the foregoing reasons, the parties respectfully request that the Court continue the stay of proceedings in this matter until and including December 31, 2002. Counsel for the

Sunbeam/Chemetron Respondents and the Grucon/SCM Respondents have authorized Complaint Counsel to file this motion on their behalf.

Respectfully submitted,

Michael J. Gidding, Esq.
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East-West Highway
Bethesda, MD 20814
(301) 504-0626

*Complaint Counsel*

Dated: December 17, 2002

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**ORDER**

UPON CONSIDERATION of the Joint Motion of Complaint Counsel and Respondents Chemtron Corp., Chemtron Investments, Inc., Sunbeam Corporation, Grucon Corp., and Sprinkler Corporation of Milwaukee, Inc. for a continuation of the stay of discovery in this matter to complete work on proposed settlements, it is this ____ day of _____, 2002, hereby ORDERED that the Motion is granted and that, by December 31, 2002, the parties are to submit to the Court a Joint Motion to Transmit Consent Agreement and Proposed Order to the

Consumer Product Safety Commission (In Camera) for each settlement . If such Motions cannot be filed by that date, the parties are to file a status report with the Court explaining the reasons that they cannot be filed and the anticipated date of such filing. The Motions or status report must be transmitted to the Court by facsimile as well as in compliance with the procedural rules.

**So Ordered**

_____
William B. Moran
United Sates Administrative Law Judge

Dated: _____

CERTIFICATE OF SERVICE

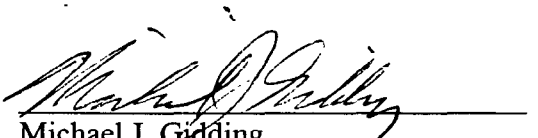
I hereby certify that on December 17, 2002, I served the foregoing Status Report and Joint Motion for Continuation of Stay to Permit Completion of Proposed Settlements upon the following counsel for the parties of record in these proceedings by fax and by first-class mail, postage prepaid to:

Heidi K. Hubbard, Esq.
William & Connolly LLP
725 -12th Street, N.W.
Washington, DC 20005
Fax: (202) 434-5029

Barbara Wrubel, Esq.
Skadden, Arps, Slate, Meagher
& Flom, LLP
Four Times Square
New York, NY 10036
Fax: (917) 777-2314

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Washington, DC 20016-2756
Fax: (202) 237-5259

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400
Fax: (414) 298-8097



Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

SBP cc

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| Chemetron Corporation,<br>f/k/a Chemetron Investments, Inc. | |
| and | |
| Chemetron Investments, Inc.,<br>f/k/a Chemetron Corporation | CPSC Docket No.: 02-1 |
| and | |
| Sunbeam Corporation | |
| and | |
| Sprinkler Corporation of Milwaukee, Inc.,<br>f/k/a Star Sprinkler Corporation, f/k/a<br>Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| Grucon Corporation | |

**STATUS REPORT AND JOINT MOTION FOR CONTINUATION OF STAY TO PERMIT WORK ON PROPOSED SETTLEMENTS**

Pursuant to the Court's order of November 4, 2002, Complaint Counsel and Respondents hereby provide this report on the status of their negotiations of proposed settlements between Complaint Counsel and the Sunbeam/Chemetron Respondents, on the one hand, and between Complaint Counsel and the Sprinkler

Corporation of Milwaukee (SCM)/Grucon Respondents, on the other hand. Complaint Counsel and Respondents further move the Court for continuation of the stay of litigation until and including December 17, 2002, to enable them to continue to focus their efforts on finalizing proposed settlements. As a report to the Court in support of this motion, the parties state:

As they advised the Court in the motion filed on November 1, 2002, Complaint Counsel and Respondents have been in discussions concerning potential resolution of their differences in this litigation. Consequently, Complaint Counsel and Respondents asked the Court on November 1, 2002, and the Court ordered on November 4, 2002, a brief stay of proceedings to enable the parties to focus on settlement. The Court's Order directed the parties to file a status report with the Court on November 21, 2002.

**Complaint Counsel and the Sunbeam/Chemetron Respondents hereby report on the status of their negotiations as follows:**

Complaint Counsel and the Sunbeam/Chemetron Respondents have made substantial progress in negotiations. They believe that they have reached agreement on the major provisions of a proposed resolution, and they are now working on the details of the resolution and on the language of proposed documents to reflect the resolution. They have also reached agreement on the substance of a press release that would ultimately announce the resolution, if the resolution is approved by the Commission. They are in the process of negotiating the language of

a proposed consent agreement and proposed order to be presented to the Court for transmission to the Commission.

The Sunbeam Corporation bankruptcy confirmation hearing that began November 20, 2002, creates some issues with respect to the effective date of any order by the bankruptcy court concerning confirmation of a bankruptcy plan. The effective date of that order, in turn, will affect the effective date of any order by the Commission approving a resolution involving Sunbeam. The bankruptcy confirmation hearing is anticipated to go several days, potentially into the week of November 25, and the effective date of an order by the bankruptcy court is anticipated at this time to be December 16, 2002. Consequently, the Sunbeam/Chemetron Respondents and Complaint Counsel anticipate that they will be able to finalize details concerning a proposed resolution of their dispute once the confirmation hearing has been completed, issues with respect to the Sunbeam bankruptcy have been further clarified, and the effective date of an order by the bankruptcy court has been established.

**Complaint Counsel and the SCM/Grucon Respondents report on the status of their negotiations as follows:**

Complaint Counsel and the SCM/Grucon Respondents have also made substantial progress in negotiations. They believe that they have reached agreement on the major provisions of a proposed resolution, and on the language of the proposed document that reflects the resolution. They have also reached agreement that any press release that ultimately announces the resolution

(assuming that the Commission accepts the proposed settlement) will track the agreed-upon language in that document. They are in the process of negotiating the language of a proposed consent agreement and proposed order to be presented to the Court for transmission to the Commission. However, recognizing that that agreement and order must be consistent with any agreement and order agreed upon by the Sunbeam/Chemetron Respondents and Complaint Counsel, final resolution of the SCM/Grucon Consent Order and Agreement will not be completed until after resolution of the Sunbeam/Chemetron agreement.

As the parties continue to work to finalize agreement on resolution of their dispute, they respectfully request that the Court continue the stay of all proceedings in this matter to allow them to work on the foregoing while avoiding the litigation costs that would have to be incurred if these proceedings went forward.

The parties seek this stay only to and including December 17, 2002. The parties propose to report to the Court on or before December 17, 2002, on the status of their work to negotiate resolution of this dispute, as well as the status of the Sunbeam bankruptcy.

For the foregoing reasons, the parties respectfully request that the Court continue the stay of proceedings in this matter until and including December 17, 2002. A proposed order granting this motion is attached for the Court's consideration. Counsel for the Sunbeam/Chemetron Respondents and the

Grucon/SCM Respondents have authorized Complaint Counsel to file this motion on their behalf.

Respectfully submitted,

Michael J. Gidding, Esq.
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East-West Highway
Bethesda, MD 20814
(301) 504-0626

*Complaint Counsel*

Dated: November 21, 2002

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**ORDER**

UPON CONSIDERATION of the Joint Motion of Complaint Counsel and Respondents Chemtron Corp., Chemtron Investments, Inc., Sunbeam Corporation, Grucon Corp., and Sprinkler Corporation of Milwaukee, Inc. for a continuation of the stay of discovery in this matter to permit work on proposed settlements to continue, it is this ____ day of _____, 2002, hereby

ORDERED that the Motion is granted and that the parties are to file a status report with the Court on December 17, said report to be transmitted to the Court by facsimile as well as in compliance with the procedural rules.

**So Ordered**

_____
William B. Moran
United Sates Administrative Law Judge

Dated: _____

CERTIFICATE OF SERVICE

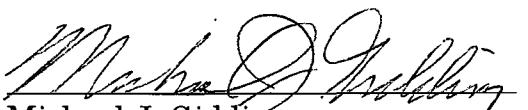
I hereby certify that on November 21, 2002, I served the foregoing Status Report and Joint Motion for Continuation of Stay to Permit Work on Proposed Settlements upon the following counsel for the parties of record in these proceedings by fax and by first-class mail, postage prepaid to:

Heidi K. Hubbard, Esq.
William & Connolly LLP
725 -12th Street, N.W.
Washington, DC 20005
Fax: (202) 434-5029

Barbara Wrubel, Esq.
Skadden, Arps, Slate, Meagher
& Flom, LLP
Four Times Square
New York, NY 10036
Fax: (917) 777-2314

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Washington, DC 20016-2756
Fax: (202) 237-5259

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400
Fax: (414) 298-8097



Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

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| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc., | ) | |
| | ) | CPSC Docket No. : 02-1 |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation, | ) | |
| | ) | |
| Sunbeam Corporation, | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Ormau Sprinkler Manufacturing Company, Inc., | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Gracon Corporation | ) | |

## ORDER GRANTING STAY OF PROCEEDINGS

On November 1, 2002, the parties filed a joint motion seeking a stay of all proceedings, until November 21, 2002. The motion relates that the parties are in discussions regarding the potential resolution of this litigation and that the stay will permit them to focus their energies on this. Upon consideration, the Motion is GRANTED. The parties are directed to file a status report with the Court on November 21, 2002. The report is to be transmitted via facsimile, as well as in compliance with the procedural rules.

**So Ordered.**

William B. Moran

William B. Moran
United States Administrative Law Judge

Dated: November 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2002, I served the attached **Order Granting Stay of Proceedings** upon all parties of record in these proceedings by facsimile and mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Karyn A. Temple, Esquire
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael J.Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway, Rm. 613
Bethesda, MD 20814

Michael A. Brown, Esquire
Margaret A.Preston, Esquire
Brown & Freeston, P.C.
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Washington, DC 20016-2756

Barbara Wrubel, Esquire
Bert L. Wolff, Esquire
Skadden, Arps, Slate, Meager & Flom, LLP
Four Times Square
New York, NY 10037

Ralph A. Weber, Esquire
Kurt D. Dykstra, Esquire
Michael Flynn, Esquire
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202-3186

Nelida Torres
Legal Staff Assistant

Dated: November 4, 2002

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

CPSC/OFFICE OF THE SECRETARY

2002 NOV -1 A 10: 19

| | |
|---|---|
| In the matter of | |
| Chemetron Corporation, f/k/a Chemetron Investments, Inc. | |
| and | |
| Chemetron Investments, Inc., f/k/a Chemetron Corporation | CPSC Docket No.: 02-1 |
| and | |
| Sunbeam Corporation | |
| and | |
| Sprinkler Corporation of Milwaukee, Inc., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| Grucon Corporation | |

**JOINT MOTION FOR BRIEF STAY OF PROCEEDINGS WHILE THE PARTIES NEGOTIATE A PROPOSED SETTLEMENT**

Complaint Counsel and Respondents hereby move the Court for a brief stay of all proceedings in this matter until and including November 20, 2002. In support of this motion, the parties state:

1. Complaint Counsel and Respondents are in discussions concerning potential resolution of their differences in this litigation. (The discussions between

Complaint Counsel and the Sunbeam/Chemetron Respondents have advanced substantially to the stage of trying to resolve certain specifics about a potential settlement.) Complaint Counsel and the Sunbeam/Chemetron Respondents, on the one hand, and Complaint Counsel and the SCM/Grucon Respondents, on the other hand, hope to be able to reach agreement and present the agreements and proposed orders to the Court for approval. (Any agreement between Complaint Counsel and the Sunbeam/Chemetron Respondents may also be subject to the approval of the bankruptcy court in the Sunbeam Corporation bankruptcy, as well as the approval of the post-petition lenders.)

2. While the parties are negotiating and, if agreement is reached, beginning the process of obtaining the requisite approvals, they respectfully request that the Court briefly stay all proceedings in this matter to allow them to work on the foregoing while avoiding the litigation costs that would have to be incurred if these proceedings went forward (particularly in this last month of the discovery schedule, which involves multiple third-party and expert depositions).

3. The parties seek this stay only to and including November 20, 2002, the date currently set for the hearing in the Sunbeam Corporation bankruptcy on confirmation of a plan for Sunbeam's discharge from bankruptcy. The parties propose to report to the Court on or before November 15, 2002, on the status of their work to negotiate an agreement and secure the necessary approvals.

For the foregoing reasons, the parties respectfully request that the Court stay all proceedings in this matter until and including November 20, 2002.

Counsel for Respondents Sunbeam/Chemetron and Grucon/SCM have authorized Complaint Counsel to file this motion on their behalf.

Respectfully submitted,

Michael J. Gidding, Esq.
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East-West Highway
Bethesda, MD 20814
(301) 504-0626

*Complaint Counsel*

CERTIFICATE OF SERVICE

I hereby certify that, on November 1, 2002, I served the foregoing Joint Motion for Brief Stay of Proceedings While the Parties Negotiate a Proposed Settlement upon the following counsel for the parties of record in these proceedings by fax and by first class mail, postage prepaid, to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005
Fax: (202) 434-5029

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756
Fax: (202) 237-5259

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036
Fax: (212) 735-2000

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186
Fax: (414) 298-8097

Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

SBP

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

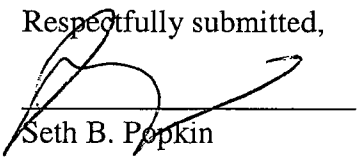
**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING CONFIDENTIAL DOCUMENTS**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories. The documents served with this response have been designated as CONFIDENTIAL by the nonparties that provided them to Complaint Counsel (Underwriters Laboratories, Inc. ("UL") and Factory Mutual/FM Approvals ("FM")).

All of the documents accompanying this supplemental response are being served on the Respondents subject to the terms of one or both of the following documents (collectively "Stipulations"): a) Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation filed February 14, 2002; and b) Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002. Given the terms of the Stipulations, which impose restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulations' terms. With respect to the documents served herewith, and in accordance with the terms of the Stipulations, the nonparties have provided limited waivers of their confidentiality claims thereby permitting service of these documents on the Respondents.

This production includes confidential documents produced by FM as a cover letter in furtherance of its response to the subpoena to FM issued September 6, 2002 (CPSC Star 23113-14). This production also includes confidential documents produced by UL October 9, 2002, in furtherance of its response to the subpoena to UL issued August 29, 2002 (CPSC Star 23117-246).

Respectfully submitted,



Seth B. Popkin

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

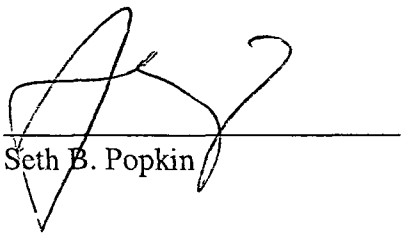
and by overnight mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

I hereby certify that on October 16, 2002, I served only the foregoing supplemental response upon the following counsel for the parties of record in these proceedings, by hand-delivery:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756



Seth B. Popkin

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

SBP

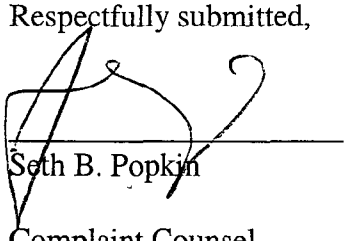
| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING NONCONFIDENTIAL DOCUMENTS**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories, with accompanying documents. The documents accompanying this response consist of nonconfidential documents provided by Egoville/Mealane (CPSC Star 23095-99) and further provided by Underwriters Laboratories Inc.

("UL") (CPSC Star 23100-02) relating to UL's September 27, 2002 response to the subpoena issued August 29, 2002. The accompanying documents also consist of nonconfidential documents constituting the response of Sunbelt Fire Protection to the subpoena issued September 6, 2002 (CPSC Star 23103-12 and videotape labeled as on original received from Sunbelt: "Star Sprinkler Heads That Didn't Work, Troy N.H./Troy Mo., July 1993, Sunbelt Fire Protection Inc., Tulsa"), and nonconfidential documents provided October 7, 2002, by FM Approvals in further response to the subpoena recently served on it (CPSC Star 23115-16) (FM Approvals requested that the cover letter accompanying this document be treated as confidential and it is separately produced).

Respectfully submitted,



Seth B. Popkin
Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2002, I served the foregoing supplemental response and copies of the documents being produced (including videotape) upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
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Seth B. Popkin

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
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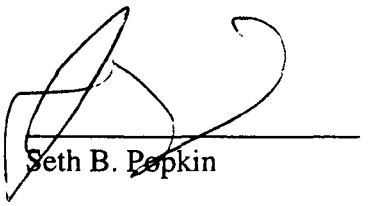
should be treated as CONFIDENTIAL consistent with certain prior productions. All of the documents accompanying this supplemental response are being served on the Respondents subject to the terms of one or both of the following documents (collectively "Stipulations"): a) Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation filed February 14, 2002; and b) Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002. Given the terms of the Stipulations, which impose restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulations' terms. With respect to the documents served herewith, and in accordance with the terms of the Stipulations, the nonparties have provided limited waivers of their confidentiality claims thereby permitting service of these documents on the Respondents.

This production includes confidential documents produced by UL as part of UL's September 27, 2002 response to the subpoena to UL issued August 29, 2002 (CPSC Star 23124 – 23227 and 23264 – 23287) (the UL subpoena response also included nonconfidential documents Complaint Counsel has produced separately). This production also includes confidential documents produced by FM as its entire response to the subpoena to FM issued September 6,

2002 (CPSC Star 23115-23123).

Respectfully submitted,



Seth B. Popkin

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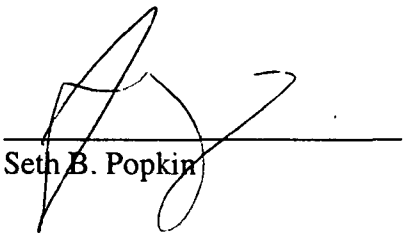

Seth B. Popkin

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
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| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
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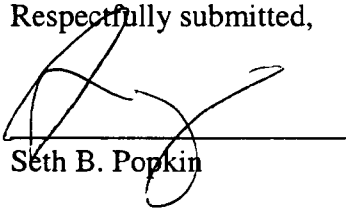
Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories, with accompanying documents. The documents accompanying this response consist of nonconfidential documents relating to Martel Laboratories (CPSC Star 5753-5765, and 23108- 23114), and nonconfidential documents

produced by Underwriters Laboratories Inc. ("UL") as part of UL's September 27, 2002 response to the subpoena issued August 29, 2002 (CPSC Star 23203, 23228 – 23263, and 23288 – 23353) (the UL subpoena response also included confidential documents Complaint Counsel has produced separately).

Respectfully submitted,



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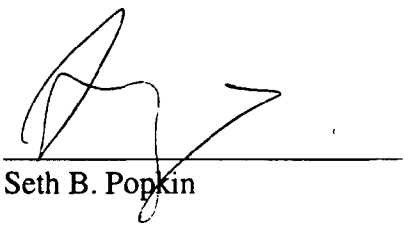

Seth B. Popkin

SBP cc

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | CPSC Docket No. : 02-1 |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| Sunbeam Corporation, | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

## Order on Tyco Fire Products LP Motion to Limit Subpoena

On September 20, 2002, Tyco Fire Products LP ("Tyco") sent a letter to the Court, through counsel, via facsimile, seeking to limit the subpoena, issued pursuant to 16 C.F.R. § 1025.38(g), on two Tyco employees, Jerome S. Pepi and James M. Martin. The letter requests that, if deemed necessary, it be treated as a motion. The letter recites that the subpoenas in issue were served by CPSC on September 6th and received on September 11, 2002.

CPSC responded, via facsimile, to counsel for Tyco on September 26, 2002. Section 1025.38(g), entitled, *Motion to quash or limit subpoena*, requires that one seeking to quash or limit a subpoena must file a motion within five (5) days of its receipt. In turn, an answer to such motion also must be made within five (5) days of service. Here, as acknowledged by the letter from Tyco's counsel, the motion was untimely, filed four days after it was due. In contrast, Complaint Counsel's answer was timely. As September 20th fell on a Friday, the five days did not elapse until September 27th. As pointed out by Complaint Counsel in its answer to the motion, Tyco's Motion was not timely filed.

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[1]All parties are reminded that sending communications via facsimile is a courtesy that the Court requested but it is not a substitute for compliance with the procedural rules for service. *See* 16 C.F.R. §§ 1025.14 through 1025.16.

The Court agrees that Tyco's motion was untimely and therefore is DENIED. However, the Court also notes that the tenor of Complaint Counsel's response suggests that it is sensitive to, and agrees with, most of the concerns raised by Tyco, either through observance of the confidentiality stipulation or by clarification that it is not using the witnesses' depositions as a source of expert testimony, but rather as fact witnesses, and that the intent of the language employed in the subpoena was not intended to require an additional search for documents which have already been the subject of an earlier search for the same materials. However, as Complaint Counsel points out, such requests are routinely included "in an abundance of caution, as stray documents have a way of turning up as litigation proceeds."[2] Answer at 2.

**So Ordered.**

William B. Moran

William B. Moran
United States Administrative Law Judge

Dated: October 7, 2002

[2]Supporting the need for such protective language, the answer relates Complaint Counsel's understanding that indeed Tyco anticipates producing some additional documents.

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2002, I served the attached **Order on Tyco Fire Products LP Motion to Limit Subpoena** upon all parties of record in these proceedings by facsimile and mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Karyn A. Temple, Esquire
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael J.Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway, Rm. 613
Bethesda, MD 20814

Michael A. Brown, Esquire
Margaret A.Freeston, Esquire
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Ralph A. Weber, Esquire
Kurt D. Dyksira, Esquire
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Nelida Torres
Legal Staff Assistant

Dated: October 7, 2002

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ADMINISTRATIVE LAW JUDGES
MAIL CODE 1900L
1200 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20460

TELEPHONE: 202 564-6255 FACSIMILE: 202 565-0044

# FAX TRANSMITTAL PAGE

**Date: October 7, 200** **Page (incl. transmittal page): 3**

**From: Judge Moran**

To: Mr. Todd Stevenson, Secretary, USCPSC
Fax: 301-504-0127 **Telephone:** 301-504-0800x1232

To: Michael J. Gidding, Esq.
Fax: 301-504-0359 **Telephone:** 301-504-0400

To: Heidi K. Hubbard, Esq.
Fax: 202-434-5029 **Telephone:** 202-434-5000

To: Barbara Wrubel, Esq.
Fax: 917-777-2324 **Telephone:** 212-735-3000

To: Michael A. Brown, Esq.
Fax: 202-237-5259 **Telephone:** 202-237-6008

To: Ralph Weber, Esq.
Fax: 414-298-8097 **Telephone:** 414-298-8207

To: **Benjamin B. Reed, Esq.**
Fax: 202-719-7049 **Telephone:** 202-719-7000

Hard Copy To Be Mailed: X Yes No
Any Questions or Problems May Be Directed To:

Nelly Torres **Telephone: 202 564-6258**

In the Matter of Chemetron Corporation *et al*, Docket No. 02-1

Sbp cc

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
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| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
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| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
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of the documents accompanying this supplemental response are being served on the Respondents subject to the terms of one or both of the following documents (collectively "Stipulations"): a) Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation filed February 14, 2002; and b) Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002. Given the terms of the Stipulations, which impose restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulations' terms.

All of the documents served herewith were previously or potentially in a category of documents subject to or potentially subject to confidentiality claims of nonparties or parties including, but not necessarily limited to, Tyco International, Tyco Fire Products LP, Grinnell Corporation, Grinnell Fire Protection, Star Sprinkler, Inc., Central Sprinkler Company, and/or Gem Sprinkler Company (collectively the "Tyco Companies") and Underwriters Laboratories, Inc. ("UL"). With respect to the documents served herewith, and in accordance with the terms of the Stipulations, these nonparties have provided limited waivers of their confidentiality claims thereby permitting service of these documents on the Respondents.

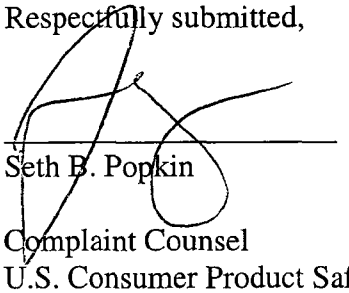
UL documents in this production, all recently produced by UL, are elabeled as CPSC Star 0022701-03, 0022705, 0023046-48, 0023056-58, and 0023060-61. Complaint Counsel has in its possession additional UL documents, also recently produced by UL, elabeled as CPSC Star 0022704, 0022706-25, 0023049-55, and 0023059. This latter set of UL documents relates to UL test results on non-Star ME-1 fire sprinklers. Consistent with the course of discovery and production to date, including applicable orders of the Court, Complaint Counsel is not producing

these non-Star ME-1 documents. If Respondents wish to review these documents, however, as before, Complaint Counsel would make them available for review by Respondents' counsel only, provided that counsel agrees not to disclose their contents to any other persons. (Note: CPSC Star 0022700, which Complaint Counsel is not producing, is an attorney note that the document imaging service erroneously scanned and elabeled.)

The Tyco Companies' documents in this production are CPSC Star 0023062-76. As noted in a prior Complaint Counsel supplemental document production response, the Tyco Companies stated that they would allow production of the documents they had numbered TYCO STARME-1 0034 - 0040 only with redactions (after initially objecting to any disclosure of them), and that they were preparing new copies of same for production. The Tyco Companies produced the new copies, and they are produced within this set of documents as CPSC Star 0023070-76.

The documents elabeled as CPSC Star 0023086-0023107 constitute all of the documents Marvin Evans has produced to date to Complaint Counsel in response to the subpoena recently served on him.

Respectfully submitted,



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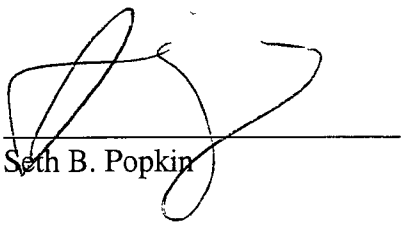

Seth B. Popkin

SBP cc

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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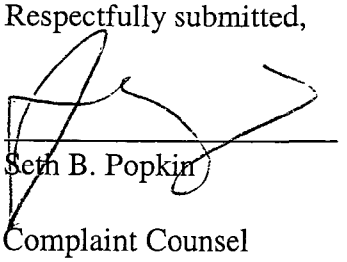

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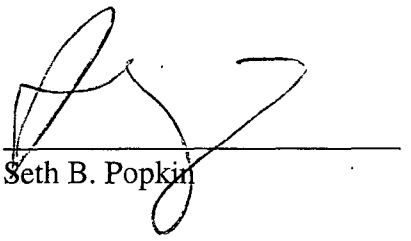

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UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**MOTION FOR LIMITED EXTENSION OF DISCOVERY AND FOR ENTRY OF REVISED SCHEDULING ORDER**

On July 24, 2002, the parties submitted to the Court a Joint Motion for a Limited Extension of Discovery and for Entry of a Revised Scheduling Order. The parties made that request because the lack of a Commission quorum precluded the issuance of subpoenas in a manner that would permit third-party depositions to be taken by August 9, the original date for the close of all discovery. Issues of third-party document production also remained unresolved

at that time. Accordingly, the parties requested, and the Court, on July 24, ordered, that the close of discovery be extended until September 27, 2002 for the purpose of deposing fact witnesses and experts. With one exception, written discovery under the Court's order ended on August 9.[1]

When the parties requested the discovery extension, we anticipated that the appointment of the new Chairman would take place by the end of July, thus providing the necessary quorum to authorize issuance of the subpoenas by early August. Accordingly, the revised schedule contemplated deposing potential fact witnesses during the month of August, with expert depositions taking place in September. With this in mind, Complaint Counsel forwarded to the Court subpoenas with revised dates at the end of August for third-party fact witness testimony. The parties also agreed upon a sequence of expert depositions to take place between the middle of September and the September 27 end of the discovery schedule.

While the Chairman was sworn in on August 1, the Commission did not vote the subpoenas out until the last week of August. Prior to that vote, Complaint Counsel advised the Court by letter that the return dates listed in the revised subpoenas had become impractical, given the failure of the Commission to act. To resolve the uncertainty associated with the timing of the Commission's vote, the Court ordered that the subpoenas provide for ten days from the date of mailing by the Secretary (plus three days for mailing) for recipients to provide subpoenaed documents to counsel for the parties. The Court's order also provided for an additional ten days after document production before depositions could take place.

Following the Court's instruction, subpoenas issued to 6 third parties with the following return dates:

[1] Written discovery relating to Respondent Grucon's corporate veil-piercing claim closed on August 23.

| Name | Document Production | Testimony |
|---|---|---|
| Underwriters Laboratories | 9/17/02 | 9/27/02 |
| Marvin Evans | 9/16/02 | 9/26/02 |
| Factory Mutual Insurance | 9/19/02 | 9/30/02 |
| Jerome Pepi | 9/20/02 | 10/01/02 |
| James Martin | 9/21/02 | 10/02/02 |
| Sunbelt Fire Protection | 9/23/02 | 10/04/02 |

Complaint Counsel has contacted each of these third parties to determine whether the dates for document production and testimony can be met. Mr. Evans has produced some documents and has stated that he is sending additional ones. He has, however, indicated that he is not available for testimony until after October 10.[2] Counsel for Underwriters Laboratories, Factory Mutual, and Tyco, Inc. (the employer of Mr. Pepi and Mr. Martin) are compiling the documents responsive to their respective subpoenas, and Complaint Counsel presumes, but has been unable to confirm, that Sunbelt Fire Protection is also compiling documents as necessary. Underwriters Laboratories and Factory Mutual Insurance have informed Complaint Counsel that they would not be able to meet their document production dates, but that they are preparing their responses and productions as expeditiously as possible. Counsel for the two Tyco witnesses have not ruled out meeting their production dates, but have not yet committed to a particular production date.

In addition, beginning with the service dates of the subpoenas, Complaint Counsel has been in regular contact with the third parties in an effort to obtain dates on which the third party witnesses (and their counsel as applicable) are available for depositions. For practical reasons, these deposition dates must be set a sufficient number of days after the anticipated actual

[2] For economy's sake, Complaint Counsel also intends to depose one additional individual, John Fenske, at the same time it deposes Mr. Evans because both are located in the Milwaukee area.

document production dates to assure that counsel has the opportunity to review the documents prior to deposing the witnesses. To date, except for Mr. Evans as noted above, none of the third parties has been able to commit to available deposition dates. Once we receive notice of the witnesses' availability, the dates for testimony must be still be coordinated with opposing counsel and the witnesses' counsel, taking into account the desirability of establishing blocks of time to take the depositions of witnesses who are located in the same geographic areas.

In view of the foregoing, Complaint Counsel requests that the Court provide a limited extension of certain aspects of the discovery schedule until November 27 solely for the purpose of taking fact and expert witness depositions. Under the schedule, the former should be completed by November 1, leaving the remainder of November for expert depositions. (Under the proposal, other aspects of the current schedule that have already passed at the time of the filing of this motion – such as the August 9 deadline for written discovery among the parties – would remain unchanged and would not be reopened.) Counsel for Respondents Chemetron Corp., Chemetron Investments, Inc., and Sunbeam Corporation has authorized Complaint Counsel to represent that it joins in the relief requested by this motion. Counsel for Respondents Grucon Corporation and Sprinkler Corporation of Milwaukee has indicated that those respondents do not oppose this motion.

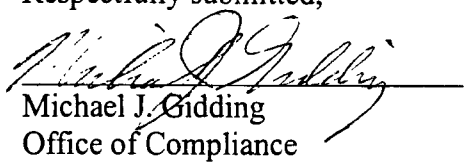
For the Court's consideration, we have attached a proposed modified schedule covering the remainder of discovery. The parties believe that granting this limited extension will provide sufficient latitude to schedule the necessary depositions in an orderly manner without the need to return to the Court with a request for yet another extension of time.

Accordingly, pursuant to 16 C.F.R.§ 1025.31(g), Complaint Counsel requests that the Court find that exceptional circumstances and good cause shown warrant an extension of discovery in this matter and adopt the proposed discovery schedule outlined below.

**Proposed Discovery Schedule & Deadlines**

| | |
|---|---|
| November 27, 2002 | Close of all discovery. |
| December 17, 2002 | Deadline for other dispositive Motions for Summary Decision |
| January 6, 2003 | All parties to file and serve responses to any dispositive Motions for Summary Decision |
| January 16, 2003 | All parties to file and serve Reply briefs on any dispositive Motions for Summary Decision |
| January 30, 2003 (or other hearing date convenient to the Court) | Hearing on any outstanding dispositive Motions for Summary Decision.<br><br>Parties' submission to the court regarding the following, as provided in 16 C.F.R. § 1025.21(a) and 1025.44:<br>1) Identification, simplification, and clarification of the issues;<br>2) Stipulations and admission of fact and the content and authenticity of documents;<br>3) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and product safety rules;<br>4) Establishment of a schedule for the exchange of written, direct testimony of experts, as well as agreed upon procedures and timetables for the cross-examination and re-direct examination of experts.<br>5) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time, and place of the hearing, with due regard to the convenience of the parties;<br>Such other matters as may aid in the efficient presentation or disposition of the proceedings. |

Respectfully submitted,



Michael J. Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway
Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1344
Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that, on September 19, 2002, I served the foregoing Motion for Limited Extension of Discovery and for Entry of a Revised Scheduling Order upon the following counsel for the parties of record in these proceedings by fax and by overnight mail, postage prepaid, to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005
Fax: (202) 434-5029

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
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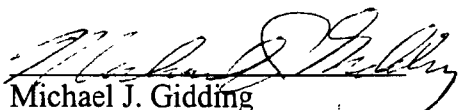
Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036
Fax: (212) 735-2000

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186
Fax: (414) 298-8097



Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

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UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**TO:** **James M. Martin**
**Senior Projects Engineer, Research and Development**
**Tyco Fire Products L.P.**
**1467 Elmwood Avenue**
**Cranston, RI 02910**

C/O Andrew S. Krulwich, Esq.
William A. McGrath, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Counsel for Tyco International Ltd. and Tyco Fire Products L.P.

SUBPOENA COMPELLING ATTENDANCE,
TESTIMONY, AND PRODUCTION OF DOCUMENTS

On October 9, 2001, the staff (hereinafter "staff") of the United States Consumer Product Safety Commission (hereinafter "Commission") filed an administrative complaint seeking public notification and remedial action to protect the public from a substantial product hazard presented by failure of Star ME-1 fire sprinklers manufactured from 1977 to 1995.

The Commission authorized issuance of this Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena") under the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §1025.38 and its authority under Section 27(b)(3) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2076(b) (3).

I. GENERAL INSTRUCTIONS

The Commission's rules for adjudicative proceedings govern this Subpoena. See 16 C.F.R. § 1025.38.

You are required to produce the documents requested below under oath or affirmation, including, if applicable, a statement that all documents produced are true and correct copies of the originals and that they were maintained in the normal course of business. You shall answer the Subpoena, and you shall state your name, address, telephone number, and title, and describe your duties and responsibilities. To the extent the documents produced are within the scope of, and/or have been submitted in response to, the Subpoena, but are not within your custody and control, identify the officials, employees, or other persons who have provided such documents. Identify those individuals by name, address, title, duties, and responsibilities, and specify the documents they provided.

A sworn statement should accompany your response attesting that a diligent search and inquiry was made for all responsive documents, and that your response is complete, true and

accurate. If you cannot comply with a particular request for production of documents, the response shall specify with particularity the reason for the inability to comply. If the requested document is no longer in your possession, custody, or control, the response shall set forth the name, address, and telephone number of any person or organization you know or believe to have possession, custody, or control of that document.

If you believe any of the documents you are submitting contain or relate to a trade secret or other matter referred to in Section 1905 of Title 18 of the United States Code, you should submit a written request for confidential treatment for that document, specifying in detail the basis for your claim.

If you fail to respond or you furnish false or misleading information, you may subject yourself to civil and criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070, or to criminal prosecution under 18 U.S.C. § 1001.

Questions about this Subpoena should be directed to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, (301) 504-0626, ext. 1358.

## II. DEFINITIONS

1. "You" and "your" shall mean the party to whom this Subpoena is directed (including if previously known under different names), including all of your past and present representatives, agents, and employees, and all other past and present persons acting or purporting to act on your behalf (including, but not limited to, all past and present agents and employees exercising discretion, discharging duties, making policy, or making decisions).

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or

computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes, amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any natural person, entity, group, firm, sole proprietorship, partnership, corporation, business association, joint venture, trust, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person

works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to you.

6. "Identify" or "identity" when used with respect to a business, entity, building, property, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to you.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. The definition of terms listed in 15 U.S.C. § 2052 are incorporated in this definition as though fully set forth herein.

9. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star" brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

## III. SPECIFIC INSTRUCTIONS

A. This request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or

control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

B. This request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

C. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

D. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

E. The singular shall include the plural, and vice versa.

F. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, you are requested to contact Seth B. Popkin of the Commission staff for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

G. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by this Subpoena, specify the privilege claimed and the

factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

H. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

I. In the event that any document sought by this Subpoena has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

J. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

**K. To facilitate identification and organization of the documents, bates-stamp all documents produced, and segregate the documents according to the numbered paragraph or subparagraphs to which they relate.**

## IV. PRODUCTION OF DOCUMENTS

You are hereby directed to provide the following:

1. To the extent not previously produced to the CPSC staff by Tyco International Ltd. or any of its subsidiaries, all documents relating to Star ME-1's, including, but not limited to, the following:

   a. All documents relating to testing, analysis, examination, and evaluation of Star ME-1's, conducted by you, any persons on your behalf, any persons on behalf of Tyco International Ltd. or any of its subsidiaries (including, but not limited to, Star Sprinkler, Inc. and Grinnell Corporation), or any other persons, including, but not limited to, all documents prepared or created in connection therewith;

   b. All documents relating to testing, analysis, examination, and evaluation of lubricants, O-rings, and/or any other components used in or with Star ME-1's, conducted by you, any persons on your behalf, any persons on behalf of Tyco International Ltd. or any of its subsidiaries (including, but not limited to, Star Sprinkler, Inc. and Grinnell Corporation), or any other persons, including, but not limited to, all documents prepared or created in connection therewith;

   c. All documents relating to complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns about Star ME-1's; and

d. All documents relating to the decision by Tyco International Ltd. or any of its subsidiaries (including, but not limited to, Star Sprinkler, Inc. and Grinnell Corporation) to discontinue manufacturing and/or distribution of Star ME-1's, including documents relating to the deliberations leading to such decision.

2. Your current curriculum vitae or resume.

You are ordered to produce the documents described in Section IV to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, on or before September 21, 2002.

## V. APPEARANCE TO TESTIFY

You are directed to appear at the offices of Tyco Fire Products L.P., 1467 Elmwood Avenue, Cranston, RI 02910, to testify with respect to the documents and matters referred to in section IV, and with respect to other documents and information provided to the CPSC staff relating to Star ME-1's, on October 2, 2002 at 10:00 A.M., and continuing thereafter until your testimony is concluded.

BY ORDER OF THE COMMISSION

TODD A. STEVENSON
Secretary
U.S. Consumer Product Safety Commission

DATE: September 6, 2002

DUPLICATE

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**TO: Marvin Evans, P.E.**
**Metallurgical Engineer**
**8550 North Fielding Road**
**Milwaukee, WI 53217**

SUBPOENA COMPELLING ATTENDANCE, TESTIMONY, AND PRODUCTION OF DOCUMENTS

On October 9, 2001, the staff (hereinafter "staff") of the United States Consumer Product Safety Commission (hereinafter "Commission") filed an administrative complaint seeking public notification and remedial action to protect the public from a substantial product hazard presented by failure of Star ME-1 fire sprinklers manufactured from 1977 to 1995.

The Commission authorized issuance of this Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena") under the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §1025.38 and its authority under Section 27(b)(3) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2076(b) (3).

## I. GENERAL INSTRUCTIONS

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A sworn statement should accompany your response attesting that a diligent search and inquiry was made for all responsive documents, and that your response is complete, true and accurate. If you cannot comply with a particular request for production of documents, the response shall specify with particularity the reason for the inability to comply. If the requested document is no longer in your possession, custody, or control, the response shall set forth the name, address, and telephone number of any person or organization you know or believe to have possession, custody, or control of that document.

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Questions about this Subpoena should be directed to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, (301) 504-0626, ext. 1358.

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2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations,

interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes, amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any natural person, entity, group, firm, sole proprietorship, partnership, corporation, business association, joint venture, trust, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to you.

6. "Identify" or "identity" when used with respect to a business, entity, building, property, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation,

registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to you.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. The definition of terms listed in 15 U.S.C. § 2052 are incorporated in this definition as though fully set forth herein.

9. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star" brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

## III. SPECIFIC INSTRUCTIONS

A. This request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

B. This request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

C. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

D. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

E. The singular shall include the plural, and vice versa.

F. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, you are requested to contact Seth B. Popkin of the Commission staff for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

G. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by this Subpoena, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

H. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

I. In the event that any document sought by this Subpoena has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

J. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

K. To facilitate identification and organization of the documents, bates-stamp all documents produced, and segregate the documents according to the numbered paragraph or subparagraphs to which they relate.

## IV. PRODUCTION OF DOCUMENTS

You are hereby directed to provide the following:

1. All documents relating to Star ME-1's, including, but not limited to, the following:

   a. All documents relating to or supporting the letter reports dated August 12, 1999 attached hereto as "Exhibit A;"

   b. All documents relating to testing, analysis, examination, and evaluation of Star ME-1's, conducted by you, any persons on your behalf, or any other persons, including, but not limited to, all documents prepared or created in connection therewith; and

   c. All documents relating to complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns about Star ME-1's.

2. All documents cited or referenced in Exhibit A, and all documents and things you reviewed or relied upon in forming the opinions expressed in Exhibit A, including, but not limited to, the following (the phrases below in quotation marks are quotations from Exhibit A):

   a. The "attached manufacturers catalog;"

   b. The "engineering assembly drawing and manufacturers catalog [William E. Stone] supplied;"

   c. The "recommended operating and test procedures outlined in the 'Automatic Sprinkler Systems Handbook': 4th Edition 1989 - published by the National Fire Protection Association;" and

d. The "attached 2 pages of the Chemetron ME-1 Dry Sprinkler catalog [William E. Stone] supplied."

3. All documents you or any person on your behalf received from, or that you or any person on your behalf provided to, William E. Stone, Grunau Project Development, Inc., Grunau Company, Inc., Sprinkler Corporation of Milwaukee, Inc., Grucon Corporation, and/or any other person, relating to Star ME-1's.

4. Your current curriculum vitae or resume.

You are ordered to produce the documents described in Section IV to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, on or before September 16, 2002.

## V. APPEARANCE TO TESTIFY

You are directed to appear at the law offices of Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C., 1000 North Water Street, Suite 2100, Milwaukee, WI 53202, to testify with respect to the documents and matters referred to in section IV above, including, but not limited to, matters relating to Exhibit A and Star ME-1's, on September 26, 2002 at 10:00 a.m., and continuing thereafter until your testimony is concluded.

BY ORDER OF THE COMMISSION

TODD A. STEVENSON
Secretary
U.S. Consumer Product Safety Commission

DATE: August 29, 2002

SRP cc

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING CONFIDENTIAL DOCUMENTS**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories. The documents served with this response have been designated as CONFIDENTIAL by the nonparties that provided them to Complaint Counsel. All of the documents accompanying this supplemental response are being served on

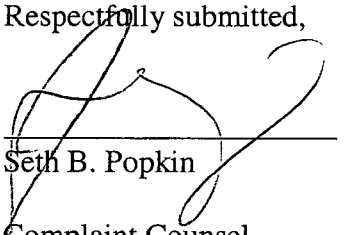
the Respondents subject to the terms of the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002 ("Stipulation"). Given the terms of the Stipulation, which imposes restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulation's terms.

All of the documents served herewith were previously or potentially in a category of documents subject to or potentially subject to confidentiality claims of nonparties Tyco International, Tyco Fire Products LP, Grinnell Corporation, Grinnell Fire Protection, Star Sprinkler, Inc., Central Sprinkler Company, and/or Gem Sprinkler Company (collectively the "Tyco Companies") and Factory Mutual Research Corporation ("FM"). With respect to the documents served herewith, and in accordance with the terms of the Stipulations, these nonparties have provided limited waivers of their confidentiality claims thereby permitting service of these documents on the Respondents.

The Tyco Companies' documents in this set of production are bates-numbered with the Tyco Companies' own bates numbers, not with CPSC bates numbers. Those numbers are TYCO STARME-1 0001 - 0033 and TYCO STARME-1 0060 - 0291. With respect to the gap in the bates ranges (TYCO STARME-1 0034 - 0059), the Tyco Companies initially provided Complaint Counsel with those documents and objected to any disclosure of them. The Tyco Companies have since stated that they will allow production of 0034 - 0040 with some redactions, and they are preparing new copies of same for production. They still object to any production of 0041 - 0059. To the extent the Respondents desire further information about those documents, the Respondents may wish to contact the Tyco Companies' counsel.

The sole FM-related document produced herewith is CPSC Star 014742. After reviewing certain documents, the Respondents requested this particular page from an FM test data spreadsheet that Complaint Counsel believes was prepared by counsel in the CPSC Office of Compliance during the pre-Complaint investigation. Other than with respect to the production of this one particular page, by this production Complaint Counsel does not otherwise waive any work product protections or applicable privileges.

Respectfully submitted,



Seth B. Popkin

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

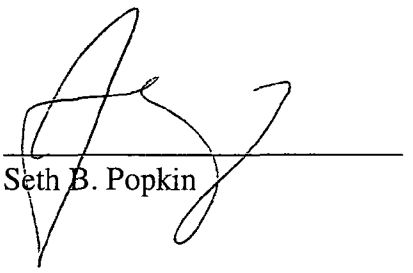
and by overnight mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

I hereby certify that on August 29, 2002, I served only the foregoing supplemental response upon the following counsel for the parties of record in these proceedings, by hand-delivery:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756



Seth B. Popkin

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

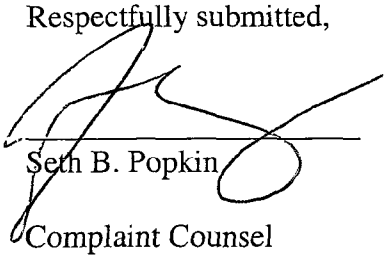
| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING NONCONFIDENTIAL DOCUMENTS**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories. To the extent some of the documents produced herewith were previously identified on Complaint Counsel's privilege log (e.g., documents relating to Jim Davidson), Complaint Counsel's production of those documents does

not constitute a waiver of privileges asserted with respect to other documents identified on the privilege log but not produced. In addition, some of the documents have been produced in response to Respondents' specific request after review of those documents at Complaint Counsel's office. CPSC Star 0022627-31 are elabeled versions of unelabeled Mealane documents previously produced August 9, 2002.

Respectfully submitted,



Seth B. Popkin

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
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725 12th Street, NW
Washington, DC 20005

and by overnight mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

I hereby certify that on August 29, 2002, I served only the foregoing supplemental response upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
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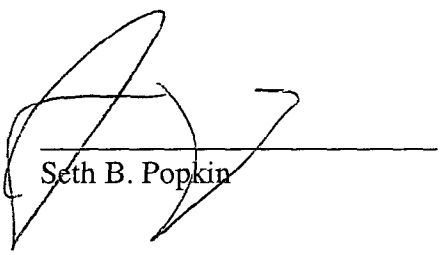
Washington, DC 20016-2756



Seth B. Popkin

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S UNOPPOSED MOTION FOR LEAVE TO TAKE DEPOSITIONS**

Pursuant to 16 C.F.R. § 1025.35(a), Complaint Counsel hereby seeks the Court's leave to take the depositions upon oral examination of the following two witnesses, at the dates, locations and times specified below:

(1) Mr. Jeffrey A. Hintze, Chief Financial Officer of Respondent Grucon Corporation ("Grucon") and Secretary of Respondent Sprinkler Corporation of Milwaukee ("SCM"), at 9:00 a.m. on Monday, September

9, 2002, in the offices of Reinhart Boerner Van Deuren, s.c., 1000 North Water Street, Suite 2100, Milwaukee, WI 53202; and

(2) Mr. Milton Kuyers, former President of Respondent SCM and former member of SCM's Board of Directors, at 8:30 a.m. on Tuesday, September 10, 2002, in the offices of Reinhart Boerner Van Deuren, s.c., at the address listed above.

Messrs. Hintze's and Kuyers' depositions are necessary principally to explore matters relating to Complaint Counsel's claim to pierce the corporate veil of Respondent SCM. Messrs. Hintze and Kuyers provided sworn affidavits supporting Respondent Grucon's Motion for Summary Decision on the veil-piercing claim.

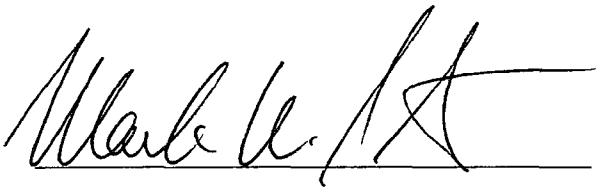
Mr. Ralph Weber, counsel of record for Grucon and SCM, has been consulted regarding these depositions and has agreed to produce the witnesses at the above dates, times and locations. In light of opposing counsel's concurrence, notices of deposition are attached hereto and are being served on all counsel of record simultaneously with this motion.

## CONCLUSION

For the reasons set forth above, Complaint Counsel's motion for leave to take the depositions of Messrs. Hintze and Kuyers should be granted.

Dated: August 29, 2002

Respectfully submitted:



Michael J. Gidding
Mark W. Porter

Complaint Counsel for
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1104

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**ORDER**

There being good cause shown to grant this motion, it is this ___ day of _____, 2002, hereby ORDERED that Complaint Counsel's Motion for Leave to Take the Depositions by Oral Examination of Mr. Jeffrey A. Hintze and Mr. Milton Kuyers is hereby granted.

_____
Honorable William B. Moran
United States Administrative Law Judge

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**NOTICE OF DEPOSITIONS**

Pursuant to 16 C.F.R. §1025.35(b), Complaint Counsel hereby gives notice to all parties of the following depositions by oral examination:

(1) **Witness:** Mr. Jeffrey A. Hintze
**Titles:** Chief Financial Officer of Respondent Grucon Corporation ("Grucon") and Secretary of Respondent Sprinkler Corporation of Milwaukee, Inc. ("SCM")
**Date:** Monday, September 9, 2002
**Time:** Commencing at 9:00 a.m.
**Location:** Offices of Reinhart Boerner Van Deuren, s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

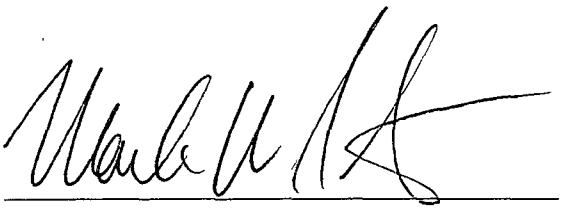
Mr. Hintze is expected to testify regarding matters relating to SCM's corporate relationship with Grucon.

(2) **Witness:** Mr. Milton Kuyers
**Titles:** Former President of Respondent SCM and former member of SCM's Board of Directors
**Date:** Tuesday, September 10, 2002
**Time:** Commencing at 8:30 a.m.
**Location:** Offices of Reinhart Boerner Van Deuren, s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

Mr. Kuyers is expected to testify regarding matters relating to SCM's corporate relationship with Grucon and to SCM's production of the Star ME-1 sprinkler.

Dated: August 29, 2002

Respectfully submitted:



Michael J. Gidding
Mark W. Porter

Complaint Counsel for
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1104

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Motion for Leave to Take Depositions and the accompanying Notice of Depositions to be served on all parties of record in these proceedings, using the methods indicated below:

By overnight delivery:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

By overnight delivery:

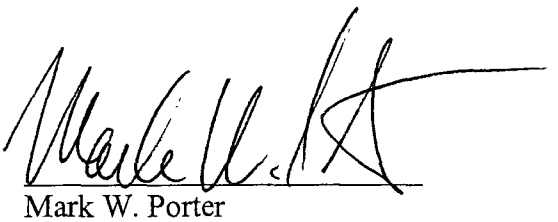
Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By overnight delivery:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

By overnight delivery:

Ralph A. Weber, Esq.
Michael T. Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186



Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety Commission

Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

Benjamin B. Reed
202.719.7531
breed@wrf.com

August 28, 2002

**VIA FACSIMILE**

Honorable William B. Moran
United States Administrative Law Judge
Office of the Administrative Law Judges
United States Environmental Protection Agency
Washington, DC 20460

Re: In the Matter of Chemetron Corporation, et al.
CPSC Docket No. 02-1

Dear Judge Moran:

Attached for your convenience is a courtesy copy of the Tyco Companies' Response to Complaint Counsel's Motion for In Camera Submission of Documents and Motion for Confidentiality and Production Determination in the referenced case, which was filed today with the Office of the Secretary of the Consumer Product Safety Commission.

Respectfully,

Andrew S. Krulwich
William A. McGrath
Benjamin B. Reed

Attachment

cc: Mr. Todd Stevenson
Counsel of Record

JBP cc

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**TYCO COMPANIES' RESPONSE TO COMPLAINT COUNSEL'S MOTION FOR *IN CAMERA* SUBMISSION OF DOCUMENTS AND MOTION FOR CONFIDENTIALITY AND PRODUCTION DETERMINATION**

## I. INTRODUCTION AND SUMMARY

This matter comes before the Court as a result of Complaint Counsel's in camera provision of certain documents that are related to or were provided to the agency by Central Sprinkler Company or its affiliates.[1] The documents fall squarely within the categories of

[1] Complaint Counsel's Motion lists Tyco International, Tyco Fire Products LP, Grinnell Corporation, Grinnell Fire Protection, Star Sprinkler, Inc., Central Sprinkler Company, and Gem Sprinkler Company (collectively, the "Tyco Companies"), although some of those (continued . . .)

documents that the Court has previously indicated are protected from disclosure and are irrelevant to this proceeding. Accordingly, disclosure to Respondents should be denied.

## II. BACKGROUND

On July 5, 2002, Complaint Counsel forwarded approximately eighty pages of documents to the Tyco Companies to review for claims of confidentiality under 15 U.S.C. § 2055(a)(2). Motion of Complaint Counsel, Exhibit B. As with prior sets of documents Complaint Counsel had provided to the Tyco Companies for such review, Complaint Counsel asked that the Tyco Companies indicate for each document whether it would waive any objection to production, waive its objection to allow limited production pursuant to the Confidentiality Stipulation entered into by the parties, or object to production outright. Id.

The Tyco Companies responded to Complaint Counsel's request on July 16, 2002. Id., Exhibit C. At that time, the Tyco Companies indicated that based on the nature of documents and the Court's prior orders regarding Tyco documents, the Tyco Companies were objecting to production of all eighty pages. The Tyco Companies advised Complaint Counsel that they would assent to allowing Respondents an "attorney's eyes only" review of the documents Bates numbered CPSC Star 014593-014600, CPSC Star 014671-014674 and CPSC Star 015739 under the procedure established by the Court during the May 1, 2002 prehearing conference and the informal conference in chambers on May 7, 2002. After reviewing those documents, Respondents requested production of twelve of those thirteen pages (CPSC Star 014593-014600

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(. . . continued)
names do not represent actual companies or companies that have provided documents to the CPSC staff. This Response is being filed on behalf of Central Sprinkler Company, which provided the documents to CPSC staff that are enclosed with Complaint Counsel's motion. However, this Response refers to the responding party as the Tyco Companies to maintain consistency with prior filings by the undersigned counsel for Central Sprinkler Company and the other Tyco Companies that have an interest in the discovery matters in this proceeding.

and CPSC Star 014671-014674), without providing any reason why they believe those documents are relevant. As a result, the Tyco Companies maintained their objection because those documents are drafts with handwritten revisions of program documents for the voluntary replacement program announced by Central Sprinkler Company ("Central") and CPSC in July 2001 (the "VRP) and constitute negotiations of aspects of that program between CPSC and Central. Nor do the documents contain any reference to Star ME-1 sprinklers. Thus, as counsel for the Tyco Companies advised counsel for the Respondents, these documents are clearly within the category of documents the Court indicated in its May 7, 2002 Order should not be disclosed.

The Tyco Companies also advised Complaint Counsel in its July 16, 2002 letter that it objected to review or production of the documents Bates numbered CPSC Star 022482-022484. Those documents constitute a draft VRP report, identical to the forms that the Court ruled on July 10, 2002 were irrelevant and should not be produced.

In addition, the Tyco Companies objected to allowing Respondents to review the documents Bates numbers CPSC Star 022418-022481 for the reasons set forth in its July 16, 2002 letter to Complaint Counsel. See id. Exhibit C. As counsel for the Tyco Companies later explained to counsel for Chemetron, those documents are highly sensitive commercial documents prepared by outside counsel in connection with ongoing litigation that involves neither Star Sprinkler, Inc. nor Star ME-1 sprinklers. The Tyco Companies were obliged to provide those draft documents to CPSC under the terms of Central's settlement with CPSC. However, those documents implicate third-party interests not relevant to this proceeding. Thus,

with respect to these documents, the Tyco Companies could not agree to even the limited "attorney's eyes only" review that the Court had directed.[2]

## III. LEGAL ANALYSIS

### A. Applicable Legal Standards

Under 15 U.S.C. § 2055(a)(2), CPSC is prohibited from publicly disclosing information "reported to or otherwise obtained by the Commission . . . which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, or subject to section 552(b)(4) of title 5, United States Code." In addition, if a manufacturer of a consumer product marks any information as confidential because the manufacturer's identity would be readily ascertainable through public disclosure, the Commission is barred from public disclosure, unless it is later determined that the information is not confidential. 15 U.S.C. § 2055(a)(3)-(4). Thus, under its statutory mandate, CPSC is prohibited from disclosing information that either contains or relates to trade secrets or confidential commercial information or is otherwise marked as confidential by the manufacturer identified by the information CPSC proposes to disclose.

"When relevant in any administrative proceeding under this act or in judicial proceedings to which the Commission is a party," trade secret or confidential commercial information may be disclosed. 15 U.S.C. § 2055(a)(8) (emphasis added). Disclosure of relevant information pursuant to this exception is to be "governed by rules of the Commission (including in camera

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[2] By letter dated July 30, 2002 and after discussing this matter with the Tyco Companies, counsel for Chemetron attempted to narrow its request to avoid involving the Court in this issue. See Exhibit 1. However, those limitations did not significantly narrow the scope of the request, and Complaint Counsel has advised the parties that it believes the documents at issue fall into at least one of the categories of documents of which counsel for Chemetron indicated they would pursue production. However, Complaint Counsel has also represented that it has not relied on nor does it intend to rely on those documents in this proceeding.

review rules for confidential material) for such proceedings." Id. The crux of this exception is that the information must be relevant. If the confidential information is irrelevant to the proceeding, the exception does not apply, and the Commission is barred from disclosing the information.

Based on these principles, in its May 7, 2002 Order, the Court stated that it deemed particular categories of documents -- including drafts of documents related to the VRP -- irrelevant and not subject to disclosure. The Court also concluded in its July 10, 2002 Order that the bi-monthly report forms Central provided to CPSC regarding the progress of the VRP should not be disclosed.

**B. The Documents Complaint Counsel Now Proposes To Produce Contain Trade Secret Or Confidential Commercial Information, Are Irrelevant, And Fall Within Those Categories Of Documents The Court Has Previously Held Should Not Be Disclosed.**

The documents that Complaint Counsel has proposed to produce and to which the Tyco Companies have objected can be grouped into three categories. The Tyco Companies' objections to the individual documents in each category are similar: (1) they contain trade secret and/or confidential commercial information; (2) they are irrelevant; and (3) the fall squarely within the types of documents the Court has already determined should not be disclosed.

1. Bates numbers CPSC Star 014593-014600 and CPSC Star 014671-014674

As discussed above, these documents are drafts of documents proposed to be used as part of the VRP, namely a script for a video news release and a list of possible questions from the media with proposed answers concerning the VRP. As such, the documents relate purely to negotiation of the VRP and, therefore, amount to settlement negotiations. Both documents also contain handwritten notes and revisions. As Tyco has pointed out previously, such documents contain confidential commercial information for the purposes of 5 U.S.C. § 552(b)(4), and, as a

result, Section 2055(a)(2). See M/A-Com Info. Sys., Inc. v. United States Dep't of Health & Human Servs., 656 F. Supp. 691, 692-93 (D.D.C. 1986) (holding that documents related to settlement negotiations between a company and HHS were exempted from disclosure). Likewise, such documents have no relevance to this proceeding, and therefore should not be disclosed. As discussed in the Tyco Companies' April 26, 2002 Response and at the May 1 and May 7, 2002 conferences, the VRP involves only a minute number of Star ME-1 sprinklers, none of which were manufactured by the Respondents. Indeed, these particular documents make no reference to ME-1 sprinklers, and contain only a passing reference to Star model sprinklers generally.

As the Court indicated in its May 7, 2002 order, documents which are drafts of documents to be used in implementing the VRP have no bearing on any issue in this proceeding. May 7, 2002 Order at 2. The Court also indicated that documents that "make no mention of the Star ME-1 sprinkler would also appear to be irrelevant." Id. Moreover, the Court pointed out at the May 1, 2002 hearing that documents containing notes that might constitute work product should not be disclosed. Accordingly, the documents Bates numbered CPSC Star 014593-014600 and CPSC Star 014671-014674 are irrelevant and should not be produced.[3]

2. Bates numbers CPSC Star 022482-022484

These documents constitute a draft version of the bi-monthly report form that Central provides to CPSC regarding the progress of the VRP and a cover email discussing the report. The Court ruled in its July 10, 2002 Order that the final versions of those report forms, which were the documents submitted with the Joint Status Report on June 20, 2002, are irrelevant and

[3] In addition, the Respondents failed to provide the Tyco Companies with any reason why they believe these documents are germane or why they wish to pursue production in spite of the Court's prior pronouncements regarding the types of documents it deems irrelevant.

should not be disclosed. If those final reports are not relevant, certainly draft reports and an email forwarding them are not relevant. The Court's prior Order should govern these documents, and they should not be disclosed.

3. Bates Numbers CPSC Star 022418-022481

These documents contain highly sensitive commercial information which the Tyco Companies are unwilling and unable to even allow the Respondents to review on an "attorney's eyes only" basis. The nature of those documents and the bases for the Tyco Companies' claims of confidentiality are fully laid out in Exhibit C to Complaint Counsel's motion. On their face, the documents fall squarely within categories of documents that the Court has previously stated are irrelevant and not subject to disclosure in this action. Moreover, considering the nature of these documents and the circumstances under which they were provided to CPSC originally, allowing any disclosure of these documents could irreversibly damage the Tyco Companies' commercial interests and could impact CPSC's ability to obtain confidential information in the future, thus impeding the Commission's ability to adequately ensure the protection of consumers from hazardous or defective products. Thus, those documents should not be subject to any disclosure.

In its May 7, 2002 Order, the Court stated that the Tyco Companies "should alert the Court to disputed documents regarding disclosure where Tyco believes that disclosure could cause competitive injury to it." Order, at 2. Moreover, the Court indicated that where issues could not be resolved, it would "seek private amplification of Tyco's reasoning for seeking non-disclosure." Id. at 3, n.2. In this instance, disclosure of these documents -- even on an "attorney's eyes only" basis -- could cause the Tyco Companies competitive harm. Nor can the Tyco Companies present in this response its arguments regarding the reasons that non-disclosure is warranted without revealing information that must remain confidential. Accordingly, the Tyco

Companies request that, to the extent the Court requires amplification of the Tyco Companies' reasoning, the Tyco Companies be permitted to present those reasons in private to maintain the confidential nature of these commercially sensitive documents.[4] Otherwise, the Tyco Companies request that the Court order that these documents should not be disclosed.

## IV. CONCLUSION

The documents for which the Tyco Companies have asserted objections to production contain or relate to trade secrets and/or confidential commercial information and are irrelevant. Moreover, these documents fall within categories of documents that the Court has already determined should not be subject to disclosure. As a result, disclosure of those documents is not only prohibited by the Act and contrary to public policy but also barred by the Court's earlier Orders in this action. Accordingly, the Court should order that the documents Bates numbered CPSC Star 014593-600, CPSC Star 014671-674, CPSC Star 022482-022484, and CPSC Star 022418-022481 should not be produced as part of this proceeding.

Respectfully submitted,

Andrew S. Krulwich
William A. McGrath
Benjamin B. Reed
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000 (telephone)
(202) 719-7049 (facsimile)

August 28, 2002

Attorneys for the Tyco Companies

[4] As noted above, Complaint Counsel has indicated that it has no intention of utilizing these documents in presenting its case. Obviously, to the extent CPSC already has possession of these documents, Complaint Counsel's presence at a private conference concerning these documents would not be objectionable to the Tyco Companies.

## CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2002, I served the attached Tyco Companies' Response to Complaint Counsel's Motion for In Camera Submission of Documents and Motion for Confidentiality and Production Determination upon all parties of record in this proceeding as follows:

**By hand delivery to:**

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, MD 20814
Complaint Counsel

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005
Counsel for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756
Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation

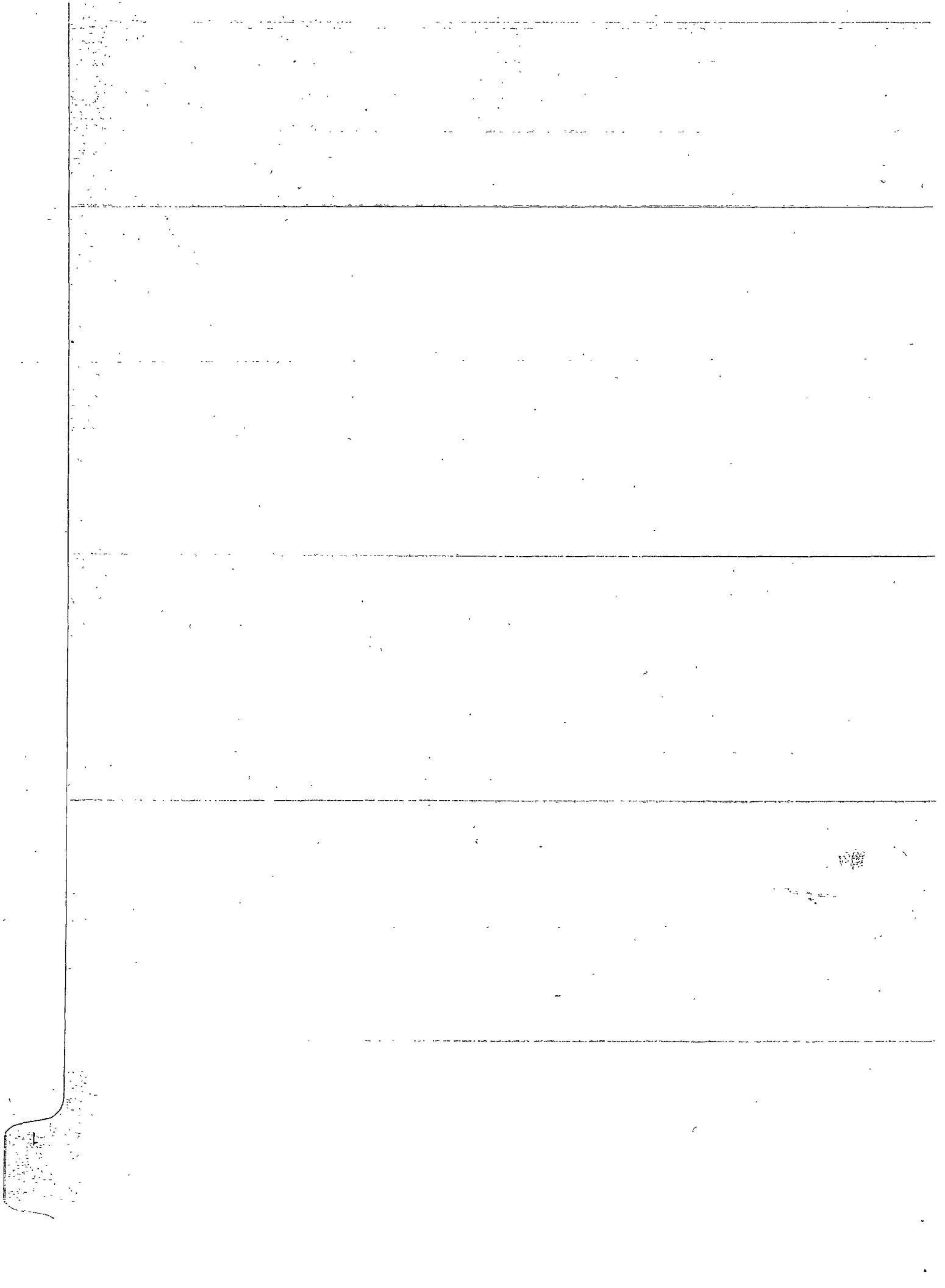
**By first class mail, postage prepaid on:**

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036
Counsel for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186
Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation



Benjamin B. Reed



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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

KARYN A. TEMPLE
(202) 434-5347
ktemple@wc.com

July 30, 2002

Via Facsimile and Mail

Seth B. Popkin, Esq.
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

**Re: CPSC Docket No.: 02-1**
*In the matter of Chemetron Corp., et al.*

Dear Seth:

This letter is in response to your letter dated July 18, 2002 regarding 80 pages of Tyco documents that were submitted to Tyco for its review and waiver or assertion of confidentiality claims. Tyco's counsel, Ben Reed, has informed us that they are unwilling to allow Respondents to review the vast majority of those documents (67 pages), even under the Court's current order permitting review of confidential documents with certain restrictions. Therefore, without the opportunity to review the documents, we are unable to determine at this time whether we will continue to seek production of these documents through a motion to the Court.

In an effort to resolve this issue prior to seeking relief from the Court, we are willing to narrow our request (with respect to the 67 pages only) to: (a) documents that relate to Star ME-1s, (b) documents that relate to the allegations of the Complaint or the Answers, (c) documents that relate to the same problems Complaint Counsel alleges in the Star ME-1 (e.g., o-ring, corrosion, etc.), or (d) any other documents that Complaint Counsel intends to use in the hearing on this matter. If none of the documents fall into any of the above-stated categories, we may be willing to forego pursuing those documents further (with the understanding that we are not waiving our right to seek similar documents in the future). Accordingly, please let me know if any of the 67 pages of Tyco documents referenced in your July 18, 2002 letter are responsive to the above-stated categories.

Sincerely,

Karyn A. Temple

cc: Michael Gidding, Esq. (via fax)
Benjamin Reed, Esq. (via fax)

SBP Ca

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc., | ) | |
| | ) | CPSC Docket No. : 02-1 |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation, | ) | |
| | ) | |
| Sunbeam Corporation, | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc., | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

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## ORDER REGARDING SUBPOENAS

On August 20, 2002, Complaint Counsel submitted a letter to the Court relating that, in several instances, return dates for subpoenas have been lapsing before the subpoenas could be issued.[1] In order to avoid repeated visits to the Court, seeking the forwarding of new applications for subpoenas which are identical to those already submitted and forwarded, except for an updated, and timely, return date, Complaint Counsel has proposed that, for each subpoena that the Commission authorizes, the Commission's Secretary be authorized to enter a return date for the production of documents which will afford thirteen working days for the response.[2] It is

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[1]The Court made inquiry to the Secretary of the Commission as to whether any response had been filed to the Complaint Counsel's letter and learned that none had been submitted by the Respondents.

[2]This formulation affords ten days for a response along with three days for mail delivery. As such it is consistent with the spirit of service and response times under the Rules of Practice for Adjudicative Proceedings. 16 C.F.R. Part 1025.

also requested that the Secretary be authorized to insert a date for providing testimony that is seven days after the date on which documents are to be produced.

Upon consideration, the Court directs that the Secretary of the Commission be permitted to enter return dates, as set forth above, and that the Secretary is also authorized to insert a date for providing testimony which is at least *ten* days after the date for the production of documents.

**So Ordered.**

William B. Moran

William B. Moran
United States Administrative Law Judge

Dated: August 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2002, I served the attached **Order Regarding Subpoenas** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Karyn A. Temple, Esquire
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael J.Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway, Rm. 613
Bethesda, MD 20814

Michael A. Brown; Esquire
Margaret A.Freeston, Esquire
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Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esquire
Bert L. Wolff, Esquire
Skadden, Arps, Slate, Meager & Flom, LLP
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New York, NY 10037

Ralph A. Weber, Esquire
Kurt D. Dykstra, Esquire
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Mr. Todd Stevenson, Secretary
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, MD 20814

Nelida Torres
Legal Staff Assistant

Dated: August 26, 2002

SBP Ca

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc., | ) | |
| | ) | CPSC Docket No. : 02-1 |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation, | ) | |
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| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc., | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

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[1]The Court made inquiry to the Secretary of the Commission as to whether any response had been filed to the Complaint Counsel's letter and learned that none had been submitted by the Respondents.

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Upon consideration, the Court directs that the Secretary of the Commission be permitted to enter return dates, as set forth above, and that the Secretary is also authorized to insert a date for providing testimony which is at least *ten* days after the date for the production of documents.

**So Ordered.**

William B. Moran

William B. Moran
United States Administrative Law Judge

Dated: August 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2002, I served the attached **Order Regarding Subpoenas** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

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Washington, DC 20005

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Mr. Todd Stevenson, Secretary
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, MD 20814

Nelida Torres
Legal Staff Assistant

Dated: August 26, 2002

SBP CC

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S ANSWERS TO RESPONDENTS' (CHEMETRON CORPORATION, CHEMETRON INVESTMENTS, INC., AND SUNBEAM CORPORATION) FOURTH SET OF INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel responds as follows to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Fourth Set of Interrogatories.

## GENERAL OBJECTIONS

### First General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things that it is prohibited to disclose pursuant to 15 U.S.C. § 2055, or under the terms of the Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation, filed February 14, 2002, or the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised), signed and dated by all counsel of record on March 22, March 26, and April 1, 2002 ("the Confidentiality Stipulations").

### Second General Objection

Complaint Counsel objects to these interrogatories to the extent they seek information or documents protected by the law attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege or protection. While Complaint Counsel will undertake to withhold information or documents protected by applicable privileges or doctrines, any inadvertent disclosure of such information or production of such documents shall not be deemed a waiver of any applicable privilege, doctrine, or protection.

## INTERROGATORIES AND ANSWERS

**Interrogatory No. 1:** Identify all affidavits and other witness statements (whether sworn or un-sworn) in your possession, custody or control that relate to the Star ME-1 or to this proceeding, and for each such statement provide:

(a) the name, address, telephone number, employer, and employment position of the person making the statement;

(b) the date of the statement;

(c) the general subject matter of the statement; and

(d) the date when the statement first came into the CPSC's possession, custody, or control.

**Objections:** Complaint Counsel objects to this interrogatory because it seeks information and documents protected by the attorney work product-doctrine. Complaint Counsel objects to subpart (d) of this interrogatory because it is unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See the documents previously produced and identified as CPSC Star 021536-021771, and 022366-022384, and the documents being produced under CPSC Star 022513-022517.

(a) See the documents identified in response to the main paragraph of Interrogatory No. 1.

(b) See the documents identified in response to the main paragraph of Interrogatory No. 1.

(c) See the documents identified in response to the main paragraph of Interrogatory No. 1.

(d) The documents identified in response the main paragraph of Interrogatory No. 1 were received through the U.S. Mail. A small number of these documents were date-stamped on the documents themselves. The dates when these date-stamped documents first came into Complaint Counsel's possession, custody, or control are facially apparent on the documents themselves. For all other documents identified in response to subpart (a) of Interrogatory No. 1, Complaint Counsel date-stamped the envelopes in which they arrived at the time they were received. Complaint Counsel is willing to make these envelopes available for inspection and copying on mutually agreed upon terms.

**Interrogatory No. 2:** Identify any Star ME-1's known by you to in fact be installed (or, if now removed, to have in fact been installed) in a location other than a freezer, cooler, or other area subject to freezing, and for each such Star ME-1 provide:

(a) the address and owner of the building/facility in which the Star ME-1 is or was installed;

(b) the type of building or facility (e.g., warehouse, office, store, etc.);

(c) the precise location in the building/facility where the Star ME-1 is or was installed;

(d) the year of manufacture of the Star ME-1;

(e) the basis for your averment that the location of installation is not subject to freezing; and

(f) all documents that reflect or relate to your answer to this interrogatory.

**Objections:** Complaint Counsel objects to this interrogatory because it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Complaint Counsel objects to subpart (e) of this interrogatory because Complaint Counsel makes no averments that any specific locations where a Star ME-1 is or was installed are or were, or are not or were not, subject to freezing. Complaint Counsel also objects to this interrogatory in its entirety to the extent that it seeks information or documents protected by the attorney-client privilege and attorney work product doctrine, or any other applicable privilege or protection.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See the documents identified in response to subpart (a) of Interrogatory No. 1. See also Complaint Counsel's answer and objections, and any supplemental answers or objections, to subpart (a) of Interrogatory No. 40 of Respondents' First Set of Interrogatories,

and to subpart (a) of Interrogatory No. 11 of Star Sprinkler Corporation's and Grucon Corporation's First Set of Interrogatories.

(b) See the documents identified in response to subpart (a) of Interrogatory No. 1. See also Complaint Counsel's answer and any supplemental responses to subpart (b) of Interrogatory No. 40 of Respondents' First Set of Interrogatories, and Complaint Counsel's answer and any supplemental responses to subpart (b) of Interrogatory No. 11 of Star Sprinkler Corporation's and Grucon Corporation's First Set of Interrogatories.

(c) See the documents identified in response to subpart (a) of Interrogatory No. 1.

(d) See the documents identified in response to subpart (a) of Interrogatory No. 1.

(e) See the objections to this subpart of this interrogatory.

(f) See the documents identified in response to subpart (a) of Interrogatory No. 1.

**Interrogatory No. 3:** With respect to your response to Respondents' Interrogatory No. 14, describe all steps taken by Complaint Counsel to locate the videotape, provide a general description of the videotape (including the provider of the tape, the name, address, and telephone number of the sprinkler installer performing the testing, the date of the testing, and the date of manufacture of the Star ME-1's involved in the testing), and identify the individual at the CPSC who is last known by you to have had possession, custody, or control of the videotape.

**Objections:** Complaint Counsel objects to this interrogatory to the extent that it seeks information or documents protected by the attorney-client privilege and attorney work-product doctrine, or any other applicable privilege or protection.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: In early January 2002, Complaint Counsel communicated by email or telephone with all current and former CPSC Engineering and Compliance staff persons who may have viewed the videotape, in an attempt to determine its whereabouts. None of the staff or former staff knew the whereabouts of the videotape. The videotape was provided by Ross Thomas Wright III (Tom Wright), Vice-President of Sunbelt Fire Protection, Inc.

(Sunbelt), in response to an August 1999 CPSC Subpoena . Mr. Wright was the sprinkler installer who performed the testing, in July 1993. Upon information and belief, SCM employees Charles Allen and John Fenske were present for the testing. The address for Sunbelt is 7924 East 15th Street, Tulsa, Oklahoma 74112. The telephone number for Sunbelt is (918) 582-8200. The videotape shows testing in July 1993 of six of the fifty Star ME-1s that Mr. Wright removed from the Troy Healthcare Facility, in Troy, Missourri, after a July 1993 laundry room fire in which three Star ME-1's fused (i.e., the fusible links were fused by heat from the fire) but did not discharge water. All of the Star ME-1's in the facility were manufactured in 1989 or 1990. The piston plugs in five of the six Star ME-1's failed to discharge from the inner tubes of the sprinklers after the fusible links were fused by application of heat, and 25 psi air pressure was applied. Complaint Counsel does not know the identity of the individual at CPSC who last had possession, custody, or control of the videotape.

**Interrogatory No. 4:** Describe in detail the reasons for the CPSC staff's decision in 1991 not to proceed further with its investigation of the Star ME-1 and:

(a) identify each and every document that describes, evidences, refers, or relates in any way to the decision;

(b) identify each and every person whom Complainant knows and/or believes to have knowledge of this decision; and

(c) describe in detail the substance of each person's knowledge and/or information.

**Objections:** Complaint Counsel objects to this interrogatory to the extent that it seeks information or documents protected by the attorney-client privilege, deliberative process privilege, the attorney work-product doctrine, or any other applicable privilege or protection.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The reason for the CPSC staff decision is set out in the Preliminary Staff Determination dated June 4, 1991, and which is being produced under CPSC Star 022510-

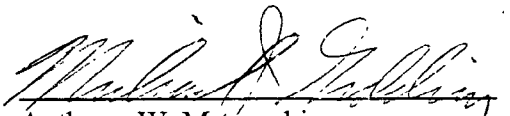
022512. Complaint Counsel recently discovered that the Preliminary Staff Determination was inadvertently misplaced while responses were being prepared to prior discovery requests in this proceeding, and for this reason was not previously Bates-stamped or produced.

(a) See the documents previously produced and identified as CPSC Star 006372-006374, 006376-006380, 006382-006384, 006386-006423, 006465-006471, and 006473-006482. See also the June 4, 1991 Preliminary Staff Determination.

(b) See Complaint Counsel's answer, and any supplemental answers, to Interrogatory No. 4 of Respondents' First Set of Interrogatories. See also the signatures on the June 4, 1991 Preliminary Staff Determination that is being produced.

(c) See the content of the June 4, 1991 Preliminary Staff Determination.

Respectfully Submitted,



Anthony W. Murawski
Michael J. Gidding

Complaint Counsel
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Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1207

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Answers to Respondents' (Sunbeam Corp., Chemetron Corp. and Chemetron Investments, Inc.) Fourth Set of Interrogatories to be served on all parties of record in these proceedings, using the methods indicated below:

By overnight delivery:

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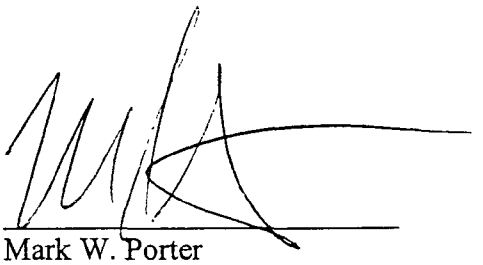


Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety
Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S ANSWERS TO RESPONDENTS' (CHEMETRON CORPORATION, CHEMETRON INVESTMENTS, INC., AND SUNBEAM CORPORATION) SECOND REQUESTS FOR ADMISSIONS**

Pursuant to 16 C.F.R. § 1025.34(b), Complaint Counsel responds as follows to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Second Requests for Admissions.

REQUEST FOR ADMISSION NO. 1: Admit that in 1991 the CPSC staff decided not to proceed further with an investigation of the Star ME-1.

RESPONSE: Complaint Counsel admits that the CPSC staff decided not to proceed further with an investigation of the Star ME-1 in 1991 because, at that time, it had insufficient evidence to make a preliminary determination as to whether or not the Star ME-1 created a substantial product hazard.

REQUEST FOR ADMISSION NO. 2: Admit that in 1991 the CPSC staff closed an investigation of the Star ME-1.

RESPONSE: Complaint Counsel admits that on June 21, 1991, the Office of Compliance sent a letter to Milt Kuyers, President of Star Sprinkler Corporation, stating in relevant part:

> The U.S. Consumer Product Safety Commission staff has decided not to proceed further with the investigation into file number CA910064 . . ..
>
> . . . .
>
> . . . This determination by the staff is based upon the information presently available to us. The staff will assess any new information concerning this product to determine if action should be taken to protect the public. Should the staff decide to investigate further, we will notify the firm.

REQUEST FOR ADMISSION NO. 3: Admit that under NFPA-25, sprinklers are to be inspected annually.

RESPONSE: Complaint counsel admits that under NFPA 25's voluntary inspection standard, a sprinklers are to be visually inspected, annually, from the floor level, with two exceptions: (1) sprinklers installed in concealed spaces, such as above suspended ceilings, shall not require

inspection, and (2) sprinklers installed in areas that are incaccessible for safety considerations due to process operations shall be inspected during each scheduled shutdown.

REQUEST FOR ADMISSION NO. 4: Admit that under NFPA-25, sprinklers that are painted are to be replaced.

RESPONSE: Complaint Counsel admits that under NFPA-25's voluntary inspection standard, sprinklers are to be replaced if they are painted with a coating that is not factory-applied after shipment from the place of manufacture.

REQUEST FOR ADMISSION NO. 5: Admit that under NFPA-25, sprinklers that are corroded, damaged, loaded, or in an improper orientation are to be replaced.

RESPONSE: Complaint Counsel admits that under NFPA-25's voluntary inspection standard, sprinklers are to be replaced if, when viewed from the floor level upon annual inspection, they are visibly corroded, damaged, loaded, or in an improper orientation.

REQUEST FOR ADMISSION NO. 6: Admit that proper maintenance of sprinklers under NFPA-25 requires that the sprinklers shall not be altered in any respect nor have any type of ornamentation, paint, or coatings applied after shipment from the place of manufacture.

RESPONSE: Complaint Counsel admits that under NFPA-25's voluntary maintenance standard, sprinklers shall not be altered in any respect nor have any type of ornamentation, paint, or coatings applied after shipment from the place of manufacture.

REQUEST FOR ADMISSION NO. 7: Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were painted.

RESPONSE: Complaint Counsel admits that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation were painted insofar as they were

factory-painted prior to shipment, but denies that any were painted after shipment from the place of manufacture.

REQUEST FOR ADMISSION NO. 8: Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were corroded.

REPONSE: Complaint Counsel admits that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 had corrosion, but denies that the corrosion would have been visible had a voluntary visual inspection of the sprinklers been made from the floor level in accordance with NFPA-25. Even if there were corrosion visible from the floor level, it would not have had any effect on the ability of the sprinkler to operate.

REQUEST FOR ADMISSION NO. 9: Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were damaged.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 10: Admit that the CPSC staff does not know the maintenance history of the Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

RESPONSE: Inasmuch as the term "maintenance history" is not defined, Complaint Counsel interprets it to mean compliance or non-compliance with NFPA-25's voluntary maintenance standard (Standard 2-2.1.1). Complaint Counsel admits that it does not know whether the owners of Raley's supermarket, their agents, fire safety professionals, or other persons, inspected the Chemetron Star ME-1s in accordance with NFPA-25. See the responses to Requests for

Admission 7, 8, and 9 herein. See the documents previously produced as CPSC Star 007690-007743, and 018053-018122.

REQUEST FOR ADMISSION NO. 11: Admit that the CPSC staff does not know the service history of the Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

RESPONSE: Complaint Counsel objects to this request because the term "service history" is vague and undefined. To the extent that the term "service history" encompasses compliance or non-compliance with NFPA-25 voluntary maintenance standard (Standard 2-2.1.1), Complaint Counsel interprets it to mean the same thing as "maintenance history." To the extent any response is required, Complaint Counsel answers as follows: See the answer to Request No. 10. Complaint Counsel admits that it does not know whether the owners of the locations in which the sprinklers were installed, their agents, fire safety professionals, or other persons, inspected the Star ME-1s in accordance with NFPA-25.

REQUEST FOR ADMISSION NO. 12: Admit that the CPSC staff does not know the inspection history of the Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 13: Admit that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were painted.

RESPONSE: Complaint Counsel admits that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation factory-applied coatings prior to shipment, but denies that any were painted after shipment from the place of manufacture.

REQUEST FOR ADMISSION NO. 14: Admit that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were corroded.

RESPONSE: Complaint Counsel admits that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 have some corrosion, but denies that this corrosion would have been visible had a voluntary visual inspection of the sprinklers been made from the floor level in accordance with NFPA-25. Even if there were corrosion visible from the floor level, it would not have had any effect on the ability of the sprinkler to operate.

REQUEST FOR ADMISSION NO. 15: Admit that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were damaged.

RESPONSE: Admit that one sprinkler may have been damaged.

REQUEST FOR ADMISSION NO. 16: Admit that the CPSC staff does not know the maintenance history of the non-Chemetron Star ME-1 sprinklers tested during its investigaton of the Star ME-1.

RESPONSE: See the response to Request No. 10.

REQUEST FOR ADMISSION NO. 17: Admit that the CPSC staff does not know the service history of the non-Chemetron Star ME-1 sprinklers tested during its investigaton of the Star ME-1.

RESPONSE: See the objections and response to Request No. 11.

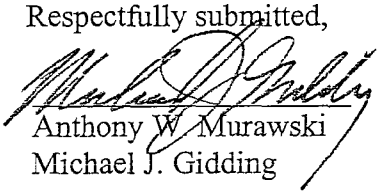
REQUEST FOR ADMISSION NO. 18: Admit that the CPSC staff does not know the inspection history of the non-Chemetron Star ME-1 sprinklers tested during its investigaton of the Star ME-1.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 19: Admit that the Star ME-1's manufactured between 1977 and 1982 have already been the subject of an informal recall by a Star manufacturer.

RESPONSE: Deny.

Respectfully submitted,



Anthony W. Murawski
Michael J. Gidding

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Answers to Respondents' (Sunbeam Corp., Chemetron Corp. and Chemetron Investments, Inc.) Second Set of Requests for Admission to be served on all parties of record in these proceedings, using the methods indicated below:

By overnight delivery:

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**COMPLAINT COUNSEL'S SUPPLEMENTAL ANSWERS TO RESPONDENTS' (CHEMETRON CORPORATION, CHEMETRON INVESTMENTS, INC., AND SUNBEAM CORPORATION) INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel supplements its Answers to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Second Set of Interrogatories.

Where current Commission employees are identified in the answers, the present business address of each such employee is as follows, unless otherwise stated: U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

GENERAL OBJECTIONS

Complaint Counsel incorporates by reference the General Objections it noted in its Answers to Respondents' (Chemetron, Corp. Chemetron Investments. Inc. and Sunbeam Corporation) Second Interrogatories

INTERROGATORIES AND ANSWERS

Interrogatory No. 17: Do you contend that Chemetron has ever manufactured Star ME-1 fire sprinklers? If so:

(c) state the total number of Star ME-1 fire sprinklers that you contend were manufactured by Chemetron;

Objections: See Complaint Counsel's objections to Interrogatory No. 17.

Answer: Complaint Counsel does not know the precise number of Star ME-1's that Chemetron manufactured, but estimates that Chemetron manufactured between 50,000 and 60,000 units. See also Complaint Counsel's Supplemental Answer to Interrogatory No. 124 below.

Interrogatory No. 54: With respect to the statement in the November 30, 2000 letter from Seth B. Popkin of the CPSC to David H. Baker that, "we conducted failure mode examinations and reviewed records of such examinations conducted by others [on Star ME-1 fire sprinklers]":...

(b) identify and describe each failure mode examination conducted by a person other than CPSC on Star ME-1 fire sprinklers, and for each such failure mode examination:...

Objections: See Complaint Counsel's Objections to Interrogatory No. 54.

Answer: See documents CPSC Star 001556, 002090, 002133-44, 002624, 002971, 005273-74, 005282-84, 009540, 009709-11, 009720, and documents SCM 0486, 0939, 000055-66, 000085-90, and 001526-30. In addition, Complaint Counsel provided all Respondents with third

party documents from UL, FM, and Grinnell that may contain information responsive to this Interrogatory.

Interrogatory No. 55: With respect to the statement in the November 30, 2000 letter from Seth B. Popkin of the CPSC to David H. Baker that "we believe the failures [of Star ME-1 fire sprinklers] are likely due to several causes, including but not limited to, corrosion, accumulation of deposits, binding of the O-rings, interference and fit problems with the components, lubricant problems, and/or combination of some or all of the foregoing":...

Objection: See Complaint Counsel's objection to Interrogatory No. 55.

Answer: See Complaint Counsel's Supplemental Answer to Interrogatory No. 54 above.

Interrogatory No. 67: With respect to the allegation in Paragraph 16 of the Complaint that "from 1977 through 1995, Respondents manufactured and/or distributed approximately 700,000 Star ME-1's":...

(b) state the number of Star ME-1 fire sprinklers that you contend were manufactured and/or distributed by Respondent Chemetron, and describe the precise method and underlying data used to arrive at this number;...

Objections: See Complaint Counsel's objections to Interrogatory No. 67.

Answer: See Complaint Counsel's Supplemental Answers to Interrogatory Nos. 17 and 124 herein.

Interrogatory No. 86: Identify and describe any and all testing of Star ME-1 fire sprinklers conducted by or on behalf of someone other than the CPSC, including:

(a) a description of any testing protocols used in the testing;

(b) the identity of the person(s) who created or established any such testing protocols;

(c) a description of the methodology employed during each and every test of Star ME-1 fire sprinklers;

(d) a description of any industry standards to which the Star ME-1 fire sprinklers were tested and/or compared (e.g. 7 psi, etc.), and the date on which the standard was adopted, came into effect, and/or was generally accepted within the industry;

(e) the date and location of each and every test of Star ME-1 fire sprinklers;

(f) an identification of the person(s) who conducted, participated in, or were otherwise present during each test of Star ME-1 fire sprinklers;

(g) a description of the results of each and every test of Star ME-1 fire sprinklers;

(h) the identification of any and all documents (including videotapes and audiotapes) relating to any testing of Star ME-1 fire sprinklers;

(i) whether tested sprinklers were preserved and, if so, the current location and custodian;

(j) an identification of the manufacturer of the Star ME-1 sprinkler being tested; and

(k) if the sprinkler had previously been installed, the location where it was installed (including address, owner and type of location).

Objection: See objections to Interrogatory No. 86.

Answer: Assuming that the testing to which this interrogatory refers is pressure testing, Complaint Counsel has previously provided Respondents with the results of such testing performed by UL, FM, and Grinnell. See also Complaint Counsel's Supplemental Answer to Interrogatory No. 54 above.

Interrogatory No. 124: Describe in detail the factual basis for your estimate that Chemetron Corporation manufactured 200,000 Star ME-1's between 1977 through 1982.

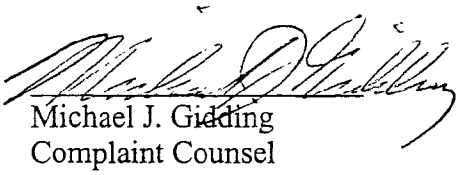
Objections: See Complaint Counsel's Objection to Interrogatory No. 124.

Answer: See Complaint Counsel's Supplemental Answer to Interrogatory No. 17 above. That response estimates that Chemetron manufactuered between 50,000 and 60,000 Star ME-1 sprinklers. That estimate is based on an extrapolation from data, set forth in documents produced by Respondents Sunbeam, Chemetron and Chemetron Investments, showing the production of Star ME-1's in 1982, annual sales of all Chemetron sprinklers, the percentage of total sprinkler sales that dry sprinklers constituted, 1982 sales of ME-1's, and the average 1982 sales price of Star ME-1 sprinklers. The lower estimate assumes that ME-1 prices decreased by a dollar for each year prior to 1982 and that ME-1's constituted 4% of total sprinkler sales. The

upper estimate makes the same assumption about price but assumes that ME-1's constituted 5% of total sprinkler sales.

Dated: August 9, 2002

Respectfully submitted,



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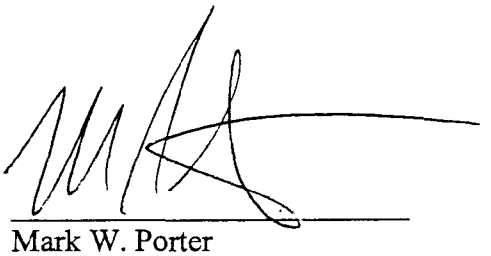

Mark W. Porter
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UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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**COMPLAINT COUNSEL'S RESPONSES TO RESPONDENTS' (CHEMETRON CORPORATION, CHEMETRON INVESTMENTS, INC., AND SUNBEAM CORPORATION) SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel responds as follows to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Second Request for Production of Documents and Things.

## GENERAL OBJECTIONS

### First General Objection

Complaint Counsel objects to these requests and to Respondents' definition of "you," "your," "Complainant," and the "CPSC," as follows: a) to the extent the definition refers to the Consumer Product Safety Commission itself ("Commission"), as distinguished from the Commission staff which brought this action; and b) to the extent these requests seek documents or things from or relating to the Commission itself. The Commission itself is not a party to this action. Complaint Counsel's responses to these requests are on behalf of, and reflect documents and things in the possession, custody, or control of, the Commission staff which brought this action, including Complaint Counsel.

### Second General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things that it is prohibited to disclose pursuant to 15 U.S.C. § 2055, or under the terms of the Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation, filed February 14, 2002, or the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised), signed and dated by all counsel of record on March 22, March 26, and April 1, 2002 ("the Confidentiality Stipulations").

### Third General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things protected by the law enforcement investigatory privilege, deliberative process privilege, attorney-client privilege, work product doctrine, or any other applicable privilege or protection. While Complaint Counsel will undertake to withhold documents or things protected by

applicable privileges or doctrines, any inadvertent production of such documents or things shall not be deemed a waiver of any applicable privilege, doctrine, or protection.

Fourth General Objection

Complaint Counsel objects to these requests to the extent they exceed the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

DOCUMENT REQUESTS AND RESPONSES

Request No. 1: All documents that you intend to use in any way (including as exhibits) at the hearing in this matter.

Response: Complaint Counsel has produced all or nearly all documents that it currently intends to use at the hearing, and will produce any additional documents that it decides to use within the time alloted by the discovery schedule in this proceeding. Complaint Counsel will identify all documents that it indends to use at the hearing in accordance with 16 C.F.R. §§ 1025.21(a) and 1025.44(b).

Request No. 2: All documents identified, or that should have been identified, in response to Respondents' Fourth Set of Interrogatories.

Objections: Complaint Counsel incorporates herein by reference all objections stated in Complaint Counsel's Answers to Respondents' Fourth Set of Interrogatories.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: See the documents identified in Complaint Counsel's Answers to Respondents' Fourth Set of Interrogatories. Complaint Counsel will produce the five affidavits referenced in its response to Interrogatory No. 2(f) within a reasonable time.

Request No. 3: To the extent not already produced in response to Respondents' Request for Production No. 14, all documents that you have obtained (or that you obtain in the future) through a subpoena issued in this proceeding.

Objections: See Complaint Counsel's response to Respondents' Request for Production No. 14.

Response: Complaint Counsel has produced all documents that are responsive to Respondents' Request for Production No. 14, as described in Complaint Counsel's response to that request. Complaint Counsel will continue to supplement its discovery responses as required under 16 C.F.R. § 1025.31(f).

Request No. 4: To the extent not already produced or served on undersigned counsel for these Respondents, all documents produced by Complaint Counsel to the Grucon and SCM Respondents in this proceeding and all other responses by Complaint Counsel to discovery requests from the Grucon and SCM Respondents.

Response: Complaint Counsel has produced all responsive documents.

Request No. 5: All documents that reflect or relate to the CPSC staff's decision in 1991 not to proceed further with its investigation of the Star ME-1.

Objections: Complaint Counsel objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work product-doctrine.

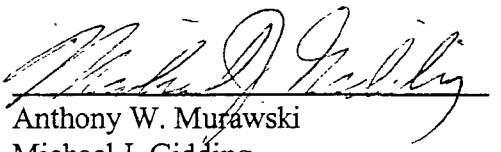
Response: Complaint Counsel is producing one additional document that was misplaced during its original document production and has otherwise produced all responsive documents not restricted by its objections to this request.

Request No. 6: All documents that reflect or relate to the water pressure present in sprinkler systems installed in any commercial buildings.

Objections: Complaint Counsel objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work product-doctrine, or which were prepared by an expert who was retained or specially employed by Complaint Counsel in anticipation of litigation or preparation for trial, and who is not expected to be called as a witness at trial.

Response: Complaint Counsel has produced all responsive documents not restricted by its objections to this request.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Answers to Respondents' (Sunbeam Corp., Chemetron Corp. and Chemetron Investments, Inc.) Second Set of Requests for Production of Documents and Things to be served on all parties of record in these proceedings, using the methods indicated below:

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**COMPLAINT COUNSEL'S ANSWERS TO RESPONDENT'S (GRUCON CORPORATION) SECOND SET OF INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel responds as follows to Respondent's (Grucon Corporation) Second Set of Interrogatories.

GENERAL OBJECTIONS

First General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things that it is prohibited to disclose pursuant to 15 U.S.C. § 2055, or under the terms of the

Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation, filed February 14, 2002, or the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised), signed and dated by all counsel of record on March 22, March 26, and April 1, 2002 ("the Confidentiality Stipulations").

Second General Objection

Complaint Counsel objects to these interrogatories to the extent they seek information or documents protected by the attorney-client privilege, deliberative process privilege, the work product doctrine, or any other applicable privilege or protection. While Complaint Counsel will undertake to withhold information or documents protected by applicable privileges or doctrines, any inadvertent disclosure of such information or production of such documents shall not be deemed a waiver of any applicable privilege, doctrine, or protection.

INTERROGATORIES AND ANSWERS

**Interrogatory No. 1:** Identify the date that you became aware of the Star ME-1 hazard alleged in the Complaint.

**Objections:** See Complaint Counsel's objections to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Interrogatory No. 5.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See Complaint Counsel's answer and any supplemental answers to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Interrogatory No. 5.

**Interrogatory No. 2:** With respect to the date identified in Interrogatory No. 1, please identify:

(a) All facts that led you to become aware of the alleged hazard on that date;

(b) All individuals at the CPSC with knowledge of the alleged hazard on that date; and

(c) All documents relating to your knowledge of the hazard on that date.

**Objections:** See the objections to Interrogatory No. 1. See also Complaint Counsel's objections to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Interrogatory No. 4.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See the answer to Interrogatory No. 1.

(b) See Complaint Counsel's answer and any supplemental answers to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Interrogatory No. 4.

(c) See the answer to subpart (a) of this interrogatory.

**Interrogatory No. 3:** Identify the date that you contend that SCM became aware of the Star ME-1 hazard alleged in the Complaint.

**Objections:** See the general objections to these interrogatories.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See the documents previously produced and identified as CPSC Star 006372-006374, 006376-006380, 006382-006384, 006386-006423, 006465-00671, and 006473-006482.

**Interrogatory No. 4:** With respect to the date identified in Interrogatory No. 3, please identify;

(a) All facts supporting your contention that SCM had knowledge of the alleged hazard on that date;

(b) The particular individuals at SCM who you contend had such knowledge on that date; and

(c) All documents relating to your contention that SCM knew of the alleged hazard on that date.

**Objections:** See the general objections to these interrogatories.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See the answer to Interrogatory No. 3.

(b) See the answer to Interrogatory No. 3.

(c) See the answer to Interrogatory No. 3.

**Interrogatory No. 5:** Identify the date that you contend that Grucon became aware of the Star ME-1 hazard alleged in the Complaint.

**Objections:** See the objections to Interrogatory No. 3.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See the answer to Interrogatory No. 3.

**Interrogatory No. 6:** With respect to the date identified in Interrogatory No. 5, please identify;

(a) All facts supporting your contention that Grucon had knowledge of the alleged hazard on that date;

(b) The particular individuals at Grucon who you contend had such knowledge on that date; and

(c) All documents relating to your contention that Grucon knew of the alleged hazard on that date.

**Objections:** See the objections to Interrogatory No. 3.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See the answer to subpart (a) of Interrogatory No. 4.

(b) See the answer to subpart (b) of Interrogatory No. 4.

(c) See the answer to subpart (c) of Interrogatory No. 4.

**Interrogatory No. 7:** With respect to the "silent" recall initiated in 1990 of the Star ME-1 manufactured from 1975 through 1976 and of its predecessor models by Mealane Corporation, please indentify:

(a) The information you received about such recall;

(b) The date you first received or became aware of the information about the recall;

(c) Whether you conducted any investigation of the recall, and if so, identify among other things, the date you commenced your investigation, the information you obtained, the sources you contacted, the sprinklers you obtained and/or tested;

(d) The results of your investigation; and

(e) All documents relating to your investigation.

**Objections:** See the general objections to these interrogatories.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See the documents previously produced and identified as CPSC Star 000096-000098, the documents that were produced on February 21, 2002, and served on all parties with Complaint Counsel's Supplemental Response to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) First Request for Production of Documents and Things, the documents previously produced and identified as CPSC Star 021536-021680, 021681-021771, and 005884-005886, and the June 4, 1991 Preliminary Staff Determination being produced as CPSC Star 022510-022512. For additional information concerning the Preliminary Staff Determination, see Complaint Counsel's answer to Interrogatory No. 4 of Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Fourth Set of Interrogatories. See also the answer to Interrogatory No. 3 above.

(b) See the response to subpart (a) of this interrogatory.

(c) See the response to subpart (a) of this interrogatory.

(d) See the response to subpart (a) of this interrogatory.

(e) See the response to subpart (a) of this interrogatory.

**Interrogatory No. 8:** With respect to your 1991 investigation of the Star ME-1 fire sprinkler, please describe:

(a) The information you received or became aware of that led you to conduct your investigation;

(b) The date you first received or became aware of the information that led you to initiate your investigation;

(c) The extent of your investigation, by describing among other things, the information you obtained, the sources you contacted, the sprinklers you obtained and/or tested, and the experts you consulted (if any);

(d) The results of your investigation; and

(e) All documents in any way relating to your investigation.

**Objections:** See the objections to Interrogatory Nos. 1 and 2.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See the answer to Interrogatory No. 2.

(b) See the answer to Interrogatory No. 1.

(c) See the answer to subpart (a) of this interrogatory.

(d) See the answer to subpart (a) of this interrogatory.

(e) See the answer to subpart (a) of this interrogatory.

**Interrogatory No. 9:** With respect to your 1998 investigation of the Star ME-1 fire sprinkler, please describe:

(a) The information you received or became aware of that led you to conduct your investigation;

(b) The date you first received or became aware of the information that led you to initiate your investigation;

(c) The extent of your investigation, by describing among other things, the information you obtained, the sources you contacted, the sprinklers you obtained and/or tested, and the experts you consulted (if any);

(d) The results of your investigation; and

(e) All documents in any way relating to your investigation.

**Objections:** See the general objections to these interrogatories.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See the answers to Interrogatory Nos. 1 and 2.

(b) See the answer to subpart (a) of this interrogatory.

(c) See the answer to subpart (a) of this interrogatory.

(d) See the answer to subpart (a) of this interrogatory.

(e) See the answer to subpart (a) of this interrogatory.

**Interrogatory No. 10:** With respect to the 1993 fire in a Troy, Missouri nursing home, please identify:

(a) The information you received or became aware of that led you to conduct your investigation;

(b) The date you first received or became aware of the information that led you to inititiate your investigation;

(c) The extent of your investigation, by describing among other things, the information you obtained, the sources you contacted, the sprinklers you obtained and/or tested, and the experts you consulted (if any);

(d) The results of your investigation; and

(e) All documents in any way relating to your investigation.

**Objections:** See Complaint Counsel's objections, and any supplemental objections, to Interrogatory Nos. 6 and 7 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Set of Interrogatories, to Interrogatory Nos. 157 and 158 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Set of Interrogatories, and to Interrogatory No. 3 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Fourth Set of Interrogatories.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) See Complaint Counsel's answers and any supplemental answers to Interrogatory Nos. 6 and 7 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Set of Interrogatories.Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation), and Complaint Counsel's answers and any supplemental answers to Interrogatory Nos. 157 and 158 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Set of Interrogatories.

(b) See the answer to subpart (a) of this interrogatory.

(c) See the answer to subpart (a) of this interrogatory.

(d) See the answer to subpart (a) of this interrogatory.

(e) See the answer to subpart (a) of this interrogatory.

**Interrogatory No. 11:** Do you contend the Star ME-1 sprinklers involved in the 1993 fire in a Troy, Missouri nursing home were manufactured by SCM? If so, please identify:

(a) All the facts upon which you rely to support your contention;

(b) The date you first became aware of such facts;

(c) The number of Star ME-1 sprinklers manufactured by SCM that were involved in the fire;

(d) The number of Star ME-1 sprinklers manufactured by SCM that you contend failed to activate as required;

(e) The number of Star ME-1 sprinklers manufactured by SCM that did activate as required;

(f) Any property damage caused as a result of the Star ME-1's manufactured by SCM failing to activate;

(g) Any injury caused as a result of the Star ME-1's manufactured by SCM failing to activate;

(h) All individuals you contend possess knowledge of the facts supporting your contention; and

(i) All documents relating to your contention.

**Objections:** See the objections to Interrogatory No. 10.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: Yes.

(a) See the answer to subpart (a) of Interrogatory No. 10.

(b) See the answer to subpart (a) of this interrogatory.

(c) See the answer to subpart (a) of this interrogatory.

(d) See the answer to subpart (a) of this interrogatory.

(e) See the answer to subpart (a) of this interrogatory.

(f) See the answer to subpart (a) of this interrogatory.

(g) See the answer to subpart (a) of this interrogatory.

(h) See the answer to subart (a) of this interrogatory.

(i) See the answer to subpart (a) of this interrogatory.

**Interrogatory No. 12:** To the extent you denied in whole or in part any of Grucon's First Set of Requests for Admission, for each such denial identify by Request No.:

(a) All facts you contend support your denial;

(b) All individuals you contend have knowledge of information that supports your denial; and

(c) All documents you contend support your denial.

**Objections:** See the general objections to these interrogatories. Complaint Counsel incorporates by reference the general and specific objections contained in each of Complaint Counsel's prior discovery responses that are referenced in these answers.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

Request for Admission No. 1:

(a) See Complaint Counsel's answer and any supplemental answers to Interrogatory No. 7 of Responents' (Sprinkler Corporation of Milwaukee and Grucon Corporation) First Sets of Interrogatories.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 1.

(c) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 1.

Request for Admission No. 2:

(a) See Complaint Counsel's answer and any supplemental answers to Interrogatory No. 6 of Responents' (Sprinkler Corporation of Milwaukee and Grucon Corporation) First Sets of Interrogatories. See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 1.

(b) See the answer to subpart (a) of the response to Interrogatory No 6 regarding Request for Admission No. 2.

(c) See the answer to subpart (a) of the response to Interrogatory No. 6 regarding Request for Admission No. 2.

Request for Admission No. 3:

(a) See Complaint Counsel's answer and any supplemental answers to Interrogatory Nos. 7 and 8 of Responents' (Sprinkler Corporation of Milwaukee and Grucon Corporation) First Sets of Interrogatories. See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 3.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 3.

(c) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 3.

Request for Admission No. 6:

(a) See the objections to Request for Admission No. 6.

(b) See the objections to Request for Admission No. 6.

(c) See the objections to Request for Admission No. 6.

Request for Admission No. 7:

(a) See the objections to Request for Admission No. 7.

(b) See the objections to Request for Admission No. 7.

(c) See the objections to Request for Admission No. 7.

Request for Admission No. 8:

(a) See the objections to Request for Admission No. 8.

(b) See the objections to Request for Admission No. 8.

(c) See the objections to Request for Admission No. 8.

Request for Admission No. 9:

(a) Complaint Counsel objects to this interrogatory on the grounds that: it seeks information that is not relevant to the subject matter of this proceeding; it is not reasonably calculated to lead to the discovery of admissible evidence; it is overly broad; it is unduly burdensome; and it seeks information that is prohibited from disclosure pursuant to 15 U.S.C. § 2055. See also the General Objections above. To the extent that any response is required, Complaint Counsel answers as follows: The Commission staff has sought corrective action from firms who meet the description in Request for Admission No. 9. Complaint Counsel is not undertaking to identify those firms because the Commission's data bases do not distinguish between operating and holding companies. Accordingly, such a search would be unduly burdensome, especially in light of the lack of relevance of the Request for Admission to the issues in this case.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 9.

(c) See the objection and answer to subpart (a) of this interrogatory regarding Request for Admission No. 9. Complaint Counsel also objects to this subpart of this interrogatory because it does not specify with reasonable particularity the documents sought.

Request for Admission No. 10:

(a) See the objections to Request for Admission No. 10.

(b) See the objections to Request for Admission No. 10.

(c) See the objections to Request for Admission No. 10.

Request for Admission No. 11:

(a) See the objections to Request for Admission No. 11.

(b) See the objections to Request for Admission No. 11.

(c) See the objections to Request for Admission No. 11.

Request for Admission No. 12:

(a) See Complaint Counsel's answer and any supplemental answers to Interrogatory No. 7 of Responents' (Sprinkler Corporation of Milwaukee and Grucon Corporation) First Sets of Interrogatories.

(b) See the answers to subpart (a) above.

(c) See the answers to subpart (a) above.

Request for Admission No. 15:

(a) See Complaint Counsel's objections and answer, and any supplemental objections and answers, to Interrogatory Nos. 40, 60, 61, 62, 140-142, and 160-173 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam) Interrogatories, and to Request No. 16 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam) First Set of Requests for Admissions.

(b) See answer to subpart (a) above.

(c) See answer to subpart (a) above.

Request for Admission No. 19:

(a) See Complaint Counsel's answer to subpart (b) of Interrogatory No. 11 of Respondents' (Grucon and SCM) First Sets of Interrogatories. See generally

affidavits and claims forms provided in response to Respondents' (Sunbeam/Chemetron) Requests for Production of Documents.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 19.

(c) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 19.

Request for Admission No. 20:

(a) See Complaint Counsel's answer to subpart (b) of Interrogatory No. 11 of Respondents' (Grucon and SCM) First Sets of Interrogatories. See generally affidavits and claims forms provided in response to Respondents' (Sunbeam/Chemetron) Requests for Production of Documents.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 20.

(c) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 20.

Request for Admission No. 21:

(a) See Complaint Counsel's answer to subpart (b) of Interrogatory No. 11 of Respondents' (Grucon and SCM) First Sets of Interrogatories. See generally affidavits and claims forms provided in response to Respondents' (Sunbeam/Chemetron) Requests for Production of Documents.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 21.

(c) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 21.

Request for Admission No. 22:

(a) See Complaint Counsel's answer to subpart (b) of Interrogatory No. 11 of Respondents' (Grucon and SCM) First Sets of Interrogatories. See generally affidavits and claims forms provided in response to Respondents' (Sunbeam/Chemetron) Requests for Production of Documents.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 22.

(c) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 22.

Request for Admission No. 23:

(a) See Complaint Counsel's answer to subpart (b) of Interrogatory No. 11 of Respondents' (Grucon and SCM) First Sets of Interrogatories. See generally affidavits and claims forms provided in response to Respondents' (Sunbeam/Chemetron) Requests for Production of Documents.

(b) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 23.

(c) See the answer to subpart (a) of this interrogatory regarding Request for Admission No. 23.

Request for Admission No. 24:

(a) See the objections to Request for Admission No. 24.

(b) See the objections to Request for Admission No. 24.

(c) See the objections to Request for Admission No. 24.

Request for Admission No. 25:

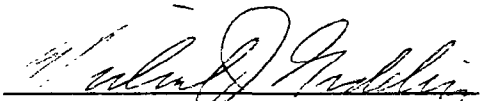
(a) Complaint Counsel obtained all of its information concerning Star ME-1's while conducting the investigations that gave rise to this proceeding and to the joint corrective action by Mealane Corporation and CPSC.

**Interrogatory No. 13:** To the extent you denied in whole or in part any of Grucon's First Set of Requests for Admission due to lack of sufficient information, for each such denial identify by Request No. all efforts you made to obtain sufficient information to respond to the inquiry.

**Objections:** See the general objections to these interrogatories.

**Answer:** Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: Complaint Counsel answers Requests No. 16 and 17 by stating it does not have sufficient information to either admit or deny, but Complaint Counsel does not, in whole or in part, deny any of Grucon's First Set of Requests for Admission due to lack of sufficient information.

Respectfully Submitted,



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Michael J. Gidding

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U.S. Consumer Product Safety Commission
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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Answers to Respondent Grucon Corp.'s Second Set of Interrogatories to be served on all parties of record in these proceedings, using the methods indicated below:

By overnight delivery:

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Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety
Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S ANSWERS TO RESPONDENT'S (GRUCON CORPORATION) FIRST SET OF REQUESTS FOR ADMISSIONS**

Pursuant to 16 C.F.R. § 1025.34(b), Complaint Counsel responds as follows to Respondent's (Grucon Corporation) First Requests for Admissions.

**REQUEST FOR ADMISSION NO. 1:** Admit that Grucon has never sold Star ME-1's.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 2:** Admit that Grucon has never manufactured Star ME-1's.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 3:** Admit that Grucon has never distributed Star ME-1's.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 4:** Admit that SCM did not manufacture Star ME-1's after January 1996.

**RESPONSE:** Complaint Counsel admits that to the best of its knowledge, SCM did not manufacture Star ME-1's after January 1996.

**REQUEST FOR ADMISSION NO. 5:** Admit that SCM did not manufacture Star ME-1's before 1983.

**RESPONSE:** : Complaint Counsel admits that to the best of its knowledge, SCM did not manufacture Star ME-1's before 1983.

**REQUEST FOR ADMISSION NO. 6:** Admit that Grucon did not completely dominate SCM so that SCM had no separate mind, will or existence of its own.

**RESPONSE:** Complaint Counsel objects to this request on the ground that the phrases "completely dominate" and "no separate mind, will or existence of its own" are vague and ambiguous. Complaint Counsel further objects to this request to the extent that it misstates the applicable legal standard governing this proceeding and seeks a purely legal conclusion apart from the application of law to specific facts. Finally, Complaint Counsel objects to this request to the extent that Complaint Counsel has not yet completed fact discovery concerning Grucon's

relationship with SCM. To the extent any response is required, Complaint Counsel answers as follows: deny.

**REQUEST FOR ADMISSION NO. 7:** Admit that Grucon did not use any alleged control of SCM to commit a fraud or wrong.

**RESPONSE:** Complaint Counsel objects to this request on the ground that the words "fraud" and "wrong" are vague and ambiguous. Complaint Counsel further objects to this request to the extent that it misstates the applicable legal standard governing this proceeding and seeks a purely legal conclusion apart from the application of law to specific facts. Finally, Complaint Counsel objects to this request to the extent that Complaint Counsel has not yet completed fact discovery concerning Grucon's relationship with SCM. To the extent any response is required, Complaint Counsel answers as follows: deny.

**REQUEST FOR ADMISSION NO. 8:** Admit that Grucon's use of any alleged control of SCM to allegedly commit a fraud or wrong was not the proximate cause of the alleged "injury" in the Complaint.

**REPONSE:** Complaint Counsel objects to this request on the ground that the terms "fraud," "wrong" and "alleged 'injury'" are vague and ambiguous. Complaint Counsel further objects to this request to the extent that it misstates the applicable legal standard governing this proceeding and seeks a purely legal conclusion apart from the application of law to specific facts. Finally, Complaint Counsel objects to this request to the extent that Complaint Counsel has not yet completed fact discovery concerning Grucon's relationship with SCM. To the extent any response is required, Complaint Counsel answers as follows: deny.

**REQUEST FOR ADMISSION NO. 9:** Admit that prior to filing the Complaint in this case you have never sought to obtain corrective action plans from a parent holding company of a

bankrupt, non-operational, asset-less, and/or defunct manufacturer, distributor, and/or retailer of a consumer product.

**RESPONSE:** Complaint Counsel objects to this request on the grounds that: it seeks information that is not relevant to the subject matter of this proceeding, it is not reasonably calculated to lead to the discovery of admissible evidence, and it is unduly burdensome because it is not possible to distinguish between holding companies and operating companies when searching the CPSC's computer databases. Complaint Counsel interprets the expression "sought to obtain corrective action plans" to include CPSC settlement negotiations or administrative proceedings, the aim of which was to obtain a corrective action. Complaint Counsel does not interpret this expression to include investigations that did not result in settlement offers or discussions. Complaint Counsel also notes that the term "corrective action plans" does not encompass CPSC investigations, settlement negotiations, administrative proceedings, or federal court proceedings, for civil or criminal penalties pursuant to any of the statutes administered by the Commission or CPSC staff. Finally, Complaint Counsel notes that this request, by its terms, does not relate to instances in which the CPSC staff has sought a corrective action from an operating parent company or corporation (*i.e.*, a parent company or corporation that was not a holding company). To the extent that any response is required, Complaint Counsel answers as follows: deny.

**REQUEST FOR ADMISSION NO. 10:** Admit that the alleged "injury" in the Complaint is SCM's lack of assets to support the remedies sought in the Complaint.

**RESPONSE:** Complaint Counsel objects to this request because it seeks a purely legal conclusion concerning the meaning of the term "alleged 'injury.'" Notwithstanding and without waiving the foregoing objection, Complaint Counsel answers as follows: deny.

**REQUEST FOR ADMISSION NO. 11:** Admit that the alleged "injury" in the Complaint is SCM's manufacture of Star ME-1's that you contend constitute a substantial product hazard.

**RESPONSE:** Complaint Counsel objects to this request because it seeks a purely legal conclusion concerning the meaning of the term "alleged 'injury.'" Notwithstanding and without waiving the foregoing objection, Complaint Counsel answers as follows: Complaint Counsel admits that SCM's manufacture and distribution of Star ME-1's, constituting a substantial product hazard, may be likened to an "injury" to consumers. Complaint Counsel denies, however, that proof of an "injury" is required in this proceeding to warrant the piercing of the corporate veil of SCM.

**REQUEST FOR ADMISSION NO. 12:** Admit that you are aware of no fires where Star ME-1's manufactured by SCM failed to activate.

**RESPONSE:** Deny. See Complaint Counsel's answers and objections, and any supplemental answers and objections, to Interrogatory Nos. 6 and 7 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Set of Interrogatories.Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation), Interrogatory Nos. 157 and 158 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Set of Interrogatories, and Interrogatory Nos. 10 and 11 of Respondent's Second Set of Interrogatories.

**REQUEST FOR ADMISSION NO. 13:** Admit that you are aware of no injuries resulting from a fire where Star ME-1's manufactured by SCM failed to activate.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 14:** Admit that you are aware of no deaths resulting from a fire where Star ME-1's manufactured by SCM failed to activate.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 15:** Admit that the Star ME-1's maufactured by SCM have not been distributed for use in households, residences, or schools (as those terms are used in 15 U.S.C. § 2052).

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 16:** Admit that Star ME-1's manufactured by SCM were not sold directly to consumers.

**RESPONSE:** Complaint Counsel has made a reasonable inquiry into this matter, but the information that is known or readily available is insufficient to enable to Complaint Counsel to admit or deny this request. See Complaint Counsel's objections and answer to Interrogatory No. 9 of Respondents' (Grucon and SCM) First Sets of Interrogatories, and Complaint Counsel's answer to Request for Admission No. 17 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Set of Requests for Admissions.

**REQUEST FOR ADMISSION NO. 17:** Admit that Star ME-1's manufactured by SCM were not installed by consumers themselves.

**RESPONSE:** Complaint Counsel objects that this interrogatory seeks information that is not relevant to the subject matter of this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: Complaint Counsel lacks sufficient information to either admit or deny. Although Complaint Counsel understands that the Star ME-1's were largely distributed to contractors and others for installation in buildings, it is conceivable that some were sold directly to consumers who installed the sprinklers themselves.

**REQUEST FOR ADMISSION NO. 18:** Admit that Star ME-1's manufactured by SCM are not serviced by consumers themselves.

**RESPONSE:** Complaint Counsel objects that this request seeks information that is not relevant to the subject matter of this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Complaint Counsel also objects because the term "serviced" is not defined, and is too vague or ambiguous to allow for a response.

**REQUEST FOR ADMISSION NO. 19:** Admit that you are not aware of any Star ME-1's allegedly manufactured by SCM that have been installed in schools (as that term is used in 15 U.S.C. § 2052).

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 20:** Admit that you are not aware of any Star ME-1's allegedly manufactured by SCM that have been installed in a household or residence (as those terms are used in 15 U.S.C. § 2052).

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 21:** Admit that you are not aware of any Star ME-1's allegedly manufactured by SCM that have been installed in health care facilities.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 22:** Admit that you are not aware of any Star ME-1's allegedly manufactured by SCM that have been installed in day care centers.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 23:** Admit that you are not aware of any Star ME-1's allegedly manufactured by SCM that have been installed in nursing homes.

**RESPONSE:** Deny.

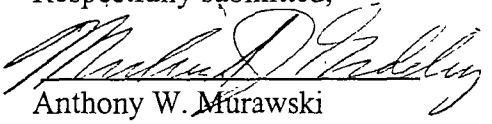
**REQUEST FOR ADMISSION NO. 24:** Admit that Star ME-1's manufactured by SCM are not consumer products within the meaning of 15 U.S.C. § 2052.

**RESPONSE:** Complaint Counsel objects to this request because it calls for a purely legal conclusion. Notwithstanding and without waiving the foregoing objection, Complaint Counsel answers as follows: Deny.

**REQUEST FOR ADMISSION NO. 25:** Admit that you did not conduct your own investigation of the fires in which Star ME-1's allegedly failed to activate.

**RESPONSE:** Complaint Counsel objects to this request because the term "your own investegation" is not defined, and is too vague or ambiguous to allow for a response. Notwithstanding and without waiving the foregoing objection, Complaint Counsel answers as follows: Deny.

Respectfully submitted,



Anthony W. Murawski
Michael J. Gidding

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1207

Dated:

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Answers to Respondent Grucon Corporation's First Set of Requests for Admission to be served on all parties of record in these proceedings, using the methods indicated below:

By overnight delivery:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart Boerner Van Deuren, s.c.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety
Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S RESPONSES TO GRUCON CORPORATION'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel responds as follows to Grucon Corporation's Second Request for Production of Documents and Things.

## GENERAL OBJECTIONS

### First General Objection

Complaint Counsel objects to these requests and to Respondents' definition of "you," "your," "Complainant," and the "CPSC," as follows: (a) to the extent the definition refers to the Consumer Product Safety Commission itself ("Commission"), as distinguished from the Commission staff which brought this action, and (b) to the extent these requests seek documents or things from or relating to the Commission itself. The Commission itself is not a party to this action. Complaint Counsel's responses to these requests are on behalf of, and reflect documents and things in the possession, custody, or control of the Commission staff which brought this action, including Complaint Counsel.

### Second General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things prohibited from disclosure pursuant to 15 U.S.C. § 2055 or under the terms of the Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation, filed February 14, 2002, or the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised), signed and dated by all counsel of record on March 22, March 26, and April 1, 2002 ("the Confidentiality Stipulations").

### Third General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things protected by the deliberative process privilege, attorney-client privilege, work product doctrine, or any other applicable privilege or protection. While Complaint Counsel will undertake to withhold documents or things protected by applicable privileges or doctrines, any inadvertent

production of such documents or things shall not be deemed a waiver of any applicable privilege, doctrine, or protection.

Fourth General Objection

Complaint Counsel objects to these requests to the extent they exceed the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

Fifth General Objection

Complaint Counsel objects to these requests to the extent that they request documents that have previously been provided to Respondents. Starting with the close of the first round of discovery in January, Complaint Counsel has served on all Respondents every document it has provided in response to any request for production by any Respondent. Accordingly, Respondents Grucon/Chemetron has already been provided with almost every document responsive to theur Second Requests for Production of Documents.

DOCUMENT REQUESTS AND RESPONSES

Request No. 1: All documents provided to the CPSC by any of the Respondents (including Chemetron Corporation, Chemetron Investments, Inc. and Sunbeam Corporation) in this action regarding Star ME-1 fire sprinklers.

Objections: Complaint Counsel objects to this request to the extent that it seeks documents that may not be disclosed pursuant to 15 U.S.C. § 2055 or under the terms of the Confidentiality Stipulations.

Response: Complaint Counsel will make all documents produced by Respondents Chemetron Corp., Chemetron Investments, Inc. and Sunbeam Corp. (Sunbeam/Chemetron) available for inspection and copying at its Betheda office, subject to Grucon/SCM compliance with the confidentiality stipulation for any documents for which Sunbeam/Chemetron claim confidentiality.

Request No. 2: All documents provided to the CPSC by any person, organization, business, or any other entity relating to Star ME- 1 fire sprinklers and/or Respondents.

Objections: Complaint Counsel objects to this request because it is overbroad, unduly burdensome, and unreasonably cumulative, and because it does not set forth with reasonable particularity the documents to be produced. This request is also ambiguous, because the term "Respondents" is undefined, and is subject to varying interpretations. Complaint Counsel also objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege or attorney work-product doctrine. See also Complaint Counsel's objections, and any supplemental objections, to Request No. 5 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Request for Production of Documents and Things.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See General Objection No. 5; See Complaint Counsel's response, and any supplemental responses, to Request No. 5 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Request for Production of Documents and Things Respondents' Request No. 5 requests "All documents that constitute the entirety of the CPSC administrative file regarding Star ME-1 fire sprinklers." Thus, all documents requested in the instant document request were subsumed in Respondents' Request No. 5. Complaint Counsel has produced all or nearly all documents that have been requested by all of the Respondents during the course of discovery in this proceeding, including documents in response to Request No. 5; except as restricted by Complaint Counsel's objections and claims of privilege. Complaint Counsel will continue to supplement its discovery responses as required under 16 C.F.R. § 1025.31(f).

Request No. 3: All documents provided to the CPSC by any non-party or fact witness that relate to Star ME-1 fire sprinklers.

Objections: Complaint Counsel objects to the portion of this request concerning "[a]ll documents provided to the CPSC by any non-party...that relate to Star ME-1 fire sprinklers" because it is overbroad, unduly burdensome, and unreasonably cumulative, and because it does not set forth with reasonable particularity the documents to be produced. Complaint Counsel also objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work-product doctrine, or documents that may not be disclosed pursuant to 15 U.S.C. § 2055, or under the terms of the Confidentiality Stipulations.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: With regard to the portion of this request concerning "[a]ll documents provided to the CPSC by any non-party...that relate to Star ME-1 fire sprinklers," see the response to Request No. 2, above. With regard to the portion of this request concerning "[a]ll documents provided to the CPSC by any...fact witness that relate to Star ME-1 fire sprinklers," see Complaint Counsel's response to Interrogatory No. 2, Complaint Counsel's response and any supplemental response to Request No. 12 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Request for Production of Documents, and Complaint Counsel's answer to Interrogatory No. 1 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Fourth Set of Interrogatories.

Request No. 4: All documents that constitute subpoenas or other requests for documents from the CPSC to any person, organization, business, or any other entity relating to Star ME-1 fire sprinklers.

Objections: See Complaint Counsel's objections to Request No. 13 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Request for Production of Documents and Things.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: All Respondents in this matter have been served with all of Complaint Counsel's applications for subpoenas submitted since the filing of the complaint in this matter. See also Complaint Counsel's response to Interrogatory No. 2, and Complaint Counsel's response and any supplemental responses to Request No. 13 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Request for Production of Documents and Things. See also the General Objections above.

Request No. 5: All documents provided to the CPSC in response to subpoenas or other requests for documents from the CPSC to any person, organization, business, or any other entity relating to Star ME-1 fire sprinklers.

Objections: Complaint Counsel objects to this request because it is unreasonably duplicative. See also Complaint Counsel's objections to Request No. 14 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Request for Production of Documents and Things, and the Second General Objection above.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See Complaint Counsel's response to Interrogatory No. 2, and the response and any supplemental responses to Request No. 14 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Request for Production of Documents and Things.

Request No. 6: All documents that you intend to rely on to prove any allegations set forth in the Complaint.

Objections: Complaint Counsel objects to this request because it is unreasonably duplicative.

Response: Notwithstanding and without waiving the foregoing objection, Complaint Counsel answers as follows: See Complaint Counsel's Response to Interrogatory No. 2. Complaint Counsel has produced all or nearly all of the documents upon which it may rely, will supplement production as is appropriate, and will designate those specific documents upon which it intends to rely in accordance with the discovery schedule in this matter and 16 C.F.R. 1025.21(a) and 1025.44. See Complaint Counsel's responses to Request Nos. 1 and 96 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Request for Production of Documents and Things.

Request No. 7: All documents relating to the incidents, transactions, and events mentioned in the Complaint.

Objections: Complaint Counsel objects to this request because it is unreasonably duplicative. Complaint Counsel also objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work-product doctrine, or documents that may not be disclosed pursuant to 15 U.S.C. § 2055, or under the terms of the Confidentiality Stipulations. See also Complaint Counsel's objections, and any supplemental objections, to Request Nos. 5, 47, 48, 60, 61, 63 and 98 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Request for Production of Documents and Things, and to Request Nos. 17 and 21 of Respondents' (Grucon Corporation and SCM) First Requests for Production of Documents and Things.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See Complaint Counsel's response to Interrogatory No. 2, and Complaint Counsel's responses and any supplemental responses to Request Nos. 5, 47, 48, 60,

61, 63 and 98 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Request for Production of Documents and Things, and to Request Nos. 17 and 21 of Respondents' (Grucon Corporation and SCM) First Requests for Production of Documents and Things.

Request No. 8: All documents that reflect or relate to your 1991 investigation of Star ME-1's.

Objections: Complaint Counsel objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work-product doctrine.

Response: Notwithstanding and without waiving the foregoing objection, Complaint Counsel answers as follows: See Complaint Counsel's response to Interrogatory No. 4 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Fourth Set of Interrogatories, and Complaint Counsel's response to Request No. 5 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Request for Production of Documents and Things. Although Interrogatory Nos. 4 and Request No. 5 are narrower in scope than the instant request, Complaint Counsel produced all documents, the production of which is not restricted by an objection, that reflect or relate to the CPSC staff's 1991 investigation of Star ME-1's.

Request No. 9: All documents that reflect or relate to the "silent" recall initiated in 1990 of the Star ME- 1 as referenced in your Answer to Interrogatory No. 7 to Respondents' First Set of Interrogatories.

Objections: Complaint Counsel objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work-product doctrine.

Response: Complaint Counsel has produced all responsive documents, unless restricted by its objections.

Request No. 10: All documents relating to the 1993 fire in a Troy, Missouri nursing home including, but not limited to, your investigation of the fire.

Objections: Complaint Counsel objects to this request because it is unreasonably duplicative. Complaint Counsel also objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work-product doctrine. See also Complaint Counsel's objections to Interrogatory Nos. 6 and 7 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Set of Interrogatories, and to Interrogatory Nos. 157 and 158 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Set of Interrogatories.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: Complaint Counsel has produced all responsive documents, unless restricted by its objections. See Complaint Counsel's answer, and any supplemental answers, to Interrogatory No. 7 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) First Set of Interrogatories, and to Interrogatory Nos. 157 and 158 of Respondents' (Chemetron Corporation, Chemetron Investments, and Sunbeam Corporation) Second Set of Interrogatories.

Request No. 11: All documents that reflect or relate to any communications between the CPSC and former employees of Grucon, Grunau Company, Grunau Project Development, or SCM including but not limited to interview notes, questions asked, answers received, documents exchanged or revealed by or between either party, and any audiotape or videotape of such communications.

Objections: Complaint Counsel objects to this request because it is unreasonably duplicative. See also Complaint Counsel also Complaint Counsel's objections, and any

supplemental objections, to Interrogatory No. 4 of Respondent's (Grucon and SCM) First Sets of Interrogatories, and Complaint Counsel's objections, and any supplemental objections, to Request No. 12 of Respondent's (Grucon and SCM) First Request for Production of Documents and Things. Complaint Counsel also objects to this request to the extent that it seeks documents protected by the deliberative process privilege, attorney-client privilege, or attorney work-product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See Complaint Counsel's answer, and any supplemental answers, Interrogatory No. 9 of Respondents' (Sunbeam/Chemetron) First Interrogatories and to Interrogatory No. 4 of Respondent's (Grucon and SCM) First Sets of Interrogatories. and see also Complaint Counsel's response, and any supplemental responses, to Request No. 12 of Respondent's (Grucon and SCM) First Request for Production of Documents and Things.

Request No. 12: All documents that reflect or relate to any communications between the CPSC and current employees of Grucon, Grunau Company, Grunau Project Development or SCM including but not limited to interview notes, questions asked, answers received, documents exchanged or revealed by or between either party, and any audiotape or videotape of such communications.

Objections: Complaint Counsel objects to this request because it is unreasonably duplicative. See also Complaint Counsel also Complaint Counsel's objections, and any supplemental objections, to Interrogatory No. 4 of Respondent's (Grucon and SCM) First Sets of Interrogatories, and Complaint Counsel's objections, and any supplemental objections, to Request No. 13 of Respondent's (Grucon and SCM) First Request for Production of Documents and Things.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See Complaint Counsel's answer, and any supplemental answers,

to Interrogatory No. 4 of Respondent's (Grucon and SCM) First Sets of Interrogatories, and Complaint Counsel's response, and any supplemental responses, to Request No. 13 of Respondent's (Grucon and SCM) First Request for Production of Documents and Things.

Request No. 13: All documents relied upon or referred to in your Response to Grucon's Second Set of Interrogatories to Complaint Counsel.

Objections: See Complaint Counsel's objections to Grucon's Second Set of Interrogatories.

Response: Complaint Counsel has produced all responsive documents, unless restricted by its objections.

Request No. 14: All documents relied upon or referred to in your Response to Grucon's First Set of Requests for Admission.

Objections: See Complaint Counsel's objections to Grucon's First Set of Requests for Admission.

Response: Complaint Counsel has produced all responsive documents, unless restricted by its objections.

Respectfully submitted,

Anthony W. Murawski
Michael J. Gidding

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Answers to Respondent Grucon Corp.'s Second Set of Requests for Production of Documents to be served on all parties of record in these proceedings, using the methods indicated below:

By overnight delivery:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart Boerner Van Deuren, s.c.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety
Commission

Todd A Stevenson, Secretary
Consumer Product Safety Commission Office of the Secretary
4340 East West Highway, Room502
Bethesda, MD 20814/ Wahington, DC 20207

**US Consumer Product Safety Commission**

SBP cc

# Fax

**To:** 1. Robert Barnett, Heidi Hubbard, Karyn Temple / Williams & Connolly 202-434-5029

2. Michael Brown, Margaret Freeston Brown & Freeston 202-237-5259

3. Ralph Weber, Kurt Dykstra / Reinhart, Boerner, Ban Deuren, Norris & Reiselbach 414-298-8097

4. Barbara Wrubel, Bert Wolff / Skadden, Arps, Slate, Meager & Flom 917-777-2314

5. Michael Gidding, CPSC 301-504-0008

**From:** Todd Stevenson, Secretary
Office of the Secretary

**Fax:**

**Pages:** 20

**Phone:** 301-504-0800, fax 301-504-0127

**Date:** 08/09/02

**Re:** In the Matter of Chemetron Corporation, et.al. CPSC Docket No. 02-1, Order on Complaint Counsel's Motion to Substitute Subpoenas, August 9, 2002

- **Comments:** Original copies of the Order will follow.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ADMINISTRATIVE LAW JUDGES
MAIL CODE 1900L
1200 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20460

TELEPHONE: 202 564-6255 FACSIMILE: 202 565-0044

# FAX TRANSMITTAL PAGE

**Date:** 8/9/02 **Page (incl. transmittal page):**

**From:** Judge Moran

**To:** Mr. Todd Stevenson, Secretary, USCPSC

**Fax:** 301-504-0127 **Telephone:** 301-504-0800x1232

Hard Copy To Be Mailed: X Yes No
Any Questions or Problems May Be Directed To:

Nelly Torres **Telephone:** 202 564-6258

In the Matter of Daisy Manufacturing Company, Inc., CPSC Docket No. 02-2
and
In the Matter of Chemetron Corporation - Docket No. 02-1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

August 9, 2002

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

FACSIMILE AND REGULAR MAIL
Mr. Todd Stevenson
Secretary, U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, Maryland 20814

Re: In the Matter of Chemetron Corporation, et al.
CPSC Docket No. 02-1

Dear Mr. Stevenson:

Enclosed is my Order, which was also sent via facsimile to you this date. Please transmit this Order via facsimile to all parties.

Sincerely,

William B. Moran

William B. Moran
United States Administrative Law Judge

Enclosure

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| CRUCON CORPORATION | |

**ORDER ON COMPLAINT COUNSEL'S MOTION TO SUBSTITUTE SUBPOENAS**

Upon consideration of Complaint Counsel's motion to substitute subpoenas with revised dates for document production and taking testimony for subpoenas originally filed with the Court, it is hereby ORDERED that:

1. Complaint Counsel's motion is granted, and

It is further ORDERED that:

2. Prior to transmittal to the Commission of the subpoena applications directed to Underwriters Laboratories, Factory Mutual Insurance Company, Marvin Evans, and Jerome Pepi, the Secretary of the Commission shall substitute the attached subpoena that corresponds to each of the named deponents for the corresponding subpoena originally filed with the Court, and

It is further ORDERED that:

3. For any subpoena application directed to one of the four deponents that has already been transmitted to the Commission, the Secretary of the Commission shall take the necessary steps to replace the subpoena attached to that application with the appropriate substitute subpoena.

William B. Moran
William B. Moran
United States Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2002, I served the attached **Order on Complaint Counsel's Motion to Substitute Subpoenas** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Karyn A. Temple, Esquire
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael J.Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway, Rm. 613
Bethesda, MD 20814

Michael A. Brown, Esquire
Margaret A.Freeston, Esquire
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esquire
Bert L. Wolff, Esquire
Skadden, Arps, Slate, Meager & Flom, LLP
Four Times Square
New York, NY 10037

Ralph A. Weber, Esquire
Kurt D. Dykstra, Esquire
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Nelida Torres
Legal Staff Assistant

Dated: August 9, 2002



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

August 9, 2002

BY FACSIMILE AND CERTIFIED MAIL
Mr. Todd Stevenson
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, Maryland 20814

Re: In the Matter of Chemetron Corporation, et al.
CPSC Docket No. 02-1

Dear Mr. Stevenson:

Pursuant to 16 C.F.R. § 1025.38(c), I am bringing to the attention of the Commission (through your office) applications for issuance of a subpoena for the following non-party:

1. James M. Martin

I ask that you forward the subpoena to the Commission. The original is being returned to you.

Sincerely,

William B. Moran

William B. Moran
United States Administrative Law Judge

Enclosure

ORIGINAL

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

APPLICATION FOR ISSUANCE OF SUBPOENA
COMPELLING ATTENDANCE, TESTIMONY, AND PRODUCTION OF DOCUMENTS
**(James M. Martin)**

To the COMMISSION
Through the PRESIDING OFFICER

Pursuant to the Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 1025.38, a party may obtain a subpoena to obtain documentary or testimonial evidence relevant to the proceeding from non-parties. The party must submit an application through the Presiding Officer to the Commission for authorization.

The attached Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena"; see Exhibit A) is directed to James M. Martin (hereinafter "Mr. Martin"). Mr. Martin has held positions related to fire sprinklers at various subsidiaries of Tyco International Ltd. (hereinafter "Tyco"), including in Research and Development for Grinnell Corporation, and, currently, as Senior Projects Engineer, Research and Development, of Tyco Fire Products L.P. Mr. Martin had significant involvement in matters pertaining to Star ME-1's (the products at issue in this litigation), including Star ME-1's manufactured and distributed by the Respondents in this matter.[1] Mr. Martin conducted testing and analysis of Star ME-1's produced prior to 1996 (the time period at issue in this litigation), wrote memoranda regarding such testing and analysis, and received analyses from testing laboratories.

Mr. Martin's work at the Tyco subsidiaries relates directly to allegations in the Complaint concerning the defect and hazard issues in the case. Complaint Counsel believes that Mr. Martin has in his possession, custody, or control information that explains or expands upon the information contained in documents relating to the Star ME-1 and that support or relate to the Complaint.

On July 3, 2002, counsel for Tyco and its subsidiaries (Wiley, Rein & Fielding) informed Complaint Counsel that it should serve a subpoena for Tyco subsidiary employees regarding Star ME-1's on Wiley, Rein & Fielding, and that such counsel would forward the subpoena to subpoenaed employees.

[1] Grinnell Corporation purchased the Star ME-1 line from Respondent Sprinkler Corporation of Milwaukee, Inc. (which was then known as Star Sprinkler Corporation) pursuant to an Asset Purchase Agreement dated January 31, 1996.

Accordingly, Complaint Counsel asks that the Commission authorize the issuance of the attached Subpoena.

Respectfully submitted,

Seth B. Popkin

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2002, I served the foregoing **Application for Issuance of Subpoena Compelling Attendance, Testimony, and Production of Documents and the accompanying proposed Subpoena**, upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Preston, Esq.
Brown & Preston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

and by overnight mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Seth B. Popkin

ORIGINAL

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| | ) | |
| and | ) | |
| | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| SUNBEAM CORPORATION | ) | |
| | ) | |
| and | ) | |
| | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| GRUCON CORPORATION | ) | |

TO: **James M. Martin**
**Senior Projects Engineer, Research and Development**
**Tyco Fire Products L.P.**
**1467 Elmwood Avenue**
**Cranston, RI 02910**

C/O Andrew S. Krulwich, Esq.
William A. McGrath, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Counsel for Tyco International Ltd. and Tyco Fire Products L.P.

SUBPOENA COMPELLING ATTENDANCE,
TESTIMONY, AND PRODUCTION OF DOCUMENTS

On October 9, 2001, the staff (hereinafter "staff") of the United States Consumer Product Safety Commission (hereinafter "Commission") filed an administrative complaint seeking public notification and remedial action to protect the public from a substantial product hazard presented by failure of Star MB-1 fire sprinklers manufactured from 1977 to 1995.

The Commission authorized issuance of this Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena") under the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §1025.38 and its authority under Section 27(b)(3) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2076(b) (3).

I. GENERAL INSTRUCTIONS

The Commission's rules for adjudicative proceedings govern this Subpoena. See 16 C.F.R. § 1025.38.

You are required to produce the documents requested below under oath or affirmation, including, if applicable, a statement that all documents produced are true and correct copies of the originals and that they were maintained in the normal course of business. You shall answer the Subpoena, and you shall state your name, address, telephone number, and title, and describe your duties and responsibilities. To the extent the documents produced are within the scope of, and/or have been submitted in response to, the Subpoena, but are not within your custody and control, identify the officials, employees, or other persons who have provided such documents. Identify those individuals by name, address, title, duties, and responsibilities, and specify the documents they provided.

A sworn statement should accompany your response attesting that a diligent search and inquiry was made for all responsive documents, and that your response is complete, true and

accurate. If you cannot comply with a particular request for production of documents, the response shall specify with particularity the reason for the inability to comply. If the requested document is no longer in your possession, custody, or control, the response shall set forth the name, address, and telephone number of any person or organization you know or believe to have possession, custody, or control of that document.

If you believe any of the documents you are submitting contain or relate to a trade secret or other matter referred to in Section 1905 of Title 18 of the United States Code, you should submit a written request for confidential treatment for that document, specifying in detail the basis for your claim.

If you fail to respond or you furnish false or misleading information, you may subject yourself to civil and criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070, or to criminal prosecution under 18 U.S.C. § 1001.

Questions about this Subpoena should be directed to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, (301) 504-0626, ext. 1358.

## II. DEFINITIONS

1. "You" and "your" shall mean the party to whom this Subpoena is directed (including if previously known under different names), including all of your past and present representatives, agents, and employees, and all other past and present persons acting or purporting to act on your behalf (including, but not limited to, all past and present agents and employees exercising discretion, discharging duties, making policy, or making decisions).

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or

computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes, amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any natural person, entity, group, firm, sole proprietorship, partnership, corporation, business association, joint venture, trust, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person

works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to you.

6. "Identify" or "identity" when used with respect to a business, entity, building, property, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to you.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. The definition of terms listed in 15 U.S.C. § 2052 are incorporated in this definition as though fully set forth herein.

9. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star" brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

## III. SPECIFIC INSTRUCTIONS

A. This request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or

control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

B. This request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

C. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

D. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

E. The singular shall include the plural, and vice versa.

F. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, you are requested to contact Seth B. Popkin of the Commission staff for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

G. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by this Subpoena, specify the privilege claimed and the

factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

II. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

I. In the event that any document sought by this Subpoena has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

J. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

K. **To facilitate identification and organization of the documents, bates-stamp all documents produced, and segregate the documents according to the numbered paragraph or subparagraphs to which they relate.**

## IV. PRODUCTION OF DOCUMENTS

You are hereby directed to provide the following:

1. To the extent not previously produced to the CPSC staff by Tyco International Ltd. or any of its subsidiaries, all documents relating to Star ME-1's, including, but not limited to, the following:

   a. All documents relating to testing, analysis, examination, and evaluation of Star ME-1's, conducted by you, any persons on your behalf, any persons on behalf of Tyco International Ltd. or any of its subsidiaries (including, but not limited to, Star Sprinkler, Inc. and Grinnell Corporation), or any other persons, including, but not limited to, all documents prepared or created in connection therewith;

   b. All documents relating to testing, analysis, examination, and evaluation of lubricants, O-rings, and/or any other components used in or with Star ME-1's, conducted by you, any persons on your behalf, any persons on behalf of Tyco International Ltd. or any of its subsidiaries (including, but not limited to, Star Sprinkler, Inc. and Grinnell Corporation), or any other persons, including, but not limited to, all documents prepared or created in connection therewith;

   c. All documents relating to complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns about Star ME-1's; and

d. All documents relating to the decision by Tyco International Ltd. or any of its subsidiaries (including, but not limited to, Star Sprinkler, Inc. and Grinnell Corporation) to discontinue manufacturing and/or distribution of Star ME-1's, including documents relating to the deliberations leading to such decision.

2. Your current curriculum vitae or resume.

You are ordered to produce the documents described in Section IV to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, on or before August 28, 2002.

## V. APPEARANCE TO TESTIFY

You are directed to appear at the offices of Tyco Fire Products L.P., 1467 Elmwood Avenue, Cranston, RI 02910, to testify with respect to the documents and matters referred to in section IV, and with respect to other documents and information provided to the CPSC staff relating to Star ME-1's, on September 4, 2002 at 10:00 A.M., and continuing thereafter until your testimony is concluded.

BY ORDER OF THE COMMISSION

_____
TODD A. STEVENSON
Secretary
U.S. Consumer Product Safety Commission

DATE:

SBP cc ref

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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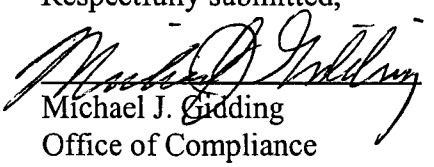
| In the matter of<br><br>CHEMETRON CORPORATION,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF<br>MILWAUKEE, INC., f/k/a Star Sprinkler<br>Corporation, f/k/a Grunau Sprinkler<br>Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S MOTION TO SUBSTITUTE SUBPOENAS**

Between June 14 and July 8, 2002, Complaint Counsel filed with the Court applications for individual subpoenas compelling document production and testimony from four third parties - Underwriters Laboratories, Factory Mutual Insurance Company, Jerome Pepi, and Marvin Evans. At the time that those applications were filed, Complaint Counsel anticipated that confirmation of the Chairman would take place in short order, providing the Commission with the quorum required for it to authorize the subpoenas to issue. The subpoenas accordingly

establish dates for document production and taking testimony consistent with the original cut-off of discovery, August 9. However, since the Chairman was not sworn in until August 1, the dates established in all four subpoenas have elapsed or will elapse before they can be voted out and served. Inasmuch as the Court has extended the close of discovery until September 27, 2002, we respectfully move the Court to permit the attached subpoenas with revised dates for document production and taking testimony to be substituted for the subpoenas originally filed with the Court. Counsel for Respondents Sunbeam Corporation, Chemetron Corporation, Chemetron Investments, Inc., Grucon Corporation, and Sprinkler Corporation of Milwaukee, Inc. have informed Complaint Counsel that the Respondents do not oppose this motion.

Respectfully submitted,



Michael J. Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway
Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1344

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**ORDER ON COMPLAINT COUNSEL'S MOTION TO SUBSTITUTE SUBPOENAS**

Upon consideration of Complaint Counsel's motion to substitute subpoenas with revised dates for document production and taking testimony for subpoenas originally filed with the Court, it is hereby ORDERED that:

1. Complaint Counsel's motion is granted, and

It is further ORDERED that:

2. Prior to transmittal to the Commission of the subpoena applications directed to Underwriters Laboratories, Factory Mutual Insurance Company, Marvin Evans, and Jerome Pepi, the Secretary of the Commission shall substitute the attached subpoena that corresponds to each of the named deponents for the corresponding subpoena originally filed with the Court, and

It is further ORDERED that:

3. For any subpoena application directed to one of the four deponents that has already been transmitted to the Commission, the Secretary of the Commission shall take the necessary steps to replace the subpoena attached to that application with the appropriate substitute subpoena.

William B. Moran
United States Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2002, I served the foregoing Complaint Counsel's Motion to Substitute Subpoenas upon the following counsel for the parties of record in these proceedings by overnight mail, postage prepaid, to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**TO: Factory Mutual Insurance Company**
**FM Global Research and FM Approvals (f/k/a Factory Mutual Research Corporation)**
**1301 Atwood Avenue**
**Johnston, RI 02919**

**ATTN: Peter H. Hachenberg, Esq., Vice President, FM Global Research and FM Approvals**

SUBPOENA COMPELLING ATTENDANCE,
TESTIMONY, AND PRODUCTION OF DOCUMENTS

On October 9, 2001, the staff (hereinafter "staff") of the United States Consumer Product Safety Commission (hereinafter "Commission") filed an administrative complaint seeking public

notification and remedial action to protect the public from a substantial product hazard presented by failure of Star ME-1 fire sprinklers manufactured from 1977 to 1995.

The Commission authorized issuance of this Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena") under the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §1025.38 and its authority under Section 27(b)(3) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2076(b) (3).

## I. GENERAL INSTRUCTIONS

The Commission's rules for adjudicative proceedings govern this Subpoena. See 16 C.F.R. § 1025.38.

Factory Mutual Insurance Company (hereinafter "FMIC"), including its affiliates and business units FM Global Research (hereinafter "FMGR") and FM Approvals (hereinafter "FMA"), is required to produce the documents requested below under oath or affirmation, including, if applicable, a statement that all documents produced are true and correct copies of the originals and that they were maintained in the normal course of business. The Subpoena shall be answered by FMIC, or by such other responsible individual who has the greatest knowledge of and control over the information being sought ("Responding Official"). Identify the Responding Official, provide his/her name, address, telephone number, and title, and describe his/her duties and responsibilities. To the extent the documents are within the scope of, and/or have been submitted in response to, the Subpoena, but are not within the custody and control of the Responding Official, identify the officials or employees who have provided such documents. Identify those individuals by name, address, title, duties, and responsibilities, and specify the documents provided.

A sworn statement should accompany FMIC's response attesting that a diligent search and inquiry was made for all responsive documents, and that its response is complete, true and accurate. If you cannot comply with a particular request for production of documents, the response shall specify with particularity the reason for the inability to comply. If the requested document is no longer in the possession, custody, or control of FMIC and/or the Responding Official, the response shall set forth the name, address and telephone number of any natural person or organization known or believed by the Responding Official to have possession, custody, or control of that document.

If you believe any of the documents you are submitting contain or relate to a trade secret or other matter referred to in Section 1905 of Title 18 of the United States Code, you should submit a written request for confidential treatment for that document, specifying in detail the basis for your claim.

If you fail to respond or you furnish false or misleading information, you may subject yourself to civil and criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070, or to criminal prosecution under 18 U.S.C. §1001.

Questions about this Subpoena should be directed to Howard N. Tarnoff, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East-West Highway, Bethesda, Maryland 20814-4408, (301) 504-0626, ext. 1382.

## II. DEFINITIONS

1. "You," "your," and "FMIC" shall mean the party to whom this Subpoena is directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of FMIC, all other past and present persons acting or purporting to act on the FMIC's behalf (including, but not limited to, all past or

present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to FMIC), and all past and present parent companies, divisions, branches, subsidiaries, business units, and affiliates of FMIC, including, but not limited to, FM Global Research, FM Approvals, and Factory Mutual Research Corporation.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes, amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any natural person, entity, group, firm, sole proprietorship, partnership, corporation, business, association, joint venture, trust, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to FMIC.

6. "Identify" or "identity" when used with respect to a business, entity, building, property, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to FMIC.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. The definition of terms listed in 15 U.S.C. § 2052 are incorporated in this definition as though fully set forth herein.

9. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

## III. SPECIFIC INSTRUCTIONS

A. This request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

B. This request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

C. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

D. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

E. The singular shall include the plural, and vice versa.

F. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, FMIC is requested to contact Howard N. Tarnoff of the Commission staff for

the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

G. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by this Subpoena, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

H. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

I. In the event that any document sought by this Subpoena has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

J. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or

blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

**K. To facilitate identification and organization of the documents, bates-stamp all documents produced, and segregate the documents according to the numbered paragraph or subparagraphs to which they relate.**

## IV. WRITTEN QUESTIONS

You are hereby directed to respond to the following inquiries:

1. Identify the current or former FMIC employee who has the most knowledge about FMIC's testing, analysis, and evaluation of Star ME-1's removed from service in buildings or other structures or installation locations.
2. Identify the current or former FMIC employee who has the most knowledge about complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns with Star ME-1's.
3. Identify the current or former FMIC employee who has the most knowledge about FMIC's analysis of O-ring water seals found in dry sprinklers, including, but not limited to, Star ME-1's.
4. Identify the current or former FMIC employee who has the most knowledge about FMIC's testing, performance, and other standards that are applicable to dry sprinklers, including, but not limited to, Star ME-1's.
5. To the extent not previously identified, identify all properties that are FMIC insureds that have Star ME-1's currently in service.

You are ordered to respond to the inquiries described in Section IV by providing written answers to Howard N. Tarnoff, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East-West Highway, Bethesda, Maryland 20814-4408, on or before July 26, 2002 at 10:00 A.M.

## V. PRODUCTION OF DOCUMENTS

You are hereby directed to provide the following:

1. To the extent not previously produced by FMIC to the CPSC staff, all documents relating to the following:
    a) testing and approval records for Star ME-1's; and
    b) correspondence referencing or relating to Star ME-1's, including all FMIC internal correspondence, and correspondence between or among FMIC, the manufacturers of Star ME-1's, and/or FMIC insureds.
2. To the extent not previously produced by FMIC to the CPSC staff, copies of all Risk Service Analysis Reports and Re-examination Reports for Star ME-1's.
3. To the extent not previously produced by FMIC to the CPSC staff, all documents relating to testing, analysis, and evaluation of Star ME-1's removed from service in buildings or other installation locations.
4. To the extent not previously produced by FMIC to the CPSC staff, all documents relating to complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns with Star ME-1's.

5. To the extent not previously produced by FMIC to the CPSC staff, all documents relating to (a) Star ME-1's and/or (b) any other dry fire sprinklers, and supporting the revision of the National Fire Protection Association ("NFPA") 25 Standard for Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, which became effective on August 9, 1999.
6. To the extent not previously produced by FMIC to the CPSC staff, all documents relating to (a) Star ME-1's and/or (b) any other Star dry fire sprinklers, and supporting FMIC Engineering Bulletin F28-90 dated January 24, 1991 entitled "Star Dry Pendant Sprinklers Possible Failure Problem."
7. All of FMIC's written document retention policies in effect since January 1, 1975.

You are ordered to produce the documents described in Section V toAndrea Paterson, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East-West Highway, Bethesda, Maryland 20814-4408, on or before August 23, 2002 at 10:00 A.M.

## VI. APPEARANCE TO TESTIFY

The person(s) identified by you in response to the questions in Section IV of this Subpoena are directed to appear at the law offices of Robins, Kaplan, Miller & Ciresi L.L.P, 111 Huntington Avenue, Suite 1300, Boston, MA 02199-7610 to testify with respect to the matters referred to above on September 5, 2002 at 10 A.M., and continuing thereafter until their testimony is concluded.

BY ORDER OF THE COMMISSION

_____

TODD A. STEVENSON
Secretary
U.S. Consumer Product Safety Commission

DATE:

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**TO:** **Jerome S. Pepi**
**Sr. Vice President, Research and Development**
**Tyco Flow Control, Inc.**
**1467 Elmwood Avenue**
**Cranston, RI 02910**

C/O Andrew S. Krulwich, Esq.
William A. McGrath, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Counsel for Tyco International Ltd., Tyco Flow Control, Inc., and Star Sprinkler, Inc.

SUBPOENA COMPELLING ATTENDANCE,
TESTIMONY, AND PRODUCTION OF DOCUMENTS

On October 9, 2001, the staff (hereinafter "staff") of the United States Consumer Product Safety Commission (hereinafter "Commission") filed an administrative complaint seeking public notification and remedial action to protect the public from a substantial product hazard presented by failure of Star ME-1 fire sprinklers manufactured from 1977 to 1995.

The Commission authorized issuance of this Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena") under the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §1025.38 and its authority under Section 27(b)(3) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2076(b) (3).

## I. GENERAL INSTRUCTIONS

The Commission's rules for adjudicative proceedings govern this Subpoena. See 16 C.F.R. § 1025.38.

You are required to produce the documents requested below under oath or affirmation, including, if applicable, a statement that all documents produced are true and correct copies of the originals and that they were maintained in the normal course of business. You shall answer the Subpoena, and you shall state your name, address, telephone number, and title, and describe your duties and responsibilities. To the extent the documents produced are within the scope of, and/or have been submitted in response to, the Subpoena, but are not within your custody and control, identify the officials, employees, or other persons who have provided such documents. Identify those individuals by name, address, title, duties, and responsibilities, and specify the documents they provided.

A sworn statement should accompany your response attesting that a diligent search and inquiry was made for all responsive documents, and that your response is complete, true and

accurate. If you cannot comply with a particular request for production of documents, the response shall specify with particularity the reason for the inability to comply. If the requested document is no longer in your possession, custody, or control, the response shall set forth the name, address, and telephone number of any person or organization you know or believe to have possession, custody, or control of that document.

If you believe any of the documents you are submitting contain or relate to a trade secret or other matter referred to in Section 1905 of Title 18 of the United States Code, you should submit a written request for confidential treatment for that document, specifying in detail the basis for your claim.

If you fail to respond or you furnish false or misleading information, you may subject yourself to civil and criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070, or to criminal prosecution under 18 U.S.C. § 1001.

Questions about this Subpoena should be directed to Howard N. Tarnoff, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, (301) 504-0626, ext. 1382.

## II. DEFINITIONS

1. "You" and "your" shall mean the party to whom this Subpoena is directed (including if previously known under different names), including all of your past and present representatives, agents, and employees, and all other past and present persons acting or purporting to act on your behalf (including, but not limited to, all past and present agents and employees exercising discretion, discharging duties, making policy, or making decisions).

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or

computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes, amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any natural person, entity, group, firm, sole proprietorship, partnership, corporation, business association, joint venture, trust, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person

works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to you.

6. "Identify" or "identity" when used with respect to a business, entity, building, property, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to you.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. The definition of terms listed in 15 U.S.C. § 2052 are incorporated in this definition as though fully set forth herein.

9. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star" brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

## III. SPECIFIC INSTRUCTIONS

A. This request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or

control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

B. This request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

C. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

D. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

E. The singular shall include the plural, and vice versa.

F. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, you are requested to contact Howard N. Tarnoff of the Commission staff for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

G. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by this Subpoena, specify the privilege claimed and the

factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

H. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

I. In the event that any document sought by this Subpoena has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

J. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

**K. To facilitate identification and organization of the documents, bates-stamp all documents produced, and segregate the documents according to the numbered paragraph or subparagraphs to which they relate.**

## IV. PRODUCTION OF DOCUMENTS

You are hereby directed to provide the following:

1. To the extent not previously produced to the CPSC staff by Tyco International Ltd. or any of its subsidiaries, all documents you wrote, received, or reviewed that relate to Star ME-1's, including, but not limited to, the following:

   a. All documents relating to testing, analysis, examination, and evaluation of Star ME-1's that you or any person you supervised conducted, or that were conducted by any persons on behalf of Tyco International Ltd. or any of its subsidiaries, including, but not limited to, all documents prepared or created in connection therewith;

   b. All documents relating to testing, analysis, examination, and evaluation of lubricants and/or O-rings used in or with Star ME-1's that you or any person you supervised conducted, or that were conducted by any persons on behalf of Tyco International Ltd. or any of its subsidiaries, including, but not limited to, all documents prepared or created in connection therewith;

   c. All documents relating to complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns about Star ME-1's; and

   d. All documents relating to the deliberation and decision by Star Sprinkler, Inc., Grinnell Corporation, and/or Tyco Flow Control,

Inc. to discontinue manufacturing and/or distribution of Star ME-1's.

2. To the extent not previously produced to the CPSC staff by Tyco International Ltd. or any of its subsidiaries, all documents you wrote, received, or reviewed that relate to (a) Star ME-1's and/or (b) any other dry fire sprinklers, and that support the revision of the National Fire Protection Association ("NFPA") 25 Standard for Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, which became effective on August 9, 1999.

3. Your current curriculum vitae or resume.

You are ordered to produce the documents described in Section IV to Andrea Paterson, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, on or before August 23, 2002.

## V. APPEARANCE TO TESTIFY

You are directed to appear at the offices of Tyco Flow Control, Inc. 1467 Elmwood Avenue, Cranston, RI 02910, to testify with respect to the documents and matters referred to in section IV (including documents previously provided to the CPSC staff relating to Star ME-1's), on September 3, 2002 at 10:00 A.M., and continuing thereafter until your testimony is concluded.

BY ORDER OF THE COMMISSION

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TODD A. STEVENSON
Secretary
U.S. Consumer Product Safety Commission

DATE:

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**TO: Underwriters Laboratories Inc.**
**333 Pfingsten Road**
**Northbrook, IL 60062**

**ATTN: Geoffrey A. Lewis, Managing Corporate Counsel—Litigation Services**

SUBPOENA COMPELLING ATTENDANCE, TESTIMONY, AND PRODUCTION OF DOCUMENTS

On October 9, 2001, the staff (hereinafter "staff") of the United States Consumer Product Safety Commission (hereinafter "Commission") filed an administrative complaint seeking public

notification and remedial action to protect the public from a substantial product hazard presented by failure of Star ME-1 fire sprinklers manufactured from 1977 to 1995.

The Commission authorized issuance of this Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena") under the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §1025.38 and its authority under Section 27(b)(3) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2076(b) (3).

## I. GENERAL INSTRUCTIONS

The Commission's rules for adjudicative proceedings govern this Subpoena. See 16 C.F.R. § 1025.38.

Underwriters Laboratories Inc. (hereinafter "UL") is required to produce the documents requested below under oath or affirmation, including, if applicable, a statement that all documents produced are true and correct copies of the originals and that they were maintained in the normal course of business. The Subpoena shall be answered by UL, or by such other responsible individual who has the greatest knowledge of and control over the information being sought ("Responding Official"). Identify the Responding Official, provide his/her name, address, telephone number, and title, and describe his/her duties and responsibilities. To the extent the documents are within the scope of, and/or have been submitted in response to, the Subpoena, but are not within the custody and control of the Responding Official, identify the officials or employees who have provided such documents. Identify those individuals by name, address, title, duties, and responsibilities, and specify the documents provided.

A sworn statement should accompany UL's response attesting that a diligent search and inquiry was made for all responsive documents, and that its response is complete, true and accurate. If you cannot comply with a particular request for production of documents, the

response shall specify with particularity the reason for the inability to comply. If the requested document is no longer in the possession, custody, or control of UL and/or the Responding Official, the response shall set forth the name, address and telephone number of any natural person or organization known or believed by the Responding Official to have possession, custody, or control of that document.

If you believe any of the documents you are submitting contain or relate to a trade secret or other matter referred to in Section 1905 of Title 18 of the United States Code, you should submit a written request for confidential treatment for that document, specifying in detail the basis for your claim.

If you fail to respond or you furnish false or misleading information, you may subject yourself to civil and criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070, or to criminal prosecution under 18 U.S.C. §1001.

Questions about this Subpoena should be directed to Howard N. Tarnoff, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East-West Highway, Bethesda, Maryland 20814-4408, (301) 504-0626, ext. 1382.

## II. DEFINITIONS

1. "You," "your," and "UL" shall mean the party to whom this Subpoena is directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of UL, all other past and present persons acting or purporting to act on the UL's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to UL), and all past and present parent companies, divisions, branches, subsidiaries, and affiliates of UL.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes, amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any natural person, entity, group, firm, sole proprietorship, partnership, corporation, business, association, joint venture, trust, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to UL.

6. "Identify" or "identity" when used with respect to a business, entity, building, property, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to UL.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. The definition of terms listed in 15 U.S.C. § 2052 are incorporated in this definition as though fully set forth herein.

9. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star" brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

## III. SPECIFIC INSTRUCTIONS

A. This request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

B. This request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

C. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

D. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

E. The singular shall include the plural, and vice versa.

F. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, UL is requested to contact Howard N. Tarnoff of the Commission staff for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full

statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

G. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by this Subpoena, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

H. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

I. In the event that any document sought by this Subpoena has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

J. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or

blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

**K. To facilitate identification and organization of the documents, bates-stamp all documents produced, and segregate the documents according to the numbered paragraph or subparagraphs to which they relate.**

## IV. WRITTEN QUESTIONS

You are hereby directed to respond to the following inquiries:

1. Identify the current or former UL employee who has the most knowledge about UL's testing, analysis, and evaluation of Star ME-1's removed from service in buildings or other structures or installation locations.
2. Identify the current or former UL employee who has the most knowledge about complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns with Star ME-1's.
3. Identify the current or former UL employee who has the most knowledge about UL's analysis of O-ring water seals found in dry sprinklers, including, but not limited to, Star ME-1's.
4. Identify the current or former UL employee who has the most knowledge about UL's testing, performance, and other standards that are applicable to dry sprinklers, including, but not limited to, Star ME-1's.

5. Identify the current or former UL employee who has the most knowledge about the standards, revisions, and press releases identified in Section V below.

You are ordered to respond to the inquiries described in Section IV by providing written answers to Howard N. Tarnoff, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East-West Highway, Bethesda, Maryland 20814-4408, on or before July 19, 2002 at 10:00 A.M.

## V. PRODUCTION OF DOCUMENTS

You are hereby directed to provide the following:

1. To the extent not previously produced by UL to the CPSC staff, all documents relating to testing, analysis, and evaluation of Star ME-1's removed from service in buildings or other installation locations.
2. To the extent not previously produced by UL to the CPSC staff, all documents relating to complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns with Star ME-1's.
3. To the extent not previously produced by UL to the CPSC staff, all documents relating to (a) Star ME-1's and/or (b) any other dry fire sprinklers, and supporting the revision of the National Fire Protection Association ("NFPA") 25 Standard for Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, which became effective on August 9, 1999.
4. To the extent not previously produced by UL to the CPSC staff, all documents relating to (a) Star ME-1's and/or (b) any other dry fire sprinklers, and

supporting UL's issuance of a press release on January 22, 1999 entitled "UL Investigates Field Samples of Dry Sprinklers."

5. To the extent not previously produced by UL to the CPSC staff, all documents relating to (a) Star ME-1's and/or (b) any other dry fire sprinklers, and supporting UL's issuance of a press release on March 3, 2000 entitled "UL Urges Testing of Dry Sprinklers."
6. To the extent not previously produced by UL to the CPSC staff, all documents relating to (a) Star ME-1's and/or (b) any other dry fire sprinklers, and supporting UL's revision of UL 199 "UL's Standard for Safety for Automatic Sprinklers for Fire Protection Service," as announced by a UL press release dated July 27, 2001.
7. To the extent not previously produced by UL to the CPSC staff, all documents relating to (a) Star ME-1's and/or (b) any other dry fire sprinklers, and supporting UL's issuance of a press release on December 21, 2001 entitled "UL Continues to Urge Inspection and Testing of Dry Sprinklers."
8. All of UL's written document retention policies in effect since January 1, 1975.

You are ordered to produce the documents described in Section V to Andrea Paterson, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East-West Highway, Bethesda, Maryland 20814-4408, on or before August 16, 2002 at 10:00 A.M.

## VI. APPEARANCE TO TESTIFY

The person(s) identified by you in response to the questions in Section IV of this Subpoena are directed to appear at UL's offices at 333 Pfingsten Road, Northbrook, IL 60062 to testify with respect to the matters referred to above on August 29, 2002 at 10 A.M., and continuing thereafter until their testimony is concluded.

BY ORDER OF THE COMMISSION

_____
TODD A. STEVENSON
Secretary
U.S. Consumer Product Safety Commission

DATE:

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**TO: Marvin Evans, P.E.**
**Metallurgical Engineer**
**8550 North Fielding Road**
**Milwaukee, WI 53217**

SUBPOENA COMPELLING ATTENDANCE,
TESTIMONY, AND PRODUCTION OF DOCUMENTS

On October 9, 2001, the staff (hereinafter "staff") of the United States Consumer Product Safety Commission (hereinafter "Commission") filed an administrative complaint seeking public notification and remedial action to protect the public from a substantial product hazard presented by failure of Star ME-1 fire sprinklers manufactured from 1977 to 1995.

The Commission authorized issuance of this Subpoena Compelling Attendance, Testimony, and Production of Documents (hereinafter "Subpoena") under the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §1025.38 and its authority under Section 27(b)(3) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2076(b) (3).

## I. GENERAL INSTRUCTIONS

The Commission's rules for adjudicative proceedings govern this Subpoena. See 16 C.F.R. § 1025.38.

You are required to produce the documents requested below under oath or affirmation, including, if applicable, a statement that all documents produced are true and correct copies of the originals and that they were maintained in the normal course of business. You shall answer the Subpoena, and you shall state your name, address, telephone number, and title, and describe your duties and responsibilities. To the extent the documents produced are within the scope of, and/or have been submitted in response to, the Subpoena, but are not within your custody and control, identify the officials, employees, or other persons who have provided such documents. Identify those individuals by name, address, title, duties, and responsibilities, and specify the documents they provided.

A sworn statement should accompany your response attesting that a diligent search and inquiry was made for all responsive documents, and that your response is complete, true and accurate. If you cannot comply with a particular request for production of documents, the response shall specify with particularity the reason for the inability to comply. If the requested document is no longer in your possession, custody, or control, the response shall set forth the name, address, and telephone number of any person or organization you know or believe to have possession, custody, or control of that document.

If you believe any of the documents you are submitting contain or relate to a trade secret or other matter referred to in Section 1905 of Title 18 of the United States Code, you should submit a written request for confidential treatment for that document, specifying in detail the basis for your claim.

If you fail to respond or you furnish false or misleading information, you may subject yourself to civil and criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. §§ 2069 and 2070, or to criminal prosecution under 18 U.S.C. § 1001.

Questions about this Subpoena should be directed to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, (301) 504-0626, ext. 1358.

## II. DEFINITIONS

1. "You" and "your" shall mean the party to whom this Subpoena is directed (including if previously known under different names), including all of your past and present representatives, agents, and employees, and all other past and present persons acting or purporting to act on your behalf (including, but not limited to, all past and present agents and employees exercising discretion, discharging duties, making policy, or making decisions).

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations,

interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes, amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any natural person, entity, group, firm, sole proprietorship, partnership, corporation, business association, joint venture, trust, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to you.

6. "Identify" or "identity" when used with respect to a business, entity, building, property, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation,

registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to you.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. The definition of terms listed in 15 U.S.C. § 2052 are incorporated in this definition as though fully set forth herein.

9. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star" brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

## III. SPECIFIC INSTRUCTIONS

A. This request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

B. This request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

C. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

D. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

E. The singular shall include the plural, and vice versa.

F. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, you are requested to contact Seth B. Popkin of the Commission staff for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

G. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by this Subpoena, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

H. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

I. In the event that any document sought by this Subpoena has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

J. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

K. To facilitate identification and organization of the documents, bates-stamp all documents produced, and segregate the documents according to the numbered paragraph or subparagraphs to which they relate.

## IV. PRODUCTION OF DOCUMENTS

You are hereby directed to provide the following:

1. All documents relating to Star ME-1's, including, but not limited to, the following:

   a. All documents relating to or supporting the letter reports dated August 12, 1999 attached hereto as "Exhibit A;"

   b. All documents relating to testing, analysis, examination, and evaluation of Star ME-1's, conducted by you, any persons on your behalf, or any other persons, including, but not limited to, all documents prepared or created in connection therewith; and

   c. All documents relating to complaints, reports, or claims regarding actual or alleged failures of, problems with, or concerns about Star ME-1's.

2. All documents cited or referenced in Exhibit A, and all documents and things you reviewed or relied upon in forming the opinions expressed in Exhibit A, including, but not limited to, the following (the phrases below in quotation marks are quotations from Exhibit A):

   a. The "attached manufacturers catalog;"

   b. The "engineering assembly drawing and manufacturers catalog [William E. Stone] supplied;"

   c. The "recommended operating and test procedures outlined in the 'Automatic Sprinkler Systems Handbook': 4th Edition 1989 - published by the National Fire Protection Association;" and

d. The "attached 2 pages of the Chemetron ME-1 Dry Sprinkler catalog [William E. Stone] supplied."

3. All documents you or any person on your behalf received from, or that you or any person on your behalf provided to, William E. Stone, Grunau Project Development, Inc., Grunau Company, Inc., Sprinkler Corporation of Milwaukee, Inc., Grucon Corporation, and/or any other person, relating to Star ME-1's.

4. Your current curriculum vitae or resume.

You are ordered to produce the documents described in Section IV to Seth B. Popkin, Trial Attorney, Consumer Product Safety Commission, Office of Compliance, Legal Division, 4330 East West Highway, Bethesda, Maryland 20814, on or before August 15, 2002.

## V. APPEARANCE TO TESTIFY

You are directed to appear at the law offices of Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C., 1000 North Water Street, Suite 2100, Milwaukee, WI 53202, to testify with respect to the documents and matters referred to in section IV above, including, but not limited to, matters relating to Exhibit A and Star ME-1's, on August 28, 2002 at 10:00 a.m., and continuing thereafter until your testimony is concluded.

BY ORDER OF THE COMMISSION

_____
TODD A. STEVENSON
Secretary
U.S. Consumer Product Safety Commission

DATE:

# MARVIN EVANS

METALLURGICAL ENGINEER

*Registered Professional Engineer*

METALLURGICAL SUPERVISION OF PRODUCT AND PLANT OPERATIONS

RESIDENCE OFFICE
8550 NO. FIELDING RD.
MILWAUKEE, WI 53217
PHONE: 414-352-0570

•

LABORATORY OFFICE
N116 W16800 MAIN STREET
GERMANTOWN, WI 53022
PHONE: 414-255-4700
FAX: 414-255-5283


August 12, 1999

Grunau Project Development, Inc.
101 W. Pleasant Street
Suite 104
Milwaukee, WI 53212

Attn: Mr. William E. Stone
Vice President

Dear Bill:

This report will confirm my personal report, and our discussion concerning my findings, when I sectioned and examined the sprinkler valve assemblies, which failed to open when tested at Underwriters Laboratories.

Without reviewing the detailed construction of these valves, (which is explained in the attached manufacturers catalog), let me briefly state that these valves are designed to open when the differential air pressure across the valve exceeds 20 psi.

I received 4 assemblies to examine. One had released properly, but the other three had failed the test.

I reviewed the engineering assembly drawing and manufacturers catalog you supplied, as well as the recommended operating and test procedures outlined in the "Automatic Sprinkler Systems Handbook": 4th Edition 1989 - published by the National Fire Protection Association.

I have attached 2 pages of the Chemetron ME-1 Dry Sprinkler catalog you supplied, which describes the mode of operation of these devices:

EXAMINATION PROCEDURE:

The initial visual examination of the piston areas of the 3 failed units, and the parts of the 4th unit, indicates that this area is generally exposed to conditions which could cause corrosion to develop over time.




CPSC Star 001526

The outer end of the piston is periodically wetted during times when the system is flushed and tested or when moist air is used to pressurize the system. This piston end can also be alternately wetted and dried, evaporating the water and if not properly dried leave behind the dissolved minerals from the water in the sleeve joint area.

If this happens, a subsequent wetting of this area creates a water solution with a high concentration of dissolved salts. These high concentrations could become very chemically active and could create corrosion cells which will attack the exposed materials in this cell area. When these materials are attacked by the corrosion cell, they leave behind metals salts and degraded corrosion by-products of other materials in their place.

When I sectioned 2 of the failed valves, this type of corrosion was very obvious and the silicone "O" ring had deteriorated and stuck to the sleeve surface with the corrosion products. This build up acted like an adhesive and stopped the free movement of the piston at the normal operating pressure and thus the valves failed to open.

The attached photograph shows in quite clear detail what I have described above.

Very truly yours,

Marvin Evans

Marvin Evans, P.E.
Metallurgical Engineer

js

Enc.

DRAFT


# MARVIN EVANS

METALLURGICAL ENGINEER

*Registered Professional Engineer*

METALLURGICAL SUPERVISION OF PRODUCT AND PLANT OPERATIONS

RESIDENCE OFFICE
8550 NO. FIELDING RD.
MILWAUKEE, WI 53217
PHONE: 414-352-0570

LABORATORY OFFICE
N116 W16800 MAIN STREET
GERMANTOWN, WI 53022
PHONE: 414-255-4700
FAX: 414-255-5283


August 12, 1999

Grunau Project Development, Inc.
101 W. Pleasant Street
Suite 104
Milwaukee, WI 53212

Attn: Mr. William E. Stone
Vice President

Dear Bill:

This report will confirm my personal report, and our discussion concerning my findings, when I sectioned and examined the sprinkler valve assemblies, which failed to open when tested at Underwriters Laboratories.

Without reviewing the detailed construction of these valves, (which is explained in the attached manufacturers catalog), let me briefly state that these valves are designed to open when the differential air pressure across the valve exceeds 20 psi. The failed units did not open when the air pressure was increased to 175 psi at Underwriters.

I received 4 assemblies to examine. One had released properly, but the other three had failed the test.

I reviewed the engineering assembly drawing and manufacturers catalog you supplied, as well as the recommended operating and test procedures outlined in the "Automatic Sprinkler Systems Handbook": 4th Edition 1989 - published by the National Fire Protection Association. I also discussed the practical aspects of these types of sprinkler systems with a colleague who had much experience in the manufacture and application of fire sprinkler devices (Mr. John Fenske).

I have attached 2 pages of the Chemetron ME-1 Dry Sprinkler catalog you supplied, which describes the mode of operation of these devices:

EXAMINATION PROCEDURE:

The initial visual examination of the piston areas of the 3 failed units, and the parts of the 4th unit, indicates that this area is generally exposed to conditions which could cause corrosion to develop over time.




CPSC Star 001528

DRAFT



Apparently the outer end of the piston is periodically wetted during times when the system is flushed and tested or when moist air is used to pressurize the system. This piston end can also be alternately wetted and dried, evaporating the water and leaving behind the dissolved minerals from the water in the sleeve joint area.

When this happens, a subsequent wetting of this area creates a water solution with a high concentration of dissolved salts. These high concentrations become very chemically active and can create corrosion cells which will attack the exposed materials in this cell area. When these materials are attacked by the corrosion cell, they leave behind metals salts and degraded corrosion by-products of other materials in their place.

When we realize that the proper long term operation of the valve relies upon the ability of the piston to move freely in its location, for a limited distance at all times, with only the silicone rubber "O" ring to maintain a freely moving air/water seal between the piston and the sleeve.

The precipitation of dissolved minerals and corrosion by-products in this area, will cause the piston to bind to the sleeve, and thus it will not move to the open valve position when the sprinkler opens.

When I sectioned 2 of the failed valves, this type of corrosion was very obvious and the silicone "O" ring had deteriorated and stuck to the sleeve surface with the corrosion products. This build up acted like an adhesive and stopped the free movement of the piston at the normal operating pressure and thus the valves failed to open.

The attached photograph shows in quite clear detail what I have described above.

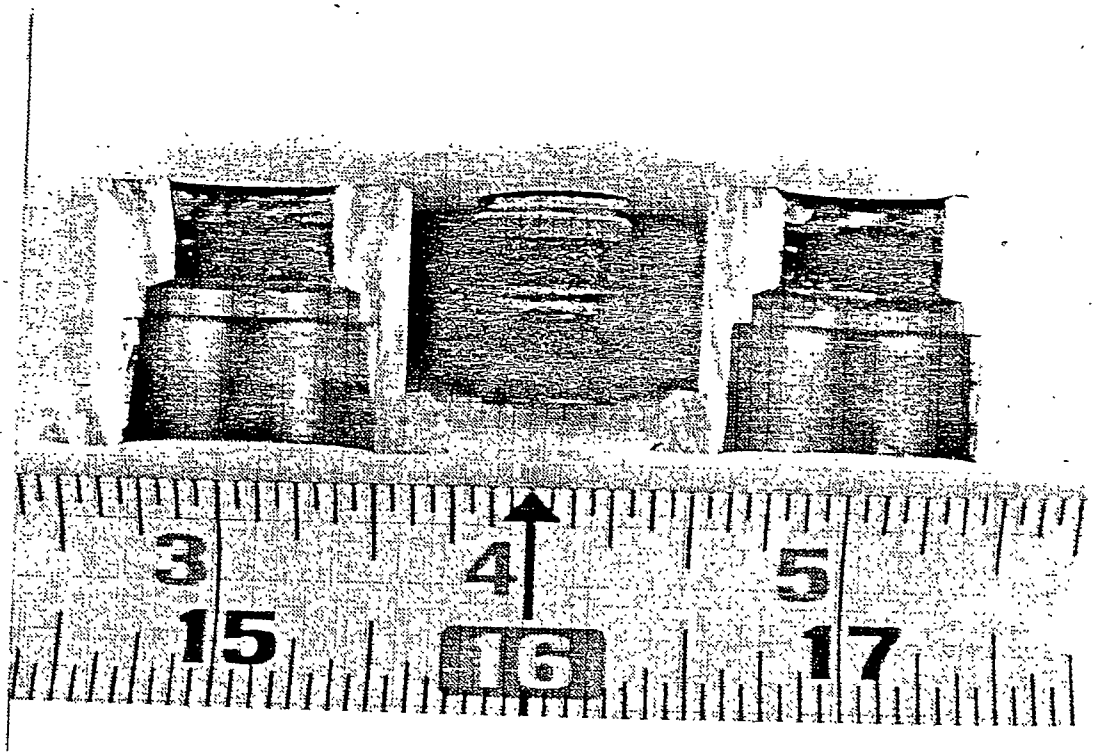
Very truly yours,

Marvin Evans 12 aug 99

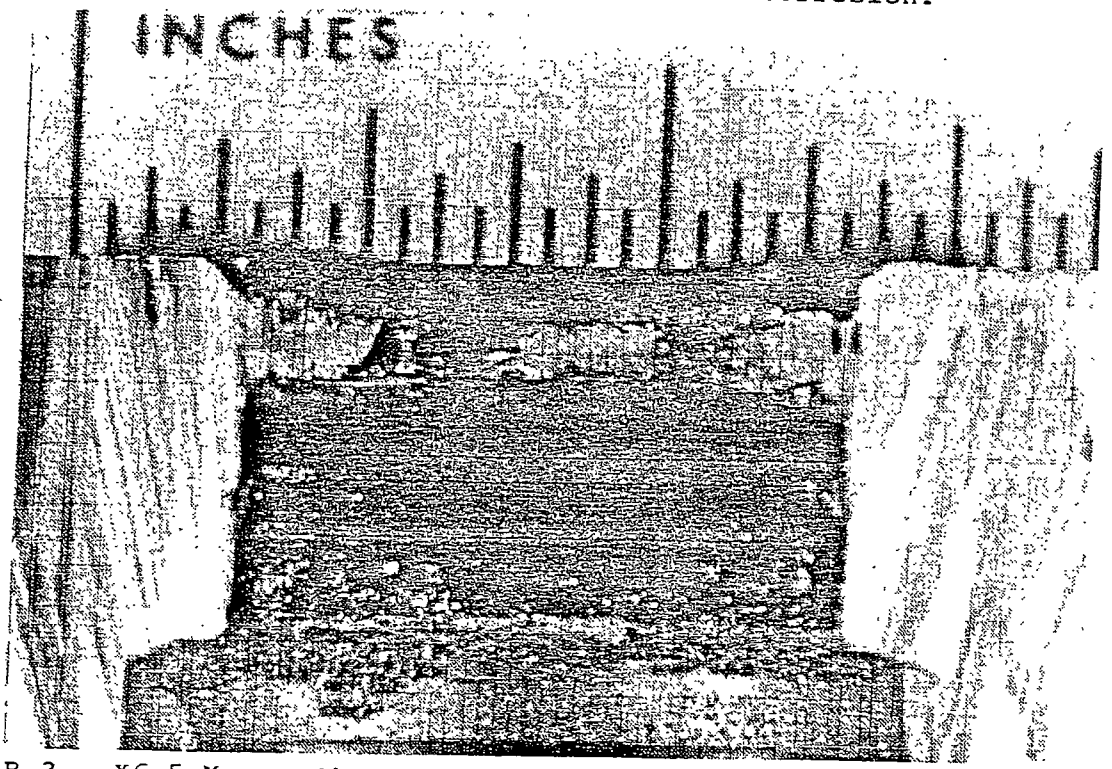
Marvin Evans, P.E.
Metallurgical Engineer

nh

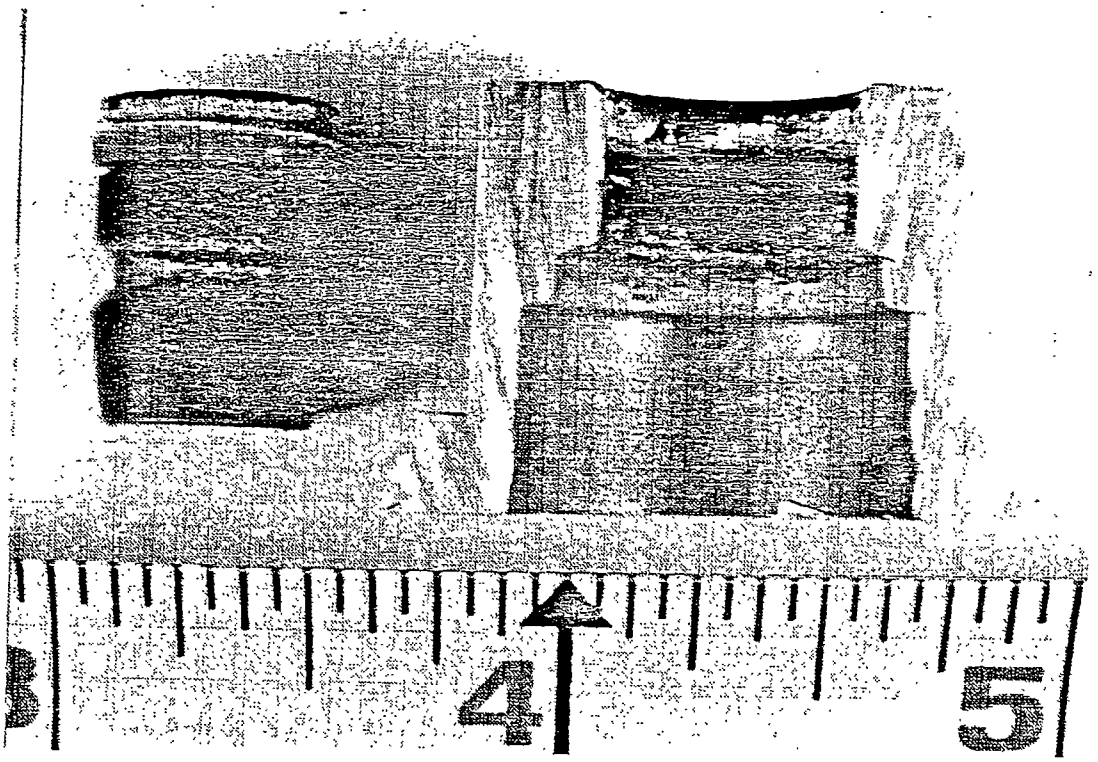
Enc.



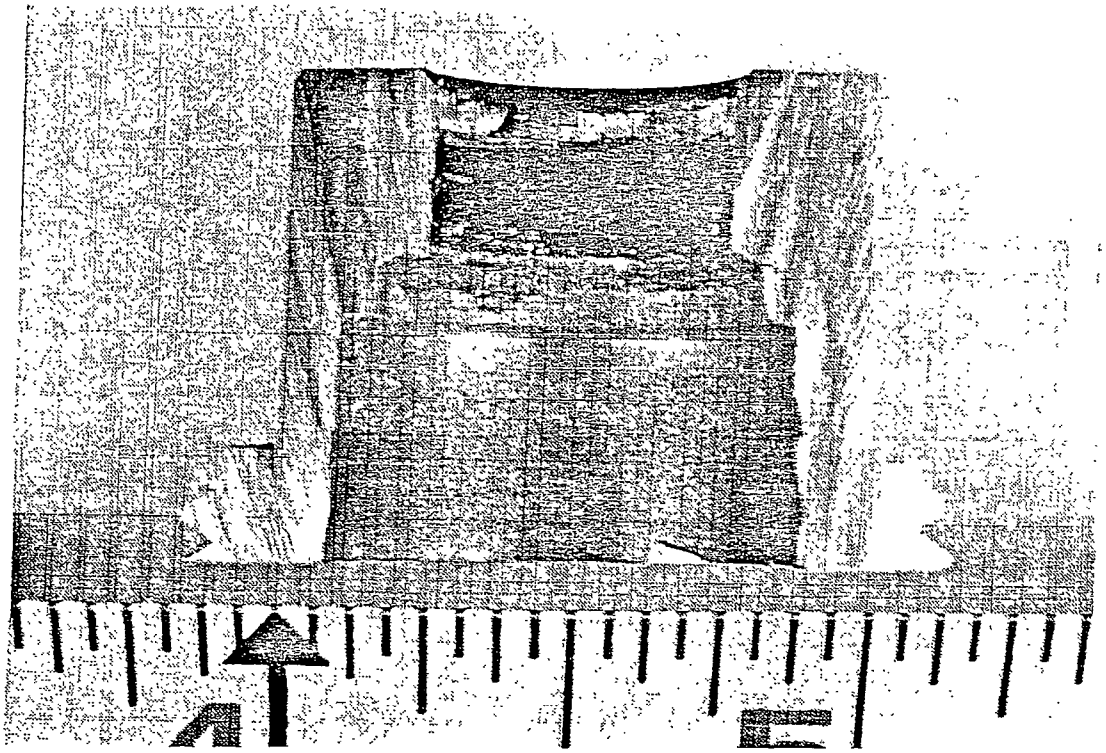

P. 1 - X1.75 Mag. Parts of Valve Assembly cut apart to show interior corrosion. NOTE: The part on the right is enlarged in the other photos to show details of the corrosion.




P.2 - X6.5 Mag. Shows magnified details of corrosion salts, rubber residue and surface condition in failed valve assembly.



P. 3.- X2.7 Mag: enlarged view of sleeve and plug.



P.4. - X3.25 Mag. enlarged view of corroded sleeve.

CPSC Star 001531

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

2002 JUL 25 A 11:36

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|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**PARTIES' JOINT SUBMISSION**
**OF CORPORATE CHART REQUESTED BY JUDGE**

During the Pre-hearing Conference on May 1, 2002, Judge Moran asked the parties to provide, either jointly or independently, a chart with blocks setting up the different corporate structures of the Respondents, how one corporation became another, and the like (Tr. at 57.) Complaint Counsel prepared a draft chart and provided it to counsel for all of the Respondents for their review. Respondents' counsel provided their comments to Complaint Counsel,

Complaint Counsel made applicable modifications, and all of the parties have agreed to a joint submission of the accompanying chart.

Respectfully submitted,

Dated July 20, 2002

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.

Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005
(202) 434-5000

Counsel for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Dated 7/23, 2002

Ralph A. Weber, Esq.
Michael Flynn, Esq.

Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202-3186
(414) 298-1000

Counsel for Grucon Corporation and Sprinkler Corporation of Milwaukee, Inc.

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Dated July 25, 2002

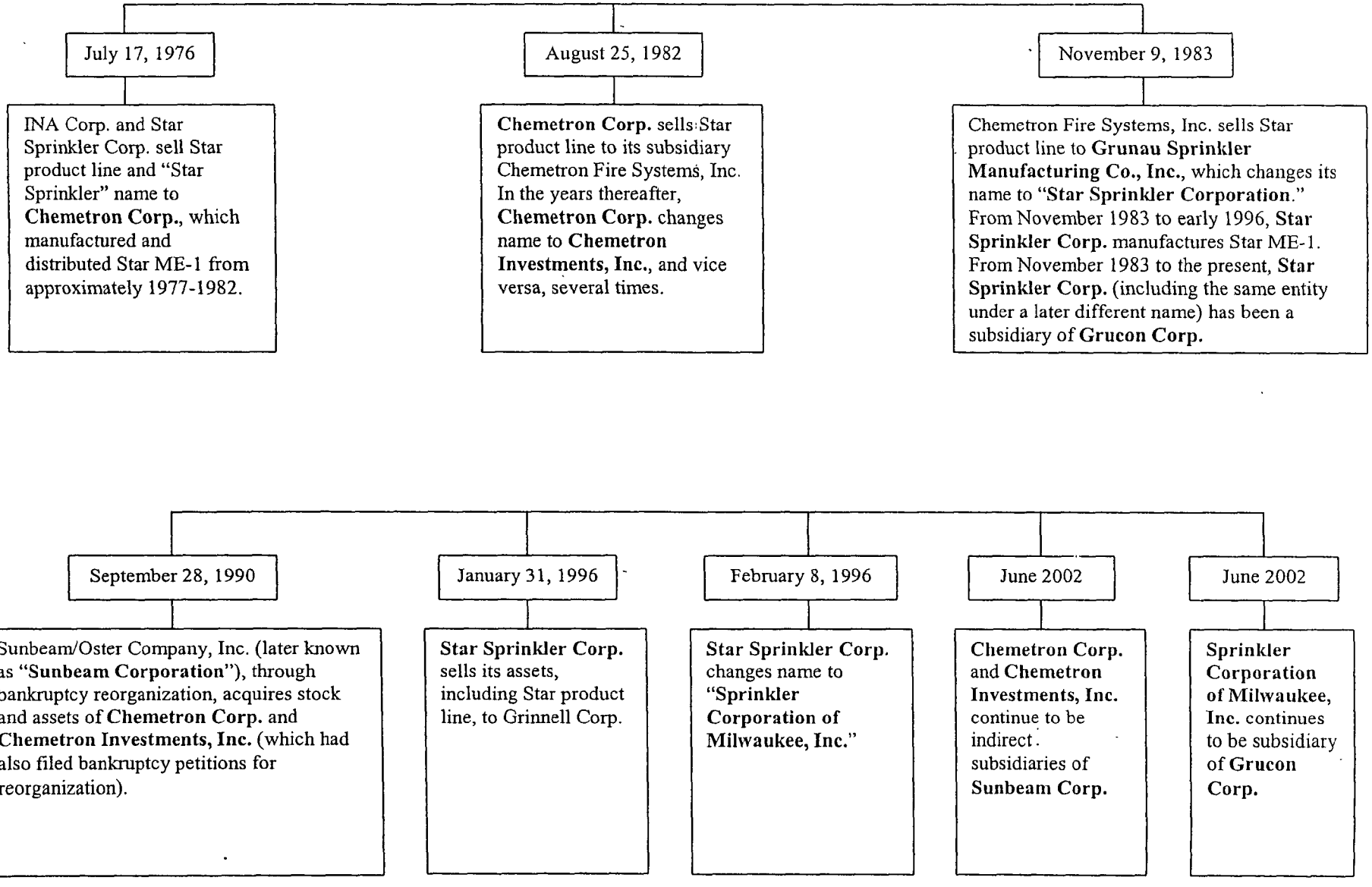
Michael J. Gidding, Esq.
Seth B. Popkin, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

*In the Matter of Chemetron Corporation, et al.,* **CPSC Docket No. 02-1**

## Timeline Chart of Respondents' Corporate Structure Related to this Action

(Respondents' names are in bold)




06/26/02

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**MOTION FOR LIMITED EXTENSION OF DISCOVERY AND FOR ENTRY OF REVISED SCHEDULING ORDER**

On April 2, 2002, the parties to this matter submitted to the Court a Joint Motion for a Revised Discovery Schedule, pursuant to the Court's Order of March 18. The Court subsequently issued an Order adopting the proposed schedule which specifies that all discovery close on August 9, 2002. In the ensuing time, the parties have worked diligently to meet the deadlines established in the Order. The deadline for motions regarding joinder of additional

parties and amendment of the pleadings is well past. Written discovery is substantially complete, and the parties have exchanged answers to interrogatories regarding expert witnesses. Respondents have deposed individuals who performed testing of Star ME- sprinklers on behalf of the Commission staff. However, as is explained below, circumstances beyond the control of the parties lead us to request that the Court extend certain aspects of discovery until September 27. (Other discovery deadlines remain unchanged.) The Sunbeam and Chemetron Respondents join in the relief requested by this motion. Respondents Grucon Corp. and Sprinkler Corporation of Milwaukee ("SCM") have declined to join in this motion at this time.

At present, Complaint Counsel has filed with the Court subpoenas for document production and testimony from a number of non-parties, and intends to file a small number of additional subpoenas of this nature. The subpoenas seek or will seek information that Complaint Counsel believes will be relevant to the alleged defect and hazard to the public that Star ME-1 sprinklers present, and testimony relating to the issue of Respondent Grucon's alleged responsibility for the acts and practices of its subsidiary, SCM. They also seek information relevant to the work of expert witnesses in this case.

16 CFR 1025.38(c) requires that all subpoena applications be forwarded to the Commission for issuance or disapproval.[1] Issuance of a subpoena requires a vote of a majority of a quorum of the Commission. When, as a result of vacancies, the Commission has only two members, two members constitute a quorum for a period of six months beginning on the date of the vacancy which caused the number of members to decline to two. 15 U.S.C. § 2053(d). After that date, the quorum lapses until the appointment of a third Commissioner. Currently, the

[1] Under section 27(b) of the Consumer Product Safety Act, 15 U.S.C. § 2076(b), the Commission may not delegate its power to issue subpoenas. Hence, the Commission must authorize the issuance of all subpoenas in administrative proceedings

Commission has only two members, a state of affairs which has existed since November 1, 2001 – a period of 8 months. Accordingly, the statute bars the Commission, as it is currently constituted, from acting on the subpoenas.

At the May 1, 2002 prehearing conference, Complaint Counsel advised the Court that, while the nomination for a third Commissioner (in this case, the Chairman) was pending before the Senate, the Commission's quorum for doing business would lapse on May 1, if confirmation did not occur before that date. It did not. In a June conference call with the Presiding Officer and the Respondents, Complaint Counsel again noted the absence of a quorum, but indicated our intention to adhere to the discovery schedule with the expectation that confirmation would occur in a sufficiently timely manner to allow us to meet the August 9 discovery close date.

Confirmation of the new Chairman has not yet taken place, nor is there any indication when or whether that event is likely to occur. Even if it were to happen in the near future, we can reasonably expect that, prior to taking up the issuance of the subpoenas, the Chairman will need some period of time to relocate from New Mexico to Washington, and to familiarize himself with the operations and staff of the Commission, as well with the duties and responsibilities of his office. At that point, even under a best-case scenario, we will be near or beyond the August 9 cut-off, leaving aside the matter of scheduling and taking the depositions after the subpoenas issue. Accordingly, we believe that these circumstances in themselves dictate extension of the discovery schedule to permit the production of documents from and depositions of non-parties to take place.

As further support for extending the schedule, certain requests that the parties have directed to Tyco International, Ltd. ("Tyco") and its subsidiaries for documents pertaining to this litigation remain unresolved. In 1996, a Tyco subsidiary, Grinnell Corporation, purchased the

assets of Star Sprinkler Corporation from Respondent Grucon. Pursuant to Grinnell's acquisition, Star Sprinkler Corp. transferred to Grinnell documents relating to Star Sprinkler Corporation's 1983 to 1996 production of Star ME-1 sprinklers. Tyco's Star subsidiary ("SSI") subsequently manufactured the Star ME-1 until 1998, when it discontinued the product. During that time period, SSI conducted tests and analyses of the ME-1, memorializing the results in its corporate files.

During the first week of June, pursuant to a subpoena to SSI issued by the Commission in this matter, the parties inspected and designated for copying documents relating to the Star ME-1 and maintained by Grinnell. Counsel for Tyco has represented that it is reviewing those documents, but has yet to designate those documents it intends to release without restriction, those it agrees to release subject to the confidentiality stipulation in this matter, and those which it intends to submit to the Court for in camera review. In addition, on May 10, 2002, Complaint Counsel requested that Tyco produce documents related to Star ME-1 fire sprinklers that Tyco had not previously provided to the Commission staff during the staff's Star ME-1 investigation. That request remains unanswered.

The information contained in many of these as-yet-to-be-produced documents is relevant to the alleged defect and risk of injury in this matter, as well as to Grucon's liability for the actions of its subsidiary, SCM. It may also be germane to the opinions that experts for both the Respondents and Complaint Counsel may express. Accordingly, prior to engaging in further expert discovery, the parties need to provide their respective experts with the Tyco/Grinnell documents. It will also be necessary to use these documents in conjunction with the depositions of subpoenaed Tyco employees, and to have the experts review that deposition testimony.

Again, it does not appear that this process will be completed in sufficient time to permit expert depositions to take place by August 9.

In view of the foregoing, Complaint Counsel requests that the Court provide a limited extension of certain aspects of the discovery schedule until September 27 solely for the purpose of addressing the document and subpoena issues discussed above. For the Court's consideration, we have attached a proposed modified schedule covering the remainder of discovery. The schedule does not alter the obligations of the parties under the discovery stipulation to complete written discovery by August 9, does not affect the supplemental August 23 date that the Court has established for completing discovery on the issue of Grucon's corporate responsibility for the acts and practices of SCM,[2] and does not permit amendment of the pleadings or the designation of additional experts. It does, however, provide what we believe is sufficient latitude to complete discovery in an orderly fashion, taking into account the uncertainties involved in the confirmation process, as well as the potential unavailability of subpoenaed witnesses and experts during the latter part of the summer.

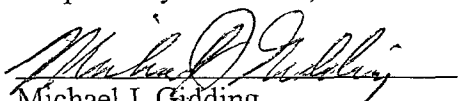
Accordingly, pursuant to 16 C.F.R.§ 1025.31(g), Complaint Counsel requests that the Court find that exceptional circumstances and good cause shown warrant an extension of discovery in this matter and adopt the proposed discovery schedule outlined below. Counsel for the Sunbeam and Chemetron Respondents, Heidi Hubbard, has authorized Complaint Counsel to represent herein that those Respondents join in the relief requested by this motion. The Grucon/SCM Respondents have declined to join in this motion at this time.

[2] On June 28, the Court deferred ruling on the Respondents' (Grucon/SCM) Motion to Dismiss until Complaint Counsel has had a reasonable time to assimilate material derived through discovery. Complaint Counsel has suggested to counsel for Grucon that, now that the Court has ruled on Complaint Counsel's Motion to Compel, the parties consider entering a separate discovery stipulation relating solely to the issues raised in the Motion to Dismiss that will permit resolution of that motion expeditiously.

**Proposed Discovery Schedule & Deadlines**

| | |
|---|---|
| August 9, 2002 | Close of all general written discover, including responses. Commencement of expert depositions. |
| August 23, 2002 | Close of written discovery on subject of Complaint Counsel's Motion to Compel to Respondents Grucon/SCM. |
| September 27, 2002 | Close of all discovery. |
| October 11, 2002 | Deadline for other dispositive Motions for Summary Decision |
| October 31, 2002 | All parties to file and serve responses to any dispositive Motions for Summary Decision |
| November 7, 2002 | All parties to file and serve Reply briefs on any dispositive Motions for Summary Decision |
| November 22, 2002 (or other hearing date convenient to the Court) | Hearing on any outstanding dispositive Motions for Summary Decision.<br><br>Parties' submission to the court regarding the following, as provided in 16 C.F.R. § 1025.21(a) and 1025.44:<br>1) Identification, simplification, and clarification of the issues;<br>2) Stipulations and admission of fact and the content and authenticity of documents;<br>3) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and product safety rules;<br>4) Establishment of a schedule for the exchange written, direct testimony of experts, as well as agreed upon procedures and timetables for the cross-examination and re-direct examination of experts.<br>5) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time, and place of the hearing, with due regard to the convenience of the parties;<br>Such other matters as may aid in the efficient presentation or disposition of the proceedings. |

Respectfully submitted,



Michael J. Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway
Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1344
Complaint Counsel

CERTIFICATE OF SERVICE

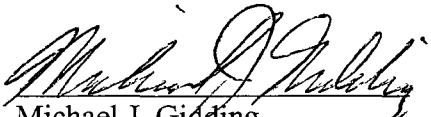
I hereby certify that on July 12, 2002, I served the attached Motion for Limited Extension of Discovery and for Entry of Revised Scheduling Order upon all parties of record in these proceedings by telefax and by mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th St., NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186



Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## RESPONDENTS' FOURTH SET OF INTERROGATORIES

Respondents Chemetron Corporation ("Chemetron"), Chemetron Investments, Inc. ("Chemetron Investments"), and Sunbeam Corporation ("Sunbeam"), through undersigned counsel, hereby propound the following interrogatories to the Consumer Product Safety Commission (the "CPSC" or the "Complainant") pursuant to 16 C.F.R. § 1025.32. Complainant is required to respond to each interrogatory, separately and fully in writing under oath, within thirty (30) days of the service of these interrogatories.

Complainant's response should be sent to the offices of Williams & Connolly LLP, 725 Twelfth St., N.W., Washington, D.C. 20005.

For the purposes of these interrogatories, as well as Respondents' Second Request for Production of Documents and Things (being served this date), the following definitions and instructions apply:

## INSTRUCTIONS

A. In answering these interrogatories, furnish all information available to you, including any such information in the possession, custody or control of your employees, directors, commissioners, officers, agents or attorneys.

B. If in answering these interrogatories you encounter any ambiguity in construing the interrogatory, set forth the matter deemed ambiguous and the construction selected or used by you in answering the interrogatory.

C. If, pursuant to Section 1025.32 (d) of the CPSC Rules, 16 C.F.R. § 1025.32 (d), you elect to specify and produce business records in answer to any interrogatory, then in accordance with that Rule, provide your specification in sufficient detail to permit Respondents to locate and identify, as readily as possible, the records from which the answer may be ascertained.

D. In the event that information sought in any interrogatory is withheld on the basis of privilege or any other objection, then as to such information allegedly subject to such asserted privilege or objection, state the privilege, and describe generally the information withheld, including: (a) the person(s) to and from whom the information was sent, (b) all persons who have received a copy of the

information, (c) the type of information (memo, letter, oral communication, etc.), and (d) the general subject matter of the information.

E. These interrogatories are to be deemed continuing in nature, requiring you to promptly supply, by way of supplemental response, any additional responsive information that may become known to you or anyone acting on your behalf after your answers have been prepared or served.

## DEFINITIONS

A. "You," "your," "Complainant" and/or the "CPSC" refers to the Consumer Product Safety Commission, including the Office of Compliance of the CPSC, and any employees or agents of the CPSC.

B. The "Complaint" means the Complaint filed in this action on October 9, 2001, and any amendments thereto.

C. "Respondents" refers to Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation.

D. "Chemetron" refers to Chemetron Corporation.

E. "Chemetron Investments" refers to Chemetron Investments, Inc.

F. "Sunbeam" refers to Sunbeam Corporation.

G. "Person" or "persons" means all individuals and entities, including natural persons, representative persons, public or private corporations, companies, unincorporated associations, partnerships, organizations, government entities, groups or agencies, plus any divisions, departments, or units thereof.

H. "Star ME-1 fire sprinklers" means the Star ME-1 fire sprinklers at issue in the Complaint.

I. "Document" or "documents" is an all inclusive term and means any tangible thing upon which any expression, communication, or representation has been recorded by any means, and shall include without limitation, written, printed, typed, recorded, or graphic matter, whether produced or reproduced or stored on paper, cards, tapes, film, electronic facsimile, computer storage devices or any other devices or media, including, but not limited to papers; books; letters; photographs; objects; tangible things; correspondence; telegrams; cables; telex messages; memoranda; notes; notations; records; work papers; transcripts; minutes; reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings; affidavits; statements; opinions; proposals; reports; studies; analyses; audits; test results; charts; evaluations; contracts; agreements; journals; statistical records; ledgers; books of account; bookkeeping entries; financial statements; tax returns; vouchers; checks; check stubs; invoices; receipts; desk calendars; appointment books; diaries; lists; tabulations; summaries; sound recordings; computer printouts; data processing input and output; microfilms; all records kept by electronic, photographic, or mechanical means; and things similar to any of the foregoing, however denominated. When a document is requested or referred to, the request or reference shall include, but is not limited to, the original and each and every copy and draft thereof having writings, notations, corrections, or markings unique to such copy or draft.

J. "Identify" or "identification," when used in reference to a natural person, means to provide the following information:

1. his or her full name;

2. his or her business affiliation(s), position(s), title(s), and job description(s) during the period delineated in the interrogatory (and the dates during which each affiliation, position, title and job description applied to him or her);

3. his or her present or last known business address (and the date of that last knowledge); and

4. his or her present or last known residence address (and the date of that last knowledge).

K. "Identify" or "identification," when used in reference to a corporation or other entity which is not a natural person, means to:

1. state the full name of such organization or entity;

2. state the form or nature of such organization (e.g., whether it is a corporation, partnership, etc. under the definition of "person" above);

3. state the address of the principal office or place of business of such organization or entity; and

4. in the event that such organization or entity has no active principal office or place of business, state the full name of a person who can provide information about the corporation or entity and its activities, and that person's current or last known business or personal residential address.

## INTERROGATORIES

**INTERROGATORY NO. 1:** Identify all affidavits and other witness statements (whether sworn or un-sworn) in your possession, custody or control that relate to the Star ME-1 or to this proceeding, and for each such statement provide:

(a) the name, address, telephone number, employer, and employment position of the person making the statement;

(b) the date of the statement;

(c) the general subject matter of the statement; and

(d) the date when the statement first came into the CPSC's possession, custody, or control.

**INTERROGATORY NO. 2:** Identify any Star ME-1's known by you to in fact be installed (or, if now removed, to have in fact been installed) in a location other than a freezer, cooler, or other area subject to freezing, and for each such Star ME-1 provide:

(a) the address and owner of the building/facility in which the Star ME-1 is or was installed;

(b) the type of building or facility (e.g., warehouse, office, store, etc.);

(c) the precise location in the building/facility where the Star ME-1 is or was installed;

(d) the year of manufacture of the Star ME-1;

(e) the basis for your averment that the location of installation is not subject to freezing; and

(f) all documents that reflect or relate to your answer to this interrogatory.

**INTERROGATORY NO. 3:** With respect to your response to Respondents' Interrogatory No. 14, describe all steps taken by Complaint Counsel to locate the videotape, provide a general description of the videotape (including the provider of the tape, the name, address, and telephone number of the sprinkler installer

performing the testing, the date of the testing, and the date of manufacture of the Star ME-1's involved in the testing), and identify the individual at the CPSC who is last known by you to have had possession, custody, or control of the videotape.

**INTERROGATORY NO. 4:** Describe in detail the reasons for the CPSC staff's decision in 1991 not to proceed further with its investigation of the Star ME-1 and:

(a) identify each and every document that describes, evidences, refers, or relates in any way to the decision;

(b) identify each and every person whom Complainant knows and/or believes to have knowledge of this decision; and

(c) describe in detail the substance of each such person's knowledge and/or information.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*

Dated: July 10, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondents' Fourth Set of Interrogatories upon all parties and participants of record in these proceedings on this 10th day of July, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | ) | |
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| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
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| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENTS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Respondents Chemetron Corporation ("Chemetron"), Chemetron Investments, Inc. ("Chemetron Investments"), and Sunbeam Corporation ("Sunbeam"), through undersigned counsel, hereby propound the following request for documents and things to the Consumer Product Safety Commission (the "CPSC" or the "Complainant") pursuant to 16 C.F.R. § 1025.33. Complainant is requested to respond within thirty (30) days of the service of these requests by making the

documents and things requested herein available for inspection and copying at the offices of Williams & Connolly LLP, 725 Twelfth St., N.W., Washington, D.C. 20005.

## INSTRUCTIONS

Respondents hereby fully incorporate by reference the instructions set forth in Respondents' Fourth Set of Interrogatories, as well as the following further instructions:

A. This request covers all documents and things in the possession, custody or control of the CPSC, including any of its employees, directors, commissioners, officers, agents or attorneys.

B. If your response to any request is to refer to the response of any other request, or to indicate that documents responsive to the request are being produced in response to some other request, identify such other request(s) specifically by number.

C. These requests are intended to be continuing in nature, requiring you to promptly supply, by way of supplemental response, any additional responsive documents and things that may become known to you or anyone acting on your behalf after your responses have been prepared or served.

D. In the event that any documents sought in any request are withheld on the basis of privilege or any other objection, then as to such documents allegedly subject to such asserted privilege or objections, state the privilege being replied upon, and describe generally the document withheld, including: (a) the persons to and from whom the document was sent, (b) all persons who have received a copy of

the document, (c) the type of document (memo, letter, etc.), and (d) the general subject matter of the document.

## DEFINITIONS

Respondents hereby fully incorporate by reference the definitions set forth in Respondents' Fourth Set of Interrogatories.

## DOCUMENTS AND THINGS TO BE PRODUCED

**REQUEST NO. 1:** All documents that you intend to use in any way (including as exhibits) at the hearing in this matter.

**REQUEST NO. 2:** All documents identified, or that should have been identified, in response to Respondents' Fourth Set of Interrogatories.

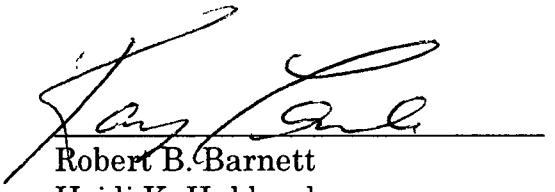
**REQUEST NO. 3:** To the extent not already produced in response to Respondents' Request for Production No. 14, all documents that you have obtained (or that you obtain in the future) through a subpoena issued in this proceeding.

**REQUEST NO. 4:** To the extent not already produced or served on undersigned counsel for these Respondents, all documents produced by Complaint Counsel to the Grucon and SCM Respondents in this proceeding and all other responses by Complaint Counsel to discovery requests from the Grucon and SCM Respondents.

**REQUEST NO. 5:** All documents that reflect or relate to the CPSC staff's decision in 1991 not to proceed further with its investigation of the Star ME-1.

**REQUEST NO. 6:** All documents that reflect or relate to the water pressure present in sprinkler systems installed in any commercial buildings.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
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Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*

Dated: July 10, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondents' Second Request for Production of Documents and Things upon all parties and participants of record in these proceedings on this 10th day of July, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | ) | |
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| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
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| and | ) | |
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| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
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| Sunbeam Corporation | ) | |
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| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## RESPONDENTS' SECOND REQUESTS FOR ADMISSIONS

Respondents Chemetron Corporation ("Chemetron"), Chemetron Investments, Inc. ("Chemetron Investments"), and Sunbeam Corporation ("Sunbeam"), through undersigned counsel, hereby propound the following requests for admissions to the Complainant pursuant to 16 C.F.R. § 1025.34. Complainant is required to respond to each request, separately and fully in writing under oath, within thirty (30) days of the service of these requests.

Complainant's responses should be sent to the offices of Williams & Connolly LLP, 725 Twelfth St., N.W., Washington, D.C. 20005.

For the purposes of these requests for admissions, the following definitions and instructions apply:

## INSTRUCTIONS

A. If your response to any of the following requests is anything other than an unqualified admission, you shall specify the portion that is true, and qualify or deny only the portion of the matter set forth in the request for admission that you refuse to admit. If you claim that you cannot specifically admit or deny the matter set forth in the request for admission, you shall set forth in detail the reasons why you cannot truthfully admit or deny the matter set forth in the request for admission. Only if you cannot admit or deny a request for admission after conducting a reasonable inquiry of all information known to or reasonably obtainable by you, may you claim a lack of information or knowledge as to any matter set forth in a request for admission.

B. If you object to any request for admission, you must state with particularity your objection in writing and the basis for your objection. The belief that the matter to which an admission has been requested presents a genuine issue for hearing is not, on that ground alone, basis for objection.

C. You shall serve your responses to these requests for admissions upon the undersigned attorneys within thirty (30) days of the service of these requests unless otherwise ordered by the Court.

D. These requests for admissions are to be deemed continuing in nature to the full extent authorized by 16 C.F.R. § 1025.31(f).

## DEFINITIONS

A. "You," "your," "Complainant" and/or the "CPSC" refers to the Consumer Product Safety Commission, including the Office of Compliance of the CPSC, and any employees or agents of the CPSC.

B. The "Complaint" means the Complaint filed in this action on October 9, 2001, and any amendments thereto.

C. "Respondents" refers to Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation.

D. "Chemetron" refers to Chemetron Corporation.

E. "Chemetron Investments" refers to Chemetron Investments, Inc.

F. "Sunbeam" refers to Sunbeam Corporation.

G. "Person" or "persons" means all individuals and entities, including natural persons, representative persons, public or private corporations, companies, unincorporated associations, partnerships, organizations, government entities, groups or agencies, plus any divisions, departments, or units thereof.

H. "Star ME-1 fire sprinklers" or "Star ME-1's" means the Star ME-1 fire sprinklers at issue in the Complaint.

## REQUESTS FOR ADMISSIONS

**REQUEST FOR ADMISSION NO. 1:** Admit that in 1991 the CPSC staff decided not to proceed further with an investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 2:** Admit that in 1991 the CPSC staff closed an investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 3:** Admit that under NFPA-25, sprinklers are to be inspected annually.

**REQUEST FOR ADMISSION NO. 4:** Admit that under NFPA-25, sprinklers that are painted are to be replaced.

**REQUEST FOR ADMISSION NO. 5:** Admit that under NFPA-25, sprinklers that are corroded, damaged, loaded, or in an improper orientation are to be replaced.

**REQUEST FOR ADMISSION NO. 6:** Admit that proper maintenance of sprinklers under NFPA-25 requires that the sprinklers shall not be altered in any respect nor have any type of ornamentation, paint, or coatings applied after shipment from the place of manufacture.

**REQUEST FOR ADMISSION NO. 7:** Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were painted.

**REQUEST FOR ADMISSION NO. 8:** Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were corroded.

**REQUEST FOR ADMISSION NO. 9:** Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were damaged.

**REQUEST FOR ADMISSION NO. 10:** Admit that the CPSC staff does not know the maintenance history of the Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 11:** Admit that the CPSC staff does not know the service history of the Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 12:** Admit that the CPSC staff does not know the inspection history of the Chemetron Star ME-1 fire sprinklers tested during its investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 13:** Admit that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were painted.

**REQUEST FOR ADMISSION NO. 14:** Admit that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were corroded.

**REQUEST FOR ADMISSION NO. 15:** Admit that some of the non-Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were damaged.

**REQUEST FOR ADMISSION NO. 16:** Admit that the CPSC staff does not know the maintenance history of the non-Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 17:** Admit that the CPSC staff does not know the service history of the non-Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 18:** Admit that the CPSC staff does not know the inspection history of the non-Chemetron Star ME-1 sprinklers tested during its investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 19:** Admit that the Star ME-1's manufactured between 1977 and 1982 have already been the subject of an informal recall by a Star manufacturer.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*

Dated: July 10, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondents' Second Requests for Admissions upon all parties and participants of record in these proceedings on this 10th day of July, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## RESPONDENTS' SECOND REQUESTS FOR ADMISSIONS

Respondents Chemetron Corporation ("Chemetron"), Chemetron Investments, Inc. ("Chemetron Investments"), and Sunbeam Corporation ("Sunbeam"), through undersigned counsel, hereby propound the following requests for admissions to the Complainant pursuant to 16 C.F.R. § 1025.34. Complainant is required to respond to each request, separately and fully in writing under oath, within thirty (30) days of the service of these requests.

Complainant's responses should be sent to the offices of Williams & Connolly LLP, 725 Twelfth St., N.W., Washington, D.C. 20005.

For the purposes of these requests for admissions, the following definitions and instructions apply:

## INSTRUCTIONS

A. If your response to any of the following requests is anything other than an unqualified admission, you shall specify the portion that is true, and qualify or deny only the portion of the matter set forth in the request for admission that you refuse to admit. If you claim that you cannot specifically admit or deny the matter set forth in the request for admission, you shall set forth in detail the reasons why you cannot truthfully admit or deny the matter set forth in the request for admission. Only if you cannot admit or deny a request for admission after conducting a reasonable inquiry of all information known to or reasonably obtainable by you, may you claim a lack of information or knowledge as to any matter set forth in a request for admission.

B. If you object to any request for admission, you must state with particularity your objection in writing and the basis for your objection. The belief that the matter to which an admission has been requested presents a genuine issue for hearing is not, on that ground alone, basis for objection.

C. You shall serve your responses to these requests for admissions upon the undersigned attorneys within thirty (30) days of the service of these requests unless otherwise ordered by the Court.

D. These requests for admissions are to be deemed continuing in nature to the full extent authorized by 16 C.F.R. § 1025.31(f).

## DEFINITIONS

A. "You," "your," "Complainant" and/or the "CPSC" refers to the Consumer Product Safety Commission, including the Office of Compliance of the CPSC, and any employees or agents of the CPSC.

B. The "Complaint" means the Complaint filed in this action on October 9, 2001, and any amendments thereto.

C. "Respondents" refers to Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation.

D. "Chemetron" refers to Chemetron Corporation.

E. "Chemetron Investments" refers to Chemetron Investments, Inc.

F. "Sunbeam" refers to Sunbeam Corporation.

G. "Person" or "persons" means all individuals and entities, including natural persons, representative persons, public or private corporations, companies, unincorporated associations, partnerships, organizations, government entities, groups or agencies, plus any divisions, departments, or units thereof.

H. "Star ME-1 fire sprinklers" or "Star ME-1's" means the Star ME-1 fire sprinklers at issue in the Complaint.

## REQUESTS FOR ADMISSIONS

**REQUEST FOR ADMISSION NO. 1:** Admit that in 1991 the CPSC staff decided not to proceed further with an investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 2:** Admit that in 1991 the CPSC staff closed an investigation of the Star ME-1.

**REQUEST FOR ADMISSION NO. 3:** Admit that under NFPA-25, sprinklers are to be inspected annually.

**REQUEST FOR ADMISSION NO. 4:** Admit that under NFPA-25, sprinklers that are painted are to be replaced.

**REQUEST FOR ADMISSION NO. 5:** Admit that under NFPA-25, sprinklers that are corroded, damaged, loaded, or in an improper orientation are to be replaced.

**REQUEST FOR ADMISSION NO. 6:** Admit that proper maintenance of sprinklers under NFPA-25 requires that the sprinklers shall not be altered in any respect nor have any type of ornamentation, paint, or coatings applied after shipment from the place of manufacture.

**REQUEST FOR ADMISSION NO. 7:** Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were painted.

**REQUEST FOR ADMISSION NO. 8:** Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were corroded.

**REQUEST FOR ADMISSION NO. 9:** Admit that some of the Chemetron Star ME-1 sprinklers tested by or on behalf of the CPSC during its investigation of the Star ME-1 were damaged.

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**REQUEST FOR ADMISSION NO. 19:** Admit that the Star ME-1's manufactured between 1977 and 1982 have already been the subject of an informal recall by a Star manufacturer.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
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(212) 735-3000

Robert B. Barnett
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Karyn A. Temple
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*

Dated: July 10, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondents' Second Requests for Admissions upon all parties and participants of record in these proceedings on this 10th day of July, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

JBP

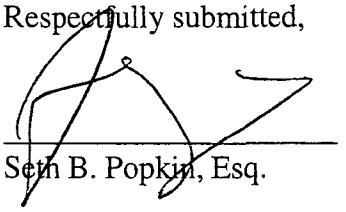
UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING NONCONFIDENTIAL DOCUMENTS (DR. PATRICK J. MORAN)**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories. Only one document (one page) accompanies this response: CPSC Star 022396 is an elabeled version of the same unelabeled page that Complaint Counsel produced June 26, 2002 with respect to Dr. Patrick J. Moran.

Respectfully submitted,



Seth B. Popkin, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

## CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

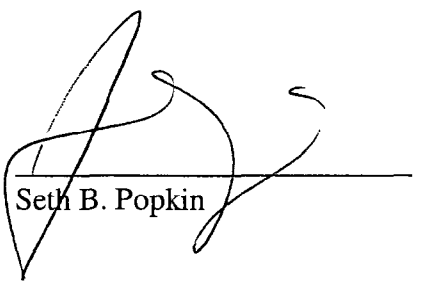
and by overnight mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Michael Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

I hereby certify that on July 5, 2002, I served only the foregoing supplemental response upon the following counsel for the parties of record in these proceedings, by facsimile and first-class mail, postage prepaid, on:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756



Seth B. Popkin

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Seth B. Popkin
Trial Attorney
Legal Division
Office of Compliance

Tel: (301) 504-0626 ext. 1358
Fax: (301) 504-0359
Email: spopkin@cpsc.gov

June 25, 2002

Patrick J. Moran, Ph.D.
23 Old Sturbridge Road
Arnold, MD 21012

Re: *In re Chemetron Corporation, et al.*, CPSC Docket No. 02-1 (Star ME-1)

Dear Dr. Moran:

Enclosed for your review please find handwritten file notes (by Nick Marchica in CPSC's Engineering Sciences department) relating to a teleconference with Jerry Pepi. These pages have bates numbers of CPSC Star 009967-009976.

Thank you.

Sincerely yours,

Seth B. Popkin

Encs.

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING CONFIDENTIAL DOCUMENTS (DR. FREDERICK MOWRER)**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories. The one five-page document served with this response and/or the information contained therein has been designated as CONFIDENTIAL by the nonparties that provided the documents or information to Complaint Counsel. All of the

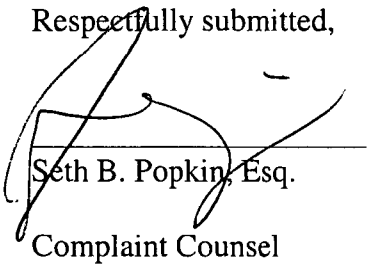
documents accompanying this supplemental response are being served on the Respondents subject to the terms of the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002 ("Stipulation"). Given the terms of the Stipulation, which imposes restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulation's terms.

All of the documents served herewith are subject to or potentially subject to confidentiality claims of nonparties Tyco International, Tyco Fire Products LP, Grinnell Corporation, Grinnell Fire Protection, Star Sprinkler, Inc., Central Sprinkler Company, and/or Gem Sprinkler Company (collectively the "Tyco Companies"); Factory Mutual Research Corporation; and Underwriters Laboratories, Inc. With respect to the documents served herewith, and in accordance with the terms of the Stipulation, these nonparties have provided limited waivers of their confidentiality claims thereby permitting service of these documents on the Respondents.

The one five-page document served herewith (CPSC Star 022385-022389 - database chart) is an elabeled version of the same unelabeled pages that Complaint Counsel produced June

10, 2002 with respect to Dr. Frederick Mowrer confidential documents.

Respectfully submitted,



Seth B. Popkin, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
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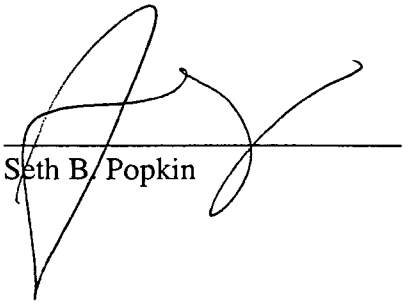


Seth B. Popkin

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING CONFIDENTIAL DOCUMENTS (TYCO COMPANIES)**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories. The documents served with this response have been designated as CONFIDENTIAL by the nonparties that provided them to Complaint Counsel. All of the documents accompanying this supplemental response are being served on

the Respondents subject to the terms of the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002 ("Stipulation"). Given the terms of the Stipulation, which imposes restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulation's terms.

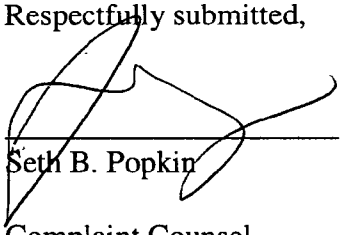
All of the documents served herewith were previously in a category of documents subject to or potentially subject to confidentiality claims of nonparties Tyco International, Tyco Fire Products LP, Grinnell Corporation, Grinnell Fire Protection, Star Sprinkler, Inc., Central Sprinkler Company, and/or Gem Sprinkler Company (collectively the "Tyco Companies"). These documents were part of the *in camera* submissions to the Court. By letter dated June 25, 2002, the Tyco Companies authorized the production, subject to the Stipulation, of redacted copies of documents specified in the list accompanying that letter. By telephone call of July 2, 2002 with counsel for the Tyco Companies, they also authorized the production of CPSC Star 016691, a document that had been enclosed with the June 25th letter but omitted from the list accompanying that letter.

By letter dated June 26, 2002, the Tyco Companies authorized the production, subject to the Stipulation, of four (4) revised redacted documents from the set that the Tyco Companies originally forwarded to Complaint Counsel in their initial redacted form on May 31 (sic - letter dated May 30), 2002, and which Complaint Counsel produced June 3, 2002. These four (4) revised redacted documents are the following: CPSC Star 002668, 002672, 009418, and 009422. The Tyco Companies stated in their June 26th letter that these revised redacted documents replace the copies with corresponding elabel numbers that they provided on May 31 (sic - May

30), 2002. The aforementioned documents accompany this supplemental response. Based upon the representations of the Tyco Companies in those letters, Complaint Counsel understands that, after their review of these documents, respondents Sunbeam Corporation, Chemetron Corporation, and Chemetron Investments, Inc. requested copies.

With respect to the documents served herewith, and in accordance with the terms of the Stipulations, the Tyco Companies have provided limited waivers of their previous confidentiality claims thereby permitting service of these documents on the Respondents.

Respectfully submitted,



Seth B. Popkin
Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
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and by overnight mail, postage prepaid, to:

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Milwaukee, WI 53202-3186

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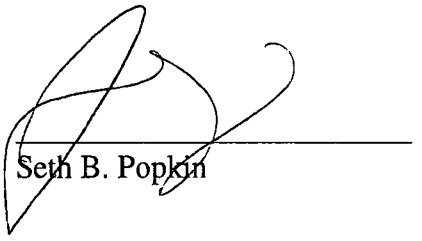

Seth B. Popkin

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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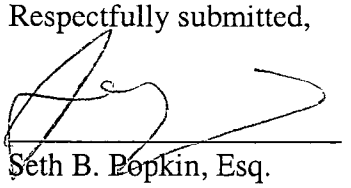
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION REGARDING NONCONFIDENTIAL EXPERT WITNESS DOCUMENTS (DR. PATRICK J. MORAN)**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Request for Production of Documents No. 73 (all documents and things reviewed or relied upon in forming opinions by any person whom the CPSC expects to call as an expert witness to testify at the

hearing). The accompanying documents (unelabeled letter followed by CPSC Star 009967-009976) relate to Dr. Patrick J. Moran and are not confidential.

Respectfully submitted,



Seth B. Popkin, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

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Karyn A. Temple, Esq.
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and by overnight mail, postage prepaid, to:

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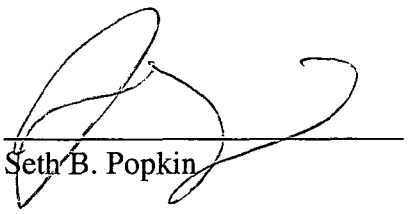

Seth B. Popkin

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

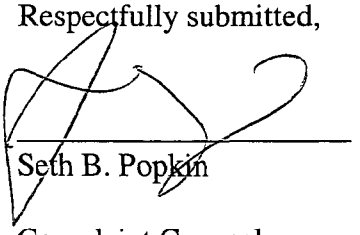
**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION AND INTERROGATORIES REGARDING CONFIDENTIAL DOCUMENTS**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents and Interrogatories. The documents served with this response have been designated as CONFIDENTIAL, and/or contain information designated as CONFIDENTIAL, by the nonparties that provided the documents or information to Complaint

Counsel. All of the documents accompanying this supplemental response are being served on the Respondents subject to the terms of the Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002 ("Stipulation"). Given the terms of the Stipulation, which imposes restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulation's terms.

All of the documents served herewith were previously in a category of documents subject to or potentially subject to confidentiality claims of nonparties Tyco International, Tyco Fire Products LP, Grinnell Corporation, Grinnell Fire Protection, Star Sprinkler, Inc., Central Sprinkler Company, and/or Gem Sprinkler Company (collectively the "Tyco Companies"); Factory Mutual Research Corporation; and Underwriters Laboratories, Inc. These documents include a CPSC staff database chart (spreadsheet) of Star ME-1 test results and Star ME-1 engineering drawings. With respect to the documents served herewith, and in accordance with the terms of the Stipulation, these nonparties have provided limited waivers of their previous confidentiality claims thereby permitting service of these documents on the Respondents.

Respectfully submitted,



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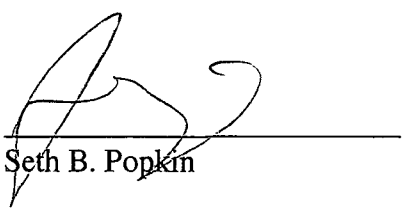

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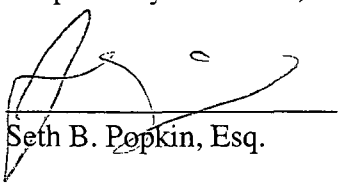

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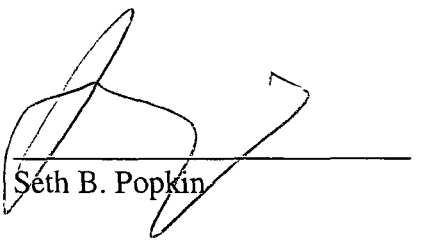

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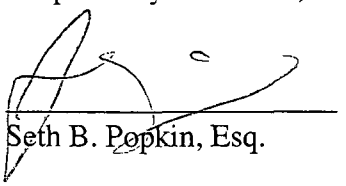

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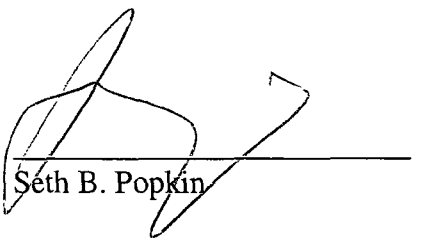

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SBP cc

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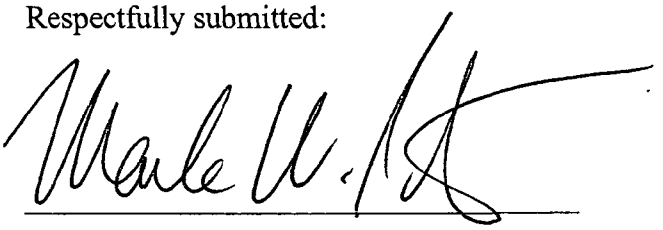
**COMPLAINT COUNSEL'S MOTION**
**FOR LEAVE TO FILE A REPLY BRIEF**

Pursuant to 16 C.F.R. § 1025.23(c), Complaint Counsel respectfully moves this Court for leave to file a reply brief (attached hereto) in support of its Motion to Compel Production of Documents (filed May 30, 2002) and its Motion to Compel Interrogatory Answers (filed June 5, 2002). Both motions seek to compel discovery from Respondents Grucon Corporation and

Sprinkler Corporation of Milwaukee, Inc. Complaint Counsel's reply is necessitated by the 23-page opposition brief (together with approximately two inches of attachments) filed by Respondents on June 17, 2002 .

Dated: June 20, 2002

Respectfully submitted:



Michael J. Gidding
Mark W. Porter

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**ORDER**

Upon consideration of the motion, opposition (if any), and any arguments of counsel, and there being good cause shown to grant this motion, it is this ___ day of _____, 2002, hereby ORDERED that Complaint Counsel's Motion for Leave to File a Reply Brief in Support of Its Motions to Compel is hereby granted.

_____
Honorable William B. Moran
United States Administrative Law Judge

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**COMPLAINT COUNSEL'S REPLY IN SUPPORT OF ITS MOTIONS TO COMPEL DISCOVERY FROM RESPONDENTS GRUCON CORPORATION AND SPRINKLER CORP. OF MILWAUKEE, INC.**

Seeking the Court's leave, Complaint Counsel makes the following reply in support of its pending motions to compel discovery responses from Respondents Grucon Corporation ("Grucon") and Sprinkler Corporation of Milwaukee, Inc. ("SCM"):[1]

[1] A motion seeking the Court's leave to file this reply is attached hereto, along with a proposed order. The sheer magnitude of Respondents' opposition (a 23-page brief and more than two inches of attachments) necessitates this reply.

## I.

Respondents' opposition boils down to this: "We've already told you we're separate corporations. Just take our word for it and go away!" Unfortunately for Respondents, the rules governing this administrative proceeding require something more exacting than that.

With all due respect, Respondents have had ample opportunities, both before and after this proceeding was filed, to provide the Commission staff with the documents and other evidence they say will establish the impropriety of veil-piercing in this case. Curiously, at page 5 of their Opposition Brief (dated June 17, 2002) ("Opp. Br."), Respondents take the Commission staff to task for failing to issue compulsory process to require production of the relevant corporate documents during the pre-filing investigation. But there was nothing preventing them from voluntarily producing the documents at that time. Similarly, when Grucon filed its declaratory judgment action in federal district court in Milwaukee in February 2001, it presumably had marshaled the documents and other evidence necessary to support the very specific factual allegations made in its complaint.[2] Grucon, at that time, could have provided such documents and evidence to the Commission staff. But, for whatever reason, it chose not to do so.[3]

Complaint Counsel can hardly be faulted for pursuing this administrative litigation when Grucon failed to pony up the evidence it says it has to prove the "corporate separateness" of

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[2] See Complaint Counsel's Motion to Compel Interrogatory Answers (filed June 5, 2002) at 2-3. Respondents argue that, by inquiring as to the factual and documentary basis of Grucon's 2001 declaratory judgment action, Complaint Counsel is somehow attempting to "reverse[] the burden of proof." Opp. Br. at 17. Respondents miss the point. Complaint Counsel obviously recognizes that it carries the burden of persuasion on its veil-piercing claim. However, Complaint Counsel is entitled to see all non-privileged evidence in Respondents' possession, custody or control that is relevant to veil-piercing. Documents supporting the allegations in Grucon's declaratory judgment complaint are unquestionably relevant to the veil-piercing claim here.

[3] Grucon failed to produce such corroborating evidence even in support of its recent Motion for Summary Decision and Order (filed May 31, 2002). See Complaint Counsel's Opposition to Grucon Corporation's Motion for Summary Decision (filed June 17, 2002).

Grucon and SCM. Indeed, Complaint Counsel would be derelict in its public duty if it had not pursued this claim against Grucon. After determining there was reason to believe that the Star ME-1 fire sprinkler manufactured from 1977 to 1995 presented a substantial product hazard within the meaning of section 15(a)(2) of the Consumer Product Safety Act, 15 U.S.C. § 2064(a)(2), it was incumbent upon Complaint Counsel to protect the public by seeking remedial action from all potentially legally responsible parties.

With the facts known to Complaint Counsel at the time of the Complaint, it was certainly appropriate to pursue Grucon on a veil-piercing theory. And Complaint Counsel has not changed its view based on anything it has learned to date in discovery. Indeed, as set forth in Complaint Counsel's Motion to Compel Interrogatory Answers (filed June 5, 2002) at 4-5, Respondents' discovery responses have disclosed, among other things, a number of related party transactions that require exploration.

In the pre-filing phase of this case, Grucon chose to ignore its opportunities to provide voluntarily the documents and evidence relevant to its relationship with SCM. Now that the parties are formally in litigation, Grucon and SCM must abide by the discovery and other rules governing that litigation. Their opposition to Complaint Counsel's Motions to Compel, despite its bluster, provides no basis for relieving them from their duty to comply.

**II.**

While Respondents aver that "Grucon produced ample documentation to support its corporate separateness" during the pre-filing phase, Opp. Br. at 5, the facts suggest otherwise. As support for this statement, Respondents cite Mr. Weber's August 4, 2000 letter to Mr. Popkin of the Commission staff, a copy of which is appended as Exhibit 11 to their opposition. Attached to that letter were approximately 58 pages of self-selected documents (Bates numbers

CPSC Star 001432-1490) relevant to the veil-piercing issue, including copies of SCM's articles of incorporation and by-laws, a few board resolutions, and a federal income tax return for the 1994 tax year. That is hardly a sufficient documentary record to make a determination on veil-piercing. The 1994 tax return is a case in point.

While the 1994 federal tax return provided to the staff in August 2000 showed SCM as the sole corporate filer,[4] recently-produced documents suggest that that was the exception, not the rule. Among the SCM documents produced (on June 6, 2002) in response to second-round discovery, were other corporate tax returns for most of the tax years in which SCM manufactured the Star ME-1 (tax years 1984-95). On each of those returns, Grucon filed on a consolidated basis with its subsidiaries, including SCM, Grunau Company, Inc., and Grunau Project Development, Inc. Evidence of consolidated tax filings can be probative of a veil-piercing claim. See, e.g., Agretti v. ANR Freight Systems, Inc., No. 89C5492, 1992 U.S. Dist. LEXIS 12189, *24 (N.D. Ill. Aug. 14, 1992) (in denying summary judgment motion to dismiss veil-piercing claim, court cited evidence that movant "filed consolidated tax returns which eliminated intercompany accounts for presentation") (citing Van Dorn Co. v. Future Chem. & Oil Corp., 753 F.2d 565, 571 (7th Cir. 1985)). Indeed, these consolidated tax filings lend even further justification for Complaint Counsel's discovery requests seeking information and documents pertaining to related-party transactions between SCM and the other Grucon-controlled subsidiaries.[5]

---

[4] Mr. Weber's August 4, 2000 letter (Opp. Br. Ex. 11), recites (at p. 3) that "I include a copy of a [sic] Star Sprinkler Corporation's 1995 tax filings as further evidence of the fact that it was a separate corporation and distinct from Grucon, Grunau Company, or Grunau Project Development." As noted above, the tax filing enclosed with Mr. Weber's letter was for the 1994 tax year, although it was filed in calendar year 1995.

[5] See Complaint Counsel's Motion to Compel Interrogatory Answers (filed June 5, 2002) at 4-5; see also infra p.6.

Despite Respondents' attempt to rewrite the legal standard, it is well-established law that a party responding to discovery must produce all relevant and responsive documents and information in its possession, custody or control, unless such documents or information are protected by a valid claim of privilege.[6] The example of the 1994 tax return merely illustrates why responding parties in discovery are not permitted to pick and choose which "reasonably available" documents to produce.

**III.**

Respondents' substantive objections to the requested discovery focus on (i) relevance and (ii) burden. Respondents can prevail on neither. First, as to relevance.

Recognizing that "cases involving an attempt to pierce a corporate veil are complicated," Compagnie Francaise d'Assurance v. Phillips Petroleum Co., 105 F.R.D. 16, 42 (S.D.N.Y. 1984) (citation omitted), the federal courts have held that when a party seeks discovery about the relationships between a corporation and its shareholder, "'relevance is broadly and liberally construed.'" Abu-Nassar v. Elders Futures, Inc., No. 88 Civ. 7906 (PKL), 1991 U.S. Dist. LEXIS 3794, *53-*54 (S.D.N.Y. Mar. 28, 1991) (citation omitted).

This broad definition of relevance is warranted by the highly fact-intensive nature of veil-piercing, which often entails consideration of multiple factors, including (i) undercapitalization, (ii) failure to maintain adequate corporate records, (iii) commingling of funds and other assets, (iv) failure to maintain arms-length relationships among related entities, etc. See, e.g., In the Matter of Safe & Sure Products, Inc., No. I.F.&R. 04-907003-C, 1998 EPA ALJ LEXIS 53, *54 (June 26, 1998). Indeed,

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[6] See, e.g., Hickman v. Taylor, 329 U.S. 495, 507-508 (1947) ("No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession").

> [a]pplying these – or any other pertinent factors – to the infinite variety of situations that might warrant disregarding the corporate form is not an easy task because **disregarding corporate separateness is a remedy that "differs with the circumstances of each case."**

Passalacqua Builders, Inc. v. Resnick Developers South, Inc., 933 F.2d 131, 139 (2d Cir. 1990) (emphasis added; citation omitted). The fact finder must "consider[] the totality of the evidence" in deciding the claim. Id. (citation omitted).

Each of the discovery requests at issue in Complaint Counsel's motion to compel are relevant to one or more factors considered by courts in assessing veil-piercing claims. Respondents have not shown otherwise,[7] even as to the requests seeking information about SCM's financial and business relationships with (i) other Grucon subsidiaries, (ii) officers, directors and shareholders of SCM, Grucon and other Grucon subsidiaries, and (iii) immediate family members of the foregoing. As set forth in Complaint Counsel's Motion to Compel Interrogatory Answers (filed June 5, 2002) at 4-5, such discovery is justified by Respondents' own representations (in interrogatory responses and otherwise) about certain transactions involving those parties. See, e.g., Passalacqua Builders, 933 F.2d at 140 (in reversing directed verdict dismissing veil-piercing claim, court cited evidence that "[f]inancial transactions also revealed a high degree of intermingling among the various corporate entities" and that "the corporations did not deal at arms length with each other"); Electromatic (Pty) Ltd. V. Rad-O-Lite of Philadelphia, Inc., 90 F.R.D. 182, 184 (E.D. Pa. 1981) (where a party demonstrates interrelated transactions, that is "enough to support further discovery on the relationships" among the various entities).

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[7] "The objecting party bears the burden of demonstrating why a particular discovery request is improper." Chicago Dist. Council v. D.P. Builders, Inc., No. 97C2496, 1997 U.S. Dist. LEXIS 17097, *8-*9 (N.D. Ill. Oct. 31, 1997) (citations omitted).

Indeed, even Respondents concede that "some of the information sought [they fail to specify which] **may be marginally relevant.**" Opp. Br. at 9 [emphasis added]. If the information, even by Respondents' own admission, is "marginally relevant," it is entirely relevant and discoverable in civil discovery. Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2008 at 108-109 (1994 ed.) ("it is not too strong to say that a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action").

**IV.**

Finally, Respondents' breadth-and-burden objections are not sufficient to relieve them of their obligation to respond fully to discovery.[8] It is established law that a party making such claims "must show specifically how, despite the broad and liberal construction afforded the federal discovery rules, each [request] is overly broad, burdensome or oppressive, by submitting affidavits or offering evidence revealing the nature of the burden. The court is not required to 'sift each interrogatory to determine the usefulness of the answer sought.'" Compagnie Francaise, 105 F.R.D. at 42 (citations omitted). Respondents have failed on that burden here. See, e.g., Abu-Nassar v. Elders Futures, Inc., No. 88 Civ. 7906 (PKL), 1991 U.S. Dist. LEXIS 3794, *59 (S.D.N.Y. Mar. 28, 1991) ("general statements by counsel, unsupported by affidavits or other competent evidence, are inadequate to demonstrate the burden of complying with proposed discovery relating to relevant areas of inquiry . . .") (citation omitted).[9]

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[8] With respect to Interrogatory No. 25, Respondents object to supplementing their response based on a claim that a deposition would be more appropriate. Opp. Br. at 22. However, where, as here, an interrogatory would advance judicial economy by potentially expediting the discovery process, the interrogatory should be allowed. See Compagnie Francaise, 106 F.R.D. at 43 ("information obtained by interrogatories . . . 'may effect judicial economy and economic savings to the parties . . . delay may be avoided . . . and the issues for trial may be narrowed'") (citation omitted).

[9] Moreover, the "sheer numerosity [of interrogatories] is not a valid objection," Compagnie Francaise, 105 F.R.D. at 42, nor is the fact that answering interrogatories or responding to document requests "will require the

In a veil-piercing case, most of the relevant documentation will, by its very nature, be in the exclusive possession, custody and control of the corporation at issue and its shareholders.[10] While that fact may inconvenience Respondents, it does not relieve them of their obligation to produce relevant documents and information.[11]

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objecting party to expend considerable time, effort and expense, or may interfere with defendant's business operations." Roseberg v. Johns-Manville Corp., 85 F.R.D. 292, 297 (E.D. Pa. 1980) (citations omitted); see also FDIC v. Mercantile Nat'l Bank, 84 F.R.D. 345, 348 (N.D. Ill. 1979).

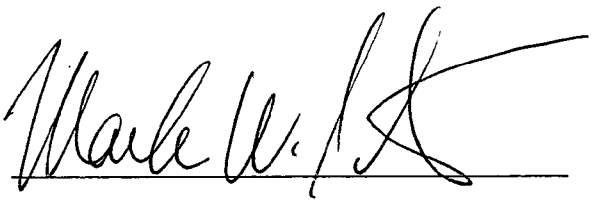
[10] Respondents complain that some of Complaint Counsel's discovery requests were not posed with the "reasonable particularity" required by 16 C.F.R. § 1025.33(b). Opp. Br. at 12. Complaint Counsel submits that even a facial examination of its requests will refute that claim. Nonetheless, because the relevant documents and information are exclusively possessed by Respondents, Complaint Counsel had no choice but to phrase some requests in more general terms in order to describe the categories of records sought.

[11] To help ease Respondents' burden in responding to discovery, Respondents may opt to permit Complaint Counsel to inspect the pertinent records on premises.

## Conclusion

For the reasons set forth above and in the motions submitted by Complaint Counsel on May 30 and June 5, 2002, Complaint Counsel's Motions to Compel discovery responses by Respondents Grucon and SCM should be granted.

Respectfully submitted:



Dated: June 20, 2002

Michael J. Gidding
Mark W. Porter

Complaint Counsel for
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1104

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Reply Memorandum In Support of Its Motions to Compel, and the accompanying papers, to be served on all parties of record in these proceedings, using the methods indicated below:

By first-class mail:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

By fax and overnight delivery:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first-class mail:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

By fax and overnight delivery:

Ralph A. Weber, Esq.
Michael T. Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
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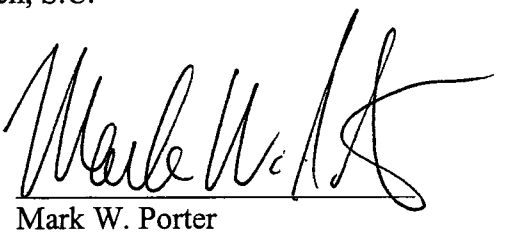

Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

JBP cc

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|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**STATUS REPORT ON RESPONDENTS' MOTION TO COMPEL AND RENEWED MOTION TO COMPEL**

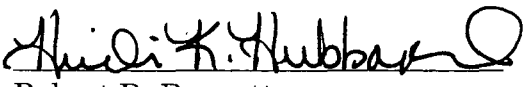
On March 7, 2002, the Chemetron and Sunbeam Respondents filed a Renewed Motion to Compel, which renewed their original Motion to Compel filed February 11, 2002, and which focused on compelling full and complete responses to their discovery requests. In particular, Respondents sought the full and complete production of numerous relevant and responsive documents and information withheld by Complaint Counsel because of third-party confidentiality assertions.

Respondents are continuing to work with Complaint Counsel to procure that complete production. Respondents have provided to Complaint

Counsel a list of the document label numbers of pages missing from the document production by Complaint Counsel, and Complaint Counsel has promised to respond by advising Respondents of the basis (e.g., unresolved assertions of confidentiality, privilege, etc.) for the withholding. Respondents understand that at least some of the responsive documents that have not yet been produced are the subject of the two motions Complaint Counsel has filed pertaining to confidentiality assertions by the Tyco Companies.

Respondents intend to continue to work with Complaint Counsel to try to obtain full and complete production of all responsive materials. Respondents do not at this time request the Court's ruling on their Renewed Motion to Compel but respectfully reserve the right to seek a ruling from the Court should they be unable to secure a full and complete production from Complaint Counsel in the very near future.

Respectfully submitted,



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(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple
WILLIAMS & CONNOLLY LLP
725 – 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*

Dated: April 25, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing upon all parties and participants of record in these proceedings on this 25th day of April, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Heidi H. Hubbard

LAW OFFICES
WILLIAMS & CONNOLLY LLP
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WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

HEIDI K. HUBBARD
(202) 434-5451
hhubbard@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

April 25, 2002

**By Hand Delivery - Filing**

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway, Rm. 502
Bethesda, MD 20814

Re: CPSC Docket No.: 02-1
*In the matter of Chemetron Corp., et al.*

Dear Sir/Madam:

Enclosed for filing please find the original and four (4) copies of the following pleading in the above-referenced matter:

Status Report on Respondents' Motion to Compel and
Renewed Motion to Compel

Please return one file-stamped copy of the pleading to the messenger for return to me. This pleading is being served this date on all parties and participants of record in this proceeding.

Please call me at (202) 434-5451 if you have any questions.

Respectfully,

Heidi K. Hubbard

Enclosure

cc (w/encl.): Michael J. Gidding, Esq.
Michael A. Brown, Esq.
Ralph A. Weber, Esq.

RECEIVED
CPSC
OFFICE OF COMPLIANCE
2002 APR 25 PM 2:59

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

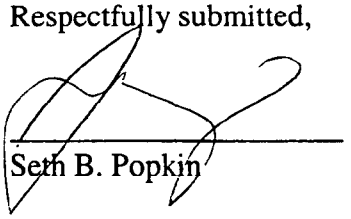
**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION REGARDING CONFIDENTIAL EXPERT WITNESS DOCUMENTS (DR. PATRICK J. MORAN)**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents, including Request for Production 73 (all documents and things reviewed or relied upon in forming opinions by any person whom the CPSC expects to call as an expert witness to testify at the hearing). The accompanying documents were reviewed or relied

upon by Dr. Patrick J. Moran in his forming opinions. As Complaint Counsel noted in previous supplemental responses, the *in camera* submissions and ongoing review of many Tyco Companies (as previously defined) documents temporarily barred Complaint Counsel from producing some of the documents reviewed or relied upon by Complaint Counsel's expert witnesses in forming opinions. Relevant parts of the *in camera* submissions matters have now been resolved, and, as a result, Complaint Counsel can produce the accompanying CONFIDENTIAL documents.

The documents served with this response have been designated as CONFIDENTIAL by the parties and/or nonparties that provided them to Complaint Counsel, contain information designated as CONFIDENTIAL by the parties and/or nonparties that provided the information, and/or were grouped with or closely related to documents designated as CONFIDENTIAL, such that separation of the nonconfidential information and documents from the confidential would prove impractical for the parties. Accordingly, Complaint Counsel requests and requires that the Respondents treat all of the documents served with this response as CONFIDENTIAL. All of the documents accompanying this supplemental response are being served on the Respondents subject to the terms of one or both of the following documents (collectively "Stipulations"): a) Confidentiality Stipulation attached to Complaint Counsel's Motion to Adopt Confidentiality Stipulation filed February 14, 2002; and b) Confidentiality Stipulation Regarding Materials Produced by Non-Parties (revised) signed and dated by all counsel of record March 22, March 26, and April 1, 2002. Given the terms of the Stipulations, which impose restrictions on disclosure of documents designated as confidential, Complaint Counsel is not filing the documents it is serving herewith in the Office of the Secretary, and the Respondents are required to handle these documents in compliance with the Stipulations' terms.

Respectfully submitted,



Seth B. Popkin

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

and by overnight mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
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Ralph A. Weber, Esq.
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1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

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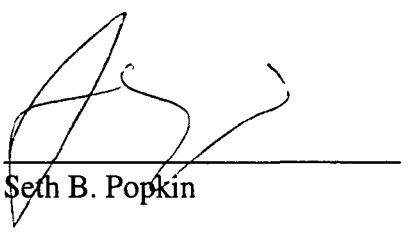

Seth B. Popkin

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION REGARDING CONFIDENTIAL EXPERT WITNESS DOCUMENTS (DR. FREDERICK W. MOWRER)**

Pursuant to 16 C.F.R. § 1025.33, and without waiving any previous general or specific objections, Complaint Counsel provides this supplemental response to Respondents' Requests for Production of Documents, including Request for Production 73 (all documents and things reviewed or relied upon in forming opinions by any person whom the CPSC expects to call as an expert witness to testify at the hearing). The accompanying documents were reviewed or relied

upon by Dr. Frederick W. Mowrer in his forming opinions. As Complaint Counsel noted in previous supplemental responses, the *in camera* submissions and ongoing review of many Tyco Companies (as previously defined) documents temporarily barred Complaint Counsel from producing some of the documents reviewed or relied upon by Complaint Counsel's expert witnesses in forming opinions. Relevant parts of the *in camera* submissions matters have now been resolved, and, as a result, Complaint Counsel can produce the accompanying CONFIDENTIAL documents.

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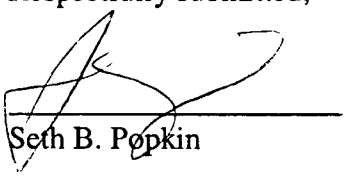
Respectfully submitted,



Seth B. Popkin

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

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and by overnight mail, postage prepaid, to:

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Suite 242
Washington, DC 20016-2756

Seth B. Popkin

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
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| and | |
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**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' REQUESTS FOR PRODUCTION REGARDING CONFIDENTIAL EXPERT WITNESS DOCUMENTS (DR. MICHAEL A. GREENE)**

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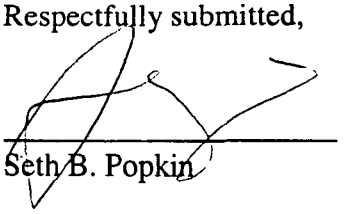

Seth B. Popkin

Complaint Counsel
U.S. Consumer Product Safety Commission
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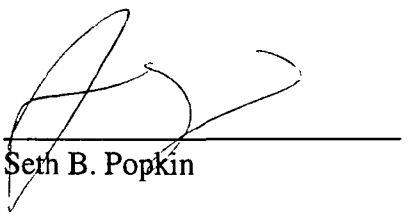

Seth B. Popkin

SBP cc

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
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| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY RESPONDENTS SPRINKLER CORP. OF MILWAUKEE, INC. AND GRUCON CORPORATION**

Pursuant to 16 C.F.R. § 1025.36, Complaint Counsel hereby moves to compel Respondents Sprinkler Corporation of Milwaukee, Inc. ("SCM") and Grucon Corporation ("Grucon") to provide full and complete responses to Complaint Counsel's Second Set of Requests for Production of Documents. Complaint Counsel is attempting to resolve these

discovery issues with Respondents' counsel (see letter attached as Exhibit A hereto[1]) in an effort to obtain complete responses without the need for a ruling by this Court.

There has been some progress in resolving these matters. Complaint Counsel received a letter yesterday (May 29, 2002) from SCM's and Grucon's counsel indicating that responsive documents -- which were due on May 10 -- are now available at counsel's office in Milwaukee (b) (5) However, because a number of important discovery issues remain unresolved, Complaint Counsel is filing this motion to preserve its rights under 16 C.F.R. § 1025.36 and to avoid any additional delay in obtaining the documents necessary to press Complaint Counsel's claims. Facing a discovery cut-off that is only ten weeks away, Complaint Counsel hopes that Respondents will soon agree voluntarily to resolve these discovery disputes in a manner that obviates the need for Court intervention. In the event such an agreement is reached, Complaint Counsel will so notify the Court.[2]

The reasons for Complaint Counsel's motion are set forth more fully below:

1. On April 10, 2002, Complaint Counsel propounded its Second Set of Requests for Production of Documents to SCM and Grucon.

2. SCM and Grucon served Complaint Counsel with written responses to the second-round document requests on May 10, 2002 (copies attached as Exhibits B and C). Responsive documents were not made available to Complaint Counsel until 19 days later, on May 29, 2002.

---

[1] Please note that, with respect to item 2 in the May 24, 2002 letter to Respondents' counsel, Complaint Counsel inadvertently erred in stating that SCM's and Grucon's responses to the Requests for Admissions had not been received. Unbeknownst to Complaint Counsel, Respondents' counsel delivered the responses to the CPSC offices on May 23. They were not internally delivered to Complaint Counsel until the morning of May 28.

[2] There also are numerous issues relating to the completeness of Grucon's and SCM's answers to Complaint Counsel's Second Set of Interrogatories, which were served on May 16, 2002. In the hope that issues relating to the interrogatory answers may be resolved among counsel before expiration of the twenty-day period under 16 C.F.R. § 1025.36, Complaint Counsel has not raised those issues in this motion.

3. While Complaint Counsel has not yet had an opportunity to review the responsive documents[3], Respondents' written responses to the document requests raise a troubling issue about the completeness of Respondents' document production. Respondents' written responses repeatedly stated their intention only to "produce those ***reasonably available*** responsive documents that [they have] located, if any" [emphasis added]. See, e.g., SCM's Responses to Complaint Counsel's Second Set of Requests for Production of Documents Nos. 2 through 16, 18 through 25, 27, 28, 29, 31 through 52, 54, 55, 57, 58 & 60. Those responses raise troubling questions about the diligence of Respondents' search for documents. Respondents' obligation is to produce all responsive documents within their possession, custody or control, 16 C.F.R § 1025.33(a)(1), not just those they deem "reasonably available." Complaint Counsel respectfully requests the Court to compel Respondents to comply fully with their discovery obligations by producing all responsive documents in their possession, custody or control, unless withheld on a claim of privilege.

4. Although Respondents objected to a number of document requests on the grounds of numerous alleged privileges (including the "critical self-analysis privilege"), Respondents have failed to provide either a privilege log or other description of the withheld documents sufficient to permit Complaint Counsel to assess Respondents' privilege claims. Complaint Counsel respectfully requests the Court to order Respondents to provide such a privilege log or other description of the withheld documents.

5. Respondent Grucon refused to produce documents responsive to Document Request No. 1. This request asked Grucon to produce documents evidencing or otherwise

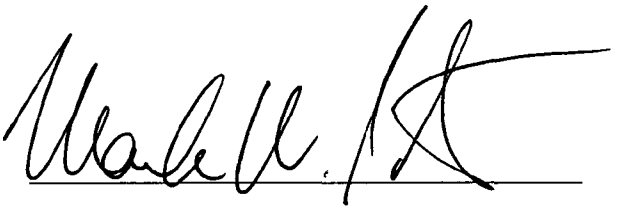
[3] Complaint Counsel will make arrangements with Respondents' counsel to have the responsive documents copied and delivered. Once Complaint Counsel has an opportunity to review the responsive documents, it may have additional objections to the completeness of Respondents' document production.

supporting certain of the allegations it raised last year in Grucon Corp. v. Consumer Product Safety Commission, Civ. Action No. 01-C-0157 (E.D. Wis., filed Feb. 14, 2001). In that case, Grucon sought a declaratory judgment that SCM and Grucon were, at all relevant times, separate and distinct corporations, so as to preclude Complaint Counsel from pursuing Grucon under a veil-piercing theory in this proceeding. While the federal district court properly dismissed that action as unripe for adjudication on September 18, 2001, the allegations raised by Grucon in that case are highly relevant to Complaint Counsel's veil-piercing claim here. For example, in that action, Grucon alleged, among other things, that SCM was an "appropriately capitalized" corporation during its operation; that SCM "complied with all required corporate practices and procedures under Wisconsin law"; and that SCM "conducted regular Board of Directors meetings and documented Board policies through minutes and resolutions." Based largely on a relevance objection, Grucon declined to produce documents responsive to this request. Complaint Counsel submits that, to the extent Grucon possesses documents evidencing these allegations, production of those documents may well assist the parties and the Court in resolving the veil-piercing claim at issue here. Since these allegations were filed in federal court only last year, such documents should be readily available to Grucon and their production should not present an onerous burden.

## Conclusion

To avoid further delay of discovery in this action, Complaint Counsel respectfully requests that Respondents SCM and Grucon be compelled immediately to produce all responsive documents within their possession, custody and control.

Respectfully submitted:



Dated: May 30, 2002

Michael J. Gidding
Mark W. Porter

Complaint Counsel for
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1104

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**ORDER**

Upon consideration of the motion, opposition, and any arguments of counsel, and there being good cause shown to grant this motion, it is this ___ day of _____, 2002, hereby ORDERED that Complaint Counsel's Motion to Compel is GRANTED; it is further ORDERED that Respondents Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation shall, within seven days of this Order, produce all documents within their in their possession, custody or control that are responsive to Complaint Counsel's Second Request for Production of Documents.

_____
Honorable William B. Moran
United States Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Motion to Compel Production of Documents and Answers to Interrogatories By Respondents' Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation to be served on all parties of record in these proceedings, using the methods indicated below:

By first-class mail:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

By hand delivery:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first-class mail:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

By overnight delivery:

Ralph A. Weber, Esq.
Michael T. Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186



Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety Commission

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Mark W. Porter
Trial Attorney
Legal Division
Office of Compliance

Tel: 301-504-0626, ext. 1104
Fax: 301-504-0359
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May 24, 2002

**By Fax & Federal Express**

Michael A. Brown, Esquire
Brown & Freeston, P.C.
3201 New Mexico Avenue, N.W., Suite 242
Washington, DC 20016-2756

Ralph A. Weber, Esquire
Reinhart Boerner Van Deuren, s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

**RE: *In the Matter of Chemetron Corp., et al.*, CPSC Docket No. 02-1**

Dear Messrs. Brown and Weber:

We have a number of concerns about the adequacy of your clients' responses to Complaint Counsel's recent discovery requests. The purpose of this letter is to raise those concerns with you now in the hope of obtaining complete responses without involving the Court.

1. Although Grucon and SCM provided written responses to Complaint Counsel's Second Set of Requests for Production of Documents on May 10, 2002, we still have not received the responsive documents. This is a point I raised with you in my letter of May 17, 2002. Grucon's and SCM's responsive documents are now two weeks late. Please advise me immediately as to when your clients will make the documents available to Complaint Counsel. With less than three months to complete discovery in this action, your clients' delay in producing documents is prejudicing Complaint Counsel's ability to pursue its claims.

2. Complaint Counsel served you with Requests for Admission by hand delivery on April 22, 2002. Pursuant to 16 C.F.R. § 1025.34(b), Grucon's and SCM's

responses were due on May 22, 2002. Complaint Counsel has not received your clients' answers as of today, which makes them two days late.

3. Throughout their written responses to the second round of document requests and interrogatories, Grucon and SCM noted that they "will produce those reasonably available responsive documents that [they have] located, if any" [emphasis added]. See, e.g., SCM's Responses to Complaint Counsel's Second Set of Requests for Production of Documents Nos. 2 through 16, 18 through 25, 27, 28, 29, 31 through 52, 54, 55, 57, 58 & 60. Aside from the fact that Complaint Counsel has not yet received any documents from your clients, reasonably available or otherwise, "reasonable availability" misstates your clients' obligation in responding to discovery requests. Your clients are obligated to produce all responsive documents and information in their possession, custody or control, and they are obligated to conduct a diligent search to locate all such documents and information. In the case of each interrogatory and document request propounded to SCM and Grucon by Complaint Counsel, please confirm in writing that your clients have produced all responsive documents and information in their possession, custody or control, unless withheld on the basis of privilege. In those instances where no responsive documents or information could be located, please confirm in writing that a diligent search was conducted for such documents and information.

4. As you know, Complaint Counsel propounded identical sets of document requests and interrogatories to SCM and Grucon. In numerous instances, Grucon declined to respond to particular document requests and interrogatories, noting that SCM was the proper party to respond. See Grucon's Answers to Complaint Counsel's Second Set of Interrogatories Nos. 15 through 22, 26, 28 through 31, 33 through 44, 46 through 51, 53 through 61, 63, 64, 68 through 71 & 74 through 77; Grucon's Responses to Complaint Counsel's Second Set of Requests for Production of Documents Nos. 2 through 16, 19 through 23, 25, 29, 32 through 48, 50, 51, 52, 55, 57 & 58. Complaint Counsel does not find these responses particularly objectionable, so long as Grucon confirms that it is obligated to ensure SCM's production of all responsive documents and information in SCM's possession, custody or control. That is particularly so here because SCM, a wholly-owned subsidiary of Grucon, has no current employees or operations. Ample federal case law exists on a corporation's duty to produce documents and information held by controlled subsidiaries. Complaint Counsel will be satisfied with a written confirmation that all responsive documents and information in SCM's possession, custody or control have been produced. And, of course, to the extent that Grucon itself has possession, custody or control of documents and information responsive to those discovery requests, Grucon is obligated to produce them. Similarly, Complaint Counsel requests Grucon's written confirmation that all such documents and information have been produced.

5. When referencing documents in lieu of written interrogatory responses, SCM and Grucon failed to comply with the requirement of 16 C.F.R. § 1025.32(d) to "specify the records from which the answer may be derived or ascertained" [emphasis added]. On several occasions, your clients' responses referred generally to documents "which will be produced," but failed to specify the particular documents from which the answers to those interrogatories may be ascertained. Therefore, in those instances where Grucon's and SCM's interrogatory responses refer to documents to be produced, please supplement the responses by identifying, by Bates number, the specific documents from which the answers may be ascertained. Specifically, Complaint Counsel requests such supplementation with respect to the following interrogatories: (for SCM) Interrogatory Nos. 15, 16, 17, 18, 19, 20, 21, 22, 30, 32, 33, 34, 35, 36, 37, 39, 40, 41, 49, 50, 53, 54, 56, 57, 61, 63, 64, 68, 69, 70 & 74; (for Grucon) Interrogatory Nos. 23, 24 & 32.

6. Grucon's and SCM's responses to Complaint Counsel's Second Set of Interrogatories omitted the signatures and oaths required by 16 C.F.R. § 1025.32(b). Please provide responses that include the required signatures and oaths.

7. Neither Grucon nor SCM has provided a privilege log or other description of the documents that you are withholding on privilege grounds. Complaint Counsel requests that you specifically identify all of the responsive documents that Grucon and SCM withheld on the basis of a privilege claim, so that the validity of those claims may be assessed.

8. Complaint Counsel has specific concerns about the following written responses to its Second Set of Requests for Production of Documents and Second Set of Interrogatories:

   a. Document Request No. 1 and Interrogatory Nos. 1-14 (to Grucon): See the comments in my letter of May 17, 2002. To the extent that Grucon possesses documents and information supporting the allegations it made in the declaratory judgment action that Grucon filed last year (e.g., that SCM was an "appropriately capitalized corporation" during its operation, and that SCM "complied with all required corporate practices under Wisconsin law"), production of those documents may help to resolve the veil-piercing issues in this case.

   b. Document Request No. 53 (to Grucon and SCM): If the redactions to those documents were based on a claim of privilege, identify the specific claim in your privilege log so that we may assess its validity. If there is no claim of privilege with respect to those documents, Complaint Counsel requests that unredacted versions be produced.

c. Interrogatory No. 25 (to Grucon and SCM): We requested certain details regarding instances in which Grucon was consulted or informed about the hiring, firing, discipline or salaries of SCM employees. While Grucon's and SCM's responses admitted that Grucon was "intermittently consulted or informed of personnel matters," they failed to identify the employees and circumstances. Please supplement the responses to include the requested details.

d. Interrogatory No. 28 (to Grucon and SCM): We requested that your clients identify instances in which the assets or property of a Grucon Subsidiary (other than SCM), a Grucon Insider, or an Immediate Family Member of a Grucon Insider (as those terms were defined in the definitions section) were used to collateralize a loan or other financial obligation of SCM and/or Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among those parties, as they may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that your clients answer this interrogatory in full.

e. Interrogatory No. 34 (to Grucon): We requested that your client identify and describe instances of financial transfers to SCM from Grucon, another Grucon Subsidiary, a Grucon Insider or an Immediate Family member of a Grucon Insider. Grucon's response to this interrogatory referred to Grucon's answer to Interrogatory No. 3, which, in turn, refers to Grucon's answer to Interrogatory No.1. As you know, Grucon's answer to Interrogatory No.1 relates to its objection to responding to interrogatories concerning allegations in its declaratory judgment action. That is not responsive to Interrogatory No. 34. Please answer Interrogatory No. 34 in full. For the reasons set forth in paragraph 8d above, Complaint Counsel is entitled to explore financial transfers to SCM from the parties identified in the interrogatory. Complaint Counsel therefore requests that Grucon answer this interrogatory in full.

f. Interrogatory No. 45 (to Grucon): We requested that your client describe the business of each of Grucon and the Grucon Subsidiaries other than SCM. Other than stating that those companies never manufactured the Star ME-1, your client refused to answer this interrogatory. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the business relationships between SCM, Grucon and the other Grucon Subsidiaries, as those relationships may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that Grucon answer this interrogatory in full.

g. Interrogatory No. 66 (to Grucon): After citing several objections to this interrogatory, Grucon stated: "Subject to and without waiving the foregoing objections, Grucon answers that [BLANK]." We assume this was an inadvertent error in the document. Please fill in the blank by providing a complete response to this interrogatory.

h. Interrogatory No. 26 (to SCM): We requested information concerning instances in which the property and assets of SCM were used to secure or collateralize a loan or other financial obligation of any other person or entity. In its response, SCM answered only as to Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore SCM's financial relationships with other parties, as this may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that SCM answer this interrogatory in full.

i. Interrogatory No. 29 (to SCM): We requested information concerning instances in which SCM assumed, paid or otherwise satisfied a liability or obligation of Grucon, another Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider. In its response, SCM answered only as to Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among those parties, as they may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that SCM answer this interrogatory in full.

j. Interrogatory No. 30 (to SCM): We requested information concerning instances in which SCM's liabilities or obligations were assumed, paid or otherwise satisfied by Grucon, another Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider. In its response, SCM answered only as to Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among those parties, as they may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that SCM answer this interrogatory in full.

k. Interrogatory No. 32 (to SCM): We requested information about how Grucon, SCM and the other Grucon Subsidiaries accounted for intercorporate transactions between and among themselves. In its answer, SCM objected to the extent that the interrogatory sought information concerning intercorporate transactions between SCM and entities other than Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among SCM and the other Grucon Subsidiaries, as they may bear on the

veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that SCM answer this interrogatory in full.

l. Interrogatory Nos. 33 & 34 (to SCM): We requested information concerning transfers of cash, property or other assets between SCM and Grucon, another Grucon Subsidiary, a Grucon Insider, or any Immediate Family Member of a Grucon Insider. In its answers, SCM objected to the extent that the interrogatories sought information concerning transfers between SCM and entities/persons other than Grucon. Your objections to these interrogatories are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among SCM and the other parties, as they may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that SCM answer these interrogatories in full.

m. Interrogatory No. 35 (to SCM): We requested information concerning certain categories of contracts between SCM and any of Grucon, another Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider. In its answer, SCM objected to the extent the interrogatory sought information about contracts between SCM and entities other than Grucon, but then identified a lease between SCM and the Gretchen Henry & Susan Dragisic Trust. Please confirm whether that lease is the only such contract between SCM and any of Grucon, another Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider. If not, for the reasons stated in paragraph 81 above, Complaint Counsel requests that SCM answer this interrogatory in full as to all such contracts.

n. Interrogatory No. 47 (to SCM): We requested information about whether Grucon or any other Grucon Subsidiary ever processed SCM's payroll. In its response, SCM answered only as to Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among SCM and the other Grucon Subsidiaries, as they may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that SCM answer this interrogatory in full.

o. Interrogatory No. 48 (to SCM): We requested information about whether Grucon or any other Grucon Subsidiary ever performed billing functions for SCM. In its response, SCM answered only as to Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among SCM and the other Grucon Subsidiaries, as they may bear on the veil-piercing

allegations in the Complaint. Complaint Counsel therefore requests that SCM answer this interrogatory in full.

p. Interrogatory No. 53 (to SCM): We requested information concerning instances in which SCM's expenses were paid by Grucon, another Grucon Subsidiary, any Grucon Insider or any Immediate Family Member of a Grucon Insider. In its answer, SCM objected to the extent that the interrogatory sought information concerning such payments by entities and persons other than Grucon. Your objections to this interrogatory are not well taken, as Complaint Counsel is entitled to explore the financial interrelationships among SCM and the other parties, as they may bear on the veil-piercing allegations in the Complaint. Complaint Counsel therefore requests that SCM answer this interrogatory in full.

To avoid further delay in completing discovery in this action, we hope to resolve these issues amicably with you without recourse to the Court. Please call me as soon as possible to discuss supplementing your clients' responses to Complaint Counsel's second round of discovery. The foregoing is without prejudice to Complaint Counsel's right to raise additional concerns in the future.

Thank you for your attention to these matters.

Very truly yours,

Mark W. Porter

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**NOTICE OF WITHDRAWAL OF COMPLAINT COUNSEL'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES BY RESPONDENT SUNBEAM CORPORATION**

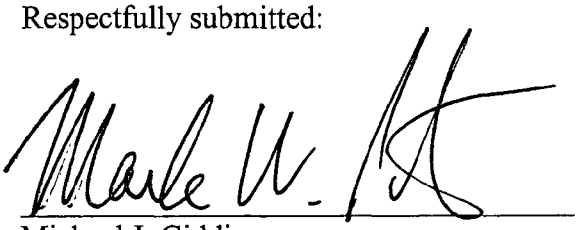
On May 3, 2002, Respondent Sunbeam Corporation ("Sunbeam") served its responses to Complaint Counsel's Second Set of Requests for Production of Documents and Second Set of Interrogatories. On May 23, 2002, Complaint Counsel filed a Motion to Compel Sunbeam to produce documents and answers responsive to numerous document requests and interrogatories.

On May 30, 2002, on behalf of its clients, Sunbeam's counsel provided Complaint Counsel with a signed letter (see Exhibit A hereto) stipulating, among other things, that "Respondents Sunbeam Corporation, Chemetron Corporation and Chemetron Investments, Inc.

('Respondents') will not raise issues relating to the discharge of liability in In the Matter of Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.) or the Asset Purchase Agreement, dated September 28, 1990, in the above-stated matter (or in any matter where the Star ME-1 is the product at issue and the Consumer Product Safety Commission ('CPSC') is the adverse party)."

Relying on the representations made by Sunbeam's counsel in its May 30, 2002 letter, Complaint Counsel hereby withdraws its pending Motion to Compel.

Respectfully submitted:



Dated: June 3, 2002

Michael J. Gidding
Mark W. Porter

Complaint Counsel for
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1104

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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

May 30, 2002

By Telecopy and U.S. Mail

Mark W. Porter, Esq.
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

**Re: CPSC Docket No.: 02-1**
*In the matter of Chemetron Corp., et al.*

Dear Mark:

This letter will confirm that Respondents Sunbeam Corporation, Chemetron Corporation and Chemetron Investments, Inc. ("Respondents") will not raise issues relating to the discharge of liability in In the Matter of Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.) (the "Allegheny bankruptcy") or the Asset Purchase Agreement, dated September 28, 1990, in the above-stated matter (or in any matter where the Star ME-1 is the product at issue and the Consumer Product Safety Commission ("CPSC") is the adverse party). Respondents reserve the right to raise issues relating to the Allegheny bankruptcy and/or the Asset Purchase Agreement in matters involving different products or in matters where the CPSC is not a party. As a result of the Respondents' decision not to raise these defenses in the current matter, however, any need for discovery requests on these issues should be obviated. We trust that this response satisfactorily resolves all outstanding issues addressed in your Motion to Compel.

Sincerely,

Karyn A. Temple

cc: Michael J. Gidding (by telecopy)

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2002, I caused a true and correct copy of the foregoing Notice of Withdrawal of Complaint Counsel's Motion to Compel Respondent Sunbeam Corporation to be served on all parties of record in these proceedings, using the methods indicated below:

By hand delivery:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

By first-class mail:

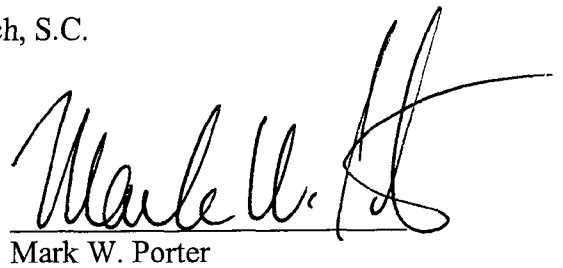
Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By overnight delivery:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

By first-class mail:

Ralph A. Weber, Esq.
Michael T. Flynn, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186



Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S**
**SECOND SET OF REQUESTS FOR PRODUCTION**
**OF DOCUMENTS AND THINGS TO RESPONDENT**
**SPRINKLER CORPORATION OF MILWAUKEE, INC.**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent Sprinkler Corporation of Milwaukee, Inc. serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel's office and permit Complaint Counsel to inspect and/or copy each of the documents and things requested below.

## DEFINITIONS

1. "You," "your," and "Respondent" means the Respondent to whom these discovery requests are directed, any and all corporate predecessors and successors, including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" means the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" means any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" means consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person means to provide the person's full name; last known residential and business address, telephone number, job title(s), and employer; and the person's relationships or associations, if any, with the Respondents in this action, and the dates of such relationships and associations.

6. "Identify" or "identity" when used with respect to a corporation, business or other entity means to provide the entity's name; all former names and d/b/a names; last known address and telephone number; state of incorporation, registration, or organization; the identity and address of its registered agent in each state where it is present and doing business or has a place of business; its present officers, directors, and shareholders; and its relationship, if any, to the Respondents in this action, and the dates of such relationships and associations.

7. "Identify" or "identity" when used with respect to a document means to provide the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication means to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Communication" means any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

10. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star" brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

11. "Second Interrogatories" means Complaint Counsel's Second Set of Interrogatories to Respondent Sprinkler Corporation of Milwaukee, Inc.

12. "AI" means Allegheny International, Inc., whether previously or subsequently known under different real or fictitious names, any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

13. "Chemetron" means Respondent Chemetron Corporation, whether previously or subsequently known under different real or fictitious names, any and all of its corporate

predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

14. "CFS" means Chemetron Fire Systems, Inc., whether previously or subsequently known under different real or fictitious names, any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

15. "Chemetron Investments" means Respondent Chemetron Investments, Inc., whether previously or subsequently known under different real or fictitious names, any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

16. "Sunbeam" means Respondent Sunbeam Corporation, whether previously or subsequently known under different real or fictitious names, any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

17. "Grucon" means Respondent Grucon Corporation, whether previously or subsequently known under different real or fictitious names, any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

18. "SCM" means Respondent Sprinkler Corporation of Milwaukee, Inc., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. (including if previously or subsequently known under different names), any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

19. "GC" means Grunau Company, Inc., a Wisconsin corporation, last known to have its principal place of business at 1100 West Anderson Court, Oak Creek, Wisconsin 53154 (including if previously or subsequently known under different names), any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

20. "GPD" means Grunau Project Development, Inc., a Wisconsin corporation, last known to have its principal place of business at 101 West Pleasant Street, Suite 104, Milwaukee, WI 53212 (including if previously or subsequently known under different names), any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors, representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

21. "Grinnell" means Grinnell Corporation, a Delaware corporation, with its principal place of business at Three Tyco Park, Exeter, NH 03833 (including if previously or subsequently known under different names), any and all of its corporate predecessors and successors, any and all of its past and present divisions, branches, officers, directors,

representatives, agents, and employees, and any and all other persons currently or previously acting or purporting to act on its behalf.

22. "Grucon Subsidiary" means SCM, GC, GPD and any other direct or indirect subsidiary of Grucon, whether or not wholly owned.

23. "Grucon Insider" means any officer, director or shareholder of Grucon, SCM, GC, GPD or any other Grucon Subsidiary, and any trust in which any of the foregoing is a trustee or beneficiary.

24. "Immediate Family Member" includes spouses, children, parents, brothers, sisters, brothers-in-law, sisters-in-law, fathers-in-law, mothers-in-law, and any trust in which any of the foregoing is a trustee or beneficiary.

INSTRUCTIONS

A. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each document, item, or category requested, that it has been produced, or that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of a request, item, or category, that part shall be specified. A response should not be supplied solely by reference to the response to another request or subpart unless the response is completely identical to the response to which reference is made.

B. The responses shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the

unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Each request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, accountants, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, accountants, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

D. Each request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

E. Identify each person who assisted or participated in preparing and/or supplying any of the information, documents, or things given in response to or relied upon in preparing a response to a request.

F. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

G. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

H. The singular shall include the plural, and vice versa.

I. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, your attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

J. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

K. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

L. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

M. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

N. Pursuant to 16 C.F.R. § 1025.31, you are under a continuing duty to supplement your responses to these discovery requests without further request from Complaint Counsel. A respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

O. In producing the documents and things requested herein, indicate, and segregate the documents by, the specific request (by paragraph and subparagraph numbers/letters) in response to which each document, group of documents, or thing is produced.

P. To facilitate identification and organization of the documents, Bates-stamp or otherwise number all documents produced.

Q. Documents identified herein by reference to a Bates number beginning with the prefix "RESP" were produced in this action by Respondents Sunbeam, Chemetron and/or Chemetron Investments. Documents identified herein by reference to a Bates number beginning with the prefix "SCM" were produced in this action by Respondent SCM. Documents identified herein by reference to a Bates number beginning with the prefix "CPSC Star" were produced in this action by Complaint Counsel.

R. Unless indicated otherwise, Respondent should produce all responsive documents for the period January 1, 1983 to the present.

## REQUESTS FOR PRODUCTION

1. With respect to the Complaint for Declaratory Relief ("Grucon Complt.") that you filed to commence the case captioned Grucon Corp. v. Consumer Product Safety Commission, Civ. Action No. 01-C-0157 (E.D. Wisc., filed Feb. 14, 2001), produce all documents that evidence, support or otherwise relate to each of your following allegations:

(a) "From 1984 to 1996, Star Sprinkler Company manufactured various sprinkler heads used in the fire protection industry. One such sprinkler was known as the ME-1, a specialized 'dry pendant' sprinkler" (Grucon Complt. ¶ 6);

(b) "During its operation, Star Sprinkler Company was an appropriately capitalized corporation" (Grucon Complt. ¶ 7);

(c) "During its operation, Star Sprinkler Company . . . complied with all required corporate practices and procedures under Wisconsin law" (Grucon Complt. ¶ 7);

(d) "Star Sprinkler Company . . . maintained a Board of Directors separate from Grucon" (Grucon Complt. ¶ 7(a));

(e) "Star Sprinkler Company . . . procured its own line of credit" (Grucon Complt. ¶ 7(b));

(f) "Star Sprinkler Company . . . hired and fired its own employees" (Grucon Complt. ¶ 7(c));

(g) "Star Sprinkler Company . . . maintained checking and other financial accounts separate from Grucon" (Grucon Complt. ¶ 7(d));

(h) "Star Sprinkler Company . . . conducted regular Board of Director meetings and documented Board policies through minutes and resolutions" (Grucon Complt. ¶ 7(e));

(i) "Star Sprinkler Company . . . maintained offices, addresses, and telephone numbers separate from Grucon" (Grucon Complt. ¶ 7(f));

(j) "On January 31, 1996 Star Sprinkler Corporation sold its assets, including its name, to a competitor, Grinnell Corporation ('Grinnell'). As a consequence of that sale, Star Sprinkler Corporation changed its name to Sprinkler Company of Milwaukee" (Grucon Complt. ¶ 8);

(k) "After the sale to Grinnell, Sprinkler Company of Milwaukee did not engage in any business activity. Sprinkler Company of Milwaukee did not manufacture any products, it did not provide any services, it did not have any employees, and it did not transact any business" (Grucon Complt. ¶ 9);

(l) "After the sale and receipt of sales proceeds, Sprinkler Company of Milwaukee appropriately disbursed the proceeds from the sale to Grinnell as a dividend to its shareholder, Grucon" (Grucon Complt. ¶ 10); and

(m) "At all times material, Grucon and Sprinkler Company of Milwaukee have been separate and distinct corporations" (Grucon Complt. ¶ 11).

2. Produce all "permanent records" maintained by SCM as required by §180.1601(1) of the Wisconsin Business Corporation Law, including but not limited to:

(a) all minutes of meetings of shareholders;

(b) all minutes of meetings of the board of directors;

(c) all records of actions taken by shareholders without a meeting;

(d) all records of actions taken by the board of directors without a meeting; and

(e) "all records of actions taken by a committee of the board of directors in place of the board of directors and on behalf of the corporation."

3. Produce all "accounting records" maintained by SCM as required by §180.1601(2) of the Wisconsin Business Corporation Law.

4. Produce all shareholder records maintained by SCM or its agent pursuant to §180.1601(3) of the Wisconsin Business Corporation Law.

5. Produce all documents evidencing or otherwise relating to each of SCM's shareholder meetings (whether annual or special), including but not limited to:

(a) all notices of such meetings;

(b) all waivers of notice signed by any of SCM's shareholders;

(c) all agendas and other materials provided to shareholders in advance of such meetings; and

(d) all resolutions considered and/or adopted at such meetings.

6. Produce all documents evidencing or otherwise relating to each of SCM's board of director meetings (whether regular or special), including but not limited to:

(a) all notices of such meetings;

(b) all waivers of notice signed by any of SCM's directors;

(c) all agendas and other materials provided to directors in advance of such meetings; and

(d) all resolutions considered and/or adopted at such meetings.

7. Produce all annual reports filed by SCM in compliance with §180.1622 of the Wisconsin Business Corporation law.

8. Produce all filings made by or on behalf of SCM with the Wisconsin Department of Financial Institutions and/or the Wisconsin Secretary of State's Office.

9. Produce all notices, correspondence and other communications received by SCM or its agent from the Wisconsin Department of Financial Institutions and/or the Wisconsin Secretary of State's Office.

10. Produce all financial statements prepared by or on behalf of SCM in compliance with §180.1620 of the Wisconsin Business Corporation Law.

11. Produce all documents evidencing or otherwise relating to fees and penalties assessed on SCM by the Wisconsin Department of Financial Institutions and/or the Wisconsin Secretary of State's Office.

12. Produce all documents constituting or otherwise relating to any actual or threatened administrative dissolution of SCM pursuant to §§180.1420-1421 of the Wisconsin Business Corporation Law.

13. Produce all documents evidencing or otherwise relating to SCM's authority to transact business as a foreign corporation in jurisdictions other than Wisconsin, including but not limited to, all certificates of authority (or their statutory equivalent) for each such jurisdiction; all annual reports and other documents filed with each such jurisdiction; and all notices, correspondence and other communications received from each such jurisdiction regarding SCM's status as a foreign corporation.

14. Produce complete copies of all federal income tax returns (including all forms, schedules, worksheets, statements, exhibits, attachments, corrections and amendments) filed by SCM.

15. Produce complete copies of all Wisconsin corporation franchise and/or income tax returns (including all forms, schedules, worksheets, statements, exhibits, attachments, corrections and amendments) filed by SCM.

16. Produce complete copies of all Uniform Commercial Code (UCC) Financing Statements (including all attachments, exhibits, amendments, addenda, corrections, continuations, releases and terminations) that were filed with any jurisdiction to perfect security interests in property or assets of SCM, including but not limited to, the following filings:

(a) Wisconsin Department of Financial Institutions (WDFI) Filing No. 01215389, effective 07/05/91, Grucon Inc. and Star Sprinkler Corp. (debtors of record), M&I Bank of Menomonee Falls (secured party);

(b) WDFI Filing No. 01219493, effective 07/26/91, Grucon Inc. and Star Sprinkler Corp. (debtors of record), First Federal Financial Service Inc. (secured party);

(c) WDFI Filing No. 00706413, effective 02/16/84, Star Sprinkler Corp. (debtor of record), M&I Marshall & Ilsley Bank (secured party);

(d) WDFI Filing No. 00729173, effective 06/19/84, Star Sprinkler Corp. (debtor of record), M&I Marshall & Ilsley Bank (secured party);

(e) WDFI Filing No. 01033327, effective 01/12/89, Star Sprinkler Corp. (debtor of record), Stoffel Equipment Co. Inc. (secured party);

(f) WDFI Filing No. 01294884, effective 07/31/92, Star Sprinkler Corp. (debtor of record), M&I First National Leasing Corp. (secured party);

(g) WDFI Filing No. 01450816, effective 08/23/94, Star Sprinkler Corp. (debtor of record), M&I First National Leasing Corp. (secured party); and

(h) Iowa Secretary of State Filing No. K444030, filed 03/09/93, Star Sprinkler Corp. (debtor of record), M&I Marshall & Ilsley Bank (secured party).

17. Produce complete copies of all Uniform Commercial Code (UCC) Financing Statements (including all amendments, exhibits, addenda, corrections, continuations, releases and terminations) that were filed with any jurisdiction to perfect security interests in property or assets of Grucon, including but not limited to, the following filings:

(a) WDFI Filing No. 00729167, effective 06/19/84, Grucon Corp. (debtor of record), M&I Marshall & Ilsley Bank (secured party); and

(b) WDFI Filing No. 01235093, effective 10/17/91, Grucon Corp. (debtor of record), Associates Leasing Inc. (secured party).

18. With respect to the UCC Financing Statements called for by Request Nos. 16 and 17 above, produce all loan agreements, credit agreements, leasing agreements, factoring agreements, purchase agreements, sale agreements, installment notes, promissory notes, mortgage agreements, security agreements, assumption agreements, guaranties, and other contracts and documents evidencing, or otherwise relating to, the transactions underlying each such UCC Financing Statement.

19. Produce all contracts, agreements and other documents relating to CFS's sale, conveyance and/or other transfer of "Star Products" assets to Respondent SCM (then known as "Grunau Sprinkler Manufacturing Company, Inc."), on or about November 9, 1983, including

but not limited to, (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices and other writings referenced in such contracts and agreements.

20. Produce all correspondence and other communications to or from CFS, Chemetron, Chemetron Investments, AI or Sunbeam relating to the transaction described in Request No. 19 above, including but not limited to, all correspondence relating to liabilities and indemnification obligations arising from that transaction.

21. Produce a complete copy of the "Asset Purchase Agreement," dated as of January 31, 1996, and all other contracts, agreements and documents relating to Respondent SCM's (then known as "Star Sprinkler Corporation") sale of certain assets, including those related to manufacture of the Star ME-1, to Grinnell on or about that date, including but not limited to (i) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (ii) all legal opinions, invoices and other writings referenced in such contracts and agreements. In responding to this request, include all of the following documents that are incorporated by reference, or otherwise cited, in the foregoing "Asset Purchase Agreement":

(a) Schedule 6.9 (the lease with the Susan Dragisic Trust and the Gretchen G. Henry Trust);

(b) Schedule 6.8 (the employment agreement with James Henry);

(c) Schedule 6.11 (Grunau Company, Inc. supply agreement);

(d) all documents constituting or otherwise relating to the "Grucon Guaranty";

(e) the "Personal Property Leases";

(f) Schedule 1.1(g) (certain contracts and leases);

(g) Schedule 1.1(h) (certain licenses and permits);

(h) Schedule 4.1.1 (jurisdictions in which SCM was qualified to do business as a foreign corporation);

(i) the "Pre-Closing Net Asset Statement";

(j) the "audited profit and loss statements of the Business for the 12-month period ended October 31, 1995";

(k) the "unaudited profit and loss statement for the two-month period ended December 31, 1995";

(l) Schedule 4.1.4 (insurance policies);

(m) Schedule 4.1.5 (pending and threatened litigation);

(n) Schedules 4.1.6 and 4.1.6(a) (licenses and permits);

(o) Schedule 4.1.9 (certain changes);

(p) Schedule 4.1.10 (list of real property leases);

(q) the "Real Property Leases";

(r) Schedule 4.1.11 (list of material contracts);

(s) the "Material Contracts";

(t) Schedule 4.1.15 (list of employee contracts, arrangements, and ERISA plans);

(u) copies of the "employee welfare benefit" and "employee pension benefit plans";

(v) Schedules 1.1(e) and 1.2(e) (list of all materials items of personal property);

(w) Schedule 4.1.20 (list of ten largest suppliers and customers);

(x) Schedule 4.1.23 (powers of attorney);

(y) Schedule 4.1.24 (list of bank, trust company, securities broker or other financial institution accounts);

(z) Schedule 4.1.25 (certain liabilities and obligations);

(aa) Schedule 4.1.26 (restrictions on business activities);

(bb) the "Office Equipment Lease";

(cc) the "Compliance Certificate" delivered by SCM; and

(dd) all documents that SCM was required to deliver to the purchaser on the Closing Date, including the certified resolutions, the bill of sale, the assignments, the "Books and Records," the "Non-Competition Agreement," the "Employment Agreement," the "Lease of Seller's Plant," the "Lease of Office Equipment," and the "Supply Agreement"; and

(ee) all documents summarizing, inventorying or listing the "Books and Records" delivered to Grinnell by SCM upon closing.

22. Produce all correspondence and other communications to or from Grinnell relating to the transaction described in Request No. 21 above, including but not limited to, all correspondence relating to liabilities and indemnification obligations arising from that transaction.

23. With reference to the SCM Board of Director Resolutions, dated January 29, 1996 (SCM000134), produce all documents that constitute, evidence or otherwise relate to each of the following:

(a) the "lines of credit and debt obligations of Grucon, Grunau and Grunau Project Development";

(b) the "Bank Debt (Star Sprinkler to M&I Bank)";

(c) the "Equipment Lease and Accruals";

(d) the "Transaction Costs";

(e) the "Income Taxes";

(f) the transfer of $200,000 to Grucon;

(g) all "further Board of Directors actions [subsequently taken] for the ultimate use of the Proceeds";

(h) the "Proceeds" received by SCM as a result of the "Asset Purchase Agreement with Grinnell Corporation"; and

(i) any repayment to SCM of funds that were "used to temporarily pay down the lines of credit and debt obligations of Grucon, Grunau and Grunau Project Development."

24. Produce the Articles of Incorporation and By-Laws (including all amendments and restatements) of Grucon and SCM.

25. Produce all documents constituting or otherwise relating to any guaranty in which (a) SCM guaranteed the financial obligations or performance of any other entity or person, and/or (b) any other entity or person guaranteed the financial obligations or performance of SCM.

26. Produce all documents constituting or otherwise relating to any guaranty in which (a) Grucon, guaranteed the financial obligations or performance of any other entity or person, and/or (b) any other entity or person guaranteed the financial obligations or performance of Grucon.

27. Produce all documents constituting or otherwise relating to any guaranty in which a Grucon Subsidiary, a Grucon Insider or an Immediate Family Member of a Grucon Insider guaranteed the financial obligations or performance of Grucon and/or SCM.

28. To the extent not produced in response to Request Nos. 10 and 21(i)-(k) above, produce all financial statements of SCM and Grucon (audited and unaudited; consolidated and unconsolidated), including but not limited to, balance sheets, income statements, profit-and-loss statements, and all auditor opinions, letters and certifications.

29. To the extent not produced in response to Request No. 18 above, produce all contracts, agreements and other documents evidencing or otherwise relating to all instances in which the assets or property of SCM were used to collateralize or secure a loan or other financial obligation, regardless of the obligor.

30. To the extent not produced in response to Request No. 18 above, produce all contracts, agreements and other documents evidencing or otherwise relating to all instances in which the assets or property of Grucon were used to collateralize or secure a loan or other financial obligation, regardless of the obligor.

31. Produce all contracts, agreements and other documents evidencing or otherwise relating to all instances in which the assets or property of a Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider were used to collateralize or secure a loan or other financial obligation of Grucon and/or SCM.

32. For each bank, brokerage, trust company or other financial institution account on which SCM was an accountholder or in which SCM otherwise held a beneficial interest, produce all check registers and account statements. In responding to this request, include all accounts identified in Schedule 4.1.24, which is referenced in Request No. 21(y) above.

33. For each of SCM's corporate credit card accounts, produce all statements.

34. Produce all correspondence and other communications to any actual or potential lender, factor or creditor relating to SCM's creditworthiness, financial condition, or compliance with any covenant of any loan, credit or factoring agreement.

35. To the extent not produced in response to one of the above requests, produce all documents constituting or otherwise relating to all term loans, revolving loans, credit lines, factoring agreements, letter of credit facilities, and other credit facilities that provided working capital or other funds to SCM, regardless of the obligor.

36. Produce all applications and supporting materials submitted by or on behalf of SCM to any actual or potential lender, factor or creditor to obtain a term loan, revolving loan, credit line, credit facility, factoring agreement, or other source of working capital.

37. Produce all documents (including, but not limited to, intercompany account entries on their respective general ledgers) that (a) recorded, for accounting or other purposes, transfers of cash, debt, inventory, real or personal property, and other assets and liabilities between SCM and each of Grucon, GC and GPD; and/or (b) otherwise recorded accounts payable and receivable between SCM and each of Grucon, GC and GPD.

38. Produce all documents evidencing or otherwise relating to all transfers (by sale, lease, loan, gift, exchange or otherwise) of cash, real property, personal property, inventory, or other assets by SCM to Grucon, a Grucon Subsidiary, a Grucon Insider, or any Immediate Family Member of a Grucon Insider. In responding to this request, include without limitation, the following:

(a) all compensation and expense reimbursements paid to officers, directors or shareholders of SCM; and

(b) all compensation and expense reimbursements paid to officers, directors or shareholders of Grucon or any Grucon Subsidiary.

39. Produce all documents evidencing or otherwise relating to all transfers (by sale, lease, loan, gift, exchange or otherwise) of cash, real property, personal property, inventory, or other assets to SCM by Grucon, a Grucon Subsidiary, a Grucon Insider, or any Immediate Family Member of a Grucon Insider.

40. Produce all documents constituting or otherwise relating to all real or personal property leases, sale agreements, purchase agreements, loan agreements, employment agreements, consulting agreements, compensation agreements, powers of attorney, or other contracts and agreements between SCM and any of Grucon, a Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider.

41. Produce all documents constituting or otherwise relating to all contracts, agreements, and applications executed on SCM's behalf, or otherwise to SCM's benefit, by any of Grucon, a Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider.

42. Produce all documents constituting or otherwise relating to all contracts, agreements, and applications executed by SCM on behalf, or otherwise to the benefit, of any of Grucon, a Grucon Subsidiary, a Grucon Insider, or an Immediate Family Member of a Grucon Insider.

43. Produce all documents evidencing or otherwise relating to all dividends and other distributions made by SCM to shareholder(s) or to other persons or entities, including but not limited to, all SCM board of director resolutions authorizing such dividends and distributions.

44. Produce all documents authorizing, evidencing or otherwise relating to levels of compensation paid to officers and directors of SCM, including but not limited to, all SCM board of director resolutions authorizing such compensation.

45. Produce all documents establishing or authorizing retirement and pension plans for the benefit of SCM officers, director or employees, including but not limited to, all SCM board of director resolutions authorizing such plans.

46. Produce all SCM board of director resolutions authorizing SCM to enter into loans or other credit agreements.

47. Produce documents sufficient to identify all insurance policies carried by, or for the benefit of, SCM, including, for each such policy, the identity of the insurance carrier, the identity of the insured(s), the dates of coverage, and the type of insurance.

48. Produce all documents authorizing officers, directors or other persons to enter into contracts on SCM's behalf, including but not limited, all SCM board of director resolutions making such authorizations.

49. To the extent not produced in response to Request Nos. 10, 21 or 28 above, produce the following documents referenced in the "Parent Corporation Guaranty," dated on or about November 9, 1983, and executed by Grucon for the benefit of CFS (RESP002377-2394) (copy appended hereto as Exhibit 1):

(a) "[Grucon's] financial statements [together with auditor certifications] on a combined basis with Layton Enterprises, Inc. ('Layton'), including balance sheets and earnings statements of [Grucon] and its consolidated subsidiaries and Layton and its consolidated subsidiaries on a combined basis, as of and for the year ended October 31, 1982 and as of and for the

ten month period ended August 31, 1983, which [were] delivered by [Grucon] to [CFS]" (referenced on RESP002378);

(b) all quarterly and yearly balance sheets and earnings statements (together with auditor certifications) delivered to CFS by Grucon pursuant to subparagraphs (i) and (ii) on RESP002380-2381, and all accompanying certificates of the president and chief financial officer; and

(c) all certificates of the president and chief financial officer delivered to CFS pursuant to the last paragraph of RESP002389.

50. To the extent not produced in response to Request Nos. 23 and 43 above, produce all documents evidencing or otherwise relating to the distribution, by dividend or otherwise, of proceeds of the January 29, 1996 sale of SCM's assets to Grinnell, including but not limited to, the SCM board of directors resolutions authorizing each such distribution.

51. Produce all documents relating to all reports of Marvin Evans ("Evans") and all services rendered by Evans relating to Star ME-1's (not previously produced), including, but not limited to: (a) all documents relating to Evans's retention to perform services relating to the Star ME-1; (b) all correspondence between GPD and Evans; (c) all correspondence between William Stone and Evans; (d) all other correspondence with or relating to Evans; (e) all documents, information, and materials prepared by, reviewed by, and/or relied upon by Evans in performing work related to the Star ME-1; and (f) Marvin Evans's current curriculum vitae.

52. Produce all documents relating to all services William Stone ("Stone") and/or GPD performed for SCM, including, but not limited to: (a) all agreements concerning Stone's services; (b) all timesheets, work descriptions, and invoices for the services performed; (c) all

payments made to Stone for services performed for SCM; and (d) documents evidencing the persons and entities making the payments.

53. Produce unredacted versions of the documents Bates-numbered CPSC Star 001356 - 001359 (redacted versions were enclosed with the letter dated January 10, 2001 from Michael Brown to Seth Popkin).

54. Produce all documents related to the letter from GC to SCM dated February 25, 1992 (SCM0687), including, but not limited to: (a) all documents related to the Glenfield Health Care Center; (b) all documents related to all materials, sprinklers (parts, components, etc.), labor, and tools that SCM and/or GC provided at the Glenfield Health Care Center; and (c) all correspondence, floor plans, drawings, agreements, invoices, and payments.

55. Produce the agreement with Continental Leasing of America, Inc. that is referenced in SCM000128.

56. For each of Grucon and the Grucon Subsidiaries, produce all minutes of shareholder and board of director meetings, all resolutions and all written consents that relate to SCM, the Star ME-1, or any aspect of SCM's business operations.

57. Produce all documents constituting, evidencing or otherwise relating to SCM's assumption of any liabilities or obligations of Grucon, any Grucon Subsidiary, any Grucon Insider, or any Immediate Family Member of a Grucon Insider.

58. Produce all documents constituting, evidencing or otherwise relating to any assumption of SCM's liabilities or obligations by Grucon, any Grucon Subsidiary, any Grucon Insider, or any Immediate Family Member of a Grucon Insider.

59. For each and every person whom you expect to call as an expert witness to testify at the hearing in this matter, produce the following: (a) a current curriculum vitae or resume; (b)

all publications authored, co-authored, edited or co-edited by such person, and all publications otherwise attributed to such person; (c) all transcripts of prior testimony; (d) all documents and things such person reviewed or relied upon in forming opinions; and (e) all documents such person created, prepared or contributed to in connection with the subject matter of this action.

60. Produce all documents identified (or which should have been identified) in your answers to the Second Interrogatories.

Dated: April 10, 2002

Mark W. Porter
Seth B. Popkin
Anthony Murawski

Complaint Counsel for
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1104

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2002, I caused a true and correct copy of the foregoing Complaint Counsel's Second Set of Requests for Production of Documents and Things to Respondent Sprinkler Corporation of Milwaukee, Inc. to be served on all parties of record in these proceedings, using the methods indicated below:

By hand delivery:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
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Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
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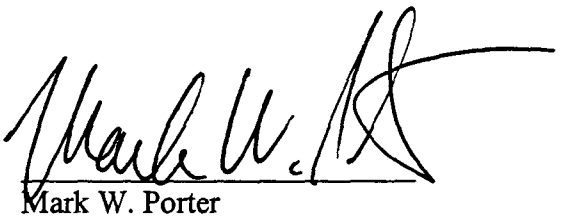
Milwaukee, WI 53202-3186



Mark W. Porter
Complaint Counsel for
U.S. Consumer Product Safety Commission

# EXHIBIT 1

PARENT CORPORATION GUARANTY

Grucon Corporation, a Wisconsin corporation, (the "undersigned") hereby unconditionally guarantees to Chemetron Fire Systems, Inc. (hereinafter "Seller") the prompt performance or payment of all obligations of Grunau Sprinkler Manufacturing Company, Inc. (hereinafter, "Buyer"), a wholly-owned subsidiary of Grucon Corporation, under that certain Purchase and Sale Agreement between Buyer and Seller dated November 9, 1983, to which this guaranty is appended (the "foregoing Agreement"), under the promissory note delivered at the closing as provided in Paragraph 7B of the foregoing Agreement (and any replacement thereof), under the security agreement executed and delivered as provided by Paragraph 7B of the foregoing Agreement, under the license agreement executed and delivered as provided by Paragraph 7D of the foregoing Agreement and under the Assumption Agreement executed and delivered as provided under Paragraph 7C of the foregoing Agreement. This guaranty shall be immediately enforceable against the undersigned in the event of any non-performance or non-payment by Buyer, and the expiration, without cure of such non-performance or non-payment, of any applicable grace period and/or the giving of any notice to Buyer, without necessity of legally proceeding against the Buyer. The undersigned shall pay the reasonable attorney's fees and costs incurred by Seller in enforcing this guaranty. This guaranty shall be binding upon and inure to the benefit of the undersigned and Seller, and their respective successors and assigns, and each reference in this guaranty to the undersigned or Seller shall be

deemed to refer to their respective successors and assigns and each reference in this guaranty to Buyer shall be deemed to refer, in addition to the Buyer above named, to its successors and assigns, just as though separately expressed with each reference. The undersigned represents and warrants as of the date of its execution hereof and as of the closing under e foregoing Agreement (which representations and warranties shall survive the closing under the foregoing Agreement): that this guaranty is duly authorized by all necessary corporate action, is a valid and enforceable obligation of the undersigned, subject to bankruptcy and insolvency laws and other laws affecting creditors rights generally and subject to the limitations on the availability of equitable relief, and is not in conflict with its Articles of Incorporation or By-Laws, nor does it constitute a default under any material agreement or obligation to which it is a party or by which it is bound; that the undersigned's financial statements on a combined basis with Layton Enterprises, Inc. ("Layton"), including balance sheets and earnings statements of the undersigned and its consolidated subsidiaries and Layton and its consolidated subsidiaries on a combined basis, as of and for the year ended October 31, 1982 and as of and for the ten month period ended August 31, 1983, which have been delivered by the undersigned to Seller, were prepared in accordance with generally accepted accounting principles applied on a basis consistent with the preceding year and corresponding ten

month period of the preceding year, respectively, and in the case of the combined financial statement as of and for the year ended October 31, 1982 was certified by Arthur Young & Company, independent public accountants for the undersigned and Layton, and fairly present the assets, liabilities, shareholders' equity and earnings of the undersigned and Layton and their consolidated subsidiaries on a combined basis as of the dates of and for the periods covered by such financial statements, and neither the undersigned nor Layton for accounting and financial reporting purposes had any unconsolidated subsidiaries during the periods covered by such financial information or since such periods to the present time, and that since August 31, 1983, there has not occurred any material adverse change in the assets, liabilities, shareholders' equity and earnings or the financial condition of either the undersigned and its subsidiaries or Layton and its subsidiaries, in either case, taken as a whole; that the merger of Layton with and into a wholly owned subsidiary of the undersigned, which remains a wholly owned subsidiary of the undersigned, has been effectuated through an exchange of capital stock of the undersigned with the shareholders of Layton for all the outstanding capital stock of Layton pursuant to Articles of Merger and a Plan and Agreement of Merger, a copy of which is attached as Appendix I hereto, and said merger became effective on November 8, 1983; that the shareholders' equity of the undersigned and its subsidiaries on a consolidated

basis determined in accordance with generally accepted accounting principles applied on a consistent basis, and after giving effect to the aforesaid merger of Layton with and into a wholly owned subsidiary of the undersigned, is not less than $3,900,000; and that there are no dividends or distributions to shareholders of the undersigned or any subsidiary of the undersigned, other than wholly owned subsidiaries, which have been declared or approved by its directors or shareholders but which have not yet been paid or made. No representation or warranty of the undersigned contained in this guaranty, and no written statement or certificate or schedule referred to herein which has been furnished to the Seller, contains any untrue statement of a material fact, or fails to state a material fact necessary in order to make the statements herein or therein contained not misleading.

The undersigned agrees that, so long as the promissory note of Buyer delivered at the closing under the foregoing Agreement (or any replacement thereof) remains outstanding and unpaid, it will (i) deliver to Seller, within 60 days following the end of each of the first three of its fiscal quarters (and within 60 days following the end of its fourth fiscal quarter as to Buyer and its subsidiaries) each fiscal year beginning with the quarter ended January 31, 1984 (except beginning with the quarter ended October 31, 1983 as to Buyer and its subsidiaries), financial information, comprised of a consolidated balance sheet

and earnings statement of the undersigned and its subsidiaries and a consolidated balance sheet and earnings statement of Buyer and its subsidiaries, as of the end of and for the quarter then ended, prepared in accordance with generally accepted accounting principles applied on a basis consistent with the immediately preceding quarter and the corresponding quarter of the preceding fiscal year, together with a certificate from the chief financial officer and the president of the undersigned, to the effect that the financial information being furnished has been so prepared and fairly presents the assets, liabilities, shareholders' equity and earnings of those entities it purports to show as of the end of and for such quarter, and (ii) deliver to Seller, within 90 days following the end of each fiscal year beginning with the fiscal year ended October 31, 1983 of the undersigned, financial information, comprised of the consolidated balance sheet and earnings statement of the undersigned and its subsidiaries (except that for the fiscal year ended October 31, 1983 only, a combined balance sheet and earning statement of the undersigned and its consolidated subsidiaries and Layton and its consolidated subsidiaries, with appropriate combining adjustments shown separately thereon may be delivered in lieu of a consolidated balance sheet and earning statement for the undersigned which includes Layton and its subsidiaries within the consolidated group), as of the end of and for the fiscal year then ended, prepared in accordance

with generally accepted accounting principles applied on a basis consistent with the preceding year, and duly certified by Arthur Young & Company, or other recognized national firm of independent certified public accountants, as fairly presenting the financial position and the results of the operations of the undersigned and its subsidiaries on a consolidated basis as of the end of and for such fiscal year (and for the fiscal year ended October 31, 1983 only of the undersigned and its consolidated subsidiaries and Layton and its consolidated subsidiaries on either a consolidated or a combined basis as aforesaid) as of the end of and for such fiscal year. The undersigned agrees that for accounting and financial reporting purposes it will not have any unconsolidated subsidiaries.

The undersigned hereby covenants that, until payment of all amounts which become due and payable under the promissory note of Buyer delivered at the closing as provided by Paragraph 7B of the foregoing Agreement (or any replacement thereof) shall have been made in full or until the unfulfilled obligations of Seller under contracts and commitments of Seller to be assumed and performed by Buyer pursuant to Paragraph 2 of the foregoing Agreement, including, without limitation, under those contracts and commitments which are unassignable by Seller, shall have been fully satisfied, whichever is last to occur, neither undersigned nor any wholly owned subsidiary of the undersigned

will, directly or indirectly, pay any funds to or for the account of, make any investment in, or loan, lease, sell, transfer, distribute, dividend or otherwise dispose of any assets, tangible or intangible, to any controlling person (as hereinafter defined) except to the undersigned or a wholly owned subsidiary of the undersigned; provided, however, that notwithstanding these provisions:

(a) loans, on reasonable commercial terms, shall be permitted to be made to controlling persons, provided the amount of all such loans outstanding as permitted hereunder at any time, plus the amount then outstanding of loans in effect at the date of execution hereof by the undersigned and wholly owned subsidiaries of the undersigned to controlling persons as defined herein (other than loans to the undersigned and wholly owned subsidiaries of the undersigned), shall not exceed in aggregate 15% of the shareholders' equity, determined on a consolidated basis in accordance with generally accepted accounting principles consistently applied, of the undersigned and its consolidated subsidiaries at the time;

(b) the employment of controlling persons as employees, officers and/or directors and the payment of compensation, reimbursement of expenses and the payment of or provision for employee benefits for such persons shall be permitted subject to the following:

(i) reimbursement of expenses shall be limited to out of pocket expenses of such persons incurred in connection with performance of their duties as an employee, officer or director;

(ii) aggregate compensation paid by the undersigned and the wholly owned subsidiaries of the undersigned together with the cost paid or accrued by the undersigned and its wholly owned subsidiaries for employee benefits provided to controlling persons who are both (x) officers and/or directors and (y) shareholders of the undersigned, or are a child, spouse or other relative of such an officer and/or director and shareholder or of the spouse of such officer and/or director and shareholder during any fiscal year of the undersigned shall not exceed in aggregate to all such controlling persons the prior fiscal year's aggregate compensation (including the costs paid or accrued for fringe benefits) for such persons by more than the amount of any profit after taxes of the undersigned and its consolidated subsidiaries (as shown on the audited financial statements of the undersigned) for such prior fiscal year;

(iii) aggregate compensation paid by the undersigned and wholly owned subsidiaries of the undersigned together with the cost paid or

accrued by the undersigned and its wholly owned subsidiaries for employee benefits provided to controlling persons who are not officers and/or directors of the undersigned but who are shareholders of the undersigned or are a child, spouse or other relative of such a shareholder or such shareholder's spouse shall not exceed $300,000 in the aggregate to all such controlling persons in any fiscal year of the undersigned; and

(iv) compensation paid by the undersigned and wholly owned subsidiaries of the undersigned together with the cost paid or accrued by the undersigned and its wholly owned subsidiaries for employee benefits provided to all other controlling persons, who are not also a shareholder of the undersigned or a child, spouse or other relative of such a shareholder or such shareholder's spouse or are not a controlling person whose compensation is limited by the terms of clauses (ii) or (iii) immediately above, shall be subject to the discretion of the Board of Directors and/or officers of the undersigned; provided such compensation and the fringe benefits provided shall not be excessive in relation to the positions the persons occupy with the undersigned or its wholly owned subsidiaries or in relation to comparable positions with competitive employers; and

(c) the purchase, lease or sale of goods or services by the undersigned and its wholly owned subsidiaries to or from a controlling person in the ordinary course of the undersigned's or such wholly owned subsidiary's business, provided such sales, leases and purchases are on terms no less favorable to the undersigned or its wholly owned subsidiaries than would be available from an unrelated third party who is not a controlling person, shall be permitted; and

(d) the repurchase of shares of its stock by the undersigned from the estate or heirs of a deceased shareholder to the extent such shares can be repurchased utilizing only life insurance proceeds paid to the undersigned as a result of the death of such shareholder shall be permitted; and

(e) the following transactions involving the undersigned and its wholly owned subsidiary, Layton Hotels, Inc., and LP Associates and/or Milwaukee MECCA Hotel Associates shall be permitted:

1. the payment to or for the benefit of LP Associates of up to $1,500,000, plus interest, to pay indebtedness of LP Associates to First Bank-Milwaukee which is guaranteed by the undersigned and/or the above named or one or more other wholly owned subsidiaries of the undersigned pursuant to a guarantee dated as of March 31, 1983;

2. the payment to or for the benefit of LP Associates of up to $600,000 which the above named wholly owned subsidiary of the undersigned has directly obligated itself in order to fulfill obligations of LP Associates to Milwaukee MECCA Hotel Associates pursuant to the Partnership Agreement (as hereinafter defined) to provide operating working capital;

3. the payment to or for the benefit of LP Associates of up to $411,000 which the above named wholly owned subsidiary of the undersigned has directly obligated itself in order to fulfill alleged obligations of LP Associates to Milwaukee MECCA Hotel Associates pursuant to the Partnership Agreement for excess project costs; and

4. the payment to or for the benefit of LP Associates of up to $250,000 which the above named wholly owned subsidiary of the undersigned has directly obligated itself in order to fulfill obligations of LP Associates to Milwaukee MECCA Hotel Associates pursuant to the Partnership Agreement with respect to a $500,000 letter of credit LP Associates is obligated to provide to Milwaukee MECCA Hotel Associates.

As used in this subparagraph (e), the term "Partnership Agreement" shall mean the Amended and Restated

Agreement and Certificate of Limited Partnership of Milwaukee MECCA Hotel Associates dated as of December 1, 1978 as amended by First Amendment dated June 27, 1980, Second Amendment dated March 1, 1981 and Third Amendment dated August 13, 1981. The undersigned hereby agrees that the Partnership Agreement will not be hereafter amended to increase the aggregate liabilities as aforesaid of the undersigned and its subsidiaries, without the consent of Allegheny International, Inc. Once more than $1,500,000 in the aggregate is paid by the undersigned and the above named wholly owned subsidiary of the undersigned and the one or more other wholly owned subsidiaries of the undersigned referred to in clause 1 above in performance of any or all of their sundry obligations described under clauses 1 through 4 of this subparagraph (e) above, then (x) no further loans to controlling persons shall be permitted under subparagraph (a) above, and all the outstanding loans to controlling persons shall be payable in accordance with their original terms and shall not be subject to extension of the maturity thereof or refinancing by the undersigned or its wholly owned subsidiaries and (y) the compensation (including the costs paid or accrued for fringe benefits) of such controlling persons whose compensation and fringe benefits are limited by clauses (ii) and (iii) of subparagraph (b) above shall be frozen thereafter for each such person

at an annual rate for any fiscal year which is no more than the amount of such person's compensation (including the cost of fringe benefits paid or accrued) paid by the undersigned and its wholly owned subsidiaries during the prior fiscal year of the undersigned.

The undersigned further covenants that, during the same period the foregoing covenants are in effect, no dividends will hereafter be declared or paid nor will any other distributions be authorized or made to shareholders of the undersigned or any subsidiary of the undersigned which is less than a wholly owned subsidiary. Should any of the foregoing covenants in this paragraph not be complied with, in addition to any other rights Seller may have and without in any way waiving such non-compliance, the undersigned in each such case shall grant to Seller a first lien and first security interest in property of a value equivalent to the amount of the covenant non-compliance, in order to further secure the undersigned's performance hereunder.

The covenants in the immediately preceding paragraph beginning in the middle of page 6 hereof are referred to in the promissory note of Buyer delivered at the closing under the foregoing Agreement (and any replacement thereof) as the "covenants regarding the conduct of business." The undersigned shall deliver to Seller, within sixty (60) days following the end of each of its first three fiscal quarters each year and within ninety (90) days following the end of each fiscal year of the undersigned ending hereafter, the certificate of the chief financial officer and the president of the undersigned to the effect that the covenants in the immediately preceding paragraph have been complied with or, if they have not, designating in what respects they have not been complied with.

As used herein,

(a) The term "controlling person" means any shareholder of the undersigned, any subsidiary of the undersigned less than wholly owned by the undersigned, any shareholder (other than the undersigned or any wholly owned subsidiary of the undersigned) of a less than wholly owned subsidiary of the undersigned, any child, spouse or other relative of a shareholder of the undersigned or a less than wholly owned subsidiary of the undersigned or any child or other relative of the spouse of such a shareholder, and, in addition to the foregoing, any person, including, as the term "person" is used in this definition, natural persons, partnerships, corporations or other forms of business enterprise who to the knowledge of the undersigned is, or is an associate of any person who either alone or with one or more of its associates is, in control of the undersigned. If any shares of the undersigned or of a subsidiary of the undersigned are held by a person as a trustee, custodian or in some other representative capacity for another, the "shareholder", as referred to above in this definition of "controlling person", shall include, in addition to the trust, custodianship or representative entity, the beneficiaries of the trust and other persons for whom such shares are being held by a trustee, custodian or representative, as well as any child, spouse or other

relative of any such beneficiary or person and any child or other relative of the spouse of any such beneficiary or person.

(b) A person or group of persons shall be deemed to be in control of another person when the first person or group of persons possesses, directly or indirectly, the power to direct or cause the direction or the power to prevent others from directing or causing the direction of the management or policies of such other person, whether through the ownership of voting securities, by contract or otherwise; and

(c) A person shall be deemed to be an associate of another person when

(i) either shall, directly or indirectly, be in control of the other,

(ii) either shall be an officer, director, partner or manager of the other, however, the mere holding of a position as an officer or director on an uncompensated basis other than nominal directors fees shall not in the absence of other factors constitute the corporation in which such an office or directorship is held an associate of the officer or director, or

(iii) there shall exist between them any contract, arrangement or understanding (express or

otherwise) with respect to the actual or potential exercise of control of the undersigned.

(d) The term "subsidiary", in its singular and plural forms as used in this guaranty, shall be deemed to refer to the directly owned as well as to indirectly owned subsidiaries of a corporation.

This Parent Corporation Guaranty is executed by the undersigned contemporaneously with the execution of the foregoing Agreement to which it is appended by the parties thereto.

GRUCON CORPORATION

By _____

Its President

JTD 34
B10-25

APPENDIX I TO PARENT CORPORATION GUARANTY

ARTICLES OF MERGER
MERGING
LAYTON ENTERPRISES, INC.
(a Wisconsin corporation)
INTO
LAYTON ACQUISITION CORP.
(a Wisconsin corporation)

The undersigned corporations, pursuant to Section 180.65 of the Wisconsin Business Corporation Laws, hereby execute the following Articles of Merger:

ONE

The corporations proposing to merge are Layton Enterprises, Inc., a Wisconsin corporation (hereinafter called "Enterprises"), and Layton Acquisition Corp., a Wisconsin corporation (hereinafter called "Acquisition").

TWO

The plan of merger is set forth in the Plan and Agreement of Merger heretofore executed by the merging corporations and attached hereto as Exhibit A.

THREE

As to each corporation, the number of shares outstanding, the number of shares entitled to vote, and the number and designation of the shares of any class or series entitled to vote as a class or series are as follows:

| Corporation | Total Number of Shares Outstanding | Number of Shares Entitled to Vote | | Number of Shares Required For Approval | | Total |
|---|---|---|---|---|---|---|
| | | Preferred | Common | Preferred | Common | |
| Enterprises | 2,960 | 1,960 | 1,000 | 981 | 501 | 1,482 |
| Acquisition | 1,000 | none | 1,000 | none | 501 | 501 |

FOUR

As to each corporation, the number of shares voted for and against the plan, respectively, and the number of

shares of any class entitled to vote as a class or series voted for and against the plan, if any, are as follows:

| Corporation | Shares Voted For | | | Shares Voted Against | | |
|---|---|---|---|---|---|---|
| | Preferred | Common | Total | Preferred | Common | Total |
| Enterprises | 1,960 | 1,000 | 2,960 | none | none | none |
| Acquisition | none | 1,000 | 1,000 | none | none | none |

FIVE

The registered offices of Enterprises and Acquisition are located in Milwaukee County, Wisconsin.

IN WITNESS WHEREOF, each of the undersigned corporations has caused these Articles of Merger to be executed in its name by its president and secretary, as of the ___ day of November, 1983.

LAYTON ENTERPRISES, INC.

NO SEAL

By _____
Gary P. Grunau, President

Attest _____
John Dragisic, Secretary

LAYTON ACQUISITION CORP.

NO SEAL

By _____
Gary P. Grunau, President

Attest _____
John Dragisic, Secretary

This document was drafted by, and should be returned to, John a Sanders, Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.



RESP002394

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S RESPONSES TO RESPONDENTS' (CHEMETRON CORPORATION, CHEMETRON INVESTMENTS, INC., AND SUNBEAM CORPORATION) FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel responds as follows to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) First Request for Production of Documents and Things.

## GENERAL OBJECTIONS

### First General Objection

Complaint Counsel objects to these requests and to Respondents' definition of "you," "your," "Complainant," and the "CPSC," as follows: a) to the extent the definition refers to the Consumer Product Safety Commission itself ("Commission"), as distinguished from the Commission staff which brought this action; and b) to the extent these requests seek documents or things from or relating to the Commission itself. The Commission itself is not a party to this action. Complaint Counsel's responses to these requests are on behalf of, and reflect documents and things in the possession, custody, or control of, the Commission staff which brought this action, including Complaint Counsel.

### Second General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. To make it possible for Complaint Counsel to disclose such confidential documents or things where applicable, and to facilitate such disclosure, Complaint Counsel is preparing motions regarding the confidentiality requests. Complaint Counsel will produce such documents or things if not restricted by other objections, but only in accordance with the following procedures, or procedures analogous to these as ordered by the Presiding Officer, to the extent applicable: 1) upon its receipt of permission from the applicable and affected third parties; 2) after all of the Respondents have executed a satisfactory confidentiality stipulation; and/or 3) after the Presiding Officer has entered an order that adequately protects the third parties or other persons who requested confidentiality. Complaint Counsel responds to the requests for production to the

extent not restricted by the confidentiality requests and will supplement as necessary after lifting of the confidentiality restrictions.

Third General Objection

Complaint Counsel objects to these requests to the extent they seek documents or things protected by the law enforcement investigatory privilege, deliberative process privilege, attorney-client privilege, work product doctrine, or any other applicable privilege or protection. While Complaint Counsel will undertake to withhold documents or things protected by applicable privileges or doctrines, any inadvertent production of such documents or things shall not be deemed a waiver of any applicable privilege, doctrine, or protection.

Fourth General Objection

Complaint Counsel objects to these requests to the extent they exceed the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

DOCUMENT REQUESTS AND RESPONSES

Request No. 1: All documents that relate to the alleged jurisdiction of the CPSC over Star ME-1 fire sprinklers.

Objections: This request is vague and confusing. As Complaint Counsel interprets this request, it is overbroad and unduly burdensome, and it calls for a legal conclusion and/or documents making a legal conclusion. As Complaint Counsel interprets this request, it seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel responds as follows: See the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and

opinions. See the Commission's Office of the General Counsel advisory opinions available on the Commission's website at cpsc.gov. See the documents that will be produced reflecting, among other things, Star ME-1 installation sites and uses.

Request No. 2: All documents that relate to any limitations on the jurisdiction of the CPSC over any product.

Objections: This request is vague and confusing. As Complaint Counsel interprets this request, it is overbroad and unduly burdensome, and it calls for a legal conclusion and/or documents making a legal conclusion. As Complaint Counsel interprets this request, it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. As Complaint Counsel interprets this request, it seeks documents protected by the attorney-client privilege, deliberative process privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel responds as follows: See the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions. See also the response to Request 1.

Request No. 3: All documents that relate to the definition of "consumer product" under the Consumer Product Safety Act.

Objections: This request is vague and confusing. As Complaint Counsel interprets this request, it is overbroad and unduly burdensome, and it calls for a legal conclusion and/or documents making a legal conclusion. As Complaint Counsel interprets this request, it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to

lead to the discovery of admissible evidence. As Complaint Counsel interprets this request, it seeks documents protected by the attorney-client privilege, deliberative process privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel responds as follows: See the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 4: All documents identified (or which should have been identified) in the CPSC's responses to Respondents' First Set of Interrogatories.

Objections: This request is vague and confusing because the phrase "or which should have been identified" contains undefined terms subject to varying interpretations. As a result, Complaint Counsel cannot respond to this portion of the request. Complaint Counsel objects to this request to the extent it seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. Complaint Counsel objects to this request to the extent it seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objection, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 5: All documents that constitute the entirety of the CPSC administrative file regarding Star ME-1 fire sprinklers.

Objections: This request is vague because the term "administrative file" is undefined. Complaint Counsel interprets this request and term broadly so as to refer to the CPSC's entire

file, and all CPSC files, regarding the Star ME-1. As Complaint Counsel interprets this request, it is overbroad, and it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. As Complaint Counsel interprets this request, it seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. As Complaint Counsel interprets this request, it seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 6: All documents that relate to the reasons giving rise to the CPSC's decision to investigate the alleged risks associated with Star ME-1 fire sprinklers.

Objections: This request is vague and confusing. As Complaint Counsel interprets this request, this request is overbroad and unduly burdensome, and this request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. As Complaint Counsel interprets this request, it seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, and the regulations related thereto in Title 16 of the Code of Federal Regulations.

Request No. 7: All documents that relate to the CPSC's decision to initiate the instant adjudicative proceeding against the Respondents.

Objections: This request is vague. As Complaint Counsel interprets this request, this request is overbroad and unduly burdensome, and this request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. As Complaint Counsel interprets this request, it seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, and the regulations related thereto in Title 16 of the Code of Federal Regulations.

Request No. 8: All documents (including, without limitation, manuals and internal memoranda or guidelines) that reflect or relate to the CPSC's criteria for or factors considered when determining whether to initiate an investigation of a consumer product, or to otherwise initiate any form of corrective action with respect to a consumer product.

Objections: This request is vague. As Complaint Counsel interprets this request, this request is overbroad and unduly burdensome, and this request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. As Complaint Counsel interprets this request, it seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel will produce all

responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, and the regulations related thereto in Title 16 of the Code of Federal Regulations.

Request No. 9: All documents identified, referred to, or mentioned, in the "List and Summary of Documentary Evidence" attached to the Complaint pursuant to 16 C.F.R. § 1025.11(b)(3).

Objections: This request seeks documents protected by the deliberative process privilege, law enforcement investigatory privilege, and the work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 10: All documents provided to the CPSC by any of the Respondents in this action regarding Star ME-1 fire sprinklers.

Objections: This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 11: All documents provided to the CPSC by any person, organization, business, or any other entity relating to Star ME-1 fire sprinklers and/or Respondents.

Objections: This request is overbroad and unduly burdensome to the extent it seeks all documents provided to the CPSC by or relating to Chemetron Corporation, Chemetron Investments, Inc., and/or Sunbeam Corporation but not also related to the Star ME-1 or this proceeding. On that same basis, this request seeks documents not relevant to the subject matter

of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 12: All documents provided to the CPSC by any non-party or fact witness that relate to Star ME-1 fire sprinklers.

Objections: This request is vague because the term "fact witness" is undefined. In addition, Complaint Counsel has not yet determined its witnesses. As Complaint Counsel interprets this request, it is included within Request 11 and, to that extent, is duplicative of Request 11. As Complaint Counsel interprets this request, it seeks documents protected by the deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. As Complaint Counsel interprets this request, it seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: See response to Request 11.

Request No. 13: All documents that constitute subpoenas or other requests for documents from the CPSC to any person, organization, business, or any other entity relating to Star ME-1 fire sprinklers.

Objections: Complaint Counsel objects to the extent this request seeks documents protected by the law enforcement investigatory privilege and work product doctrine. This request seeks documents that in part relate to consumer products other than the Star ME-1, and, to that extent, this request is overbroad, seeks documents not relevant to the subject matter of the proceedings, seeks documents not reasonably calculated to lead to the discovery of admissible

evidence, and seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. To the extent the documents produced, including subpoenas, relate in part to or contain references to consumer products other than the Star ME-1, such documents will be produced in redacted form so as to protect and withhold the references to such other consumer products.

Request No. 14: All documents provided to the CPSC in response to subpoenas or other requests for documents from the CPSC to any person, organization, business, or any other entity relating to Star ME-1 fire sprinklers.

Response: See the objections and response to Request 13.

Request No. 15: All documents that relate to the manufacturing, distributing, selling, or marketing of Star ME-1 fire sprinklers.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 16: All documents that relate to the manufacturing, distributing, selling, or marketing of Star ME-1 fire sprinklers by Chemetron.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product

doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 17: All documents that relate to the manufacturing, distributing, selling, or marketing of Star ME-1 fire sprinklers by Chemetron Investments.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 18: All documents that relate to the number of Star ME-1 fire sprinklers that you contend were manufactured and/or distributed by Chemetron.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 19: All documents that relate to the number of Star ME-1 fire sprinklers that you contend were manufactured and/or distributed by Chemetron Investments.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 20: All documents that relate to the locations where you contend Star ME-1 fire sprinklers manufactured and/or distributed by Chemetron were installed.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 21: All documents that relate to the locations where you contend Star ME-1 fire sprinklers manufactured and/or distributed by Chemetron Investments were installed.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 22: All documents that relate to any fires that you contend occurred in locations where Star ME-1 fire sprinklers manufactured and/or distributed by Chemetron were installed.

Response: Complaint Counsel has no such documents.

Request No. 23: All documents that relate to any fires that you contend occurred in locations where Star ME-1 fire sprinklers manufactured and/or distributed by Chemetron Investments were installed.

Response: Complaint Counsel has no such documents.

Request No. 24: All documents that reflect or relate to any complaints or reports alleging that Star ME-1 fire sprinklers manufactured and/or distributed by Chemetron failed to operate as intended.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 25: All documents that reflect or relate to any complaints or reports alleging that Star ME-1 fire sprinklers manufactured and/or distributed by Chemetron Investments failed to operate as intended.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 26: All documents and things that reflect or relate to any testing of Star ME-1 fire sprinklers conducted by or on behalf of the CPSC. Your response should include, without limitation:

(a) any databases analyzing any such testing;

(b) all documents relating to the testing, including without limitation, the complete notebook entries of each tester, technician engineer or anyone else present at each such test;

(c) protocols and methodology employed during each such test;

(d) all documents relating to or otherwise describing the results of each such test;

(e) all compilations and reports revealing any and all testing data used in or derived from any testing of Star ME-1 fire sprinklers; and

(f) all Star ME-1 fire sprinklers (including components of sprinklers) that were tested.

Objections: This request is vague because the phrase "things that reflect or relate to any testing" is unclear and subject to varying interpretations. As a result of that phrase and its interpretation, this request is overbroad and unduly burdensome. This request seeks documents and things protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents and things prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. On November 30, 2000, and on October 4, 2001, Complaint Counsel provided to Respondents' counsel (on the former date, David Baker, and on the latter date, David Baker, Bert Wolff, and Barbara Wrubel) a database printout titled "Test Results of Star ME-1 Manufactured after 1976." See updated database printout with documents being produced. Due to the terms of applicable confidentiality requests and the public filing of the documents being produced, the updated database printout

excludes test results from UL, FM, and Grinnell Corporation. Complaint Counsel will produce further updates of the database printout that will include UL, FM, and Grinnell Corporation test results as confidentiality waivers and/or arrangements are completed. Regarding subparagraph (f), Complaint Counsel expects to be able to make sprinklers available for inspection upon mutually agreeable terms, subject to possible limitations.

Request No. 27: All documents and things that reflect or relate to any testing of Star ME-1 fire sprinklers conducted by or on behalf of any other person, organization, business, or other entity. Your response should include, without limitation:

(a) any databases analyzing any such testing;

(b) all documents relating to the testing, including without limitation, the complete notebook entries of each tester, technician engineer or anyone else present at each such test;

(c) protocols and methodology employed during each such test;

(d) all documents relating to or otherwise describing the results of each such test;

(e) all compilations and reports revealing any and all testing data used in or derived from any testing of Star ME-1 fire sprinklers; and

(f) all Star ME-1 fire sprinklers (including components of sprinklers) that were tested.

Objections: This request is vague and confusing because the phrase "any other person, organization, business, or other entity" contains unclear terms subject to varying interpretations. Complaint Counsel interprets this phrase as referring to persons, organizations, businesses, or entities other than the CPSC referenced in Request 26. This request is also vague because the phrase "things that reflect or relate to any testing" is unclear and subject to varying interpretations. As a result of that phrase and its interpretation, this request is overbroad and unduly burdensome. This request seeks documents and things protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work

product doctrine. This request seeks documents and things prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. On November 30, 2000, and on October 4, 2001, Complaint Counsel provided to Respondents' counsel (on the former date, David Baker, and on the latter date, David Baker, Bert Wolff, and Barbara Wrubel) a database printout titled "Test Results of Star ME-1 Manufactured after 1976." See updated database printout with documents being produced. Due to the terms of applicable confidentiality requests and the public filing of the documents being produced, the updated database printout excludes test results from UL, FM, and Grinnell Corporation. Complaint Counsel will produce further updates of the database printout that will include UL, FM, and Grinnell Corporation test results as confidentiality waivers and/or arrangements are completed. Regarding subparagraph (f), Complaint Counsel expects to be able to make sprinklers available for inspection upon mutually agreeable terms, subject to possible limitations.

Request No. 28: All audio and/or video tapes relating to any testing of Star ME-1 fire sprinklers. Your response to this request should include, without limitation, the complete and unedited version (including all video and audio) of all tests of Star ME-1 fire sprinklers, whether or not ultimately relied upon or used by the CPSC in taking action against the Respondents.

Objections: Complaint Counsel objects to this request to the extent it seeks videotapes protected by the law enforcement investigatory privilege and work product doctrine. This request seeks documents and things prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel has no audiotapes responsive to this request. Complaint Counsel will produce all responsive videotapes not restricted by the objections.

Request No. 29: All documents and things that reflect or relate to any testing of non-Star ME-1 fire sprinklers conducted by or on behalf of the CPSC. Your response should include, without limitation:

(a) any databases analyzing any such testing;

(b) all documents relating to the testing, including without limitation, the complete notebook entries of each tester, technician engineer or anyone else present at each such test;

(c) protocols and methodology employed during each such test;

(d) all documents relating to or otherwise describing the results of each such test;

(e) all compilations and reports revealing any and all testing data used in or derived from any testing of non-Star ME-1 fire sprinklers; and

(f) all non-Star ME-1 fire sprinklers (including components of sprinklers) that were tested.

Objections: This request is overbroad and unduly burdensome. This request seeks documents and things protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents and things prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel also objects to this request to the extent it seeks documents and things not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel will make available for inspection and copying

publicly available documents that have been segregated and that may include, but may not be limited to, documents responsive to this request.

Request No. 30: All documents and things that reflect or relate to any testing of non-Star ME-1 fire sprinklers conducted by or on behalf of any other person, organization, business, or other entity. Your response should include, without limitation:

(a) any databases analyzing any such testing;

(b) all documents relating to the testing, including without limitation, the complete notebook entries of each tester, technician engineer or anyone else present at each such test;

(c) protocols and methodology employed during each such test;

(d) all documents relating to or otherwise describing the results of each such test;

(e) all compilations and reports revealing any and all testing data used in or derived from any testing of non-Star ME-1 fire sprinklers; and

(f) all non-Star ME-1 fire sprinklers (including components of sprinklers) that were tested.

Objections: This request is vague and confusing because the phrase "any other person, organization, business, or other entity" contains unclear terms subject to varying interpretations. Complaint Counsel interprets this phrase as referring to persons, organizations, businesses, or entities other than the CPSC referenced in Request 29. This request is overbroad and unduly burdensome. This request seeks documents and things protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents and things prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel also objects to this request to the extent it seeks documents and things not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel will make available for inspection and copying publicly available documents that have been segregated and that may include, but may not be limited to, documents responsive to this request.

Request No. 31: All audio and/or video tapes relating to any testing of non-Star ME-1 fire sprinklers. Your response should include, without limitation, the complete and unedited version (including all video and audio) of all tests of non-Star ME-1 fire sprinklers, whether or not ultimately relied upon or used by the CPSC in taking action against the Respondents.

Objections: This request is overbroad and unduly burdensome. This request seeks documents protected by the law enforcement investigatory privilege, and work product doctrine and prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel also objects to this request to the extent it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel will make available for inspection and copying publicly available documents that have been segregated and that may include, but may not be limited to, documents responsive to this request.

Request No. 32: All documents that reflect or relate to any examinations, including without limitation, any failure mode examinations of Star ME-1 fire sprinklers conducted by or on behalf of the CPSC.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 33: All documents that reflect or relate to any examinations, including without limitation, any failure mode examinations of Star ME-1 fire sprinklers conducted by or on behalf of any other person, organization, business, or other entity.

Objections: This request is vague and confusing because the phrase "any other person, organization, business, or other entity" contains unclear terms subject to varying interpretations. Complaint Counsel interprets this phrase as referring to persons, organizations, businesses, or entities other than the CPSC referenced in Request 32. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 34: All documents that reflect or relate to any examinations, including without limitation, any failure mode examinations of non-Star ME-1 fire sprinklers conducted by or on behalf of the CPSC.

Objections: This request is overbroad and unduly burdensome. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel also objects to this request to the extent it seeks documents not relevant to

the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel will make available for inspection and copying publicly available documents that have been segregated and that may include, but may not be limited to, documents responsive to this request.

Request No. 35: All documents that reflect or relate to any examinations, including without limitation, any failure mode examinations of non-Star ME-1 fire sprinklers conducted by or on behalf of any other person, organization, business, or other entity.

Objections: This request is vague and confusing because the phrase "any other person, organization, business, or other entity" contains unclear terms subject to varying interpretations. Complaint Counsel interprets this phrase as referring to persons, organizations, businesses, or entities other than the CPSC referenced in Request 34. This request is overbroad and unduly burdensome. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel also objects to this request to the extent it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel will make available for inspection and copying publicly available documents that have been segregated and that may include, but may not be limited to, documents responsive to this request.

Request No. 36: All documents that relate to any fires where Chemetron Star ME-1 fire sprinklers allegedly failed to activate properly.

Objections: This request is vague because the phrase "failed to activate properly" contains undefined terms subject to varying interpretations. This request is also vague because the phrase "Chemetron Star ME-1 fire sprinklers" is undefined. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel has no documents that relate to any fires in the presence of Star ME-1 fire sprinklers manufactured or distributed by Chemetron Corporation.

Request No. 37: All documents that relate to any fires where Chemetron Star ME-1 fire sprinklers activated properly.

Objections: This request is vague because the phrase "activated properly" contains undefined terms subject to varying interpretations. This request is also vague because the phrase "Chemetron Star ME-1 fire sprinklers" is undefined. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds that it has no documents that relate to any fires in the presence of Star ME-1 fire sprinklers manufactured or distributed by Chemetron Corporation.

Request No. 38: All documents that relate to any fires where non-Chemetron Star ME-1 fire sprinklers allegedly failed to activate properly.

Objections: This request is vague because the phrase "failed to activate properly" contains undefined terms subject to varying interpretations. This request is also vague because

the phrase "non-Chemetron Star ME-1 fire sprinklers" is undefined. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections that relate to any fires where Star ME-1 fire sprinklers manufactured or distributed by a person or entity other than Chemetron Corporation reportedly failed to activate.

Request No. 39: All documents that relate to any fires where non-Chemetron Star ME-1 fire sprinklers activated properly.

Objections: This request is vague because the phrase "activated properly" contains undefined terms subject to varying interpretations. This request is also vague because the phrase "Chemetron Star ME-1 fire sprinklers" is undefined. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds that it does not have any documents that relate to fires in the presence of Star ME-1 fire sprinklers manufactured or distributed by a person or entity other than Chemetron Corporation in which the sprinklers activated.

Request No. 40: All documents that relate to any fires where non-Star ME-1 fire sprinklers allegedly failed to activate properly.

Objections: This request is vague because the phrase "failed to activate properly" contains undefined terms subject to varying interpretations. This request is overbroad and unduly burdensome. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel also objects to this request to the extent it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel will make available for inspection and copying publicly available documents that have been segregated and that may include, but may not be limited to, documents responsive to this request.

Request No. 41: All documents that relate to any fires where non-Star ME-1 fire sprinklers activated properly.

Objections: This request is vague because the phrase "activated properly" contains undefined terms subject to varying interpretations. This request is overbroad and unduly burdensome. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel also objects to this request to the extent it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: Complaint Counsel will make available for inspection and copying publicly available documents that have been segregated and that may include, but may not be limited to, documents responsive to this request.

Request No. 42: All documents that reflect or relate to any communications between the CPSC and former employees of Respondents, including but not limited to interview notes, questions asked, answers received, documents exchanged or revealed by or between either party, and any audiotape or videotape of such communications.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 43: All documents that reflect or relate to any communications between the CPSC and current employees of Respondents, including but not limited to interview notes, questions asked, answers received, documents exchanged or revealed by or between either party, and any audiotape or videotape of such communications.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 44: All documents received by the CPSC from Respondents (including any agent, employee, or representative of Respondents) relating to Star ME-1 fire sprinklers.

Objections: This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Complaint Counsel asked Respondents if they wished to waive their previous requests for confidentiality made for documents they previously submitted to the CPSC relating to Star ME-1 fire sprinklers. Respondents did not waive such requests. Complaint Counsel will produce all responsive documents not restricted by the objections or after implementation of procedures referenced above in the General Objections.

Request No. 45: All Star ME-1 fire sprinklers in your possession, custody, or control.

Objection: Complaint Counsel objects to this request to the extent it seeks things protected by the law enforcement investigatory privilege and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel expects to be able to make sprinklers available for inspection upon mutually agreeable terms, subject to possible limitations.

Request No. 46: All non-Star ME-1 fire sprinklers in your possession, custody, or control.

Objection: This request is overbroad and unduly burdensome. Complaint Counsel objects to this request to the extent it seeks things protected by the law enforcement investigatory privilege and work product doctrine. This request seeks things that may be prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel objects to this request to the extent it seeks things not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 47: All documents that relate to the allegation in Paragraph 4 of the Complaint that Chemetron "manufactured the Star ME-1 from in or about 1976 to in or about 1982."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 48: All documents that relate to the allegation in Paragraph 6 of the Complaint that "Sunbeam assumed [Chemetron's] and [Chemetron Investments'] liabilities for the Star ME-1 relief sought herein."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request may call for a legal conclusion and/or documents making a legal conclusion.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 49: All documents that relate to the allegation in Paragraph 10 of the Complaint that each Respondent was and/or is a "manufacturer[.]"

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request calls for a legal conclusion and/or documents making a legal conclusion.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the

Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 50: All documents that relate to the allegation in Paragraph 10 of the Complaint that each Respondent was and/or is a "distributor[.]"

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request calls for a legal conclusion and/or documents making a legal conclusion.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 51: All documents that relate to the allegation in Paragraph 12 of the Complaint that "[t]he Star ME-1 is an article produced and distributed for the personal use, consumption, and/or enjoyment of a consumer in or around a household or residence, in recreation, or otherwise."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 52: All documents that relate to the allegation in Paragraph 12 of the Complaint that Star ME-1 fire sprinklers are "consumer product[s]."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request calls for a legal conclusion and/or documents making a legal conclusion.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 53: All documents, if any, demonstrating that Star ME-1 fire sprinklers are used in day care centers.

Objections: This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request seeks documents protected by the law enforcement investigatory privilege.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 54: All documents that relate to the allegation in Paragraph 12 of the Complaint that "[t]he Star ME-1 is used [ ] in day care centers[.]"

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 55: All documents, if any, demonstrating that Star ME-1 fire sprinklers are used in nursing homes.

Objections: This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request seeks documents protected by the law enforcement investigatory privilege.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 56: All documents that relate to the allegation in Paragraph 12 of the Complaint that "[t]he Star ME-1 is used in [ ] nursing homes[.]"

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 57: All documents, if any, demonstrating that Star ME-1 fire sprinklers are used in health care facilities.

Objections: This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request seeks documents protected by the law enforcement investigatory privilege.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 58: All documents that relate to the allegation in Paragraph 12 of the Complaint that "[t]he Star ME-1 is used in [ ] health care facilities."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 59: All documents that relate to the allegations in Paragraph 13 of the Complaint about the operation of Star ME-1 fire sprinklers.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 60: All documents, if any, demonstrating that Star ME-1 fire sprinklers have failed to operate as intended in an actual fire situation.

Objections: This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request seeks documents protected by the law enforcement investigatory privilege.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 61: All documents that relate to the allegation in Paragraph 14 of the Complaint that the Star ME-1 fire sprinkler "has failed and is likely to fail to operate as intended in fires."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 62: All documents that relate to the allegation in Paragraph 15 of the Complaint that the "the inadequate design and/or manufacturing of the Star ME-1 constitutes a 'defect' [pursuant to] section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2)." Your response should include, without limitation, all data, testing, reports, and other information relating to the design of Star ME-1 fire sprinklers.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request calls for a legal conclusion and/or documents making a legal conclusion.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 63: All documents that relate to the allegation in Paragraph 16 of the Complaint that "[f]rom 1977 through 1995, Respondents manufactured, and/or distributed approximately 700,000 Star ME-1's."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 64: All documents that relate to the allegation in Paragraph 17 of the Complaint that the "[f]ailure of the Star ME-1 to operate as intended in a fire creates a likelihood that the fire will grow and spread, exposing consumers to the risk of serious injury and death."

Objections: This request is vague, overbroad, and unduly burdensome. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 65: All documents that relate to the allegation in Paragraph 18 of the Complaint that the "defect in the Star ME-1 manufactured from 1977 through 1995 creates a 'substantial risk of injury to the public' within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2)."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055

or a request for confidentiality. This request calls for a legal conclusion and/or documents making a legal conclusion.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 66: All documents that relate to the allegation in Paragraph 19 of the Complaint that "[t]he Star ME-1 manufactured from 1977 through 1995 constitutes a 'substantial product hazard' as that term is defined and used in sections 15(a)(2), (c) and (d) of the CPSA, 15 U.S.C. § 2064(a) (2), (c) and (d)."

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request calls for a legal conclusion and/or documents making a legal conclusion.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 67: All documents that relate to the CPSC's authority to reject a remedy elected pursuant to 15 U.S.C. § 2064(d).

Objections: This request is vague and confusing. As Complaint Counsel interprets this request, it is overbroad and unduly burdensome, and it calls for a legal conclusion and/or documents making a legal conclusion. As Complaint Counsel interprets this request, it seeks

documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. As Complaint Counsel interprets this request, it seeks documents protected by the attorney-client privilege, deliberative process privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel responds as follows: See the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 68: All documents that relate to the provision "less a reasonable allowance for use" in connection with a refund under 15 U.S.C. § 2064(d)(3).

Objections: This request is vague and confusing. As Complaint Counsel interprets this request, it is overbroad and unduly burdensome, and it calls for a legal conclusion and/or documents making a legal conclusion. As Complaint Counsel interprets this request, it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. As Complaint Counsel interprets this request, it seeks documents protected by the attorney-client privilege, deliberative process privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel responds as follows: See the Consumer Product Safety Act, 15 U.S.C. §§ 2051 - 2084, the regulations related thereto in Title 16 of the Code of Federal Regulations, and related case law, legal decisions, and opinions.

Request No. 69: All documents that refer or relate to the useful life of Star ME-1 fire sprinklers.

Objections: This request is vague because the term "useful life" is undefined and unclear. As a result, without the request being rephrased so as to eliminate the ambiguities, Complaint Counsel cannot determine if further objections would be necessary or provide a response.

Request No. 70: A current curriculum vitae or resume for each and every person whom the CPSC expects to call as an expert witness to testify at the hearing in this matter.

Response: Complaint Counsel has not yet determined whom it expects to call as an expert witness to testify at the hearing in this matter. Complaint Counsel will supplement this response as appropriate.

Request No. 71: All publications of any nature authorized by any person whom the CPSC expects to call as an expert witness to testify at the hearing in this matter.

Objections: This request is vague and confusing because of the word "authorized." Complaint Counsel presumes the Respondents intended the word "authorized" to be the word "authored," and Complaint Counsel interprets and responds to this request on the basis of that presumption. As Complaint Counsel interprets this request, it is overbroad. As Complaint Counsel interprets this request, it seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel responds that it has not yet determined whom it expects to call as an expert witness to testify at the hearing in this matter. Complaint Counsel will supplement this response as appropriate.

Request No. 72: All transcripts of prior testimony by any person whom the CPSC expects to call as an expert witness to testify at the hearing in this matter.

Objections: This request is overbroad and unduly burdensome. This request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds that it has not yet determined whom it expects to call as an expert witness to testify at the hearing in this matter. Complaint Counsel will supplement this response as appropriate.

Request No. 73: All documents and things reviewed or relied upon in forming opinions by any person whom the CPSC expects to call as an expert witness to testify at the hearing in this matter.

Response: Complaint Counsel has not yet determined whom it expects to call as an expert witness to testify at the hearing in this matter. Complaint Counsel will supplement this response as appropriate.

Request No. 74: All documents prepared or created in connection with this matter by any person whom the CPSC expects to call as an expert witness to testify at the hearing on this matter.

Response: Complaint Counsel has not yet determined whom it expects to call as an expert witness to testify at the hearing in this matter. Complaint Counsel will supplement this response as appropriate.

Request No. 75: All statements made by Respondents that the CPSC contends constitute admissions relating to any of the issues raised in the Complaint.

Objections: This request appears to call for a legal conclusion and/or documents as to which a legal conclusion may have to be made. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds that all statements made by Respondents that will be offered against them can be expected to constitute admissions. Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 76: All documents that relate to the feasibility and/or propriety of any alternative designs for Star ME-1 fire sprinklers (including any components thereof).

Objections: This request is vague and confusing because the phrase "feasibility and/or propriety of any alternative designs for" contains terms the meanings of which are unclear in the context of the request. As a result, the request overall is unclear, and, without the request being rephrased so as to eliminate the ambiguities, Complaint Counsel cannot determine if further objections would be necessary, provide a further written response, or produce responsive documents.

Request No. 77: All documents that reflect or relate to any alternative designs for Star ME-1 fire sprinklers (including any components thereof).

Objections: This request is vague and confusing because the phrase "any alternative designs for" contains terms the meanings of which are unclear in the context of the request. As a result, the request overall is unclear, and, without the request being rephrased so as to eliminate the ambiguities, Complaint Counsel cannot determine if further objections would be necessary, provide a further written response, or produce responsive documents.

Request No. 78: All testing protocols used by the CPSC or by any expert or other person on behalf of the CPSC in testing Star ME-1 fire sprinklers.

Objections: This request seeks documents protected by the work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 79: All documents that reflect or relate to any testing standards applied to Star ME-1 fire sprinklers in determining their pass/failure rates.

Objections: This request is vague, in part because the terms "any testing standards applied to" and "pass/failure rates" are undefined and unclear. This request is overbroad and unduly burdensome. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 80: All documents that reflect or relate to the CPSC's preliminary determination of the alleged risks associated with Star ME-1 fire sprinklers. Your response should include, without limitation:

(a) all internal reports, memoranda, correspondence and/or analyses prepared or relied upon by the persons involved in the CPSC Staff's preliminary determination;

(b) all documents revealing the level of hazard assigned to Star ME-1 fire sprinklers in accordance with the applicable provisions of the CPSC Recall Handbook; and

(c) all data, studies, reports and/or testing upon which the CPSC relied in making its preliminary determination.

Objection: This request is overbroad and unduly burdensome. This request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request is vague in part because the term "level of hazard assigned to" is undefined and unclear.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. See also the Complaint.

Request No. 81: All documents that reflect or relate to any changes in the CPSC's preliminary determination and/or initial assignment of the level of hazard allegedly presented by Star ME-1 fire sprinklers.

Objection: This request is overbroad and unduly burdensome. This request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This request is vague in part because the term "level of hazard assigned to" is undefined and unclear.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel responds as follows: None.

Request No. 82: All documents that relate to any requests for recall of Star ME-1 fire sprinklers.

Objection: This request is overbroad and unduly burdensome. This request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 83: All documents that reflect or relate to any corrective action plan for Star ME-1 fire sprinklers by any company or entity other than Respondents.

Objection: This request is overbroad and unduly burdensome. This request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 84: All documents that reflect or relate to any complaints, claims and/or reports of personal injury, property damage or any other problems allegedly associated with Star ME-1 fire sprinklers. Your response should include, without limitation:

(a) any and all written complaints, claims, letters or correspondence;

(b) any and all questionnaires or other surveys; and

(c) any and all data, investigation reports, survey results or other information revealing or relating to any such complaints, claims or reports.

Objection: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 85: All documents (including without limitation correspondence, internal memoranda, notes, studies, surveys or other analyses) that reflect or relate to any communications between the CPSC and any consumer(s) regarding Star ME-1 fire sprinklers and/or Respondents.

Objections: This request is overbroad and unduly burdensome to the extent it seeks all documents that reflect or relate to any communications between the CPSC and any consumer(s) regarding Chemetron Corporation, Chemetron Investments, Inc., and/or Sunbeam Corporation but not also related to the Star ME-1 or this proceeding. On that same basis, this request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 86: All documents that reflect or relate to any communications between the CPSC and any state or local government authorities relating to Star ME-1 fire sprinklers and/or Respondents.

Objections: This request is overbroad and unduly burdensome to the extent it seeks all documents that reflect or relate to any communications between the CPSC and any state or local government authorities relating to Chemetron Corporation, Chemetron Investments, Inc., and/or Sunbeam Corporation but not also related to the Star ME-1 or this proceeding. On that same basis, this request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 87: All documents that reflect or relate to any communications between the CPSC and any federal government authorities relating to Star ME-1 fire sprinklers and/or Respondents.

Objections: This request is overbroad and unduly burdensome to the extent it seeks all documents that reflect or relate to any communications between the CPSC and any federal government authorities relating to Chemetron Corporation, Chemetron Investments, Inc., and/or Sunbeam Corporation but not also related to the Star ME-1 or this proceeding. On that same basis, this request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 88: All documents that reflect or relate to any complaints and/or reports from dealers, retailers, distributors, and/or installers regarding allegations of personal injury, property damage or any other problems allegedly associated with Star ME-1 fire sprinklers.

Objection: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 89: All documents that reflect or relate to scripts, talking points, outlines, or any other material prepared by, for, or on behalf of the CPSC for any press conferences, news releases, or communications with the public and/or the media regarding Star ME-1 fire sprinklers and/or Respondents.

Objections: This request is vague and confusing. This request is overbroad and unduly burdensome to the extent it seeks all of the requested documents regarding Chemetron Corporation, Chemetron Investments, Inc., and/or Sunbeam Corporation but not also related to the Star ME-1 or this proceeding. On that same basis, this request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 90: All documents that reflect or relate to any material regarding Star ME-1 fire sprinklers and/or Respondents created by or on behalf of the CPSC public relations department,

media department, or any other CPSC internal department charged with communicating with or providing information to the public and/or the media.

Objections: This request is overbroad and unduly burdensome to the extent it seeks all of the requested documents regarding Chemetron Corporation, Chemetron Investments, Inc., and/or Sunbeam Corporation but not also related to the Star ME-1 or this proceeding. On that same basis, this request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 91: All documents that reflect or relate to any journals, calendars, diaries, or correspondence maintained by the CPSC staff regarding Star ME-1 fire sprinklers and/or Respondents.

Objections: This request is vague and confusing. This request is overbroad and unduly burdensome, including, but not limited to, to the extent it seeks all of the requested documents regarding Chemetron Corporation, Chemetron Investments, Inc., and/or Sunbeam Corporation but not also related to the Star ME-1 or this proceeding. This request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Request No. 92: All documents that reflect or relate to any communications from, to, between or among persons employed by, or otherwise retained by, the CPSC regarding Star ME-1 fire sprinklers.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 93: All documents (including correspondence, internal memoranda, notes, studies, surveys or other analyses) that reflect or relate to any communications regarding Star ME-1 fire sprinklers between the CPSC and any dealer, retailer, distributor, and/or installer.

Objection: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 94: All documents that reflect or relate to the CPSC's document retention policy.

Objections: This request is vague and confusing. This request is overbroad and unduly burdensome. This request seeks documents not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections. The documents being produced reflect the Commission's document retention policy.

Request No. 95: To the extent not addressed above, all Star ME-1 fire sprinklers tested by or on behalf of the CPSC.

Objection: This request is essentially duplicative of Request 45. This request seeks things protected by the deliberative process privilege, law enforcement investigatory privilege, and work product doctrine.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel expects to be able to make sprinklers available for inspection upon mutually agreeable terms, subject to possible limitations.

Request No. 96: To the extent not addressed above, all documents that you intend to rely on to prove any allegations set forth in the Complaint.

Objection: This request seeks documents protected by the deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 97: To the extent not addressed above, all documents that reflect or relate to any facts as set forth in your response to the Respondents' First Set of Interrogatories.

Objections: This request is overbroad and unduly burdensome. This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law

enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 98: To the extent not addressed above, all documents relating to the incidents, transactions, and events mentioned in the Complaint.

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Request No. 99: To the extent not addressed above, all documents used, referred to, relied upon, or mentioned in the November 30, 2000 letter from Seth B. Popkin to David H. Baker (attached hereto).

Objections: This request seeks documents protected by the attorney-client privilege, deliberative process privilege, law enforcement investigatory privilege, and work product doctrine. This request seeks documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Response: Notwithstanding and without waiving the foregoing objections, Complaint Counsel will produce all responsive documents not restricted by the objections.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
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Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2002, I served the foregoing and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery:

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I hereby certify that on January 22, 2002, I served the foregoing upon the following counsel for the parties of record in these proceedings, by first class mail, postage prepaid:

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Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

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|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

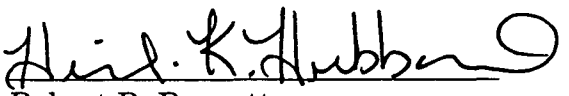
**NOTICE OF APPEARANCE OF ATTORNEY**
**FOR CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. §§ 1025.63 and 1025.64, the following additional attorney hereby enters her Notice of Appearance in the above-captioned matter on behalf of respondent Chemetron Investments, Inc., commencing January 22, 2002:

Karyn A. Temple
Williams & Connolly LLP
725 – 12th St., N.W.
Washington, DC 20005
202/434-5000

Attorney Temple is a member in good standing of the Bar of the State of New York.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of the D.C. Bar)
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Investments, Inc.*

Dated: January 22, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Notice of Appearance upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Karyn A. Temple

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**CONSUMER PRODUCT SAFETY COMMISSION**

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| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
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| Grucon Corporation | ) | |
| | ) | |

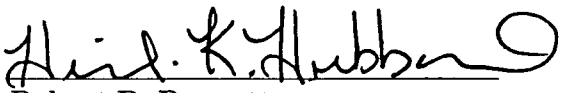
**NOTICE OF APPEARANCE OF ATTORNEY**
**FOR CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. §§ 1025.63 and 1025.64, the following additional attorney hereby enters her Notice of Appearance in the above-captioned matter on behalf of respondent Chemetron Investments, Inc., commencing January 22, 2002:

Karyn A. Temple
Williams & Connolly LLP
725 – 12th St., N.W.
Washington, DC 20005
202/434-5000

Attorney Temple is a member in good standing of the Bar of the State of New York.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
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Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of the D.C. Bar)
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Investments, Inc.*

Dated: January 22, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Notice of Appearance upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
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Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

**UNITED STATES OF AMERICA**
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| | ) | |

**RESPONDENT CHEMETRON CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENT CHEMETRON CORPORATION**

Pursuant to 16 C.F.R. § 1025.32(b), Respondent Chemetron Corporation ("Chemetron") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's First Set of Interrogatories to Respondent Chemetron Corporation.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Chemetron will provide a log of documents withheld on privilege grounds.

B. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information and/or documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and interrogatories have been read to exclude any such information and/or documents. Chemetron also objects to the definitions, instructions and interrogatories as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Chemetron an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Chemetron objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had possession, custody, or control of the document or any copy thereof," "the number of

pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad, and unduly burdensome.

D. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

E. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Chemetron obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

F. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information that is not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such information, Chemetron does not admit the relevance or admissibility thereof.

G. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information that is equally accessible to all parties, is available as a matter of public record, or has been provided to Chemetron by the CPSC and/or Complaint Counsel in this matter.

H. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Chemetron an obligation to obtain information or documents from entities formerly affiliated with Chemetron

or to obtain other information or documents not in Chemetron's current possession, custody, or control, and Chemetron has read the definitions, instructions, and interrogatories to exclude any such obligation. Chemetron itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Chemetron Corporation has never manufactured, distributed, or sold Star ME-1 fire sprinklers. Moreover, Chemetron's subsidiary, Chemetron Investments, Inc. (formerly known as Chemetron Corporation) transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Chemetron. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

I. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek to require Chemetron to obtain information or documents that were, but no longer are, within Chemetron's possession, custody, or control, and Chemetron has read the definitions, instructions, and interrogatories to exclude any such obligation.

J. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek, or may be construed, to impose on

Chemetron an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Chemetron will search files in its possession, custody, and control where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

K. Chemetron objects to the definition of "You," "your" and "Respondent" insofar as it includes "all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent" whether or not such persons or entities have had any involvement in the events giving rise to this lawsuit, as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

L. Chemetron objects to the definition of "identify" and "identity" with respect to a "person" insofar as it includes residential addresses and telephone numbers of former employees or of persons for whom a business address and telephone number are available, on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and may invade the legitimate expectation of privacy of those persons to the confidentiality of such information to the extent such information may be derived only

from personnel records. Chemetron further objects to this definition insofar as it includes the "employer, employer department and/or subject area in which the person works, business affiliations . . . and the person's relationships or associations, if any, to the Respondents in this action" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

M. Chemetron objects to the definition of "identify" and "identity" with respect to the definition of a business entity, building, or place insofar as it includes "all former names of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action" as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

N. Chemetron objects to each interrogatory to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Chemetron has made an effort to respond, where possible, as it understands and interprets the interrogatory.

O. Chemetron objects to each interrogatory to the extent that it contains compound questions and/or contentions which should be separated into individual interrogatories.

P. In responding to any of these interrogatories, Chemetron does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

Q. Because discovery in this action is ongoing, Chemetron reserves the right to amend and/or supplement the information set forth in these responses.

R. These General Objections are incorporated into every interrogatory response and shall not be repeated in every response to which they are applicable. By responding to an interrogatory, Chemetron does not waive any general or specific objection.

S. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be made available upon an appropriate order of the Court or agreement of counsel protecting their confidentiality.

## RESPONSES TO INTERROGATORIES

**INTERROGATORY NO. 1:** Identify all documents that support your answers to these Interrogatories, your responses to the Requests for Production, and/or upon which you rely and/or relied in responding to these Interrogatories and the Requests for Production.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron is producing non-privileged documents used or relied upon in responding to these Interrogatories, which are numbered 000001 – end.[1]

**INTERROGATORY NO. 2:** State all facts in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome. Chemetron further objects because the facts are already set forth in the Answer, which is incorporated herein by reference.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron is producing non-privileged documents containing facts supporting its Answer, which are numbered 001412-001455, 001465-001479, 001480, 001485-001540, 001546-001550, 001551-001553, 001554-001555, 001559-001561, 002255-003171.

**INTERROGATORY NO. 3:** Identify all documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

---

[1] All Bates Numbers begin with RESP.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to the interrogatory as vague, ambiguous, overbroad and unduly burdensome.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron is producing non-privileged documents used or relied upon in preparing its Answer, which are numbered 001412-001455, 001465-001479, 001480, 001485-001540, 001546-001550, 001551-001553, 001554-001555, 001559-001561, 002255-003171.

**INTERROGATORY NO. 4:** Identify each person who you believe possesses any knowledge of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, and describe with specificity the knowledge of each such person concerning the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "each person" who would have "any knowledge" of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, without limiting the interrogatory to those who have material knowledge and/or material involvement in issues relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, or to persons employed or retained by Chemetron. Chemetron also objects to this interrogatory to the extent that it requests that Chemetron identify "each person" who would have "any knowledge," without

limiting the interrogatory to persons with personal and discoverable knowledge, and without excluding Chemetron's attorneys and/or consultants. In addition, to the extent that this interrogatory may be deemed to call for a comprehensive description of each person's knowledge, Chemetron objects on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory as vague and ambiguous to the extent that it contains compound questions which should be separated into individual interrogatories.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron responds as follows: Because Chemetron Corporation has never manufactured or sold Star ME-1 fire sprinklers, and because Chemetron Investments, Inc. (formerly known as Chemetron Corporation) has not had any involvement with Star ME-1 fire sprinklers for over 18 years, there are no persons currently within Chemetron with personal knowledge of the subject matter of this litigation. The information provided in these responses has been based upon the review of corporate records and documents. For a list of persons (apart from outside counsel) who assisted in the preparation of these responses, Chemetron refers to its response to Interrogatory No. 5, which is incorporated herein by reference.

Additionally, former employees of Chemetron entities identified in the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered

000736, 000739-000740C, 001403, 002126, 002190-002254, 002255-003171, may also have some material knowledge in response to this interrogatory.

**INTERROGATORY NO. 5:** Identify all persons who assisted in the preparation of, and/or who provided information or documents used in the preparation of, the responses to these Interrogatories and the responses to the Requests for Production.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "all persons who assisted in the preparation of" the responses to these interrogatories and requests for production, without limiting the interrogatory to persons with material involvement in the preparation of the responses, and without excluding outside counsel or those who may have had only a minor or clerical role.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that the following persons (apart from outside counsel) participated in the preparation of these interrogatory responses and requests for production in some material way:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2515

Kenneth R. Bell, Esq.
Senior Vice President – Risk Management,
Product Regulatory Compliance and Product Litigation,
and Assistant Secretary

Sunbeam Corporation
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316/832-2747

Marc P. Clements, Esq.
Senior Director - Product Litigation and Compliance
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Ronald C. Gahagan, Jr.
Vice President and Assistant
Secretary
Chemetron Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Debra Roberts
Legal Assistant
Legal Dept.
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2654

**INTERROGATORY NO. 6:** Identify all persons who participated or assisted in producing the documents produced in response to these Interrogatories and the Requests for Production.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "all persons who participated or assisted" in producing documents, without limiting the

interrogatory to persons with material involvement, and without excluding outside counsel or those who may have had only a minor or clerical role.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that the following persons (apart from outside counsel) participated in producing documents in response to these interrogatories and requests for production in some material way:

Barbara L. Allen
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P.O. Box 2931
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**INTERROGATORY NO. 7:** Since the date of your incorporation, have you had written document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron's] incorporation."

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron will produce a copy of the official document retention policy currently in effect for Sunbeam Corporation, which is numbered 001316-001319.

**INTERROGATORY NO. 8:** Since the date of your incorporation, have you had unwritten document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all of your unwritten document retention policies in effect since the date of your incorporation, and state the period of time each policy was in effect.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible

evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron's] incorporation." Chemetron also objects to this interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not reasonbly calculated to lead to the discovery of admissible evidence to the extent that it seeks "unwritten" document retention policies.

**INTERROGATORY NO. 9:** Since the date of your incorporation, have you had written policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron's] incorporation." Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding any "products," without limiting the interrogatory to policies relating to the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has no policies applicable to Star ME-1 fire sprinklers because Chemetron currently has no involvement with such sprinklers.

**INTERROGATORY NO. 10:** Since the date of your incorporation, have you had unwritten policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of

the time period referenced, describe in detail all such policies, state the period of time each policy was in effect.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron's] incorporation." Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding any "products," without limiting the interrogatory to policies relating to the Star ME-1. Chemetron further objects to this interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not reasonbly calculated to lead to the discovery of admissible evidence to the extent that it seeks "unwritten" policies.

**INTERROGATORY NO. 11:** Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, and for each such expert witness, state or provide the following information:

a) The subject matter on which the expert is expected to testify;
b) The substance of the facts and opinions to which the expert is expected to testify; and
c) A summary of the grounds for each opinion.

**RESPONSE:** Chemetron objects to this interrogatory as premature. Chemetron has not yet determined or identified the expert witness it expects to call at the trial or hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron will timely identify the expert witnesses it expects to call at the hearing of this matter in compliance with the rules and orders in this proceeding or by agreement with opposing counsel.

**INTERROGATORY NO. 12:** Identify each person whom you expect to call as a witness at the trial or hearing of this matter (other than those already identified in response to the immediately preceding interrogatory), and for each such witness, state or provide the following information:

a) The subject matter on which the witness is expected to testify; and
b) The substance of the facts to which the witness is expected to testify.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks the "substance of the facts to which the witness is expected to testify." Chemetron further objects to this interrogatory as premature. Chemetron has not yet determined or identified each person it expects to call as a witness at the trial or hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron will provide a trial witness list if and to the extent required by the rules and orders in this proceeding or by agreement with opposing counsel.

**INTERROGATORY NO. 13:** Identify each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former

employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users. As part of your answer, identify all communications you and/or other persons made and/or received relating to the following:

a) Problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-l's and/or any component parts thereof, including, but not limited to, any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-l's; and

b) Failures and/or partial failures of Star ME-l's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires and/or tests.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonbly calculated to lead to the discovery of admissible evidence to the extent that it seeks communications by or between the CPSC and/or Complaint Counsel and Chemetron. Chemetron also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "each" communication relating to the subject matter of this litigation, the Complaint, and/or the Answer, without limiting the request to communications relating to the Star ME-1. Chemetron further objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery. Specifically, Chemetron objects to this interrogatory to the extent that it seeks any communications by or between it and its attorneys (including its in-house counsel) and this interrogatory has been read to exclude any such privileged information. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the

extent that it seeks "each communication" between or among "former employees, agents, and/or representatives; and or sprinkler installers, contractors, customers, and/or users."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has not identified any non-privileged communications about Star ME-1 fire sprinklers, other than the communications reflected in the documents being provided pursuant to 16 C.F.R. § 1025.32(d), which are numbered 000001-000008, 000009, 000010, 000011-000019, 000020-000027, 000028, 000029, 000030-000034, 000035-000040, 000043-000044, 000045-000049, 000050, 000051-000052, 000053, 000054-000056, 000057-000066, 000067-000069, 000747-000753, 000754-000755, 000756-000773, 000774-000775, 000777, 000778-000779, 000780-000781, 000782-001217, 001218, 001219-001220, 001221-001223, 001224-001227, 001228-001232, 001233-001236, 001237-001241, 001242-001244, 001245-001248, 001249-001284, 001285, 001286-001288A, 001289-001290, 001291-001292, 001293, 001294-001298, 001299-001300, 001301, 001302-001305, 001306-001309, 001310-001315, 001722-001723, 003221-003222, 003223-003224, 003225-003226.

**INTERROGATORY NO. 14:** Identify all persons from whom you have obtained witness statements relating to the subject matter of this litigation, the Complaint, and the Answer, and all persons who have custody or possession of each such statement, as well as the date of each such statement and whether each such statement was written or oral.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has not obtained any non-privileged witness statements relating to the subject matter of this litigation, the Complaint, and/or the Answer.

**INTERROGATORY NO. 15:** Identify and describe in detail all operations, purposes, and uses of the Star ME-1.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all operations, purposes, and uses of the Star ME-1." Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that is seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint

Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states, upon information and belief, that the Star ME-1 dry fire sprinkler was intended to be installed in fire sprinkler systems used in very cold, unheated or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing.

**INTERROGATORY NO. 16:** Identify each person who manufactured the Star ME-1 and the place(s) at which each such person manufactured the Star ME-1. State the dates each such person manufactured the Star ME-1.

**RESPONSE:** Chemetron objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron and requests that Chemetron identify "each person" who manufactured the Star ME-1, without limiting the interrogatory to Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the

extent that it requests that Chemetron state the "place(s)" at which each such person manufactured the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that upon information and belief, Star Sprinkler Corporation, a Florida corporation, manufactured some type of Star ME-1 "dry" fire sprinkler prior to 1977. Chemetron Corporation (now known as Chemetron Investments, Inc.) is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between 1977 and 1982. A Chemetron subsidiary, Chemetron Fire Systems, Inc. ("CFS"), is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between August 25, 1982 and November 9, 1983. CFS, however, sold its assets in the Star Sprinkler business almost twenty years ago – in 1983. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc. Upon information and belief, Grunau Sprinkler Manufacturing Company, Inc. manufactured some type of Star ME-1 "dry" fire sprinkler after 1983.

Pursuant to 16 C.F.R. § 1025.32(d), Chemetron is also producing documents responsive to this interrogatory, which are numbered 001546-001550, 001551-001553, 001554-001558, 001626-001701, 002190-002254, 002255-003171.

**INTERROGATORY NO. 17:** Identify all persons who participated in, had responsibility for, and/or had knowledge of any of the following relating to the Star ME-1, and for each such person, state their position and title at the time of their participation or responsibility and describe in detail the nature of their participation, activities, responsibilities, and/or knowledge:

a) Design and/or development;
b) Engineering;
c) Manufacture;
d) Testing; and

e) UL and/or FM approval process and/or listing process.

**RESPONSE:** Chemetron objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "all persons who participated in, had responsibility for, and/or had knowledge" of the specified responsibilities and/or activities, without limiting the interrogatory to Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 002014-002016, 002190-002254, 002255-003171.

**INTERROGATORY NO. 18:** Identify and describe in detail the Star ME-1, all materials used therein, and all procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, the following:

a) Its design, materials, and component parts, including, but not limited to, the specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the

manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001887-001918.

**INTERROGATORY NO. 19:** For each change identified in your response to the immediately preceding interrogatory:

a) State the date of the change;
b) State all reasons for the change;
c) Identify all persons who participated in bringing about the change, and explain each person's role in same;
d) Identify all persons who implemented the change; and
e) State whether or not any tests were performed on the Star ME-l's before and/or after the change occurred. If so:
    i) Describe all such tests and provide a detailed protocol;
    ii) Identify the persons and entities who participated in setting up and/or conducting the tests;
    iii) Describe and explain the results of the tests, including all observations and conclusions; and
    iv) Identify all persons who participated in evaluating the test results.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 20:** Identify the manufacturer and supplier of each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1.

**RESPONSE:** Chemetron objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possesion, custody, and control of Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "manufacturers" and "suppliers," without limiting the interrogatory to Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 21:** State the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same, and identify the manufacturer and supplier of each of the "O" rings contained in the Star ME-1.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of

admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 22:** Identify all industry and/or other standards, codes, requirements, and/or rules according to which the Star ME-1 was manufactured, including, but not limited to, UL and FM.

**RESPONSE:** Chemetron objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron or information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent

that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001976-001985, 002190-002254, 002979-003007.

**INTERROGATORY NO. 23:** Identify all industry and/or other standards, codes, requirements, and/or rules applicable to the Star ME-1, including, but not limited to, UL and FM.

**RESPONSE:** Chemetron objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron also objects to this interrogatory as vague and ambiguous to the extent that it requests that Chemetron identify all standards etc. that are "applicable" to the Star ME-1. Chemetron further objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron or information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001976-001985, 002979-003007.

**INTERROGATORY NO. 24:** Were the Star ME-1's submitted for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM? If so, for each submission for approval, listing, and/or certification:

a) Identify the Star ME-1;
b) Identify the laboratory, institution, and/or other person to whom the Star ME-1 was submitted;
c) State the date of each submission;
d) Describe all steps taken to obtain approval, listing, and/or certification;
e) Identify all persons who made the submission, all persons involved in each step, and all persons having knowledge of the submission and the steps associated therewith;
f) Identify and describe all tests, examinations, evaluations, and analyses conducted with respect to the submission, and include in your answer the following:
    i) The identity of each person having knowledge of same;
    ii) The identity of each person setting up, conducting, evaluating, and/or witnessing same; and
    iii) A detailed description and explanation of the results of same, including all findings, observations, and conclusions;
g) Identify each communication relating to the submission;
h) State the final result of and final response to the submission, and the date of the final result and/or response, including, but not limited to, whether or not the submission was approved, granted, denied, rejected, refused, and/or postponed. If the submission was denied, rejected, refused, and/or postponed, state all reasons for such action; and
i) State whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1. If so, identify the Star ME-1 or component part, state the date of and all reasons for such action, identify each person

with knowledge of such action, and identify each communication relating to such action.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 001769-001776, 001777-001837, 001976-001985, 002979-003007.

**INTERROGATORY NO. 25:** Identify each person who distributed and/or participated in the distribution of the Star ME-1, and state the dates each such

person distributed and/or participated in the distribution of the Star ME-1. For each such person, identify each person to whom the Star ME-1 was distributed, the dates on which the Star ME-1 was distributed to that person, the quantity of Star ME-1's distributed to each person, and the terms on which the Star ME-1 was distributed to each person (including, but not limited to, sale prices).

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "each person" who distributed and/or participated in the distribution of the Star ME-1, without limiting the interrogatory to Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that upon information and belief, Star Sprinkler Corporation, a Florida corporation, distributed some type of Star ME-1 "dry" fire sprinkler prior to 1977. Chemetron Corporation (now known as Chemetron Investments, Inc.) is believed to have distributed some kind of Star ME-

1 "dry" fire sprinkler between 1977 and 1982. A Chemetron subsidiary, Chemetron Fire Systems, Inc. ("CFS"), is believed to have distributed some kind of Star ME-1 "dry" fire sprinkler between August 25, 1982 and November 9, 1983. CFS, however, sold its assets in the Star Sprinkler business almost twenty years ago – in 1983. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc. Upon information and belief, Grunau Sprinkler Manufacturing Company, Inc. distributed some type of Star ME-1 "dry" fire sprinkler after 1983.

Pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is also producing documents responsive to this interrogatory, which are numbered 001546-001500, 001551-001553, 001554-001558, 001626-001701, 002255-003171.

**INTERROGATORY NO. 26:** By manufacturer, state the total quantity of Star ME-1's manufactured in each year in which they were manufactured, and state the total quantity of Star ME-l's manufactured in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it is not limited to Star ME-1's allegedly manufactured by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated

to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 27:** By manufacturer, state the total quantity of Star ME-1's distributed in each year in which they were distributed, and state the total quantity of Star ME-1's distributed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it is not limited to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint

Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 001989, 001991, 001968-001975.

**INTERROGATORY NO. 28:** Identify each person who installed and/or participated in the installation of the Star ME-1, and state the dates each such person installed and/or participated in the installation of the Star ME-1.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "each person" who installed and/or participated in the installation of the Star ME-1, without limiting the interrogatory to Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or

Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 29:** State the total quantity of Star ME-1's installed in each year in which they were distributed, and state the total quantity of Star ME-1's installed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron state the quantities of Star ME-1's installed, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC

and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 30:** Identify, and state the building type of (including, but not limited to, the building types listed in interrogatory 31), all buildings in which Star ME-1's have ever been installed, state the quantity ever installed in each such building, and state the quantity presently installed in each such building.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify and state the building type of "all buildings" in which Star ME-1's have ever been installed, and "the quantity" ever and/or presently installed in each such building, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks

information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 31:** State the quantity of Star ME-1's ever installed in each of the following types of buildings:

a) Private homes;
b) Apartment buildings;
c) Public and private schools, including, but not limited to, universities, colleges, dormitories, and residential halls;
d) Nursing homes;
e) Hospitals and other healthcare facilities;
f) Detention facilities, including, but not limited to, prisons and jails;
g) Homeless shelters;
h) Facilities used for recreation, including, but not limited to, health clubs, gymnasiums, sports arenas, public pools, country clubs, and museums;
i) Hotels and motels; and
j) Day care centers.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that

Chemetron state "the quantity of Star ME-1's" ever installed in each such building, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 32:** State the quantity of Star ME-1's currently in your possession, custody, or control, and of those, state the quantity that have been removed from service, the quantity that have never been put in service, and the manufacture year of each one.

**RESPONSE:** Subject to and without waiving the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any Star ME-1's in its possession, custody, or control.

**INTERROGATORY NO. 33:** Identify and describe all actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, you and/or any other persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to any actions taken by "other persons," without limiting the interrogatory to Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 34:** Identify all persons with knowledge of and/or responsibility for all actions, steps, and/or procedures identified and described in response to the immediately preceding interrogatory.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "all persons" with knowledge and/or responsibility, without limiting the interrogatory to Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 35:** Identify all tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, and for each Star ME-1 tested, examined, and/or analyzed:

a) Identify the Star ME-1;
b) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
c) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
d) Describe and explain the results of the tests, including all observations and conclusions; and
e) Identify all persons who participated in evaluating the test results.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not

reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify any tests, examinations, and/or analyses not conducted or reviewed by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the examinations and/or analyses of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 36:** State whether you or any other persons:

(a) observed that;

(b) alleged, reported, or otherwise communicated to you that they observed that; or

(c) tested, examined, and/or analyzed to determine if any of the following conditions was present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems. If so, for each such Star ME-1 or component part thereof:

(i) Identify the Star ME-1 and/or component part;

(ii) Describe the circumstances of the conditions;
(iii) Describe each observation, test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
(iv) Identify all persons who made the observations and/or communicated this information to you, and state the dates of all such observations and/or communications;
(v) Identify all persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
(vi) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions was present and the criteria by which it was determined whether the referenced conditions were present;
(vii) State all reasons any of the referenced conditions was present;
(viii) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
(ix) Identify all communications relating to the observations, tests, examinations, and/or analyses.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it purports to request that Chemetron state whether "any other persons" conducted the activities listed in (a) – (c), without limiting the interrogatory to Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron

further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 37:** State the effects each of the following conditions may have upon the operation, activation, and/or other performance of a Star ME-1, and state all facts, reasons, and bases for the effects you state:

a) Corrosion;
b) Accumulation of deposits;
c) Adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts;
d) Swelling of the "O" ring;
e) Lubricant deficiencies or problems;
f) Leakage;and
g) Component part interference or fit problems.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001404-001310-001315, 001404-001411.

**INTERROGATORY NO. 38:** Explain in detail the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 39:** In each of the Star ME-1's manufactured and installed, after the thermal sensing element or fusible link melts from fire or heat, does each Star ME-1 require water pressure to enable its component parts to properly move and open the sprinkler (to then enable water to properly discharge)? For each Star ME-1 requiring such water pressure:

a) State the minimum water pressure required (in psi) and the reasons that pressure is required;
b) State how the water pressure causes the Star ME-1's component parts to properly move and open the sprinkler; and
c) State all reasons the Star ME-1's component parts will not properly move and open the sprinkler without that pressure.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron or information relating to Star ME-1's not allegedly manufactured, distributed, or installed by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel,

information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 40:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's? If so, for each such alleged, reported, or communicated problem, flaw, defect, defective condition, and deficiency:

a) Identify the Star ME-1 or component part;
b) Describe it in detail and state the date;
c) Identify all persons having knowledge of it;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and
f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information

equally available to all parties or as a matter of public record. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding "any" Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with Star ME-1's other than the allegations of the CPSC and those contained in the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron will also produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Chemetron, however, has no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 41:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water)

in fires? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 or component part;
b) Describe it in detail, state the time and date, and state the cause and nature of the fire;
c) Identify the building and/or place at which it occurred;
d) State the sprinkler system pressure (in psig) at the site of it;
e) Identify all persons witnessing and/or having knowledge of it;
f) State the date on which you acquired knowledge of it;
g) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it;
h) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;
i) State whether any persons sustained or allegedly sustained injury as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:
    i) Identify the person;
    ii) Describe each injury, and state how, where, and when the injury occurred; and
    iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;
j) State whether any persons died or allegedly died as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:
    i) Identify the person;
    ii) Describe the death, and state how, where, and when the death occurred; and
    iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;
k) State whether any property was damaged, destroyed, or lost, or allegedly damaged, destroyed, or lost, as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so:
    i) Identify the property and the persons owning the property;
    ii) Describe the damage, destruction, or loss, and state the value of the affected property;
    iii) State how, where, and when the damage, destruction, or loss occurred; and

iv) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

l) State whether any police, fire, medical, emergency service, or other report was prepared related to the fire. If so, for each such report:
   i) Identify the report, including its date;
   ii) State the type of report;
   iii) Identify the municipality, organization, and/or other persons by whom the report was prepared;
   iv) State whether photographs and other documents, or statements, were obtained in connection with and/or made part of the report; and
   v) State whether you have a copy of the report in your possession, custody, or control;

m) State whether any persons tested, examined, and/or analyzed any Star ME-1 or component part thereof that failed and/or partially failed in a fire, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 or component part thereof tested, examined, and/or analyzed:
   i) Identify the Star ME-1 or component part;
   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
   iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
   iv) Describe and explain the results of the tests, including all observations and conclusions;
   v) Identify all persons who participated in evaluating the test results; and
   vi) Identify all communications related to it;

n) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:
   i) Identify the Star ME-1 and/or component part;
   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;
v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
vi) Identify all communications related to it;

o) State all reasons the Star ME-1 failed and/or partially failed in the fire.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has no independent knowledge of, nor

has any person alleged, reported, or otherwise communicated to it, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires, other than the allegations of the CPSC and those contained in the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron will also produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Chemetron, however, has no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 42:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 and/or component part;
b) Describe it in detail and state the date;
c) Identify and describe all tests in which it occurred, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions; and

g) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Chemetron further

objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules, other than the allegations and reports of the CPSC, which will be produced.

**INTERROGATORY NO. 43:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element? If so, for each such alleged, reported, or communicated failure:

a) Identify the Star ME-1 and/or component part;
b) Describe it in detail and state the date;
c) Identify and describe all tests or other circumstances in which it occurred, including the test protocol, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests or circumstances;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

g) State the pressure, if any, at which the Star ME-1 activated, or if it failed altogether to activate, state the highest pressure to which it was subjected;

h) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

   i) Identify the Star ME-1 and/or component part;

   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

   iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

   iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

   v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses;

   vi) Identify all communications related to it; and

   vii) State all reasons for the presence of the referenced conditions.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to

lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element, other than the allegations and reports of the CPSC, which will be produced.

**INTERROGATORY NO. 44:** Describe in detail the performance record and history of the Star ME-1, including, but not limited to, as applicable, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the

interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 45:** Identify all Star ME-1's that properly operated and activated in a fire, including, but not limited to, the date and circumstances of the fire. Identify all persons having knowledge of this information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly

burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 46:** State whether or not any Star ME-1's and/or any Star ME-1 component parts were de-listed (by UL, FM, and/or any other person), recalled, discontinued, taken off the market, and/or the subject of a warning, advisory, safety, or similar notice to consumers, distributors, installers, governmental authorities, or other persons. If so, for each such action:

a) Identify the Star ME-1, state the quantity sought to be recalled, discontinued, taken off the market, and/or subject to notice, and the quantity actually recalled, discontinued, taken off the market, and/or subject to notice;
b) Describe the action in detail, state the date, and state all reasons for the action;
c) Identify and describe the circumstances leading to the action;
d) Identify all persons having knowledge of the action;
e) State the date on which you acquired knowledge of the action;
f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and
g) Identify and describe all actions you and/or any other persons took relating, to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron

also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 001404-001411.

**INTERROGATORY NO. 47:** State whether or not any Star ME-1's and/or any Star ME-1 component parts were returned, and/or were asked to be returned, to you and/or any manufacturer, supplier, distributor, installer, and/or other person. If so, for each such action:

a) Identify the Star ME-1, state the quantity asked to be returned, and state the quantity actually returned;
b) Describe the action in detail, state the date, and state all reasons for the action;
c) Identify and describe the circumstances leading to the action;
d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;
f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and
g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron, and information concerning Star ME-1's or components returned or asked to be returned to "any manufacturer, supplier, distributor, installer, and/or other person," without limiting the interrogatory to Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information that was provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that no Star ME-1's and/or any Star ME-1 component parts have been returned and/or have been asked to be returned to Chemetron by any person other than the CPSC and as provided in the documents

being provided pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls of Star ME-1's by manufacturers, which are numbered 001404-001411.

**INTERROGATORY NO. 48:** Have you and/or any other persons replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers? If so, state the total number of Star ME-1's replaced, according to manufacturer and model year, and for each Star ME-1 replaced:

a) Identify it and state the date it was replaced;
b) Identify the building and/or place at which it had been installed;
c) State the make, model, and year of the replacement sprinkler;
d) Identify all persons to whom you provided the replacement sprinkler;
e) State all reasons you and/or any other persons replaced it;
f) Describe its condition at the time of replacement;
g) State all costs of replacing it, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs;
h) Identify all persons who paid the replacement costs;
i) Identify all communications related to it; and
j) State whether any persons tested, examined, and/or analyzed it, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 and/or component part tested, examined, and/or analyzed:
    i) Identify the Star ME-1 or component part;
    ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
    iii) Identify the persons who participated in setting, up and/or conducting the tests, examinations, and/or analyses;
    iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions;
    v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
    vi) Identify all communications related to it.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not

reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron and information regarding whether "any other persons" replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers, without limiting the interrogatory to Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has not replaced any Star ME-1's.

**INTERROGATORY NO. 49:** State all current costs of replacing a Star ME-1 and/or a group of Star ME-1's, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs. To the extent these costs may vary depending upon facts and circumstances (including, but not limited to, the building or site of replacement or the quantity being replaced), so state, identify all variables, factors, and considerations related to determining the costs, and explain fully. If you cannot give exact costs, give your best estimates (identified as such) and explain the basis for the estimates.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory

as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has not yet determined the costs of replacing Star ME-1's allegedly manufactured by any Chemetron entity over 18 years ago. Because neither Chemetron nor any of its subsidiaries or affiliates currently manufactures fire sprinklers, Chemetron assumes that the cost would require, *inter alia*, purchasing replacement sprinklers from a manufacturer.

**INTERROGATORY NO. 50:** Identify and describe all verbal and/or written claims of which you are aware relating to the Star ME-1. For each such claim, identify the Star ME-1, state the date on and manner in which you first became aware of same, identify all persons making the claim, and state the status of same, including whether or not it has been settled or otherwise resolved, and if settled or resolved, the settlement or resolution terms and amounts.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "all verbal" and/or written "claims," without limiting the interrogatory to claims of malfunction or failure in Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron further

objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information that was provided to Chemetron by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it is not aware of any verbal and/or written claims of malfunction or failure relating to Star ME-1's allegedly manufactured, distributed, or installed by any Chemetron entity. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron will produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Chemetron, however, has no information to suggest that these document pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 51:** From the date of your incorporation through the present, identify each of your employees and state the dates during which you employed each employee.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron's] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron and/or current

employees. Chemetron also objects to this interrogatory generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 52:** From the date of your incorporation through the present, identify each of your officers and state the dates during which each officer held each officer position.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron's] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron and/or to current officers.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that its current officer is:

Ronald C. Gahagan, Jr.; since April 22, 1999
Vice President and Assistant
Secretary
Chemetron Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Pursuant to 16 C.F.R. § 1025.32(d), Chemetron will also produce documents naming officers during 1982 (the year of its incorporation) and currently, which have been numbered 001702-001721, 003193-003200.

**INTERROGATORY NO. 53:** From the date of your incorporation through the present, identify each of your directors and state the dates during which each director held such[sic] position.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron's] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron and/or to current directors.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that its current director is:

Ronald C. Gahagan, Jr.; since April 22, 1999
Vice President and Assistant
Secretary
Chemetron Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Pursuant to 16 C.F.R. § 1025.32(d), Chemetron will also produce documents naming directors during 1982 (the year of its incorporation) and currently, which have been numbered 000718, 001702-001721, 003190-003191, 003192, 003193-003200.

**INTERROGATORY NO. 54:** From the date of your incorporation through the present, identify all of your stockholders and/or other owners, state the percentage of stock owned by each person identified, and state the dates during which each person owned said stock.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron's] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron and/or to current stockholders. Chemetron also objects to this interrogatory generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron will produce documents identifying its stockholders during 1982 (the year of its incorporation) and currently, which have been numbered 000718, 003193-003200, 003368-003375.

**INTERROGATORY NO. 55:** From the date of your incorporation through the present, identify each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company:

a) Sales;
b) Marketing;
c) Product design and/or development;
d) Engineering and/or technical services;
e) Customer service/customer relations;
f) Public and/or governmental relations;
g) Product manufacturing and/or production;
h) Product distribution;
i) Corporate mergers, acquisitions, and/or transactions;
j) Quality assurance/control; and
k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron's] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron and/or current employees. Chemetron also objects to this interrogatory generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 56:** Identify and describe your insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1. Identify all insurance policies relating to the foregoing.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks insurance coverage relating to any "products," without limiting the interrogatory to insurance coverage applicable to the recall, repair, and/or refund of the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that to the best of its knowledge and belief it maintains no insurance coverage that is and/or may be applicable to recall, repair, and/or refund of the Star ME-1.

**INTERROGATORY NO. 57:** For each of the last three (3) years, state your gross income, your net income, your gross sales, and your net sales.

**RESPONSE:** Subject to and without waiving the General Objections, Chemetron states that it has received no income and has made no sales in the last three years.

**INTERROGATORY NO. 58:** From the date of your incorporation through the present, identify each name under which Chemetron Corporation has transacted business and/or been known, state the dates during which Chemetron Corporation has transacted business and/or been known by each name, state each date of and reason for each Chemetron Corporation name change, and identify all documents evidencing each Chemetron Corporation name change and the dates thereof.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information "[f]rom the date of [Chemetron's] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron "state each date of and reason for each Chemetron name change and the dates thereof."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has transacted business under the following names during the following periods:

Alchem, Inc. from July 29, 1982 to October 4, 1982;

Chemetron Corporation from October 4, 1982 to August 18, 1983;

Alchem, Inc. from August 18, 1983 to February 22, 1984;

Chemetron Corporation since February 22, 1984.

**INTERROGATORY NO. 59:** From the date of your incorporation through the present, describe in detail the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., identifying by dates or date ranges the periods of time in which the relationship changed and the manners in which it changed.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron's] incorporation through the present." Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "by dates or date ranges the periods of time in which the relationship changed and the manners in which it changed."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it currently owns a majority interest in the stock of Chemetron Investments, Inc., and Chemetron Corporation is a wholly-owned subsidiary of Montey Corporation. Montey Corporation is a wholly-owned subsidiary of Sunbeam.

**INTERROGATORY NO. 60:** From the date of your incorporation through the present, describe in detail your business, purposes, operations, and addresses/locations, identifying the dates that, and extents to which, any of these changed.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron's]

incorporation through the present." Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it does not limit its request to information regarding the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it is an inactive corporation.

**INTERROGATORY NO. 61:** From the date of your incorporation through the present, describe in detail your business, involvement, and/or relationship with the Star ME-1, identifying the dates that, and extents to which, any of these changed.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information "[f]rom the date of [Chemetron's] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron. Chemetron also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify "the dates that, and extents to which, any of these changed."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it has not had any business, involvement, and/or relationship with the Star ME-1 for almost twenty years. In 1976, Chemetron Corporation (now known as Chemetron Investments, Inc.) acquired the assets of Star Sprinkler Corp., and, upon information and belief, began

to manufacture, among others, some kind of Star ME-1 brand fire sprinkler. On August 25, 1982, Chemetron transferred the assets of its fire systems division to Chemetron Fire Systems, Inc. ("CFS"), a wholly-owned subsidiary of Chemetron. On November 9, 1983, CFS sold the assets of its star line of fire suppression equipment, including the Star ME-1 fire sprinkler, to Grunau Sprinkler Manufacturing Company, Inc. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

**INTERROGATORY NO. 62:** For each of the documents produced in response to these Interrogatories and the Requests for Production, state whether or not it is a true and accurate copy of the original.

**RESPONSE:** Subject to and without waiving the General Objections, Chemetron states that to the best of its knowledge, information, and belief, all documents produced in response to these Interrogatories and Requests for Production are true and correct copies.

As to objections,

Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
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New York, NY 10036
(212) 735-3000

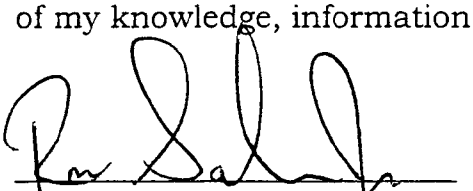
Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of the DC Bar)
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation*

Dated: January 22, 2002

As to answers:

I, Ronald C. Gahagan Jr., hereby declare under penalty of perjury that after a diligent search and based on any responsive information that could be located, the foregoing answers are true and correct to the best of my knowledge, information, and belief.



Ronald C. Gahagan, Jr.
Vice President and Assistant Secretary

For Chemetron Corporation

Dated: January ___, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Chemetron Corporation's Responses to Complaint Counsel's First Set of Interrogatories to Respondent Chemetron Corporation upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENT CHEMETRON INVESTMENTS, INC.'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENT CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. § 1025.32(b), Respondent Chemetron Investments, Inc. ("Chemetron Investments") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's First Set of Interrogatories to Respondent Chemetron Investments, Inc.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Chemetron Investments will provide a log of documents withheld on privilege grounds.

B. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek information and/or documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and interrogatories have been read to exclude any such information and/or documents. Chemetron Investments also objects to the definitions, instructions and interrogatories as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Chemetron Investments an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Chemetron Investments objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had

possession, custody, or control of the document or any copy thereof," "the number of pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad, and unduly burdensome.

D. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

E. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Chemetron Investments obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

F. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek information that is not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such information, Chemetron Investments does not admit the relevance or admissibility thereof.

G. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek information that is equally accessible to all parties, is available as a matter of public record, or has been provided to Chemetron Investments by the CPSC and/or Complaint Counsel in this matter.

H. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Chemetron

Investments an obligation to obtain information or documents from entities formerly affiliated with Chemetron Investments or to obtain other information or documents not in Chemetron Investments' current possession, custody, or control, and Chemetron Investments has read the definitions, instructions, and interrogatories to exclude any such obligation. Chemetron Investments itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Chemetron Investments, Inc. (formerly known as Chemetron Corporation) transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Chemetron Investments. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

I. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek to require Chemetron Investments to obtain information or documents that were, but no longer are, within Chemetron Investments' possession, custody, or control, and Chemetron Investments has read the definitions, instructions, and interrogatories to exclude any such obligation.

J. Chemetron Investments objects to the definitions, instructions, and interrogatories to the extent that they seek, or may be construed, to impose on

Chemetron Investments an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Chemetron Investments will search files in its possession, custody, and control where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

K. Chemetron Investments objects to the definition of "You," "your" and "Respondent" insofar as it includes "all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent" whether or not such persons or entities have had any involvement in the events giving rise to this lawsuit, as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

L. Chemetron Investments objects to the definition of "identify" and "identity" with respect to a "person" insofar as it includes residential addresses and telephone numbers of former employees or of persons for whom a business address and telephone number are available, on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and may invade the legitimate expectation of privacy of those persons to the

confidentiality of such information to the extent such information may be derived only from personnel records. Chemetron Investments further objects to this definition insofar as it includes the "employer, employer department and/or subject area in which the person works, business affiliations . . . and the person's relationships or associations, if any, to the Respondents in this action" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

M. Chemetron Investments objects to the definition of "identify" and "identity" with respect to the definition of a business entity, building, or place insofar as it includes "all former names of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action" as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

N. Chemetron Investments objects to each interrogatory to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Chemetron Investments has made an effort to respond, where possible, as it understands and interprets the interrogatory.

O. Chemetron Investments objects to each interrogatory to the extent that it contains compound questions and/or contentions which should be separated into individual interrogatories.

P. In responding to any of these interrogatories, Chemetron Investments does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

Q. Because discovery in this action is ongoing, Chemetron Investments reserves the right to amend and/or supplement the information set forth in these responses.

R. These General Objections are incorporated into every interrogatory response and shall not be repeated in every response to which they are applicable. By responding to an interrogatory, Chemetron Investments does not waive any general or specific objection.

S. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be made available upon an appropriate order of the Court or agreement of counsel protecting their confidentiality.

## RESPONSES TO INTERROGATORIES

**INTERROGATORY NO. 1:** Identify all documents that support your answers to these Interrogatories, your responses to the Requests for Production, and/or upon which you rely and/or relied in responding to these Interrogatories and the Requests for Production.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as overbroad and unduly burdensome.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments is producing non-privileged documents used or relied upon in responding to these Interrogatories, which are numbered 000001 – end.[1]

**INTERROGATORY NO. 2:** State all facts in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as overbroad and unduly burdensome. Chemetron Investments further objects because the facts are already set forth in the Answer, which is incorporated herein by reference.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments is producing non-privileged documents containing facts supporting the Answer, which

[1] All Bates Numbers begin with RESP.

are numbered 001412-001455, 001465-001479, 001480, 001485-001540, 001546-001550, 001551-001553, 001554-001555, 001559-001561, 002255-003171.

**INTERROGATORY NO. 3:** Identify all documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to the interrogatory as vague, ambiguous, overbroad and unduly burdensome.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments is producing non-privileged documents used or relied upon in preparing its Answer, which are numbered 001412-001455, 001465-001479, 001480, 001485-001540, 001546-001550, 001551-001553, 001554-001555, 001559-001561, 002255-003171.

**INTERROGATORY NO. 4:** Identify each person who you believe possesses any knowledge of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, and describe with specificity the knowledge of each such person concerning the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "each person" who would have "any knowledge" of the facts relating to the

subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, without limiting the interrogatory to those who have material knowledge and/or material involvement in issues relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, or to persons employed or retained by Chemetron Investments. Chemetron Investments also objects to this interrogatory to the extent that it requests that Chemetron Investments identify "each person" who would have "any knowledge," without limiting the interrogatory to persons with personal and discoverable knowledge, and without excluding Chemetron Investments' attorneys and/or consultants. In addition, to the extent that this interrogatory may be deemed to call for a comprehensive description of each person's knowledge, Chemetron Investments objects on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Chemetron Investments further objects to this interrogatory as vague and ambiguous to the extent that it contains compound questions which should be separated into individual interrogatories.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments responds as follows: Because Chemetron Investments, Inc. has not had any involvement with Star ME-1 fire sprinklers for over 18 years, there are no persons currently within Chemetron Investments with personal knowledge of the subject matter of this litigation. The information provided in these responses has been based upon the review of corporate records and documents. For a list of persons (apart from outside counsel)

who assisted in the preparation of these responses, Chemetron Investments refers to its response to Interrogatory No. 5, which is incorporated herein by reference.

Additionally, former employees of Chemetron entities identified in the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 000736, 000739-000740C, 001403, 002190-002254, 002255-003171 may also have some material knowledge in response to this interrogatory.

**INTERROGATORY NO. 5:** Identify all persons who assisted in the preparation of, and/or who provided information or documents used in the preparation of, the responses to these Interrogatories and the responses to the Requests for Production.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "all persons who assisted in the preparation of" the responses to these interrogatories and requests for production, without limiting the interrogatory to persons with material involvement in the preparation of the responses, and without excluding outside counsel or those who may have had only a minor or clerical role.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that the following persons (apart from outside counsel) participated in the preparation of these interrogatory responses and requests for production in some material way:

Barbara L. Allen
Corporate Secretary
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316/832-2515

Kenneth R. Bell, Esq.
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316/832-2654

**INTERROGATORY NO. 6:** Identify all persons who participated or assisted in producing the documents produced in response to these Interrogatories and the Requests for Production.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "all persons who participated or assisted" in producing documents, without limiting the interrogatory to persons with material involvement, and without excluding outside counsel or those who may have had only a minor or clerical role.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that the following persons (apart from outside counsel) participated in producing documents in response to these interrogatories and requests for production in some material way:

Barbara L. Allen
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Kenneth R. Bell, Esq.
Senior Vice President – Risk Management,
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**INTERROGATORY NO. 7:** Since the date of your incorporation, have you had written document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron Investments'] incorporation."

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments will produce a copy of the official document retention policy currently in effect for Sunbeam Corporation, which is numbered 001316-001319.

**INTERROGATORY NO. 8:** Since the date of your incorporation, have you had unwritten document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all of your unwritten document retention policies in effect since the date of your incorporation, and state the period of time each policy was in effect.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron Investments'] incorporation." Chemetron Investments also objects to this interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not reasonbly calculated to lead to the discovery of admissible evidence to the extent that it seeks "unwritten" document retention policies.

**INTERROGATORY NO. 9:** Since the date of your incorporation, have you had written policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron Investments'] incorporation." Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding any "products," without limiting the interrogatory to policies relating to the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has no policies applicable to Star ME-1 fire sprinklers because Chemetron Investments currently has no involvement with such sprinklers.

**INTERROGATORY NO. 10:** Since the date of your incorporation, have you had unwritten policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all such policies, state the period of time each policy was in effect.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Chemetron Investments'] incorporation." Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding any "products," without limiting the interrogatory to policies relating to the Star ME-1. Chemetron Investments further objects to this interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not reasonbly calculated to lead to the discovery of admissible evidence to the extent that it seeks "unwritten" policies.

**INTERROGATORY NO. 11:** Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, and for each such expert witness, state or provide the following information:

a) The subject matter on which the expert is expected to testify;

b) The substance of the facts and opinions to which the expert is expected to testify; and
c) A summary of the grounds for each opinion.

**RESPONSE:** Chemetron Investments objects to this interrogatory as premature. Chemetron Investments has not yet determined or identified the expert witness it expects to call at the trial or hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will timely identify the expert witnesses it expects to call at the hearing of this matter in compliance with the rules and orders in this proceeding or by agreement with opposing counsel.

**INTERROGATORY NO. 12:** Identify each person whom you expect to call as a witness at the trial or hearing of this matter (other than those already identified in response to the immediately preceding interrogatory), and for each such witness, state or provide the following information:

a) The subject matter on which the witness is expected to testify; and
b) The substance of the facts to which the witness is expected to testify.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks the "substance of the facts to which the witness is expected to testify." Chemetron Investments further objects to this interrogatory as premature. Chemetron Investments has not yet determined or identified each person it expects to call as a witness at the trial or hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will provide a trial witness list if and to the extent required by the rules and orders in this proceeding or by agreement with opposing counsel.

**INTERROGATORY NO. 13:** Identify each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users. As part of your answer, identify all communications you and/or other persons made and/or received relating to the following:

a) Problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-l's and/or any component parts thereof, including, but not limited to, any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-l's; and

b) Failures and/or partial failures of Star ME-l's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires and/or tests.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonbly calculated to lead to the discovery of admissible evidence to the extent that it seeks communications by or between the CPSC and/or Complaint Counsel and Chemetron Investments. Chemetron Investments also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evience to the extent that it seeks "each" communication relating to the subject matter of this litigation, the Complaint and/or the Answer, without limiting the request to communications relating to the Star ME-1. Chemetron Investments

further objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery. Specifically, Chemetron Investments objects to this interrogatory to the extent that it seeks any communications by or between it and its attorneys (including its in-house counsel) and this interrogatory has been read to exclude any such privileged information. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "each communication" between or among "former employees, agents, and/or representatives; and or sprinkler installers, contractors, customers, and/or users."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has not identified any non-privileged communications about Star ME-1 fire sprinklers other than the communications reflected in the documents being provided pursuant to 16 C.F.R. § 1025.32(d), which are numbered 000001-000008, 000009, 000010, 000011-000019, 000020-000027, 000028, 000029, 000030-000034, 000035-000040, 000043-000044, 000045-000049, 000050, 000051-000052, 000053, 000054-000056, 000057-000066, 000067-000069, 000747-000753, 000754-000755, 000756-000773, 000774-000775, 000777, 000778-000779, 000780-000781, 000782-001217, 001218, 001219-001220, 001221-001223, 001224-001227, 001228-001232, 001233-001236, 001237-001241, 001242-001244, 001245-001248, 001249-001284, 001285, 001286-001288A, 001289-

001290, 001291-001292, 001293, 001294-001298, 001299-001300, 001301, 001302-001305, 001306-001309, 001310-001315, 001722-001723, 003221-003222, 003223-003224, 003225-003226.

**INTERROGATORY NO. 14:** Identify all persons from whom you have obtained witness statements relating to the subject matter of this litigation, the Complaint, and the Answer, and all persons who have custody or possession of each such statement, as well as the date of each such statement and whether each such statement was written or oral.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has not obtained any non-privileged witness statements relating to the subject matter of this litigation, the Complaint, and/or the Answer.

**INTERROGATORY NO. 15:** Identify and describe in detail all operations, purposes, and uses of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all operations, purposes, and uses of the Star ME-1." Chemetron Investments further objects to this interrogatory as overbroad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that is seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states, upon information and belief, that the Star ME-1 dry fire sprinkler was intended to be installed in fire sprinkler systems used in very cold, unheated or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing.

**INTERROGATORY NO. 16:** Identify each person who manufactured the Star ME-1 and the place(s) at which each such person manufactured the Star ME-1. State the dates each such person manufactured the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments and requests that Chemetron Investments identify "each person" who manufactured the Star ME-1, without limiting the interrogatory to Chemetron

Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments state the "place(s)" at which each such person manufactured the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that upon information and belief, Star Sprinkler Corporation, a Florida corporation, manufactured some type of Star ME-1 "dry" fire sprinkler prior to 1977. Chemetron Investments is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between 1977 and 1982. A Chemetron subsidiary, Chemetron Fire Systems, Inc. ("CFS"), is believed to have manufactured some kind of Star ME-1 dry fire sprinkler between August 25, 1982 and November 9, 1983. CFS, however, sold its assets in the Star Sprinkler business almost twenty years ago – in 1983. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc. Upon information and belief, Grunau Sprinkler Manufacturing Company, Inc. manufactured some type of Star ME-1 "dry" fire sprinkler after 1983.

Pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments is also producing documents responsive to this interrogatory, which are numbered 001546-001550, 001551-001553, 001554-001558, 001626-001701, 002190-002254, 002255-003171.

**INTERROGATORY NO. 17:** Identify all persons who participated in, had responsibility for, and/or had knowledge of any of the following relating to the Star ME-1, and for each such person, state their position and title at the time of their participation or responsibility and describe in detail the nature of their participation, activities, responsibilities, and/or knowledge:

a) Design and/or development;
b) Engineering;
c) Manufacture;
d) Testing; and
e) UL and/or FM approval process and/or listing process.

**RESPONSE:** Chemetron Investments objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "all persons" who participated in, had responsibility for, and/or had knowledge" of the specified responsibilities and/or activities, without limiting the interrogatory to Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 002014-002016, 002190-002254, 002255-003171.

**INTERROGATORY NO. 18:** Identify and describe in detail the Star ME-1, all materials used therein, and all procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, the following:

a) Its design, materials, and component parts, including, but not limited to, the specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron

Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001887-001918.

**INTERROGATORY NO. 19:** For each change identified in your response to the immediately preceding interrogatory:

a) State the date of the change;
b) State all reasons for the change;
c) Identify all persons who participated in bringing about the change, and explain each person's role in same;
d) Identify all persons who implemented the change; and
e) State whether or not any tests were performed on the Star ME-l's before and/or after the change occurred. If so:
    i) Describe all such tests and provide a detailed protocol;
    ii) Identify the persons and entities who participated in setting up and/or conducting the tests;
    iii) Describe and explain the results of the tests, including all observations and conclusions; and
    iv) Identify all persons who participated in evaluating the test results.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession,

custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 20:** Identify the manufacturer and supplier of each component part, substance, chemical, lubricant, and/or other material used in the Star ME-l.

**RESPONSE:** Chemetron Investments objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possesion, custody, and control of Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "manufacturers" and "suppliers," without limiting the interrogatory to Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 21:** State the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same, and identify the manufacturer and supplier of each of the "O" rings contained in the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to

date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 22:** Identify all industry and/or other standards, codes, requirements, and/or rules according to which the Star ME-1 was manufactured, including, but not limited to, UL and FM.

**RESPONSE:** Chemetron Investments objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments or information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001976-001985, 002979-003007.

**INTERROGATORY NO. 23:** Identify all industry and/or other standards, codes, requirements, and/or rules applicable to the Star ME-1, including, but not limited to, UL and FM.

**RESPONSE:** Chemetron Investments objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments also objects to this interrogatory as vague and ambiguous to the extent that it requests that Chemetron Investments identify all standards etc. that are "applicable" to the Star ME-1. Chemetron Investments further objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments or information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001976-001985, 002190-002254, 002979-003007.

**INTERROGATORY NO. 24:** Were the Star ME-1's submitted for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM? If so, for each submission for approval, listing, and/or certification:

a) Identify the Star ME-1;

b) Identify the laboratory, institution, and/or other person to whom the Star ME-1 was submitted;
c) State the date of each submission;
d) Describe all steps taken to obtain approval, listing, and/or certification;
e) Identify all persons who made the submission, all persons involved in each step, and all persons having knowledge of the submission and the steps associated therewith;
f) Identify and describe all tests, examinations, evaluations, and analyses conducted with respect to the submission, and include in your answer the following:
    i) The identity of each person having knowledge of same;
    ii) The identity of each person setting up, conducting, evaluating, and/or witnessing same; and
    iii) A detailed description and explanation of the results of same, including all findings, observations, and conclusions;
g) Identify each communication relating to the submission;
h) State the final result of and final response to the submission, and the date of the final result and/or response, including, but not limited to, whether or not the submission was approved, granted, denied, rejected, refused, and/or postponed. If the submission was denied, rejected, refused, and/or postponed, state all reasons for such action; and
i) State whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1. If so, identify the Star ME-1 or component part, state the date of and all reasons for such action, identify each person with knowledge of such action, and identify each communication relating to such action.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks

information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 001769-001776, 001777-001837, 001976-001985, 002979-003007.

**INTERROGATORY NO. 25:** Identify each person who distributed and/or participated in the distribution of the Star ME-1, and state the dates each such person distributed and/or participated in the distribution of the Star ME-1. For each such person, identify each person to whom the Star ME-1 was distributed, the dates on which the Star ME-1 was distributed to that person, the quantity of Star ME-1's distributed to each person, and the terms on which the Star ME-1 was distributed to each person (including, but not limited to, sale prices).

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also

objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "each person" who distributed and/or participated in the distribution of the Star ME-1, without limiting the interrogatory to Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that upon information and belief, Star Sprinkler Corporation, a Florida corporation, distributed some type of Star ME-1 "dry" fire sprinkler prior to 1977. Chemetron Corporation (now known as Chemetron Investments, Inc.) is believed to have distributed some kind of Star ME-1 "dry" fire sprinkler between 1977 and 1982. A Chemetron subsidiary, Chemetron Fire Systems, Inc. ("CFS"), is believed to have distributed some kind of Star ME-1 "dry" fire sprinkler between August 25, 1982 and November 9, 1983. CFS, however, sold its assets in the Star Sprinkler business almost twenty years ago – in 1983. In 1985, all of the outstanding stock of CFS was sold to Figgie

International Inc. Upon information and belief, Grunau Sprinkler Manufacturing Company, Inc. distributed some type of Star ME-1 "dry" fire sprinkler after 1983.

Pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments is also producing documents responsive to this interrogatory, which are numbered 001546-001500, 001551-001553, 001554-001558, 001626-001701, 002255-003171.

**INTERROGATORY NO. 26:** By manufacturer, state the total quantity of Star ME-1's manufactured in each year in which they were manufactured, and state the total quantity of Star ME-l's manufactured in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it is not limited to Star ME-1's allegedly manufactured by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 27:** By manufacturer, state the total quantity of Star ME-1's distributed in each year in which they were distributed, and state the total quantity of Star ME-1's distributed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it is not limited to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 001989, 001991, 001968-001975.

**INTERROGATORY NO. 28:** Identify each person who installed and/or participated in the installation of the Star ME-1, and state the dates each such person installed and/or participated in the installation of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "each person" who installed and/or participated in the installation of the Star ME-1, without limiting the interrogatory to Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments

by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 29:** State the total quantity of Star ME-1's installed in each year in which they were distributed, and state the total quantity of Star ME-1's installed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments state the quantities of Star ME-1's installed, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to

Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 30:** Identify, and state the building type of (including, but not limited to, the building types listed in interrogatory 31), all buildings in which Star ME-1's have ever been installed, state the quantity ever installed in each such building, and state the quantity presently installed in each such building.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory because it does not limit its scope to any particular time frame. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify and state the building type of "all buildings" in which Star ME-1's have ever been installed, and "the quantity" ever and/or presently installed in each such building, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Chemetron Investments. Chemetron Investments

further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 31:** State the quantity of Star ME-1's ever installed in each of the following types of buildings:

a) Private homes;
b) Apartment buildings;
c) Public and private schools, including, but not limited to, universities, colleges, dormitories, and residential halls;
d) Nursing homes;
e) Hospitals and other healthcare facilities;
f) Detention facilities, including, but not limited to, prisons and jails;
g) Homeless shelters;
h) Facilities used for recreation, including, but not limited to, health clubs, gymnasiums, sports arenas, public pools, country clubs, and museums;
i) Hotels and motels; and
j) Day care centers.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory because it does not limit its scope to any particular time

frame. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments state "the quantity of Star ME-1's" ever installed in each such building, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 32:** State the quantity of Star ME-1's currently in your possession, custody, or control, and of those, state the quantity that have been removed from service, the quantity that have never been put in service, and the manufacture year of each one.

**RESPONSE:** Subject to and without waiving the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any Star ME-1's in its possession, custody, or control.

**INTERROGATORY NO. 33:** Identify and describe all actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, you and/or any other persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to any actions taken by "other persons," without limiting the interrogatory to Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 34:** Identify all persons with knowledge of and/or responsibility for all actions, steps, and/or procedures identified and described in response to the immediately preceding interrogatory.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "all persons" with knowledge and/or responsibility, without limiting the interrogatory to Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 35:** Identify all tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, and for each Star ME-1 tested, examined, and/or analyzed:

a) Identify the Star ME-1;
b) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
c) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
d) Describe and explain the results of the tests, including all observations and conclusions; and
e) Identify all persons who participated in evaluating the test results.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify any tests, examinations, and/or analyses not conducted or reviewed by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the examinations and/or analyses of the CPSC and the documents being produced pursuant to 16 C.F.R. §

1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 36:** State whether you or any other persons:

(a) observed that;

(b) alleged, reported, or otherwise communicated to you that they observed that; or

(c) tested, examined, and/or analyzed to determine if any of the following conditions was present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems. If so, for each such Star ME-1 or component part thereof:

(i) Identify the Star ME-1 and/or component part;

(ii) Describe the circumstances of the conditions;

(iii) Describe each observation, test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

(iv) Identify all persons who made the observations and/or communicated this information to you, and state the dates of all such observations and/or communications;

(v) Identify all persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

(vi) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions was present and the criteria by which it was determined whether the referenced conditions were present;

(vii) State all reasons any of the referenced conditions was present;

(viii) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

(ix) Identify all communications relating to the observations, tests, examinations, and/or analyses.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession,

custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it purports to request that Chemetron Investments state whether "any other persons" conducted the activities listed in (a) – (c), without limiting the interrogatory to Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising

out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 37:** State the effects each of the following conditions may have upon the operation, activation, and/or other performance of a Star ME-1, and state all facts, reasons, and bases for the effects you state:

a) Corrosion;
b) Accumulation of deposits;
c) Adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts;
d) Swelling of the "O" ring;
e) Lubricant deficiencies or problems;
f) Leakage;and
g) Component part interference or fit problems.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 38:** Explain in detail the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 39:** In each of the Star ME-1's manufactured and installed, after the thermal sensing element or fusible link melts from fire or heat, does each Star ME-1 require water pressure to enable its component parts to properly move and open the sprinkler (to then enable water to properly discharge)? For each Star ME-1 requiring such water pressure:

a) State the minimum water pressure required (in psi) and the reasons that pressure is required;
b) State how the water pressure causes the Star ME-1's component parts to properly move and open the sprinkler; and
c) State all reasons the Star ME-1's component parts will not properly move and open the sprinkler without that pressure.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments or information relating to Star ME-1's not allegedly manufactured, distributed, or installed by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 40:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any problems, flaws, defects,

defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's? If so, for each such alleged, reported, or communicated problem, flaw, defect, defective condition, and deficiency:

a) Identify the Star ME-1 or component part;
b) Describe it in detail and state the date;
c) Identify all persons having knowledge of it;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and
f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding "any" Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has no independent

knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with Star ME-1's other than the allegations of the CPSC and those contained in the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will also produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Chemetron Investments, however, has no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 41:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 or component part;
b) Describe it in detail, state the time and date, and state the cause and nature of the fire;
c) Identify the building and/or place at which it occurred;
d) State the sprinkler system pressure (in psig) at the site of it;
e) Identify all persons witnessing and/or having knowledge of it;
f) State the date on which you acquired knowledge of it;
g) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it;
h) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

i) State whether any persons sustained or allegedly sustained injury as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:
   i) Identify the person;
   ii) Describe each injury, and state how, where, and when the injury occurred; and
   iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

j) State whether any persons died or allegedly died as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:
   i) Identify the person;
   ii) Describe the death, and state how, where, and when the death occurred; and
   iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

k) State whether any property was damaged, destroyed, or lost, or allegedly damaged, destroyed, or lost, as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so:
   i) Identify the property and the persons owning the property;
   ii) Describe the damage, destruction, or loss, and state the value of the affected property;
   iii) State how, where, and when the damage, destruction, or loss occurred; and
   iv) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

l) State whether any police, fire, medical, emergency service, or other report was prepared related to the fire. If so, for each such report:
   i) Identify the report, including its date;
   ii) State the type of report;
   iii) Identify the municipality, organization, and/or other persons by whom the report was prepared;
   iv) State whether photographs and other documents, or statements, were obtained in connection with and/or made part of the report; and
   v) State whether you have a copy of the report in your possession, custody, or control;

m) State whether any persons tested, examined, and/or analyzed any Star ME-1 or component part thereof that failed and/or partially failed in a fire, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 or component part thereof tested, examined, and/or analyzed:
   i) Identify the Star ME-1 or component part;
   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
   iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
   iv) Describe and explain the results of the tests, including all observations and conclusions;
   v) Identify all persons who participated in evaluating the test results; and
   vi) Identify all communications related to it;

n) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:
   i) Identify the Star ME-1 and/or component part;
   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
   iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
   iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;
   v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
   vi) Identify all communications related to it;

o) State all reasons the Star ME-1 failed and/or partially failed in the fire.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires, other than the allegations of the CPSC and those contained in the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411. Pursuant to

16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will also produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Chemetron Investments, however, has no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 42:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 and/or component part;
b) Describe it in detail and state the date;
c) Identify and describe all tests in which it occurred, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and
f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions; and
g) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;
ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;
v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
vi) Identify all communications related to it.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules, other than the allegations and reports of the CPSC, which will be produced.

**INTERROGATORY NO. 43:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element? If so, for each such alleged, reported, or communicated failure:

a) Identify the Star ME-1 and/or component part;
b) Describe it in detail and state the date;
c) Identify and describe all tests or other circumstances in which it occurred, including the test protocol, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests or circumstances;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and
f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;
g) State the pressure, if any, at which the Star ME-1 activated, or if it failed altogether to activate, state the highest pressure to which it was subjected;

h) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:
   i) Identify the Star ME-1 and/or component part;
   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
   iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
   iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;
   v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses;
   vi) Identify all communications related to it; and
   vii) State all reasons for the presence of the referenced conditions.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Chemetron Investments further objects to this

interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element, other than the allegations and reports of the CPSC, which will be produced.

**INTERROGATORY NO. 44:** Describe in detail the performance record and history of the Star ME-1, including, but not limited to, as applicable, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments.

Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 45:** Identify all Star ME-1's that properly operated and activated in a fire, including, but not limited to, the date and circumstances of the fire. Identify all persons having knowledge of this information.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly

burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 46:** State whether or not any Star ME-1's and/or any Star ME-1 component parts were de-listed (by UL, FM, and/or any other person), recalled, discontinued, taken off the market, and/or the subject of a warning, advisory, safety, or similar notice to consumers, distributors, installers, governmental authorities, or other persons. If so, for each such action:

a) Identify the Star ME-1, state the quantity sought to be recalled, discontinued, taken off the market, and/or subject to notice, and the quantity actually recalled, discontinued, taken off the market, and/or subject to notice;
b) Describe the action in detail, state the date, and state all reasons for the action;
c) Identify and describe the circumstances leading to the action;
d) Identify all persons having knowledge of the action;
e) State the date on which you acquired knowledge of the action;
f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and
g) Identify and describe all actions you and/or any other persons took relating, to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron

Investments. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 001404-001411.

**INTERROGATORY NO. 47:** State whether or not any Star ME-1's and/or any Star ME-1 component parts were returned, and/or were asked to be returned, to you and/or any manufacturer, supplier, distributor, installer, and/or other person. If so, for each such action:

a) Identify the Star ME-1, state the quantity asked to be returned, and state the quantity actually returned;
b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;
d) Identify all persons having knowledge of the action;
e) State the date on which you acquired knowledge of the action;
f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and
g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments, and information concerning Star ME-1's or components returned or asked to be returned to "any manufacturer, supplier, distributor, installer, and/or other person," without limiting the interrogatory to Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information that was provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that no Star ME-1's and/or any

Star ME-1 component parts have been returned and/or have been asked to be returned to Chemetron Investments by any person other than the CPSC and as provided in the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls of Star ME-1's by manufacturers, which are numbered 001404-001411.

**INTERROGATORY NO. 48:** Have you and/or any other persons replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers? If so, state the total number of Star ME-1's replaced, according to manufacturer and model year, and for each Star ME-1 replaced:

a) Identify it and state the date it was replaced;
b) Identify the building and/or place at which it had been installed;
c) State the make, model, and year of the replacement sprinkler;
d) Identify all persons to whom you provided the replacement sprinkler;
e) State all reasons you and/or any other persons replaced it;
f) Describe its condition at the time of replacement;
g) State all costs of replacing it, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs;
h) Identify all persons who paid the replacement costs;
i) Identify all communications related to it; and
j) State whether any persons tested, examined, and/or analyzed it, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 and/or component part tested, examined, and/or analyzed:
    i) Identify the Star ME-1 or component part;
    ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
    iii) Identify the persons who participated in setting, up and/or conducting the tests, examinations, and/or analyses;
    iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions;
    v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
    vi) Identify all communications related to it.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments and information regarding whether "any other persons" replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers, without limiting the interrogatory to Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has not replaced any Star ME-1's.

**INTERROGATORY NO. 49:** State all current costs of replacing a Star ME-1 and/or a group of Star ME-1's, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs. To the extent these costs may vary depending upon facts and circumstances (including, but not limited to, the building or site of replacement or the quantity being replaced), so state, identify all variables, factors, and considerations related to determining the costs, and explain fully. If you cannot give exact costs, give your best estimates (identified as such) and explain the basis for the estimates.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has not yet determined the costs of replacing Star ME-1's allegedly manufactured by any Chemetron entity over 18 years ago . Because Chemetron Investments does not currently manufacture fire sprinklers, Chemetron Investments assumes that the cost would require, *inter alia*, purchasing replacement sprinklers from a manufacturer.

**INTERROGATORY NO. 50:** Identify and describe all verbal and/or written claims of which you are aware relating to the Star ME-1. For each such claim, identify the Star ME-1, state the date on and manner in which you first became aware of same, identify all persons making the claim, and state the status of same, including whether or not it has been settled or otherwise resolved, and if settled or resolved, the settlement or resolution terms and amounts.

**RESPONSE:** Chemetron Investments objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product

doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "all verbal" and/or written "claims," without limiting the interrogatory to claims of malfunction or failure in Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information that was provided to Chemetron Investments by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it is not aware of any verbal and/or written claims of malfunction or failure relating to Star ME-1's allegedly manufactured, distributed, or installed by any Chemetron entity. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003540) relating generally to fire sprinklers. Chemetron Investments, however, has

no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 51:** From the date of your incorporation through the present, identify each of your employees and state the dates during which you employed each employee.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the request to the relevant time frame of the Complaint as it relates to Chemetron and/or to current employees. Chemetron Investments also objects to this interrogatory generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 52:** From the date of your incorporation through the present, identify each of your officers and state the dates during which each officer held each officer position.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or to current officers.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that its current officer is:

Ronald C. Gahagan, Jr.; since April 22, 1999
Vice President and Assistant
Secretary
Chemetron Investments, Inc.
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments will also produce documents naming officers during the time period between 1977 and 1982 and currently, which have been numbered 000720, 000721, 000723, 000725-000729, 000731, 000732, 000733, 000734, 000736, 000738, 000739-000740C, 001702-001721.

**INTERROGATORY NO. 53:** From the date of your incorporation through the present, identify each of your directors and state the dates during which each director held such[sic] position.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or to current directors.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that its current director is:

Ronald C. Gahagan, Jr.; since April 22, 1999
Vice President and Assistant
Secretary

Chemetron Investments, Inc.
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments will also produce documents naming directors during the time period between 1977 and 1982 and currently, which have been numbered 000717, 000720, 000721, 000722, 000723, 000724, 000730, 000731, 000732, 000733, 000734, 000735, 000736, 000737, 000738, 000739-740C, 001702-001721.

**INTERROGATORY NO. 54:** From the date of your incorporation through the present, identify all of your stockholders and/or other owners, state the percentage of stock owned by each person identified, and state the dates during which each person owned said stock.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or to current stockholders. Chemetron Investments also objects to this interrogatory generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d) Chemetron Investments is producing documents identifying its stockholders during some of the time period

between 1977 and 1982 and currently, which have been numbered 000717, 000719, 000722, 000730, 000735, 003368-003375.

**INTERROGATORY NO. 55:** From the date of your incorporation through the present, identify each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of our company:

a) Sales;
b) Marketing;
c) Product design and/or development;
d) Engineering and/or technical services;
e) Customer service/customer relations;
f) Public and/or governmental relations;
g) Product manufacturing and/or production;
h) Product distribution;
i) Corporate mergers, acquisitions, and/or transactions;
j) Quality assurance/control; and
k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or to current employees. Chemetron Investments also objects to this interrogatory generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron Investments is

producing documents which may identify some former employees in response to this interrogatory, which are numbered 002126, 002190-002254, 002255-003171.

**INTERROGATORY NO. 56:** Identify and describe your insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1. Identify all insurance policies relating to the foregoing.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks insurance coverage relating to any "products," without limiting the interrogatory to insurance coverage applicable to the recall, repair, and/or refund of the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that to the best of its knowledge and belief it maintains no insurance coverage that is and/or may be applicable to recall, repair, and/or refund of the Star ME-1.

**INTERROGATORY NO. 57:** For each of the last three (3) years, state your gross income, your net income, your gross sales, and your net sales.

**RESPONSE:** Subject to and without waiving the General Objections, Chemetron Investments states that it has received no income and has made no sales in the last three years.

**INTERROGATORY NO. 58:** From the date of your incorporation through the present, identify each name under which Chemetron Investments, Inc. has transacted business and/or been known, state the dates during which Chemetron Investments, Inc. has transacted business and/or been known by each name, state

each date of and reason for each Chemetron Investments, Inc. name change, and identify all documents evidencing each Chemetron Investments, Inc. name change and the dates thereof.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron Investments. Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments "state each date of and reason for each Chemetron Investments name change and the dates thereof."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has transacted business under the following names during the following periods:

Alsub Corporation from July 28, 1977 to November 30, 1977;

Chemetron Corporation from November 30, 1977 to October 4, 1982;

Chemetron Investments, Inc. from October 4, 1982 to August 18, 1983;

Chemetron Corporation from August 18, 1983 to February 22, 1984;

Chemetron Investments, Inc. since February 22, 1984.

**INTERROGATORY NO. 59:** From the date of your incorporation through the present, describe in detail the relationship(s) between Chemetron Corporation and

Chemetron Investments, Inc., identifying by dates or date ranges the periods of time in which the relationship changed and the manners in which it changed.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present." Chemetron Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "by dates or date ranges the periods of time in which the relationship changed and the manners in which it changed."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that Eliskim, Inc. currently owns a minority interest in the shares of Chemetron Investments, Inc. and Chemetron Corporation currently owns a majority interest in the shares of Chemetron Investments, Inc.

**INTERROGATORY NO. 60:** From the date of your incorporation through the present, describe in detail your business, purposes, operations, and addresses/locations, identifying the dates that, and extents to which, any of these changed.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present." Chemetron

Investments also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because it does not limit its request to information regarding the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it is an inactive corporation.

**INTERROGATORY NO. 61:** From the date of your incorporation through the present, describe in detail your business, involvement, and/or relationship with the Star ME-1, identifying the dates that, and extents to which, any of these changed.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the interrogatory to the relevant time frame of the Complaint as it relates to Chemetron Investments. Chemetron Investments also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron Investments identify "the dates that, and extents to which, any of these changed."

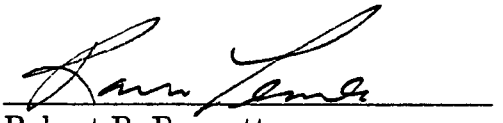
Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments states that it has not had any business, involvement, and/or relationship with the Star ME-1 for almost twenty years – since 1982. In 1976, Chemetron Corporation (now known as Chemetron Investments, Inc.), acquired the assets of Star Sprinkler Corp., and, upon

information and belief, began to manufacture, among others, some kind of Star ME-1 brand fire sprinkler. On August 25, 1982, Chemetron transferred the assets of its fire systems division to Chemetron Fire Systems, Inc. ("CFS"), a wholly-owned subsidiary of Chemetron. On November 9, 1983, CFS sold the assets of its star line of fire suppression equipment, including the Star ME-1 fire sprinkler, to Grunau Sprinkler Manufacturing Company, Inc. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

**INTERROGATORY NO. 62:** For each of the documents produced in response to these Interrogatories and the Requests for Production, state whether or not it is a true and accurate copy of the original.

**RESPONSE:** Subject to and without waiving the General Objections, Chemetron Investments states that to the best of its knowledge, information, and belief, all documents produced in response to these Interrogatories and Requests for Production are true and correct copies.

As to objections,



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(212) 735-3000

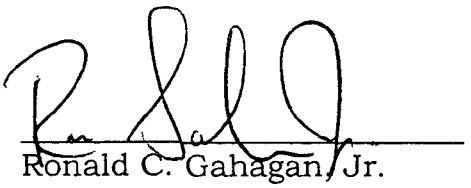
Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of the DC Bar)
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Investments, Inc.*

Dated: January 22, 2002

As to answers:

I, Ronald C. Gahagan, Jr., hereby declare under penalty of perjury that after a diligent search and based on any responsive information that could be located, the foregoing answers are true and correct to the best of my knowledge, information, and belief.



Ronald C. Gahagan, Jr.
Vice President and Assistant Secretary

For Chemetron Investments, Inc.

Dated: January ___, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Chemetron Investments, Inc.'s Responses to Complaint Counsel's First Set of Interrogatories to Respondent Chemetron Investments, Inc. upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

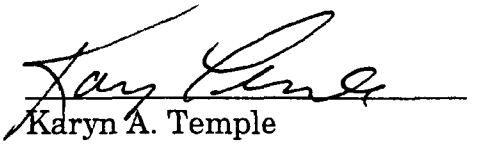
*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENT CHEMETRON INVESTMENTS, INC.'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. § 1025.33(c), Respondent Chemetron Investments, Inc. ("Chemetron Investments") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Chemetron Investments, Inc.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek information or documents protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Chemetron Investments will provide a log of documents withheld on privilege grounds.

B. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and requests have been read to exclude any such documents. Chemetron Investments also objects to the definitions, instructions and requests as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Chemetron Investments an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Chemetron Investments objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had

possession, custody, or control of the document or any copy thereof," "the number of pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad and unduly burdensome.

D. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

E. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron Investments obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

F. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek documents that are not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such documents, Chemetron Investments does not admit the relevance or admissibility thereof.

G. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek documents that are equally accessible to all parties, are available as a matter of public record, or have been provided to Chemetron Investments by the CPSC and/or Complaint Counsel in this matter.

H. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron Investments an

obligation to obtain information or documents from entities formerly affiliated with Chemetron Investments or to obtain other information or documents not in Chemetron Investments' current possession, custody, or control, and Chemetron Investments has read the definitions, instructions, and requests to exclude any such obligation. Chemetron Investments itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Chemetron Investments, Inc. (formerly known as Chemetron Corporation) transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Chemetron Investments. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

I. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek to require Chemetron Investments to obtain information or documents that were, but no longer are, within Chemetron Investments' possession, custody, or control, and Chemetron Investments has read the definitions, instructions, and requests to exclude any such obligation.

J. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek, or may be construed, to impose on

Chemetron Investments an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Chemetron Investments will search files in its possession, custody, and control where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

K. Chemetron Investments objects to each request to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Chemetron Investments has made an effort to respond, where possible, as it understands and interprets the request.

L. Chemetron Investments objects to each request to the extent that it contains compound questions and/or contentions which should be separated into individual requests.

M. In responding to any of these requests, Chemetron Investments does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

N. Because discovery in this action is ongoing, Chemetron Investments reserves the right to amend and/or supplement these responses.

O. These General Objections are incorporated into every response and shall not be repeated in every response to which they are applicable. By responding to a request, Chemetron Investments does not waive any general or specific objection.

P. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be made available upon an appropriate order of the Court or agreement of counsel protecting their confidentiality.

**RESPONSES**

**REQUEST NO. 1:** All documents identified in response to the Interrogatories.

**RESPONSE:** Subject to and without waiving the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 2:** All documents relating to your answers to the Interrogatories, in support of your answers thereto, and/or used or relied upon in preparing your answers thereto.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all" documents "relating" to or "in support" of your answers to the Interrogatories.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents used or relied upon in preparing the Interrogatories will be produced.

**REQUEST NO. 3:** All documents in support of and/or upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all" documents "in support" of the Answer.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents used or relied upon in preparing Chemetron Investments' Answer will be produced.

**REQUEST NO. 4:** All documents refuting or tending to refute the allegations of the Complaint.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all documents "tending to refute" the allegations of the Complaint. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably

calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents refuting the allegations of the Complaint will be produced.

**REQUEST NO. 5:** All documents supporting or tending to support the allegations of the Complaint.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all documents "tending to support" the allegations in the Complaint.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents supporting specific allegations concerning the identity of the parties will be produced. To date, Chemetron Investments has been unable to locate any other documents within its possession, custody, or control which support the allegations of the Complaint as they relate to Respondent Chemetron Investments.

**REQUEST NO. 6:** All of your written document retention policies in effect at any time(s) since the date of your incorporation.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "since the date of [Chemetron Investments'] incorporation."

Subject to and without waiving the foregoing objections and the General Objections, a current document retention policy will be produced.

**REQUEST NO. 7:** All of your written policies in effect at any time(s) since the date of your incorporation relating to retention of your products or samples of your products.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to products other than the Star ME-1. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "since the date of [Chemetron Investments'] incorporation."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments has no policies pertaining to the retention of Star ME-1's because Chemetron Investments does not currently manufacture such sprinklers.

**REQUEST NO. 8:** All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Specifically (and without limitation), Chemetron Investments objects to the request to the extent that it seeks communications by or between it and its attorneys and/or expert consultants since the filing of the Complaint or in anticipation of this litigation, and the request has been interpreted to exclude any such privileged communications. Chemetron Investments also objects to the document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all" documents relating generally to "the subject matter of this litigation, the Complaint [and] the Answer," without limiting the request to documents relating to the Star ME-1. Chemetron Investments further objects to the document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents

that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 9:** All correspondence relating to the Star ME-1 other than correspondence to or from Complaint Counsel dated on or after October 9, 2001.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Specifically (and without limitation), Chemetron Investments objects to the document request to the extent that it seeks correspondence by or between it and its attorneys and/or expert consultants since the filing of the Complaint or in anticipation of this litigation, and the request has been interpreted to exclude any such privileged correspondence. Chemetron Investments also objects to the document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks correspondence by or between the CPSC and Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 10:** All documents you obtained from the U.S. Consumer Product Safety Commission or its staff relating to the Star ME-1, other than those obtained from Complaint Counsel on or after October 9, 2001.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that are, or should be, already in the possession of Complaint Counsel and/or the CPSC.

Subject to and without waiving the foregoing objections and the General Objections, responsive documents will be produced.

**REQUEST NO. 11:** All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments has located no documents responsive to this request.

**REQUEST NO. 12:** All documents describing and/or evidencing the operations, purposes, and uses of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or

control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 13:** All documents relating to the quantities of Star ME-1's manufactured.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC

and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 14:** All documents relating to manufacture of the Star ME-1, including, but not limited to, its design, development, and/or engineering.

**RESPONSE:** Chemetron Investments objects to this document request as vague, ambiguous, overbroad, and unduly burdensome to the extent that it seeks all documents relating to the "manufacture" of the Star ME-1. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 15:** All complete engineering drawing packages, engineering drawings, requests for changes, and change notices relating to the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 16:** All documents relating to the materials used in the Star ME-1 and to the procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, all documents relating to the following:

a) The Star ME-1's design, materials, and component parts, including, but not limited to, the acquisition of and specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 17:** All documents evidencing the manufacturer and supplier of each component part, substance, chemical, lubricant, "O" ring, and/or other material used in the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will produce documents listing suppliers of Star products generally, but not specifically

referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 18:** All documents evidencing the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 19:** All documents relating to submission of the Star ME-1 for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM. These documents shall include, but not be limited to, the following: documents relating to all tests, examinations, evaluations, and analyses conducted with respect to the submission; each communication relating to the submission; all results of and responses to the submission; and all documents relating to whether or not approval, listing, and/or certification of any Star ME-I or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not. any person ever objected to the sale and/or distribution of any Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 20:** All documents evidencing the persons who distributed and/or participated in the distribution of the Star ME-1, the persons to whom the

Star ME-1 was distributed, the dates of Star ME-1 distribution, and the Star ME-1 quantities distributed.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will produce stock schedules and lists evidencing some distributors of Star products generally, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 21:** All documents relating to the installation of the Star ME-1, including, but not limited to, the persons who installed and/or participated in the installation of the Star ME-1, the persons for whom the Star ME-1 was installed, the buildings in which the Star ME-1 was installed, the building types in which Star ME-1's have ever been installed, the dates of Star ME-1 installation, and the Star ME-1 quantities installed.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or installed by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 22:** All documents relating to the actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, any persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or installed by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has

been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 23:** All documents relating to tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, including, but not limited to, test, examination, and/or analysis procedures, protocols, and results.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments or documents concerning tests, examinations, or analyses not conducted or reviewed by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the examinations and/or analyses of the CPSC and documents arising out of CPSC induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 24:** All documents relating to any of the following conditions being present, observed, and/or alleged in any Star ME-1's or any components parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments or documents relating to "any" Star ME-1's, without limiting the request to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to his request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 25:** All documents relating to actual, potential, or alleged effects on the operation, activation, and/or other performance of Star ME-1's of any of the following conditions being present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problem.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments or documents relating to Star ME-1's generally, without limiting the request to Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to his request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 26:** All documents relating to the operation and proper operation of Star ME-l's.

**RESPONSE:** Chemetron Investments objects to this request as vague and ambiguous. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 27:** All documents relating to the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced.

**REQUEST NO. 28:** All documents relating to actual, alleged, reported, or otherwise communicated problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's,

which will be produced. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will also produce non-privileged documents relating generally to fire sprinklers, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 29:** All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-l's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires. Your response should include, but not be limited to, the following resulting from or relating to the fire (including in attempting to escape from or extinguish the fire):

a) All documents relating to injuries or alleged injuries;
b) All documents relating to deaths or alleged deaths;
c) All documents relating to damaged, destroyed, or lost property, and allegedly damaged, destroyed, or lost property;
d) All police, fire, medical, emergency service, or other reports;
e) All documents relating to tests, examinations, and/or analyses of any Star ME-1 or component part thereof that failed and/or partially failed, and/or any other Star ME-1 from the same site; and
f) All documents relating to the reasons the Star ME-1 failed and/or partially failed.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further

objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will also produce non-privileged documents relating generally to fire sprinklers, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 30:** All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules. Your response should include, but not be limited to, all documents relating to these tests.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced.

**REQUEST NO. 31:** All documents relating to actual, alleged, reported, or otherwise communicated failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element. Your response should include, but not be limited to, all documents relating to these tests, failures, or other circumstances.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced.

**REQUEST NO. 32:** All documents relating to the performance record and/or history of the Star ME-1, including, but not limited to, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the

possession, custody, or control of Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 33:** All documents relating to all Star ME-l's that properly operated and activated in a fire.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments

also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 34:** All documents relating to the de-listing (by UL, FM, and/or any other person), recall, discontinuance, and/or taking off the market of any Star ME-l's and/or any Star ME-1 component parts, and all documents relating to any warning, advisory, safety, or similar notice to persons relating to any Star ME-l's and/or any Star ME-l component parts.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to recalls of Star ME-1's by persons other than Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 35:** All documents relating to the return, and/or requested return, to you and/or any manufacturer, supplier, distributor, installer, and/or other person, of any Star ME-l's and/or any Star ME-l component parts.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments or documents relating to returns of Star ME-1's to persons other than Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and

documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 36:** All documents relating to the replacement of Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers.

**RESPONSE:** Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to replacement of Star ME-1's by persons other than Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 37:** All documents evidencing the current costs, and/or estimates of the current costs, of replacing a Star ME-1 or a group of Star ME-1's,

including, but not limited to, the costs of the replacement product, the labor, any other associated costs, all variables, factors, and considerations related to determining the costs or estimates, and all bases for all estimates.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, Chemetron Investments has located no non-privileged documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 38:** All documents relating to all verbal and/or written claims of which you are aware relating to the Star ME-1, including, but not limited to, the persons making the claim, the status of the claim (including whether or not it has been settled or otherwise resolved), and the settlement or resolution terms and amounts.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or

control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to "all verbal" and/or written "claims," without limiting the request to claims of malfunction or failure in Star ME-1's allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will also produce non-privileged documents relating generally to fire sprinklers, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 39:** Personnel or other documents sufficient to identify and evidence each of your employees from the date of your incorporation through the present and the dates during which you employed each employee. (This request

does not seek *all* documents relating to your employees, but merely documents adequate to evidence and confirm the information sought.)

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the document request to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or Chemetron Investments' current employees. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 40:** Documents sufficient to identify and evidence each of your officers from the date of your incorporation through the present and the dates during which each officer was in each office. (This request does not seek *all* documents relating to your officers, but merely documents adequate to evidence and confirm the information sought.)

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the document request to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or Chemetron Investments' current officers. Chemetron Investments also objects to this document request generally as

overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will produce documents listing its current officers. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Chemetron Investments will also produce documents naming its officers during the time period between 1977 and 1982.

**REQUEST NO. 41:** Documents sufficient to identify and evidence each of your directors from the date of your incorporation through the present and the dates during which each director held his/her directorship. (This request does not seek *all* documents relating to your directors, but merely documents adequate to evidence and confirm the information sought.)

**RESPONSE:** Chemetron Investments objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the document request to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or Chemetron Investments' current directors. Chemetron Investments also objects to this document request generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will produce documents listing its current directors. In the spirit of cooperation and without waiving any rights with

respect to the foregoing, Chemetron Investments will also produce documents naming its directors during the time period between 1977 and 1982.

**REQUEST NO. 42:** Documents sufficient to identify and evidence each of your stockholders and/or other owners from the date of your incorporation through the present, the percentage of stock owned by each person identified, and the dates during which each person owned said stock. (This request does not seek *all* documents relating to your stockholders and/or other owners, but merely documents adequate to evidence and confirm the information sought.)

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the document request to the relevant time frame of the Complaint as it relates to Chemetron Investments and/or current stockholders. Chemetron Investments also objects to this document request generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will produce documents identifying its current stockholders. In the sprit of cooperation and without waiving the foregoing, Chemetron Investments will also produce documents identifying its stockholders during some of the time period between 1977 and 1982.

**REQUEST NO. 43:** Documents sufficient to identify and evidence each of your employees, agents, representatives, and/or consultants who has held a supervisory,

managerial, and/or executive position or role in the following areas of your company from the date of your incorporation through the present:

a) Sales;
b) Marketing;
c) Product design and/or development;
d) Engineering and/or technical services;
e) Customer service/customer relations;
f) Public and/or governmental relations;
g) Product manufacturing and/or production;
h) Product distribution;
i) Corporate mergers, acquisitions, and/or transactions;
j) Quality assurance/control; and
k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

(This request does not seek *all* documents relating to these employees, agents, representatives, and/or consultants, but merely documents adequate to evidence and confirm the information sought.)

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "[f]rom the date of [Chemetron Investments'] incorporation through the present," without limiting the document request to the relevant time frame of the Complaint as it relates to Chemetron Investments. Chemetron Investments also objects to this document request generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 44:** All documents relating to the sale of Star ME-1's, including, but not limited to, purchase orders, shipping documents, invoices, billing statements, and sales receipts.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the

possession, custody, or control of Chemetron Investments, or documents relating to Star ME-1's not allegedly manufactured, distributed, or sold by Chemetron Investments. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it could be read to encompass all documents relating to the sale of the Star product line to Grunau Sprinkler Manufacturing Company, Inc. or to sales of Star products as a whole and the request has been read to exclude such documents.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 45:** All of your insurance policies, including, but not limited to, general liability and product liability policies, as well as all policies evidencing and/or describing insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all of your insurance policies," without limiting the request to insurance policies relating to recalls, repairs and/or refunds of the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has located no Chemetron Investments insurance policies that provide coverage and/or

may be applicable or related to recalls, repairs, refunds or corrective actions related to Star ME-1's.

**REQUEST NO. 46:** For each of the last three (3) years, all documents evidencing your profits, losses, gross income, net income, gross sales, net sales, net assets, net worth, total assets, and total liabilities, including, but not limited to, your federal and state tax returns, financial statements, and accountant's reports.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine and any other privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 47:** All documents comprising, for each of the last three (3) years, your budgets, revenue projections, cash flow projections, and profitability projections.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine and any other privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 48:** All photographs and other pictures of the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine or any other privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 49:** All product catalogues, brochures, marketing materials, sales materials, and similar documents listing, describing, or otherwise referencing or showing the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent

that it seeks documents provided to Chemetron Investments by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 50:** Three (3) never-installed Star ME-1's of each manufacture model year.

**RESPONSE:** Chemetron Investments objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks things outside the possession, custody, or control of Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any Star ME-1's within its possession, custody, or control responsive to this request.

**REQUEST NO. 51:** Three (3) samples of each Star ME-1 component part, including, but not limited to, each substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks things outside the possession, custody, or control of Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any component parts within its possession, custody, or control responsive to this request.

**REQUEST NO. 52:** All Star ME-1's tested, analyzed, examined, torn down, and/or cut apart.

**RESPONSE:** Chemetron Investments objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all Star ME-1's" tested, analyzed, examined, torn down, and/or cut apart, without limiting the request to Star ME-1's tested etc. by Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has located no sprinklers in its possession, custody, or control responsive to this request.

**REQUEST NO. 53:** All name change certificates and/or other public filings documenting each Chemetron Investments name change.

**RESPONSE:** Chemetron Investments objects to this request as vague, ambiguous, overbroad and unduly burdensome, to the extent that it seeks "other public filings documenting each Chemetron Investments name change."

Subject to and without waiving the foregoing objections and the General Objections, current name change certificates for Chemetron Investments will be produced.

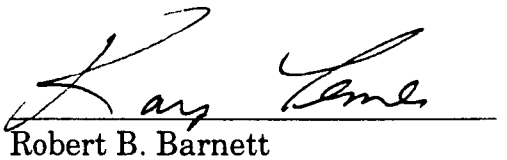
**REQUEST NO. 54:** All documents relating to the reasons for each Chemetron Investments name change.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine and any other privileges or immunities from discovery. Chemetron Investments also objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 55:** All documents evidencing the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., including, but not limited to, all documents evidencing dates and/or the periods of time in which the relationship changed and the manners in which it changed.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney client privilege, the work product doctrine and any other privileges or immunities from discovery. Chemetron Investments also objects to this document request generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will produce select documents referencing the corporate relationships described in response to Interrogatory No. 59.



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*Attorneys for Chemetron Investments, Inc.*

Dated: January 22, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Chemetron Investments, Inc.'s Responses to Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Chemetron Investments, Inc. upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

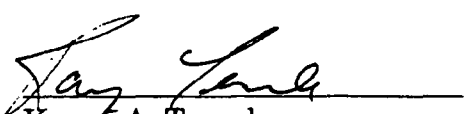
*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

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|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
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| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENT SUNBEAM CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENT SUNBEAM CORPORATION**

Pursuant to 16 C.F.R. § 1025.32(b), Respondent Sunbeam Corporation ("Sunbeam") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's First Set of Interrogatories to Respondent Sunbeam Corporation.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Sunbeam will provide a log of documents withheld on privilege grounds.

B. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information and/or documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and interrogatories have been read to exclude any such information and/or documents. Sunbeam also objects to the definitions, instructions and interrogatories as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Sunbeam an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Sunbeam objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had possession, custody, or control of the document or any copy thereof," "the number of

pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad, and unduly burdensome.

D. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

E. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Sunbeam obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

F. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information that is not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such information, Sunbeam does not admit the relevance or admissibility thereof.

G. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information that is equally accessible to all parties, is available as a matter of public record, or has been provided to Sunbeam by the CPSC and/or Complaint Counsel in this matter.

H. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Sunbeam an obligation to obtain information or documents from entities formerly affiliated with Sunbeam or

to obtain other information or documents not in Sunbeam's current possession, custody, or control, and Sunbeam has read the definitions, instructions, and interrogatories to exclude any such obligation. Sunbeam itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Sunbeam has never manufactured, distributed, or sold Star ME-1 fire sprinklers. Moreover, Sunbeam's subsidiary, Chemetron Corporation (now known as Chemetron Investments, Inc.), transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Sunbeam. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

I. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek to require Sunbeam to obtain information or documents that were, but no longer are, within Sunbeam's possession, custody, or control, and Sunbeam has read the definitions, instructions, and interrogatories to exclude any such obligation.

J. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek, or may be construed, to impose on Sunbeam an obligation to conduct an unreasonably burdensome search. To the extent

that a search is required, Sunbeam will search files in its possession, custody, and control where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

K. Sunbeam objects to the definition of "You," "your" and "Respondent" insofar as it includes "all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent" whether or not such persons or entities have had any involvement in the events giving rise to this lawsuit, as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

L. Sunbeam objects to the definition of "identify" and "identity" with respect to a "person" insofar as it includes residential addresses and telephone numbers of former employees or of persons for whom a business address and telephone number are available, on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and may invade the legitimate expectation of privacy of those persons to the confidentiality of such information to the extent such information may be derived only from personnel records. Sunbeam further objects to this definition insofar as it

includes the "employer, employer department and/or subject area in which the person works, business affiliations . . . and the person's relationships or associations, if any, to the Respondents in this action" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

M. Sunbeam objects to the definition of "identify" and "identity" with respect to the definition of a business entity, building, or place insofar as it includes "all former names of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action" as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

N. Sunbeam objects to each interrogatory to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Sunbeam has made an effort to respond, where possible, as it understands and interprets the interrogatory.

O. Sunbeam objects to each interrogatory to the extent that it contains compound questions and/or contentions which should be separated into individual interrogatories.

P. In responding to any of these interrogatories, Sunbeam does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

Q. Because discovery in this action is ongoing, Sunbeam reserves the right to amend and/or supplement the information set forth in these responses.

R. These General Objections are incorporated into every interrogatory response and shall not be repeated in every response to which they are applicable. By responding to an interrogatory, Sunbeam does not waive any general or specific objection.

S. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be made available upon an appropriate order of the Court or agreement of counsel protecting their confidentiality.

## RESPONSES TO INTERROGATORIES

**INTERROGATORY NO. 1:** Identify all documents that support your answers to these Interrogatories, your responses to the Requests for Production, and/or upon which you rely and/or relied in responding to these Interrogatories and the Requests for Production.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad and unduly burdensome.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam is producing non-privileged documents used or relied upon in responding to these Interrogatories, which are numbered 000001 – end.[1]

**INTERROGATORY NO. 2:** State all facts in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad and unduly burdensome. Sunbeam further objects because the facts are already set forth in the Answer, which is incorporated herein by reference.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is producing non-privileged documents containing facts supporting the Answer, which are numbered 001412-001455, 001465-001479, 001480, 001485-001540, 001546-001550, 001551-001553, 001554-001555, 001559-001561, 002255-003171.

**INTERROGATORY NO. 3:** Identify all documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any

[1] All Bates Numbers begin with RESP.

other applicable privileges or immunities from discovery. Sunbeam also objects to the interrogatory as vague, ambiguous, overbroad and unduly burdensome.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam is producing non-privileged documents used or relied upon in preparing its Answer, which are numbered 001412-001455, 001465-001479, 001480, 001485-001540, 001546-001550, 001551-001553, 001554-001555, 001559-001561, 002255-003171.

**INTERROGATORY NO. 4:** Identify each person who you believe possesses any knowledge of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, and describe with specificity the knowledge of each such person concerning the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "each person" who would have "any knowledge" of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, without limiting the interrogatory to those who have material knowledge and/or material involvement in issues relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, or to persons employed or retained by Sunbeam. Sunbeam also objects to this interrogatory to the extent that it requests that Sunbeam identify "each person" who would have "any knowledge," without limiting the interrogatory to persons with personal and discoverable knowledge, and without excluding Sunbeam's attorneys and/or consultants. In addition, to the extent that

this interrogatory may be deemed to call for a comprehensive description of each person's knowledge, Sunbeam objects on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory as vague and ambiguous to the extent that it contains compound questions which should be separated into individual interrogatories.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam responds as follows: Because Sunbeam has never manufactured or sold Star ME-1 fire sprinklers, and because Chemetron Corporation (now known as Chemetron Investments, Inc.) has not had any involvement with Star ME-1 fire sprinklers for over 18 years, there are no persons within Sunbeam with personal knowledge of the subject matter of this litigation. The information provided in these responses has been based upon the review of corporate records and documents. For a list of persons (apart from outside counsel) who assisted in the preparation of these responses, Sunbeam refers to its response to Interrogatory No. 5, which is incorporated herein by reference.

**INTERROGATORY NO. 5:** Identify all persons who assisted in the preparation of, and/or who provided information or documents used in the preparation of, the responses to these Interrogatories and the responses to the Requests for Production.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "all persons who

assisted in the preparation of" the responses to these interrogatories and requests for production, without limiting the interrogatory to persons with material involvement in the preparation of the responses, and without excluding outside counsel or those who may have had only a minor or clerical role.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that the following persons (apart from outside counsel) participated in the preparation of these interrogatory responses and requests for production in some material way:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
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P.O. Box 2931
Wichita, KS 67219
316/832-2515

Kenneth R. Bell
Senior Vice President – Risk Management,
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Marc P. Clements, Esq.
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Wichita, KS 67219
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Debra Roberts

Legal Assistant
Legal Dept.
Sunbeam Corporation
2111 East 37th Street North
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316/832-2654

**INTERROGATORY NO. 6:** Identify all persons who participated or assisted in producing the documents produced in response to these Interrogatories and the Requests for Production.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "all persons who participated or assisted" in producing documents, without limiting the interrogatory to persons with material involvement, and without excluding outside counsel or those who may have had only a minor or clerical role.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that the following persons (apart from outside counsel) participated in producing documents in response to these interrogatories and requests for production in some material way:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2515

Kenneth R. Bell
Senior Vice President – Risk Management,
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**INTERROGATORY NO. 7:** Since the date of your incorporation, have you had written document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Sunbeam's] incorporation."

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam will produce a copy of the official document retention policy currently in effect, which is numbered 001316-001319.

**INTERROGATORY NO. 8:** Since the date of your incorporation, have you had unwritten document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all of your unwritten document retention policies in effect since the date of your incorporation, and state the period of time each policy was in effect.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Sunbeam's] incorporation." Sunbeam also objects to this interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "unwritten" document retention policies.

**INTERROGATORY NO. 9:** Since the date of your incorporation, have you had written policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Sunbeam's] incorporation." Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence to the extent that it seeks information regarding any "products," without limiting the interrogatory to policies relating to the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has had no policies applicable to Star ME-1 fire sprinklers because Sunbeam has had no involvement with such sprinklers.

**INTERROGATORY NO. 10:** Since the date of your incorporation, have you had unwritten policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all such policies, state the period of time each policy was in effect.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information concerning the time period "[s]ince the date of [Sunbeam's] incorporation." Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding any "products," without limiting the interrogatory to policies relating to the Star ME-1. Sunbeam further objects to this interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "unwritten" policies.

**INTERROGATORY NO. 11:** Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, and for each such expert witness, state or provide the following information:

a) The subject matter on which the expert is expected to testify;
b) The substance of the facts and opinions to which the expert is expected to testify; and
c) A summary of the grounds for each opinion.

**RESPONSE:** Sunbeam objects to this interrogatory as premature. Sunbeam has not yet determined or identified the expert witness it expects to call at the trial or hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam will timely identify the expert witnesses it expects to call at the hearing of this matter in compliance with the rules and orders in this proceeding or by agreement with opposing counsel.

**INTERROGATORY NO. 12:** Identify each person whom you expect to call as a witness at the trial or hearing of this matter (other than those already identified in response to the immediately preceding interrogatory), and for each such witness, state or provide the following information:

a) The subject matter on which the witness is expected to testify; and
b) The substance of the facts to which the witness is expected to testify.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks the "substance of the facts to which the witness is expected to testify." Sunbeam further objects to this

interrogatory as premature. Sunbeam has not yet determined or identified each person it expects to call as a witness at the trial or hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam will provide a trial witness list if and to the extent required by the rules and orders in this proceeding or by agreement with opposing counsel.

**INTERROGATORY NO. 13:** Identify each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users. As part of your answer, identify all communications you and/or other persons made and/or received relating to the following:

a) Problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-l's and/or any component parts thereof, including, but not limited to, any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-l's; and

b) Failures and/or partial failures of Star ME-l's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires and/or tests.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks communications by or between the CPSC and/or Complaint Counsel and Sunbeam. Sunbeam also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdenosme, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "each" communication relating to the subject matter of this litigation, the Complaint,

and/or the Answer, without limiting the request to communications relating to the Star ME-1. Sunbeam further objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery. Specifically, Sunbeam objects to this interrogatory to the extent that it seeks any communications by or between it and its attorneys (including its in-house counsel) and this interrogatory has been read to exclude any such privileged information. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "each communication" between or among "former employees, agents, and/or representatives; and or sprinkler installers, contractors, customers, and/or users."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has not identified any non-privileged communications about Star ME-1 fire sprinklers, other than the communications reflected in the documents being provided pursuant to 16 C.F.R. § 1025.32(d), which are numbered 000001-000008, 000009, 000010, 000011-000019, 000020-000027, 000028, 000029, 000030-000034, 000035-000040, 000043-000044, 000045-000049, 000050, 000051-000052, 000053, 000054-000056, 000057-000066, 000067-000069, 000747-000753, 000754-000755, 000756-000773, 000774-000775, 000777, 000778-000779, 000780-000781, 000782-001217, 001218, 001219-001220, 001221-001223, 001224-001227, 001228-001232, 001233-001236, 001237-001241, 001242-001244,

001245-001248, 001249-001284, 001285, 001286-001288A, 001289-001290, 001291-001292, 001293, 001294-001298, 001299-001300, 001301, 001302-001305, 001306-001309, 001310-001315, 001722-001723, 003221-003222, 003223-003224, 003225-003226.

**INTERROGATORY NO. 14:** Identify all persons from whom you have obtained witness statements relating to the subject matter of this litigation, the Complaint, and the Answer, and all persons who have custody or possession of each such statement, as well as the date of each such statement and whether each such statement was written or oral.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has not obtained any non-privileged witness statements relating to the subject matter of this litigation, the Complaint, and/or the Answer.

**INTERROGATORY NO. 15:** Identify and describe in detail all operations, purposes, and uses of the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all operations, purposes, and uses of the Star ME-1." Sunbeam further objects to

this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that is seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states, upon information and belief, that the Star ME-1 dry fire sprinkler was intended to be installed in fire sprinkler systems used in very cold, unheated or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing.

**INTERROGATORY NO. 16:** Identify each person who manufactured the Star ME-1 and the place(s) at which each such person manufactured the Star ME-1. State the dates each such person manufactured the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam and requests that Sunbeam identify "each person" who manufactured the Star ME-1, without limiting the interrogatory to Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly

burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam state the "place(s)" at which each such person manufactured the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that Sunbeam does not now, nor has it ever, manufactured Star ME-1 fire sprinklers. Upon information and belief, Star Sprinkler Corporation, a Florida corporation, manufactured some type of Star ME-1 "dry" fire sprinkler prior to 1977. Chemetron Corporation (now known as Chemetron Investments, Inc.) is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between 1977 and 1982. A Chemetron subsidiary, Chemetron Fire Systems, Inc. ("CFS"), is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between August 25, 1982 and November 9, 1983. CFS, however, sold its assets in the Star Sprinkler business almost twenty years ago – in 1983. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc. Upon information and belief, Grunau Sprinkler Manufacturing Company, Inc. manufactured some type of Star ME-1 "dry" fire sprinkler after 1983.

Pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is also producing documents responsive to this interrogatory, which are numbered 001546-001550, 001551-001553, 001554-001558, 001626-001701, 002190-002254, 002255-003171.

**INTERROGATORY NO. 17:** Identify all persons who participated in, had responsibility for, and/or had knowledge of any of the following relating to the Star ME-1, and for each such person, state their position and title at the time of their participation or responsibility and describe in detail the nature of their participation, activities, responsibilities, and/or knowledge:

a) Design and/or development;
b) Engineering;
c) Manufacture;
d) Testing; and
e) UL and/or FM approval process and/or listing process.

**RESPONSE:** Sunbeam objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "all persons who participated in, had responsibility for, and/or had knowledge" of the specified responsibilities and/or activities, without limiting the interrogatory to Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control

responsive to this interrogatory other than the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 002014-002016, 002190-002254, 002255-003171.

**INTERROGATORY NO. 18:** Identify and describe in detail the Star ME-1, all materials used therein, and all procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, the following:

a) Its design, materials, and component parts, including, but not limited to, the specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is producing

documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001887-001918.

**INTERROGATORY NO. 19:** For each change identified in your response to the immediately preceding interrogatory:

a) State the date of the change;
b) State all reasons for the change;
c) Identify all persons who participated in bringing about the change, and explain each person's role in same;
d) Identify all persons who implemented the change; and
e) State whether or not any tests were performed on the Star ME-l's before and/or after the change occurred. If so:
   i) Describe all such tests and provide a detailed protocol;
   ii) Identify the persons and entities who participated in setting up and/or conducting the tests;
   iii) Describe and explain the results of the tests, including all observations and conclusions; and
   iv) Identify all persons who participated in evaluating the test results.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been

unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 20:** Identify the manufacturer and supplier of each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possesion, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "manufacturers" and "suppliers," without limiting the interrogatory to Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 21:** State the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same, and identify the manufacturer and supplier of each of the "O" rings contained in the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible

evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 22:** Identify all industry and/or other standards, codes, requirements, and/or rules according to which the Star ME-1 was manufactured, including, but not limited to, UL and FM.

**RESPONSE:** Sunbeam objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam or information relating to Star ME-1's

not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001976-001985, 002979-003007.

**INTERROGATORY NO. 23:** Identify all industry and/or other standards, codes, requirements, and/or rules applicable to the Star ME-1, including, but not limited to, UL and FM.

**RESPONSE:** Sunbeam objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam also objects to this interrogatory as vague and ambiguous to the extent that it requests that Sunbeam identify all standards etc. that are "applicable" to the Star ME-1. Sunbeam further objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Sunbeam or information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel,

information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is producing documents responsive to this interrogatory, which are numbered 001769-001776, 001777-001837, 001976-001985, 002190-002254, 002979-003007.

**INTERROGATORY NO. 24:** Were the Star ME-1's submitted for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM? If so, for each submission for approval, listing, and/or certification:

a) Identify the Star ME-1;
b) Identify the laboratory, institution, and/or other person to whom the Star ME-1 was submitted;
c) State the date of each submission;
d) Describe all steps taken to obtain approval, listing, and/or certification;
e) Identify all persons who made the submission, all persons involved in each step, and all persons having knowledge of the submission and the steps associated therewith;
f) Identify and describe all tests, examinations, evaluations, and analyses conducted with respect to the submission, and include in your answer the following:
    i) The identity of each person having knowledge of same;
    ii) The identity of each person setting up, conducting, evaluating, and/or witnessing same; and
    iii) A detailed description and explanation of the results of same, including all findings, observations, and conclusions;
g) Identify each communication relating to the submission;
h) State the final result of and final response to the submission, and the date of the final result and/or response, including, but not limited to, whether or not the submission was approved, granted, denied, rejected, refused, and/or postponed. If the submission was denied, rejected, refused, and/or postponed, state all reasons for such action; and
i) State whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn,

discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1. If so, identify the Star ME-1 or component part, state the date of and all reasons for such action, identify each person with knowledge of such action, and identify each communication relating to such action.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 001769-001776, 001777-001837, 001976-001985, 002979-003007.

**INTERROGATORY NO. 25:** Identify each person who distributed and/or participated in the distribution of the Star ME-1, and state the dates each such person distributed and/or participated in the distribution of the Star ME-1. For each such person, identify each person to whom the Star ME-1 was distributed, the dates on which the Star ME-1 was distributed to that person, the quantity of Star ME-1's distributed to each person, and the terms on which the Star ME-1 was distributed to each person (including, but not limited to, sale prices).

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "each person" who distributed and/or participated in the distribution of the Star ME-1, without limiting the interrogatory to Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that Sunbeam does not now, nor has it ever, distributed Star ME-1 fire sprinklers. Upon information and belief, Star Sprinkler Corporation, a Florida corporation, distributed some type of Star ME-1 "dry" fire

sprinkler prior to 1977. Chemetron Corporation (now known as Chemetron Investments, Inc.) is believed to have distributed some kind of Star ME-1 "dry" fire sprinkler between 1977 and 1982. A Chemetron subsidiary, Chemetron Fire Systems, Inc. ("CFS"), is believed to have distributed some kind of Star ME-1 "dry" fire sprinkler between August 25, 1982 and November 9, 1983. CFS, however, sold its assets in the Star Sprinkler business almost twenty years ago – in 1983. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc. Upon information and belief, Grunau Sprinkler Manufacturing Company, Inc. distributed some type of Star ME-1 "dry" fire sprinkler after 1983.

Pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is also producing documents responsive to this interrogatory, which are numbered 001546-001500, 001551-001553, 001554-001558, 001626-001701, 002255-003171.

**INTERROGATORY NO. 26:** By manufacturer, state the total quantity of Star ME-1's manufactured in each year in which they were manufactured, and state the total quantity of Star ME-l's manufactured in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it is not limited to

Star ME-1's allegedly manufactured by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 27:** By manufacturer, state the total quantity of Star ME-1's distributed in each year in which they were distributed, and state the total quantity of Star ME-1's distributed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it is not limited to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not

reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the documents being produced pursuant to 16 C.F.R. § 1025.32(d), which are numbered 001989, 001991, 001968-001975.

**INTERROGATORY NO. 28:** Identify each person who installed and/or participated in the installation of the Star ME-1, and state the dates each such person installed and/or participated in the installation of the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "each person" who installed and/or participated in the installation of the Star ME-1, without limiting the interrogatory to Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks

information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 29:** State the total quantity of Star ME-1's installed in each year in which they were distributed, and state the total quantity of Star ME-1's installed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam state the quantities of Star ME-1's installed, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC

and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 30:** Identify, and state the building type of (including, but not limited to, the building types listed in interrogatory 31), all buildings in which Star ME-1's have ever been installed, state the quantity ever installed in each such building, and state the quantity presently installed in each such building.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify and state the building type of "all buildings" in which Star ME-1's have ever been installed, and "the quantity" ever and/or presently installed in each such building, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information

provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 31:** State the quantity of Star ME-1's ever installed in each of the following types of buildings:

a) Private homes;
b) Apartment buildings;
c) Public and private schools, including, but not limited to, universities, colleges, dormitories, and residential halls;
d) Nursing homes;
e) Hospitals and other healthcare facilities;
f) Detention facilities, including, but not limited to, prisons and jails;
g) Homeless shelters;
h) Facilities used for recreation, including, but not limited to, health clubs, gymnasiums, sports arenas, public pools, country clubs, and museums;
i) Hotels and motels; and
j) Day care centers.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory because it does not limit its scope to any particular time frame. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that

Sunbeam state "the quantity of Star ME-1's" ever installed in each such building, without limiting the interrogatory to Star ME-1's allegedly installed, distributed, or manufactured by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 32:** State the quantity of Star ME-1's currently in your possession, custody, or control, and of those, state the quantity that have been removed from service, the quantity that have never been put in service, and the manufacture year of each one.

**RESPONSE:** Subject to and without waiving the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any Star ME-1's in its possession, custody, or control.

**INTERROGATORY NO. 33:** Identify and describe all actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, you and/or any other persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to any actions taken by "other persons," without limiting the interrogatory to Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 34:** Identify all persons with knowledge of and/or responsibility for all actions, steps, and/or procedures identified and described in response to the immediately preceding interrogatory.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "all persons" with knowledge and/or responsibility, without limiting the interrogatory to Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 35:** Identify all tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, and for each Star ME-1 tested, examined, and/or analyzed:

a) Identify the Star ME-1;
b) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
c) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
d) Describe and explain the results of the tests, including all observations and conclusions; and
e) Identify all persons who participated in evaluating the test results.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not

reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify any tests, examinations, and/or analyses not conducted or reviewed by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the examinations and/or analyses of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 36:** State whether you or any other persons:

(a) observed that;

(b) alleged, reported, or otherwise communicated to you that they observed that; or

(c) tested, examined, and/or analyzed to determine if any of the following conditions was present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems. If so, for each such Star ME-1 or component part thereof:

(i) Identify the Star ME-1 and/or component part;

(ii) Describe the circumstances of the conditions;

(iii) Describe each observation, test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
(iv) Identify all persons who made the observations and/or communicated this information to you, and state the dates of all such observations and/or communications;
(v) Identify all persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
(vi) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions was present and the criteria by which it was determined whether the referenced conditions were present;
(vii) State all reasons any of the referenced conditions was present;
(viii) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
(ix) Identify all communications relating to the observations, tests, examinations, and/or analyses.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it purports to request that Sunbeam state whether "any other persons" conducted the activities listed in (a) – (c), without limiting the interrogatory to Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects

to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 37:** State the effects each of the following conditions may have upon the operation, activation, and/or other performance of a Star ME-1, and state all facts, reasons, and bases for the effects you state:

a) Corrosion;
b) Accumulation of deposits;
c) Adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts;
d) Swelling of the "O" ring;
e) Lubricant deficiencies or problems;
f) Leakage;and
g) Component part interference or fit problems.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 38:** Explain in detail the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad,

unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 39:** In each of the Star ME-1's manufactured and installed, after the thermal sensing element or fusible link melts from fire or heat, does each Star ME-1 require water pressure to enable its component parts to properly move and open the sprinkler (to then enable water to properly discharge)? For each Star ME-1 requiring such water pressure:

a) State the minimum water pressure required (in psi) and the reasons that pressure is required;
b) State how the water pressure causes the Star ME-1's component parts to properly move and open the sprinkler; and
c) State all reasons the Star ME-1's component parts will not properly move and open the sprinkler without that pressure.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information outside the possession, custody, and control of Sunbeam or information relating to Star ME-1's not allegedly manufactured, distributed, or installed by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel,

information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 40:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's? If so, for each such alleged, reported, or communicated problem, flaw, defect, defective condition, and deficiency:

a) Identify the Star ME-1 or component part;
b) Describe it in detail and state the date;
c) Identify all persons having knowledge of it;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and
f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information

equally available to all parties or as a matter of public record. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information regarding "any" Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with Star ME-1's other than the allegations of the CPSC and those contained in the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will also produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Sunbeam, however, has no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 41:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water)

in fires? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 or component part;
b) Describe it in detail, state the time and date, and state the cause and nature of the fire;
c) Identify the building and/or place at which it occurred;
d) State the sprinkler system pressure (in psig) at the site of it;
e) Identify all persons witnessing and/or having knowledge of it;
f) State the date on which you acquired knowledge of it;
g) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it;
h) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;
i) State whether any persons sustained or allegedly sustained injury as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:
    i) Identify the person;
    ii) Describe each injury, and state how, where, and when the injury occurred; and
    iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;
j) State whether any persons died or allegedly died as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:
    i) Identify the person;
    ii) Describe the death, and state how, where, and when the death occurred; and
    iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;
k) State whether any property was damaged, destroyed, or lost, or allegedly damaged, destroyed, or lost, as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so:
    i) Identify the property and the persons owning the property;
    ii) Describe the damage, destruction, or loss, and state the value of the affected property;
    iii) State how, where, and when the damage, destruction, or loss occurred; and

iv) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

l) State whether any police, fire, medical, emergency service, or other report was prepared related to the fire. If so, for each such report:
   i) Identify the report, including its date;
   ii) State the type of report;
   iii) Identify the municipality, organization, and/or other persons by whom the report was prepared;
   iv) State whether photographs and other documents, or statements, were obtained in connection with and/or made part of the report; and
   v) State whether you have a copy of the report in your possession, custody, or control;

m) State whether any persons tested, examined, and/or analyzed any Star ME-1 or component part thereof that failed and/or partially failed in a fire, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 or component part thereof tested, examined, and/or analyzed:
   i) Identify the Star ME-1 or component part;
   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
   iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;
   iv) Describe and explain the results of the tests, including all observations and conclusions;
   v) Identify all persons who participated in evaluating the test results; and
   vi) Identify all communications related to it;

n) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:
   i) Identify the Star ME-1 and/or component part;
   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it;

o) State all reasons the Star ME-1 failed and/or partially failed in the fire.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has no independent knowledge of, nor

has any person alleged, reported, or otherwise communicated to it, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires, other than the allegations of the CPSC and those contained in the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001414-001411. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will also produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Sunbeam, however, has no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 42:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 and/or component part;
b) Describe it in detail and state the date;
c) Identify and describe all tests in which it occurred, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions; and

g) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Sunbeam further

objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules, other than the allegations and reports of the CPSC, which will be produced.

**INTERROGATORY NO. 43:** Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element? If so, for each such alleged, reported, or communicated failure:

a) Identify the Star ME-1 and/or component part;
b) Describe it in detail and state the date;
c) Identify and describe all tests or other circumstances in which it occurred, including the test protocol, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests or circumstances;
d) State the date on which you acquired knowledge of it;
e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

g) State the pressure, if any, at which the Star ME-1 activated, or if it failed altogether to activate, state the highest pressure to which it was subjected;

h) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

   i) Identify the Star ME-1 and/or component part;

   ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

   iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

   iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

   v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses;

   vi) Identify all communications related to it; and

   vii) State all reasons for the presence of the referenced conditions.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel in this action at any time, and the interrogatory has been interpreted so as to exclude such information. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to

lead to the discovery of admissible evidence to the extent that it seeks information equally available to all parties or as a matter of public record. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has no independent knowledge of, nor has any person alleged, reported, or otherwise communicated to it, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element, other than the allegations and reports of the CPSC, which will be produced.

**INTERROGATORY NO. 44:** Describe in detail the performance record and history of the Star ME-1, including, but not limited to, as applicable, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to

Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 000036-000040, 001310-001315, 001404-001411.

**INTERROGATORY NO. 45:** Identify all Star ME-1's that properly operated and activated in a fire, including, but not limited to, the date and circumstances of the fire. Identify all persons having knowledge of this information.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not

reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

**INTERROGATORY NO. 46:** State whether or not any Star ME-1's and/or any Star ME-1 component parts were de-listed (by UL, FM, and/or any other person), recalled, discontinued, taken off the market, and/or the subject of a warning, advisory, safety, or similar notice to consumers, distributors, installers, governmental authorities, or other persons. If so, for each such action:

a) Identify the Star ME-1, state the quantity sought to be recalled, discontinued, taken off the market, and/or subject to notice, and the quantity actually recalled, discontinued, taken off the market, and/or subject to notice;
b) Describe the action in detail, state the date, and state all reasons for the action;
c) Identify and describe the circumstances leading to the action;
d) Identify all persons having knowledge of the action;
e) State the date on which you acquired knowledge of the action;
f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and
g) Identify and describe all actions you and/or any other persons took relating, to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also

objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory other than the allegations and reports of the CPSC and the documents being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which are numbered 001404-001411.

**INTERROGATORY NO. 47:** State whether or not any Star ME-1's and/or any Star ME-1 component parts were returned, and/or were asked to be returned, to you and/or any manufacturer, supplier, distributor, installer, and/or other person. If so, for each such action:

a) Identify the Star ME-1, state the quantity asked to be returned, and state the quantity actually returned;
b) Describe the action in detail, state the date, and state all reasons for the action;
c) Identify and describe the circumstances leading to the action;
d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;
f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and
g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam, and information concerning Star ME-1's or components returned or asked to be returned to "any manufacturer, supplier, distributor, installer, and/or other person," without limiting the interrogatory to Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information that was provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that no Star ME-1's and/or any Star ME-1 component parts have been returned and/or have been asked to be returned to Sunbeam by any person other than the CPSC and as provided in the documents

being produced pursuant to 16 C.F.R. § 1025.32(d) arising out of CPSC-induced recalls of Star ME-1's by manufacturers, which are numbered 001404-001411.

**INTERROGATORY NO. 48:** Have you and/or any other persons replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers? If so, state the total number of Star ME-1's replaced, according to manufacturer and model year, and for each Star ME-1 replaced:

a) Identify it and state the date it was replaced;
b) Identify the building and/or place at which it had been installed;
c) State the make, model, and year of the replacement sprinkler;
d) Identify all persons to whom you provided the replacement sprinkler;
e) State all reasons you and/or any other persons replaced it;
f) Describe its condition at the time of replacement;
g) State all costs of replacing it, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs;
h) Identify all persons who paid the replacement costs;
i) Identify all communications related to it; and
j) State whether any persons tested, examined, and/or analyzed it, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 and/or component part tested, examined, and/or analyzed:
    i) Identify the Star ME-1 or component part;
    ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;
    iii) Identify the persons who participated in setting, up and/or conducting the tests, examinations, and/or analyses;
    iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions;
    v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and
    vi) Identify all communications related to it.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably

calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating to Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam and information regarding whether "any other persons" replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers, without limiting the interrogatory to Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has not replaced any Star ME-1's.

**INTERROGATORY NO. 49:** State all current costs of replacing a Star ME-1 and/or a group of Star ME-1's, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs. To the extent these costs may vary depending upon facts and circumstances (including, but not limited to, the building or site of replacement or the quantity being replaced), so state, identify all variables, factors, and considerations related to determining the costs, and explain fully. If you cannot give exact costs, give your best estimates (identified as such) and explain the basis for the estimates.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory as

overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information relating generally to Star ME-1's, without limiting the interrogatory to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has not yet determined the costs of replacing Star ME-1's allegedly manufactured by any Chemetron entity over 18 years ago. Because neither Sunbeam nor any of its subsidiaries or affiliates currently manufactures fire sprinklers, Sunbeam assumes that the cost would require, *inter alia*, purchasing replacement sprinklers from a manufacturer.

**INTERROGATORY NO. 50:** Identify and describe all verbal and/or written claims of which you are aware relating to the Star ME-1. For each such claim, identify the Star ME-1, state the date on and manner in which you first became aware of same, identify all persons making the claim, and state the status of same, including whether or not it has been settled or otherwise resolved, and if settled or resolved, the settlement or resolution terms and amounts.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "all verbal" and/or written "claims," without limiting the interrogatory to claims of malfunction or failure in Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects

to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information that was provided to Sunbeam by the CPSC and/or Complaint Counsel, information that is equally available to all parties, or information that is available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it is not aware of any verbal and/or written claims of malfunction or failure relating to Star ME-1's allegedly manufactured, distributed, or installed by any Chemetron entity. Pursuant to 16 C.F.R. § 1025.32(d), in the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will produce documents (numbered 001968-001975, 003172-003189, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350) relating generally to fire sprinklers. Sunbeam, however, has no information to suggest that these documents pertain to the Star ME-1's at issue in the Complaint.

**INTERROGATORY NO. 51:** Identify each of your current officers and state the dates during which each officer held each officer position.

**RESPONSE:** Subject to and without waiving the General Objections, Sunbeam states that its current officers are:

Barbara L. Allen; since June 1, 1999
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219

316/832-2515

Kenneth R. Bell; since April 10, 2000
Senior Vice President – Risk Management,
Product Regulatory Compliance and Product Litigation,
and Assistant Secretary
2111 East 37th Street North
Sunbeam Corporation
P.O. Box 2931
Wichita, KS 67219
316/832-2747

Steven P. Berreth; since December 15, 2000
Vice President, Patents and
Trademarks
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Susan M. Daly; since December 13, 2000
Assistant Secretary
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Ronald H. Dunbar; since August 12, 1998
Senior Vice President, Human Resources
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

John Frederick; since June 27, 2000
Vice President, Finance and Corporate
Controller
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Michele Grabasch; since June 27, 2000
Assistant Secretary

Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Steven R. Isko; since June 27, 2000
Senior Vice President, General Counsel
and Assistant Secretary
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Cheryl S. Jackman; since December 13, 2000
Assistant Secretary
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Bobby G. Jenkins; since June 16, 1998
Executive Vice President and
Chief Financial Officer
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Jerry W. Levin; since August 12, 1998
Chairman of the Board,
Chief Executive Officer and President
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Victor J. Michels; since December 13, 2000
Assistant Secretary
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Ronald R. Richter; since May 12, 1998

Vice President and Treasurer
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Robert S. Schur; since August 12, 1998
Assistant Treasurer
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Marc Shiffman; since June 27, 2000
Senior Vice President, Corporate
Development and Strategy
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Robert P. Totte; since May 12, 1998
Vice President, Taxes
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

**INTERROGATORY NO. 52:** Identify each of your current directors and state the dates during which each director held each such position.

**RESPONSE:** Subject to and without waiving the General Objections, Sunbeam states that its current directors are:

Philip E. Beckman; since June 29, 1999
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Charles M. Elson; since September 25, 1996
Sunbeam Corporation

2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Howard Gittis; since June 16, 1998
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

John H. Klein; since February 3, 1999
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Jerry W. Levin; since June 16, 1998
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

David J. Pecker; since June 27, 2000
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

James D. Robinson, III; since June 27, 2000
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

Faith Whittlesey; since November 27, 1996
Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

**INTERROGATORY NO. 53:** From the date of your incorporation through the present, identify each of your employees, agents, representatives, and/or

consultants who has held a supervisory, managerial, and/or executive position or role in corporate mergers, acquisitions, and/or transactions.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 54:** Identify and describe your insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1. Identify all insurance policies relating to the foregoing.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks insurance coverage relating to any "products," without limiting the interrogatory to insurance coverage applicable to the recall, repair, and/or refund of the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that to the best of its knowledge and belief it does not maintain any insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds of the Star ME-1.

**INTERROGATORY NO. 55:** From the date of your incorporation through the present, identify each name under which Sunbeam Corporation has transacted business and/or been known, state the dates during which Sunbeam Corporation has transacted business and/or been known by each name, state each date of and reason for each Sunbeam Corporation name change, and identify all documents evidencing each Sunbeam Corporation name change and the dates thereof.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Sunbeam's] incorporation through the present." Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "each date of and reason for each Sunbeam Corporation name change." Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "all documents evidencing each Sunbeam corporation name change and the dates thereof."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has transacted business under the following names and during the following periods:

Sunbeam/Oster Companies, Inc. from October 26, 1989 to March 26, 1990;

Oster/Sunbeam Companies, Inc. from March 26, 1990 to August 10, 1990;

Sunbeam/Oster Company, Inc. from August 10, 1990 to November 19, 1990;

Sunbeam-Oster Company, Inc. from November 19, 1990 to May 16, 1995;

Sunbeam Corporation since May 16, 1995.

**INTERROGATORY NO. 56:** From the dates of their incorporations through the present, describe in detail the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., and the relationship(s) between each of them and Sunbeam Corporation, identifying by dates or date ranges the periods of time in which the relationships changed and the manners in which they changed.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks information "[f]rom the date of [Chemetron and Chemetron Investments'] incorporation through the present." Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks the "periods of time in which the relationships changed and the manners in which they changed."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it was incorporated on October 26, 1989 and was then known as Sunbeam/Oster Companies, Inc. It acquired assets from the Allegheny International, Inc. bankruptcy, including the stock of Chemetron Corporation and Chemetron Investments, Inc.

The shares of Chemetron Corporation that are held by Sunbeam Corporation are indirectly held through a subsidiary of Sunbeam Corporation, Montey Corporation.

The shares of Chemetron Investments, Inc. are held by Eliskim, Inc. and Chemetron Corporation, both of which are directly-held and wholly-owned subsidiaries of Montey Corporation. Montey Corporation is a directly-held and wholly-owned subsidiary of Sunbeam Corporation.

**INTERROGATORY NO. 57:** From the date of your incorporation through the present, describe in detail your business, involvement, and/or relationship with the Star ME-1, identifying the dates that, and extents to which, any of these changed.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify "the dates that, and extents to which, any of these changed."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it has never had a business, involvement, and/or relationship with the Star ME-1. Sunbeam does not now, nor has it ever, manufactured, distributed, and/or sold the Star ME-1 fire sprinkler. Moreover, during the time period a Chemetron entity allegedly manufactured some kind of the Star ME-1 "dry" fire sprinkler, the current Sunbeam Corporation was not in existence.

As to objections,

Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

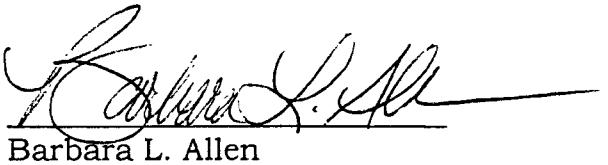
Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of the DC Bar)
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Sunbeam Corporation*

Dated: January 22, 2002

As to answers:

I, Barbara L. Allen, hereby declare under penalty of perjury that after a diligent search and based on any responsive information that could be located, the foregoing answers are true and correct to the best of my knowledge, information, and belief.



Barbara L. Allen
Corporate Secretary

For Sunbeam Corporation

Dated: January ___, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Sunbeam's Responses to Complaint Counsel's First Set of Interrogatories to Respondent Sunbeam Corporation upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., NW
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENT SUNBEAM CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT SUNBEAM CORPORATION**

Pursuant to 16 C.F.R. § 1025.33(c), Respondent Sunbeam Corporation ("Sunbeam") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Sunbeam Corporation.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek information or documents protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Sunbeam will provide a log of documents withheld on privilege grounds.

B. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and requests have been read to exclude any such documents. Sunbeam also objects to the definitions, instructions and requests as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Sunbeam an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Sunbeam objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had possession, custody, or control of the document or any copy thereof," "the number of pages, attachments, appendices, and exhibits," and "all further information

concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad and unduly burdensome.

D. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

E. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek to impose on Sunbeam obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

F. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek documents that are not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such documents, Sunbeam does not admit the relevance or admissibility thereof.

G. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek documents that are equally accessible to all parties, are available as a matter of public record, or have been provided to Sunbeam by the CPSC and/or Complaint Counsel in this matter.

H. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek to impose on Sunbeam an obligation to obtain information or documents from entities formerly affiliated with Sunbeam or to obtain other information or documents not in Sunbeam's current possession, custody, or control, and Sunbeam has read the definitions, instructions, and requests to exclude any

such obligation. Sunbeam itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Sunbeam has never manufactured, distributed, or sold Star ME-1 fire sprinklers. Moreover, Sunbeam's subsidiary, Chemetron Corporation (now known as Chemetron Investments, Inc.), transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Sunbeam. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

I. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek to require Sunbeam to obtain information or documents that were, but no longer are, within Sunbeam's possession, custody, or control, and Sunbeam has read the definitions, instructions, and requests to exclude any such obligation.

J. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek, or may be construed, to impose on Sunbeam an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Sunbeam will search files in its possession, custody, and control where there is a

reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

K. Sunbeam objects to each request to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Sunbeam has made an effort to respond, where possible, as it understands and interprets the request.

L. Sunbeam objects to each request to the extent that it contains compound questions and/or contentions which should be separated into individual requests.

M. In responding to any of these requests, Sunbeam does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

N. Because discovery in this action is ongoing, Sunbeam reserves the right to amend and/or supplement these responses.

O. These General Objections are incorporated into every response and shall not be repeated in every response to which they are applicable. By responding to a request, Sunbeam does not waive any general or specific objection.

P. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be made available upon an appropriate order of the Court or agreement of counsel protecting their confidentiality.

## RESPONSES

**REQUEST NO. 1:** All documents identified in response to the Interrogatories.

**RESPONSE:** Subject to and without waiving the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 2:** All documents relating to your answers to the Interrogatories, in support of your answers thereto, and/or used or relied upon in preparing your answers thereto.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all" documents "relating" to or "in support" of your answers to the Interrogatories.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents used or relied upon in preparing the Interrogatories will be produced.

**REQUEST NO. 3:** All documents in support of and/or upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam

also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all" documents "in support" of the Answer.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents used or relied upon in preparing Sunbeam's Answer will be produced.

**REQUEST NO. 4:** All documents refuting or tending to refute the allegations of the Complaint.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all documents "tending to refute" the allegations of the Complaint. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents refuting the allegations of the Complaint will be produced.

**REQUEST NO. 5:** All documents supporting or tending to support the allegations of the Complaint.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all documents "tending to support" the allegations in the Complaint.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents supporting specific allegations concerning the identity of the parties will be produced. To date, Sunbeam has been unable to locate any other documents within its possession, custody, or control which support the allegations of the Complaint as they relate to Respondent Sunbeam Corporation.

**REQUEST NO. 6:** All of your written document retention policies in effect at any time(s) since the date of your incorporation.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "since the date of [Sunbeam's] incorporation."

Subject to and without waiving the foregoing objections and the General Objections, a current document retention policy will be produced.

**REQUEST NO. 7:** All of your written policies in effect at any time(s) since the date of your incorporation relating to retention of your products or samples of your products.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to products other than the Star ME-1. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents "since the date of [Sunbeam's] incorporation."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam has no policies pertaining to the retention of Star ME-1's because Sunbeam has had no involvement with such sprinklers.

**REQUEST NO. 8:** All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion. meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery.

Specifically (and without limitation), Sunbeam objects to the request to the extent that it seeks communications by or between it and its attorneys and/or expert consultants since the filing of the Complaint or in anticipation of this litigation, and the request has been interpreted to exclude any such privileged communications. Sunbeam also objects to the document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all" documents relating generally to "the subject matter of this litigation, the Complaint [and] the Answer," without limiting the request to documents relating to the Star ME-1. Sunbeam further objects to the document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 9:** All correspondence relating to the Star ME-1 other than correspondence to or from Complaint Counsel dated on or after October 9, 2001.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Specifically (and without limitation), Sunbeam objects to the document request to the extent that it seeks correspondence by or between it and its attorneys and/or expert consultants since the filing of the Complaint or in anticipation of this litigation, and the request has been interpreted to exclude any such privileged correspondence. Sunbeam also objects to the document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks correspondence by or between the CPSC and Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 10:** All documents you obtained from the U.S. Consumer Product Safety Commission or its staff relating to the Star ME-1, other than those obtained from Complaint Counsel on or after October 9, 2001.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that are, or should be, already in the possession of Complaint Counsel and/or the CPSC.

Subject to and without waiving the foregoing objections and the General Objections, responsive documents will be produced.

**REQUEST NO. 11:** All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam has located no documents responsive to this request.

**REQUEST NO. 12:** All documents describing and/or evidencing the operations, purposes, and uses of the Star ME-1.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 13:** All documents relating to the quantities of Star ME-1's manufactured.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 14:** All documents relating to manufacture of the Star ME-1, including, but not limited to, its design, development, and/or engineering.

**RESPONSE:** Sunbeam objects to this document request as vague, ambiguous, overbroad, and unduly burdensome to the extent that it seeks all documents relating to the "manufacture" of the Star ME-1. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents

outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 15:** All complete engineering drawing packages, engineering drawings, requests for changes, and change notices relating to the Star ME-1.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent

that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 16:** All documents relating to the materials used in the Star ME-1 and to the procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, all documents relating to the following:

a) The Star ME-1's design, materials, and component parts, including, but not limited to, the acquisition of and specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further

objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 17:** All documents evidencing the manufacturer and supplier of each component part, substance, chemical, lubricant, "O" ring, and/or other material used in the Star ME-1.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will produce documents listing suppliers of Star products generally, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 18:** All documents evidencing the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 19:** All documents relating to submission of the Star ME-1 for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM. These documents shall include, but not be limited to, the following: documents relating to all tests, examinations, evaluations, and analyses conducted with respect to the submission; each communication relating to the submission; all results of and responses to the submission; and all documents relating to whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not. any person ever objected to the sale and/or distribution of any Star ME-1.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 20:** All documents evidencing the persons who distributed and/or participated in the distribution of the Star ME-1, the persons to whom the Star ME-1 was distributed, the dates of Star ME-1 distribution, and the Star ME-1 quantities distributed.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will produce stock schedules and lists evidencing some

distributors of Star products generally, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 21:** All documents relating to the installation of the Star ME-1, including, but not limited to, the persons who installed and/or participated in the installation of the Star ME-1, the persons for whom the Star ME-1 was installed, the buildings in which the Star ME-1 was installed, the building types in which Star ME-1's have ever been installed, the dates of Star ME-1 installation, and the Star ME-1 quantities installed.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or installed by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to

locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 22:** All documents relating to the actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, any persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or installed by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to

locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 23:** All documents relating to tests, examinations, and/or analyses of Star ME-l's and/or any component parts thereof, including, but not limited to, test, examination, and/or analysis procedures, protocols, and results.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam or documents concerning tests, examinations, or analyses not conducted or reviewed by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to

locate any documents within its possession, custody, or control responsive to this request other than the examinations and/or analyses of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 24:** All documents relating to any of the following conditions being present, observed, and/or alleged in any Star ME-1's or any components parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam or documents relating to "any" Star ME-1's, without limiting the request to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to his request other than the allegations and reports of the CPSC and documents arising

out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 25:** All documents relating to actual, potential, or alleged effects on the operation, activation, and/or other performance of Star ME-1's of any of the following conditions being present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problem.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam or documents relating to Star ME-1's generally, without limiting the request to Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to his request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 26:** All documents relating to the operation and proper operation of Star ME-l's.

**RESPONSE:** Sunbeam objects to this document request as vague and ambiguous. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 27:** All documents relating to the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or

control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced.

**REQUEST NO. 28:** All documents relating to actual, alleged, reported, or otherwise communicated problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of

admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will also produce relating generally to fire sprinklers, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 29:** All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-l's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires. Your response should include, but not be limited to, the following resulting from or relating to the fire (including in attempting to escape from or extinguish the fire):

a) All documents relating to injuries or alleged injuries;
b) All documents relating to deaths or alleged deaths;
c) All documents relating to damaged, destroyed, or lost property, and allegedly damaged, destroyed, or lost property;
d) All police, fire, medical, emergency service, or other reports;

e) All documents relating to tests, examinations, and/or analyses of any Star ME-1 or component part thereof that failed and/or partially failed, and/or any other Star ME-1 from the same site; and

f) All documents relating to the reasons the Star ME-1 failed and/or partially failed.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will also produce non-privileged documents relating

generally to fire sprinklers, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 30:** All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules. Your response should include, but not be limited to, all documents relating to these tests.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to

locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced.

**REQUEST NO. 31:** All documents relating to actual, alleged, reported, or otherwise communicated failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element. Your response should include, but not be limited to, all documents relating to these tests, failures, or other circumstances.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced.

**REQUEST NO. 32:** All documents relating to the performance record and/or history of the Star ME-1, including, but not limited to, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 33:** All documents relating to all Star ME-l's that properly operated and activated in a fire.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 34:** All documents relating to the de-listing (by UL, FM, and/or any other person), recall, discontinuance, and/or taking off the market of any Star ME-l's and/or any Star ME-1 component parts, and all documents relating to any warning, advisory, safety, or similar notice to persons relating to any Star ME-l's and/or any Star ME-l component parts.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to recalls of Star ME-1's by persons other than Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the

discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 35:** All documents relating to the return, and/or requested return, to you and/or any manufacturer, supplier, distributor, installer, and/or other person, of any Star ME-l's and/or any Star ME-l component parts.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam or documents relating to returns of Star ME-1's to persons other than Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 36:** All documents relating to the replacement of Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to replacement of Star ME-1's by persons other than Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC and documents arising

out of CPSC-induced recalls by manufacturers of Star ME-1's, which will be produced.

**REQUEST NO. 37:** All documents evidencing the current costs, and/or estimates of the current costs, of replacing a Star ME-1 or a group of Star ME-1's, including, but not limited to, the costs of the replacement product, the labor, any other associated costs, all variables, factors, and considerations related to determining the costs or estimates, and all bases for all estimates.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents concerning Star ME-1's not allegedly manufactured, distributed, or sold by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, Sunbeam has located no non-privileged documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 38:** All documents relating to all verbal and/or written claims of which you are aware relating to the Star ME-1, including, but not limited to, the persons making the claim, the status of the claim (including whether or not it has been settled or otherwise resolved), and the settlement or resolution terms and amounts.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other privileges or immunities from discovery. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not

reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to "all verbal" and/or written "claims," without limiting the request to claims of malfunction or failure in Star ME-1's allegedly manufactured, distributed, or sold by Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any documents within its possession, custody, or control responsive to this request other than the allegations and reports of the CPSC, which will be produced. In the spirit of cooperation and without waiving any rights with respect to the foregoing, Sunbeam will produce non-privileged documents relating generally to fire sprinklers, but not specifically referencing the Star ME-1 fire sprinklers and thus not necessarily involving the fire sprinklers at issue in the Complaint.

**REQUEST NO. 39:** All documents relating to the sale of Star ME-1's, including, but not limited to, purchase orders, shipping documents, invoices, billing statements, and sales receipts.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to Star ME-1's sold by a person other than Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it could be read to encompass all documents relating to the sale of the Star product line to Grunau Sprinkler Manufacturing Company, Inc. or to documents relating to sales of Star products as a whole, and the request has been read to exclude such documents.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged documents will be produced.

**REQUEST NO. 40:** All of your insurance policies, including, but not limited to, general liability and product liability policies, as well as all policies evidencing and/or describing insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective

actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1.

**RESPONSE:** Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all of your insurance policies," without limiting the request to policies relating to recalls, repairs and/or refunds of the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has located no Sunbeam insurance policies that provide coverage and/or may be applicable or related to recalls, repairs, refunds or corrective actions related to Star ME-1's.

**REQUEST NO. 41:** All photographs and other pictures of the Star ME-1.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, work product doctrine or any other privileges or immunities from discovery. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam further objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 42:** All product catalogues, brochures, marketing materials, sales materials, and similar documents listing, describing, or otherwise referencing or showing the Star ME-1.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Sunbeam. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that were provided to Sunbeam by the CPSC and/or Complaint Counsel, documents that are equally available to all parties, or documents that are available as a matter of public record.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 43:** Three (3) never-installed Star ME-1's of each manufacture model year.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks things outside the possession, custody, or control of Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to

locate any Star ME-1's within its possession, custody, or control responsive to this request.

**REQUEST NO. 44:** Three (3) samples of each Star ME-1 component part, including, but not limited to, each substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks things outside the possession, custody, or control of Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has been unable to locate any component parts within its possession, custody, or control responsive to this request.

**REQUEST NO. 45:** All Star ME-1's tested, analyzed, examined, torn down, and/or cut apart.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "all Star ME-1's" tested, analyzed, examined, torn down, and/or cut apart, without limiting the request to Star ME-1's tested etc. by Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Sunbeam has located no sprinklers in its possession, custody, or control responsive to this request.

**REQUEST NO. 46:** All name change certificates and/or other public filings documenting each Sunbeam Corporation name change.

**RESPONSE:** Sunbeam objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "other public filings documenting each Sunbeam Corporation name change."

Subject to and without waiving the foregoing objections and the General Objections, current name change certificates for Sunbeam Corporation will be produced.

**REQUEST NO. 47:** All documents evidencing the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., and the relationship(s) between each of them and Sunbeam Corporation, including, but not limited to, all documents evidencing the dates and/or the periods of time in which the relationships changed and the manners in which they changed.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other privileges or immunities from discovery. Sunbeam also objects to this document request generally as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam will produce select documents referencing the corporate relationships described in response to Interrogatory No. 56.

**REQUEST NO. 48:** Sunbeam Corporation's most recent reorganization plan and disclosure statement provided to creditors.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, responsive documents will be produced.

**REQUEST NO. 49:** The most recent valuations of Sunbeam Corporation and of its assets prepared by and/or for you.

**RESPONSE:** Sunbeam objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work product doctrine, or any other privileges or immunities from discovery. Sunbeam also objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 50:** The most recent Sunbeam Corporation complete liquidation study.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 51:** An index of all documents provided to Sunbeam Corporation's creditors and creditor committees.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 52:** Sunbeam Corporation's debtor-in-possession (DIP) credit agreement.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

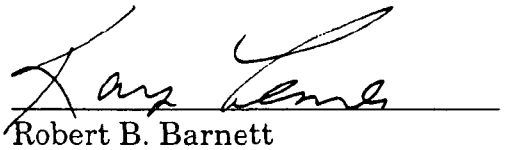
Subject to and without waiving the foregoing objections and the General Objections, responsive documents will be produced.

**REQUEST NO. 53:** The most recent set of Sunbeam Corporation projections and pro forma financial statements.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 54:** All of Sunbeam Corporation's monthly financial statements since January 1, 2001, including balance sheet, income statement, and statement of cash flows.

**RESPONSE:** Sunbeam objects to this document request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.



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*Attorneys for Sunbeam Corporation*

Dated: January 22, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Sunbeam Corporation's Responses to Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Sunbeam Corporation upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Karyn A. Temple

# PRIVILEGE LOG FOR DOCUMENTS IN THE MATTER OF CHEMETRON CORP., ET AL. – CPSC DOCKET NO. 02-1

| Date | Document Type | Author (Name, Title and Capacity) | Addresses (Name, Title and Capacity) | Distributees (Name, Title and Capacity) | Privilege Claimed | Description | Bates Numbers |
|---|---|---|---|---|---|---|---|
| Undated | Schedule w/ handwritten notations | Not Shown | Not Shown | Not Shown | Attorney-Client, Work Product | Handwritten notations on Schedule 3g to the Stock Purchase Agreement with Figgie International, Inc. (clean copy produced) | P-RESP 000001-000005 |
| 06/17/85 | Letter | Howard F. Voigt, Staff Counsel | Hugh Laumeister, President Chemetron Fire Systems, Inc. | K. Dutton; E.B. Harmon; D.R. Sargent | Attorney-Client, Work Product | Letter regarding settlement of litigation | P-RESP 000006 |
| 06/12/85 | Letter | Eileen Norwood, Vinson & Elkins | Howard F. Voigt, Staff Counsel, Allegheny International, Inc. | Not Shown | Attorney-Client, Work Product | Letter regarding settlement of litigation | P-RESP 000007 |
| 1/14/92 | Memo | Not Shown | Not Shown | Not Shown | Attorney-Client, Work Product | New Matter Data Sheet | P-RESP 000008 |
| 10/15/87 | List | Not Shown | Not Shown | Not Shown | Attorney-Client, Work Product | Overnight Claim Print of Chemetron Fire Systems claims (generated for the purpose of litigation) | P-RESP 000009-000021 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1/14/92 | Letter w/ handwritten notations | Mark Neubacher, Administrator | Legal Department, Sunbeam-Oster Company, Inc. | Not Shown | Attorney-Client, Work Product | Handwritten notations redacted (letter produced) | RESP 001404 |
| Various | All documents, including correspondence, memoranda, notes, and emails | Sunbeam; Sunbeam's attorneys | Various | Various | Attorney-Client, Work Product | All documents, including correspondence, memoranda, notes, and emails, prepared by, created by, collected by, or under the direction of, Sunbeam's attorneys relating to the CPSC's investigation giving rise to this proceeding **(see General Objection B in all responses)** | N/A |
| Various | All documents, including correspondence, memoranda, notes, and emails | Documents collected by Sunbeam attorneys or by third parties under the direction of Sunbeam attorneys | Various | Various | Attorney-Client, Work Product | All documents, including correspondence, memoranda, notes, and emails, prepared by, created by, collected by, or under the direction of, Sunbeam's attorneys relating to the CPSC's investigation giving rise to this proceeding **(see General Objection B in all responses)** | N/A |

LAW OFFICES
WILLIAMS & CONNOLLY LLP
725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

HEIDI K. HUBBARD
(202) 434-5451
hhubbard@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

January 22, 2002

**By Hand Delivery – Filing**

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway, Rm. 502
Bethesda, MD 20814

Re: CPSC Docket No.: 02-1
*In the matter of Chemetron Corp., et al.*

Dear Sir/Madam:

Enclosed for filing please find the original and four (4) copies of the following pleading in the above-referenced matter:

1. Motion by Respondents Chemetron, Chemetron Investments, and Sunbeam for Protective Order for Confidential Documents.

Please return one file-stamped copy of the pleading to the messenger for return to me. This pleading is being served this date on all parties and participants of record in this proceeding.

Also enclosed please find a sealed envelope containing confidential documents to be reviewed in camera by the Presiding Officer in this proceeding (once he/she has been appointed). This envelope should **not** be filed in the public docket. Nor should it be opened or disclosed to anyone except the Presiding Officer.

Please call me at (202) 434-5451 if you have any questions.

Respectfully,

Heidi K. Hubbard

Heidi K. Hubbard

Enclosures

cc (w/motion encl.): Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Michael A. Brown, Esq.
Ralph A. Weber, Esq.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**MOTION BY RESPONDENTS CHEMETRON, CHEMETRON INVESTMENTS, AND SUNBEAM FOR PROTECTIVE ORDER FOR CONFIDENTIAL DOCUMENTS**

Pursuant to 16 C.F.R. §§ 1025.31(d) and 1025.45, Respondents Chemetron Corporation, Chemetron Investments, Inc. and Sunbeam Corporation (collectively herein, "Respondents"), through undersigned counsel, hereby move for a protective order to protect from disclosure the confidential documents being submitted *in camera* herewith. Without disclosing details that would compromise

the confidentiality of the documents, Respondents provide the following description of the documents at issue and the nature of the claim for protection:

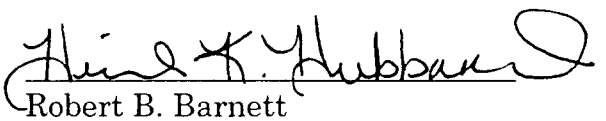
**1. Claims lists involving Chemetron Fire Systems products, including some of the "Star" line of fire sprinkler products.** These documents have been numbered RESP-001968-001975, 003172-003189, 003328-003236, 003237-003245, 003246-003260, 003261-003284, 003285-003296, 003297-003311, 003312-003318, 003319-003343, 003344-003350, 0033351-003352, 003353-003354. These lists are compilations of confidential commercial information of a kind that would customarily not be released to the general public. See, e.g., 5 U.S.C. § 552(b)(4). Moreover, disclosure of the lists would constitute a clearly unwarranted invasion of personal privacy because the lists may contain personal confidential information, such as social security numbers, pertaining to some of the claimants. Cf. 5 U.S.C. § 552(b)(6). The lists make no specific mention of the Star ME-1 and thus do not necessarily contain *any* information responsive to the discovery requests, let alone relevant to the Star ME-1 sprinklers at issue in this proceeding. (Because they appear to refer to some "Star" products, they have been identified as *potentially* responsive only in an abundance of caution.)

**2. Exhibit G to Grunau stock purchase agreement, which lists employees and their social security numbers.** This document has been numbered RESP-002948-002949. The disclose of personal information about employees, such as their social security numbers, would constitute a clearly unwarranted invasion of personal privacy. Cf. 5 U.S.C. § 552(b)(6).

*  *  *  *  *

Given that the foregoing documents have limited, if any, relevance to this proceeding, and given their confidential commercial and/or personal nature, Respondents respectfully request that these documents be protected from disclosure.

Respectfully submitted,




Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of DC Bar)
WILLIAMS & CONNOLLY LLP
725 – 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*


Dated: January 22, 2002

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

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|---|---|---|
| In the matter of | ) | |
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| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**ORDER**

UPON CONSIDERATION of the Motion by Respondents Chemetron, Chemetron Investments, and Sunbeam for Protective Order for Confidential Documents, and upon in camera review of the documents that are the subject of the Motion, and it appearing that good cause exists to grant the Motion, it is this ___ day of _____, 2002, hereby

ORDERED that the Motion be and hereby is GRANTED; and it is

FURTHER ORDERED that the documents identified in the Motion shall be kept confidential and protected from disclosure to the other parties herein and to the general public.

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing upon all parties and participants of record in these proceedings on this 22nd day of January, 2002, by hand-delivery on:

Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Heidi K. Hubbard

LBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S SUPPLEMENTAL ANSWERS TO RESPONDENTS' (CHEMETRON CORPORATION, CHEMETRON INVESTMENTS, INC., AND SUNBEAM CORPORATION) SECOND SET OF INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel supplements its Answers to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Second Set of Interrogatories.

Where current Commission employees are identified in the answers, the present business address of each such employee is as follows, unless otherwise stated: U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

GENERAL OBJECTIONS

Complaint Counsel incorporates by reference the General Objections it noted in its Answers to Respondents' (Chemetron, Corp. Chemetron Investments. Inc. and Sunbeam Corporation) Second Interrogatories

INTERROGATORIES AND ANSWERS

Interrogatory No. 124: Describe in detail the factual basis for your estimate that Chemetron Corporation manufactured 200,000 Star ME-1's between 1977 through 1982.

Objections: See Complaint Counsel's Second General Objection relating to confidential information.

Answer: The estimate was based on an extrapolation from data showing the annual production of Star ME-1's from 1989 through 1995, also taking into account a Grucon estimate of Star ME-1 sprinklers manufactured from 1983 to 1996 and an unconfirmed estimate in the press release announcing the Mealane recall of the number of sprinklers produced between 1961 and 1976.

Complaint Counsel received unit sales data from Tyco, Intl. showing the yearly sales of Star ME-1 sprinklers from 1989 through 1998. Tyco has claimed confidentiality for that information. Once those confidentiality claims are resolved in accordance with the procedures the parties have adopted, we will provide the documentation to Respondents. To arrive at an average number of sprinklers manufactured per year, Seth Popkin divided the total number of sprinklers produced annually between 1989 and 1995 by the number of years in that period. Mr. Popkin did not include production figures for 1996 to 1998 because there was a significant drop

off in the production of Star ME-1 sprinklers after Grinnell acquired the assets of Star Sprinkler Corporation. Mr. Popkin arrived at the estimate of 200,000 sprinklers by multiplying the average number of sprinklers manufactured annually between 1989 and 1995 by the number of years that Chemetron manufactured Star ME-1 sprinklers.

In arriving at his estimate, Mr. Popkin considered the statement contained in a joint press release that the Commission issued with the Mealane Corp. announcing the recall of the Star ME-I sprinkler and its predecessors that, between 1961 and 1976, Mealane manufactured approximately 1 million dry sprinklers. There was no documentation to support this figure, and Mealane now contends that the actual number produced is substantially lower. Mr. Popkin did not use this figure in preparing his estimate because of the lack of documentation and the fact that it would result in yearly production figures that were substantially higher than those supported by the documentation that Tyco provided. Mr. Popkin also considered an undocumented statement that Grucon provided indicating its belief that Grucon's Star subsidiary produced 200,000 Star ME-1 sprinklers from 1983 to 1996, but did not factor it into his estimate because the figure was inconsistent with the production data that Tyco provided covering years in which the Grucon Star subsidiary was in operation.

Interrogatory No. 132: Were any of the Star ME-1's tested by or on behalf of you altered by paint on the nozzle or sprinkler heads? If so, fully explain how this factor was taken into account when testing the sprinkler heads and determining their failure rates.

Objections: See Complaint Counsel's General Objections. The interrogatory is vague because the meaning of the term "altered by paint on the nozzle or sprinkler head" is not clear.

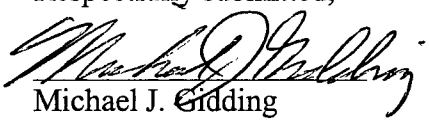
Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: To the best of Complaint Counsel's knowledge, no, assuming that the term "altered" refers to the application of paint after the sprinkler was sold in a manner that

would affect the operation of the sprinkler. See CPSC Star documents 007690 through 007747, 008201 through 008214, 008221 through 008226, 008271 through 008277, 008292 through 008297, 008305 through 008318, 009877 through 009893, 010007 through 010012, and 010022 through 010039 which contain observations by US Naval Academy personnel of the physical characteristics of the sprinklers tested.

Interrogatory No.133: Do you or those testing Star ME-1's on your behalf consider the prior maintenance history of the Star ME-1's tested? If so, describe in detail how the prior maintenance history of the Star ME-1's was considered when conducting the testing. If not, describe in detail why you did not consider the prior maintenance history of the Star ME-1's when conducting testing.

Answer: No. The pressure testing protocol (previously produced) did not call for consideration of the prior "maintenance history"of the Star ME-1's when conducting the testing. The information was not relevant to conducting the pressure testing because the purpose of that testing was to determine whether and at what pressures the sprinklers would activate.

Respectfully submitted,



Michael J. Gidding
Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on March26, 2002, I served the attached Complaint Counsel's Supplemental Answers to Respondents' (Chemetron Corporation, Chemetron Investments, Inc. and Sunbeam Corporation) Second Set of Interrogatories upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th St., NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S SUPPLEMENTAL RESPONSE TO RESPONDENTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, FIRST SET OF INTERROGATORIES, AND SECOND SET OF INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel provides this supplemental response to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) First Request for Production of Documents and Things, First Set of Interrogatories, and Second Set of Interrogatories.

A sizeable portion of the enclosed documents constitute supporting data and related information from the U.S. Naval Academy, based on testing of Star ME-1 sprinkler samples (see,

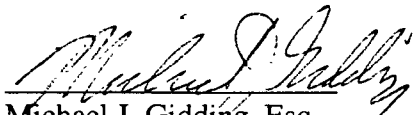
e.g., Request No. 26, Interrogatory Nos. 49, 64, and elabeled document 018582-018938; and 020087-91), which were inadvertently omitted from earlier document productions, as well as additional chain of custody information on Star ME-1 sprinkler samples (see, e.g., Interrogatory No. 138, and elabeled documents 019837-020056; 020086). Also enclosed are documents relating to Raley's supermarket (elabeled documents 017739-830) and to the Commission's Fast Track Recall Program (see, e.g., Request No. 8 and elabeled documents 018522-57). In addition, enclosed elabeled documents 019695-836 relate to installers of Star ME-1's, sites at which Star ME-1's have been installed, Egoville & Associates, and Star ME-1 recalls and recall requests (see, e.g., Interrogatory Nos. 40, 61, and 62, and Request Nos. 82 and 83). The enclosed documents elabeled 020092-93 concern the 7 psi standard for fire sprinkler discharge (see Interrogatory No. 50). An Assignment Report instructing CPSC investigators to collect samples of the Star ME-1, as well as documents concerning a Star ME-1 that was obtained by the Santa Clara County Fire Department (see, e.g., Interrogatory Nos. 6, 11, 40, 57, 58, 60, 61) are enclosed in the documents elabeled 020102, 020143-44, 020148-50, and 020313. The document elabeled 020291 is a copy of a public notice issued by Star Sprinkler Corporation circa 1990-1991 (see, e.g., Interrogatory Nos. 6 and 11). The document elabeled 020312 is a listing of Mealane Corporation as a participant in CPSC's Voluntary Corrective Action Plans under section 15 of the Consumer Product Safety Act (see, e.g., Request No. 82).

Finally, enclosed are various documents constituting part of the CPSC administrative file on this matter, see Request No. 5, including the following: (1) various documents relating to Underwriters Laboratories and Factory Mutual (elabeled documents 017354-59, 017380-417, 017442-44, 019692-94, 020104-06, 020197-208, 020210-22, and 020255-56); (2) news items (elabeled documents 006254, 014450-51, 017352-53, 018513-20); (3) legal pleadings (elabeled

documents 001867, 008850-59, 018470-512, 020154-96, and 020226-54); (4) documents relating to communications with parties and nonparties regarding waivers of previous confidentiality claims or requests (elabeled documents 019636-91); (5) CPSC staff requests for "Product Safety Assessments" (PSAs) concerning corporate histories for both sets of Respondents (elabeled documents 020076-82, and 020333; the responsive PSAs are listed in the privilege log that was provided); (6) a sprinkler pressure testing protocol that predates the protocol used in testing of Star ME-1s (elabeled document 020084); and (7) publicly available records containing corporate history information related to Grucon Corporation (elabeled documents 020107-34, and 020339-48).

We anticipate producing further documents in the very near future as such issues as additional third party confidentiality requests are resolved. To the degree that there are pages missing in any of the elabeled ranges listed above due to privilege or work-product protection issues (and not outstanding third party confidentiality claims), we anticipate filing shortly, if necessary, an updated privilege log that will account for them.

Respectfully submitted,



Michael J. Gidding, Esq.
Andrea S. Paterson, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

## CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2002, I served the foregoing supplemental response and copies of the documents being produced upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

and by overnight mail, postage prepaid, to:

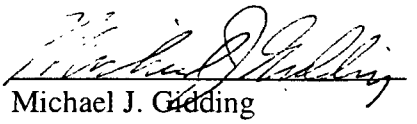
Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

I also hereby certify that on March 22, 2002, I served only the foregoing supplemental response upon the following counsel for the parties of record in these proceedings, by facsimile and first class mail, postage prepaid, on:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

and by first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036



Michael J. Gidding

Todd A Stevenson, Secretary
Consumer Product Safety Commission Office of the Secretary
4340 East West Highway, Room502
Bethesda, MD 20814/ Wahington, DC 20207

**US Consumer Product Safety Commission**

# Fax

**To:** 1. Robert Barnett, Heidi Hubbard, Karyn Temple / Williams & Connolly 202-434-5029

2. Michael Brown, Margaret Freeston Brown & Freeston 202-237-5259

3. Ralph Weber, Kurt Dykstra / Reinhart, Boerner, Ban Deuren, Norris & Reiselbach 414-298-8097

4. Barbara Wrubel, Bert Wolff / Skadden, Arps, Slate, Meager & Flom 917-777-2314

5. Michael Gidding, CPSC 301-504-0008

**From:** Todd Stevenson, Secretary
Office of the Secretary

**Fax:**

**Pages:** 8

**Phone:** 301-504-0800, fax 301-504-0127

**Date:** 03/18/02

**Re:** In the Matter of Chemetron Corporation, et.al. CPSC Docket No. 02-1, Orders on Motions to Revise Scheduling Order and to Hold Open Discovery, March 18, 2002

- **Comments:** Original copies of the Order will follow.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

March 18, 2002

BY REGULAR MAIL AND FACSIMILE
Mr. Todd Stevenson
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, Maryland 20814

Re: In the Matter of Chemetron Corporation, et al.
CPSC Docket No. 02-1

Dear Mr. Stevenson:

Enclosed is my Order, which was also sent via facsimile to you this date. Please transmit this Order via facsimile to all parties.

Sincerely,

William B. Moran

William B. Moran
United States Administrative Law Judge

Enclosure

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | CPSC Docket No. : 02-1 |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
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| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

## ORDERS ON MOTIONS TO REVISE SCHEDULING ORDER AND TO HOLD OPEN DISCOVERY

### I. THE PARTIES' JOINT MOTION FOR RECONSIDERATION OF SCHEDULING ORDER AND REVISED SCHEDULING ORDER

On February 26, 2002 the parties filed a Joint Motion for the Court's reconsideration of its scheduling order ("Joint Motion") together with a revised scheduling order for the Court to adopt. The parties submit that the "complexity and unusual posture of this case" warrant an extension beyond the 150 days anticipated by under 16 C.F.R. § 1025.31(g). Three reasons are advanced in support of the Joint Motion: 1. the absence of the active participation by the judge until February 20, 2002; 2. the many claims of confidentiality asserted by Respondents and by third parties; and 3. the "need to promote the efficient and effective use of the Court's and the parties' discovery resources." Joint Motion at 2.

In support of these reasons, Counsel for the Consumer Product Safety Commission (CPSC) relates that the Commission has a practice of conducting only limited investigations prior to the filing of a complaint. It advises that the CPSC staff has little more than a prima facie case at the time a complaint is filed and consequently it anticipates that the record will be more fully developed during discovery. Similarly, the motion relates that Respondents have no formal pre-complaint discovery tools.[1] The import of these points is that both sides rely heavily on discovery. Despite these pre-complaint limitations, the parties acknowledge that the 150 days provided for discovery to take place is usually sufficient. However, they urge that the exceptional circumstances, listed above, warrant an extension of an additional 100 days *after* May 1, 2002, which is the date planned to hold the first prehearing conference. Under such an approach discovery effectively would be extended by another 150 days.[2]

Elaborating upon these arguments, the parties point out that the judge is supposed to hold a prehearing conference[3] within fifty days of the publication of the Complaint in the Federal Register and that a one of the primary purposes of this conference is "to address such issues as the scope and nature of discovery." *Id.* at 5. Thus the judicial oversight attendant to the prehearing conference ensures that "pre-trial activities proceed in an orderly and fair manner." The motion notes that the court's critical role in this objective is underscored by the fact that the procedural rules "do not even permit the scheduling of oral testimony by deposition until after the pre-hearing conference" has occurred. *Id.* The parties also relate that the "numerous, outstanding third party confidentiality ... claims..." add to the complexity of the case and that these claims will require the Court's aid, if the parties are unable to resolve them. Last, the parties urge that discovery proceed to allow the Court's resolution of dispositive motions involving jurisdiction and corporate liability, asserting that these motions cannot be presented until they have had the opportunity to use "the full range of discovery tools." *Id.* at 8.

One unfamiliar with this litigation might have the impression that the discovery process has been immobilized by the delay in the paperwork associated with the appointment of this court to preside in the case. However that has not been the case at all. The parties have already exchanged thousands of pages of documents and, as they acknowledge, they were able to resolve extensions for time to file discovery objections and responses, for the time to respond to complaint, for time extensions, on two occasions, to respond to interrogatories and for the production of documents and they were able to

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[1]The Court is unaware of any formal pre-complaint discovery process in any civil litigation process.

[2]As proposed, the parties would have until approximately August 10, 2002 to complete discovery. Even with that schedule, the parties proposal does not even plan *to schedule* a date for a hearing until October 30, 2002 which would be a year and three weeks after the filing of the complaint.

[3]A telephone conference call, held to address issues preliminary to the first prehearing conference, occurred between the Court and the parties on February 20, 2002.

formulate a joint motion to adopt a confidentiality stipulation[4] and, at least at the time of the February 20, 2002 conference call, to resolve whether CPSC had adequately responded to interrogatories and document production requests. Despite these observations, the Court notes that the parties correctly point out that depositions are typically taken, upon leave of the Court, after the first prehearing conference[5]. 16 C.F.R. § 1025.35(a). Ultimately, when the arguments presented are considered together with the fact that the parties are jointly seeking such reconsideration, the Court agrees that the scheduling order should be revised.

However, the proposed discovery schedule and deadlines is unacceptable. Given that the first prehearing conference is ordinarily anticipated within 50 days after the Complaint is published in the Federal Register and that depositions ordinarily are envisioned to occur after that, the Court will extend the time for completion of all discovery until August 9, 2002. The deadline for preliminary dispositive motions for summary decision will be May 31st with other dispositive motions filed by August 23rd. By September 30, 2002 the parties shall submit, as identified at 16 C.F.R. § 1025.21(a), a statement regarding: the identification, simplification and clarification of the issues; stipulations and admissions of fact and of the content and authenticity of documents; matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and consumer product rules; establishment of a schedule for the exchange of final witness lists, prepared testimony and documents. To the extent other details set forth in the parties' proposed discovery schedule and deadlines are not addressed in this Order, the parties are directed to confer and develop an agreed upon schedule for those particulars which is consistent with deadlines set in this Order and to submit the revised schedule to the Court by April 2, 2002. Due to uncertainties with United States mail delivery, in addition to the service requirements set forth at 16 C.F.R. § 1025.16, the parties also are directed to file all motions with the Court via facsimile or by a next-day service delivery provider.

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[4]It is the Court's recollection that it orally granted the Joint Motion to Adopt Confidentiality Stipulation during the February 20, 2002 conference call. **In any event, today's Order formally adopts the Parties Confidentiality Stipulation.**

[5]In the Court's view, the provision, described as "*When depositions may be taken*," does not necessarily prohibit an order prior to the first prehearing conference, when considered with the "broad discretion ... vested in the Presiding Officer ... to allow ... alter[ing] time limitations and other procedural aspects of a case..." 16 C.F.R. §1025.1. When coupled with the Court's authority, under 16 C.F.R. § 1025.42, "to avoid unnecessary delay in the disposition of proceedings" it would appear that there is no absolute barrier to permitting depositions earlier particularly where much discovery has occurred prior to the prehearing conference.

**II. Respondents' motion to hold discovery open until a discovery schedule has been established and renewed motion to hold discovery open and for related relief.**

On February 14, 2002, Respondents Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation filed a Motion to hold discovery open until a discovery schedule has been established. The same respondents filed a renewed motion to hold open discovery on March 7th. As these motions already have been addressed in this Order, no further discussion is necessary.

**So Ordered.**

William B. Moran

William B. Moran
United States Administrative Law Judge

Dated: March 18, 2002

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2002, I served the attached **Orders On Motions To Revise Scheduling Order And To Hold Open Discovery** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

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Maria Whiting-Beale
Legal Staff Assistant

Dated: March 18, 2002

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S THIRD SUPPLEMENTAL RESPONSE TO RESPONDENTS' (CHEMETRON, CHEMETRON INVESTMENTS AND SUNBEAM CORPORATION) FIRST INTERROGATORIES**

Pursuant to 16 C.F.R. 1025.32(d), Complaint Counsel supplements those of its responses to Respondents' First Set of Interrogatories in which Complaint Counsel, as part of its responses, directed Respondents to see documents to be produced, excluding documents as to which

confidentiality claims had been made. For each applicable interrogatory, Complaint Counsel has listed the document number ranges in the same order as the documents that were produced.

INTERROGATORIES AND SUPPLEMENTAL ANSWERS

Interrogatory No. 1: State the reasons for the CPSC's authorization of, and decision to initiate, the instant adjudicative proceeding against the Respondents.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 000002 – 000090, 000096 – 000106, 007628 – 007636, 000113 – 000196, and 008844 – 008849. The basis for the staff's recommendation to the Commission that it issue the Complaint in this proceeding is also set out in the Recommendation for Issuance of an Administrative Complaint, dated September 6, 2001 (see privilege log), and in the staff's September 14, 2001 memorandum to the Commission, responding to Michael A. Brown's September 6, 2001 letter to the Commission (see privilege log).

Interrogatory No. 3: Identify all communications and documents (including internal memoranda and correspondence) relating to the CPSC's decision to initiate the instant adjudicative proceeding against the Respondents.

Answer: See answer to Interrogatory No. 1.

Interrogatory No. 6: Describe in detail any investigation by the CPSC relating to complaints and/or reports of personal injury, death, property damage, non-activation, or any other problems allegedly associated with Star ME-1 fire sprinklers. Your response should include, without limitation, the following:

(a) the identity by name, address, title, and job description of any and all persons employed and/or retained by the CPSC who participated in the investigation;

(b) the identity by name and address of any persons making complaints or reports with whom the CPSC communicated in connection with the investigation;

(c) the identity by name and address of any persons who complained of or reported an incident regarding Star ME-1 fire sprinklers;

(d) the identification of any questionnaires or other surveys used by the CPSC in conducting the investigation; and

(e) the identification of any and all data, reports, survey results, or other information revealing the results of the investigations.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 008925 – 009096, 007645 – 007777, 007785 – 007805, 008201 – 008226, 008271 – 008277, 008292 – 008297, 008305 – 008318, 009876 – 009893, 010006 – 010017, 010022 – 010039, 007179 – 007187, 007953 – 007960, 008385 – 008389, 007927 – 007928, and 019633 – 019635.

Interrogatory No. 7: Identify and describe any and all incidents known to the CPSC in which any person has reported a fire in connection with Star ME-1 fire sprinklers. For each such incident, state the following:

(a) the name and address of the reporting person;

(b) the location of the fire;

(c) the date of the incident involving the fire;

(d) a description of all property damage, if any, allegedly caused by or associated with the fire;

(e) a description of all personal injuries, if any, allegedly sustained as a result of or associated with the fire; and

(f) the manufacturer and the distributor of the Star ME-1 fire sprinklers involved.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 007179 – 007187, 007953 – 007960, and 007991 – 007994.

Interrogatory No. 8: To the extent not already identified in response to Interrogatory Nos. 6-7, identify and describe any and all incidents known to the CPSC in which any person has reported any form of property damage or personal injury in connection with Star ME-1 fire sprinklers. For each such incident, state the following:

(a) the name and address of the reporting person;

(b) the location of the fire;

(c) the date of the incident involving the fire;

(d) a description of all property damage, if any, allegedly caused by or associated with the fire;

(e) a description of any and all personal injuries, if any, allegedly sustained as a result of or associated with the fire; and

(f) the manufacturer and the distributor of the Star ME-1 fire sprinklers involved.

Answer: See answer to Interrogatory No. 7.

Interrogatory No. 11: Identify each and every person whom Complainant knows and/or believes to have knowledge or information concerning or related to the subject matter of the Complaint or other discoverable information. For each such person, include the following:

(a) the person's name;

(b) the person's last known home and business addresses;

(c) the person's last known telephone number;

(d) the person's employer, or business, or government affiliation;

(e) whether the Complainant has contacted such person; and

(f) the specific subject matter of the person's knowledge.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 009179 – 009180, 009182 – 009184, 008925 – 009096, 007645 –007777, 007785 – 007805, 008164 – 008173, 008176 – 008179, 008183, 008188 – 008191, 008201 – 008226, 008271 –

008277, 008305 – 008318, 008376, 008411 – 008415, 009876 – 009893, 010006 – 010017, 010022 – 010039, 019631 – 019632, 003149 – 003606, 003608 – 003664, 001752 – 001863, 004878, 004859 – 004863, 004894 – 004899, 005773 – 005776, 005786 – 005808, 007931 – 007934, 008413, 008417, 008558 – 008562, 008369 – 008371, 008398 – 008399, 008401 – 008402, 008404, 009850 – 009853, 008367 – 008368, 005767 – 005768, 005770 – 005772, 008405 – 008406, 008542 – 008547, 008811 – 008830, 008361 – 008363, 005777 – 005778, 008364 – 008366, 007179 – 007187, 007953 – 007960, 007991 – 007994, 008385 – 008389, 007927 – 007928, 008861 – 008891, 008548 – 008557, 008892 – 008924, 008422 – 008427, 008383 – 008384, 008407, 005779 – 005785, 007929 – 007930, 008419, 008536 – 008541, 014878 – 014888, 014892 – 014943, 014864 – 014866, 014858 – 014863, 014867 – 014877, 008418, 004864 – 004877, 004879 – 004893, 004900 – 005009, and 005432 – 005444.

Interrogatory No. 15: Describe the CPSC's preliminary determination of the alleged risks associated with Star ME-1 fire sprinklers. Your response should include, without limitation, the following:

(a) the date the CPSC Staff issued its preliminary determination of the alleged risks associated with Star ME-1 fire sprinklers;

(b) the identity of all persons involved in the Staff's preliminary determination;

(c) the level of hazard assigned to Star ME-1 fire sprinklers in accordance with the applicable provisions of the CPSC Recall Handbook; and

(d) an identification of all data, studies, reports, and/or testing upon which the CPSC relied in making its preliminary determination.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 007645 –007777, 007785 – 007805, 008201 – 008226, 008271 – 008277, 008292 –

008297, 008292 – 008297, 008305 – 008318, 009876 – 009893, 010006 – 010017, 010022 – 010039, 005549 – 005657, 019633 – 019635, and 000002 – 000090.

Interrogatory No. 16: Describe in detail any and all measures taken by the CPSC to determine the severity of the risk allegedly associated with Star ME-1 fire sprinklers, including, without limitation:

(a) a description of how the CPSC measures the severity of the risk allegedly associated with Star ME-1 fire sprinklers;

(b) a statement of whether the measurement employed by the CPSC incorporates, considers, or is in any way adjusted to reflect the number of products in use and the frequency of the use of Star ME-1 fire sprinklers;

(c) a description of all efforts taken by the CPSC to measure the severity of the risk or probability of injury allegedly associated with Star ME-1 fire sprinklers; and

(d) an identification of all data, studies, and reports that quantify or otherwise provide an assessment of the risk or probability of injury allegedly associated with Star ME-1 fire sprinklers.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 019172 – 019315, 019338 – 019516, and 000002 – 000090.

Interrogatory No. 40: Identify each and every location known to you in which Star ME-1 fire sprinklers manufactured by Chemetron have ever been used and/or placed. For each location:

(a) state the exact address of the location;

(b) describe the type of location (e.g., cold storage facility, warehouse, loading dock, parking garage, etc.);

(c) identify the owner of the location;

(d) identify the exact model, size, temperature rating, and installation position of the Star ME-1 fire sprinkler used and/or placed therein; and

(e) identify the manufacturer, distributor, and seller of the Star ME-1 used and/or placed therein.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 019549 – 019579, 019580 – 019603, and 008925 – 009096.

Interrogatory No. 49: With respect to the statement in the November 30, 2000 letter (attached hereto) from Seth B. Popkin of the CPSC to David H. Baker that "we have collected pressure test results on post-1976 Star ME-1's. The tests determined whether or not sprinklers activated, and if so, the pressures at which they activated":

(a) identify the date and location of each such test;

(b) describe in detail how each such test was conducted and the results of each such test;

(c) identify by name, address, title and qualifications the person(s) conducting the tests;

(d) identify by name, address, title and qualifications the person(s) interpreting the test results;

(e) identify the location where each Star ME-1 fire sprinkler tested had been or was installed;

(f) describe the type of location where each Star ME-1 fire sprinkler tested had been or was installed (e.g., cold storage facility, warehouse, loading dock, parking garage, etc.);

(g) identify the owner of the location where each Star ME-1 fire sprinkler tested was installed;

(h) identify the manufacturer of each Star ME-1 fire sprinkler that was tested;

(i) fully describe the visual appearance and condition of each Star ME-1 fire sprinkler tested (including any abnormalities, corrosion, etc.);

(j) fully describe the complete maintenance and service history of each Star ME-1 fire sprinkler tested; and

(k) state whether the tested sprinklers were preserved and, if so, their current location and custodian.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 009179 – 009180, 009182 – 009184, 007645 –007777, 007785 – 007805, 008201 – 008226, 008271 – 008277, 008292 – 008297, 008305 – 008318, 008396 – 008297, 009876 – 009893, 010006 – 010017, 010022 – 010039, and 019633 – 019635. With regard to subpart (k), all samples of Star ME-1 fire sprinklers are currently stored in sample room 3 at the Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

Interrogatory No. 56: With respect to the allegation in Paragraph 6 of the Complaint that, "[b]y virtue of the Asset Purchase Agreement and Sunbeam's stock and assets acquisition of CC and CI, Sunbeam assumed CC's and CI's liabilities for the Star ME-1 relief sought herein":

(a) set forth in detail the factual basis for this allegation;

(b) identify each and every document that describes, evidences, refers, or relates in any way to this allegation;

(c) identify each and every person whom Complainant knows and/or believes to have knowledge of this allegation; and

(d) describe in detail the substance of each such person's knowledge and/or information.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 003149 – 003606, 000002 – 000090, 000113 – 000196, 000199 – 000710, and 000712 – 001156.

Interrogatory No. 57: With respect to the allegation in Paragraph 10 of the Complaint that "[e]ach of the Respondents was and/or is a 'manufacturer'":

(a) set forth in detail the factual basis for this allegation with respect -- separately and specifically -- to each Respondent;

(b) identify each and every document that describes, evidences, refers, or relates in any way to this allegation;

(c) identify each and every person whom Complainant knows and/or believes to have knowledge of this allegation; and

(d) describe in detail the substance of each such person's knowledge and/or information.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 008925 – 009096, 010667 – 010781, 014760 – 014773, 003149 – 003606, 003608 – 003664, 000002 – 000090, 000096 – 000106, 000113 – 000196, 000199 – 000710, 008458 – 008459, 008487 – 008508, and 003149 – 003606. With regard to subpart (b) as it relates to Sunbeam Corporation, see answer to Interrogatory No. 56.

Interrogatory No. 59: With respect to the allegation in Paragraph 10 of the Complaint that "each of the Respondents was and/or is" a "distributor":

(a) set forth in detail the factual basis for this allegation with respect -- separately and specifically -- to each Respondent;

(b) identify each and every document that describes, evidences, refers, or relates in any way to this allegation;

(c) identify each and every person whom Complainant knows and/or believes to have knowledge of this allegation; and

(d) describe in detail the substance of each such person's knowledge and/or information.

Answer: See answer to Interrogatory No. 57.

Interrogatory No. 60: With respect to the allegation in Paragraph 12 of the Complaint that the Star ME-1 fire sprinkler is a "consumer product" that was "distributed in commerce" "as those terms are defined in ... 15 U.S.C. § 2052(a)(1), (11)":

(a) set forth in detail any and all facts and law that you contend support this allegation;

(b) identify each and every document that describes, evidences, refers, or relates in any way to this allegation;

(c) identify each and every person whom Complainant knows and/or believes to have knowledge of this allegation; and

(d) describe in detail the substance of each such person's knowledge and/or information.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 009179 – 009180, 009182 – 009184, 007645 –007777, 007785 – 007805, 008201 – 008226, 008271 – 008277, 008292 – 008297, 008305 – 008318, 008376, 008379 – 008382, 008396 – 008297, 008411 – 008415, 009876 – 009893, 010006 – 010017, 010022 – 010039, 005773 – 005776, 005786 – 005808, 007931 – 007934, 008413, 008417, 008558 – 008562, 008369 – 008371, 008398 – 008399, 008401 – 008402, 008404, 009850 – 009853, 005728, 008367 – 008368, 005767 – 005768, 005770 – 005772, 008405 – 008406, 008811 – 008830, 008361 – 008363, 005777 – 005778, 008200, 008364 – 008366, 007179 – 007187, 007953 – 007960, 007991 – 007994, 008385 – 008389, 007927 – 007928, 008548 – 008557, 008422 – 008427, 008407, 008416, 005779 – 005785, 008419, 008536 – 008541, 014892 – 014943, 014864 – 014866, 014858 – 014863, 014867 – 014877, 019172 – 019315, 019633 – 019635, 000002 – 000090, 000096 – 000106, 000110 – 000112, 000113 – 000196, 008437 – 008439, 008458 – 008459, 008467 – 008471, and 008477.

Interrogatory No. 61: With respect to the allegation in Paragraph 12 of the Complaint that the Star ME-1 fire sprinkler is "an article produced and distributed for the personal use, consumption, and/or enjoyment of a consumer in or around a household or residence, in recreation, or otherwise":

(a) set forth in detail the factual basis for this allegation;

(b) describe in detail any and all ways in which you contend that consumers have used, consumed, and/or enjoyed Star ME-1 fire sprinklers;

(c) identify each and every document that describes, evidences, refers, or relates in any way to this allegation;

(d) identify each and every person whom Complainant knows and/or believes to have knowledge of this allegation; and

(e) describe in detail the substance of each such person's knowledge and/or information.

Answer: See answer to Interrogatory No. 60.

Interrogatory No. 62: With respect to the allegation in Paragraph 12 of the Complaint that Star ME-1 fire sprinklers are "used in, among other places, day care centers, nursing homes, and health care facilities":

(a) set forth in detail the factual basis for this allegation;

(b) identify by name and address each and every day care center in which you contend that Star ME-1 sprinklers have been used, identify the manufacturer of the sprinklers used in each center, describe in detail the type of sprinklers used in each center, and identify the locations within the center where the sprinklers were used;

(c) identify by name and address each and every nursing home in which you contend that Star ME-1 sprinklers have been used, identify the manufacturer of the sprinklers used in each nursing home, describe in detail the type of sprinklers used in each nursing home, and identify the locations within the nursing home where the sprinklers were used;

(d) identify by name and address each and every health care facility in which you contend that Star ME-1 sprinklers have been used, identify the manufacturer of the sprinklers used in each health care facility, describe in detail the type of sprinklers used in each health care facility, and identify the locations within the health care facility where the sprinklers were used;

(e) identify each and every document that describes, evidences, refers, or relates in any way to this allegation;

(f) identify each and every person whom Complainant knows and/or believes to have knowledge of this allegation; and

(g) describe in detail the substance of each such person's knowledge and/or information.

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC Star 009179 – 009180, 009182 – 009184, 007645 –007777, 007785 – 007805, 008201 – 008226, 008271 – 008277, 008292 – 008297, 008305 – 008318, 008376, 008379 – 008382, 008396 – 008297, 008411 – 008415, 009876 – 009893, 010006 – 010017, 010022 – 010039,005773 – 005776, 005786 – 005808, 007931 – 007934, 008413, 008417, 008420 – 008421, 008558 – 008562, 008369 – 008371, 008398 – 008399, 008401 – 008402, 008404, 009850 – 009853, 008367 – 008368, 005767 – 005768, 005770 – 005772, 008405 – 008406, 008542 – 008547, 008811 – 008830, 008361 – 008363, 005777 – 005778, 008200, 008364 – 008366, 007179 – 007187, 007953 – 007960, 007991 – 007994, 008385 – 008389, 008861 – 008891, 008548 – 008557, 008892 – 008924, 008407, 008416, 005779 – 005785, 007929 – 007930, 008419, 008536 – 008541, 014892 – 014943, 014864 – 014866, 014858 – 014863, and 014867 – 014877.

Interrogatory No. 85: Identify and describe any and all testing of Star ME-1 fire sprinklers conducted by or on behalf of the CPSC, including:

(a) a description of any testing protocols used by the CPSC in testing Star ME-1 fire sprinklers;

(b) the identity of the person(s) who created or established any such testing protocols;

(c) a description of the methodology employed during each and every test of Star ME-1 fire sprinklers;

(d) a description of any industry standards to which the Star ME-1 fire sprinklers were tested and/or compared (e.g. 7 psi, etc.), and the date on which the standard was adopted, came into effect, and/or was generally accepted within the industry;

(e) the date and location of each and every test of Star ME-1 fire sprinklers;

(f) an identification of the person(s) who conducted, participated in, or were otherwise present during each test of Star ME-1 fire sprinklers;

(g) a description of the results of each and every test of Star ME-1 fire sprinklers;

(h) the identification of any and all documents (including videotapes and audiotapes) relating to any testing of Star ME-1 fire sprinklers;

(i) whether tested sprinklers were preserved and, if so, the current location and custodian;

(j) an identification of the manufacturer of the Star ME-1 sprinkler being tested; and

(k) if the sprinkler had previously been installed, the location where it was installed (including address, owner and type of location).

Answer: Notwithstanding and without waiving any objections raised in Complaint Counsel's initial answers, or in any supplements thereto, see the documents numbered CPSC 019336 – 019337 and 005549 – 005657. With regard to the rest of this interrogatory, see answer to Interrogatory No. 49.

Interrogatory No. 88: For each test of Star ME-1 fire sprinklers conducted by the CPSC, describe in detail the condition and age of the specific Star ME-1 fire sprinklers used in the test. Your response should include, without limitation, the following:

(a) an identification of each specific Star ME-1 fire sprinkler by model number or other distinguishing identification;

(b) an identification of the manufacturer of the Star ME-1 fire sprinkler being tested;

(c) a description of how and when the CPSC obtained each specific Star ME-1 fire sprinkler used in the testing;

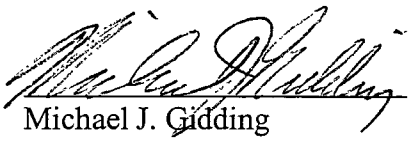
(d) a description of the condition of each specific Star ME-1 fire sprinkler used in the testing;

(e) a statement of the age of each specific Star ME-1 fire sprinkler used in the testing; and

(f) a statement of whether the CPSC has retained and, if so, the current location and custodian of each specific Star ME-1 fire sprinkler used in the testing.

Answer: See answer to Interrogatory No. 49.

Respectfully submitted,



Michael J. Gidding
Office of Compliance
U.S. Consumer Product
Safety Commission
4330 East West Highway
Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1344

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2002, I served the foregoing upon the following counsel for the parties of record in these proceedings, by hand-delivery on:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Karyn A. Temple, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

by overnight mail, postage prepaid, to:

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

by facsimile and first class mail, postage prepaid, on:

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

and by first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Anthony Murawski

SBP

LAW OFFICES
WILLIAMS & CONNOLLY LLP
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WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

KARYN A. TEMPLE
(202) 434-5347
ktemple@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

March 8, 2002

RECEIVED
CPSC
OFFICE OF COMPLIANCE
2002 MAR 11 AM 9:18

**By Facsimile & Federal Express**

Michael J. Gidding, Esq.
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

**Re: CPSC Docket No.: 02-1**
*In the matter of Chemetron Corp., et al.*

Dear Mike:

Today we identified one additional document responsive to Complaint Counsel's First Set of Interrogatories and First Request for Production of Documents, the enclosed Document No. 003363-003369, which is responsive to Interrogatory No. 27 and Document Request No. 13.

Sincerely,

Karyn A. Temple

Enclosures

cc: Seth B. Popkin (w/encl.)
Michael A. Brown, Esq.
Ralph A. Weber, Esq.

NATIONAL AUTOMATIC SPRINKLER & FIRE CONTROL ASSOCIATION, INC.

HILL CORPORATE PARK • ROUTE 22 - P.O. BOX 1000 • PATTERSON, N.Y. 12563 • (914) 878-4200

July 8, 1982

TO: MANUFACTURERS' COUNCIL
Robert Gray, Chairman
Bernhard Bischoff
Clifford Dolan
Frank J. Fee, III
William Lawton
Raymond Malek
Charles Miner
Robert Worthington
Russell P. Fleming, Secretary

Copy HML. RCTS. RG. FJF.

See 1980 for comparison.*

SUBJECT: 1982 STATISTICAL SUMMARY REPORT
File No. 404

See OFS report 4th Q.

tlemen:

Attached is a copy of your Annual Statistical Summary Report for 1981.

With kindest regards,

Edward J. Reilly
President

RECEIVED
AUG 19 1982
FIRE SYSTEMS

EJR:el
encls.

cc: Norman Ney

* R Gibbs has same

NATIONAL AUTOMATIC SPRINKLER AND FIRE CONTROL ASSOCIATION, INC

# STATISTICAL SUMMARY REPORT

## 1981

Products not offered by CFS

| | | 1 Qtr. | 2 Qtr. | 3 Qtr. | 4 Qtr. | Totals |
|---|---|---|---|---|---|---|
| 1.0 | SPRINKLER HEADS SHIPPED (in thousands) | | | | | |
| 1.1 | Total Domestic | 2,593 | 3,124 | 3,089 | 3,200 | 12,006 |
| 1.2 | Total Export | 465 | 579 | 485 | 575 | 2,104 |
| 1.3 | TOTAL HEADS SHIPPED | 3,058 | 3,703 | 3,574 | 3,775 | 14,110 |
| 2.0 | SPRINKLER HEADS BY TYPE (Domestic and Export in thousands) | | | | | |
| 2.1 | Std. Upr. or Pen. | 2,543 | 2,958 | 2,736 | 2,879 | 11,116 |
| 2.2 | Dry Pend.& Upright | 27 | 22 | 23 | 25 | 97 |
| 2.3 | Flush, Recessed and Concealed | 377 | 394 | 448 | 522 | 1,741 |
| 2.4 | Sidewall | 121 | 139 | 133 | 139 | 532 |
| 2.5 | All Other | 177 | 183 | 234 | 210 | 804 |
| 2.6 | TOTAL HEADS | 3,245 | 3,696 | 3,574 | 3,775 | 14,290 |
| 2.7 | % Glass Bulb in Total | 4.6 | 4.0 | 3.8 | 1.1 | 3.3 |
| 3.0 | SPRINKLER HEADS BY THREAD SIZE (Standard, upright and pendent in thousands) | | | | | |
| 3.1 | 1/2" | 2,312 | 2,649 | 2,566 | 2,429 | 9,956 |
| 3.2 | 3/4" | 508 | 621 | 554 | 663 | 2,346 |
| 3.3 | GRAND TOTAL | 2,820 | 3,270 | 3,120 | 3,092 | 12,302 |
| 4.0 | VALVES SHIPPED | | | | | |
| 4.1 | Total Domestic | 7,823 | 8,470 | 9,294 | 9,299 | 34,886 |
| 4.2 | Total Export | 1,283 | 1,481 | 1,405 | 1,664 | 5,833 |
| 4.3 | TOTAL VALVES SHIPPED | 9,106 | 9,951 | 10,699 | 10,963 | 40,719 |

Distributed Aug. 11, 1982

NATIONAL AUTOMATIC SPRINKLER AND FIRE CONTROL ASSOCIATION, INC

STATISTICAL SUMMARY REPORT

1981

| | | 1 Qtr. | 2 Qtr. | 3 Qtr. | 4 Qtr. | Totals |
|---|---|---|---|---|---|---|
| 5.0 | VALVES BY TYPE (Domestic & Foreign) | | | | | |
| 5.1 | Alarm | 4,411 | 5,093 | 4,855 | 4,896 | 19,255 |
| 5.2 | Dry | 1,670 | 1,685 | 1,819 | 2,012 | 7,186 |
| 5.3 | Deluge | 1,231 | 1,460 | 1,719 | 1,072 | 5,482 |
| 5.4 | Check | 1,785 | 1,682 | 2,306 | 2,983 | 8,756 |
| 5.5 | TOTAL VALVES | 9,097 | 9,920 | 10,699 | 10,963 | 40,679 |
| 5.6 | % Grooved End of Total | 18.4 | 19.5 | 34.4 | 27.7 | 25.4 |
| 6.0 | VALVES BY SIZE (not including check valves) | | | | | |
| 6.1 | 2-1/2" and under | 338 | 388 | 307 | 288 | 1,321 |
| 6.2 | 3" | 414 | 341 | 413 | 355 | 1,523 |
| 6.3 | 4" | 3,141 | 3,427 | 3,509 | 3,143 | 13,220 |
| 6.4 | 5" | 0 | 0 | 0 | 0 | 0 |
| 6.5 | 6" | 2,908 | 3,418 | 3,545 | 3,504 | 13,375 |
| 6.6 | 8" | 690 | 921 | 597 | 628 | 2,836 |
| 6.7 | over 8" | 0 | 0 | 0 | 0 | 0 |
| 6.8 | TOTAL | 7,491 | 8,495 | 8,371 | 7,918 | 32,275 |
| 7.0 | OTHER MECHANICAL DEVICES SHIPPPED UNDER YOUR NAME | | | | | |
| 7.1 | Water Motor Gong | 4,289 | 5,004 | 4,775 | 5,015 | 19,083 |
| 7.2 | Detector Check | 1,141 | 555 | 573 | 566 | 2,835 |
| 7.3 | Accel. & Exhstr. | 1,072 | 947 | 982 | 1,199 | 4,200 |
| 7.4 | Retards | 3,087 | 3,181 | 3,848 | 3,396 | 13,512 |
| 7.5 | Nozzles | 16,831 | 15,824 | 65,676 | 42,275 | 140,606 |
| 7.6 | Water Flow Indic. | 5,379 | 5,816 | 5,289 | 5,098 | 21,582 |
| 7.7 | TOTALS | 31,799 | 31,327 | 81,143 | 57,549 | 201,818 |
| 8.0 | VALUE OF SHIPMENTS - FOREIGN AND DOMESTIC SPRINKLER DEVICES (in thousands) | | | | | |
| 8.1 | Total $ Volume shipped (in thousands) | 13,806 | 16,202 | 16,955 | 16,065 | 63,028 |
| 8.2 | Percent (%) of above volume shipped to foreign customers | 19.7 | 19.6 | 17.3 | 21.1 | 19.4 |

RESP003365

8/11/82

NAS & FFCA STATISTICAL SUMMARY REPORT
MANUFACTURERS' HISTORICAL INPUT FORM

Instructions:

1. Follow detailed instructions for each line item as explained in the enclosed guide for data entry.
2. Do not include the name of your company on this input form.
3. Mail this form to: Norman Ney, Ney & Willens, 200 W . 57th Street, New York, New York 10019. Mark the envelope "PERSONAL & CONFIDENTIAL."
4. Include device quantities and $ shipped for your internal contracting.

QUARTERLY INPUT DATA - 1981

| | | 4th QUARTER 1981 |
|---|---|---|
| 1.0 | SPRINKLER HEADS SHIPPED (in thousands) | |
| 1.1 | Total Domestic | 208 |
| 1.2 | Export | 52 |
| 1.3. | Total Heads Shipped | 260 |
| 2.0 | SPRINKLER HEADS BY TYPE (Domestic & Foreign in thousands) | |
| 2.1 | Standard Upright or Pendant | 112 |
| 2.2 | Dry Pendant & Upright | 1 |
| 2.3 | F, R & C | 68 |
| 2.4 | Sidewall | 10 |
| 2.5 | All Other | 69 |
| 2.6 | Total Heads | 260 |
| 2.7 | % Glass Bulb in Total | 0 |
| 3.0 | SPRINKLER HEADS BY SIZE (Standard, upright and pendant in thousands) | |
| 3.1 | 1/2" | 240 |
| 3.2 | 3/4" | 12 |



RESP003366

4.0 VALVES SHIPPED

| | | 4th QUARTER 1981 |
|---|---|---|
| 4.1 | Total Domestic | 443 |
| 4.2 | Export | 78 |
| 4.3 | Total Valves Shipped | 521 |

4.7%

5.0 VALVES BY TYPE (Domestic and Foreign)

| | | |
|---|---|---|
| 5.1 | Alarm | 225 |
| 5.2 | Dry | 81 |
| 5.3 | Deluge | 43 |
| 5.4 | Check | 172 |
| 5.5 | Total Valves | 521 |
| 5.6 | % Grooved End | 0 |

6.0 VALVES BY SIZE - Not Including Check Valves

| | | |
|---|---|---|
| 6.1 | 2-1/2" and under | 0 |
| 6.2 | 3" | 52 |
| 6.3 | 4" | 87 |
| 6.4 | 5" | 0 |
| 6.5 | 6" | 150 |
| 6.6 | 8" | 16 |
| 6.7 | Over 8" | 0 |
| 6.8 | Total | 349 |



RESP003367

7.0 OTHER MECHANICAL DEVICES SHIPPED UNDER YOUR NAME

| | | 4th QUARTER 1981 |
|---|---|---|
| 7.1 | Water Motor Gong | 179 |
| 7.2 | Detector Check | 0 |
| 7.3 | Accelerators & Exhausters | 43 |
| 7.4 | Retards | 165 |
| 7.5 | Nozzles | 6000 4.3% |
| 7.6 | Water Flow Indicators | 323 |

8.0 VALUE OF SHIPMENTS - Foreign and Domestic Sprinkler Devices (in thousands)

| | | |
|---|---|---|
| 8.1 | Total $000 Volume Shipped | 1076 1.7% |
| 8.2 | Percent (%) of above volume shipped to foreign customers | 15% |

SPECIAL ITEMS ASKED FOR ON LAST REPORT (CROSS OUT IF YOU ANSWERED LAST TIME)

| | | 1 Q 80 | 2 Q 80 | 3 Q 80 | 4 Q 80 | Total |
|---|---|---|---|---|---|---|
| 1. | Glass Bulb % of Total | 0 | 0 | 0 | 0 | 0 |

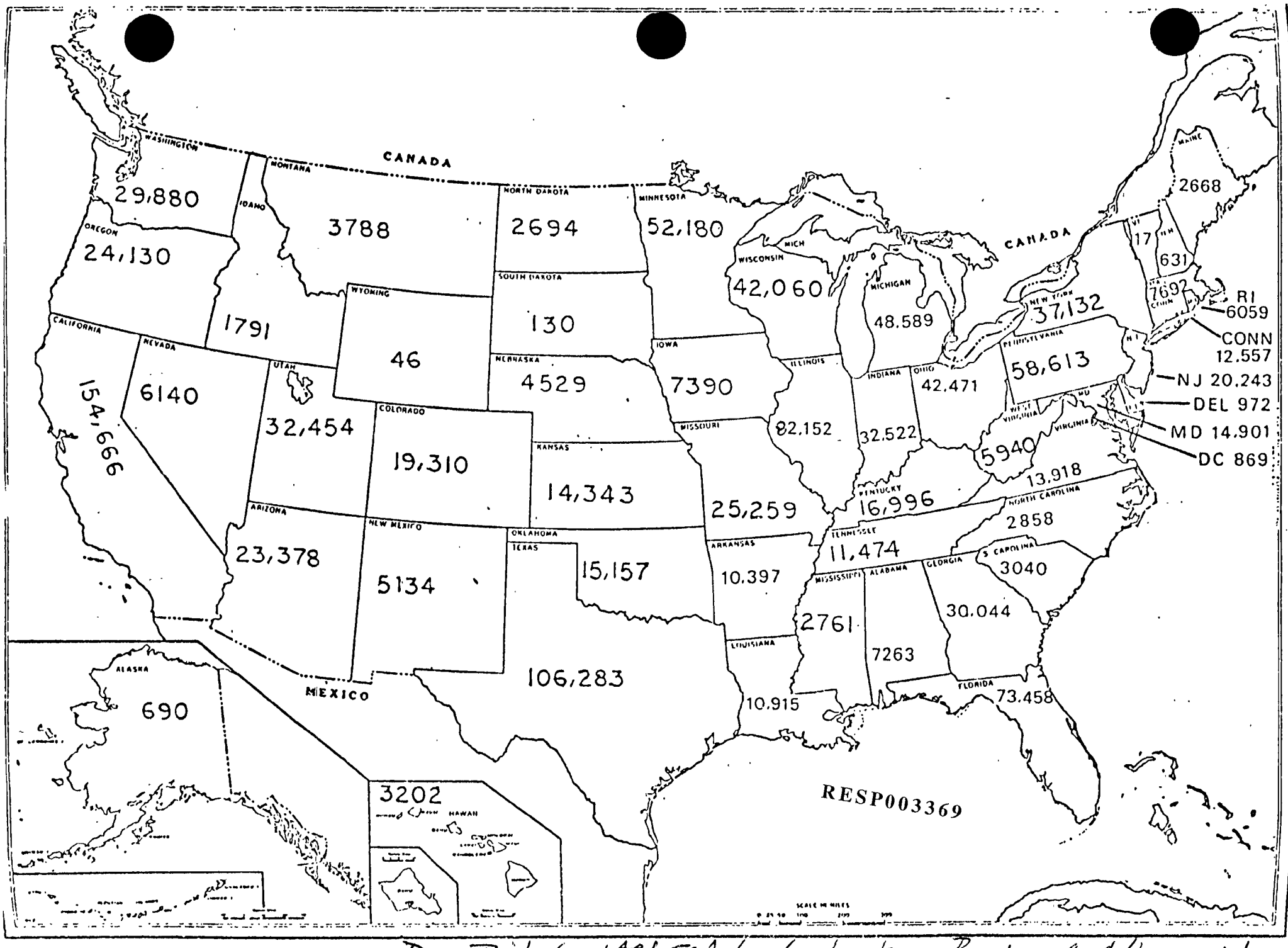
| | | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 |
|---|---|---|---|---|---|---|---|
| 2. | Heads Shipped | Records Not Available | | | | | |

3. Types of heads reported as "all other" list by name:

- Large and Small Orifice Heads
- Conventional Heads.



RESP003368


CANADA
WASHINGTON
29,880
MONTANA
3788
NORTH DAKOTA
2694
MINNESOTA
52,180
OREGON
24,130
IDAHO
1791
WYOMING
46
SOUTH DAKOTA
130
CALIFORNIA
154,666
NEVADA
6140
UTAH
32,454
COLORADO
19,310
NEBRASKA
4529
IOWA
7390
MISSOURI
82,152
KANSAS
14,343
ARIZONA
23,378
NEW MEXICO
5134
OKLAHOMA
25,259
TEXAS
106,283
ARKANSAS
10.397
LOUISIANA
10.915
MEXICO
ALASKA
690
HAWAII
3202
WISCONSIN
42,060
MICH
MICHIGAN
48.589
CANADA
INDIANA
ILLINOIS
32.522
OHIO
42.471
KENTUCKY
16,996
TENNESSEE
11,474
MISSISSIPPI
2761
ALABAMA
7263
GEORGIA
30.044
FLORIDA
73.458
S CAROLINA
3040
NORTH CAROLINA
2858
VIRGINIA
5940
WEST VIRGINIA
PENNSYLVANIA
58,613
NEW YORK
37,132
MD
DEL
NJ
CONN
RI
VT
NH
MAINE
2668
17
631
769
6059
12.557
20.243
972
14.901
869
13,918
RESP003369
SCALE IN MILES

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**CHEMETRON AND SUNBEAM RESPONDENTS' RENEWED MOTION TO HOLD DISCOVERY OPEN AND FOR RELATED RELIEF**

For the purpose of trying to secure adequate notice of, and reasonable opportunity to respond to, the allegations against them, Respondents Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation (collectively herein, "Respondents") hereby renew their Motion to Hold Discovery Open (filed February 14, 2002) and request related relief as set forth herein. In support of this motion, Respondents state:

## I. TO DATE, RESPONDENTS HAVE BEEN DENIED ACCESS TO MUCH OF THE EVIDENCE THAT FORMS THE BASIS OF THE ALLEGATIONS AGAINST THEM.

To obtain basic due process, Respondents are dependent on full and complete discovery from Complaint Counsel. As Complaint Counsel has conceded in its discovery responses, Respondent Sunbeam Corporation has never made the Star ME-1 sprinklers at issue in this proceeding. See Complaint Counsel's Answers to Respondents' First Set of Interrogatories (filed Jan. 22, 2002), Resp. No. 19. As for the Chemetron Respondents, Complaint Counsel alleges that some Chemetron entity made the sprinklers from approximately 1976 to 1982 – i.e., over 20 years ago. See id. at Resp. No. 17. It is undisputed that a Chemetron entity had divested the "Star" line of products – including the Star ME-1 – by 1983 and has had no involvement with any kind of fire sprinklers since that date. See Exh. A, Bill of Sale dated Nov. 9, 1983. Books and records pertaining to the Star line apparently were transferred to the new owner. See id. *Consequently, Respondents have almost no documents about the Star ME-1 fire sprinklers,*[1] *and they have no employees who were involved with those sprinklers or who have knowledge about their design, manufacture, and sale.* Respondents, therefore, require full and complete discovery from Complaint Counsel to understand and respond to the allegations against them; and due process requires nothing less. See Williston Basin Interstate Pipeline Co. v. Fed. Energy Regulatory Comm'n, 165 F.3d 54, 63 (D.C. Cir. 1999) ("It is well-established that a party is entitled . . . to be apprised of the factual material on

[1] Respondents have produced to Complaint Counsel the tiny handful of documents they found about the Star line of products.

the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.") (quotation and brackets omitted); see also Greene v. McElroy, 360 U.S. 474, 496 (1959) ("Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."); Mitchell v. Espy, 845 F. Supp. 1474, 1498 (D. Kan. 1994) (finding that agency violated plaintiff's due process rights when it failed to disclose all relevant evidence during the administrative process).

As set forth in (1) Respondents' Renewed Motion to Compel (filed concurrently herewith), (2) the parties' Joint Motion for Reconsideration of Scheduling Order (filed February 26, 2002), and (3) Respondents' Motion to Hold Discovery Open (filed February 14, 2002), which was agreed to by Complaint Counsel, Respondents have yet to be provided with information and documents that are responsive to their discovery requests and that form the basis of the allegations against them. The foregoing motions, which are incorporated herein by reference, set forth in detail this problem and will not be repeated here. To give just one example (out of many): In Complaint Counsel's List and Summary of Documentary Evidence Supporting the Charges, see 16 C.F.R. § 1025.11(b)(3) (2001), Complaint Counsel identified, as evidence supporting the charges:

> 9. Star ME-1 test results and records including, but not limited to, those of Underwriters Laboratories, Inc. ["UL"], Factory Mutual Research Corporation ["FM"], the United States Naval Academy, and Grinnell Corporation ["Grinnell"] showing model, manufacture date, test date, activation and nonactivation, pressures of activation and nonactivation, and origin sites of tested sprinklers. . . .

Complaint Counsel has yet to produce the evidence from UL, FM and Grinnell – i.e., three of the four entities conducting the testing – because of assertions of confidentiality by the testers. See Exh. B, Ltr. from S. Popkin to H. Hubbard dated Jan. 30, 2002. Thus, Respondents have been denied the opportunity to review this data – a predicate to being able to respond to it through expert evidence and/or by seeking additional discovery.

## II. REASONABLE RESPONSE TIME IS REQUIRED ONCE THE EVIDENCE HAS BEEN PROVIDED.

Complaint Counsel has promised to provide the withheld documents and information once third-party confidentiality assertions have been resolved. Production of the withheld evidence would, of course, be only the first step to affording Respondents adequate notice of, and a reasonable opportunity to respond to, the evidence against them.

**A. Adequate Review Time.** Given the anticipated volume of documents,[2] Respondents expect that it will take some time to review the documents and to seek expert assistance in analyzing the technical (e.g., design, engineering, testing) aspects of the documents.

[2] See Exh. B, Ltr. from S. Popkin to H. Hubbard dated Jan. 30, 2002 (listing numerous groups of documents withheld on confidentiality grounds).

**B. Follow-up Discovery.** Moreover, additional discovery may be appropriate – e.g., to seek clarification of information reflected in the documents, and/or to seek additional materials referred to in the documents.

**C. Identification of Experts.** In addition, Respondents cannot, of course, locate and identify experts to respond to the evidence against them until they have been provided with all of that evidence.

**D. Depositions.** All parties have agreed that depositions may be needed in this complex proceeding. Of course, the adjudicative rules permit depositions only upon leave of the Presiding Officer after the first prehearing conference (which will not occur in this proceeding until May 1 – long after the March 8 date that this Court has set for the close of discovery). See 16 C.F.R. 1025.35 (2001). Even if the first prehearing conference had already occurred, however, requests for leave to take depositions would be premature. Until all of the documentary evidence is produced, any deposition questioning would be based on partial information, at best, and Respondents would likely need to re-depose the witnesses once the withheld evidence had been produced. For example, a deposition now about testing of these sprinklers would have to be conducted in the absence of data from three of the four entities conducting the testing.

## III. ALL PARTIES AGREE THAT MORE TIME IS NEEDED.

All parties – including Complaint Counsel – have agreed that the specific circumstances of this proceeding warrant an extension of the discovery schedule. See Joint Motion for Reconsideration of Scheduling Order (filed Feb. 26, 2002) (incorporated herein by reference).

## IV. NO GOOD CAUSE EXISTS TO RUSH THIS PROCEEDING.

As noted in Part I supra, the Star ME-1 sprinklers allegedly made by a Chemetron entity were sold over 20 years ago. Complaint Counsel has produced no information showing that in that entire 20+ years there have been any fires in which a Star ME-1 sprinkler made by Chemetron failed to operate. Thus, Complaint Counsel has acknowledged that there have been no deaths and no injuries attributable to any failure of a Star ME-1. See Complaint Counsel's Answers to Respondents' First Set of Interrogatories (filed Jan. 22, 2002), Resp. No. 71.

Moreover, although some manufacturers have conducted recalls of fire sprinklers (usually at the urging of Commission Staff), *not all fire sprinklers are alike,* even if one assumes – while recognizing that the issue has never been litigated – that recall was appropriate in the other situations. For example, the Central Sprinkler proceeding, CPSC Docket No. 98-2, involved mostly "wet" fire sprinklers, an entirely different type from the Star ME-1 "dry" pendent fire sprinklers at issue here. Dry pendent fire sprinklers are uniquely designed for very cold, unheated or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing. See Respondent Sunbeam Corporation's Responses to Complaint Counsel's First Set of Interrogatories to Respondent Sunbeam (filed Jan. 22, 2001), Resp. No. 15. And even Star ME-1s are not all alike. The Commission's Staff has made a lower preliminary hazard assessment for the Star ME-1s at issue here than it made for the Star ME-1s made by the Mealane Corporation. Compare Complaint Counsel's Supplemental Answers to Respondents'

First Set of Interrogatories (filed Feb. 13, 2002), Resp. No. 15(b) (preliminary hazard assessment for Star ME-1s allegedly made by Respondents was "B") with id. at Resp. No. 95 (preliminary hazard assessment for Mealane Star ME-1s was "A"). Thus, prior remedial action concerning other fire sprinklers cannot justify rushing this proceeding at the expense of Respondents' right to adequate notice of, and a reasonable opportunity to respond to, the evidence against them – i.e., their right to basic due process.

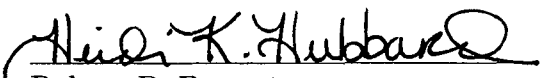
## CONCLUSION

For the foregoing reasons, Respondents respectfully request the following relief:

1. That discovery in this proceeding be held open pending Respondents' receipt of, and adequate time to review, full and complete discovery responses from Complaint Counsel, including the information and documents currently being withheld because of confidentiality assertions.

2. That a new discovery schedule be established that affords Respondents the opportunity to take additional discovery, seek leave to take depositions, and name experts, after Respondents have been provided with complete discovery responses.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of the DC Bar)
WILLIAMS & CONNOLLY LLP
725 – 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*

Dated: March 7, 2001

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**ORDER**

UPON CONSIDERATION of Chemetron and Sunbeam Respondents' Renewed Motion to Hold Discovery Open and for Related Relief, any opposition thereto, and any arguments of counsel, and there being good cause shown to grant the Motion, it is this ___ day of _____, 2002 hereby

ORDERED that the Motion be and hereby is GRANTED; and it is

FURTHER ORDERED that discovery in this matter shall be held open and a new discovery schedule shall be established after third-party confidentiality

assertions have been resolved and Complaint Counsel has provided complete responses to Respondents' discovery requests; and it is

FURTHER ORDERED that the new discovery schedule will afford Respondents the opportunity to take additional discovery, seek leave to take depositions, and name experts, after they have been provided with complete discovery responses.

_____

Presiding Officer

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing upon all parties and participants of record in these proceedings on this 7th day of March, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Heidi K. Hubbard

# BILL OF SALE

THIS BILL OF SALE made this 9th day of November, 1983, by Chemetron Fire Systems, Inc., a Delaware corporation (herein called "Seller"), to Grunau Sprinkler Manufacturing Company, Inc., a Wisconsin corporation (herein called "Buyer");

W I T N E S S E T H :

WHEREAS, Buyer and Seller have entered into a Purchase and Sale Agreement dated November 9, 1983 whereby Seller has agreed to transfer to Buyer the business and certain assets of Seller relating to Seller's line of fire suppression equipment comprised of sprinkler heads, valves and accessories thereto which Seller has heretofore sold under the "Star" trade name (references hereinafter to "Star Products" shall refer, as the context may require, to said product line and/or the products in that product line), in exchange for consideration and upon the terms and conditions set forth in said Purchase and Sale Agreement;

NOW, THEREFORE, subject to the representations, warranties, covenants and agreements and on the terms set forth in the Purchase and Sale Agreement, Seller does hereby transfer, assign, sell, convey and deliver to Buyer, its successors and assigns the business of Seller with respect to the Star Products, along with the following assets owned by Seller:

A. the inventories related to the Star Products of raw materials, work in process and finished goods owned by Seller on the date hereof, wherever located, including inventory located at its Granite Quarry, North Carolina and Monee, Illinois facilities, and at the warehouse located at 519 West Central Park Avenue, Anaheim, California;

B. the machinery and equipment listed on the attached Exhibit A hereto, and all tools, dies, fixtures, patterns and jigs owned by Seller relating to manufacture of the Star Products, wherever located, including at the Granite Quarry and Monee, Illinois facilities of Seller or located with vendors to the Seller;

C. the patents, trademarks and trade names listed on the attached Exhibit B hereto; and

D. all models, records, drawings, tracings, customer lists, files, data and the like owned by Seller relating to the design, manufacture, sale and

service of Star Products, including but not limited to: sales, advertising and technical materials and literature, price sheets, catalogs, operation manuals, specification sheets and films, slides, display stands, artwork and printing plates, engineering specifications, production drawings, part drawings, tool drawings, plans, designs and blueprints.

TO HAVE AND TO HOLD such property and assets forever.

Seller hereby agrees that it will at any time and from time to time at the request of Buyer execute and deliver to Buyer any and all such instruments as Buyer may reasonably request for the purpose of vesting in Buyer the full right, title and interest of Seller in and to such property and assets intended to be conveyed and transferred hereby.

IN WITNESS WHEREOF, Seller has caused these presents to be signed in its name as of the day and year first above written.

CHEMETRON FIRE SYSTEMS, INC.

[CORPORATE SEAL]

By _____

'JTD-34/A8-9

**Exhibit B**

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Seth B. Popkin
Trial Attorney
Legal Division
Office of Compliance

Tel (301) 504-0626 ext 1358
Fax (301) 504-0359
Email: spopkin@cpsc.gov

January 30, 2002

Via Facsimile and Mail
(202) 434-5029

Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005

Re: In the Matter of Chemetron Corporation, et al., CPSC Docket No. 02-1

Dear Ms. Hubbard:

I am writing in response to your letter dated January 25, 2002. We understand from your letter that the respondents Sunbeam Corporation, Chemetron Corporation, and Chemetron Investments, Inc. ("Respondents") have waived all of their previous assertions of confidentiality for documents provided by them to the CPSC to date. We also understand that the sole exception to these waivers is the set of documents you provided in a sealed envelope to the Presiding Officer as referenced in the motion for protective order these respondents filed and served January 22, 2002.

In your letter, you requested a listing or other specific identification of the documents we have had to withhold on confidentiality grounds. As you know from our conversations and from our written responses to the Respondents' discovery requests, we want to produce additional responsive documents, but many are subject to confidentiality requests restricting production. We need to afford the parties or third parties who have asserted confidentiality the opportunity to establish their trade secret or other confidentiality claims. For that reason, we are making additional efforts to secure waivers, or reductions in scope, of the confidentiality claims. To the extent that parties or third parties do not waive their confidentiality claims following these further efforts, we will file motions for in camera review of such documents, for determinations of whether and to what extent the documents may be produced, and for the entry of an appropriate order.

In response to your request, the parties and third parties who have asserted confidentiality, and the categories of the documents we have had to withhold on confidentiality grounds, include the following:

1. **Kidde-Fenwal:** Trademark agreement and asset purchase agreement.

2. **Sprinkler Corporation of Milwaukee, Inc. (Sprinkler Company of Milwaukee, Inc.), f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Co., Inc.:** Meeting minutes and resolutions, tax returns, by-laws, repair/claims information, correspondence, and Grinnell and Star Sprinkler, Inc. internal memoranda.

3. **Grucon Corporation:** Corporate consent resolution and correspondence.

4. **Grunau Project Development, Inc.:** Engineering drawings, UL reports on sprinklers, correspondence, purchase agreement, sprinklers, and metallurgist reports with photographs.

5. **Grunau Company:** Potential overlap with 2 through 4 above.

6. **Star Sprinkler, Inc.; Grinnell Corporation; and Tyco:** Correspondence, internal company memoranda, Star ME-1 evaluation and testing information, engineering drawings, UL and FM documentation, and notes of company employees.

7. **Sunbelt Fire Protection, Inc.:** Written response to Commission staff subpoena served on this sprinkler installer.

8. **Fermi National Accelerator Laboratory:** Information on tested sprinkler from this site, and information on the site.

9. **Factory Mutual Research Corporation (FM):** Written response to, and documents produced in response to, Commission staff subpoena served on FM. These documents include correspondence, memoranda, testing records, engineering drawings, and other product information.

10. **Underwriters Laboratories (UL):** UL asserted confidentiality with respect to all documents and information it provided in response to Commission staff requests, except that UL has waived, or has not asserted, confidentiality for the following: (a) UL directories; and (b) documents and information that do not reference any specific UL subscriber (manufacturer) or subscriber's specific product (e.g., a specific sprinkler model) (e.g., this category would include documents referencing dry sprinklers generally or o-ring sprinklers generally, as well as documents describing UL sprinkler testing procedures). The documents as to which UL has continued to assert its confidentiality assertions include information and documents provided in response to Commission staff inquiries, including correspondence, memoranda, testing records, engineering drawings, and other product information.

11. **Central Sprinkler Company, Tyco Fire Products LP, Gem Sprinkler Company, Star Sprinkler, Inc., Grinnell Fire Protection, and Grinnell Corporation:** Documents relating to the 2001 Star ME-1 corrective action plan including correspondence, emails, engineering records, recall notices and drafts, and replacement sprinkler information.

12. **Mealane Corporation, INA, and Gary Egoville, Esq.:** Documents relating to the 1999 Star ME-1 recall. Complaint Counsel review regarding confidentiality pending.

If you should have any questions concerning the above information, please contact us.

Sincerely yours,

Seth B. Popkin

Michael A. Brown, Esq. (via telecopier and mail)
Ralph A. Weber, Esq. (via telecopier and mail)

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**CHEMETRON AND SUNBEAM RESPONDENTS' RENEWED MOTION TO COMPEL**

In light of this Court's decision to close discovery in this proceeding on March 8, 2002, Respondents Chemetron Corporation, Chemetron Investments, Inc. and Sunbeam Corporation (collectively herein, "Respondents"), as a protective measure, hereby renew their Motion to Compel (filed February 11, 2002) – particularly with respect to documents that Complaint Counsel has promised to

produce but has not yet produced because of assertions of confidentiality. In support of this renewed motion, Respondents state:

1. On November 20, 2001, Respondents served their First Set of Interrogatories and their First Request for Production of Documents on Complaint Counsel. Thereafter, Complaint Counsel requested an extension of time to respond, in part because of difficulties Complaint Counsel was encountering with respect to assertions of confidentiality by third parties concerning documents responsive to Respondents' discovery requests. Respondents agreed with Complaint Counsel to a mutual extension to January 22, 2002 of the deadline for outstanding discovery responses.

2. Complaint Counsel provided written responses to Respondents' first discovery requests on January 22, 2002, and produced some documents. Complaint Counsel stated in the written responses that numerous additional documents and information responsive to the discovery requests would be produced after Complaint Counsel had resolved issues related to assertions of confidentiality by the third parties from whom Complaint Counsel originally obtained the documents. Indeed, approximately 70 of Complaint Counsel's document responses and at least 40 of Complaint Counsel's interrogatory responses referred to documents and information being withheld on confidentiality grounds. See Complaint Counsel's Responses to Respondents' First Request for Production of Documents and Things (filed Jan. 22, 2002); Complaint Counsel's Answers to Respondents' First Set of Interrogatories (filed Jan. 22, 2002).

3. Counsel for Respondents wrote to Complaint Counsel on January 25, 2002, requesting identification of the documents being withheld on confidentiality grounds. See Exh. A, Ltr. from H. Hubbard to S. Popkin dated Jan. 25, 2002. In response, Complaint Counsel advised that at least 12 different groups of third parties had asserted confidentiality for documents in Complaint Counsel's possession that were responsive to the discovery requests in this matter. See Exh. B, Ltr. from S. Popkin to H. Hubbard dated Jan. 30, 2002. Complaint Counsel further advised that Complaint Counsel was trying to resolve these confidentiality issues with the third parties.

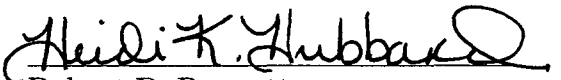
4. On February 11, 2002, Respondents moved to compel full and complete responses to their discovery requests. In that motion, Respondents identified a number of specific inadequacies with respect to the production that had been made. Most of those issues have been resolved through cooperation between the parties, and Complaint Counsel has promised certain action with respect to the other specific issues. Consequently, the remaining major issue with respect to Complaint Counsel's responses to Respondent's first discovery requests is the withholding of numerous relevant and responsive documents because of third-party confidentiality assertions that have not yet been resolved.

5. The information and documents withheld by Complaint Counsel on confidentiality grounds are relevant to – indeed, form the basis of – the allegations of Complaint Counsel against Respondents. Compare List and Summary of Documentary Evidence (list, but not evidence, filed with Complaint on

Oct. 9, 2001) with Exh. B, Ltr. from S. Popkin to H. Hubbard dated Jan. 30, 2002 (listing documents being withheld by Complaint Counsel on grounds of confidentiality). For example, the documents and information withheld by Complaint Counsel on confidentiality grounds include materials reflecting testing and other analyses of the sprinkler at issue in this proceeding. Consequently, Respondents need access to the documents and information in order to have adequate notice of the allegations against them and to be able to respond to those allegations, including by seeking additional discovery, naming appropriate experts, etc.

6. Respondents will be prejudiced if these documents are not produced to Respondents well in advance of the close of discovery – thereby allowing Respondents adequate opportunity to review the documents, to seek additional discovery with respect to information contained in the documents, and to obtain expert evaluation of the appropriate response to the information in the documents. Given the March 8, 2002 anticipated close of discovery, Respondents will be denied the foregoing adequate opportunity. Consequently, Respondents have joined with Complaint Counsel in a motion to extend the discovery schedule. See Joint Motion for Reconsideration of Scheduling Order (filed Feb. 26, 2002). As a protective measure, Respondents also hereby move to compel production of the documents and information still being withheld on confidentiality grounds.

Respectfully submitted,



Barbara Wrubel
Bert L. Wolff
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New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple (admitted only in NY;
supervision by the above attorneys,
members of the DC Bar)
WILLIAMS & CONNOLLY LLP
725 – 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation*

Dated: March 7, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing upon all parties and participants of record in these proceedings on this 7th day of March, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Seth B. Popkin, Esq.
Anthony Murawski, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Heidi K. Hubbard

**Exhibit A**

LAW OFFICES
WILLIAMS & CONNOLLY LLP
725 TWELFTH STREET, N.W.
WASHINGTON, D. C. 20005-5901
(202) 434-5000
FAX (202) 434-5029

HEIDI K. HUBBARD
(202) 434-5451
hhubbard@wc.com

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

January 25, 2002

**By Telecopy: 301/504-0359**
**and U.S. Mail**

Seth B. Popkin, Esq.
Office of Compliance
U.S. Consumer Product Safety Commission
4330 East-West Highway, Room 613
Bethesda, MD 20814

**Re: CPSC Docket No.: 02-1**
***In the Matter of Chemetron Corp., et al.***

Dear Seth:

In response to your inquiry of January 23, this letter will confirm that Sunbeam and the Chemetron entities, in the spirit of cooperation and for the purpose of facilitating a rapid resolution of confidentiality issues, have agreed not to assert confidentiality for documents provided by them to the CPSC to date, other than the documents provided in a sealed envelope to the Presiding Officer as described in their motion for a protective order filed January 22, 2002.

On a related subject, we have received your discovery responses, which indicate that numerous documents have been withheld on grounds of confidentiality. Your responses did not include any listing or other specific identification of the documents that are being withheld on confidentiality grounds. Please provide that information. I understand that you are working on setting up a conference call among all counsel for the purpose of discussing confidentiality. It would be helpful if you would provide in advance of that conference call a specific identification of each document that you are withholding on confidentiality grounds,

so that we can discuss in that call how to achieve the prompt resolution of confidentiality issues and production of those documents by Complaint Counsel.

Very truly yours,

Heidi K. Hubbard

cc: Michael A. Brown, Esq. (by telecopy)

**Exhibit B**

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Seth B. Popkin
Trial Attorney
Legal Division
Office of Compliance

Tel: (301) 504-0626 ext. 1358
Fax: (301) 504-0359
Email spopkin@cpsc.gov

January 30, 2002

Via Facsimile and Mail
(202) 434-5029

Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005

Re: In the Matter of Chemetron Corporation, et al., CPSC Docket No. 02-1

Dear Ms. Hubbard:

I am writing in response to your letter dated January 25, 2002. We understand from your letter that the respondents Sunbeam Corporation, Chemetron Corporation, and Chemetron Investments, Inc. ("Respondents") have waived all of their previous assertions of confidentiality for documents provided by them to the CPSC to date. We also understand that the sole exception to these waivers is the set of documents you provided in a sealed envelope to the Presiding Officer as referenced in the motion for protective order these respondents filed and served January 22, 2002.

In your letter, you requested a listing or other specific identification of the documents we have had to withhold on confidentiality grounds. As you know from our conversations and from our written responses to the Respondents' discovery requests, we want to produce additional responsive documents, but many are subject to confidentiality requests restricting production. We need to afford the parties or third parties who have asserted confidentiality the opportunity to establish their trade secret or other confidentiality claims. For that reason, we are making additional efforts to secure waivers, or reductions in scope, of the confidentiality claims. To the extent that parties or third parties do not waive their confidentiality claims following these further efforts, we will file motions for in camera review of such documents, for determinations of whether and to what extent the documents may be produced, and for the entry of an appropriate order.

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5. **Grunau Company:** Potential overlap with 2 through 4 above.

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12. **Mealane Corporation, INA, and Gary Egoville, Esq.:** Documents relating to the 1999 Star ME-1 recall. Complaint Counsel review regarding confidentiality pending.

If you should have any questions concerning the above information, please contact us.

Sincerely yours,

Seth B. Popkin

Michael A. Brown, Esq. (via telecopier and mail)
Ralph A. Weber, Esq. (via telecopier and mail)

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF INTERROGATORIES TO RESPONDENT**
**CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel hereby requests that Respondent Chemetron Investments, Inc. serve upon Complaint Counsel, within thirty (30) days, written answers, under oath, to each of the interrogatories set forth below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Requests for Production" shall mean Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Chemetron Investments, Inc. served upon the Respondents.

20. "Answer" shall mean the Answer and Defenses of Chemetron Investments, Inc. filed in this action.

## INSTRUCTIONS

A. Each interrogatory and every subpart thereof shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an interrogatory, that part shall be specified. An answer should not be supplied solely by reference to the answer to another interrogatory or subpart unless the answer is completely identical to the answer to which reference is made.

B. The answers shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete answer to a particular interrogatory is not possible after exercising the required diligence, the interrogatory shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial answer is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Identify each person who assisted or participated in preparing and/or supplying any of the information given in a response to or relied upon in preparing the answers to these interrogatories.

D. If precise information cannot be supplied in response to any interrogatory, an estimate (identified as such) and an explanation of the basis for the estimate shall be supplied.

E. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

F. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

G. The singular shall include the plural, and vice versa.

H. These interrogatories shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the

purpose of resolving any ambiguity. If any interrogatory cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

I. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

J. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

K. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

L. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or

blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

M. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

INTERROGATORIES

1. Identify all documents that support your answers to these Interrogatories, your responses to the Requests for Production, and/or upon which you rely and/or relied in responding to these Interrogatories and the Requests for Production.

2. State all facts in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

3. Identify all documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. Identify each person who you believe possesses any knowledge of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, and describe with specificity the knowledge of each such person concerning the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer.

5. Identify all persons who assisted in the preparation of, and/or who provided information or documents used in the preparation of, the responses to these Interrogatories and the responses to the Requests for Production.

6. Identify all persons who participated or assisted in producing the documents produced in response to these Interrogatories and the Requests for Production.

7. Since the date of your incorporation, have you had written document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

8. Since the date of your incorporation, have you had unwritten document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all of your unwritten document retention policies in effect since the date of your incorporation, and state the period of time each policy was in effect.

9. Since the date of your incorporation, have you had written policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

10. Since the date of your incorporation, have you had unwritten policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all such policies, state the period of time each policy was in effect.

11. Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, and for each such expert witness, state or provide the following information:

a) The subject matter on which the expert is expected to testify;

b) The substance of the facts and opinions to which the expert is expected to testify; and

c) A summary of the grounds for each opinion.

12. Identify each person whom you expect to call as a witness at the trial or hearing of this matter (other than those already identified in response to the immediately preceding interrogatory), and for each such witness, state or provide the following information:

a) The subject matter on which the witness is expected to testify; and

b) The substance of the facts to which the witness is expected to testify.

13. Identify each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users. As part of your answer, identify all communications you and/or other persons made and/or received relating to the following:

a) Problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's; and

b) Failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires and/or tests.

14. Identify all persons from whom you have obtained witness statements relating to the subject matter of this litigation, the Complaint, and the Answer, and all persons who have custody or possession of each such statement, as well as the date of each such statement and whether each such statement was written or oral.

15. Identify and describe in detail all operations, purposes, and uses of the Star ME-1.

16. Identify each person who manufactured the Star ME-1 and the place(s) at which each such person manufactured the Star ME-1. State the dates each such person manufactured the Star ME-1.

17. Identify all persons who participated in, had responsibility for, and/or had knowledge of any of the following relating to the Star ME-1, and for each such person, state their position and title at the time of their participation or responsibility and describe in detail the nature of their participation, activities, responsibilities, and/or knowledge:

a) Design and/or development;

b) Engineering;

c) Manufacture;

d) Testing; and

e) UL and/or FM approval process and/or listing process.

18. Identify and describe in detail the Star ME-1, all materials used therein, and all procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, the following:

a) Its design, materials, and component parts, including, but not limited to, the specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they

were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

19. For each change identified in your response to the immediately preceding interrogatory:

a) State the date of the change;

b) State all reasons for the change;

c) Identify all persons who participated in bringing about the change, and explain each person's role in same;

d) Identify all persons who implemented the change; and

e) State whether or not any tests were performed on the Star ME-1's before and/or after the change occurred. If so:

i) Describe all such tests and provide a detailed protocol;

ii) Identify the persons and entities who participated in setting up and/or conducting the tests;

iii) Describe and explain the results of the tests, including all observations and conclusions; and

iv) Identify all persons who participated in evaluating the test results.

20. Identify the manufacturer and supplier of each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1.

21. State the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same, and identify the manufacturer and supplier of each of the "O" rings contained in the Star ME-1.

22. Identify all industry and/or other standards, codes, requirements, and/or rules according to which the Star ME-1 was manufactured, including, but not limited to, UL and FM.

23. Identify all industry and/or other standards, codes, requirements, and/or rules applicable to the Star ME-1, including, but not limited to, UL and FM.

24. Were the Star ME-1's submitted for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM? If so, for each submission for approval, listing, and/or certification:

a) Identify the Star ME-1;

b) Identify the laboratory, institution, and/or other person to whom the Star ME-1 was submitted;

c) State the date of each submission;

d) Describe all steps taken to obtain approval, listing, and/or certification;

e) Identify all persons who made the submission, all persons involved in each step, and all persons having knowledge of the submission and the steps associated therewith;

f) Identify and describe all tests, examinations, evaluations, and analyses conducted with respect to the submission, and include in your answer the following:

i) The identity of each person having knowledge of same;

ii) The identity of each person setting up, conducting, evaluating, and/or witnessing same; and

iii) A detailed description and explanation of the results of same, including all findings, observations, and conclusions;

g) Identify each communication relating to the submission;

h) State the final result of and final response to the submission, and the date of the final result and/or response, including, but not limited to, whether or not the submission was approved, granted, denied, rejected, refused, and/or postponed. If the submission was denied, rejected, refused, and/or postponed, state all reasons for such action; and

i) State whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1. If so, identify the Star ME-1 or component part, state the date of and all reasons for such action, identify each person with knowledge of such action, and identify each communication relating to such action.

25. Identify each person who distributed and/or participated in the distribution of the Star ME-1, and state the dates each such person distributed and/or participated in the distribution of the Star ME-1. For each such person, identify each person to whom the Star ME-1 was distributed, the dates on which the Star ME-1 was distributed to that person, the quantity of Star

ME-1's distributed to each person, and the terms on which the Star ME-1 was distributed to each person (including, but not limited to, sale prices).

26. By manufacturer, state the total quantity of Star ME-1's manufactured in each year in which they were manufactured, and state the total quantity of Star ME-1's manufactured in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

27. By manufacturer, state the total quantity of Star ME-1's distributed in each year in which they were distributed, and state the total quantity of Star ME-1's distributed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

28. Identify each person who installed and/or participated in the installation of the Star ME-1, and state the dates each such person installed and/or participated in the installation of the Star ME-1.

29. State the total quantity of Star ME-1's installed in each year in which they were distributed, and state the total quantity of Star ME-1's installed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

30. Identify, and state the building type of (including, but not limited to, the building types listed in interrogatory 31), all buildings in which Star ME-1's have ever been installed, state the quantity ever installed in each such building, and state the quantity presently installed in each such building.

31. State the quantity of Star ME-1's ever installed in each of the following types of buildings:

a) Private homes;

b) Apartment buildings;

c) Public and private schools, including, but not limited to, universities, colleges, dormitories, and residential halls;

d) Nursing homes;

e) Hospitals and other healthcare facilities;

f) Detention facilities, including, but not limited to, prisons and jails;

g) Homeless shelters;

h) Facilities used for recreation, including, but not limited to, health clubs, gymnasiums, sports arenas, public pools, country clubs, and museums;

i) Hotels and motels; and

j) Day care centers.

32. State the quantity of Star ME-1's currently in your possession, custody, or control, and of those, state the quantity that have been removed from service, the quantity that have never been put in service, and the manufacture year of each one.

33. Identify and describe all actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, you and/or any other persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

34. Identify all persons with knowledge of and/or responsibility for all actions, steps, and/or procedures identified and described in response to the immediately preceding interrogatory.

35. Identify all tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, and for each Star ME-1 tested, examined, and/or analyzed:

a) Identify the Star ME-1;

b) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

c) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

d) Describe and explain the results of the tests, including all observations and conclusions; and

e) Identify all persons who participated in evaluating the test results.

36. State whether you or any other persons:

a) observed that;

b) alleged, reported, or otherwise communicated to you that they observed that; or

c) tested, examined, and/or analyzed to determine if:

any of the following conditions was present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems. If so, for each such Star ME-1 or component part thereof:

i) Identify the Star ME-1 and/or component part;

ii) Describe the circumstances of the conditions;

iii) Describe each observation, test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iv) Identify all persons who made the observations and/or communicated this information to you, and state the dates of all such observations and/or communications;

v) Identify all persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

vi) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions was present and the criteria by which it was determined whether the referenced conditions were present;

vii) State all reasons any of the referenced conditions was present;

viii) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

ix) Identify all communications relating to the observations, tests, examinations, and/or analyses.

37. State the effects each of the following conditions may have upon the operation, activation, and/or other performance of a Star ME-1, and state all facts, reasons, and bases for the effects you state:

a) Corrosion;

b) Accumulation of deposits;

c) Adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts;

d) Swelling of the "O" ring;

e) Lubricant deficiencies or problems;

f) Leakage; and

g) Component part interference or fit problems.

38. Explain in detail the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

39. In each of the Star ME-1's manufactured and installed, after the thermal sensing element or fusible link melts from fire or heat, does each Star ME-1 require water pressure to enable its component parts to properly move and open the sprinkler (to then enable water to properly discharge)? For each Star ME-1 requiring such water pressure:

a) State the minimum water pressure required (in psig) and the reasons that pressure is required;

b) State how the water pressure causes the Star ME-1's component parts to properly move and open the sprinkler; and

c) State all reasons the Star ME-1's component parts will not properly move and open the sprinkler without that pressure.

40. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's? If so, for each such alleged, reported, or communicated problem, flaw, defect, defective condition, and deficiency:

a) Identify the Star ME-1 or component part;

b) Describe it in detail and state the date;

c) Identify all persons having knowledge of it;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

41. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 or component part;

b) Describe it in detail, state the time and date, and state the cause and nature of the fire;

c) Identify the building and/or place at which it occurred;

d) State the sprinkler system pressure (in psig) at the site of it;

e) Identify all persons witnessing and/or having knowledge of it;

f) State the date on which you acquired knowledge of it;

g) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it;

h) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

i) State whether any persons sustained or allegedly sustained injury as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe each injury, and state how, where, and when the injury occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

j) State whether any persons died or allegedly died as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe the death, and state how, where, and when the death occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

k) State whether any property was damaged, destroyed, or lost, or allegedly damaged, destroyed, or lost, as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so:

i) Identify the property and the persons owning the property;

ii) Describe the damage, destruction, or loss, and state the value of the affected property;

iii) State how, where, and when the damage, destruction, or loss occurred; and

iv) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

l) State whether any police, fire, medical, emergency service, or other report was prepared related to the fire. If so, for each such report:

i) Identify the report, including its date;

ii) State the type of report;

iii) Identify the municipality, organization, and/or other persons by whom the report was prepared;

iv) State whether photographs and other documents, or statements, were obtained in connection with and/or made part of the report; and

v) State whether you have a copy of the report in your possession, custody, or control;

m) State whether any persons tested, examined, and/or analyzed any Star ME-1 or component part thereof that failed and/or partially failed in a fire, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 or component part thereof tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, including all observations and conclusions;

v) Identify all persons who participated in evaluating the test results; and

vi) Identify all communications related to it;

n) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it;

o) State all reasons the Star ME-1 failed and/or partially failed in the fire.

42. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests in which it occurred, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions; and

g) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

43. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element? If so, for each such alleged, reported, or communicated failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests or other circumstances in which it occurred, including the test protocol, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests or circumstances;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

g) State the pressure, if any, at which the Star ME-1 activated, or if it failed altogether to activate, state the highest pressure to which it was subjected;

h) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses;

vi) Identify all communications related to it; and

i) State all reasons for the presence of the referenced conditions.

44. Describe in detail the performance record and history of the Star ME-1, including, but not limited to, as applicable, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

45. Identify all Star ME-1's that properly operated and activated in a fire, including, but not limited to, the date and circumstances of the fire. Identify all persons having knowledge of this information.

46. State whether or not any Star ME-1's and/or any Star ME-1 component parts were delisted (by UL, FM, and/or any other person), recalled, discontinued, taken off the market, and/or the subject of a warning, advisory, safety, or similar notice to consumers, distributors, installers, governmental authorities, or other persons. If so, for each such action:

a) Identify the Star ME-1, state the quantity sought to be recalled, discontinued, taken off the market, and/or subject to notice, and the quantity actually recalled, discontinued, taken off the market, and/or subject to notice;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

47. State whether or not any Star ME-1's and/or any Star ME-1 component parts were returned, and/or were asked to be returned, to you and/or any manufacturer, supplier, distributor, installer, and/or other person. If so, for each such action:

a) Identify the Star ME-1, state the quantity asked to be returned, and state the quantity actually returned;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

48. Have you and/or any other persons replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers? If so, state the total

number of Star ME-1's replaced, according to manufacturer and model year, and for each Star ME-1 replaced:

a) Identify it and state the date it was replaced;

b) Identify the building and/or place at which it had been installed;

c) State the make, model, and year of the replacement sprinkler;

d) Identify all persons to whom you provided the replacement sprinkler;

e) State all reasons you and/or any other persons replaced it;

f) Describe its condition at the time of replacement;

g) State all costs of replacing it, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs;

h) Identify all persons who paid the replacement costs;

i) Identify all communications related to it; and

j) State whether any persons tested, examined, and/or analyzed it, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 and/or component part tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

49. State all current costs of replacing a Star ME-1 and/or a group of Star ME-1's, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs. To the extent these costs may vary depending upon facts and circumstances (including, but not limited to, the building or site of replacement or the quantity being replaced), so state, identify all variables, factors, and considerations related to determining the costs, and explain fully. If you cannot give exact costs, give your best estimates (identified as such) and explain the basis for the estimates.

50. Identify and describe all verbal and/or written claims of which you are aware relating to the Star ME-1. For each such claim, identify the Star ME-1, state the date on and manner in which you first became aware of same, identify all persons making the claim, and state the status of same, including whether or not it has been settled or otherwise resolved, and if settled or resolved, the settlement or resolution terms and amounts.

51. From the date of your incorporation through the present, identify each of your employees and state the dates during which you employed each employee.

52. From the date of your incorporation through the present, identify each of your officers and state the dates during which each officer held each officer position.

53. From the date of your incorporation through the present, identify each of your directors and state the dates during which each director held such position.

54. From the date of your incorporation through the present, identify all of your stockholders and/or other owners, state the percentage of stock owned by each person identified, and state the dates during which each person owned said stock.

55. From the date of your incorporation through the present, identify each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company:

a) Sales;

b) Marketing;

c) Product design and/or development;

d) Engineering and/or technical services;

e) Customer service/customer relations;

f) Public and/or governmental relations;

g) Product manufacturing and/or production;

h) Product distribution;

i) Corporate mergers, acquisitions, and/or transactions;

j) Quality assurance/control; and

k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

56. Identify and describe your insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1. Identify all insurance policies relating to the foregoing.

57. For each of the last three (3) years, state your gross income, your net income, your gross sales, and your net sales.

58. From the date of your incorporation through the present, identify each name under which Chemetron Investments, Inc. has transacted business and/or been known, state the dates during which Chemetron Investments, Inc. has transacted business and/or been known by each name, state each date of and reason for each Chemetron Investments, Inc. name change, and identify all documents evidencing each Chemetron Investments, Inc. name change and the dates thereof.

59. From the date of your incorporation through the present, describe in detail the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., identifying by dates or date ranges the periods of time in which the relationship changed and the manners in which it changed.

60. From the date of your incorporation through the present, describe in detail your business, purposes, operations, and addresses/locations, identifying the dates that, and extents to which, any of these changed.

61. From the date of your incorporation through the present, describe in detail your business, involvement, and/or relationship with the Star ME-1, identifying the dates that, and extents to which, any of these changed.

62. For each of the documents produced in response to these Interrogatories and the Requests for Production, state whether or not it is a true and accurate copy of the original.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
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Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF INTERROGATORIES TO RESPONDENT**
**CHEMETRON CORPORATION**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel hereby requests that Respondent Chemetron Corporation serve upon Complaint Counsel, within thirty (30) days, written answers, under oath, to each of the interrogatories set forth below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Requests for Production" shall mean Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Chemetron Corporation served upon the Respondents.

20. "Answer" shall mean the Answer and Defenses of Chemetron Corporation filed in this action.

## INSTRUCTIONS

A. Each interrogatory and every subpart thereof shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an interrogatory, that part shall be specified. An answer should not be supplied solely by reference to the answer to another interrogatory or subpart unless the answer is completely identical to the answer to which reference is made.

B. The answers shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete answer to a particular interrogatory is not possible after exercising the required diligence, the interrogatory shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial answer is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Identify each person who assisted or participated in preparing and/or supplying any of the information given in a response to or relied upon in preparing the answers to these interrogatories.

D. If precise information cannot be supplied in response to any interrogatory, an estimate (identified as such) and an explanation of the basis for the estimate shall be supplied.

E. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

F. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

G. The singular shall include the plural, and vice versa.

H. These interrogatories shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the

purpose of resolving any ambiguity. If any interrogatory cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

I. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

J. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

K. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

L. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or

blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

M. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

INTERROGATORIES

1. Identify all documents that support your answers to these Interrogatories, your responses to the Requests for Production, and/or upon which you rely and/or relied in responding to these Interrogatories and the Requests for Production.

2. State all facts in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

3. Identify all documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. Identify each person who you believe possesses any knowledge of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, and describe with specificity the knowledge of each such person concerning the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer.

5. Identify all persons who assisted in the preparation of, and/or who provided information or documents used in the preparation of, the responses to these Interrogatories and the responses to the Requests for Production.

6. Identify all persons who participated or assisted in producing the documents produced in response to these Interrogatories and the Requests for Production.

7. Since the date of your incorporation, have you had written document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

8. Since the date of your incorporation, have you had unwritten document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all of your unwritten document retention policies in effect since the date of your incorporation, and state the period of time each policy was in effect.

9. Since the date of your incorporation, have you had written policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

10. Since the date of your incorporation, have you had unwritten policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all such policies, state the period of time each policy was in effect.

11. Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, and for each such expert witness, state or provide the following information:

a) The subject matter on which the expert is expected to testify;

b) The substance of the facts and opinions to which the expert is expected to testify; and

c) A summary of the grounds for each opinion.

12. Identify each person whom you expect to call as a witness at the trial or hearing of this matter (other than those already identified in response to the immediately preceding interrogatory), and for each such witness, state or provide the following information:

a) The subject matter on which the witness is expected to testify; and

b) The substance of the facts to which the witness is expected to testify.

13. Identify each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users. As part of your answer, identify all communications you and/or other persons made and/or received relating to the following:

a) Problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's; and

b) Failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires and/or tests.

14. Identify all persons from whom you have obtained witness statements relating to the subject matter of this litigation, the Complaint, and the Answer, and all persons who have custody or possession of each such statement, as well as the date of each such statement and whether each such statement was written or oral.

15. Identify and describe in detail all operations, purposes, and uses of the Star ME-1.

16. Identify each person who manufactured the Star ME-1 and the place(s) at which each such person manufactured the Star ME-1. State the dates each such person manufactured the Star ME-1.

17. Identify all persons who participated in, had responsibility for, and/or had knowledge of any of the following relating to the Star ME-1, and for each such person, state their position and title at the time of their participation or responsibility and describe in detail the nature of their participation, activities, responsibilities, and/or knowledge:

a) Design and/or development;

b) Engineering;

c) Manufacture;

d) Testing; and

e) UL and/or FM approval process and/or listing process.

18. Identify and describe in detail the Star ME-1, all materials used therein, and all procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, the following:

a) Its design, materials, and component parts, including, but not limited to, the specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they

were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

19. For each change identified in your response to the immediately preceding interrogatory:

a) State the date of the change;

b) State all reasons for the change;

c) Identify all persons who participated in bringing about the change, and explain each person's role in same;

d) Identify all persons who implemented the change; and

e) State whether or not any tests were performed on the Star ME-1's before and/or after the change occurred. If so:

i) Describe all such tests and provide a detailed protocol;

ii) Identify the persons and entities who participated in setting up and/or conducting the tests;

iii) Describe and explain the results of the tests, including all observations and conclusions; and

iv) Identify all persons who participated in evaluating the test results.

20. Identify the manufacturer and supplier of each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1.

21. State the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same, and identify the manufacturer and supplier of each of the "O" rings contained in the Star ME-1.

22. Identify all industry and/or other standards, codes, requirements, and/or rules according to which the Star ME-1 was manufactured, including, but not limited to, UL and FM.

23. Identify all industry and/or other standards, codes, requirements, and/or rules applicable to the Star ME-1, including, but not limited to, UL and FM.

24. Were the Star ME-1's submitted for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM? If so, for each submission for approval, listing, and/or certification:

a) Identify the Star ME-1;

b) Identify the laboratory, institution, and/or other person to whom the Star ME-1 was submitted;

c) State the date of each submission;

d) Describe all steps taken to obtain approval, listing, and/or certification;

e) Identify all persons who made the submission, all persons involved in each step, and all persons having knowledge of the submission and the steps associated therewith;

f) Identify and describe all tests, examinations, evaluations, and analyses conducted with respect to the submission, and include in your answer the following:

i) The identity of each person having knowledge of same;

ii) The identity of each person setting up, conducting, evaluating, and/or witnessing same; and

iii) A detailed description and explanation of the results of same, including all findings, observations, and conclusions;

g) Identify each communication relating to the submission;

h) State the final result of and final response to the submission, and the date of the final result and/or response, including, but not limited to, whether or not the submission was approved, granted, denied, rejected, refused, and/or postponed. If the submission was denied, rejected, refused, and/or postponed, state all reasons for such action; and

i) State whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1. If so, identify the Star ME-1 or component part, state the date of and all reasons for such action, identify each person with knowledge of such action, and identify each communication relating to such action.

25. Identify each person who distributed and/or participated in the distribution of the Star ME-1, and state the dates each such person distributed and/or participated in the distribution of the Star ME-1. For each such person, identify each person to whom the Star ME-1 was distributed, the dates on which the Star ME-1 was distributed to that person, the quantity of Star

ME-1's distributed to each person, and the terms on which the Star ME-1 was distributed to each person (including, but not limited to, sale prices).

26. By manufacturer, state the total quantity of Star ME-1's manufactured in each year in which they were manufactured, and state the total quantity of Star ME-1's manufactured in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

27. By manufacturer, state the total quantity of Star ME-1's distributed in each year in which they were distributed, and state the total quantity of Star ME-1's distributed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

28. Identify each person who installed and/or participated in the installation of the Star ME-1, and state the dates each such person installed and/or participated in the installation of the Star ME-1.

29. State the total quantity of Star ME-1's installed in each year in which they were distributed, and state the total quantity of Star ME-1's installed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

30. Identify, and state the building type of (including, but not limited to, the building types listed in interrogatory 31), all buildings in which Star ME-1's have ever been installed, state the quantity ever installed in each such building, and state the quantity presently installed in each such building.

31. State the quantity of Star ME-1's ever installed in each of the following types of buildings:

a) Private homes;

b) Apartment buildings;

c) Public and private schools, including, but not limited to, universities, colleges, dormitories, and residential halls;

d) Nursing homes;

e) Hospitals and other healthcare facilities;

f) Detention facilities, including, but not limited to, prisons and jails;

g) Homeless shelters;

h) Facilities used for recreation, including, but not limited to, health clubs, gymnasiums, sports arenas, public pools, country clubs, and museums;

i) Hotels and motels; and

j) Day care centers.

32. State the quantity of Star ME-1's currently in your possession, custody, or control, and of those, state the quantity that have been removed from service, the quantity that have never been put in service, and the manufacture year of each one.

33. Identify and describe all actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, you and/or any other persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

34. Identify all persons with knowledge of and/or responsibility for all actions, steps, and/or procedures identified and described in response to the immediately preceding interrogatory.

35. Identify all tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, and for each Star ME-1 tested, examined, and/or analyzed:

a) Identify the Star ME-1;

b) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

c) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

d) Describe and explain the results of the tests, including all observations and conclusions; and

e) Identify all persons who participated in evaluating the test results.

36. State whether you or any other persons:

a) observed that;

b) alleged, reported, or otherwise communicated to you that they observed that; or

c) tested, examined, and/or analyzed to determine if:

any of the following conditions was present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems. If so, for each such Star ME-1 or component part thereof:

i) Identify the Star ME-1 and/or component part;

ii) Describe the circumstances of the conditions;

iii) Describe each observation, test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iv) Identify all persons who made the observations and/or communicated this information to you, and state the dates of all such observations and/or communications;

v) Identify all persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

vi) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions was present and the criteria by which it was determined whether the referenced conditions were present;

vii) State all reasons any of the referenced conditions was present;

viii) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

ix) Identify all communications relating to the observations, tests, examinations, and/or analyses.

37. State the effects each of the following conditions may have upon the operation, activation, and/or other performance of a Star ME-1, and state all facts, reasons, and bases for the effects you state:

a) Corrosion;

b) Accumulation of deposits;

c) Adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts;

d) Swelling of the "O" ring;

e) Lubricant deficiencies or problems;

f) Leakage; and

g) Component part interference or fit problems.

38. Explain in detail the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

39. In each of the Star ME-1's manufactured and installed, after the thermal sensing element or fusible link melts from fire or heat, does each Star ME-1 require water pressure to enable its component parts to properly move and open the sprinkler (to then enable water to properly discharge)? For each Star ME-1 requiring such water pressure:

a) State the minimum water pressure required (in psig) and the reasons that pressure is required;

b) State how the water pressure causes the Star ME-1's component parts to properly move and open the sprinkler; and

c) State all reasons the Star ME-1's component parts will not properly move and open the sprinkler without that pressure.

40. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's? If so, for each such alleged, reported, or communicated problem, flaw, defect, defective condition, and deficiency:

a) Identify the Star ME-1 or component part;

b) Describe it in detail and state the date;

c) Identify all persons having knowledge of it;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

41. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 or component part;

b) Describe it in detail, state the time and date, and state the cause and nature of the fire;

c) Identify the building and/or place at which it occurred;

d) State the sprinkler system pressure (in psig) at the site of it;

e) Identify all persons witnessing and/or having knowledge of it;

f) State the date on which you acquired knowledge of it;

g) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it;

h) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

i) State whether any persons sustained or allegedly sustained injury as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe each injury, and state how, where, and when the injury occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

j) State whether any persons died or allegedly died as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe the death, and state how, where, and when the death occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

k) State whether any property was damaged, destroyed, or lost, or allegedly damaged, destroyed, or lost, as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so:

i) Identify the property and the persons owning the property;

ii) Describe the damage, destruction, or loss, and state the value of the affected property;

iii) State how, where, and when the damage, destruction, or loss occurred; and

iv) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

l) State whether any police, fire, medical, emergency service, or other report was prepared related to the fire. If so, for each such report:

i) Identify the report, including its date;

ii) State the type of report;

iii) Identify the municipality, organization, and/or other persons by whom the report was prepared;

iv) State whether photographs and other documents, or statements, were obtained in connection with and/or made part of the report; and

v) State whether you have a copy of the report in your possession, custody, or control;

m) State whether any persons tested, examined, and/or analyzed any Star ME-1 or component part thereof that failed and/or partially failed in a fire, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 or component part thereof tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, including all observations and conclusions;

v) Identify all persons who participated in evaluating the test results; and

vi) Identify all communications related to it;

n) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it;

o) State all reasons the Star ME-1 failed and/or partially failed in the fire.

42. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests in which it occurred, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions; and

g) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

43. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element? If so, for each such alleged, reported, or communicated failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests or other circumstances in which it occurred, including the test protocol, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests or circumstances;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

g) State the pressure, if any, at which the Star ME-1 activated, or if it failed altogether to activate, state the highest pressure to which it was subjected;

h) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses;

vi) Identify all communications related to it; and

i) State all reasons for the presence of the referenced conditions.

44. Describe in detail the performance record and history of the Star ME-1, including, but not limited to, as applicable, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

45. Identify all Star ME-1's that properly operated and activated in a fire, including, but not limited to, the date and circumstances of the fire. Identify all persons having knowledge of this information.

46. State whether or not any Star ME-1's and/or any Star ME-1 component parts were delisted (by UL, FM, and/or any other person), recalled, discontinued, taken off the market, and/or the subject of a warning, advisory, safety, or similar notice to consumers, distributors, installers, governmental authorities, or other persons. If so, for each such action:

a) Identify the Star ME-1, state the quantity sought to be recalled, discontinued, taken off the market, and/or subject to notice, and the quantity actually recalled, discontinued, taken off the market, and/or subject to notice;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

47. State whether or not any Star ME-1's and/or any Star ME-1 component parts were returned, and/or were asked to be returned, to you and/or any manufacturer, supplier, distributor, installer, and/or other person. If so, for each such action:

a) Identify the Star ME-1, state the quantity asked to be returned, and state the quantity actually returned;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

48. Have you and/or any other persons replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers? If so, state the total

number of Star ME-1's replaced, according to manufacturer and model year, and for each Star ME-1 replaced:

a) Identify it and state the date it was replaced;

b) Identify the building and/or place at which it had been installed;

c) State the make, model, and year of the replacement sprinkler;

d) Identify all persons to whom you provided the replacement sprinkler;

e) State all reasons you and/or any other persons replaced it;

f) Describe its condition at the time of replacement;

g) State all costs of replacing it, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs;

h) Identify all persons who paid the replacement costs;

i) Identify all communications related to it; and

j) State whether any persons tested, examined, and/or analyzed it, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 and/or component part tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

49. State all current costs of replacing a Star ME-1 and/or a group of Star ME-1's, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs. To the extent these costs may vary depending upon facts and circumstances (including, but not limited to, the building or site of replacement or the quantity being replaced), so state, identify all variables, factors, and considerations related to determining the costs, and explain fully. If you cannot give exact costs, give your best estimates (identified as such) and explain the basis for the estimates.

50. Identify and describe all verbal and/or written claims of which you are aware relating to the Star ME-1. For each such claim, identify the Star ME-1, state the date on and manner in which you first became aware of same, identify all persons making the claim, and state the status of same, including whether or not it has been settled or otherwise resolved, and if settled or resolved, the settlement or resolution terms and amounts.

51. From the date of your incorporation through the present, identify each of your employees and state the dates during which you employed each employee.

52. From the date of your incorporation through the present, identify each of your officers and state the dates during which each officer held each officer position.

53. From the date of your incorporation through the present, identify each of your directors and state the dates during which each director held such position.

54. From the date of your incorporation through the present, identify all of your stockholders and/or other owners, state the percentage of stock owned by each person identified, and state the dates during which each person owned said stock.

55. From the date of your incorporation through the present, identify each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company:

a) Sales;

b) Marketing;

c) Product design and/or development;

d) Engineering and/or technical services;

e) Customer service/customer relations;

f) Public and/or governmental relations;

g) Product manufacturing and/or production;

h) Product distribution;

i) Corporate mergers, acquisitions, and/or transactions;

j) Quality assurance/control; and

k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

56. Identify and describe your insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1. Identify all insurance policies relating to the foregoing.

57. For each of the last three (3) years, state your gross income, your net income, your gross sales, and your net sales.

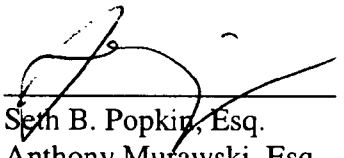
58. From the date of your incorporation through the present, identify each name under which Chemetron Corporation has transacted business and/or been known, state the dates during which Chemetron Corportion has transacted business and/or been known by each name, state each date of and reason for each Chemetron Corporation name change, and identify all documents evidencing each Chemetron Corporation name change and the dates thereof.

59. From the date of your incorporation through the present, describe in detail the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., identifying by dates or date ranges the periods of time in which the relationship changed and the manners in which it changed.

60. From the date of your incorporation through the present, describe in detail your business, purposes, operations, and addresses/locations, identifying the dates that, and extents to which, any of these changed.

61. From the date of your incorporation through the present, describe in detail your business, involvement, and/or relationship with the Star ME-1, identifying the dates that, and extents to which, any of these changed.

62. For each of the documents produced in response to these Interrogatories and the Requests for Production, state whether or not it is a true and accurate copy of the original.



Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
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Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF INTERROGATORIES TO RESPONDENT**
**SUNBEAM CORPORATION**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel hereby requests that Respondent Sunbeam Corporation serve upon Complaint Counsel, within thirty (30) days, written answers, under oath, to each of the interrogatories set forth below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Requests for Production" shall mean Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Sunbeam Corporation served upon the Respondents.

20. "Answer" shall mean the Answer and Defenses of Sunbeam Corporation filed in this action.

## INSTRUCTIONS

A. Each interrogatory and every subpart thereof shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an interrogatory, that part shall be specified. An answer should not be supplied solely by reference to the answer to another interrogatory or subpart unless the answer is completely identical to the answer to which reference is made.

B. The answers shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete answer to a particular interrogatory is not possible after exercising the required diligence, the interrogatory shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial answer is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Identify each person who assisted or participated in preparing and/or supplying any of the information given in a response to or relied upon in preparing the answers to these interrogatories.

D. If precise information cannot be supplied in response to any interrogatory, an estimate (identified as such) and an explanation of the basis for the estimate shall be supplied.

E. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

F. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

G. The singular shall include the plural, and vice versa.

H. These interrogatories shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the

purpose of resolving any ambiguity. If any interrogatory cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

I. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

J. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

K. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

L. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or

blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

M. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

INTERROGATORIES

1. Identify all documents that support your answers to these Interrogatories, your responses to the Requests for Production, and/or upon which you rely and/or relied in responding to these Interrogatories and the Requests for Production.

2. State all facts in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

3. Identify all documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. Identify each person who you believe possesses any knowledge of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, and describe with specificity the knowledge of each such person concerning the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer.

5. Identify all persons who assisted in the preparation of, and/or who provided information or documents used in the preparation of, the responses to these Interrogatories and the responses to the Requests for Production.

6. Identify all persons who participated or assisted in producing the documents produced in response to these Interrogatories and the Requests for Production.

7. Since the date of your incorporation, have you had written document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

8. Since the date of your incorporation, have you had unwritten document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all of your unwritten document retention policies in effect since the date of your incorporation, and state the period of time each policy was in effect.

9. Since the date of your incorporation, have you had written policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

10. Since the date of your incorporation, have you had unwritten policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all such policies, state the period of time each policy was in effect.

11. Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, and for each such expert witness, state or provide the following information:

a) The subject matter on which the expert is expected to testify;

b) The substance of the facts and opinions to which the expert is expected to testify; and

c) A summary of the grounds for each opinion.

12. Identify each person whom you expect to call as a witness at the trial or hearing of this matter (other than those already identified in response to the immediately preceding interrogatory), and for each such witness, state or provide the following information:

a) The subject matter on which the witness is expected to testify; and

b) The substance of the facts to which the witness is expected to testify.

13. Identify each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users. As part of your answer, identify all communications you and/or other persons made and/or received relating to the following:

a) Problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's; and

b) Failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires and/or tests.

14. Identify all persons from whom you have obtained witness statements relating to the subject matter of this litigation, the Complaint, and the Answer, and all persons who have custody or possession of each such statement, as well as the date of each such statement and whether each such statement was written or oral.

15. Identify and describe in detail all operations, purposes, and uses of the Star ME-1.

16. Identify each person who manufactured the Star ME-1 and the place(s) at which each such person manufactured the Star ME-1. State the dates each such person manufactured the Star ME-1.

17. Identify all persons who participated in, had responsibility for, and/or had knowledge of any of the following relating to the Star ME-1, and for each such person, state their position and title at the time of their participation or responsibility and describe in detail the nature of their participation, activities, responsibilities, and/or knowledge:

a) Design and/or development;

b) Engineering;

c) Manufacture;

d) Testing; and

e) UL and/or FM approval process and/or listing process.

18. Identify and describe in detail the Star ME-1, all materials used therein, and all procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, the following:

a) Its design, materials, and component parts, including, but not limited to, the specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they

were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

19. For each change identified in your response to the immediately preceding interrogatory:

a) State the date of the change;

b) State all reasons for the change;

c) Identify all persons who participated in bringing about the change, and explain each person's role in same;

d) Identify all persons who implemented the change; and

e) State whether or not any tests were performed on the Star ME-1's before and/or after the change occurred. If so:

i) Describe all such tests and provide a detailed protocol;

ii) Identify the persons and entities who participated in setting up and/or conducting the tests;

iii) Describe and explain the results of the tests, including all observations and conclusions; and

iv) Identify all persons who participated in evaluating the test results.

20. Identify the manufacturer and supplier of each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1.

21. State the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same, and identify the manufacturer and supplier of each of the "O" rings contained in the Star ME-1.

22. Identify all industry and/or other standards, codes, requirements, and/or rules according to which the Star ME-1 was manufactured, including, but not limited to, UL and FM.

23. Identify all industry and/or other standards, codes, requirements, and/or rules applicable to the Star ME-1, including, but not limited to, UL and FM.

24. Were the Star ME-1's submitted for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM? If so, for each submission for approval, listing, and/or certification:

a) Identify the Star ME-1;

b) Identify the laboratory, institution, and/or other person to whom the Star ME-1 was submitted;

c) State the date of each submission;

d) Describe all steps taken to obtain approval, listing, and/or certification;

e) Identify all persons who made the submission, all persons involved in each step, and all persons having knowledge of the submission and the steps associated therewith;

f) Identify and describe all tests, examinations, evaluations, and analyses conducted with respect to the submission, and include in your answer the following:

i) The identity of each person having knowledge of same;

ii) The identity of each person setting up, conducting, evaluating, and/or witnessing same; and

iii) A detailed description and explanation of the results of same, including all findings, observations, and conclusions;

g) Identify each communication relating to the submission;

h) State the final result of and final response to the submission, and the date of the final result and/or response, including, but not limited to, whether or not the submission was approved, granted, denied, rejected, refused, and/or postponed. If the submission was denied, rejected, refused, and/or postponed, state all reasons for such action; and

i) State whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1. If so, identify the Star ME-1 or component part, state the date of and all reasons for such action, identify each person with knowledge of such action, and identify each communication relating to such action.

25. Identify each person who distributed and/or participated in the distribution of the Star ME-1, and state the dates each such person distributed and/or participated in the distribution of the Star ME-1. For each such person, identify each person to whom the Star ME-1 was distributed, the dates on which the Star ME-1 was distributed to that person, the quantity of Star

ME-1's distributed to each person, and the terms on which the Star ME-1 was distributed to each person (including, but not limited to, sale prices).

26. By manufacturer, state the total quantity of Star ME-1's manufactured in each year in which they were manufactured, and state the total quantity of Star ME-1's manufactured in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

27. By manufacturer, state the total quantity of Star ME-1's distributed in each year in which they were distributed, and state the total quantity of Star ME-1's distributed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

28. Identify each person who installed and/or participated in the installation of the Star ME-1, and state the dates each such person installed and/or participated in the installation of the Star ME-1.

29. State the total quantity of Star ME-1's installed in each year in which they were distributed, and state the total quantity of Star ME-1's installed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

30. Identify, and state the building type of (including, but not limited to, the building types listed in interrogatory 31), all buildings in which Star ME-1's have ever been installed, state the quantity ever installed in each such building, and state the quantity presently installed in each such building.

31. State the quantity of Star ME-1's ever installed in each of the following types of buildings:

a) Private homes;

b) Apartment buildings;

c) Public and private schools, including, but not limited to, universities, colleges, dormitories, and residential halls;

d) Nursing homes;

e) Hospitals and other healthcare facilities;

f) Detention facilities, including, but not limited to, prisons and jails;

g) Homeless shelters;

h) Facilities used for recreation, including, but not limited to, health clubs, gymnasiums, sports arenas, public pools, country clubs, and museums;

i) Hotels and motels; and

j) Day care centers.

32. State the quantity of Star ME-1's currently in your possession, custody, or control, and of those, state the quantity that have been removed from service, the quantity that have never been put in service, and the manufacture year of each one.

33. Identify and describe all actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, you and/or any other persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

34. Identify all persons with knowledge of and/or responsibility for all actions, steps, and/or procedures identified and described in response to the immediately preceding interrogatory.

35. Identify all tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, and for each Star ME-1 tested, examined, and/or analyzed:

a) Identify the Star ME-1;

b) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

c) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

d) Describe and explain the results of the tests, including all observations and conclusions; and

e) Identify all persons who participated in evaluating the test results.

36. State whether you or any other persons:

a) observed that;

b) alleged, reported, or otherwise communicated to you that they observed that; or

c) tested, examined, and/or analyzed to determine if:

any of the following conditions was present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems. If so, for each such Star ME-1 or component part thereof:

i) Identify the Star ME-1 and/or component part;

ii) Describe the circumstances of the conditions;

iii) Describe each observation, test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iv) Identify all persons who made the observations and/or communicated this information to you, and state the dates of all such observations and/or communications;

v) Identify all persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

vi) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions was present and the criteria by which it was determined whether the referenced conditions were present;

vii) State all reasons any of the referenced conditions was present;

viii) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

ix) Identify all communications relating to the observations, tests, examinations, and/or analyses.

37. State the effects each of the following conditions may have upon the operation, activation, and/or other performance of a Star ME-1, and state all facts, reasons, and bases for the effects you state:

a) Corrosion;

b) Accumulation of deposits;

c) Adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts;

d) Swelling of the "O" ring;

e) Lubricant deficiencies or problems;

f) Leakage; and

g) Component part interference or fit problems.

38. Explain in detail the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

39. In each of the Star ME-1's manufactured and installed, after the thermal sensing element or fusible link melts from fire or heat, does each Star ME-1 require water pressure to enable its component parts to properly move and open the sprinkler (to then enable water to properly discharge)? For each Star ME-1 requiring such water pressure:

a) State the minimum water pressure required (in psig) and the reasons that pressure is required;

b) State how the water pressure causes the Star ME-1's component parts to properly move and open the sprinkler; and

c) State all reasons the Star ME-1's component parts will not properly move and open the sprinkler without that pressure.

40. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's? If so, for each such alleged, reported, or communicated problem, flaw, defect, defective condition, and deficiency:

a) Identify the Star ME-1 or component part;

b) Describe it in detail and state the date;

c) Identify all persons having knowledge of it;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

41. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 or component part;

b) Describe it in detail, state the time and date, and state the cause and nature of the fire;

c) Identify the building and/or place at which it occurred;

d) State the sprinkler system pressure (in psig) at the site of it;

e) Identify all persons witnessing and/or having knowledge of it;

f) State the date on which you acquired knowledge of it;

g) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it;

h) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

i) State whether any persons sustained or allegedly sustained injury as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe each injury, and state how, where, and when the injury occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

j) State whether any persons died or allegedly died as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe the death, and state how, where, and when the death occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

k) State whether any property was damaged, destroyed, or lost, or allegedly damaged, destroyed, or lost, as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so:

i) Identify the property and the persons owning the property;

ii) Describe the damage, destruction, or loss, and state the value of the affected property;

iii) State how, where, and when the damage, destruction, or loss occurred; and

iv) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

l) State whether any police, fire, medical, emergency service, or other report was prepared related to the fire. If so, for each such report:

i) Identify the report, including its date;

ii) State the type of report;

iii) Identify the municipality, organization, and/or other persons by whom the report was prepared;

iv) State whether photographs and other documents, or statements, were obtained in connection with and/or made part of the report; and

v) State whether you have a copy of the report in your possession, custody, or control;

m) State whether any persons tested, examined, and/or analyzed any Star ME-1 or component part thereof that failed and/or partially failed in a fire, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 or component part thereof tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, including all observations and conclusions;

v) Identify all persons who participated in evaluating the test results; and

vi) Identify all communications related to it;

n) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it;

o) State all reasons the Star ME-1 failed and/or partially failed in the fire.

42. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests in which it occurred, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions; and

g) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

43. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element? If so, for each such alleged, reported, or communicated failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests or other circumstances in which it occurred, including the test protocol, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests or circumstances;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

g) State the pressure, if any, at which the Star ME-1 activated, or if it failed altogether to activate, state the highest pressure to which it was subjected;

h) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses;

vi) Identify all communications related to it; and

i) State all reasons for the presence of the referenced conditions.

44. Describe in detail the performance record and history of the Star ME-1, including, but not limited to, as applicable, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

45. Identify all Star ME-1's that properly operated and activated in a fire, including, but not limited to, the date and circumstances of the fire. Identify all persons having knowledge of this information.

46. State whether or not any Star ME-1's and/or any Star ME-1 component parts were delisted (by UL, FM, and/or any other person), recalled, discontinued, taken off the market, and/or the subject of a warning, advisory, safety, or similar notice to consumers, distributors, installers, governmental authorities, or other persons. If so, for each such action:

a) Identify the Star ME-1, state the quantity sought to be recalled, discontinued, taken off the market, and/or subject to notice, and the quantity actually recalled, discontinued, taken off the market, and/or subject to notice;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

47. State whether or not any Star ME-1's and/or any Star ME-1 component parts were returned, and/or were asked to be returned, to you and/or any manufacturer, supplier, distributor, installer, and/or other person. If so, for each such action:

a) Identify the Star ME-1, state the quantity asked to be returned, and state the quantity actually returned;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

48. Have you and/or any other persons replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers? If so, state the total

number of Star ME-1's replaced, according to manufacturer and model year, and for each Star ME-1 replaced:

a) Identify it and state the date it was replaced;

b) Identify the building and/or place at which it had been installed;

c) State the make, model, and year of the replacement sprinkler;

d) Identify all persons to whom you provided the replacement sprinkler;

e) State all reasons you and/or any other persons replaced it;

f) Describe its condition at the time of replacement;

g) State all costs of replacing it, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs;

h) Identify all persons who paid the replacement costs;

i) Identify all communications related to it; and

j) State whether any persons tested, examined, and/or analyzed it, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 and/or component part tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

49. State all current costs of replacing a Star ME-1 and/or a group of Star ME-1's, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs. To the extent these costs may vary depending upon facts and circumstances (including, but not limited to, the building or site of replacement or the quantity being replaced), so state, identify all variables, factors, and considerations related to determining the costs, and explain fully. If you cannot give exact costs, give your best estimates (identified as such) and explain the basis for the estimates.

50. Identify and describe all verbal and/or written claims of which you are aware relating to the Star ME-1. For each such claim, identify the Star ME-1, state the date on and manner in which you first became aware of same, identify all persons making the claim, and state the status of same, including whether or not it has been settled or otherwise resolved, and if settled or resolved, the settlement or resolution terms and amounts.

51. Identify each of your current officers and state the dates during which each officer held each officer position.

52. Identify each of your current directors and state the dates during which each director held such position.

53. From the date of your incorporation through the present, identify each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in corporate mergers, acquisitions, and/or transactions.

54. Identify and describe your insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1. Identify all insurance policies relating to the foregoing.

55. From the date of your incorporation through the present, identify each name under which Sunbeam Corporation has transacted business and/or been known, state the dates during which Sunbeam Corportion has transacted business and/or been known by each name, state each date of and reason for each Sunbeam Corporation name change, and identify all documents evidencing each Sunbeam Corporation name change and the dates thereof.

56. From the dates of their incorporations through the present, describe in detail the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., and the relationship(s) between each of them and Sunbeam Corporation, identifying by dates or date ranges the periods of time in which the relationships changed and the manners in which they changed.

57. From the date of your incorporation through the present, describe in detail your business, involvement, and/or relationship with the Star ME-1, identifying the dates that, and extents to which, any of these changed.

58. For each of the documents produced in response to these Interrogatories and the Requests for Production, state whether or not it is a true and accurate copy of the original.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
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Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S**
**FIRST SET OF INTERROGATORIES TO RESPONDENT**
**GRUCON CORPORATION**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel hereby requests that Respondent Grucon Corporation serve upon Complaint Counsel, within thirty (30) days, written answers, under oath, to each of the interrogatories set forth below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Requests for Production" shall mean Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent Grucon Corporation served upon the Respondents.

20. "Answer" shall mean the Answer of Grucon Corporation filed in this action.

INSTRUCTIONS

A. Each interrogatory and every subpart thereof shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an interrogatory, that part shall be specified. An answer should not be supplied solely by reference to the answer to another interrogatory or subpart unless the answer is completely identical to the answer to which reference is made.

B. The answers shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete answer to a particular interrogatory is not possible after exercising the required diligence, the interrogatory shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial answer is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Identify each person who assisted or participated in preparing and/or supplying any of the information given in a response to or relied upon in preparing the answers to these interrogatories.

D. If precise information cannot be supplied in response to any interrogatory, an estimate (identified as such) and an explanation of the basis for the estimate shall be supplied.

E. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

F. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

G. The singular shall include the plural, and vice versa.

H. These interrogatories shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the

purpose of resolving any ambiguity. If any interrogatory cannot be answered in full after exercising the required diligence, it shall be answered to the extent possible with a full statement of all efforts to fully answer and of all reasons a full answer cannot be made.

I. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

J. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

K. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

L. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or

blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

M. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

INTERROGATORIES

1. Identify all documents that support your answers to these Interrogatories, your responses to the Requests for Production, and/or upon which you rely and/or relied in responding to these Interrogatories and the Requests for Production.

2. State all facts in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

3. Identify all documents in support of and upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. Identify each person who you believe possesses any knowledge of the facts relating to the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer, and describe with specificity the knowledge of each such person concerning the subject matter of this litigation, the Star ME-1, the Complaint, and/or the Answer.

5. Identify all persons who assisted in the preparation of, and/or who provided information or documents used in the preparation of, the responses to these Interrogatories and the responses to the Requests for Production.

6. Identify all persons who participated or assisted in producing the documents produced in response to these Interrogatories and the Requests for Production.

7. Since the date of your incorporation, have you had written document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

8. Since the date of your incorporation, have you had unwritten document retention policies? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all of your unwritten document retention policies in effect since the date of your incorporation, and state the period of time each policy was in effect.

9. Since the date of your incorporation, have you had written policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, state the period(s) of time you had such policies.

10. Since the date of your incorporation, have you had unwritten policies relating to retention of your products or samples of your products? If the response to this question is in the affirmative for any part or all of the time period referenced, describe in detail all such policies, state the period of time each policy was in effect.

11. Identify each person whom you expect to call as an expert witness at the trial or hearing of this matter, and for each such expert witness, state or provide the following information:

a) The subject matter on which the expert is expected to testify;

b) The substance of the facts and opinions to which the expert is expected to testify; and

c) A summary of the grounds for each opinion.

12. Identify each person whom you expect to call as a witness at the trial or hearing of this matter (other than those already identified in response to the immediately preceding interrogatory), and for each such witness, state or provide the following information:

a) The subject matter on which the witness is expected to testify; and

b) The substance of the facts to which the witness is expected to testify.

13. Identify each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users. As part of your answer, identify all communications you and/or other persons made and/or received relating to the following:

a) Problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's; and

b) Failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires and/or tests.

14. Identify all persons from whom you have obtained witness statements relating to the subject matter of this litigation, the Complaint, and the Answer, and all persons who have custody or possession of each such statement, as well as the date of each such statement and whether each such statement was written or oral.

15. Identify and describe in detail all operations, purposes, and uses of the Star ME-1.

16. Identify each person who manufactured the Star ME-1 and the place(s) at which each such person manufactured the Star ME-1. State the dates each such person manufactured the Star ME-1.

17. Identify all persons who participated in, had responsibility for, and/or had knowledge of any of the following relating to the Star ME-1, and for each such person, state their position and title at the time of their participation or responsibility and describe in detail the nature of their participation, activities, responsibilities, and/or knowledge:

a) Design and/or development;

b) Engineering;

c) Manufacture;

d) Testing; and

e) UL and/or FM approval process and/or listing process.

18. Identify and describe in detail the Star ME-1, all materials used therein, and all procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, the following:

a) Its design, materials, and component parts, including, but not limited to, the specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they

were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

19. For each change identified in your response to the immediately preceding interrogatory:

a) State the date of the change;

b) State all reasons for the change;

c) Identify all persons who participated in bringing about the change, and explain each person's role in same;

d) Identify all persons who implemented the change; and

e) State whether or not any tests were performed on the Star ME-1's before and/or after the change occurred. If so:

i) Describe all such tests and provide a detailed protocol;

ii) Identify the persons and entities who participated in setting up and/or conducting the tests;

iii) Describe and explain the results of the tests, including all observations and conclusions; and

iv) Identify all persons who participated in evaluating the test results.

20. Identify the manufacturer and supplier of each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1.

21. State the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same, and identify the manufacturer and supplier of each of the "O" rings contained in the Star ME-1.

22. Identify all industry and/or other standards, codes, requirements, and/or rules according to which the Star ME-1 was manufactured, including, but not limited to, UL and FM.

23. Identify all industry and/or other standards, codes, requirements, and/or rules applicable to the Star ME-1, including, but not limited to, UL and FM.

24. Were the Star ME-1's submitted for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM? If so, for each submission for approval, listing, and/or certification:

a) Identify the Star ME-1;

b) Identify the laboratory, institution, and/or other person to whom the Star ME-1 was submitted;

c) State the date of each submission;

d) Describe all steps taken to obtain approval, listing, and/or certification;

e) Identify all persons who made the submission, all persons involved in each step, and all persons having knowledge of the submission and the steps associated therewith;

f) Identify and describe all tests, examinations, evaluations, and analyses conducted with respect to the submission, and include in your answer the following:

i) The identity of each person having knowledge of same;

ii) The identity of each person setting up, conducting, evaluating, and/or witnessing same; and

iii) A detailed description and explanation of the results of same, including all findings, observations, and conclusions;

g) Identify each communication relating to the submission;

h) State the final result of and final response to the submission, and the date of the final result and/or response, including, but not limited to, whether or not the submission was approved, granted, denied, rejected, refused, and/or postponed. If the submission was denied, rejected, refused, and/or postponed, state all reasons for such action; and

i) State whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1. If so, identify the Star ME-1 or component part, state the date of and all reasons for such action, identify each person with knowledge of such action, and identify each communication relating to such action.

25. Identify each person who distributed and/or participated in the distribution of the Star ME-1, and state the dates each such person distributed and/or participated in the distribution of the Star ME-1. For each such person, identify each person to whom the Star ME-1 was distributed, the dates on which the Star ME-1 was distributed to that person, the quantity of Star

ME-1's distributed to each person, and the terms on which the Star ME-1 was distributed to each person (including, but not limited to, sale prices).

26. By manufacturer, state the total quantity of Star ME-1's manufactured in each year in which they were manufactured, and state the total quantity of Star ME-1's manufactured in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

27. By manufacturer, state the total quantity of Star ME-1's distributed in each year in which they were distributed, and state the total quantity of Star ME-1's distributed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

28. Identify each person who installed and/or participated in the installation of the Star ME-1, and state the dates each such person installed and/or participated in the installation of the Star ME-1.

29. State the total quantity of Star ME-1's installed in each year in which they were distributed, and state the total quantity of Star ME-1's installed in all years combined. If you cannot state exact quantities, please so state and give your best estimates.

30. Identify, and state the building type of (including, but not limited to, the building types listed in interrogatory 31), all buildings in which Star ME-1's have ever been installed, state the quantity ever installed in each such building, and state the quantity presently installed in each such building.

31. State the quantity of Star ME-1's ever installed in each of the following types of buildings:

a) Private homes;

b) Apartment buildings;

c) Public and private schools, including, but not limited to, universities, colleges, dormitories, and residential halls;

d) Nursing homes;

e) Hospitals and other healthcare facilities;

f) Detention facilities, including, but not limited to, prisons and jails;

g) Homeless shelters;

h) Facilities used for recreation, including, but not limited to, health clubs, gymnasiums, sports arenas, public pools, country clubs, and museums;

i) Hotels and motels; and

j) Day care centers.

32. State the quantity of Star ME-1's currently in your possession, custody, or control, and of those, state the quantity that have been removed from service, the quantity that have never been put in service, and the manufacture year of each one.

33. Identify and describe all actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, you and/or any other persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

34. Identify all persons with knowledge of and/or responsibility for all actions, steps, and/or procedures identified and described in response to the immediately preceding interrogatory.

35. Identify all tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, and for each Star ME-1 tested, examined, and/or analyzed:

a) Identify the Star ME-1;

b) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

c) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

d) Describe and explain the results of the tests, including all observations and conclusions; and

e) Identify all persons who participated in evaluating the test results.

36. State whether you or any other persons:

a) observed that;

b) alleged, reported, or otherwise communicated to you that they observed that; or

c) tested, examined, and/or analyzed to determine if:

any of the following conditions was present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems. If so, for each such Star ME-1 or component part thereof:

i) Identify the Star ME-1 and/or component part;

ii) Describe the circumstances of the conditions;

iii) Describe each observation, test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iv) Identify all persons who made the observations and/or communicated this information to you, and state the dates of all such observations and/or communications;

v) Identify all persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

vi) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions was present and the criteria by which it was determined whether the referenced conditions were present;

vii) State all reasons any of the referenced conditions was present;

viii) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

ix) Identify all communications relating to the observations, tests, examinations, and/or analyses.

37. State the effects each of the following conditions may have upon the operation, activation, and/or other performance of a Star ME-1, and state all facts, reasons, and bases for the effects you state:

a) Corrosion;

b) Accumulation of deposits;

c) Adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts;

d) Swelling of the "O" ring;

e) Lubricant deficiencies or problems;

f) Leakage; and

g) Component part interference or fit problems.

38. Explain in detail the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

39. In each of the Star ME-1's manufactured and installed, after the thermal sensing element or fusible link melts from fire or heat, does each Star ME-1 require water pressure to enable its component parts to properly move and open the sprinkler (to then enable water to properly discharge)? For each Star ME-1 requiring such water pressure:

a) State the minimum water pressure required (in psig) and the reasons that pressure is required;

b) State how the water pressure causes the Star ME-1's component parts to properly move and open the sprinkler; and

c) State all reasons the Star ME-1's component parts will not properly move and open the sprinkler without that pressure.

40. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's? If so, for each such alleged, reported, or communicated problem, flaw, defect, defective condition, and deficiency:

a) Identify the Star ME-1 or component part;

b) Describe it in detail and state the date;

c) Identify all persons having knowledge of it;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

41. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 or component part;

b) Describe it in detail, state the time and date, and state the cause and nature of the fire;

c) Identify the building and/or place at which it occurred;

d) State the sprinkler system pressure (in psig) at the site of it;

e) Identify all persons witnessing and/or having knowledge of it;

f) State the date on which you acquired knowledge of it;

g) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it;

h) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

i) State whether any persons sustained or allegedly sustained injury as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe each injury, and state how, where, and when the injury occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

j) State whether any persons died or allegedly died as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so, for each such person:

i) Identify the person;

ii) Describe the death, and state how, where, and when the death occurred; and

iii) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

k) State whether any property was damaged, destroyed, or lost, or allegedly damaged, destroyed, or lost, as a result of or relating to the fire (including in attempting to escape from or extinguish the fire). If so:

i) Identify the property and the persons owning the property;

ii) Describe the damage, destruction, or loss, and state the value of the affected property;

iii) State how, where, and when the damage, destruction, or loss occurred; and

iv) Identify each claim related to it, including the identity of each person against whom the claim was made, describe the claim, and state the result;

l) State whether any police, fire, medical, emergency service, or other report was prepared related to the fire. If so, for each such report:

i) Identify the report, including its date;

ii) State the type of report;

iii) Identify the municipality, organization, and/or other persons by whom the report was prepared;

iv) State whether photographs and other documents, or statements, were obtained in connection with and/or made part of the report; and

v) State whether you have a copy of the report in your possession, custody, or control;

m) State whether any persons tested, examined, and/or analyzed any Star ME-1 or component part thereof that failed and/or partially failed in a fire, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 or component part thereof tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, including all observations and conclusions;

v) Identify all persons who participated in evaluating the test results; and

vi) Identify all communications related to it;

n) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it;

o) State all reasons the Star ME-1 failed and/or partially failed in the fire.

42. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules? If so, for each such alleged, reported, or communicated failure and/or partial failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests in which it occurred, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions; and

g) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

43. Do you have knowledge of, and/or has any person alleged, reported, or otherwise communicated to you, any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element? If so, for each such alleged, reported, or communicated failure:

a) Identify the Star ME-1 and/or component part;

b) Describe it in detail and state the date;

c) Identify and describe all tests or other circumstances in which it occurred, including the test protocol, identify all persons witnessing and/or having knowledge of it and performing the tests, and state all results, observations, and evaluations from the tests or circumstances;

d) State the date on which you acquired knowledge of it;

e) State how, and identify from whom, you acquired knowledge of it, and identify all communications relating to it; and

f) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions;

g) State the pressure, if any, at which the Star ME-1 activated, or if it failed altogether to activate, state the highest pressure to which it was subjected;

h) State whether any persons tested, examined, and/or analyzed the Star ME-1 or any component part thereof to determine if any one or more of the following conditions was present: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; and/or component part interference or fit problems. If so, for each Star ME-1 or component part thereof so tested, examined, and/or analyzed:

i) Identify the Star ME-1 and/or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions relating to the extent to which any of the referenced conditions were present and the bases and criteria by which it was determined whether the referenced conditions were present;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses;

vi) Identify all communications related to it; and

i) State all reasons for the presence of the referenced conditions.

44. Describe in detail the performance record and history of the Star ME-1, including, but not limited to, as applicable, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

45. Identify all Star ME-1's that properly operated and activated in a fire, including, but not limited to, the date and circumstances of the fire. Identify all persons having knowledge of this information.

46. State whether or not any Star ME-1's and/or any Star ME-1 component parts were delisted (by UL, FM, and/or any other person), recalled, discontinued, taken off the market, and/or the subject of a warning, advisory, safety, or similar notice to consumers, distributors, installers, governmental authorities, or other persons. If so, for each such action:

a) Identify the Star ME-1, state the quantity sought to be recalled, discontinued, taken off the market, and/or subject to notice, and the quantity actually recalled, discontinued, taken off the market, and/or subject to notice;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

47. State whether or not any Star ME-1's and/or any Star ME-1 component parts were returned, and/or were asked to be returned, to you and/or any manufacturer, supplier, distributor, installer, and/or other person. If so, for each such action:

a) Identify the Star ME-1, state the quantity asked to be returned, and state the quantity actually returned;

b) Describe the action in detail, state the date, and state all reasons for the action;

c) Identify and describe the circumstances leading to the action;

d) Identify all persons having knowledge of the action;

e) State the date on which you acquired knowledge of the action;

f) State how, and identify from whom, you acquired knowledge of the action, and identify all communications relating to it; and

g) Identify and describe all actions you and/or any other persons took relating to it, including, but not limited to, the dates of all actions and the identity of all persons who took the actions.

48. Have you and/or any other persons replaced Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers? If so, state the total

number of Star ME-1's replaced, according to manufacturer and model year, and for each Star ME-1 replaced:

a) Identify it and state the date it was replaced;

b) Identify the building and/or place at which it had been installed;

c) State the make, model, and year of the replacement sprinkler;

d) Identify all persons to whom you provided the replacement sprinkler;

e) State all reasons you and/or any other persons replaced it;

f) Describe its condition at the time of replacement;

g) State all costs of replacing it, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs;

h) Identify all persons who paid the replacement costs;

i) Identify all communications related to it; and

j) State whether any persons tested, examined, and/or analyzed it, and/or any other Star ME-1 from the same site. If so, for each Star ME-1 and/or component part tested, examined, and/or analyzed:

i) Identify the Star ME-1 or component part;

ii) Describe each test, examination, and/or analysis, state the date of each, and provide a detailed protocol for each;

iii) Identify the persons who participated in setting up and/or conducting the tests, examinations, and/or analyses;

iv) Describe and explain the results of the tests, examinations, and/or analyses, including all observations and conclusions;

v) Identify all persons who participated in evaluating the results of the tests, examinations, and/or analyses; and

vi) Identify all communications related to it.

49. State all current costs of replacing a Star ME-1 and/or a group of Star ME-1's, including, and separately specifying, the costs of the replacement product, the labor, and any other associated costs. To the extent these costs may vary depending upon facts and circumstances (including, but not limited to, the building or site of replacement or the quantity being replaced), so state, identify all variables, factors, and considerations related to determining the costs, and explain fully. If you cannot give exact costs, give your best estimates (identified as such) and explain the basis for the estimates.

50. Identify and describe all verbal and/or written claims of which you are aware relating to the Star ME-1. For each such claim, identify the Star ME-1, state the date on and manner in which you first became aware of same, identify all persons making the claim, and state the status of same, including whether or not it has been settled or otherwise resolved, and if settled or resolved, the settlement or resolution terms and amounts.

51. From the date of your incorporation through the present, identify each of your employees and state the dates during which you employed each employee.

52. From the date of your incorporation through the present, identify each of your officers and state the dates during which each officer held each officer position.

53. From the date of your incorporation through the present, identify each of your directors and state the dates during which each director held such position.

54. From the date of your incorporation through the present, identify all of your stockholders and/or other owners, state the percentage of stock owned by each person identified, and state the dates during which each person owned said stock.

55. From the date of your incorporation through the present, identify each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company:

a) Sales;

b) Marketing;

c) Product design and/or development;

d) Engineering and/or technical services;

e) Customer service/customer relations;

f) Public and/or governmental relations;

g) Product manufacturing and/or production;

h) Product distribution;

i) Corporate mergers, acquisitions, and/or transactions;

j) Quality assurance/control; and

k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

56. Identify and describe your insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1. Identify all insurance policies relating to the foregoing.

57. For each of the last three (3) years, state your gross income, your net income, your gross sales, and your net sales.

58. For each of the documents produced in response to these Interrogatories and the Requests for Production, state whether or not it is a true and accurate copy of the original.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
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Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF REQUESTS FOR PRODUCTION**
**OF DOCUMENTS AND THINGS TO RESPONDENT**
**CHEMETRON CORPORATION**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent Chemetron Corporation serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel's office and permit Complaint Counsel to inspect and/or copy each of the documents and things requested below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Interrogatories" shall mean Complaint Counsel's First Set of Interrogatories to Respondent Chemetron Corporation served upon the Respondents.

20. "Answer" shall mean the Answer and Defenses of Chemetron Corporation filed in this action.

## INSTRUCTIONS

A. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each document, item, or category requested, that it has been produced, or that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of a request, item, or category, that part shall be specified. A response should not be

supplied solely by reference to the response to another request or subpart unless the response is completely identical to the response to which reference is made.

B. The responses shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Each request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

D. Each request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

E. Identify each person who assisted or participated in preparing and/or supplying any of the information, documents, or things given in response to or relied upon in preparing a response to a request.

F. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be

construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

G. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

H. The singular shall include the plural, and vice versa.

I. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

J. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

K. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

L. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

M. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

N. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

O. In producing the documents and things requested herein, indicate, and segregate the documents by, the specific request (by paragraph and subparagraph numbers/letters) in response to which each document, group of documents, or thing is produced.

P. To facilitate identification and organization of the documents, bates-stamp all documents produced.

REQUESTS FOR PRODUCTION

1. All documents identified in response to the Interrogatories.

2. All documents relating to your answers to the Interrogatories, in support of your answers thereto, and/or used or relied upon in preparing your answers thereto.

3. All documents in support of and/or upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. All documents refuting or tending to refute the allegations of the Complaint.

5. All documents supporting or tending to support the allegations of the Complaint.

6. All of your written document retention policies in effect at any time(s) since the date of your incorporation.

7. All of your written policies in effect at any time(s) since the date of your incorporation relating to retention of your products or samples of your products.

8. All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users.

9. All correspondence relating to the Star ME-1 other than correspondence to or from Complaint Counsel dated on or after October 9, 2001.

10. All documents you obtained from the U.S. Consumer Product Safety Commission or its staff relating to the Star ME-1, other than those obtained from Complaint Counsel on or after October 9, 2001.

11. All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

12. All documents describing and/or evidencing the operations, purposes, and uses of the Star ME-1.

13. All documents relating to the quantities of Star ME-1's manufactured.

14. All documents relating to manufacture of the Star ME-1, including, but not limited to, its design, development, and/or engineering.

15. All complete engineering drawing packages, engineering drawings, requests for changes, and change notices relating to the Star ME-1.

16. All documents relating to the materials used in the Star ME-1 and to the procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, all documents relating to the following:

a) The Star ME-1's design, materials, and component parts, including, but not limited to, the acquisition of and specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

17. All documents evidencing the manufacturer and supplier of each component part, substance, chemical, lubricant, "O" ring, and/or other material used in the Star ME-1.

18. All documents evidencing the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same.

19. All documents relating to submission of the Star ME-1 for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM. These documents shall include, but not be limited to, the following: documents relating to all tests, examinations, evaluations, and analyses conducted with respect to the submission; each communication relating to the submission; all results of and responses to the submission; and all documents relating to whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1.

20. All documents evidencing the persons who distributed and/or participated in the distribution of the Star ME-1, the persons to whom the Star ME-1 was distributed, the dates of Star ME-1 distribution, and the Star ME-1 quantities distributed.

21. All documents relating to the installation of the Star ME-1, including, but not limited to, the persons who installed and/or participated in the installation of the Star ME-1, the persons for whom the Star ME-1 was installed, the buildings in which the Star ME-1 was installed, the building types in which Star ME-1's have ever been installed, the dates of Star ME-1 installation, and the Star ME-1 quantities installed.

22. All documents relating to the actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, any persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

23. All documents relating to tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, including, but not limited to, test, examination, and/or analysis procedures, protocols, and results.

24. All documents relating to any of the following conditions being present, observed, and/or alleged in any Star ME-1's or any components parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

25. All documents relating to actual, potential, or alleged effects on the operation, activation, and/or other performance of Star ME-1's of any of the following conditions being present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

26. All documents relating to the operation and proper operation of Star ME-1's.

27. All documents relating to the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

28. All documents relating to actual, alleged, reported, or otherwise communicated problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

29. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires. Your response should include, but not be limited to, the following resulting from or relating to the fire (including in attempting to escape from or extinguish the fire):

a) All documents relating to injuries or alleged injuries;

b) All documents relating to deaths or alleged deaths;

c) All documents relating to damaged, destroyed, or lost property, and allegedly damaged, destroyed, or lost property;

d) All police, fire, medical, emergency service, or other reports;

e) All documents relating to tests, examinations, and/or analyses of any Star ME-1 or component part thereof that failed and/or partially failed, and/or any other Star ME-1 from the same site; and

f) All documents relating to the reasons the Star ME-1 failed and/or partially failed.

30. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in

tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules. Your response should include, but not be limited to, all documents relating to these tests.

31. All documents relating to actual, alleged, reported, or otherwise communicated failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element. Your response should include, but not be limited to, all documents relating to these tests, failures, or other circumstances.

32. All documents relating to the performance record and/or history of the Star ME-1, including, but not limited to, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

33. All documents relating to all Star ME-1's that properly operated and activated in a fire.

34. All documents relating to the delisting (by UL, FM, and/or any other person), recall, discontinuance, and/or taking off the market of any Star ME-1's and/or any Star ME-1 component parts, and all documents relating to any warning, advisory, safety, or similar notice to persons relating to any Star ME-1's and/or any Star ME-1 component parts.

35. All documents relating to the return, and/or requested return, to you and/or any manufacturer, supplier, distributor, installer, and/or other person, of any Star ME-1's and/or any Star ME-1 component parts.

36. All documents relating to the replacement of Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers.

37. All documents evidencing the current costs, and/or estimates of the current costs, of replacing a Star ME-1 or a group of Star ME-1's, including, but not limited to, the costs of the replacement product, the labor, any other associated costs, all variables, factors, and considerations related to determining the costs or estimates, and all bases for all estimates.

38. All documents relating to all verbal and/or written claims of which you are aware relating to the Star ME-1, including, but not limited to, the persons making the claim, the status of the claim (including whether or not it has been settled or otherwise resolved), and the settlement or resolution terms and amounts.

39. Personnel or other documents sufficient to identify and evidence each of your employees from the date of your incorporation through the present and the dates during which you employed each employee. (This request does not seek *all* documents relating to your employees, but merely documents adequate to evidence and confirm the information sought.)

40. Documents sufficient to identify and evidence each of your officers from the date of your incorporation through the present and the dates during which each officer was in each office. (This request does not seek *all* documents relating to your officers, but merely documents adequate to evidence and confirm the information sought.)

41. Documents sufficient to identify and evidence each of your directors from the date of your incorporation through the present and the dates during which each director held his/her directorship. (This request does not seek *all* documents relating to your directors, but merely documents adequate to evidence and confirm the information sought.)

42. Documents sufficient to identify and evidence each of your stockholders and/or other owners from the date of your incorporation through the present, the percentage of stock owned by each person identified, and the dates during which each person owned said stock. (This request does not seek *all* documents relating to your stockholders and/or other owners, but merely documents adequate to evidence and confirm the information sought.)

43. Documents sufficient to identify and evidence each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company from the date of your incorporation through the present:

a) Sales;

b) Marketing;

c) Product design and/or development;

d) Engineering and/or technical services;

e) Customer service/customer relations;

f) Public and/or governmental relations;

g) Product manufacturing and/or production;

h) Product distribution;

i) Corporate mergers, acquisitions, and/or transactions;

j) Quality assurance/control; and

k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

(This request does not seek *all* documents relating to these employees, agents, representatives, and/or consultants, but merely documents adequate to evidence and confirm the information sought.)

44. All documents relating to the sale of Star ME-1's, including, but not limited to, purchase orders, shipping documents, invoices, billing statements, and sales receipts.

45. All of your insurance policies, including, but not limited to, general liability and product liability policies, as well as all policies evidencing and/or describing insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1.

46. For each of the last three (3) years, all documents evidencing your profits, losses, gross income, net income, gross sales, net sales, net assets, net worth, total assets, and total liabilities, including, but not limited to, your federal and state tax returns, financial statements, and accountant's reports.

47. All documents comprising, for each of the last three (3) years, your budgets, revenue projections, cash flow projections, and profitability projections.

48. All photographs and other pictures of the Star ME-1.

49. All product catalogues, brochures, marketing materials, sales materials, and similar documents listing, describing, or otherwise referencing or showing the Star ME-1.

50. Three (3) never-installed Star ME-1's of each manufacture model year.

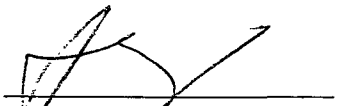
51. Three (3) samples of each Star ME-1 component part, including, but not limited to, each substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

52. All Star ME-1's tested, analyzed, examined, torn down, and/or cut apart.

53. All name change certificates and/or other public filings documenting each Chemetron Corporation name change.

54. All documents relating to the reasons for each Chemetron Corporation name change.

55. All documents evidencing the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., including, but not limited to, all documents evidencing dates and/or the periods of time in which the relationship changed and the manners in which it changed.



Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF REQUESTS FOR PRODUCTION**
**OF DOCUMENTS AND THINGS TO RESPONDENT**
**CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent Chemetron Investments, Inc. serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel's office and permit Complaint Counsel to inspect and/or copy each of the documents and things requested below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Interrogatories" shall mean Complaint Counsel's First Set of Interrogatories to Respondent Chemetron Investments, Inc. served upon the Respondents.

20. "Answer" shall mean the Answer and Defenses of Chemetron Investments, Inc. filed in this action.

## INSTRUCTIONS

A. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each document, item, or category requested, that it has been produced, or that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of a request, item, or category, that part shall be specified. A response should not be

supplied solely by reference to the response to another request or subpart unless the response is completely identical to the response to which reference is made.

B. The responses shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Each request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

D. Each request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

E. Identify each person who assisted or participated in preparing and/or supplying any of the information, documents, or things given in response to or relied upon in preparing a response to a request.

F. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be

construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

G. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

H. The singular shall include the plural, and vice versa.

I. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

J. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

K. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

L. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

M. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

N. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

O. In producing the documents and things requested herein, indicate, and segregate the documents by, the specific request (by paragraph and subparagraph numbers/letters) in response to which each document, group of documents, or thing is produced.

P. To facilitate identification and organization of the documents, bates-stamp all documents produced.

REQUESTS FOR PRODUCTION

1. All documents identified in response to the Interrogatories.

2. All documents relating to your answers to the Interrogatories, in support of your answers thereto, and/or used or relied upon in preparing your answers thereto.

3. All documents in support of and/or upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. All documents refuting or tending to refute the allegations of the Complaint.

5. All documents supporting or tending to support the allegations of the Complaint.

6. All of your written document retention policies in effect at any time(s) since the date of your incorporation.

7. All of your written policies in effect at any time(s) since the date of your incorporation relating to retention of your products or samples of your products.

8. All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users.

9. All correspondence relating to the Star ME-1 other than correspondence to or from Complaint Counsel dated on or after October 9, 2001.

10. All documents you obtained from the U.S. Consumer Product Safety Commission or its staff relating to the Star ME-1, other than those obtained from Complaint Counsel on or after October 9, 2001.

11. All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

12. All documents describing and/or evidencing the operations, purposes, and uses of the Star ME-1.

13. All documents relating to the quantities of Star ME-1's manufactured.

14. All documents relating to manufacture of the Star ME-1, including, but not limited to, its design, development, and/or engineering.

15. All complete engineering drawing packages, engineering drawings, requests for changes, and change notices relating to the Star ME-1.

16. All documents relating to the materials used in the Star ME-1 and to the procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, all documents relating to the following:

a) The Star ME-1's design, materials, and component parts, including, but not limited to, the acquisition of and specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

17. All documents evidencing the manufacturer and supplier of each component part, substance, chemical, lubricant, "O" ring, and/or other material used in the Star ME-1.

18. All documents evidencing the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same.

19. All documents relating to submission of the Star ME-1 for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM. These documents shall include, but not be limited to, the following: documents relating to all tests, examinations, evaluations, and analyses conducted with respect to the submission; each communication relating to the submission; all results of and responses to the submission; and all documents relating to whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1.

20. All documents evidencing the persons who distributed and/or participated in the distribution of the Star ME-1, the persons to whom the Star ME-1 was distributed, the dates of Star ME-1 distribution, and the Star ME-1 quantities distributed.

21. All documents relating to the installation of the Star ME-1, including, but not limited to, the persons who installed and/or participated in the installation of the Star ME-1, the persons for whom the Star ME-1 was installed, the buildings in which the Star ME-1 was installed, the building types in which Star ME-1's have ever been installed, the dates of Star ME-1 installation, and the Star ME-1 quantities installed.

22. All documents relating to the actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, any persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

23. All documents relating to tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, including, but not limited to, test, examination, and/or analysis procedures, protocols, and results.

24. All documents relating to any of the following conditions being present, observed, and/or alleged in any Star ME-1's or any components parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

25. All documents relating to actual, potential, or alleged effects on the operation, activation, and/or other performance of Star ME-1's of any of the following conditions being present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

26. All documents relating to the operation and proper operation of Star ME-1's.

27. All documents relating to the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

28. All documents relating to actual, alleged, reported, or otherwise communicated problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

29. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires. Your response should include, but not be limited to, the following resulting from or relating to the fire (including in attempting to escape from or extinguish the fire):

a) All documents relating to injuries or alleged injuries;

b) All documents relating to deaths or alleged deaths;

c) All documents relating to damaged, destroyed, or lost property, and allegedly damaged, destroyed, or lost property;

d) All police, fire, medical, emergency service, or other reports;

e) All documents relating to tests, examinations, and/or analyses of any Star ME-1 or component part thereof that failed and/or partially failed, and/or any other Star ME-1 from the same site; and

f) All documents relating to the reasons the Star ME-1 failed and/or partially failed.

30. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in

tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules. Your response should include, but not be limited to, all documents relating to these tests.

31. All documents relating to actual, alleged, reported, or otherwise communicated failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element. Your response should include, but not be limited to, all documents relating to these tests, failures, or other circumstances.

32. All documents relating to the performance record and/or history of the Star ME-1, including, but not limited to, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

33. All documents relating to all Star ME-1's that properly operated and activated in a fire.

34. All documents relating to the delisting (by UL, FM, and/or any other person), recall, discontinuance, and/or taking off the market of any Star ME-1's and/or any Star ME-1 component parts, and all documents relating to any warning, advisory, safety, or similar notice to persons relating to any Star ME-1's and/or any Star ME-1 component parts.

35. All documents relating to the return, and/or requested return, to you and/or any manufacturer, supplier, distributor, installer, and/or other person, of any Star ME-1's and/or any Star ME-1 component parts.

36. All documents relating to the replacement of Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers.

37. All documents evidencing the current costs, and/or estimates of the current costs, of replacing a Star ME-1 or a group of Star ME-1's, including, but not limited to, the costs of the replacement product, the labor, any other associated costs, all variables, factors, and considerations related to determining the costs or estimates, and all bases for all estimates.

38. All documents relating to all verbal and/or written claims of which you are aware relating to the Star ME-1, including, but not limited to, the persons making the claim, the status of the claim (including whether or not it has been settled or otherwise resolved), and the settlement or resolution terms and amounts.

39. Personnel or other documents sufficient to identify and evidence each of your employees from the date of your incorporation through the present and the dates during which you employed each employee. (This request does not seek *all* documents relating to your employees, but merely documents adequate to evidence and confirm the information sought.)

40. Documents sufficient to identify and evidence each of your officers from the date of your incorporation through the present and the dates during which each officer was in each office. (This request does not seek *all* documents relating to your officers, but merely documents adequate to evidence and confirm the information sought.)

41. Documents sufficient to identify and evidence each of your directors from the date of your incorporation through the present and the dates during which each director held his/her directorship. (This request does not seek *all* documents relating to your directors, but merely documents adequate to evidence and confirm the information sought.)

42. Documents sufficient to identify and evidence each of your stockholders and/or other owners from the date of your incorporation through the present, the percentage of stock owned by each person identified, and the dates during which each person owned said stock. (This request does not seek *all* documents relating to your stockholders and/or other owners, but merely documents adequate to evidence and confirm the information sought.)

43. Documents sufficient to identify and evidence each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company from the date of your incorporation through the present:

a) Sales;

b) Marketing;

c) Product design and/or development;

d) Engineering and/or technical services;

e) Customer service/customer relations;

f) Public and/or governmental relations;

g) Product manufacturing and/or production;

h) Product distribution;

i) Corporate mergers, acquisitions, and/or transactions;

j) Quality assurance/control; and

k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

(This request does not seek *all* documents relating to these employees, agents, representatives, and/or consultants, but merely documents adequate to evidence and confirm the information sought.)

44. All documents relating to the sale of Star ME-1's, including, but not limited to, purchase orders, shipping documents, invoices, billing statements, and sales receipts.

45. All of your insurance policies, including, but not limited to, general liability and product liability policies, as well as all policies evidencing and/or describing insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1.

46. For each of the last three (3) years, all documents evidencing your profits, losses, gross income, net income, gross sales, net sales, net assets, net worth, total assets, and total liabilities, including, but not limited to, your federal and state tax returns, financial statements, and accountant's reports.

47. All documents comprising, for each of the last three (3) years, your budgets, revenue projections, cash flow projections, and profitability projections.

48. All photographs and other pictures of the Star ME-1.

49. All product catalogues, brochures, marketing materials, sales materials, and similar documents listing, describing, or otherwise referencing or showing the Star ME-1.

50. Three (3) never-installed Star ME-1's of each manufacture model year.

51. Three (3) samples of each Star ME-1 component part, including, but not limited to, each substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

52. All Star ME-1's tested, analyzed, examined, torn down, and/or cut apart.

53. All name change certificates and/or other public filings documenting each Chemetron Investments, Inc. name change.

54. All documents relating to the reasons for each Chemetron Investments, Inc. name change.

55. All documents evidencing the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., including, but not limited to, all documents evidencing dates and/or the periods of time in which the relationship changed and the manners in which it changed.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF REQUESTS FOR PRODUCTION**
**OF DOCUMENTS AND THINGS TO RESPONDENT**
**CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent Chemetron Investments, Inc. serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel's office and permit Complaint Counsel to inspect and/or copy each of the documents and things requested below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Interrogatories" shall mean Complaint Counsel's First Set of Interrogatories to Respondent Chemetron Investments, Inc. served upon the Respondents.

20. "Answer" shall mean the Answer and Defenses of Chemetron Investments, Inc. filed in this action.

## INSTRUCTIONS

A. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each document, item, or category requested, that it has been produced, or that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of a request, item, or category, that part shall be specified. A response should not be

supplied solely by reference to the response to another request or subpart unless the response is completely identical to the response to which reference is made.

B. The responses shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Each request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

D. Each request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

E. Identify each person who assisted or participated in preparing and/or supplying any of the information, documents, or things given in response to or relied upon in preparing a response to a request.

F. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be

construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

G. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

H. The singular shall include the plural, and vice versa.

I. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

J. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

K. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

L. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

M. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

N. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

O. In producing the documents and things requested herein, indicate, and segregate the documents by, the specific request (by paragraph and subparagraph numbers/letters) in response to which each document, group of documents, or thing is produced.

P. To facilitate identification and organization of the documents, bates-stamp all documents produced.

REQUESTS FOR PRODUCTION

1. All documents identified in response to the Interrogatories.

2. All documents relating to your answers to the Interrogatories, in support of your answers thereto, and/or used or relied upon in preparing your answers thereto.

3. All documents in support of and/or upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. All documents refuting or tending to refute the allegations of the Complaint.

5. All documents supporting or tending to support the allegations of the Complaint.

6. All of your written document retention policies in effect at any time(s) since the date of your incorporation.

7. All of your written policies in effect at any time(s) since the date of your incorporation relating to retention of your products or samples of your products.

8. All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users.

9. All correspondence relating to the Star ME-1 other than correspondence to or from Complaint Counsel dated on or after October 9, 2001.

10. All documents you obtained from the U.S. Consumer Product Safety Commission or its staff relating to the Star ME-1, other than those obtained from Complaint Counsel on or after October 9, 2001.

11. All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

12. All documents describing and/or evidencing the operations, purposes, and uses of the Star ME-1.

13. All documents relating to the quantities of Star ME-1's manufactured.

14. All documents relating to manufacture of the Star ME-1, including, but not limited to, its design, development, and/or engineering.

15. All complete engineering drawing packages, engineering drawings, requests for changes, and change notices relating to the Star ME-1.

16. All documents relating to the materials used in the Star ME-1 and to the procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, all documents relating to the following:

a) The Star ME-1's design, materials, and component parts, including, but not limited to, the acquisition of and specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

17. All documents evidencing the manufacturer and supplier of each component part, substance, chemical, lubricant, "O" ring, and/or other material used in the Star ME-1.

18. All documents evidencing the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same.

19. All documents relating to submission of the Star ME-1 for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM. These documents shall include, but not be limited to, the following: documents relating to all tests, examinations, evaluations, and analyses conducted with respect to the submission; each communication relating to the submission; all results of and responses to the submission; and all documents relating to whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1.

20. All documents evidencing the persons who distributed and/or participated in the distribution of the Star ME-1, the persons to whom the Star ME-1 was distributed, the dates of Star ME-1 distribution, and the Star ME-1 quantities distributed.

21. All documents relating to the installation of the Star ME-1, including, but not limited to, the persons who installed and/or participated in the installation of the Star ME-1, the persons for whom the Star ME-1 was installed, the buildings in which the Star ME-1 was installed, the building types in which Star ME-1's have ever been installed, the dates of Star ME-1 installation, and the Star ME-1 quantities installed.

22. All documents relating to the actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, any persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

23. All documents relating to tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, including, but not limited to, test, examination, and/or analysis procedures, protocols, and results.

24. All documents relating to any of the following conditions being present, observed, and/or alleged in any Star ME-1's or any components parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

25. All documents relating to actual, potential, or alleged effects on the operation, activation, and/or other performance of Star ME-1's of any of the following conditions being present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

26. All documents relating to the operation and proper operation of Star ME-1's.

27. All documents relating to the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

28. All documents relating to actual, alleged, reported, or otherwise communicated problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

29. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires. Your response should include, but not be limited to, the following resulting from or relating to the fire (including in attempting to escape from or extinguish the fire):

a) All documents relating to injuries or alleged injuries;

b) All documents relating to deaths or alleged deaths;

c) All documents relating to damaged, destroyed, or lost property, and allegedly damaged, destroyed, or lost property;

d) All police, fire, medical, emergency service, or other reports;

e) All documents relating to tests, examinations, and/or analyses of any Star ME-1 or component part thereof that failed and/or partially failed, and/or any other Star ME-1 from the same site; and

f) All documents relating to the reasons the Star ME-1 failed and/or partially failed.

30. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in

tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules. Your response should include, but not be limited to, all documents relating to these tests.

31. All documents relating to actual, alleged, reported, or otherwise communicated failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element. Your response should include, but not be limited to, all documents relating to these tests, failures, or other circumstances.

32. All documents relating to the performance record and/or history of the Star ME-1, including, but not limited to, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

33. All documents relating to all Star ME-1's that properly operated and activated in a fire.

34. All documents relating to the delisting (by UL, FM, and/or any other person), recall, discontinuance, and/or taking off the market of any Star ME-1's and/or any Star ME-1 component parts, and all documents relating to any warning, advisory, safety, or similar notice to persons relating to any Star ME-1's and/or any Star ME-1 component parts.

35. All documents relating to the return, and/or requested return, to you and/or any manufacturer, supplier, distributor, installer, and/or other person, of any Star ME-1's and/or any Star ME-1 component parts.

36. All documents relating to the replacement of Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers.

37. All documents evidencing the current costs, and/or estimates of the current costs, of replacing a Star ME-1 or a group of Star ME-1's, including, but not limited to, the costs of the replacement product, the labor, any other associated costs, all variables, factors, and considerations related to determining the costs or estimates, and all bases for all estimates.

38. All documents relating to all verbal and/or written claims of which you are aware relating to the Star ME-1, including, but not limited to, the persons making the claim, the status of the claim (including whether or not it has been settled or otherwise resolved), and the settlement or resolution terms and amounts.

39. Personnel or other documents sufficient to identify and evidence each of your employees from the date of your incorporation through the present and the dates during which you employed each employee. (This request does not seek *all* documents relating to your employees, but merely documents adequate to evidence and confirm the information sought.)

40. Documents sufficient to identify and evidence each of your officers from the date of your incorporation through the present and the dates during which each officer was in each office. (This request does not seek *all* documents relating to your officers, but merely documents adequate to evidence and confirm the information sought.)

41. Documents sufficient to identify and evidence each of your directors from the date of your incorporation through the present and the dates during which each director held his/her directorship. (This request does not seek *all* documents relating to your directors, but merely documents adequate to evidence and confirm the information sought.)

42. Documents sufficient to identify and evidence each of your stockholders and/or other owners from the date of your incorporation through the present, the percentage of stock owned by each person identified, and the dates during which each person owned said stock. (This request does not seek *all* documents relating to your stockholders and/or other owners, but merely documents adequate to evidence and confirm the information sought.)

43. Documents sufficient to identify and evidence each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company from the date of your incorporation through the present:

a) Sales;

b) Marketing;

c) Product design and/or development;

d) Engineering and/or technical services;

e) Customer service/customer relations;

f) Public and/or governmental relations;

g) Product manufacturing and/or production;

h) Product distribution;

i) Corporate mergers, acquisitions, and/or transactions;

j) Quality assurance/control; and

k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

(This request does not seek *all* documents relating to these employees, agents, representatives, and/or consultants, but merely documents adequate to evidence and confirm the information sought.)

44. All documents relating to the sale of Star ME-1's, including, but not limited to, purchase orders, shipping documents, invoices, billing statements, and sales receipts.

45. All of your insurance policies, including, but not limited to, general liability and product liability policies, as well as all policies evidencing and/or describing insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1.

46. For each of the last three (3) years, all documents evidencing your profits, losses, gross income, net income, gross sales, net sales, net assets, net worth, total assets, and total liabilities, including, but not limited to, your federal and state tax returns, financial statements, and accountant's reports.

47. All documents comprising, for each of the last three (3) years, your budgets, revenue projections, cash flow projections, and profitability projections.

48. All photographs and other pictures of the Star ME-1.

49. All product catalogues, brochures, marketing materials, sales materials, and similar documents listing, describing, or otherwise referencing or showing the Star ME-1.

50. Three (3) never-installed Star ME-1's of each manufacture model year.

51. Three (3) samples of each Star ME-1 component part, including, but not limited to, each substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

52. All Star ME-1's tested, analyzed, examined, torn down, and/or cut apart.

53. All name change certificates and/or other public filings documenting each Chemetron Investments, Inc. name change.

54. All documents relating to the reasons for each Chemetron Investments, Inc. name change.

55. All documents evidencing the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., including, but not limited to, all documents evidencing dates and/or the periods of time in which the relationship changed and the manners in which it changed.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
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Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF REQUESTS FOR PRODUCTION**
**OF DOCUMENTS AND THINGS TO RESPONDENT**
**SUNBEAM CORPORATION**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent Sunbeam Corporation serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel's office and permit Complaint Counsel to inspect and/or copy each of the documents and things requested below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Interrogatories" shall mean Complaint Counsel's First Set of Interrogatories to Respondent Sunbeam Corporation served upon the Respondents.

20. "Answer" shall mean the Answer and Defenses of Sunbeam Corporation filed in this action.

## INSTRUCTIONS

A. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each document, item, or category requested, that it has been produced, or that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of a request, item, or category, that part shall be specified. A response should not be

supplied solely by reference to the response to another request or subpart unless the response is completely identical to the response to which reference is made.

B. The responses shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Each request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

D. Each request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

E. Identify each person who assisted or participated in preparing and/or supplying any of the information, documents, or things given in response to or relied upon in preparing a response to a request.

F. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be

construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

G. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

H. The singular shall include the plural, and vice versa.

I. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

J. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

K. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

L. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

M. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

N. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

O. In producing the documents and things requested herein, indicate, and segregate the documents by, the specific request (by paragraph and subparagraph numbers/letters) in response to which each document, group of documents, or thing is produced.

P. To facilitate identification and organization of the documents, bates-stamp all documents produced.

REQUESTS FOR PRODUCTION

1. All documents identified in response to the Interrogatories.

2. All documents relating to your answers to the Interrogatories, in support of your answers thereto, and/or used or relied upon in preparing your answers thereto.

3. All documents in support of and/or upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. All documents refuting or tending to refute the allegations of the Complaint.

5. All documents supporting or tending to support the allegations of the Complaint.

6. All of your written document retention policies in effect at any time(s) since the date of your incorporation.

7. All of your written policies in effect at any time(s) since the date of your incorporation relating to retention of your products or samples of your products.

8. All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users.

9. All correspondence relating to the Star ME-1 other than correspondence to or from Complaint Counsel dated on or after October 9, 2001.

10. All documents you obtained from the U.S. Consumer Product Safety Commission or its staff relating to the Star ME-1, other than those obtained from Complaint Counsel on or after October 9, 2001.

11. All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

12. All documents describing and/or evidencing the operations, purposes, and uses of the Star ME-1.

13. All documents relating to the quantities of Star ME-1's manufactured.

14. All documents relating to manufacture of the Star ME-1, including, but not limited to, its design, development, and/or engineering.

15. All complete engineering drawing packages, engineering drawings, requests for changes, and change notices relating to the Star ME-1.

16. All documents relating to the materials used in the Star ME-1 and to the procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, all documents relating to the following:

a) The Star ME-1's design, materials, and component parts, including, but not limited to, the acquisition of and specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

17. All documents evidencing the manufacturer and supplier of each component part, substance, chemical, lubricant, "O" ring, and/or other material used in the Star ME-1.

18. All documents evidencing the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same.

19. All documents relating to submission of the Star ME-1 for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM. These documents shall include, but not be limited to, the following: documents relating to all tests, examinations, evaluations, and analyses conducted with respect to the submission; each communication relating to the submission; all results of and responses to the submission; and all documents relating to whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1.

20. All documents evidencing the persons who distributed and/or participated in the distribution of the Star ME-1, the persons to whom the Star ME-1 was distributed, the dates of Star ME-1 distribution, and the Star ME-1 quantities distributed.

21. All documents relating to the installation of the Star ME-1, including, but not limited to, the persons who installed and/or participated in the installation of the Star ME-1, the persons for whom the Star ME-1 was installed, the buildings in which the Star ME-1 was installed, the building types in which Star ME-1's have ever been installed, the dates of Star ME-1 installation, and the Star ME-1 quantities installed.

22. All documents relating to the actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, any persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance with specifications, was properly manufactured, and would fully and properly operate and activate.

23. All documents relating to tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, including, but not limited to, test, examination, and/or analysis procedures, protocols, and results.

24. All documents relating to any of the following conditions being present, observed, and/or alleged in any Star ME-1's or any components parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

25. All documents relating to actual, potential, or alleged effects on the operation, activation, and/or other performance of Star ME-1's of any of the following conditions being present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

26. All documents relating to the operation and proper operation of Star ME-1's.

27. All documents relating to the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

28. All documents relating to actual, alleged, reported, or otherwise communicated problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

29. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires. Your response should include, but not be limited to, the following resulting from or relating to the fire (including in attempting to escape from or extinguish the fire):

a) All documents relating to injuries or alleged injuries;

b) All documents relating to deaths or alleged deaths;

c) All documents relating to damaged, destroyed, or lost property, and allegedly damaged, destroyed, or lost property;

d) All police, fire, medical, emergency service, or other reports;

e) All documents relating to tests, examinations, and/or analyses of any Star ME-1 or component part thereof that failed and/or partially failed, and/or any other Star ME-1 from the same site; and

f) All documents relating to the reasons the Star ME-1 failed and/or partially failed.

30. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in

tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes, requirements, and/or rules. Your response should include, but not be limited to, all documents relating to these tests.

31. All documents relating to actual, alleged, reported, or otherwise communicated failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element. Your response should include, but not be limited to, all documents relating to these tests, failures, or other circumstances.

32. All documents relating to the performance record and/or history of the Star ME-1, including, but not limited to, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

33. All documents relating to all Star ME-1's that properly operated and activated in a fire.

34. All documents relating to the delisting (by UL, FM, and/or any other person), recall, discontinuance, and/or taking off the market of any Star ME-1's and/or any Star ME-1 component parts, and all documents relating to any warning, advisory, safety, or similar notice to persons relating to any Star ME-1's and/or any Star ME-1 component parts.

35. All documents relating to the return, and/or requested return, to you and/or any manufacturer, supplier, distributor, installer, and/or other person, of any Star ME-1's and/or any Star ME-1 component parts.

36. All documents relating to the replacement of Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers.

37. All documents evidencing the current costs, and/or estimates of the current costs, of replacing a Star ME-1 or a group of Star ME-1's, including, but not limited to, the costs of the replacement product, the labor, any other associated costs, all variables, factors, and considerations related to determining the costs or estimates, and all bases for all estimates.

38. All documents relating to all verbal and/or written claims of which you are aware relating to the Star ME-1, including, but not limited to, the persons making the claim, the status of the claim (including whether or not it has been settled or otherwise resolved), and the settlement or resolution terms and amounts.

39. All documents relating to the sale of Star ME-1's, including, but not limited to, purchase orders, shipping documents, invoices, billing statements, and sales receipts.

40. All of your insurance policies, including, but not limited to, general liability and product liability policies, as well as all policies evidencing and/or describing insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1.

41. All photographs and other pictures of the Star ME-1.

42. All product catalogues, brochures, marketing materials, sales materials, and similar documents listing, describing, or otherwise referencing or showing the Star ME-1.

43. Three (3) never-installed Star ME-1's of each manufacture model year.

44. Three (3) samples of each Star ME-1 component part, including, but not limited to, each substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

45. All Star ME-1's tested, analyzed, examined, torn down, and/or cut apart.

46. All name change certificates and/or other public filings documenting each Sunbeam Corporation name change.

47. All documents evidencing the relationship(s) between Chemetron Corporation and Chemetron Investments, Inc., and the relationship(s) between each of them and Sunbeam Corporation, including, but not limited to, all documents evidencing the dates and/or the periods of time in which the relationships changed and the manners in which they changed.

48. Sunbeam Corporation's most recent reorganization plan and disclosure statement provided to creditors.

49. The most recent valuations of Sunbeam Corporation and of its assets prepared by and/or for you.

50. The most recent Sunbeam Corporation complete liquidation study.

51. An index of all documents provided to Sunbeam Corporation's creditors and creditor committees.

52. Sunbeam Corporation's debtor-in-possession (DIP) credit agreement.

53. The most recent set of Sunbeam Corporation projections and pro forma financial statements.

54. All of Sunbeam Corporation's monthly financial statements since January 1, 2001, including balance sheet, income statement, and statement of cash flows.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
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Washington, DC 20016-2756

By first class mail, postage prepaid, to:

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Bert L. Wolff, Esq.
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Ralph A. Weber, Esq.
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Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|
| In the matter of | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | CPSC Docket No.: 02-1 |
| and | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | |
| and | |
| SUNBEAM CORPORATION | |
| and | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | |
| and | |
| GRUCON CORPORATION | |

**COMPLAINT COUNSEL'S**
**FIRST SET OF REQUESTS FOR PRODUCTION**
**OF DOCUMENTS AND THINGS TO RESPONDENT**
**GRUCON CORPORATION**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent Grucon Corporation serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel's office and permit Complaint Counsel to inspect and/or copy each of the documents and things requested below.

## DEFINITIONS

1. "You," "your," and "Respondent" shall mean the Respondent to whom these discovery requests are directed (including if previously known under different names), including all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent.

2. "Document" shall mean the original (or an identical copy when the original is not available) and each nonidentical copy of any written, graphic, photographic, audio, visual, or computer materials, however produced or reproduced, of any kind or description, whether sent, received, or otherwise, including, but not limited to, papers, books, letters, telefacsimiles, teletypes, photographs, motion pictures, videotapes, audio recordings, correspondence, drawings, sketches, schematics, manuals, blueprints, work papers, intra- and interoffice communications, transcripts, minutes, reports, and recordings of telephone conversations, other conversations, interviews, conferences, and meetings, affidavits, statements, summaries, opinions, court pleadings and filings, reports, indices, studies, analyses, evaluations, contracts, licenses, agreements, questionnaires, answers to questionnaires, statistical records, calendars, appointment books, diaries, telephone logs, lists, tabulations, charts, graphs, data sheets, computer tapes, records, disks, cards, printouts and programs, microfilms, electronic mail, all other records created or kept by electronic, photographic, mechanical, or computerized means, any other written, printed, or reproduced material, including all drafts, alterations, modifications, changes,

amendments, and/or corrections of or to any of the foregoing, and things similar to any of the foregoing, regardless of their author or origin, however denominated.

3. "Person" shall mean any individual, entity, group, sole proprietorship, corporation, business, association, joint venture, partnership, firm, or other legal, business, or governmental entity, whether foreign or domestic.

4. "Relating to" or "related to" shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection with the matter discussed.

5. "Identify" or "identity" when used with respect to a person shall mean to provide the person's present or last known name, residential address, telephone number, occupation, job or position, job title(s), employer, employer department and/or subject area in which the person works, business affiliation, and business or employment address, and the person's relationships or associations, if any, to the Respondents in this action.

6. "Identify" or "identity" when used with respect to a business, entity, building, or place shall mean the present or last known name, address, and telephone number, and all former names, of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action.

7. "Identify" or "identity" when used with respect to a document shall mean the name or title of the document, a description of the document or record including its date of preparation and transmission, the author, sender, and recipient, a summary of the subject matter, and the identity of the person who currently has custody of, possession of, or control over the

document. You may also identify a document by providing a complete and legible copy thereof, and by stating that you have done so.

8. "Identify" when used with respect to a communication shall mean to describe in detail the nature and content of the communication, state the date of the communication, identify all persons to and from whom the communication was made, and identify all persons hearing, witnessing, and/or present during the communication.

9. "Identify" or "identity" when used with respect to a Star ME-1 shall mean to identify its manufacturer, state its manufacture date, and identify the building and/or place in which the Star ME-1 is/was installed and/or from which it was removed (if applicable).

10. "Claim" shall mean a complaint, lawsuit, governmental action, governmental order, dispute, report or allegation of injury or death, report or allegation of malfunction, report or allegation of operational failure, request or demand for payment, request or demand for indemnification, request or demand for reimbursement, warranty claim, insurance claim, and request for insurance coverage.

11. "Communication" shall mean any transfer of information, ideas, opinions, or thought by any means at any time or place under any circumstances, including, but not limited to, any transfer of information or data in a document or from one location to another by electrical, electronic, or similar means.

12. "Distribute" shall mean to deliver, sell, give, allot, or otherwise provide, and shall include the giving away of free samples and promotional items.

13. "Manufacture" shall mean to make, produce, assemble, fabricate, or work into usable form.

14. "Star ME-1" shall mean the dry fire sprinkler manufactured under the "Star"

brand name labeled, designated, and/or distributed as model "ME-1," in all orifice sizes, temperature ratings, finishes, and/or installation positions, including all versions, variations, and model years of that sprinkler.

15. "Activate" or "Activation" shall mean full opening of the sprinkler and release or discharge of water after melting of the Star ME-1's thermal sensing element.

16. "UL" shall mean Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, and any subsidiaries, divisions, employees, or agents of Underwriters Laboratories, Inc.

17. "FM" shall mean Factory Mutual Research Corporation, 1151 Boston-Providence Turnpike, Norwood, MA 02062, and any subsidiaries, divisions, employees, or agents of Factory Mutual Research Corporation.

18. "Complaint" shall mean the Complaint filed in this action.

19. "Interrogatories" shall mean Complaint Counsel's First Set of Interrogatories to Respondent Grucon served upon the Respondents.

20. "Answer" shall mean the Answer of Grucon Corporation filed in this action.

## INSTRUCTIONS

A. Each request shall be answered separately and fully in writing. Each response shall state, with respect to each document, item, or category requested, that it has been produced, or that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of a request, item, or category, that part shall be specified. A response should not be supplied solely by reference to the response to another request or subpart unless the response is completely identical to the response to which reference is made.

B. The responses shall be signed by the person giving them, and the objections, if any, shall be signed by the person or attorney making them. When a complete response to a particular request is not possible after exercising the required diligence, the request shall be answered to the extent possible and a statement shall be made indicating the reasons only a partial response is given, stating the information or knowledge you have concerning the unanswered portion or unproduced documents, and describing your efforts to secure the unknown information or unproduced documents.

C. Each request seeks production of all documents described herein and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain or have the ability to obtain from sources under their control.

D. Each request for a document contemplates production of the document in its entirety, without abbreviation or expurgation, including any amendments thereto whether referred to in the document or otherwise.

E. Identify each person who assisted or participated in preparing and/or supplying any of the information, documents, or things given in response to or relied upon in preparing a response to a request.

F. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The words "any" and "all" shall be construed so as to make the request inclusive rather than exclusive.

G. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

H. The singular shall include the plural, and vice versa.

I. These requests shall be read, interpreted, and answered in accordance with these instructions and the definitions set forth herein. If the meaning of any word or phrase used herein is unclear, the Respondents' attorneys are requested to contact Complaint Counsel for the purpose of resolving any ambiguity. If any request cannot be complied with in full after exercising the required diligence, it shall be complied with to the extent possible with a full statement of all efforts to make full compliance and of all reasons full compliance cannot be made.

J. If it is claimed that the attorney-client privilege or any other privilege is applicable to any document sought by these discovery requests, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and identify the document as follows:

i) State the date, nature, and subject matter of the document;

ii) Identify each author of the document;

iii) Identify each preparer of the document;

iv) Identify each person who is an addressee or an intended recipient of the document;

v) Identify each person from whom the document was received;

vi) State the present location of the document and all copies thereof;

vii) Identify each person who has or ever had possession, custody, or control of the document or any copy thereof;

viii) State the number of pages, attachments, appendices, and exhibits; and

ix) Provide all further information concerning the document and the circumstances upon which the claim of privilege is asserted.

K. For any communication with respect to which a privilege is asserted, identify the persons or entities among whom the communication took place, the date of the communication, and the subject.

L. In the event that any document sought by these discovery requests has been destroyed, discarded, or otherwise disposed of, that document is to be identified as completely as possible including, without limitation, the following information:

i) Identify each author of the document;

ii) Identify each preparer of the document;

iii) Identify each addressee or intended recipient of the document;

iv) Identify each person who received the document;

v) State the date of the document;

vi) State the subject matter of the document;

vii) State the reason for disposal of the document;

viii) Identify each person who authorized disposal of the document;

ix) Identify each person who disposed of the document.

M. If any document was, but is no longer, in your possession, custody, or control, provide the following information:

i) State the disposition of the document;

ii) State the date such disposition was made;

iii) Identify the present custodian of the document, or, if the document no longer exists, so state;

iv) Identify the person(s) who made the decision regarding the disposition of the document; and

v) State the reasons for the disposition and describe the document and the contents of the document, including the title, author, position or title of the author, addressee, position or title of the addressee, whether indicated or blind copies were made, date, subject matter, number of pages, attachments or appendices, and all persons to whom the document was distributed, shown, or explained.

N. Pursuant to 16 C.F.R. § 1025.31, the Respondents are under a continuing duty to supplement their responses to these discovery requests without further request from Complaint Counsel. A Respondent who has responded to a discovery request with a response that was complete when made is under a duty to supplement that response to include information later obtained.

O. In producing the documents and things requested herein, indicate, and segregate the documents by, the specific request (by paragraph and subparagraph numbers/letters) in response to which each document, group of documents, or thing is produced.

P. To facilitate identification and organization of the documents, bates-stamp all documents produced.

REQUESTS FOR PRODUCTION

1. All documents identified in response to the Interrogatories.

2. All documents relating to your answers to the Interrogatories, in support of your answers thereto, and/or used or relied upon in preparing your answers thereto.

3. All documents in support of and/or upon which you base the Answer, including each of the Answer's admissions, denials, and affirmative or other defenses (numbered or otherwise).

4. All documents refuting or tending to refute the allegations of the Complaint.

5. All documents supporting or tending to support the allegations of the Complaint.

6. All of your written document retention policies in effect at any time(s) since the date of your incorporation.

7. All of your written policies in effect at any time(s) since the date of your incorporation relating to retention of your products or samples of your products.

8. All documents relating to each communication, whether in person, by telephone, or by some other means, whether in a discussion, meeting, or other setting, relating to the subject matter of this litigation, the Complaint, the Answer, the documents requested herein, and/or the Star ME-1, between, among, by, or with any persons, including, but not limited to, the following: the Respondents; the Respondents' employees, former employees, agents, and/or representatives; and/or sprinkler installers, contractors, customers, and/or users.

9. All correspondence relating to the Star ME-1 other than correspondence to or from Complaint Counsel dated on or after October 9, 2001.

10. All documents you obtained from the U.S. Consumer Product Safety Commission or its staff relating to the Star ME-1, other than those obtained from Complaint Counsel on or after October 9, 2001.

11. All witness statements relating to the subject matter of this litigation, the Complaint, and the Answer.

12. All documents describing and/or evidencing the operations, purposes, and uses of the Star ME-1.

13. All documents relating to the quantities of Star ME-1's manufactured.

14. All documents relating to manufacture of the Star ME-1, including, but not limited to, its design, development, and/or engineering.

15. All complete engineering drawing packages, engineering drawings, requests for changes, and change notices relating to the Star ME-1.

16. All documents relating to the materials used in the Star ME-1 and to the procedures and specifications for the manufacture of the Star ME-1, including, but not limited to, all documents relating to the following:

a) The Star ME-1's design, materials, and component parts, including, but not limited to, the acquisition of and specifications for each component part, substance, chemical, lubricant, and/or other material used in the Star ME-1, the purposes for which they were used, the manner and amounts in which they were used, and any changes in any of the foregoing;

b) All tools, machinery, and equipment used in the Star ME-1 manufacture process, the purposes for which they were used, and any changes in any of the foregoing; and

c) All changes in procedures and specifications for the manufacture of the Star ME-1.

17. All documents evidencing the manufacturer and supplier of each component part, substance, chemical, lubricant, "O" ring, and/or other material used in the Star ME-1.

18. All documents evidencing the composition and/or material of the "O" rings contained in the Star ME-1, including all changes in same.

19. All documents relating to submission of the Star ME-1 for approval, listing, and/or certification by laboratories or institutions including, but not limited to, UL and FM. These documents shall include, but not be limited to, the following: documents relating to all tests, examinations, evaluations, and analyses conducted with respect to the submission; each communication relating to the submission; all results of and responses to the submission; and all documents relating to whether or not approval, listing, and/or certification of any Star ME-1 or component part thereof was ever withdrawn, discontinued, cancelled, or the like, and whether or not any person ever objected to the sale and/or distribution of any Star ME-1.

20. All documents evidencing the persons who distributed and/or participated in the distribution of the Star ME-1, the persons to whom the Star ME-1 was distributed, the dates of Star ME-1 distribution, and the Star ME-1 quantities distributed.

21. All documents relating to the installation of the Star ME-1, including, but not limited to, the persons who installed and/or participated in the installation of the Star ME-1, the persons for whom the Star ME-1 was installed, the buildings in which the Star ME-1 was installed, the building types in which Star ME-1's have ever been installed, the dates of Star ME-1 installation, and the Star ME-1 quantities installed.

22. All documents relating to the actions, steps, and/or procedures, including, but not limited to, quality control and quality assurance, any persons took before, during, and/or after the manufacture of each Star ME-1, to ensure that each Star ME-1 was manufactured in accordance

with specifications, was properly manufactured, and would fully and properly operate and activate.

23. All documents relating to tests, examinations, and/or analyses of Star ME-1's and/or any component parts thereof, including, but not limited to, test, examination, and/or analysis procedures, protocols, and results.

24. All documents relating to any of the following conditions being present, observed, and/or alleged in any Star ME-1's or any components parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

25. All documents relating to actual, potential, or alleged effects on the operation, activation, and/or other performance of Star ME-1's of any of the following conditions being present in any Star ME-1's or any component parts thereof: corrosion; accumulation of deposits; adhesion, binding, bonding, and/or sticking of the "O" ring to other sprinkler component parts; swelling of the "O" ring; lubricant deficiencies or problems; leakage and/or evidence of leakage; and/or component part interference or fit problems.

26. All documents relating to the operation and proper operation of Star ME-1's.

27. All documents relating to the role of, and requirements for, water pressure in the operation and activation of the Star ME-1.

28. All documents relating to actual, alleged, reported, or otherwise communicated problems, flaws, defects, defective conditions, and/or deficiencies in or associated with any Star ME-1's and/or any component parts thereof, including, but not limited to, performance or

activation, and/or with any substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

29. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's and/or any component parts thereof to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in fires. Your response should include, but not be limited to, the following resulting from or relating to the fire (including in attempting to escape from or extinguish the fire):

a) All documents relating to injuries or alleged injuries;

b) All documents relating to deaths or alleged deaths;

c) All documents relating to damaged, destroyed, or lost property, and allegedly damaged, destroyed, or lost property;

d) All police, fire, medical, emergency service, or other reports;

e) All documents relating to tests, examinations, and/or analyses of any Star ME-1 or component part thereof that failed and/or partially failed, and/or any other Star ME-1 from the same site; and

f) All documents relating to the reasons the Star ME-1 failed and/or partially failed.

30. All documents relating to actual, alleged, reported, or otherwise communicated failures and/or partial failures of Star ME-1's, and/or any component parts thereof, to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests, and/or to operate, activate, perform, and/or otherwise function (including, but not limited to, discharge water) in tests in accordance with applicable industry and/or other standards, codes,

requirements, and/or rules.. Your response should include, but not be limited to, all documents relating to these tests.

31. All documents relating to actual, alleged, reported, or otherwise communicated failures of Star ME-1's to activate at a pressure of 7 psig or below in tests or otherwise after melting of the thermal sensing element, and/or any failures of Star ME-1's to activate at a pressure of 7 psig or below in tests within 5 seconds of melting of the thermal sensing element. Your response should include, but not be limited to, all documents relating to these tests, failures, or other circumstances.

32. All documents relating to the performance record and/or history of the Star ME-1, including, but not limited to, positive and negative information, praise and criticism, passing and failing test results, and successes and failures in service.

33. All documents relating to all Star ME-1's that properly operated and activated in a fire.

34. All documents relating to the delisting (by UL, FM, and/or any other person), recall, discontinuance, and/or taking off the market of any Star ME-1's and/or any Star ME-1 component parts, and all documents relating to any warning, advisory, safety, or similar notice to persons relating to any Star ME-1's and/or any Star ME-1 component parts.

35. All documents relating to the return, and/or requested return, to you and/or any manufacturer, supplier, distributor, installer, and/or other person, of any Star ME-1's and/or any Star ME-1 component parts.

36. All documents relating to the replacement of Star ME-1's that had been installed in buildings or other places with new Star ME-1's or other sprinklers.

37. All documents evidencing the current costs, and/or estimates of the current costs, of replacing a Star ME-1 or a group of Star ME-1's, including, but not limited to, the costs of the replacement product, the labor, any other associated costs, all variables, factors, and considerations related to determining the costs or estimates, and all bases for all estimates.

38. All documents relating to all verbal and/or written claims of which you are aware relating to the Star ME-1, including, but not limited to, the persons making the claim, the status of the claim (including whether or not it has been settled or otherwise resolved), and the settlement or resolution terms and amounts.

39. Personnel or other documents sufficient to identify and evidence each of your employees from the date of your incorporation through the present and the dates during which you employed each employee. (This request does not seek *all* documents relating to your employees, but merely documents adequate to evidence and confirm the information sought.)

40. Documents sufficient to identify and evidence each of your officers from the date of your incorporation through the present and the dates during which each officer was in each office. (This request does not seek *all* documents relating to your officers, but merely documents adequate to evidence and confirm the information sought.)

41. Documents sufficient to identify and evidence each of your directors from the date of your incorporation through the present and the dates during which each director held his/her directorship. (This request does not seek *all* documents relating to your directors, but merely documents adequate to evidence and confirm the information sought.)

42. Documents sufficient to identify and evidence each of your stockholders and/or other owners from the date of your incorporation through the present, the percentage of stock owned by each person identified, and the dates during which each person owned said stock.

(This request does not seek *all* documents relating to your stockholders and/or other owners, but merely documents adequate to evidence and confirm the information sought.)

43. Documents sufficient to identify and evidence each of your employees, agents, representatives, and/or consultants who has held a supervisory, managerial, and/or executive position or role in the following areas of your company from the date of your incorporation through the present:

a) Sales;

b) Marketing;

c) Product design and/or development;

d) Engineering and/or technical services;

e) Customer service/customer relations;

f) Public and/or governmental relations;

g) Product manufacturing and/or production;

h) Product distribution;

i) Corporate mergers, acquisitions, and/or transactions;

j) Quality assurance/control; and

k) Any divisions or areas responsible for, or with work relating to, Star ME-1's and/or any component parts thereof.

(This request does not seek *all* documents relating to these employees, agents, representatives, and/or consultants, but merely documents adequate to evidence and confirm the information sought.)

44. All documents relating to the sale of Star ME-1's, including, but not limited to, purchase orders, shipping documents, invoices, billing statements, and sales receipts.

45. All of your insurance policies, including, but not limited to, general liability and product liability policies, as well as all policies evidencing and/or describing insurance coverage that is and/or may be applicable or related to recalls, repairs, and/or refunds relating to your products, and/or to other corrective actions relating to your products, including, but not limited to, potential corrective action for the Star ME-1.

46. From the date of your incorporation through the present, all documents evidencing your profits, losses, gross income, net income, gross sales, net sales, net assets, net worth, total assets, and total liabilities, including, but not limited to, your federal and state tax returns, financial statements, and accountant's reports.

47. All documents comprising, for each of the last three (3) years, your budgets, revenue projections, cash flow projections, and profitability projections.

48. All photographs and other pictures of the Star ME-1.

49. All product catalogues, brochures, marketing materials, sales materials, and similar documents listing, describing, or otherwise referencing or showing the Star ME-1.

50. Three (3) never-installed Star ME-1's of each manufacture model year.

51. Three (3) samples of each Star ME-1 component part, including, but not limited to, each substance, chemical, lubricant, "O" ring, and/or other material used in manufacturing Star ME-1's.

52. All Star ME-1's tested, analyzed, examined, torn down, and/or cut apart.

Seth B. Popkin, Esq.
Anthony Murawski, Esq.

Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2001, I served the foregoing upon all parties of record in these proceedings, by hand-delivery to:

Robert B. Barnett, Esq.
Heidi K. Hubbard, Esq.
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW
Suite 242
Washington, DC 20016-2756

By first class mail, postage prepaid, to:

Barbara Wrubel, Esq.
Bert L. Wolff, Esq.
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, NY 10036

Ralph A. Weber, Esq.
Kurt D. Dykstra, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street
Suite 2100
Milwaukee, WI 53202-3186

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

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| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## ANSWER AND DEFENSES OF SUNBEAM CORPORATION

Respondent Sunbeam Corporation ("Sunbeam"), through its undersigned counsel, hereby responds to the Complaint filed in this matter. Respondent submits this Answer pursuant to 16 C.F.R. § 1025.12, which requires the filing of an answer within 20 days of the service of the complaint (with additional days for service by mail), without prejudice to its right to file a motion to dismiss, motion for summary decision and order, or any other motion for relief.

Respondent hereby responds as follows to the numbered paragraphs of the Complaint:

1. As to the first sentence of Paragraph 1, Respondent denies the allegations to the extent they are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, except Respondent admits only that Complaint Counsel purports to bring this action under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064. The second sentence of Paragraph 1 states a legal conclusion requiring no response.

2. Paragraph 2 states a legal conclusion requiring no response. To the extent that a response is required, Respondent denies the allegations in Paragraph 2. The Consumer Product Safety Commission ("Commission") lacks jurisdiction under the CPSA over the fire sprinklers at issue in the Complaint and/or any Star ME-1 fire sprinklers allegedly made by this Respondent. The Commission also lacks jurisdiction over Respondent with respect to those sprinklers. In addition, the Commission lacks authority to impose on Respondent the relief sought by the Complaint.

3. The allegations of Paragraph 3 are admitted on information and belief.

4. The allegations of Paragraph 4 of the Complaint pertain to Respondent Chemetron Corporation ("Chemetron"), requiring no response from this Respondent. To the extent a response is required: The allegations of the first sentence of Paragraph 4 are admitted. As to the second sentence of Paragraph 4,

Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period.

5. The allegations of Paragraph 5 of the Complaint pertain to Respondent Chemetron Investments, Inc. ("Chemetron Investments"), requiring no response from this Respondent. To the extent a response is required, the allegations are admitted.

6. The allegations of the first three sentences of Paragraph 6 are admitted. The fourth sentence of Paragraph 6 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam assumed any liability for the Star ME-1 relief sought in the Complaint and further denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments have or ever had liability for the Star ME-1 relief sought in the Complaint. In addition, even if such liability existed and had been assumed by Sunbeam, then the only relief to which the Commission would be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

7. The allegations of Paragraph 7 pertain to respondent Sprinkler Corporation of Milwaukee, Inc. ("SCM"), requiring no response from this

Respondent. To the extent that a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and, on that basis, denies them.

8. The allegations of Paragraph 8 pertain to respondent Grucon Corporation ("Grucon"), requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, on that basis, denies them.

9. The allegations of Paragraph 9 pertain to respondents SCM and Grucon, requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and, on that basis, denies them.

10. Paragraph 10 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam is or ever was a "manufacturer" and/or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint. Respondent further denies that Chemetron and/or Chemetron Investments are "manufacturers" and/or "distributors" of the Star ME-1 fire sprinklers at issue, and denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments ever were "manufacturers" and/or "distributors" of those sprinklers; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point prior to 1983.

11. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, on that basis, denies them, except admits only upon information and belief that the Star ME-1 fire sprinkler was a "dry" fire sprinkler that was intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing.

12. With respect to the allegations in the first two sentences of Paragraph 12, to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied. On information and belief, any "dry" fire sprinklers allegedly made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing. Complaint Counsel has failed to provide to Respondent (and Respondent is not aware of) any evidence that any Star ME-1 fire sprinklers allegedly made by this Respondent were used in locations of the type listed in these allegations. To the extent the allegations in the first two sentences of Paragraph 12 are intended to pertain to SCM or Grucon, Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. The third sentence of Paragraph 12 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies the allegations in the third sentence of Paragraph 12 with respect to any Star ME-1 fire sprinklers allegedly made by this Respondent and with respect

generally to "dry" sprinkler heads and sprinkler systems, which are not "consumer products" within the meaning of the CPSA.

13. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, on that basis, denies them.

14. Respondent denies the allegations of Paragraph 14 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. In addition, on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure.

15. To the extent the allegations of Paragraph 15 are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied.

16. Respondent denies that Sunbeam ever manufactured or distributed Star ME-1 fire sprinklers or fire sprinklers of any kind and further denies, for lack of knowledge or information, that the Chemetron Respondents manufactured fire sprinklers of any kind for the period 1983 through 1995. With respect to the period from 1977 through 1982, Respondent lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and, on that basis, denies them; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period. Respondent knows of no evidence – and Complaint Counsel has provided no evidence – to support the 700,000 figure or any component thereof, or to support that this Respondent made Star ME-1 fire sprinklers.

17. Respondent denies the allegations of Paragraph 17 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, on information and belief, sprinkler systems are generally designed with redundancies so that if one sprinkler head does not operate, an adjacent head may and ordinarily does operate to help suppress or extinguish a fire. Also on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure. In addition, on information and belief, any "dry" fire sprinklers made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where

the sprinkler is subject to freezing, and are not "consumer products" within the meaning of the CPSA.

18. Respondent denies the allegations of Paragraph 18 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

19. Respondent denies the allegations in Paragraph 19 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

**DEFENSES**

1. Respondent incorporates Paragraphs 1-19 of this Answer as though fully set forth herein.

2. The Star ME-1 "dry" fire sprinklers at issue in the Complaint and allegedly made by this Respondent are not "consumer products" within the meaning of the CPSA.

3. Respondent is not and has never been a "manufacturer" or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint.

4. Respondent does not have, never has had, and has not assumed any liability for the Star ME-1 relief sought in the Complaint.

5. The Complaint fails to state a claim upon which relief may be granted.

6. Any Star ME-1 fire sprinklers made by this Respondent do not create a substantial risk of injury to the public.

7. Any Star ME-1 fire sprinklers made by this Respondent have conformed to the then-existing state of the art.

8. Basing any recall or remedy order on a standard of performance or design or knowledge that was not developed at the time of manufacture would deprive Respondent of its rights under the United States Constitution, including its rights under the due process and takings clauses.

9. Complaint Counsel has not provided (and Respondent is not aware of) any actual instance where Star ME-1 fire sprinklers made by this Respondent failed to operate as intended in a fire situation.

10. Without conceding any failure of any Star ME-1 fire sprinklers allegedly made by this Respondent, any actual lack of operation or other failure of such sprinklers was caused by abuse of the sprinkler or sprinkler system, use of prohibitive substances in the sprinkler system, failure to inspect and maintain the sprinkler system, failure to replace the sprinklers or sprinkler system as needed, or other acts or omissions committed by persons not within Respondent's control.

12. Without conceding any obligation for the relief sought in the Complaint, any obligation that otherwise might have existed may have been assumed by Figgie International Inc.

13. Without conceding that any remedy is legally supportable, Respondent has the right to elect a remedy under the CPSA and that remedy cannot be vetoed by the Commission. The Commission may not impose its preferred remedy on Respondent.

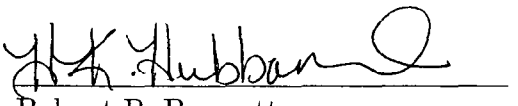
14. Without conceding that any remedy is legally supportable, any remedy that might be implemented must reflect that purchasers of Star ME-1 fire

sprinklers have had use and value from the sprinklers for many years prior to the institution of this action.

15. Without conceding that any remedy is legally supportable, any relief to which the Commission might otherwise be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

WHEREFORE, Respondent respectfully requests that the Commission order that the Complaint be dismissed and order such other and further relief in favor of Respondent as may be just and proper.

Respectfully submitted,



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(202) 434-5000

*Attorneys for Sunbeam Corporation*

Dated: November 1, 2001

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Answer and Defenses upon all parties and participants of record in these proceedings on this 1st day of November, 2001, by U.S. mail, postage pre-paid, on:

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Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
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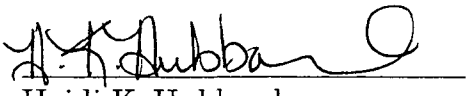
*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Heidi K. Hubbard

SBP

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

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|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## ANSWER AND DEFENSES OF CHEMETRON CORPORATION

Respondent Chemetron Corporation ("Chemetron"), through its undersigned counsel, hereby responds to the Complaint filed in this matter. Respondent submits this Answer pursuant to 16 C.F.R. § 1025.12, which requires the filing of an answer within 20 days of the service of the complaint (with additional days for service by mail), without prejudice to its right to file a motion to dismiss, motion for summary decision and order, or any other motion for relief.

Respondent hereby responds as follows to the numbered paragraphs of the Complaint:

1. As to the first sentence of Paragraph 1, Respondent denies the allegations to the extent they are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, except Respondent admits only that Complaint Counsel purports to bring this action under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064. The second sentence of Paragraph 1 states a legal conclusion requiring no response.

2. Paragraph 2 states a legal conclusion requiring no response. To the extent that a response is required, Respondent denies the allegations in Paragraph 2. The Consumer Product Safety Commission ("Commission") lacks jurisdiction under the CPSA over the fire sprinklers at issue in the Complaint and/or any Star ME-1 fire sprinklers allegedly made by this Respondent. The Commission also lacks jurisdiction over Respondent with respect to those sprinklers. In addition, the Commission lacks authority to impose on Respondent the relief sought by the Complaint.

3. The allegations of Paragraph 3 are admitted on information and belief.

4. The allegations of the first sentence of Paragraph 4 are admitted. As to the second sentence of Paragraph 4, Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. Respondent admits on information and belief that

Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period.

5. The allegations of Paragraph 5 of the Complaint pertain to Respondent Chemetron Investments, Inc. ("Chemetron Investments"), requiring no response from this Respondent. To the extent a response is required, the allegations are admitted.

6. The allegations of Paragraph 6 of the Complaint pertain to Respondent Sunbeam Corporation ("Sunbeam"), requiring no response from this Respondent. To the extent a response is required: The allegations of the first three sentences of Paragraph 6 are admitted. The fourth sentence of Paragraph 6 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam assumed any liability for the Star ME-1 relief sought in the Complaint and further denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments have or ever had liability for the Star ME-1 relief sought in the Complaint. In addition, even if such liability existed and had been assumed by Sunbeam, then the only relief to which the Commission would be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

7. The allegations of Paragraph 7 pertain to respondent Sprinkler Corporation of Milwaukee, Inc. ("SCM"), requiring no response from this Respondent. To the extent that a response is required, this Respondent lacks

knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and, on that basis, denies them.

8. The allegations of Paragraph 8 pertain to respondent Grucon Corporation ("Grucon"), requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, on that basis, denies them.

9. The allegations of Paragraph 9 pertain to respondents SCM and Grucon, requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and, on that basis, denies them.

10. Paragraph 10 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam is or ever was a "manufacturer" and/or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint. Respondent further denies that Chemetron and/or Chemetron Investments are "manufacturers" and/or "distributors" of the Star ME-1 fire sprinklers at issue, and denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments ever were "manufacturers" and/or "distributors" of those sprinklers; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point prior to 1983.

11. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, on that basis, denies them, except admits only upon information and belief that the Star ME-1 fire sprinkler was a "dry" fire sprinkler that was intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing.

12. With respect to the allegations in the first two sentences of Paragraph 12, to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied. On information and belief, any "dry" fire sprinklers allegedly made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing. Complaint Counsel has failed to provide to Respondent (and Respondent is not aware of) any evidence that any Star ME-1 fire sprinklers allegedly made by this Respondent were used in locations of the type listed in these allegations. To the extent the allegations in the first two sentences of Paragraph 12 are intended to pertain to SCM or Grucon, Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. The third sentence of Paragraph 12 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies the allegations in the third sentence of Paragraph 12 with respect to any Star ME-1 fire sprinklers allegedly made by this Respondent and with respect

generally to "dry" sprinkler heads and sprinkler systems, which are not "consumer products" within the meaning of the CPSA.

13. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, on that basis, denies them.

14. Respondent denies the allegations of Paragraph 14 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. In addition, on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure.

15. To the extent the allegations of Paragraph 15 are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied.

16. Respondent denies that Sunbeam ever manufactured or distributed Star ME-1 fire sprinklers or fire sprinklers of any kind and further denies, for lack of knowledge or information, that the Chemetron Respondents manufactured fire sprinklers of any kind for the period 1983 through 1995. With respect to the period from 1977 through 1982, Respondent lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and, on that basis, denies them; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period. Respondent knows of no evidence – and Complaint Counsel has provided no evidence – to support the 700,000 figure or any component thereof.

17. Respondent denies the allegations of Paragraph 17 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, on information and belief, sprinkler systems are generally designed with redundancies so that if one sprinkler head does not operate, an adjacent head may and ordinarily does operate to help suppress or extinguish a fire. Also on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure. In addition, on information and belief, any "dry" fire sprinklers made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing, and are not "consumer products" within the meaning of the CPSA.

18. Respondent denies the allegations of Paragraph 18 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

19. Respondent denies the allegations in Paragraph 19 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

**DEFENSES**

1. Respondent incorporates Paragraphs 1-19 of this Answer as though fully set forth herein.

2. The Star ME-1 "dry" fire sprinklers at issue in the Complaint and allegedly made by this Respondent are not "consumer products" within the meaning of the CPSA.

3. Respondent is not a "manufacturer" or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint.

4. Respondent does not have, never has had, and has not assumed any liability for the Star ME-1 relief sought in the Complaint.

5. The Complaint fails to state a claim upon which relief may be granted.

6. Any Star ME-1 fire sprinklers made by this Respondent do not create a substantial risk of injury to the public.

7. Any Star ME-1 fire sprinklers made by this Respondent have conformed to the then-existing state of the art.

8. Basing any recall or remedy order on a standard of performance or design or knowledge that was not developed at the time of manufacture would

deprive Respondent of its rights under the United States Constitution, including its rights under the due process and takings clauses.

9. Complaint Counsel has not provided (and Respondent is not aware of) any actual instance where Star ME-1 fire sprinklers made by this Respondent failed to operate as intended in a fire situation.

10. Without conceding any failure of any Star ME-1 fire sprinklers allegedly made by this Respondent, any actual lack of operation or other failure of such sprinklers was caused by abuse of the sprinkler or sprinkler system, use of prohibitive substances in the sprinkler system, failure to inspect and maintain the sprinkler system, failure to replace the sprinklers or sprinkler system as needed, or other acts or omissions committed by persons not within Respondent's control.

12. Without conceding any obligation for the relief sought in the Complaint, any obligation that otherwise might have existed may have been assumed by Figgie International Inc.

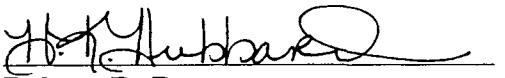
13. Without conceding that any remedy is legally supportable, Respondent has the right to elect a remedy under the CPSA and that remedy cannot be vetoed by the Commission. The Commission may not impose its preferred remedy on Respondent.

14. Without conceding that any remedy is legally supportable, any remedy that might be implemented must reflect that purchasers of Star ME-1 fire sprinklers have had use and value from the sprinklers for many years prior to the institution of this action.

15. Without conceding that any remedy is legally supportable, any relief to which the Commission might otherwise be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

WHEREFORE, Respondent respectfully requests that the Commission order that the Complaint be dismissed and order such other and further relief in favor of Respondent as may be just and proper.

Respectfully submitted,



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(202) 434-5000

*Attorneys for Chemetron Corporation*

Dated: November 1, 2001

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Answer and Defenses upon all parties and participants of record in these proceedings on this 1st day of November, 2001, by U.S. mail, postage pre-paid, on:

Seth B. Popkin, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
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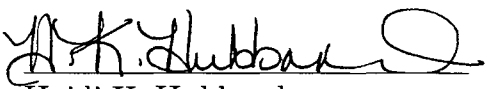
*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Heidi K. Hubbard

SBP

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

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| In the matter of | ) | |
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| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## ANSWER AND DEFENSES OF CHEMETRON INVESTMENTS, INC.

Respondent Chemetron Investments, Inc. ("Chemetron Investments"), through its undersigned counsel, hereby responds to the Complaint filed in this matter. Respondent submits this Answer pursuant to 16 C.F.R. § 1025.12, which requires the filing of an answer within 20 days of the service of the complaint (with additional days for service by mail), without prejudice to its right to file a motion to dismiss, motion for summary decision and order, or any other motion for relief.

Respondent hereby responds as follows to the numbered paragraphs of the Complaint:

1. As to the first sentence of Paragraph 1, Respondent denies the allegations to the extent they are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, except Respondent admits only that Complaint Counsel purports to bring this action under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064. The second sentence of Paragraph 1 states a legal conclusion requiring no response.

2. Paragraph 2 states a legal conclusion requiring no response. To the extent that a response is required, Respondent denies the allegations in Paragraph 2. The Consumer Product Safety Commission ("Commission") lacks jurisdiction under the CPSA over the fire sprinklers at issue in the Complaint and/or any Star ME-1 fire sprinklers allegedly made by this Respondent. The Commission also lacks jurisdiction over Respondent with respect to those sprinklers. In addition, the Commission lacks authority to impose on Respondent the relief sought by the Complaint.

3. The allegations of Paragraph 3 are admitted on information and belief.

4. The allegations of Paragraph 4 of the Complaint pertain to Respondent Chemetron Corporation ("Chemetron"), requiring no response from this Respondent. To the extent a response is required: The allegations of the first sentence of Paragraph 4 are admitted. As to the second sentence of Paragraph 4,

Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period.

5. Admitted.

6. The allegations of Paragraph 6 of the Complaint pertain to Respondent Sunbeam Corporation ("Sunbeam"), requiring no response from this Respondent. To the extent a response is required: The allegations of the first three sentences of Paragraph 6 are admitted. The fourth sentence of Paragraph 6 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam assumed any liability for the Star ME-1 relief sought in the Complaint and further denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments have or ever had liability for the Star ME-1 relief sought in the Complaint. In addition, even if such liability existed and had been assumed by Sunbeam, then the only relief to which the Commission would be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

7. The allegations of Paragraph 7 pertain to respondent Sprinkler Corporation of Milwaukee, Inc. ("SCM"), requiring no response from this Respondent. To the extent that a response is required, this Respondent lacks

knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and, on that basis, denies them.

8. The allegations of Paragraph 8 pertain to respondent Grucon Corporation ("Grucon"), requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, on that basis, denies them.

9. The allegations of Paragraph 9 pertain to respondents SCM and Grucon, requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and, on that basis, denies them.

10. Paragraph 10 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam is or ever was a "manufacturer" and/or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint. Respondent further denies that Chemetron and/or Chemetron Investments are "manufacturers" and/or "distributors" of the Star ME-1 fire sprinklers at issue, and denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments ever were "manufacturers" and/or "distributors" of those sprinklers; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point prior to 1983.

11. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, on that basis, denies them, except admits only upon information and belief that the Star ME-1 fire sprinkler was a "dry" fire sprinkler that was intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing.

12. With respect to the allegations in the first two sentences of Paragraph 12, to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied. On information and belief, any "dry" fire sprinklers allegedly made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing. Complaint Counsel has failed to provide to Respondent (and Respondent is not aware of) any evidence that any Star ME-1 fire sprinklers allegedly made by this Respondent were used in locations of the type listed in these allegations. To the extent the allegations in the first two sentences of Paragraph 12 are intended to pertain to SCM or Grucon, Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. The third sentence of Paragraph 12 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies the allegations in the third sentence of Paragraph 12 with respect to any Star ME-1 fire sprinklers allegedly made by this Respondent and with respect

generally to "dry" sprinkler heads and sprinkler systems, which are not "consumer products" within the meaning of the CPSA.

13. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, on that basis, denies them.

14. Respondent denies the allegations of Paragraph 14 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. In addition, on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure.

15. To the extent the allegations of Paragraph 15 are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied.

16. Respondent denies that Sunbeam ever manufactured or distributed Star ME-1 fire sprinklers or fire sprinklers of any kind and further denies, for lack of knowledge or information, that the Chemetron Respondents manufactured fire sprinklers of any kind for the period 1983 through 1995. With respect to the period from 1977 through 1982, Respondent lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and, on that basis, denies them; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period. Respondent knows of no evidence – and Complaint Counsel has provided no evidence – to support the 700,000 figure or any component thereof, or to support that this Respondent made Star ME-1 fire sprinklers.

17. Respondent denies the allegations of Paragraph 17 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, on information and belief, sprinkler systems are generally designed with redundancies so that if one sprinkler head does not operate, an adjacent head may and ordinarily does operate to help suppress or extinguish a fire. Also on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure. In addition, on information and belief, any "dry" fire sprinklers made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where

the sprinkler is subject to freezing, and are not "consumer products" within the meaning of the CPSA.

18. Respondent denies the allegations of Paragraph 18 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

19. Respondent denies the allegations in Paragraph 19 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

**DEFENSES**

1. Respondent incorporates Paragraphs 1-19 of this Answer as though fully set forth herein.

2. The Star ME-1 "dry" fire sprinklers at issue in the Complaint and allegedly made by this Respondent are not "consumer products" within the meaning of the CPSA.

3. Respondent is not and has never been a "manufacturer" or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint.

4. Respondent does not have, never has had, and has not assumed any liability for the Star ME-1 relief sought in the Complaint.

5. The Complaint fails to state a claim upon which relief may be granted.

6. Any Star ME-1 fire sprinklers made by this Respondent do not create a substantial risk of injury to the public.

7. Any Star ME-1 fire sprinklers made by this Respondent have conformed to the then-existing state of the art.

8. Basing any recall or remedy order on a standard of performance or design or knowledge that was not developed at the time of manufacture would deprive Respondent of its rights under the United States Constitution, including its rights under the due process and takings clauses.

9. Complaint Counsel has not provided (and Respondent is not aware of) any actual instance where Star ME-1 fire sprinklers made by this Respondent failed to operate as intended in a fire situation.

10. Without conceding any failure of any Star ME-1 fire sprinklers allegedly made by this Respondent, any actual lack of operation or other failure of such sprinklers was caused by abuse of the sprinkler or sprinkler system, use of prohibitive substances in the sprinkler system, failure to inspect and maintain the sprinkler system, failure to replace the sprinklers or sprinkler system as needed, or other acts or omissions committed by persons not within Respondent's control.

12. Without conceding any obligation for the relief sought in the Complaint, any obligation that otherwise might have existed may have been assumed by Figgie International Inc.

13. Without conceding that any remedy is legally supportable, Respondent has the right to elect a remedy under the CPSA and that remedy cannot be vetoed by the Commission. The Commission may not impose its preferred remedy on Respondent.

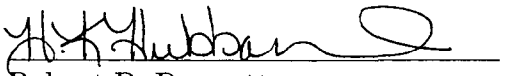
14. Without conceding that any remedy is legally supportable, any remedy that might be implemented must reflect that purchasers of Star ME-1 fire

sprinklers have had use and value from the sprinklers for many years prior to the institution of this action.

15. Without conceding that any remedy is legally supportable, any relief to which the Commission might otherwise be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

WHEREFORE, Respondent respectfully requests that the Commission order that the Complaint be dismissed and order such other and further relief in favor of Respondent as may be just and proper.

Respectfully submitted,



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725 – 12th St., N.W.
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(202) 434-5000

*Attorneys for Chemetron Investments, Inc.*

Dated: November 1, 2001

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Answer and Defenses upon all parties and participants of record in these proceedings on this 1st day of November, 2001, by U.S. mail, postage pre-paid, on:

Seth B. Popkin, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
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*Counsel for Complainant, Consumer Product Safety Commission*

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1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Heidi K. Hubbard

SBP

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## ANSWER AND DEFENSES OF CHEMETRON INVESTMENTS, INC.

Respondent Chemetron Investments, Inc. ("Chemetron Investments"), through its undersigned counsel, hereby responds to the Complaint filed in this matter. Respondent submits this Answer pursuant to 16 C.F.R. § 1025.12, which requires the filing of an answer within 20 days of the service of the complaint (with additional days for service by mail), without prejudice to its right to file a motion to dismiss, motion for summary decision and order, or any other motion for relief.

Respondent hereby responds as follows to the numbered paragraphs of the Complaint:

1. As to the first sentence of Paragraph 1, Respondent denies the allegations to the extent they are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, except Respondent admits only that Complaint Counsel purports to bring this action under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064. The second sentence of Paragraph 1 states a legal conclusion requiring no response.

2. Paragraph 2 states a legal conclusion requiring no response. To the extent that a response is required, Respondent denies the allegations in Paragraph 2. The Consumer Product Safety Commission ("Commission") lacks jurisdiction under the CPSA over the fire sprinklers at issue in the Complaint and/or any Star ME-1 fire sprinklers allegedly made by this Respondent. The Commission also lacks jurisdiction over Respondent with respect to those sprinklers. In addition, the Commission lacks authority to impose on Respondent the relief sought by the Complaint.

3. The allegations of Paragraph 3 are admitted on information and belief.

4. The allegations of Paragraph 4 of the Complaint pertain to Respondent Chemetron Corporation ("Chemetron"), requiring no response from this Respondent. To the extent a response is required: The allegations of the first sentence of Paragraph 4 are admitted. As to the second sentence of Paragraph 4,

Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period.

5. Admitted.

6. The allegations of Paragraph 6 of the Complaint pertain to Respondent Sunbeam Corporation ("Sunbeam"), requiring no response from this Respondent. To the extent a response is required: The allegations of the first three sentences of Paragraph 6 are admitted. The fourth sentence of Paragraph 6 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam assumed any liability for the Star ME-1 relief sought in the Complaint and further denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments have or ever had liability for the Star ME-1 relief sought in the Complaint. In addition, even if such liability existed and had been assumed by Sunbeam, then the only relief to which the Commission would be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

7. The allegations of Paragraph 7 pertain to respondent Sprinkler Corporation of Milwaukee, Inc. ("SCM"), requiring no response from this Respondent. To the extent that a response is required, this Respondent lacks

knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and, on that basis, denies them.

8. The allegations of Paragraph 8 pertain to respondent Grucon Corporation ("Grucon"), requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, on that basis, denies them.

9. The allegations of Paragraph 9 pertain to respondents SCM and Grucon, requiring no response from this Respondent. To the extent a response is required, this Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and, on that basis, denies them.

10. Paragraph 10 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies that Sunbeam is or ever was a "manufacturer" and/or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint. Respondent further denies that Chemetron and/or Chemetron Investments are "manufacturers" and/or "distributors" of the Star ME-1 fire sprinklers at issue, and denies, for lack of knowledge or information, that Chemetron and/or Chemetron Investments ever were "manufacturers" and/or "distributors" of those sprinklers; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point prior to 1983.

11. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 and, on that basis, denies them, except admits only upon information and belief that the Star ME-1 fire sprinkler was a "dry" fire sprinkler that was intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing.

12. With respect to the allegations in the first two sentences of Paragraph 12, to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied. On information and belief, any "dry" fire sprinklers allegedly made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where the sprinkler is subject to freezing. Complaint Counsel has failed to provide to Respondent (and Respondent is not aware of) any evidence that any Star ME-1 fire sprinklers allegedly made by this Respondent were used in locations of the type listed in these allegations. To the extent the allegations in the first two sentences of Paragraph 12 are intended to pertain to SCM or Grucon, Respondent lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. The third sentence of Paragraph 12 states a legal conclusion requiring no response. To the extent a response is required, Respondent denies the allegations in the third sentence of Paragraph 12 with respect to any Star ME-1 fire sprinklers allegedly made by this Respondent and with respect

generally to "dry" sprinkler heads and sprinkler systems, which are not "consumer products" within the meaning of the CPSA.

13. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, on that basis, denies them.

14. Respondent denies the allegations of Paragraph 14 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. In addition, on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure.

15. To the extent the allegations of Paragraph 15 are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent, the allegations are denied.

16. Respondent denies that Sunbeam ever manufactured or distributed Star ME-1 fire sprinklers or fire sprinklers of any kind and further denies, for lack of knowledge or information, that the Chemetron Respondents manufactured fire sprinklers of any kind for the period 1983 through 1995. With respect to the period from 1977 through 1982, Respondent lacks knowledge or

information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and, on that basis, denies them; Respondent admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of Star ME-1 "dry" fire sprinklers at some point during the identified period. Respondent knows of no evidence – and Complaint Counsel has provided no evidence – to support the 700,000 figure or any component thereof, or to support that this Respondent made Star ME-1 fire sprinklers.

17. Respondent denies the allegations of Paragraph 17 to the extent those allegations are intended to apply to any Star ME-1 fire sprinklers allegedly made by this Respondent. Complaint Counsel has failed to provide to Respondent any evidence of the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Respondent is not aware of any claim or lawsuit against Respondent alleging any damage or injury from the failure of any Star ME-1 fire sprinklers allegedly made by this Respondent. Moreover, on information and belief, sprinkler systems are generally designed with redundancies so that if one sprinkler head does not operate, an adjacent head may and ordinarily does operate to help suppress or extinguish a fire. Also on information and belief, "dry" fire sprinklers and sprinkler systems are to be routinely inspected and maintained to prevent the risk, if any, of failure. In addition, on information and belief, any "dry" fire sprinklers made by this Respondent were intended to be installed in fire sprinkler systems used in very cold, unheated, or uninsulated areas of non-residential commercial buildings where

the sprinkler is subject to freezing, and are not "consumer products" within the meaning of the CPSA.

18. Respondent denies the allegations of Paragraph 18 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

19. Respondent denies the allegations in Paragraph 19 to the extent they apply to any Star ME-1 fire sprinklers allegedly made by this Respondent.

**DEFENSES**

1. Respondent incorporates Paragraphs 1-19 of this Answer as though fully set forth herein.

2. The Star ME-1 "dry" fire sprinklers at issue in the Complaint and allegedly made by this Respondent are not "consumer products" within the meaning of the CPSA.

3. Respondent is not and has never been a "manufacturer" or "distributor" of the Star ME-1 fire sprinklers at issue in the Complaint.

4. Respondent does not have, never has had, and has not assumed any liability for the Star ME-1 relief sought in the Complaint.

5. The Complaint fails to state a claim upon which relief may be granted.

6. Any Star ME-1 fire sprinklers made by this Respondent do not create a substantial risk of injury to the public.

7. Any Star ME-1 fire sprinklers made by this Respondent have conformed to the then-existing state of the art.

8. Basing any recall or remedy order on a standard of performance or design or knowledge that was not developed at the time of manufacture would deprive Respondent of its rights under the United States Constitution, including its rights under the due process and takings clauses.

9. Complaint Counsel has not provided (and Respondent is not aware of) any actual instance where Star ME-1 fire sprinklers made by this Respondent failed to operate as intended in a fire situation.

10. Without conceding any failure of any Star ME-1 fire sprinklers allegedly made by this Respondent, any actual lack of operation or other failure of such sprinklers was caused by abuse of the sprinkler or sprinkler system, use of prohibitive substances in the sprinkler system, failure to inspect and maintain the sprinkler system, failure to replace the sprinklers or sprinkler system as needed, or other acts or omissions committed by persons not within Respondent's control.

12. Without conceding any obligation for the relief sought in the Complaint, any obligation that otherwise might have existed may have been assumed by Figgie International Inc.

13. Without conceding that any remedy is legally supportable, Respondent has the right to elect a remedy under the CPSA and that remedy cannot be vetoed by the Commission. The Commission may not impose its preferred remedy on Respondent.

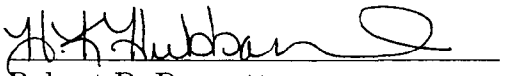
14. Without conceding that any remedy is legally supportable, any remedy that might be implemented must reflect that purchasers of Star ME-1 fire

sprinklers have had use and value from the sprinklers for many years prior to the institution of this action.

15. Without conceding that any remedy is legally supportable, any relief to which the Commission might otherwise be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York.

WHEREFORE, Respondent respectfully requests that the Commission order that the Complaint be dismissed and order such other and further relief in favor of Respondent as may be just and proper.

Respectfully submitted,



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(202) 434-5000

*Attorneys for Chemetron Investments, Inc.*

Dated: November 1, 2001

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Answer and Defenses upon all parties and participants of record in these proceedings on this 1st day of November, 2001, by U.S. mail, postage pre-paid, on:

Seth B. Popkin, Esq.
Alan H. Schoem, Esq.
Eric L. Stone, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

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Ralph A. Weber, Esq.
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P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Heidi K. Hubbard

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

---

In the matter of

CHEMETRON CORPORATION,
f/k/a Chemetron Investments, Inc.

and

CPSC Docket No.: 02-1

CHEMETRON INVESTMENTS, INC.,
f/k/a Chemetron Corporation

and

SUNBEAM CORPORATION

and

SPRINKLER CORPORATION OF
MILWAUKEE, INC., f/k/a Star
Sprinkler Corporation, f/k/a Grunau
Sprinkler Manufacturing Company, Inc.

and

GRUCON CORPORATION,

---

## ANSWER OF GRUCON CORPORATION

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Grucon Corporation ("Grucon"), by its attorneys Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c. by Ralph A. Weber and Kurt D. Dykstra and Brown & Freeston, P.C. by Michael A. Brown and Margaret A. Freeston, responds to the Consumer Product Safety Commission's complaint as follows:

1. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 1.

2. Grucon denies the allegations contained in paragraph 2.

3. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 3.

4. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 4.

5. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 5.

6. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 6.

7. Grucon admits the allegations contained in paragraph 7.

8. Grucon admits that it is a Delaware corporation with its principal place of business at 1100 West Anderson Court, Oak Creek, Wisconsin 53153 and that it is the parent company of Sprinkler Corporation of Milwaukee, Inc. Grucon denies the remaining allegations contained in paragraph 8.

9. Grucon denies the allegations contained in paragraph 9.

10. Grucon denies that it is and/or was a "manufacturer" and/or a "distributor" as those terms are defined in sections 3(a)(4) and (5) of the CPSA. Grucon admits that Sprinkler Corporation of Milwaukee, Inc. manufactured ME-1 sprinkler heads, though, upon information and belief, ME-1 heads are not "consumer products" as that term is defined by the CPSA. As to the other

respondents, Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 10.

11. Grucon admits the allegations contained in paragraph 11.

12. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 12.

13. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 13.

14. Grucon denies the allegations contained in paragraph 14.

15. Grucon denies the allegations contained in paragraph 15.

16. Grucon lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 16.

17. Grucon denies the allegations contained in paragraph 17.

18. Grucon denies the allegations contained in paragraph 18.

19. Grucon denies the allegations contained in paragraph 19.

**AFFIRMATIVE DEFENSES**

1. The Star ME-1 was not a consumer product as that term is defined by the Consumer Product Safety Act and, therefore, the Consumer Product Safety Commission lacks authority and jurisdiction to commence and pursue this action.

2. Any problems with the Star ME-1 sprinklers may be the result of the acts and/or omissions of other parties and/or intervening or superceding causes.

3. The ME-1 sprinklers may have undergone a substantial change and/or modification after it was designed, manufactured, or sold.

4. Grucon is not a "distributor" or "manufacturer" as defined by the Consumer Product Safety Act and, therefore, the Consumer Product Safety Commission has no authority or jurisdiction to commence and pursue a claim against it. Furthermore, Grucon has not engaged in any improper activities that would permit any piercing of the corporate veil.

WHEREFORE, defendant Grucon respectfully requests that the Consumer Product Safety Commission's complaint be dismissed with prejudice and Grucon be awarded such other relief as is deemed just and equitable.

Dated this 30th day of October, 2001.

Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202-3186
414-298-1000

Mailing Address:
P.O. Box 514000
Milwaukee, WI 53203-3400

Ralph A. Weber
WI State Bar ID No. 1001563
Kurt D. Dykstra
WI State Bar ID No. 1025415

BY _____
Attorneys for Grucon Corporation

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Margaret A. Freeston, Esq.
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Washington, DC 20016-2756

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Answer of Grucon Corporation on all parties and participants of record in these proceedings on this 30th day of October, 2001, by hand-delivery on:

Seth B. Popkin, Esquire
Alan H. Schoem, Esquire
Eric L. Stone, Esquire
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Consumer Product Safety Commission
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Room 613
Bethesda, Maryland 20814

Counsel for Complainant, Consumer Product Safety Commission

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005

With a copy via U.S. mail, postage pre-paid to:

Barbara Wrubel, Esquire
Bert L. Wolff, Esquire
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, New York 10036

Counsel for Chemetron Corporation, Chemetron Investments, Inc. and Sunbeam Corporation

Michael A. Brown

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

---

In the matter of

CHEMETRON CORPORATION,
f/k/a Chemetron Investments, Inc.

and

CHEMETRON INVESTMENTS, INC.,
f/k/a Chemetron Corporation

and

SUNBEAM CORPORATION

and

SPRINKLER CORPORATION OF
MILWAUKEE, INC., f/k/a Star
Sprinkler Corporation, f/k/a Grunau
Sprinkler Manufacturing Company, Inc.

and

GRUCON CORPORATION,

CPSC Docket No.: 02-1

RECEIVED
CPSC
OFFICE OF COMPLIANCE
2001 OCT 30 PM 1:55

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**ANSWER OF SPRINKLER CORPORATION OF MILWAUKEE, INC.**

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Sprinkler Corporation of Milwaukee, Inc. ("Sprinkler Corp."), by its attorneys Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c. by Ralph A. Weber and Kurt D. Dykstra and Brown & Freeston, P.C. by Michael A. Brown and Margaret A. Freeston, responds to the Consumer Product Safety Commission's complaint as follows:

1. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 1.

2. Sprinkler Corp. denies the allegations contained in paragraph 2.

3. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 3.

4. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 4.

5. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 5.

6. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 6.

7. Sprinkler Corp. admits the allegations contained in paragraph 7.

8. Sprinkler Corp. admits that Grucon is a Delaware corporation with its principal place of business at 1100 West Anderson Court, Oak Creek, Wisconsin 53153 and that Grucon is the parent company of Sprinkler Corp. Sprinkler Corp. denies the remaining allegations contained in paragraph 8.

9. Sprinkler Corp. denies the allegations contained in paragraph 9.

10. Sprinkler Corp. admits that it was a manufacturer of ME-1 sprinkler heads, though, upon information and belief, ME-1 heads are not "consumer products" as that term is defined by the CPSA. Sprinkler Corp. denies that the Grucon Corporation was/is a "manufacturer" and/or "distributor" as those terms are defined in sections 3(a)(4) and (5) of the CPSA. As to the other respondents,

Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 10.

11. Sprinkler Corp. admits the allegations contained in paragraph 11.

12. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 12.

13. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 13.

14. Sprinkler Corp. denies the allegations contained in paragraph 14.

15. Sprinkler Corp. denies the allegations contained in paragraph 15.

16. Sprinkler Corp. lacks knowledge or information sufficient to form a belief as to the truth of the matter asserted in paragraph 16.

17. Sprinkler Corp. denies the allegations contained in paragraph 17.

18. Sprinkler Corp. denies the allegations contained in paragraph 18.

19. Sprinkler Corp. denies the allegations contained in paragraph 19.

**AFFIRMATIVE DEFENSES**

1. Upon information and belief, the Star ME-1 was not a consumer product as that term is defined by the Consumer Product Safety Act and, therefore, the Consumer Product Safety Commission lacks authority and jurisdiction to commence and pursue this action.

2. Any problems with the Star ME-1 sprinklers may be the result of the acts and/or omissions of other parties and/or intervening or superceding causes.

3. The ME-1 sprinklers may have undergone a substantial change and/or modification after it was designed, manufactured, or sold.

WHEREFORE, defendant Sprinkler Corp. respectfully requests that the Consumer Product Safety Commission's complaint be dismissed with prejudice and Sprinkler Corp. be awarded such other relief as is deemed just and equitable.

Dated this 30th day of October, 2001.

Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202-3186
414-298-1000

Mailing Address:
P.O. Box 514000
Milwaukee, WI 53203-3400

Ralph A. Weber
WI State Bar ID No. 1001563
Kurt D. Dykstra
WI State Bar ID No. 1025415

BY _____
Attorneys for Sprinkler Corporation
of Milwaukee, Inc.

Michael A. Brown, Esq.
Margaret A. Freeston, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW,
Suite 242
Washington, DC 20016-2756

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Answer of Sprinkler Corporation of Milwaukee, Inc. on all parties and participants of record in these proceedings on this 30th day of October, 2001, by hand-delivery on:

Seth B. Popkin, Esquire
Alan H. Schoem, Esquire
Eric L. Stone, Esquire
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway
Room 613
Bethesda, Maryland 20814

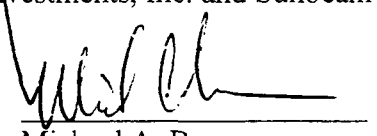
Counsel for Complainant, Consumer Product Safety Commission

Robert B. Barnett, Esquire
Heidi K. Hubbard, Esquire
Williams & Connolly LLP
725 12th Street, N.W.
Washington, D.C. 20005

With a copy via U.S. mail, postage pre-paid to:

Barbara Wrubel, Esquire
Bert L. Wolff, Esquire
Skadden, Arps, Slate, Meager & Flom LLP
Four Times Square
New York, New York 10036

Counsel for Chemetron Corporation, Chemetron Investments, Inc. and Sunbeam Corporation



Michael A. Brown

SBP cc

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

2001 OCT -9 P 3:09

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

# COMPLAINT

## Nature of Proceedings

1. This is an administrative proceeding pursuant to section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064, for public notification and remedial action to protect the public from a substantial product hazard presented by failure of the Star ME-1 fire sprinkler manufactured from 1977 to 1995. This proceeding is governed by the Rules of Practice

for Adjudicative Proceedings before the United States Consumer Product Safety Commission, 16 C.F.R. Part 1025.

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in section 15(c), (d), and (f) of the CPSA, 15 U.S.C. § 2064(c), (d), and (f).

Parties

3. Complaint Counsel is the staff of the Legal Division of the Office of Compliance of the United States Consumer Product Safety Commission ("Commission"), an independent regulatory commission established by section 4 of the CPSA, 15 U.S.C. § 2053.

4. Respondent Chemetron Corporation ("CC"), formerly and also known as "Chemetron Investments, Inc." and formerly doing business as "Star Sprinkler," is a Delaware corporation, with its principal place of business at 2381 Executive Center Drive, Boca Raton, Florida 33431. CC manufactured the Star ME-1 from in or about 1976 to in or about 1982.

5. Respondent Chemetron Investments, Inc. ("CI"), formerly and also known as "Chemetron Corporation," is a Delaware corporation, with its principal place of business at 2381 Executive Center Drive, Boca Raton, Florida 33431.

6. Respondent Sunbeam Corporation ("Sunbeam") is a Delaware corporation, with its principal place of business at 2381 Executive Center Drive, Boca Raton, Florida 33431. Under an Asset Purchase Agreement dated September 28, 1990, Sunbeam acquired the stock and assets of CC and CI. CC and CI have been and are Sunbeam subsidiaries. By virtue of the Asset Purchase Agreement and Sunbeam's stock and assets acquisition of CC and CI, Sunbeam assumed CC's and CI's liabilities for the Star ME-1 relief sought herein.

7. Respondent Sprinkler Corporation of Milwaukee, Inc., formerly known as "Star Sprinkler Corporation" and "Grunau Sprinkler Manufacturing Company, Inc." ("SCM"), is a Wisconsin corporation with its last known principal place of business at 307 West Layton Avenue, Milwaukee, Wisconsin 53207. SCM manufactured the Star ME-1 from in or about 1983 through in or about early 1996.

8. Respondent Grucon Corporation ("Grucon") is a Delaware corporation with its principal place of business at 1100 West Anderson Court, Oak Creek, Wisconsin 53154. From 1983 to the present, Grucon owned and operated SCM under a variety of names. Grucon and SCM have engaged in actions disregarding corporate form and identities, and/or they have failed to take actions to properly maintain corporate form and identities. These actions, failures, and related effects include, but are not limited to, the following: common business interests, common control and management, SCM's dependence on Grucon, SCM's absence of assets or employees, SCM's undercapitalization, SCM's board of directors resolution to temporarily pay down the credit lines and debt obligations of Grucon and other Grucon subsidiaries with proceeds of SCM's assets sale, SCM's board of directors resolution to pay to Grucon proceeds of SCM's assets sale, SCM's failure to make corporate filings, and/or Grucon's guarantees on behalf of SCM.

9. There was and/or is such unity of interest and ownership between SCM and Grucon that the purported separate personalities of the corporations did not and/or do not exist. Given the compelling public interest at stake in effectuating the relief sought herein, and SCM's reported lack of assets with which to fund such relief, adherence to the fiction of the separate corporate existences of SCM and Grucon would promote injustice and/or inequitable consequences.

10. Each of the Respondents was and/or is a "manufacturer" and/or a "distributor" as those terms are defined in section 3(a)(4) and (5) of the CPSA, 15 U.S.C. § 2052(a)(4) and (5).

Consumer Product

11. The Star ME-1 fire sprinkler is a dry fire sprinkler manufactured under the "Star" brand name that was labeled and sold as model "ME-1" in various sizes, temperature ratings, finishes, and installation positions ("Star ME-1"). The Star ME-1 is intended to suppress and/or extinguish fire.

12. The Star ME-1 is an article produced and distributed for the personal use, consumption, and/or enjoyment of a consumer in or around a household or residence, in recreation, or otherwise. The Star ME-1 is used in, among other places, day care centers, nursing homes, and health care facilities. The Star ME-1 is a "consumer product" that was "distributed in commerce," as those terms are defined in section 3(a)(1) and (11) of the CPSA, 15 U.S.C. § 2052(a)(1), (11).

Defect

13. The Star ME-1 is intended to operate in accordance with applicable industry standards and building code requirements. The Star ME-1 is intended to operate when the temperature to which it is exposed reaches a particular level, at which point a thermal sensing element at the exposed end of the sprinkler should melt, and water should flow through and discharge from the sprinkler.

14. As a result of inadequate design and/or manufacturing, the Star ME-1 has failed and is likely to fail to operate as intended in fires.

15. The inadequate design and/or manufacturing of the Star ME-1 constitutes a "defect" as that term is used in section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

Substantial Risk of Injury and Substantial Product Hazard

16. From 1977 through 1995, Respondents manufactured and/or distributed approximately 700,000 Star ME-1's.

17. Star ME-1's are likely to fail to operate as intended in a fire. Failure of the Star ME-1 to operate as intended in a fire creates a likelihood the fire will grow and spread, exposing consumers to the risk of serious injury and death.

18. The defect in the Star ME-1 manufactured from 1977 through 1995 creates a "substantial risk of injury to the public" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

19. The Star ME-1 manufactured from 1977 through 1995 constitutes a "substantial product hazard" as that term is defined and used in section 15(a)(2), (c), and (d) of the CPSA, 15 U.S.C. § 2064(a)(2), (c), and (d).

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that the Star ME-1 manufactured from 1977 through 1995 was distributed in commerce and presents a "substantial product hazard" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

B. Determine under section 15(c) of the CPSA, 15 U.S.C. § 2064(c), that public notification is required to protect the public adequately from the substantial product hazard presented by the Star ME-1 manufactured from 1977 through 1995, and order that the Respondents:

1. Give prompt public notice of the defect in the Star ME-1 manufactured from 1977 through 1995, the risk of injury and the hazard to the public, and the remedies available to remove the risk of injury and hazard;

2. Mail such notice to each person who is or has been a manufacturer, distributor, or retailer of the Star ME-1;

3. Mail such notice to each person to whom the Respondents know the Star ME-1 manufactured from 1977 through 1995 was delivered or sold; and

4. Include in such notice a complete description of the risk and hazard presented, a warning that the Star ME-1 manufactured from 1977 through 1995 must be replaced immediately, clear instructions informing consumers of the means by which to avail themselves of any and all remedies ordered by the Commission, and such other information as the Commission may order.

C. Determine that action under section 15(d) of the CPSA, 15 U.S.C. § 2064(d), is in the public interest and order Respondents:

1. To elect to repair the defect in all the Star ME-1's manufactured from 1977 through 1995 so they will operate as intended and required and not present a risk of injury and hazard to the public; to replace all the Star ME-1's manufactured from 1977 through 1995 with a like or equivalent product that does not contain the defect, operates as intended and required, and will not present a risk of injury and hazard to the public; or to refund to consumers the purchase price of the Star ME-1's manufactured from 1977 through 1995;

2. To make no charge to consumers and to reimburse them for any foreseeable expenses incurred in availing themselves of any remedy provided under any Commission Order issued in this matter;

3. To reimburse distributors, dealers, contractors, and installers for expenses in connection with carrying out any Commission Order issued in this matter;

4. To submit a plan satisfactory to the Commission for taking action under C(1) through (3) above;

5. To submit monthly reports documenting progress of the corrective action program;

6. For a period of five (5) years after entry of a Final Order in this matter, to keep records of all actions taken to comply with C(1) through (5) above, and to supply those records to the Commission, upon request, for the purpose of monitoring compliance with the Final Order;

7. To notify the Commission at least 60 days prior to any change in the Respondents' business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect compliance with any Order issued by the Commission in this matter; and

8. To take such other and further actions as the Commission deems necessary

to protect the public health and safety and to comply with the CPSA.

Issued by Order of the Commission

Dated this 9th day of October, 2001

Alan H. Schoem

Alan H. Schoem
Assistant Executive Director
Office of Compliance
U.S. Consumer Product Safety Commission
(301) 504-0621

Eric L. Stone
Director, Legal Division
Office of Compliance

Seth B. Popkin
Complaint Counsel
Office of Compliance
4330 East West Highway, Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2001, I served the foregoing Complaint upon all parties of record in these proceedings by mailing, certified mail, postage prepaid, a copy to each at their principal places of business, and courtesy copies to their counsel, as follows:

Chemetron Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431

Chemetron Investments, Inc.
2381 Executive Center Drive
Boca Raton, Florida 33431

Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431

Sprinkler Corporation of Milwaukee, Inc.
307 West Layton Avenue
Milwaukee, Wisconsin 53207

Grucon Corporation
1100 West Anderson Court
Oak Creek, Wisconsin 53154

David H. Baker, Esq.
Thompson, Hine & Flory, LLP
1920 N Street, NW
Washington, DC 20036-1601

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street, P.O. Box 514000
Milwaukee, WI 53203-3400

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, NW, Suite 242
Washington, DC 20016-2756

George A. Davis, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, New York 10153

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc. | ) | CPSC Docket No.: 02-1 |
| and | ) | |
| CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation | ) | |
| and | ) | |
| SUNBEAM CORPORATION | ) | |
| and | ) | |
| SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| and | ) | |
| GRUCON CORPORATION | ) | |

## LIST AND SUMMARY OF DOCUMENTARY EVIDENCE

Pursuant to 16 C.F.R. § 1025.11(b)(3) of the Rules of Practice for Adjudicative Proceedings before the United States Consumer Product Safety Commission, the following is a list and summary of documentary evidence supporting the charges in this matter. Complaint Counsel reserves the right to offer additional evidence during the course of the proceeding.

1. Correspondence between the U.S. Consumer Product Safety Commission ("Commission") staff and the Respondents, between the Commission staff and other persons/entities, and between or among other persons/entities.

2. Fire incident records, including, but not limited to, documentation reporting that in 1993, three (3) Star ME-1's manufactured by Sprinkler Corporation of Milwaukee, Inc., f/k/a "Star Sprinkler Corporation" and "Grunau Sprinkler Manufacturing Company, Inc." ("SCM"), failed to discharge water after their thermal sensing elements melted during a fire in a Missouri nursing home. The manufacturer's documentation reports that the sprinkler system pressure was 40 psi, the piston did not move until forced out, and the O-ring was glued to teflon.

3. Correspondence from SCM to the Missouri nursing home referenced above, after the fire, recommending that the nursing home replace all the dry sprinklers in the nursing home.

4. Company memoranda, notes, records, and correspondence concerning the Star ME-1, the Star ME-1's design and performance, and related matters, including, but not limited to, 1996 and 1997 Grinnell Corporation correspondence and/or memoranda regarding Star ME-1 failures and failure modes.

5. Star ME-1 engineering drawings, engineering records, and product illustrations showing the product's design, components, materials, manufacturing specifications, operational information, and minimal engineering changes.

6. Technical records, technical analyses, evaluations, and installation site records concerning the Star ME-1.

7. Public notices from SCM and Star Sprinkler, Inc. (a successor to Respondents), advising that the Star ME-1 manufactured from 1975 through 1981 may not operate properly under fire conditions, notifying of failure modes of these sprinklers, and warning that fire protection agencies and officials should be notified so that the potential hazard is evaluated and/or corrected.

8. Computer and other data compilations, test procedures, test records, videotapes of testing, and other documents relating to Star ME-1 testing, analysis, and failures, including, but not limited to, photographs, notes, and product tear down and analysis records providing information on failure modes and inadequate design and/or manufacturing.

9. Star ME-1 test results and records including, but not limited to, those of Underwriters Laboratories, Inc., Factory Mutual Research Corporation, the United States Naval Academy, and Grinnell Corporation showing model, manufacture date, test date, activation and nonactivation, pressures of activation and nonactivation, and origin sites of tested sprinklers. The test results show, *inter alia*, that 64% of the tested Star ME-1's did not activate as required and thus failed the testing, and that many of the tested Star ME-1's failed at pressures far exceeding requirements.

10. Industry standards, including, but not limited to, National Fire Protection Association and Underwriters Laboratories, Inc. standards.

11. Underwriters Laboratories, Inc.'s warnings about dry sprinklers with O-ring seals and analyses that O-ring sealed sprinklers can degrade over time.

12. Transactional documents including, but not limited to, asset and stock purchase agreements and other contracts by which Respondents acquired, *inter alia*, the Star assets, product line, and/or liability.

13. Documents showing the relationship between Grucon Corporation ("Grucon") and SCM, and the relationships among Grucon and its subsidiaries SCM, Grunau Company, Inc. ("GC"), and Grunau Project Development, Inc. ("GPD"), including, but not limited to, Grucon's and SCM's actions and inactions disregarding, and/or failing to properly maintain, corporate form and identities. These documents include, but are not limited to, purchase agreements

providing, in part, as follows: that Grucon guaranteed SCM's obligations, that notices to SCM were to be sent to Grucon and not to SCM, that SCM was required to cause a Grucon principal and director and Grucon to enter into a noncompetition agreement, and that Grucon was required to cause GC to enter into a supply agreement with Grinnell Corporation pursuant to which GC would agree to purchase from Grinnell Corporation fire protection products at specified prices and terms (and GC and Grinnell agreed to such purchases at discounted prices).

14. Corporate and business records/filings including, but not limited to, articles of incorporation, name change information, and board of directors meeting minutes or records. The board records show that SCM's directors resolved to pay to Grucon proceeds of the 1996 sale of SCM's assets, and SCM's directors resolved to temporarily pay down the lines of credit and debt obligations of Grucon, GC, and GPD with some of the proceeds of the 1996 SCM assets sale.

15. Company reports and website materials that include information on Respondents' operations, management, and history.

16. Public records relating to the Respondents, including, but not limited to, annual reports and records concerning corporate standing/status, and evidencing common management and control among certain Respondents.

17. Correspondence to Grucon from Underwriters Laboratories, Inc. concerning Star ME-1 testing, and from Grinnell Corporation to Grucon concerning a Star ME-1 warranty, lubricant, and sprinkler operations issue.

18. Documents evidencing Star ME-1 services GPD and/or a GPD employee/officer performed for SCM, and evidencing GPD's material involvement with Star ME-1 matters, including, but not limited to, a GPD metallurgical engineer report regarding Star ME-1 analysis.

19. Documents provided by the Respondents and other persons/entities, including, but not limited to, documents referenced above.

Dated this 9th day of October, 2001

Alan H. Schoem

Alan H. Schoem
Assistant Executive Director
Office of Compliance
U.S. Consumer Product Safety Commission
(301) 504-0621

Eric L. Stone
Director, Legal Division
Office of Compliance

Seth B. Popkin
Complaint Counsel
Office of Compliance
4330 East West Highway
Room 613
Bethesda, Maryland 20814
(301) 504-0626, ext. 1358

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2001, I served the foregoing List and Summary of Documentary Evidence upon all parties of record in these proceedings by mailing, certified mail, postage prepaid, a copy to each at their principal places of business, and courtesy copies to their counsel, as follows:

Chemetron Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431

Chemetron Investments, Inc.
2381 Executive Center Drive
Boca Raton, Florida 33431

Sunbeam Corporation
2381 Executive Center Drive
Boca Raton, Florida 33431

Sprinkler Corporation of Milwaukee, Inc.
307 West Layton Avenue
Milwaukee, Wisconsin 53207

Grucon Corporation
1100 West Anderson Court
Oak Creek, Wisconsin 53154

David H. Baker, Esq.
Thompson, Hine & Flory, LLP
1920 N Street, NW
Washington, DC 20036-1601

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C.
1000 North Water Street, P.O. Box 514000
Milwaukee, WI 53203-3400

Michael A. Brown, Esq.
Brown & Freeston, P.C.
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George A. Davis, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, New York 10153

Seth B. Popkin
Complaint Counsel for
U.S. Consumer Product Safety Commission

SBP a

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

July 10, 2002

FACSIMILE AND REGULAR MAIL
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, Maryland 20814

Re: In the Matter of Chemetron Corporation, et al.
CPSC Docket No. 02-1

Dear Ms. Hammond:

Enclosed is my Order, which was also sent via facsimile to you this date. Please transmit this Order via facsimile to all parties.

Sincerely,

William B. Moran

William B. Moran
United States Administrative Law Judge

Enclosure

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | CPSC Docket No. : 02-1 |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grumau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

## ORDER on Complaint Counsel's Motions to Compel Production of Documents and Answers to Interrogatories

### I. Complaint Counsel's Motion to Compel Production of Documents[1] by Respondents Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation

Complaint Counsel has filed a motion to compel Respondents Sprinkler Corporation of Milwaukee, Inc. ("SCM") and Grucon Corporation ("Grucon") to provide "full and complete

[1] In response to the Motion, Sprinkler Corporation of Milwaukee and Grucon Corporation, Inc. filed a Brief in Opposition. The same document also addressed Complaint Counsel's Motion to Compel Interrogatory Answers. Along with the Brief in Opposition, Sprinkler and Grucon filed an unopposed Motion for leave to combine their responses together with a request to permit filing a late response to the motions. The motion to combine and file a late response is GRANTED. Thereafter, Complaint Counsel filed a Motion for Leave to File a Reply Brief, pursuant to 16 C.F.R. § 1025.23(c), which Motion was accompanied by the substantive Reply. The section referred to provides that no reply is permitted, unless allowed by the Court. In this instance the Court has decided to grant the motion for a reply brief and consequently it accepts and considers the Reply Brief. However the parties are advised that henceforth only the motion seeking permission to file a reply will be allowed. No Brief in Support is to be submitted until after such a motion is granted.

responses to [its] Second Set of Requests for Production of Documents."

Complaint Counsel also seeks an order directing respondents to provide a privilege log (or an equivalent description) where privileges to withhold documents have been asserted. Last, Complaint Counsel objects to respondent's refusal to produce documents responsive to Document Request No. 1. This request involves the production of "documents evidencing or otherwise supporting certain of the allegations [Grucon] raised ... in *Grucon Corp. v. Consumer Product Safety Commission*, Civ. Action No. 01-C-0157." In that action Grucon sought, but was denied, a declaratory judgment that it and SCM were distinct corporations. Complaint Counsel seeks the documents relied upon by Grucon in support of that claim.

In its twenty-two page Brief in Opposition, after relating background and general information in the first eleven pages, Grucon and SCM point out that discovery may not descend into a mere fishing expedition, nor may it be over broad or unduly burdensome when compared with relevance of the requested information. However, Grucon admits that SCM is its "defunct subsidiary" and does not take issue with Complaint Counsel's assertion that Grucon is a private holding company which owns a number of family-run businesses, nor with the assertion that SCM is "enmeshed in a network of financial relationships with persons and entities controlled by, or otherwise related to [Grucon]." The admitted close relationship between Grucon and SCM guides the Court's discovery determinations here.

Respondents also assert that requiring them to answer Request number 1, which relates to its earlier Complaint for Declaratory Relief against the CPSC, would turn the burden of proof on its head.[2] They further maintain that answering Request number 1 would be responsive, at a minimum, to Request numbers 2 - 8, 10, 14 -15, 21 -24, 28, 32 -40, 43, 45, 50, 56.[3]

The Court agrees that the standard under 16 C.F.R. § 1025.33, Production of documents and things, is to "produce and permit ... to inspect and copy ... designated documents ... or ... things ... which are in the possession, custody, or control of the party upon whom the request is served ..."[4] Thus, the proposition that production is limited to documents that are "reasonably available" is rejected. Although Grucon and SCM have objected generally to questions as overbroad and unduly burdensome, they relate that still have responded with nearly 10,000 pages

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[2]Respondents have confused the burden of proof with discovery. It is true that the burden of proof rests and remains with Complaint Counsel. However to suggest that one cannot gather information in support of meeting that burden through discovery is incorrect.

[3]This does not create an additional burden. Where a previous answer provides a *complete* and direct response to a subsequent question, the party responding to the discovery may simply direct the discoverer to that earlier answer.

[4]Such requests must be within the Commission's statutory authority, relevant, and not privileged. *See* 16 C.F.R § 1025.31(c).

of materials and that their discovery efforts are continuing and would be supplemented for those documents "reasonably available." This strikes the Court as evidencing some vacillation or at least selectivity in its stance in response to the motions to compel. While discovery may not be a fishing expedition, it appears that Grucon and SCM have, by virtue of the 10,000 pages it has willingly produced, effectively selected certain fishing spots for Complaint Counsel while keeping other locations off-limits.

In an area of apparent agreement, Grucon and SCM agree to provide Complaint Counsel with a privilege log, describing those documents being withheld under a claim of privilege. The Court presumes that Grucon and SCM already have begun the process of preparing such a log in anticipation of the Court's Order. Consequently, they are directed to provide the privilege log to Complaint Counsel within ten days of this Order.

Upon consideration of the Motion to Compel production of documents by SCM and Grucon, the Court orders that those Respondents produce, within 14 days of this Order, all documents in their possession, custody or control that are responsive to Complaint Counsel's Second Request for Production of Documents, *except* for Request Nos. 11, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 45, 46, 47 and 48. *Except further* that to the extent those (just enumerated) excepted responses would be included in responding to Request No. 1, they *shall* be answered. Further, Request Nos. 16, 17, and 18 are limited in their approval to the enumerated filings in those requests (i.e. No.16 (a) through (h) and No.17 (a) and (b).

## II. Complaint Counsel's Motion to Compel Interrogatory Answers[5] by Respondents Sprinkler Corp. of Milwaukee, Inc. and Grucon Corporation

In seeking "full and complete responses" to its second set of interrogatories, Complaint Counsel characterizes its questions as "largely explor[ing] factual issues relevant to [its] claim that SCM's corporate veil should be pierced." As with its Motion for document production, Complaint Counsel notes the earlier federal district court action filed by Grucon against the Commission, and requests that there be a full response to Interrogatories 1 through 14.

Complaint Counsel also requests that respondents be directed to specify the particular documents from which answers to certain listed interrogatories may be determined, either by Bates number or some other detailed description to accomplish the purpose of readily locating

[5]As noted at footnote No.1, Sprinkler and Grucon's Brief in Opposition was combined with its response to the motion to compel production of documents.

the documents.[6] A third grouping of questions,[7] relating to SCM's financial and business relationships with Grucon, Grucon subsidiaries and immediate family members of officers, directors and shareholders, is based on the fact that Grucon is a private holding company which owns a number of family run businesses. Given this, Complaint Counsel contends that such inquiries are proper where SCM is "enmeshed in a network of financial relationships with persons and entities controlled by, or otherwise related to, that parent." In support of its contention that such discovery is appropriate to explore whether the financial dealings between these various entities were arm's-length arrangements, Complaint Counsel notes that SCM admitted that it leased office space from a trust, which members, it believes, were also members of SCM's Board of Directors and that intercorporate transfers occurred between SCM and other Grucon-controlled entities.

Last, Complaint Counsel requests that respondents be compelled to provide a full and complete answer to interrogatory No. 25 and No. 66. The former, inquires about the extent of consultation that occurred between Grucon and SCM regarding SCM personnel issues.

As with its objections to the document discovery requests, Respondents object generally that the requests are over broad and would upend the burden of proof.[8] As set forth at footnote 3, the Court has rejected the contention that answering interrogatories Nos. 1 - 14, relating to Respondents Complaint for Declaratory Relief, would reverse the burden of proof. However, Respondents also contend that those questions would be responsive to interrogatories Nos. 15 - 18, 25, 31-32, 36, 42 -44, 50 -51, 68 -73 and 76.[9]

Consistent with the foregoing directions of the Court regarding the Motion to Compel Interrogatory Answers by these Respondents, the Court GRANTS the Motion and ORDERS that Respondents SCM and Grucon, within 14 days of this Order, produce full and complete answers to Complaint Counsel's Second Set of Interrogatories *except* that Interrogatory numbers 23, 24,

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[6]In particular Complaint Counsel seeks specification of such documents for SCM Interrogatories 15 through 22, 30, 32 through 37, 39 through 41, 49, 50, 53, 54, 56, 57, 61, 63, 64, 68, 69, 70 & 74 and Grucon Interrogatories 23, 24, & 32.

[7]These questions are identified as Interrogatories 26, 28, 29, 30, 32 through 35, 45, 47, 48, 53, and 66.

[8]In its opposition, Grucon and SCM agrees to provide more specific identification where it cited to documents in lieu of answers, if the Court so directs. The Court does so. **Grucon and SCM are directed to identify, by Bates number, the records responsive to particular interrogatories.**

[9]See footnote No. 3.

27, 42, 43, and 45 need not be answered.

Because of the delay in the Court's ruling on these motions, it has decided to extend the August 9, 2002 date for the close of discovery on this matter hjto August 23rd. This extension applies only to the subject of these Motions to Compel regarding SCM and Grucon.

**So Ordered.**

William B. Moran
William B. Moran
United States Administrative Law Judge

Dated: July 7, 2002

## CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2002, I served the attached **Order** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

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Mr. Todd Stevenson, Secretary
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, MD 20814

Nelida Torres
Legal Staff Assistant

Dated: July 10, 2002
Washington, D.C.

JSP

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc., | ) | |
| | ) | CPSC Docket No. : 02-1 |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation, | ) | |
| | ) | |
| Sunbeam Corporation, | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc., | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

## ORDER REGARDING DOCUMENTS SUBMITTED *IN CAMERA*

On June 20, 2002 Tyco Companies and the Respondents submitted a Joint Status Report regarding the Chemetron Respondents' review of the documents which had been submitted *in camera* by Complaint Counsel. At the Court's direction a process was established to determine if the number of documents in issue could be reduced. The end result of this process has left the Court with only five pages remaining in dispute over whether they must be produced to the Respondents. The parties have asked the Court to determine whether or not the remaining five pages are to be produced (subject to the previously established Confidentiality Stipulation).

The Court has reviewed the pages[1] remaining in issue. Upon its *in camera* review of those documents, the Court agrees with the Tyco Companies that those documents are not relevant in this proceeding and accordingly determines that they are not subject to production.

[1] The Joint Report, describing the total as "only five pages," identifies the documents as Bates numbers 20403 through 20408. Thus, there are actually "only six pages" left in dispute.

So Ordered.

William B. Moran
William B. Moran
United States Administrative Law Judge

Dated: July 10, 2002

## CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2002, I served the attached **Order** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

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Nelida Torres
Legal Staff Assistant

Dated: July 10, 2002
Washington, D.C.

SBP cc

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
THE ADMINISTRATIVE
LAW JUDGES

June 28, 2002

FACSIMILE AND REGULAR MAIL
Mr. Todd Stevenson
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Room 502, South Tower
Bethesda, Maryland 20814

Re: In the Matter of Chemetron Corporation, et al.
CPSC Docket No. 02-1

Dear Mr. Stevenson:

Enclosed is my Order, which was also sent via facsimile to you this date. Please transmit this Order via facsimile to all parties.

Sincerely,

William B. Moran

William B. Moran
United States Administrative Law Judge

Enclosure

# UNITED STATES OF AMERICA
# CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | CPSC Docket No. : 02-1 |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |

## ORDER ON RESPONDENT GRUCON CORPORATION'S MOTION FOR SUMMARY DECISION

Respondent Grucon Corporation ("Grucon") has filed a Motion for Summary Decision and Order pursuant to 16 C.F.R. § 1025.25. A Memorandum in Support accompanied the motion. Grucon relates that the basis for its motion is that it "did not manufacture or distribute the sprinklers at issue" in this litigation and that "no justification exists to 'pierce the corporate veil' and impose liability on [it]..." Motion at 1, Memorandum at 2. Thereafter, Complaint Counsel for the Consumer Product Safety Commission ("CPSC") filed a Memorandum in Opposition to the Grucon Motion, together with its own motion, seeking the Court's denial of the motion, or in the alternative, a deferral in ruling on Grucon's Motion until Complaint Counsel has completed discovery[1] regarding its veil-piercing claim.

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[1]Related to this motion and pending before the Court are Complaint Counsel's Motions to Compel Sprinkler Corporation of Milwaukee to produce documents and provide answers to interrogatories.

Although employing a slightly different denomination, the section in issue from the Rules of Practice for Adjudicative Proceedings, 16 C.F.R. Part 1025, and entitled "Summary decisions orders," 16 C.F.R. § 1025.25, concerns summary judgment. It provides, in part, that such an order should be issued if "the pleadings and any deposition, answers to interrogatories, admissions, or affidavits show that there is no genuine issue as to any material fact ..." Thus, the section contemplates that discovery relevant to the issue will first have been completed. As this has not yet occurred, the Court agrees that it would be premature to rule on Grucon's Motion.

Accordingly, having fully considered the parties' briefs on the issue, the court defers ruling on Grucon's Motion until Complaint Counsel has had a reasonable time to assimilate the material derived through discovery. The Court trusts that once this has occurred Complaint Counsel will evaluate, in good faith, its position on whether Grucon should remain a party and, if warranted, on its own motion seek to dismiss Grucon from the proceeding. Should Complaint Counsel determine that, from its perspective, there is substance to its veil-piercing argument, the Court directs that it supplement its response to Grucon's Motion in light of that evidence. Following such a response, within twenty days Grucon is directed to file a reply to Complaint Counsel's submission.

So Ordered.

William B. Moran

William B. Moran
United States Administrative Law Judge

Dated: June 28, 2002

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2002, I served the attached **Order on Respondent Gruccon Corporation's Motion for Summary Decision** upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

Robert E. Barnett, Esquire
Heidi K. Hubbard, Esquire
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Mr. Todd Stevenson, Secretary
Ms. Rocky Hammond
U.S. Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
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Bethesda, MD 20814

Nelida Torres
Legal Staff Assistant

Dated: June 28, 2002

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**JOINT MOTION FOR REVISED SCHEDULE, PURSUANT TO COURT'S ORDER OF MARCH 18th, 2002**

In its order of March 18th, 2002, the Court invited the parties to submit a revised, joint schedule by April 2, 2002, incorporating the new discovery deadlines set by the Court and addressing any outstanding discovery issues. The parties' revised schedule set forth below proposes minor additions to the Court's timeline, which are geared primarily towards third-party confidentiality claims and expert discovery issues.

## Proposed Revised Discovery Schedule & Deadlines

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| April 12, 2002 | Complaint Counsel to file a Motion with the Court regarding any outstanding, already identified third-party confidentiality and related claims. (Complaint Counsel to file additional confidentiality Motions concerning third-party information received after this date with the Court as necessary.)<br><br>Complaint Counsel to produce to Respondents all identified third-party information responsive to outstanding discovery requests and not subject to a confidentiality Motion with the Court. |
| April 19, 2002 | Responses due from any third parties regarding confidentiality and related claims. |
| April 22, 2002 | Deadline for Motions regarding joinder of additional parties or amendment of pleadings.<br><br>Deadline for submitting proposed joint procedures for pre-trial discovery matters to be raised at the First Prehearing Conference, including procedures for and number of depositions and expert discovery issues. |
| April 24, 2002 (or other hearing date convenient to the court). | Hearing on identified third-party confidentiality and related claims. Complaint Counsel to produce documents as ordered by the Court within 7 days, subject to any interlocutory appeal by a party claiming confidentiality. |
| May 1, 2002 | First Prehearing Conference (by telephone).<br><br>Depositions of party and non-party witnesses to commence after this Conference. |
| May 15, 2002 | Complaint Counsel to file and serve answers to interrogatories regarding expert witnesses, as provided by 16 C.F.R. § 1025.31(c)(4), as well as make available for inspection or copying all document and things reviewed or relied upon by expert(s) in forming opinions. |
| May 31, 2002 | Deadline for all parties to file and serve preliminary dispositive Motions for Summary Decision. |
| June 14, 2002 | Respondents to file and serve answers to interrogatories regarding expert witnesses, as |

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| | provided by 16 C.F.R. § 1025.31(c)(4), as well as make available for inspection or copying all document and things reviewed or relied upon by expert(s) in forming opinions. |
| June 17, 2002 | All parties to file and serve Responses to any preliminary dispositive Motions for Summary Decision. |
| June 24, 2002 | All parties to file and serve Reply briefs on any preliminary dispositive Motions for Summary Decision. |
| June 28, 2002 | All parties to file and serve answers to interrogatories regarding expert rebuttal witnesses, if any, as provided by 16 C.F.R. § 1025.31(c)(4), as well as make available for inspection or copying all document and things reviewed or relied upon by rebuttal expert(s) in forming opinions. |
| July 8, 2002 | Commencement of expert depositions. |
| July 15, 2002 (or other hearing date convenient to the Court) | Hearing on any outstanding preliminary dispositive Motions for Summary Decision. |
| August 9, 2002 | Close of all discovery. |
| August 23, 2002 | Deadline for other dispositive Motions for Summary Decision. |
| September 9, 2002 | All parties to file and serve Responses to any dispositive Motions for Summary Decision. |
| September 16, 2002 | All parties to file and serve Reply briefs on any preliminary dispositive Motions for Summary Decision. |
| September 30, 2002 (or other hearing date convenient to the Court) | Hearing on any outstanding dispositive Motions for Summary Decision.<br><br>Parties' submission to the court regarding the following, as provided in 16 C.F.R. §§ 1025.21(a) and 16 C.F.R. 1025.44:<br><br>1) Identification, simplification, and clarification of the issues;<br>2) Stipulations and admission of fact and the content and authenticity of documents;<br>3) Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission's substantive standards, regulations, and product safety rules;<br>4) Establishment of a schedule for the |

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| | exchange of written, direct testimony of experts, as well agreed-upon procedures and timetables for the cross-examination and re-direct examination of experts.<br>5) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time, and place of the hearing, with due regard to the convenience of the parties;<br>Such other matters as may aid in the efficient presentation or disposition of the proceedings. |

Respectfully submitted,

Michael J. Gidding
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U.S. Consumer Product
Safety Commission
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(301) 504-0626, ext. 1344
Complaint Counsel

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Counsel for Sunbeam Corporation, Chemetron Corporation
And Chemetron Investments, Inc.

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Mailing Address:

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Suite 242

| | |
|---|---|
| | exchange of written, direct testimony of experts, as well agreed-upon procedures and timetables for the cross-examination and re-direct examination of experts.<br>5) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time, and place of the hearing, with due regard to the convenience of the parties;<br>Such other matters as may aid in the efficient presentation or disposition of the proceedings. |

Respectfully submitted,

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Safety Commission
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And Chemetron Investments, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2002, I served the attached Joint Motion for Revised Schedule Pursuant to Court's Order of March 18, 2002 upon all parties of record in these proceedings by mailing, postage pre-paid, a copy of each document to:

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Suite 2100
Milwaukee, WI 53202-3186

Michael J. Gidding
Complaint Counsel for the
U.S. Consumer Product Safety Commission

| | | |
|---|---|---|
| *42* | 05/03/2002 | Respondent Sunbeam Corporation's Responses to Complaint Counsel's Second Set of Interrogatories to Respondent Sunbeam Corporation |
| *43* | 05/03/2002 | Respondent Chemetron Investments Inc.'s Responses to Complaint Counsel's Second Set of Requests of Interrogatories to Respondent Chemetron Investments Inc. |
| 44 | 05/03/2002 | Respondent Chemetron Corporation's Responses to Complaint Counsel's First Set of Requests for Admission |
| 45 | 05/03/2002 | Respondent Sunbeam Corporation's Responses to Complaint Counsel's First Set of Requests for Admission |
| 46 | 05/03/2002 | Respondent Sunbeam Corporation's Responses to Complaint Counsel's Second Set of Requests for Production of Documents and Things to Respondent Sunbeam Corporation |
| 47 | 05/03/2002 | Respondent Chemetron Corporation's Responses to Complaint Counsel's Second Set of Requests for Production of Documents and Things to Respondent Chemetron Corporation |
| 48 | 05/03/2002 | Respondent Chemetron Investment Corporation's Responses to Complaint Counsel's First Set of Requests for Admission |

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>Chemetron Corporation,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>Chemetron Investments, Inc.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>Sunbeam Corporation<br><br>and<br><br>Sprinkler Corporation of Milwaukee, Inc.,<br>f/k/a Star Sprinkler Corporation, f/k/a<br>Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>Grucon Corporation | CPSC Docket No.: 02-1 |

**RESPONDENT CHEMETRON INVESTMENTS, INC.'S RESPONSES TO COMPLAINT COUNSEL'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT CHEMETRON INVESTMENTS, INC.**

Pursuant to 16 C.F.R. § 1025.33(c), Respondent Chemetron Investments, Inc. ("Chemetron Investments") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's Second Set of Requests for Production of Documents and Things to Respondent Chemetron Investments, Inc.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek information or documents protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Chemetron Investments will provide a log of documents withheld on privilege grounds.

B. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and requests have been read to exclude any such documents. Chemetron Investments also objects to the definitions, instructions and requests as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Chemetron Investments an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Chemetron Investments objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had

possession, custody, or control of the document or any copy thereof," "the number of pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad, and unduly burdensome.

D. Chemetron Investments objects to the definition of "AI" as encompassing entities formerly affiliated with Allegheny International, Inc., and entities that have yet to be affiliated with Allegheny International, Inc. because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron Investments has read the definition to exclude any such entities.

E. Chemetron Investments objects to the definition of "Chemetron Corporation" as encompassing entities formerly affiliated with Chemetron Corporation, and entities that have yet to be affiliated with Chemetron Corporation because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron Investments has read the definition to exclude any such entities.

F. Chemetron Investments objects to the definition of "Chemetron Investments" as encompassing entities formerly affiliated with Chemetron Investments, and entities that have yet to be affiliated with Chemetron Investments because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron Investments has read the definition to exclude any such entities.

G. Chemetron Investments objects to the definition of "Sunbeam" as encompassing entities formerly affiliated with Sunbeam, and entities that have yet to be affiliated with Sunbeam because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron Investments has read the definition to exclude any such entities.

H. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

I. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron Investments obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

J. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek documents that are not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such documents, Chemetron Investments does not admit the relevance or admissibility thereof.

K. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek documents that are equally accessible to all parties, are available as a matter of public record, or have been provided to Chemetron Investments by the CPSC and/or Complaint Counsel in this matter.

L. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron Investments an obligation to obtain information or documents from entities formerly affiliated with Chemetron Investments or to obtain other information or documents not in Chemetron Investments' current possession, custody, or control, and Chemetron Investments has read the definitions, instructions, and requests to exclude any such obligation. Chemetron Investments itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Chemetron Investments, Inc. (formerly known as Chemetron Corporation) transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Chemetron Investments. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

M. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek to require Chemetron Investments to obtain information or documents that were, but no longer are, within Chemetron Investments' possession, custody, or control, and Chemetron Investments has read the definitions, instructions, and requests to exclude any such obligation.

N. Chemetron Investments objects to the definitions, instructions, and requests to the extent that they seek, or may be construed, to impose on Chemetron Investments an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Chemetron Investments will search files in its possession, custody, and control where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

O. Chemetron Investments objects to each request to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Chemetron Investments has made an effort to respond, where possible, as it understands and interprets the request.

P. Chemetron Investments objects to each request to the extent that it contains compound questions and/or contentions which should be separated into individual requests.

Q. In responding to any of these requests, Chemetron Investments does not concede the relevance, materiality, or admissibility of any information or documents provided, and hereby preserves all such objections.

R. Because discovery in this action is ongoing, Chemetron Investments reserves the right to amend and/or supplement these responses.

S. These General Objections are incorporated into every response and shall not be repeated in every response to which they are applicable. By

responding to a request, Chemetron Investments does not waive any general or specific objection.

T. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be produced pursuant to the parties' Confidentiality Stipulation and Order.

## RESPONSES

**REQUEST NO. 1:** All contracts, agreements, and other documents (other than RESP001546-1558) relating to Respondent Chemetron Investments' (then known as "Chemetron Corporation") sale, conveyance, and/or other transfer of assets relating to its "Fire Systems Business" to CFS on or about August 25, 1982, including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to Respondent Chemetron Investments' (then known as Chemetron Corporation) sale, conveyance, and/or other transfer of assets relating to its Fire Systems Business including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, additional non-privileged documents in response to subparagraph (a), if any, will be produced.

**REQUEST NO. 2:** All contracts, agreements, and other documents (other than RESP001559-1561, RESP002255-2435) relating to CFS's sale, conveyance, and/or other transfer of assets relating to "Star Products" to Grunau Sprinkler Manufacturing Company, Inc., on or about November 9, 1983, including but not limited to (a) all exhibits (including Exhibits D through L, referenced at RESP002258-2259), schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to CFS's sale, conveyance, and/or other transfer of assets relating to Star Products to Grunau Sprinkler Manufacturing Company, Inc., on or about November 9, 1983 including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments already produced the complete closing binder for Chemetron Fire Systems Inc.'s sale of the Star Products line to Grunau Sprinkler Manufacturing Company, Inc. on November 9, 1983, including all

exhibits, schedules, addenda, and attachments thereto in response to Complaint Counsel's first set of discovery requests. Chemetron Investments produced Exhibits D through L as documents numbered RESP002928-003171. Chemetron Investments will also produce any amendments to the contracts and agreements therein, if any.

**REQUEST NO. 3:** All correspondence and other communications to or from Grunau relating to the transaction described in Request No. 2 above, including but not limited to all correspondence relating to Grunau's and Chemetron's liabilities and indemnification obligations.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks all "other communications." Chemetron Investments further objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive correspondence will be produced.

**REQUEST NO. 4:** All contracts, agreements, and other documents (other than RESP001485-1545) relating to Respondent Chemetron's sale, conveyance, and/or other transfer of all of the issued and outstanding shares of capital stock of CFS to Figgie, on or about July 30, 1985, including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and

agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to Respondent Chemetron's sale, conveyance, and/or other transfer of assets of all of the issued and outstanding shares of capital stock of CFS to Figgie, on or about July 30, 1985 including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will produce the complete closing binder for the sale of all of the issued and outstanding shares of capital stock of Chemetron Fire Systems, Inc. to Figgie International Inc. on July 30, 1985, including all exhibits, schedules, addenda, attachments, and amendments.

**REQUEST NO. 5:** All correspondence and other communications to or from Figgie relating to the transaction described in Request No. 4 above, including but not limited to all correspondence relating to Figgie's and Chemetron's liabilities and indemnification obligations.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-

product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks all "other communications." Chemetron Investments further objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive correspondence will be produced.

**REQUEST NO. 6:** All pleadings, answers, motions, briefs, interrogatory responses, responses to requests for admission, requests for production of documents, deposition notices, and deposition transcripts in the civil case captioned Chemetron Corporation v. Figgie International Inc., Civil Action No. 86-2025, filed in the United States District Court for the Western District of Pennsylvania.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron Investments further objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 7:** All contracts, agreements, and other documents (other than RESP001465-1479) relating to the "Settlement Agreement," entered into on or about June 25, 1990, by AI, Chemetron, Chemetron Investments, and Figgie International Inc., including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to the Settlement Agreement entered into on or about June 25, 1990, by AI, Chemetron, Chemetron Investments, and Figgie International Inc., including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will produce all exhibits, schedules, addenda, attachments, and amendments to the Settlement Agreement entered into on or about June 25, 1990 by AI, Chemetron, Chemetron Investments, and Figgie International, Inc.

**REQUEST NO. 8:** In connection with the "Settlement Agreement" referenced in Request No. 7 above, produce the following: (a) the motion (and all exhibits, schedules, attachments, and addenda thereto) to approve the Settlement Agreement filed with the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court"); (b) the Bankruptcy Court's order (and all exhibits, schedules, attachments, and addenda thereto) approving the Settlement Agreement; (c) all invoices delivered to Chemetron by Figgie itemizing the "defense costs" and "indemnity payments" contemplated by the Settlement Agreement; and (d) all correspondence or other communications between Chemetron and Figgie relating to such defense costs and indemnity payments or otherwise related to the Settlement Agreement.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron Investments. Chemetron Investments further objects to this document request as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron Investments further objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks "all invoices delivered to Chemetron by Figgie itemizing the 'defense costs' and 'indemnity payments' contemplated by the Settlement Agreement," and "all correspondence or other communications between Chemetron and Figgie relating to

such defense costs and indemnity payments or otherwise related to the Settlement Agreement."

Subject to and without waiving the foregoing objections and the General Objections, non-privileged documents in response to subparagraphs (a)-(b) will be produced.

**REQUEST NO. 9:** In connection with the bankruptcy proceedings captioned In re. Allegheny International, Inc., et al., Case No. 88-00448, filed in the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court"), produce the following: (a) all proofs of claim relating to the Star ME-1; (b) a complete copy of all petitions filed by all debtors, including all schedules listing creditors and all amendments and supplements thereto; (c) the "Modified Plan" (and all exhibits, schedules, attachments, and addenda thereto) approved by the Bankruptcy Court on or about September 13, 1990 and referenced in the recitals to the Asset Purchase Agreement (RESP001412-1455) dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and AI (the "Asset Purchase Agreement"); (d) the Bankruptcy Court's orders approving the "Stock Plan" and the "Modified Plan," both of which are referenced in the recitals to the Asset Purchase Agreement, and all exhibits, schedules, attachments, and addenda thereto; (e) all Bankruptcy Court orders (and all exhibits, schedules, attachments, and addenda thereto) relating to procedures for providing notice to creditors and other interested parties; (f) all service lists used to disseminate notices to creditors and other interested parties; (g) copies of all notices sent to creditors and/or published in newspapers regarding the Bankruptcy Court's consideration of the Stock Plan and the Modified Plan; and (h) all orders, motions, petitions, adversary proceeding pleadings, or other Bankruptcy Court filings relating to any liability, whether contingent or otherwise, arising from, or otherwise relating to, the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record.

Chemetron Investments further objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 10:** In connection with the Asset Purchase Agreement referenced in Request No. 9 above, produce the following: (a) all exhibits, schedules, addenda, attachments, and amendments thereto, and (b) all legal opinions, invoices, and other writings referenced in the Asset Purchase Agreement.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 11:** With reference to RESP001541-1545, produce all pleadings, judgments, settlement stipulations, settlement agreements, correspondence, and other documents relating to the following legal actions and/or claims identified in the aforementioned document: (a) Caterpillar Tractor Co. v. Chemetron Fire Systems, Inc., et al., Tenth Judicial Court, Peoria County, IL (alleging "defect in fire suppression system actuator requiring replacement"); (b) Gray Tool Company v. Star Sprinkler Corp., District Court, Harris County, TX (alleging "property damage caused by defective sprinkler system"); (c) St. Paul Fire & Marine v. Safety First Products Co., Chemetron Corporation, et al., 22nd Judicial District, Parish of St. Tammanz, LA (alleging, inter alia, "sprinkler system failed" and "design defect"); (d) Stop Fire, Inc., et al. v. Chemetron Corporation, et al., Superior Court, Santa Clara County, CA (alleging "sprinkler system failed"); and (e) Broadview Bowl-O-Matic Lanes, Atlanta, GA (alleging "sprinkler system failed during a fire in a shopping mall resulting in property damage").

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron Investments further objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to legal actions and/or claims generally, without limiting the request to legal actions and/or claims involving the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 12:** With reference to RESP003261-3284, produce all pleadings, judgments, settlement stipulations, settlement agreements, correspondence, and other documents relating to legal actions and/or claims filed by the following claimants, which are identified by the name and date of loss ("D/L") set forth in the aforementioned document . . . [confidential information omitted].

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron

Investments further objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to legal actions and/or claims generally, without limiting the request to legal actions and/or claims involving the Star ME-1. Chemetron Investments further objects to this document request to the extent that Complaint Counsel references documents subject to the parties' Confidentiality Stipulation in violation of that stipulation.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron Investments has been unable to locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 13:** In addition to the legal actions and claims identified in Request Nos. 11 and 12 above, produce all pleadings, judgments, settlement stipulations, settlement agreements, correspondence, and other documents relating to all litigation filed, and all claims otherwise asserted or threatened, by any person or entity, regarding the Star ME-1.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this request as overbroad and unduly burdensome to the extent that it is duplicative of Complaint Counsel's previous discovery requests to Chemetron Investments.

Subject to and without waiving the foregoing objections and the General Objections, additional non-privileged responsive documents, if any, will be produced.

**REQUEST NO. 14:** In connection with the bankruptcy proceedings captioned In re. AI Realty Marketing of New York, Inc., et al., Chapter 11 Case Nos. 01-40252 (AJG) through 01-40290 (AJG), and In re Sunbeam Corporation, Chapter 11 Case No. 01-40291 (AJG), filed in the United States Bankruptcy Court for the Southern District of New York, produce the following: (a) all proofs of claim relating to the Star ME-1, and (b) a complete copy of all petitions filed by the debtors, including all schedules listing creditors and all amendments and supplements thereto.

**RESPONSE:** Chemetron Investments objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron Investments also objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 15:** This request relates to the document captioned "Instrument of General Conveyance and Assumption of Liabilities" dated on or about September 28, 1990, between AI (as "Seller") and Sunbeam/Oster Company, Inc. (as "Purchaser") (RESP001456-1461). With reference to the second sentence of the first full paragraph on page 5 of the document (RESP001460), produce all "further instruments, papers and documents" that were executed and/or delivered by the Purchaser "to evidence the assumption of liabilities and obligations of Debtors assumed [t]hereunder by Purchaser."

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous,

overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 16:** This request relates to the document captioned "Acknowledgement of Obligations" dated September 28, 1990 and executed on behalf of Sunbeam/Oster Company, Inc. (RESP001463). Produce the "Second Amended and Restated Stipulation of Settlement" dated as of September 7, 1990, which was referenced in the foregoing document.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 17:** This request relates to the document captioned "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455). With respect to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement, produce: (a) all documents relating to the nature, type, scope, or magnitude of the "Assumed Liabilities"; (b) all documents relating to the liabilities and obligations of Chemetron and Chemetron Investments that were assumed by Sunbeam/Oster Company, Inc. as "Assumed Liabilities"; (c) all documents relating to the liabilities and obligations that the parties to the foregoing agreement intended to be included as "Assumed Liabilities"; (d) all documents relating to the liabilities and obligations that actually were treated, for accounting, legal, or other purposes, as "Assumed Liabilities" by Sunbeam following September 28, 1990; and (e) all documents relating to the liabilities and obligations of Chemetron and Chemetron Investments that were discharged through confirmation of the "Modified Plan," as that term was used in the foregoing agreement.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 18:** This request relates to the document captioned "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455). With respect to the "Product Liability Claims," as that term was defined and used in the foregoing agreement, produce: (a) all documents relating to the nature, type, scope, or magnitude of the "Product Liability Claims"; (b) all documents relating to the "Product Liability Claims" that arose as a result of products manufactured or sold by each of Chemetron and Chemetron Investments; (c) all documents relating to the claims that the parties to the foregoing agreement intended to be included as "Product Liability Claims"; and (d) all documents relating to the claims that actually were treated, for accounting, legal, or other purposes, as "Product Liability Claims" by Sunbeam following September 28, 1990.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 19:** Produce all documents (including auditor work papers) relating to the establishment or maintenance of any accounting reserves for the "Assumed Liabilities," as that term was defined and used in RESP001412-1455.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 20:** Produce all documents (including auditor work papers) relating to the establishment or maintenance of any accounting reserves for the "Product Liability Claims," as that term was defined and used in RESP001412-1455.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 21:** Produce all documents (including auditor work papers) relating to the establishment or maintenance of any accounting reserves for the "Non-Operating Expenses," as that term was defined and used in RESP001183-1186.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 22:** This request relates to the document captioned "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455). With respect to the "Reinstated Intercompany Claims," as that term was defined and used in the foregoing agreement, produce all documents relating to the Reinstated Intercompany Claims made by and against each of Chemetron and Chemetron Investments.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 23:** With reference to the document captioned "Schedule 2 - Assumed Liabilities Being Assigned and Assumed By SAHL" (RESP001462), produce the contracts, agreements, or other documents to which this schedule was appended or to which this schedule otherwise relates.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 24:** With reference to the document captioned "Schedule 2 - Assumed Liabilities Being Assigned and Assumed By SAHL" (RESP001462), produce all documents relating to "Future Liability Claims."

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous,

overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 25:** With respect to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP000783-1214), produce: (a) all documents relied upon or used in any way to prepare the text and analysis found in Section D ("General Liability Claims"), including, without limitation, the "loss data assembled and recorded by [the] insurance carriers"; (b) all documents that describe, evidence, refer, or relate in any way to the statement on page 13-3 of the document that "Chemetron obligations represent approximately $1.9 million of the foregoing $5.8 million"; and (c) all documents analyzing or relating to the "asset sale divestitures" referenced on page 13-3 of the document.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 26:** Produce a complete copy (with all financial statements, notes, exhibits, and attachments) of each Form 10-K filed by Sunbeam with the U.S. Securities and Exchange Commission for fiscal year 1990 through the present.

**RESPONSE:** Chemetron Investments objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, responsive documents will be produced.

**REQUEST NO. 27:** In connection with the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.), produce all documents relating to any proposed or actual treatment of the "Non-Operating Expenses" (as that term was defined and used in RESP001183-1186) in any proposed or actual plan of reorganization, including but not limited to the following documents: (a) the July 21, 1989 commitment letter executed by AI in which Wells Fargo Bank ("Wells Fargo") agreed, subject to certain conditions, to lend up to $400 million to finance AI's plan of reorganization; (b) the November 8, 1989 letter from Wells Fargo to AI in which Wells Fargo withdrew its previous lending commitment; (c) all documents relating to negotiations or communications with creditors, lenders, or other persons concerning the actual or proposed treatment of the "Non-Operating Expenses"; (d) all documents analyzing the actual or proposed treatment of the "Non-Operating Expenses"; and (e) all documents analyzing, or otherwise relating to, the nature, type, scope, or magnitude of the "Non-Operating Expenses."

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 28:** Produce all documents relating to any and all of Respondent's or Allegheny International, Inc.'s representations to, or communications with, creditors, lenders, potential lenders, or other outside parties relating to the nature, type, scope, or magnitude of: (a) the "Assumed Liabilities," as that term is defined and used in the "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455); and (b) the "Non-Operating Expenses," as that term is used in Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP000783-1214).

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery.

Chemetron Investments also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 29:** For each and every person whom you expect to call as an expert witness to testify at the hearing in this matter, produce the following: (a) a current curriculum vitae or resume; (b) all publications authored, co-authored, edited, or co-edited by such person, and all publications otherwise attributed to such person; (c) all transcripts of prior testimony; (d) all documents and things such person reviewed or relied upon in forming opinions; and (e) all documents such person created, prepared, or contributed to in connection with the subject matter of this action.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents outside the scope of 16 C.F.R. § 1025.31(c)(4) and the agreement of the parties in the jointly proposed schedule. Chemetron Investments also objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments further objects to this document request as vague, ambiguous, overbroad, and unduly burdensome. Chemetron Investments further objects to this document request as premature. Chemetron Investments has not yet determined who it expects to call as an expert witness to testify at the hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron Investments will provide testifying expert information in compliance with the adjudicative rules and the agreements of the parties.

**REQUEST NO. 30:** Produce all documents identified (or which should have been identified) in Respondent's answers to the Second Interrogatories.

**RESPONSE:** Chemetron Investments objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks documents that "should have been identified" in Respondent's answers to the Second Interrogatories.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged documents identified in Respondents' answers will be produced.

**REQUEST NO. 31:** Produce a copy of each engagement letter executed by Al's outside auditors for all periods during the pendency of the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

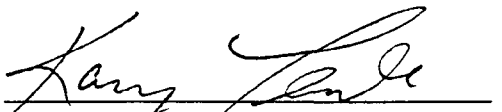
**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 32:** Produce a copy of each engagement letter executed by investment bankers advising AI during the pendency of the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 33**: All contracts, agreements, and other documents (other than RESP001412-1464) relating to the "Asset Purchase Agreement" entered into as of September 28, 1990, by AI and Sunbeam/Oster Company, Inc., including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron Investments objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron Investments also objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.



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*Attorneys for Chemetron Investments, Inc.*

Dated: May 3, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Chemetron Investments, Inc.'s Responses to Complaint Counsel's Second Set of Requests for Production of Documents and Things to Respondent Chemetron Investments, Inc. upon all parties and participants of record in these proceedings on this 3rd day of May, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Mark W. Porter, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Karyn A. Temple

**UNITED STATES OF AMERICA**
**CONSUMER PRODUCT SAFETY COMMISSION**

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENT CHEMETRON CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT CHEMETRON CORPORATION**

Pursuant to 16 C.F.R. § 1025.33(c), Respondent Chemetron Corporation ("Chemetron") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's Second Set of Requests for Production of Documents and Things to Respondent Chemetron Corporation.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron objects to the definitions, instructions, and requests to the extent that they seek information or documents protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Chemetron will provide a log of documents withheld on privilege grounds.

B. Chemetron objects to the definitions, instructions, and requests to the extent that they seek documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and requests have been read to exclude any such documents. Chemetron also objects to the definitions, instructions and requests as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Chemetron an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Chemetron objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had possession, custody, or control of the document or any copy thereof," "the number of

pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad, and unduly burdensome.

D. Chemetron objects to the definition of "AI" as encompassing entities formerly affiliated with Allegheny International, Inc., and entities that have yet to be affiliated with Allegheny International, Inc. because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

E. Chemetron objects to the definition of "Chemetron" as encompassing entities formerly affiliated with Chemetron Corporation, and entities that have yet to be affiliated with Chemetron Corporation because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

F. Chemetron objects to the definition of "Chemetron Investments" as encompassing entities formerly affiliated with Chemetron Investments, and entities that have yet to be affiliated with Chemetron Investments because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

G. Chemetron objects to the definition of "Sunbeam" as encompassing entities formerly affiliated with Sunbeam and entities that have yet to be affiliated with Chemetron because it is vague, ambiguous, over broad, and

unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

H. Chemetron objects to the definitions, instructions, and requests to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

I. Chemetron objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

J. Chemetron objects to the definitions, instructions, and requests to the extent that they seek documents that are not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such documents, Chemetron does not admit the relevance or admissibility thereof.

K. Chemetron objects to the definitions, instructions, and requests to the extent that they seek documents that are equally accessible to all parties, are available as a matter of public record, or have been provided to Chemetron by the CPSC and/or Complaint Counsel in this matter.

L. Chemetron objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron an obligation to obtain information or documents from entities formerly affiliated with Chemetron or to obtain other information or documents not in Chemetron's current possession, custody, or control, and Chemetron has read the definitions, instructions, and

requests to exclude any such obligation. Chemetron itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Respondent Chemetron Corporation has never manufactured, distributed, or sold Star ME-1 fire sprinklers. Moreover, Chemetron's subsidiary, Chemetron Investments, Inc. (formerly known as Chemetron Corporation), transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Chemetron. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

M. Chemetron objects to the definitions, instructions, and requests to the extent that they seek to require Chemetron to obtain information or documents that were, but no longer are, within Chemetron's possession, custody, or control, and Chemetron has read the definitions, instructions, and requests to exclude any such obligation.

N. Chemetron objects to the definitions, instructions, and requests to the extent that they seek, or may be construed, to impose on Chemetron an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Chemetron will search files in its possession, custody, and control

where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

O. Chemetron objects to each request to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Chemetron has made an effort to respond, where possible, as it understands and interprets the request.

P. Chemetron objects to each request to the extent that it contains compound questions and/or contentions which should be separated into individual requests.

Q. In responding to any of these requests, Chemetron does not concede the relevance, materiality, or admissibility of any information or documents provided, and hereby preserves all such objections.

R. Because discovery in this action is ongoing, Chemetron reserves the right to amend and/or supplement these responses.

S. These General Objections are incorporated into every response and shall not be repeated in every response to which they are applicable. By responding to a request, Chemetron does not waive any general or specific objection.

T. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any

such documents will be produced pursuant to the parties' Confidentiality Stipulation and Order.

## RESPONSES

**REQUEST NO. 1:** All contracts, agreements, and other documents (other than RESP001546-1558) relating to Respondent Chemetron Investments' (then known as "Chemetron Corporation") sale, conveyance, and/or other transfer of assets relating to its "Fire Systems Business" to CFS on or about August 25, 1982, including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to Respondent Chemetron Investments' (then known as Chemetron Corporation) sale, conveyance, and/or other transfer of assets relating to its Fire Systems Business including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, additional non-privileged documents in response to subparagraph (a), if any, will be produced.

**REQUEST NO. 2:** All contracts, agreements, and other documents (other than RESP001559-1561, RESP002255-2435) relating to CFS's sale, conveyance, and/or other transfer of assets relating to "Star Products" to Grunau Sprinkler

Manufacturing Company, Inc., on or about November 9, 1983, including but not limited to (a) all exhibits (including Exhibits D through L, referenced at RESP002258-2259), schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to CFS's sale, conveyance, and/or other transfer of assets relating to Star Products to Grunau Sprinkler Manufacturing Company, Inc., on or about November 9, 1983 including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron already produced the complete closing binder for Chemetron Fire Systems Inc.'s sale of the Star Products line to Grunau Sprinkler Manufacturing Company, Inc. on November 9, 1983, including all exhibits, schedules, addenda, and attachments thereto in response to Complaint Counsel's first set of discovery requests. Chemetron produced Exhibits D through L as documents numbered RESP002928-003171. Chemetron will also produce any amendments to the contracts and agreements therein, if any.

**REQUEST NO. 3:** All correspondence and other communications to or from Grunau relating to the transaction described in Request No. 2 above, including but not limited to all correspondence relating to Grunau's and Chemetron's liabilities and indemnification obligations.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks all "other communications." Chemetron further objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive correspondence will be produced.

**REQUEST NO. 4:** All contracts, agreements, and other documents (other than RESP001485-1545) relating to Respondent Chemetron's sale, conveyance, and/or other transfer of all of the issued and outstanding shares of capital stock of CFS to Figgie, on or about July 30, 1985, including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor

reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to Respondent Chemetron's sale, conveyance, and/or other transfer of assets of all of the issued and outstanding shares of capital stock of CFS to Figgie, on or about July 30, 1985 including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron will produce the complete closing binder for the sale of all of the issued and outstanding shares of capital stock of Chemetron Fire Systems, Inc. to Figgie International Inc. on July 30, 1985, including all exhibits, schedules, addenda, attachments, and amendments.

**REQUEST NO. 5:** All correspondence and other communications to or from Figgie relating to the transaction described in Request No. 4 above, including but not limited to all correspondence relating to Figgie's and Chemetron's liabilities and indemnification obligations.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks all "other communications." Chemetron further objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive correspondence will be produced.

**REQUEST NO. 6:** All pleadings, answers, motions, briefs, interrogatory responses, responses to requests for admission, requests for production of documents, deposition notices, and deposition transcripts in the civil case captioned Chemetron Corporation v. Figgie International Inc., Civil Action No. 86-2025, filed in the United States District Court for the Western District of Pennsylvania.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron further objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 7:** All contracts, agreements, and other documents (other than RESP001465-1479) relating to the "Settlement Agreement," entered into on or about June 25, 1990, by AI, Chemetron, Chemetron Investments, and Figgie International Inc., including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product

doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks all "other documents" relating to the Settlement Agreement entered into on or about June 25, 1990, by AI, Chemetron, Chemetron Investments, and Figgie International Inc., including "all legal opinions, invoices, and other writings referenced in such contracts and agreements."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron will produce all exhibits, schedules, addenda, attachments, and amendments to the Settlement Agreement entered into on or about June 25, 1990 by AI, Chemetron, Chemetron Investments, and Figgie International, Inc.

**REQUEST NO. 8:** In connection with the "Settlement Agreement" referenced in Request No. 7 above, produce the following: (a) the motion (and all exhibits, schedules, attachments, and addenda thereto) to approve the Settlement Agreement filed with the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court"); (b) the Bankruptcy Court's order (and all exhibits, schedules, attachments, and addenda thereto) approving the Settlement Agreement; (c) all invoices delivered to Chemetron by Figgie itemizing the "defense costs" and "indemnity payments" contemplated by the Settlement Agreement; and (d) all correspondence or other communications between Chemetron and Figgie relating to such defense costs and indemnity payments or otherwise related to the Settlement Agreement.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery.

Chemetron also objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents outside the possession, custody, or control of Chemetron. Chemetron further objects to this document request as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron further objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks "all invoices delivered to Chemetron by Figgie itemizing the 'defense costs' and 'indemnity payments' contemplated by the Settlement Agreement," and "all correspondence or other communications between Chemetron and Figgie relating to such defense costs and indemnity payments or otherwise related to the Settlement Agreement."

Subject to and without waiving the foregoing objections and the General Objections, non-privileged documents in response to subparagraphs (a)-(b) will be produced.

**REQUEST NO. 9:** In connection with the bankruptcy proceedings captioned In re. Allegheny International, Inc., et al., Case No. 88-00448, filed in the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court"), produce the following: (a) all proofs of claim relating to the Star ME-1; (b) a complete copy of all petitions filed by all debtors, including all schedules listing creditors and all amendments and supplements thereto; (c) the "Modified Plan" (and all exhibits, schedules, attachments, and addenda thereto) approved by the Bankruptcy Court on or about September 13, 1990 and referenced in the recitals to the Asset Purchase Agreement (RESP001412-1455) dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and AI (the "Asset Purchase Agreement"); (d) the Bankruptcy Court's orders approving the "Stock Plan" and the

"Modified Plan," both of which are referenced in the recitals to the Asset Purchase Agreement, and all exhibits, schedules, attachments, and addenda thereto; (e) all Bankruptcy Court orders (and all exhibits, schedules, attachments, and addenda thereto) relating to procedures for providing notice to creditors and other interested parties; (f) all service lists used to disseminate notices to creditors and other interested parties; (g) copies of all notices sent to creditors and/or published in newspapers regarding the Bankruptcy Court's consideration of the Stock Plan and the Modified Plan; and (h) all orders, motions, petitions, adversary proceeding pleadings, or other Bankruptcy Court filings relating to any liability, whether contingent or otherwise, arising from, or otherwise relating to, the Star ME-1.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron further objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 10:** In connection with the Asset Purchase Agreement referenced in Request No. 9 above, produce the following: (a) all exhibits, schedules, addenda, attachments, and amendments thereto, and (b) all legal opinions, invoices, and other writings referenced in the Asset Purchase Agreement.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad,

unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 11:** With reference to RESP001541-1545, produce all pleadings, judgments, settlement stipulations, settlement agreements, correspondence, and other documents relating to the following legal actions and/or claims identified in the aforementioned document: (a) Caterpillar Tractor Co. v. Chemetron Fire Systems, Inc., et al., Tenth Judicial Court, Peoria County, IL (alleging "defect in fire suppression system actuator requiring replacement"); (b) Gray Tool Company v. Star Sprinkler Corp., District Court, Harris County, TX (alleging "property damage caused by defective sprinkler system"); (c) St. Paul Fire & Marine v. Safety First Products Co., Chemetron Corporation, et al., 22nd Judicial District, Parish of St. Tammanz, LA (alleging, inter alia, "sprinkler system failed" and "design defect"); (d) Stop Fire, Inc., et al. v. Chemetron Corporation, et al., Superior Court, Santa Clara County, CA (alleging "sprinkler system failed"); and (e) Broadview Bowl-O-Matic Lanes, Atlanta, GA (alleging "sprinkler system failed during a fire in a shopping mall resulting in property damage").

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron further objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to legal actions and/or claims generally, without limiting the request to legal actions and/or claims involving the Star ME-1.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged responsive documents will be produced.

**REQUEST NO. 12:** With reference to RESP003261-3284, produce all pleadings, judgments, settlement stipulations, settlement agreements, correspondence, and other documents relating to legal actions and/or claims filed by the following claimants, which are identified by the name and date of loss ("D/L") set forth in the aforementioned document . . . [confidential information omitted].

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron further objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents relating to legal actions and/or claims generally, without limiting the request to legal actions and/or claims involving the Star ME-1. Chemetron further objects to this document request to the extent that Complaint Counsel references documents subject to the parties' Confidentiality Stipulation in violation of that stipulation.

Subject to and without waiving the foregoing objections and the General Objections, after a diligent search, to date Chemetron has been unable to

locate any documents within its possession, custody, or control responsive to this request.

**REQUEST NO. 13:** In addition to the legal actions and claims identified in Request Nos. 11 and 12 above, produce all pleadings, judgments, settlement stipulations, settlement agreements, correspondence, and other documents relating to all litigation filed, and all claims otherwise asserted or threatened, by any person or entity, regarding the Star ME-1.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this request as overbroad and unduly burdensome to the extent that it is duplicative of Complaint Counsel's previous discovery requests to Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, additional non-privileged responsive documents, if any, will be produced.

**REQUEST NO. 14:** In connection with the bankruptcy proceedings captioned In re. AI Realty Marketing of New York, Inc., et al., Chapter 11 Case Nos. 01-40252 (AJG) through 01-40290 (AJG), and In re Sunbeam Corporation, Chapter 11 Case No. 01-40291 (AJG), filed in the United States Bankruptcy Court for the Southern District of New York, produce the following: (a) all proofs of claim relating to the Star ME-1, and (b) a complete copy of all petitions filed by the debtors, including all schedules listing creditors and all amendments and supplements thereto.

**RESPONSE:** Chemetron objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks documents that are equally available to all parties or documents that are available as a matter of public record. Chemetron

also objects to this document request generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 15:** This request relates to the document captioned "Instrument of General Conveyance and Assumption of Liabilities" dated on or about September 28, 1990, between AI (as "Seller") and Sunbeam/Oster Company, Inc. (as "Purchaser") (RESP001456-1461). With reference to the second sentence of the first full paragraph on page 5 of the document (RESP001460), produce all "further instruments, papers and documents" that were executed and/or delivered by the Purchaser "to evidence the assumption of liabilities and obligations of Debtors assumed [t]hereunder by Purchaser."

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 16:** This request relates to the document captioned "Acknowledgement of Obligations" dated September 28, 1990 and executed on behalf of Sunbeam/Oster Company, Inc. (RESP001463). Produce the "Second Amended and Restated Stipulation of Settlement" dated as of September 7, 1990, which was referenced in the foregoing document.

**RESPONSE:** Chemetron objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 17:** This request relates to the document captioned "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455). With

respect to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement, produce: (a) all documents relating to the nature, type, scope, or magnitude of the "Assumed Liabilities"; (b) all documents relating to the liabilities and obligations of Chemetron and Chemetron Investments that were assumed by Sunbeam/Oster Company, Inc. as "Assumed Liabilities"; (c) all documents relating to the liabilities and obligations that the parties to the foregoing agreement intended to be included as "Assumed Liabilities"; (d) all documents relating to the liabilities and obligations that actually were treated, for accounting, legal, or other purposes, as "Assumed Liabilities" by Sunbeam following September 28, 1990; and (e) all documents relating to the liabilities and obligations of Chemetron and Chemetron Investments that were discharged through confirmation of the "Modified Plan," as that term was used in the foregoing agreement.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 18:** This request relates to the document captioned "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455). With respect to the "Product Liability Claims," as that term was defined and used in the foregoing agreement, produce: (a) all documents relating to the nature, type, scope, or magnitude of the "Product Liability Claims"; (b) all documents relating to the "Product Liability Claims" that arose as a result of products manufactured or sold by each of Chemetron and Chemetron Investments; (c) all documents relating to the claims that the parties to the foregoing agreement intended to be included as "Product Liability Claims"; and (d) all documents relating to the claims that actually were treated, for accounting, legal, or other purposes, as "Product Liability Claims" by Sunbeam following September 28, 1990.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery.

Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 19:** Produce all documents (including auditor work papers) relating to the establishment or maintenance of any accounting reserves for the "Assumed Liabilities," as that term was defined and used in RESP001412-1455.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 20:** Produce all documents (including auditor work papers) relating to the establishment or maintenance of any accounting reserves for the "Product Liability Claims," as that term was defined and used in RESP001412-1455.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 21:** Produce all documents (including auditor work papers) relating to the establishment or maintenance of any accounting reserves for the

"Non-Operating Expenses," as that term was defined and used in RESP001183-1186.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 22:** This request relates to the document captioned "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455). With respect to the "Reinstated Intercompany Claims," as that term was defined and used in the foregoing agreement, produce all documents relating to the Reinstated Intercompany Claims made by and against each of Chemetron and Chemetron Investments.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 23:** With reference to the document captioned "Schedule 2 - Assumed Liabilities Being Assigned and Assumed By SAHL" (RESP001462), produce the contracts, agreements, or other documents to which this schedule was appended or to which this schedule otherwise relates.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product

doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 24:** With reference to the document captioned "Schedule 2 - Assumed Liabilities Being Assigned and Assumed By SAHL" (RESP001462), produce all documents relating to "Future Liability Claims."

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 25:** With respect to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP000783-1214), produce: (a) all documents relied upon or used in any way to prepare the text and analysis found in Section D ("General Liability Claims"), including, without limitation, the "loss data assembled and recorded by [the] insurance carriers"; (b) all documents that describe, evidence, refer, or relate in any way to the statement on page 13-3 of the document that "Chemetron obligations represent approximately $1.9 million of the foregoing $5.8 million"; and (c) all documents analyzing or relating to the "asset sale divestitures" referenced on page 13-3 of the document.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad,

unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 26:** Produce a complete copy (with all financial statements, notes, exhibits, and attachments) of each Form 10-K filed by Sunbeam with the U.S. Securities and Exchange Commission for fiscal year 1990 through the present.

**RESPONSE:** Chemetron objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, responsive documents will be produced.

**REQUEST NO. 27:** In connection with the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.), produce all documents relating to any proposed or actual treatment of the "Non-Operating Expenses" (as that term was defined and used in RESP001183-1186) in any proposed or actual plan of reorganization, including but not limited to the following documents: (a) the July 21, 1989 commitment letter executed by AI in which Wells Fargo Bank ("Wells Fargo") agreed, subject to certain conditions, to lend up to $400 million to finance AI's plan of reorganization; (b) the November 8, 1989 letter from Wells Fargo to AI in which Wells Fargo withdrew its previous lending commitment; (c) all documents relating to negotiations or communications with creditors, lenders, or other persons concerning the actual or proposed treatment of the "Non-Operating Expenses"; (d) all documents analyzing the actual or proposed treatment of the "Non-Operating Expenses"; and (e) all documents analyzing, or otherwise relating to, the nature, type, scope, or magnitude of the "Non-Operating Expenses."

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad,

unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 28:** Produce all documents relating to any and all of Respondent's or Allegheny International, Inc.'s representations to, or communications with, creditors, lenders, potential lenders, or other outside parties relating to the nature, type, scope, or magnitude of: (a) the "Assumed Liabilities," as that term is defined and used in the "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455); and (b) the "Non-Operating Expenses," as that term is used in Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP000783-1214).

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 29:** For each and every person whom you expect to call as an expert witness to testify at the hearing in this matter, produce the following: (a) a current curriculum vitae or resume; (b) all publications authored, co-authored, edited, or co-edited by such person, and all publications otherwise attributed to such person; (c) all transcripts of prior testimony; (d) all documents and things such person reviewed or relied upon in forming opinions; and (e) all documents such person created, prepared, or contributed to in connection with the subject matter of this action.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents outside the scope of 16 C.F.R. § 1025.31(c)(4) and the agreement of the parties in the jointly proposed schedule. Chemetron also objects to this document request to the extent that it seeks documents protected by the attorney-

client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron further objects to this document request as vague, ambiguous, overbroad, and unduly burdensome. Chemetron further objects to this document request as premature. Chemetron has not yet determined who it expects to call as an expert witness to testify at the hearing on this matter.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron will provide testifying expert information in compliance with the adjudicative rules and the agreements of the parties.

**REQUEST NO. 30:** Produce all documents identified (or which should have been identified) in Respondent's answers to the Second Interrogatories.

**RESPONSE:** Chemetron objects to this document request as vague, ambiguous, overbroad and unduly burdensome to the extent that it seeks documents that "should have been identified" in Respondent's answers to the Second Interrogatories.

Subject to and without waiving the foregoing objections and the General Objections, non-privileged documents identified in Respondents' answers will be produced.

**REQUEST NO. 31:** Produce a copy of each engagement letter executed by Al's outside auditors for all periods during the pendency of the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product

doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

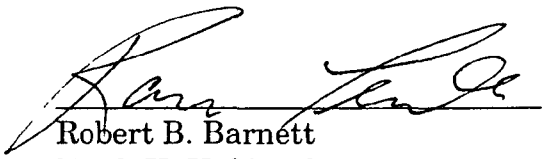
**REQUEST NO. 32:** Produce a copy of each engagement letter executed by investment bankers advising AI during the pendency of the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 33**: All contracts, agreements, and other documents (other than RESP001412-1464) relating to the "Asset Purchase Agreement" entered into as of September 28, 1990, by AI and Sunbeam/Oster Company, Inc., including but not limited to (a) all exhibits, schedules, addenda, attachments, and amendments to such contracts and agreements, and (b) all legal opinions, invoices, and other writings referenced in such contracts and agreements.

**RESPONSE:** Chemetron objects to this document request to the extent that it seeks documents protected by the attorney-client privilege, the work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this document request as overbroad, unduly burdensome,

and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.



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*Attorneys for Chemetron Corporation*

Dated: May 3, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Chemetron Corporation's Responses to Complaint Counsel's Second Set of Requests for Production of Documents and Things to Respondent Chemetron Corporation upon all parties and participants of record in these proceedings on this 3rd day of May, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Mark W. Porter, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

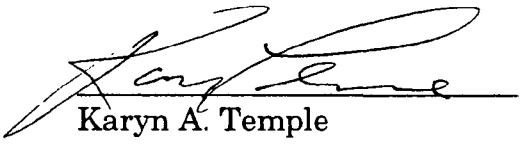
*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

## RESPONDENT SUNBEAM CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to 16 C.F.R. § 1025.34(b), Respondent Sunbeam Corporation ("Sunbeam"), through its undersigned counsel, hereby serves the following responses to Complaint Counsel's First Set of Requests for Admission in this matter. The responses are made for the purposes of the pending matter only and not for any other purposes, nor may they be used in any other proceedings. *See* 16 C.F.R. § 1025.34(c).

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek information protected from discovery by the attorney-client privilege, work-product doctrine, and/or any other applicable privileges or immunities from discovery.

B. Sunbeam objects to Complaint Counsel's definitions, instructions, and requests to the extent they seek information that is neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence. By providing such information, Sunbeam does not admit the relevance or admissibility thereof.

C. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek to impose on Sunbeam an obligation to obtain information from entities formerly affiliated with Sunbeam or to obtain other information not in Sunbeam's current possession, custody, or control, and Sunbeam has read the definitions, instructions, and requests to exclude any such obligation.

D. Sunbeam objects to the definitions, instructions, and requests to the extent that they seek to require Sunbeam to obtain information that was, but no longer is, within Sunbeam's current possession, custody, or control, and Sunbeam has read the definitions, instructions, and requests to exclude any such obligation.

E. Sunbeam objects to each request to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection,

Sunbeam has made an effort to respond, where possible, as it understands and interprets the request.

F. Sunbeam objects to each request to the extent that it contains compound questions and/or contentions which should be separated into individual requests.

G. In responding to any of these requests, Sunbeam does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

H. Because discovery in this action is ongoing, Sunbeam reserves the right to amend and/or supplement these responses.

I. These General Objections are incorporated into every response and shall not be repeated in every response to which they are applicable. By responding to a request, Sunbeam does not waive any general or specific objection.

## SPECIFIC OBJECTIONS

J. Sunbeam objects to Complaint Counsel's definition of the term "Chemetron" as encompassing entities formerly affiliated with Chemetron Corporation, and entities that have yet to be affiliated with Chemetron Corporation because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Sunbeam has read the definition to exclude any such entities.

K. Sunbeam objects to Complaint Counsel's definition of the term "Chemetron Investments" as encompassing entities formerly affiliated with Chemetron Investments, and entities that have yet to be affiliated with Chemetron

Investments because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Sunbeam has read the definition to exclude any such entities.

L. Sunbeam objects to Complaint Counsel's definition of the term "Sunbeam" as encompassing entities formerly affiliated with Sunbeam and entities that have yet to be affiliated with Sunbeam because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Sunbeam has read the definition to exclude any such entities.

## REQUESTS AND RESPONSES

**REQUEST FOR ADMISSION NO. 1:**

Admit that, on or about June 7, 1976, Respondent Chemetron Investments (then known as "Chemetron Corporation") purchased certain property and assets, including property and assets relating to the manufacture of the Star ME-1, from INA Corporation, Safety First Products Corp., Star Sprinkler Corporation, Safety First Products Corp. of California, and Anglam International, Inc.

**RESPONSE TO REQUEST NO. 1:**

Sunbeam objects to Request for Admission No. 1 on the ground that the phrase "property and assets relating to the manufacture of the Star ME-1" is vague and ambiguous.

Subject to and without waiving any objection, Sunbeam denies the request as stated. Upon information and belief, Sunbeam believes that on or about June 7, 1976 a corporation then known as Chemetron Corporation entered into an Asset Purchase Agreement with INA Corporation, Safety First Products Corp., Star Sprinkler Corporation, Safety First Products Corp. of California, and Anglam International, Inc.

REQUEST FOR ADMISSION NO. 2:

Admit that, in connection with the transaction referenced in Request for Admission No. 1 above, Respondent Chemetron Investments (then known as "Chemetron Corporation") entered into an Asset Purchase Agreement, dated June 7, 1976 (RESP001626-1701).

RESPONSE TO REQUEST NO. 2:

Denied as stated. Upon information and belief, Sunbeam believes that a corporation then known as Chemetron Corporation entered into an Asset Purchase Agreement dated June 7, 1976. That document speaks for itself.

REQUEST FOR ADMISSION NO. 3:

Admit that the document Bates-numbered RESP001626-1701 is a true and correct copy of the document referenced in Request for Admission No.2 above, and was maintained in the regular course of business.

RESPONSE TO REQUEST NO. 3:

Sunbeam cannot admit or deny that the document Bates-numbered RESP001626-1701 is a true and correct copy of the document referenced in Request for Admission No. 2 above, nor that it was maintained in the regular course of business because it was not maintained by Sunbeam. Upon information and belief, Sunbeam believes that the document Bates-numbered REP001626-1701 is a copy of the document referenced in Request for Admission No. 2 as maintained by Chemetron Corporation.

REQUEST FOR ADMISSION NO. 4:

Admit that, on or about August 25, 1982, Respondent Chemetron Investments (then known as "Chemetron Corporation") conveyed certain of its

property and assets, including all property and assets relating to manufacture of the Star ME-1, to CFS.

RESPONSE TO REQUEST NO. 4:

Denied as stated. Upon information and belief, Sunbeam believes that on or about August 25, 1982 an Instrument of Conveyance and Transfers was executed by Chemetron Corporation. That document speaks for itself.

REQUEST FOR ADMISSION NO. 5:

Admit that, in connection with the transaction referenced in Request for Admission No. 4 above, Respondent Chemetron Investments (then known as "Chemetron Corporation") and CFS entered into the following written contracts and agreements, each dated as of August 25, 1982: (1) Instrument of Conveyance and Transfer (RESP001551-1553); (2) Agreement Regarding Unassignable Contracts; (2) Assignment (RESP001554-1555); (3) Instrument of Assumption (RESP001546-1550); and (4) Agreement of Amendment (RESP001556-1558).

RESPONSE TO REQUEST NO. 5:

Denied as stated. Upon information and belief, Sunbeam believes that on August 25, 1982 a corporation then known as Chemetron Corporation and a corporation known as Chemetron Fire Systems, Inc. entered into the following written contracts and agreements: (1) Instrument of Conveyance and Transfer; (2) Agreement Regarding Unassignable Contracts; (2) Assignment; (3) Instrument of Assumption; and (4) Agreement of Amendment.

REQUEST FOR ADMISSION NO. 6:

Admit that the documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are true and correct copies of the documents referenced in Request for Admission No. 5 above, and were maintained in the regular course of business.

RESPONSE TO REQUEST NO. 6:

Sunbeam cannot admit or deny that the documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are true and correct copies of the documents referenced in Request for Admission No. 5 above, nor that they were maintained in the regular course of business because Sunbeam did not maintain those documents. Upon information and belief, Sunbeam believes that the documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are copies of the documents referenced in Request for Admission No.5 as maintained by Chemetron Corporation.

REQUEST FOR ADMISSION NO. 7:

Admit that, on or about November 9, 1983, CFS conveyed certain of its property and assets, including all property and assets relating to the manufacture of the Star ME-1, to Grunau Sprinkler Manufacturing Company, Inc.

RESPONSE TO REQUEST NO. 7:

Sunbeam objects to Request for Admission No. 7 on the ground that the phrase "certain of its property and assets" is vague and ambiguous.

Subject to and without waiving any objection, Sunbeam denies the request as stated. Upon information and belief, Sunbeam believes that on November 9, 1983, Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. entered into a Purchase and Sale Agreement. That document speaks for itself.

REQUEST FOR ADMISSION NO. 8:

Admit that, in connection with the transaction referenced in Request for Admission No. 7 above, CFS and Grunau Sprinkler Manufacturing Company, Inc.

entered into Purchase and Sale Agreement, dated November 9, 1983 (RESP002261-2299).

RESPONSE TO REQUEST NO. 8:

Sunbeam objects to Request for Admission No. 8 on the grounds that the phrase "the transaction referenced in Request for Admission No. 7" is vague and ambiguous.

Subject to and without waiving any objection, Sunbeam denies the request as stated. Upon information and belief, Sunbeam believes that a corporation known as Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. entered into Purchase and Sale Agreement, dated November 9, 1983 (RESP002261-2299).

REQUEST FOR ADMISSION NO. 9:

Admit that the document Bates-numbered RESP002261-2299 is a true and correct copy of the document referenced in Request for Admission No. 8 above, and was maintained in the regular course of business.

RESPONSE TO REQUEST NO. 9:

Sunbeam cannot admit or deny that the document Bates-numbered RESP002261-2299 is a true and correct copy of the document referenced in Request for Admission No. 8 above, nor that it was maintained in the regular course of business because Sunbeam did not maintain the document. Upon information and belief, Sunbeam believes that the document Bates-numbered RESP002261-2299 is a copy of the document referenced in Request for Admission No. 8 as maintained by Chemetron Corporation.

REQUEST FOR ADMISSION NO. 10:

Admit that, on or about July 30, 1985, Respondent Chemetron sold all of the outstanding shares of capital stock of CFS, its wholly-owned subsidiary, to Figgie International Inc.

RESPONSE TO REQUEST NO. 10:

Denied as stated. Upon information and belief, Sunbeam believes that on or about July 30, 1985, Respondent Chemetron entered into a Stock Purchase Agreement with Figgie International Inc. That document speaks for itself.

REQUEST FOR ADMISSION NO. 11:

Admit that, in connection with the transaction referenced in Request for Admission No. 10 above, Respondent Chemetron entered into the following written contracts and agreements: (1) Stock Purchase Agreement, dated as of July 30, 1985 (RESP001485-1540); and (2) Amendment, dated November 26, 1985 (RESP001481-1484).

RESPONSE TO REQUEST NO. 11:

Upon information and belief, Sunbeam believes that Chemetron Corporation entered into the following written contracts and agreements: (1) Stock Purchase Agreement, dated as of July 30, 1985 (RESP001485-1540); and (2) Amendment, dated November 26, 1985 (RESP001481-1484).

REQUEST FOR ADMISSION NO. 12:

Admit that the documents Bates-numbered RESP001485-1540 and RESP001481-1484 are true and correct copies of the documents referenced in Request for Admission No. 11 above, and were maintained in the regular course of business.

RESPONSE TO REQUEST NO. 12:

Sunbeam cannot admit or deny that the documents Bates-numbered RESP001485-1540 and RESP001481-1484 are true and correct copies of the documents referenced in Request for Admission No. 11 above, nor that they were maintained in the regular course of business because Sunbeam did not maintain the documents. Upon information and belief, Sunbeam believes that the documents Bates-numbered RESP001485-1540 and RESP001481-1484 are copies of the documents referenced in Request for Admission No. 11 as maintained by Chemetron Corporation.

REQUEST FOR ADMISSION NO. 13:

Admit that, on or about February 20, 1988, Allegheny International, Inc. and four of its wholly-owned subsidiaries, Respondent Chemetron, Sunbeam Corporation, Almet/Lawnlite, Inc., and Sunbeam Holdings Inc., filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Western District of Pennsylvania.

RESPONSE TO REQUEST NO. 13:

Admit.

REQUEST FOR ADMISSION NO. 14:

Admit that, on or about May 3, 1988, certain other subsidiaries of Allegheny International, Inc., including Respondent Chemetron Investments, filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Western District of Pennsylvania.

RESPONSE TO REQUEST NO. 14:

Admit.

REQUEST FOR ADMISSION NO. 15:

Admit that, on or about June 25, 1990, Respondent Chemetron, Respondent Chemetron Investments and Allegheny International, Inc. entered into a Settlement Agreement with Figgie International Inc. and Chemetronics Caribe, Inc. (RESP001465-1479), and that Settlement Agreement was submitted to, and approved by, the United States Bankruptcy Court for the Western District of Pennsylvania.

RESPONSE TO REQUEST NO. 15:

Admit upon information and belief.

REQUEST FOR ADMISSION NO. 16:

Admit that the document Bates-numbered RESP001465-1479 is a true and correct copy of the document referenced in Request for Admission No. 15 above, and was maintained in the regular course of business.

RESPONSE TO REQUEST NO. 16:

Sunbeam cannot admit or deny that the document Bates-numbered RESP001465-1479 is a true and correct copy of the document referenced in Request for Admission No. 15 above, nor that it was maintained in the regular course of business because Sunbeam did not maintain the document. Upon information and belief, Sunbeam believes that the document Bates-numbered RESP001465-1479 is a copy of the document referenced in Request for Admission No. 15 above as maintained by Chemetron Corporation and Chemetron Investments.

REQUEST FOR ADMISSION NO. 17:

Admit that, on or about September 28, 1990, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") acquired certain property and assets of Allegheny International, Inc., including all of the outstanding shares of capital stock of Respondent Chemetron and Respondent Chemetron Investments, and assumed certain liabilities of, among other entities, Allegheny International, Inc., Chemetron and Chemetron Investments.

RESPONSE TO REQUEST NO. 17:

Sunbeam objects to Request for Admission No. 17 on the ground that the phrase "certain property and assets" is vague and ambiguous.

Subject to and without waiving any objection, Sunbeam admits that on or about September 28, 1990, it entered into an Asset Purchase Agreement with Allegheny International, Inc. That document speaks for itself.

REQUEST FOR ADMISSION NO. 18:

Admit that, in connection with the transaction referenced in Request for Admission No. 17 above, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") and Allegheny International Inc. entered into the following written agreements: (1) Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455); and (2) Instrument of General Conveyance and Assumption of Liabilities dated September 28, 1990 (RESP001456-1461).

RESPONSE TO REQUEST NO. 18:

Denied as stated. Sunbeam admits that Sunbeam/Oster Company, Inc. and Allegheny International Inc. entered into the following written agreements: (1) Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455); and (2) Instrument of General Conveyance and Assumption of Liabilities dated September 28, 1990 (RESP001456-1461).

REQUEST FOR ADMISSION NO. 19:

Admit that, in connection with the transaction referenced in Request for Admission No. 17 above, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") executed an Acknowledgment of Obligations, dated September 28, 1990 (RESP001463-1464).

RESPONSE TO REQUEST NO. 19:

Denied as stated. Sunbeam admits that Sunbeam/Oster Company, Inc. executed an Acknowledgment of Obligations, dated September 28, 1990 (RESP001463-1464).

REQUEST FOR ADMISSION NO. 20:

Admit that the documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are true and correct copies of the documents referenced in Requests for Admission Nos. 18 and 19 above, and were maintained in the regular course of business.

RESPONSE TO REQUEST NO. 20:

Denied as stated. Sunbeam admits that the documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are copies of the documents referenced in Requests for Admission Nos. 18 and 19 above in the manner and form as they currently exist as maintained by Sunbeam.

REQUEST FOR ADMISSION NO. 21:

Admit that the transaction referenced in Request for Admission No. 17 above was effectuated pursuant to: (a) the July 12, 1990 confirmation by the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court") of the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended (the "Stock Plan"); and (b) the September 13, 1990 confirmation by the Bankruptcy Court of certain modifications to the Stock Plan. Admit further that both of the foregoing confirmations were entered in the bankruptcy proceedings captioned In re. Allegheny International, Inc., et al., Chapter 11 Case No. 88-448- (Bankr. W.D. Pa.).

RESPONSE TO REQUEST NO. 21:

Denied as stated. Sunbeam admits that on September 28, 1990, Sunbeam/Oster Company, Inc. entered into an Asset Purchase Agreement dated

September 28, 1990 with Allegheny International, Inc. Sunbeam further admits that the United States Bankruptcy Court for the Western District of Pennsylvania confirmed the December 29, 1989 Debtors' Joint Stock Plan of Reorganization on July 12, 1990, and confirmed modifications to the Debtors' Joint Stock Plan of Reorganization on September 13, 1990.

REQUEST FOR ADMISSION NO. 22:

Admit that Respondent Chemetron Investments (then known as "Chemetron Corporation") manufactured the Star ME-1 during the period 1977 to 1982.

RESPONSE TO REQUEST NO. 22:

Denied as stated. Upon information and belief, Sunbeam believes that a corporation then known as Chemetron Corporation manufactured the Star ME-1 at certain times from approximately 1977 until approximately 1982.

REQUEST FOR ADMISSION NO. 23:

Admit that CFS manufactured the Star ME-1 during the period 1982 to 1983.

RESPONSE TO REQUEST NO. 23:

Sunbeam objects to this request on the grounds that it is irrelevant to this proceeding. To the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 24:

Admit that CFS was a wholly-owned subsidiary of Respondent Chemetron at all times between August 25, 1982 and July 30, 1985.

RESPONSE TO REQUEST NO. 24:

Denied as stated. Upon information and belief, Sunbeam believes that Chemetron Fire Systems, Inc. was a wholly-owned subsidiary of Respondent Chemetron at all times between August 25, 1982 and July 30, 1985.

REQUEST FOR ADMISSION NO. 25:

Admit that Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") assumed certain liabilities and obligations, contingent and otherwise, of Chemetron pursuant to the Asset Purchase Agreement, dated September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 25:

Sunbeam objects to Request for Admission No. 25 on the ground that the phrase "certain liabilities and obligations, contingent and otherwise" is vague and ambiguous. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 26:

Admit that Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") assumed certain liabilities and obligations, contingent and otherwise, of Chemetron Investments pursuant to the Asset Purchase Agreement, dated September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 26:

Sunbeam objects to Request for Admission No. 26 on the ground that the phrase "certain liabilities and obligations, contingent and otherwise" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 27:

Admit that certain liabilities, contingent and otherwise, of Chemetron were treated as "non-operating expenses" in the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214).

RESPONSE TO REQUEST NO. 27:

Sunbeam objects to Request for Admission No. 27 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were treated as 'non-operating expenses'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 28:

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were treated as "non-operating expenses" in the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214).

RESPONSE TO REQUEST NO. 28:

Sunbeam objects to Request for Admission No. 28 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were treated as 'non-operating expenses'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 29:

Admit that certain liabilities, contingent and otherwise, of Chemetron were "Product Liability Claims," within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 29:

Sunbeam objects to Request for Admission No. 29 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were 'Product Liability Claims,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 30:

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were "Product Liability Claims" within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 30:

Sunbeam objects to Request for Admission No. 30 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were 'Product Liability Claims,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 31:

Admit that certain liabilities, contingent and otherwise, of Chemetron were "Assumed Liabilities, " within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 31:

Sunbeam objects to Request for Admission No. 31 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were 'Assumed Liabilities,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 32:

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were "Assumed Liabilities," within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 32:

Sunbeam objects to Request for Admission No. 32 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were 'Assumed Liabilities,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Sunbeam states: denied.

REQUEST FOR ADMISSION NO. 33:

Admit that the United States Consumer Product Safety Commission was not given actual notice of any hearings, motions or bar dates in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

RESPONSE TO REQUEST NO. 33:

Sunbeam objects to this request on the grounds that it is irrelevant to this proceeding. Further, Sunbeam cannot admit or deny whether the United States Consumer Product Safety Commission received notice of any hearings, motions, or bar dates in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.) because such information is not within Sunbeam's knowledge.

REQUEST FOR ADMISSION NO. 34:

Admit that the United States Consumer Product Safety Commission was not listed as a creditor on any filing made by any of the debtors in the bankruptcy

proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

RESPONSE TO REQUEST NO. 34:

Sunbeam objects to this request on the grounds that it is irrelevant to this proceeding.

REQUEST FOR ADMISSION NO. 35:

Admit that, under the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214), the "non-operating expenses" were not liquidated and discharged.

RESPONSE TO REQUEST NO. 35:

Admit.

REQUEST FOR ADMISSION NO. 36:

Admit that Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214), was confirmed by the United States Bankruptcy Court for the Western District of Pennsylvania in the proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448.

RESPONSE TO REQUEST NO. 36:

Admit.

REQUEST FOR ADMISSION NO. 37:

Admit that, after the Effective Date of the Settlement Agreement, dated as of June 25, 1990 (RESP0001465-1479), paragraphs (d) and (h) of the Instrument of Assumption, dated as of August 25, 1982 (RESP0001546-1550), as amended by the Agreement of Amendment, also dated as of August 25, 1982 (RESP0001556-1558), were terminated and had no further force and effect.

RESPONSE TO REQUEST NO. 37:

Admit upon information and belief.

REQUEST FOR ADMISSION NO. 38:

Admit that each of the documents you produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are true and correct copies of the originals.

RESPONSE TO REQUEST NO. 38:

Denied as stated. Sunbeam admits that each of the documents Sunbeam produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are copies of the documents in the manner and form as they currently exist.

REQUEST FOR ADMISSION NO. 39:

Admit that each of the documents you produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are kept in the regular course of business.

RESPONSE TO REQUEST NO. 39:

Denied as stated. See Response to Request for Admission No. 38.

REQUEST FOR ADMISSION NO. 40:

Admit that each of the documents you produced in response to Complaint Counsel's Second Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are true and correct copies of the originals.

RESPONSE TO REQUEST NO. 40:

Denied as stated. Sunbeam admits that each of the documents Sunbeam produced in response to Complaint Counsel's Second Set of Requests for Production of Documents and Things and Complaint Counsel's Second Set of Interrogatories are copies of the documents in the manner and form as they currently exist.

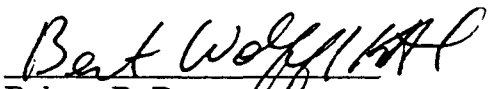
REQUEST FOR ADMISSION NO. 41:

Admit that each of the documents you produced in response to Complaint Counsel's Second Set of Requests for Production of Documents and Things and Complaint Counsel's Second Set of Interrogatories are kept in the regular course of business.

RESPONSE TO REQUEST NO. 41:

Denied as stated. See Response to Request for Admission 40.

Respectfully submitted,



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*Attorneys for Sunbeam*

Dated: May 3, 2002

## CERTIFICATE OF SERVICE

I hereby certify that have caused to be served a true and correct copy of the foregoing Respondent Sunbeam Corporation's Responses to Complaint Counsel's First Set of Requests for Admission upon all parties and participants of record in these proceedings on this 3rd day of May, 2002, by U.S. mail, postage pre-paid, on:

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Mark W. Porter, Esq.
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Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
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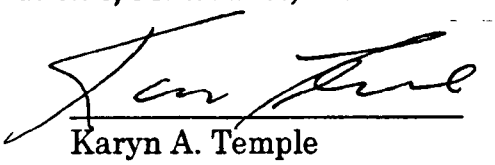
*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>Chemetron Corporation,<br>f/k/a Chemetron Investments, Inc.<br><br>and<br><br>Chemetron Investments, Inc.,<br>f/k/a Chemetron Corporation<br><br>and<br><br>Sunbeam Corporation<br><br>and<br><br>Sprinkler Corporation of Milwaukee, Inc.,<br>f/k/a Star Sprinkler Corporation, f/k/a<br>Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>Grucon Corporation | CPSC Docket No.: 02-1 |

**RESPONDENT CHEMETRON INVESTMENT CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to 16 C.F.R. § 1025.34(b), Respondent Chemetron Investments ("Chemetron"), through its undersigned counsel, hereby serves the following responses to Complaint Counsel's First Set of Requests for Admission in this matter. The responses are made for the purposes of the pending matter only and not for any other purposes, nor may they be used in any other proceedings. *See* 16 C.F.R. § 1025.34(c).

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron objects to the definitions, instructions, and requests to the extent that they seek information protected from discovery by the attorney-client privilege, work-product doctrine, and/or any other applicable privileges or immunities from discovery.

B. Chemetron objects to Complaint Counsel's definitions, instructions, and requests to the extent they seek information that is neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence. By providing such information, Chemetron does not admit the relevance or admissibility thereof.

C. Chemetron objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron an obligation to obtain information from entities formerly affiliated with Chemetron or to obtain other information not in Chemetron's current possession, custody, or control, and Chemetron has read the definitions, instructions, and requests to exclude any such obligation.

D. Chemetron objects to the definitions, instructions, and requests to the extent that they seek to require Chemetron to obtain information that was, but no longer is, within Chemetron's current possession, custody, or control, and Chemetron has read the definitions, instructions, and requests to exclude any such obligation.

E. Chemetron objects to each request to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection,

Chemetron has made an effort to respond, where possible, as it understands and interprets the request.

F. Chemetron objects to each request to the extent that it contains compound questions and/or contentions which should be separated into individual requests.

G. In responding to any of these requests, Chemetron does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

H. Because discovery in this action is ongoing, Chemetron reserves the right to amend and/or supplement these responses.

I. These General Objections are incorporated into every response and shall not be repeated in every response to which they are applicable. By responding to a request, Chemetron does not waive any general or specific objection.

## SPECIFIC OBJECTIONS

J. Chemetron objects to Complaint Counsel's definition of the term "Chemetron" as encompassing entities formerly affiliated with Chemetron, and entities that have yet to be affiliated with Chemetron because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

K. Chemetron objects to Complaint Counsel's definition of the term "Chemetron Investments" as encompassing entities formerly affiliated with Chemetron Investments, and entities that have yet to be affiliated with Chemetron Investments because it is vague, ambiguous, over broad, and unduly burdensome in

both time and scope. Chemetron has read the definition to exclude any such entities.

L. Chemetron objects to Complaint Counsel's definition of the term "Sunbeam" as encompassing entities formerly affiliated with Sunbeam and entities that have yet to be affiliated with Sunbeam because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

## REQUESTS AND RESPONSES

**REQUEST FOR ADMISSION NO. 1:**

Admit that, on or about June 7, 1976, Respondent Chemetron Investments (then known as "Chemetron Corporation") purchased certain property and assets, including property and assets relating to the manufacture of the Star ME-1, from INA Corporation, Safety First Products Corp., Star Sprinkler Corporation, Safety First Products Corp. of California, and Anglam International, Inc.

**RESPONSE TO REQUEST NO. 1:**

Chemetron objects to Request for Admission No. 1 on the ground that the phrase "property and assets relating to the manufacture of the Star ME-1" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron denies the request as stated. Upon information and belief, Chemetron admits that on or about June 7, 1976 Chemetron Investments, Inc. (f/k/a Chemetron Corporation) entered into an Asset Purchase Agreement with INA Corporation, Safety First Products Corp., Star Sprinkler Corporation, Safety First Products Corp. of California, and Anglam International, Inc.

**REQUEST FOR ADMISSION NO. 2:**

Admit that, in connection with the transaction referenced in Request for Admission No. 1 above, Respondent Chemetron Investments (then known as "Chemetron Corporation") entered into an Asset Purchase Agreement, dated June 7, 1976 (RESP001626-1701).

**RESPONSE TO REQUEST NO. 2:**

Denied as stated. Chemetron admits that on or about June 7, 1976 Chemetron Investments (f/k/a Chemetron Corporation) entered into an Asset Purchase Agreement. That document speaks for itself.

**REQUEST FOR ADMISSION NO. 3:**

Admit that the document Bates-numbered RESP001626-1701 is a true and correct copy of the document referenced in Request for Admission No.2 above, and was maintained in the regular course of business.

**RESPONSE TO REQUEST NO. 3:**

Chemetron cannot admit or deny that the document Bates-numbered RESP001626-1701 is a true and correct copy of the document referenced in Request for Admission No. 2 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The document Bates-numbered REP001626-1701 is a copy of the document referenced in Request for Admission No. 2 above in the manner and form as it currently exists.

**REQUEST FOR ADMISSION NO. 4:**

Admit that, on or about August 25, 1982, Respondent Chemetron Investments (then known as "Chemetron Corporation") conveyed certain of its property and assets, including all property and assets relating to manufacture of the Star ME-1, to CFS.

RESPONSE TO REQUEST NO. 4:

Denied as stated. Chemetron admits that on or about August 25, 1982 an Instrument of Conveyance and Transfers was executed by Chemetron Investments, Inc. (f/k/a Chemetron Corporation). That document speaks for itself.

REQUEST FOR ADMISSION NO. 5:

Admit that, in connection with the transaction referenced in Request for Admission No. 4 above, Respondent Chemetron Investments (then known as "Chemetron Corporation") and CFS entered into the following written contracts and agreements, each dated as of August 25, 1982: (1) Instrument of Conveyance and Transfer (RESP001551-1553); (2) Agreement Regarding Unassignable Contracts; (2) Assignment (RESP001554-1555); (3) Instrument of Assumption (RESP001546-1550); and (4) Agreement of Amendment (RESP001556-1558).

RESPONSE TO REQUEST NO. 5:

Denied as stated. Chemetron admits that on August 25, 1982 Chemetron Investments, Inc. (f/k/a Chemetron Coporation) entered into the following written contracts and agreements with a corporation known as Chemetron Fire Systems, Inc.: (1) Instrument of Conveyance and Transfer; (2) Agreement Regarding Unassignable Contracts; (2) Assignment; (3) Instrument of Assumption; and (4) Agreement of Amendment.

REQUEST FOR ADMISSION NO. 6:

Admit that the documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are true and correct copies of the documents referenced in Request for Admission No. 5 above, and were maintained in the regular course of business.

RESPONSE TO REQUEST NO. 6:

Chemetron cannot admit or deny that the documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are true and correct copies of the document referenced in Request for Admission No. 5 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are copies of the documents referenced in Request for Admission No.5 in the manner and form that they currently exist.

REQUEST FOR ADMISSION NO. 7:

Admit that, on or about November 9, 1983, CFS conveyed certain of its property and assets, including all property and assets relating to the manufacture of the Star ME-1, to Grunau Sprinkler Manufacturing Company, Inc.

RESPONSE TO REQUEST NO. 7:

Chemetron objects to Request for Admission No. 7 on the ground that the phrase "certain of its property and assets" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron denies the request as stated. Upon information and belief, Chemetron believes that on November 9, 1983, Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. entered into a Purchase and Sale Agreement. That document speaks for itself.

REQUEST FOR ADMISSION NO. 8:

Admit that, in connection with the transaction referenced in Request for Admission No. 7 above, CFS and Grunau Sprinkler Manufacturing Company, Inc.

entered into Purchase and Sale Agreement, dated November 9, 1983 (RESP002261-2299).

RESPONSE TO REQUEST NO. 8:

Chemetron objects to Request for Admission No. 8 on the grounds that the phrase "the transaction referenced in Request for Admission No. 7" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron denies the request as stated. Upon information and belief, Chemetron believes that a corporation known as Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. entered into Purchase and Sale Agreement, dated November 9, 1983 (RESP002261-2299).

REQUEST FOR ADMISSION NO. 9:

Admit that the document Bates-numbered RESP002261-2299 is a true and correct copy of the document referenced in Request for Admission No. 8 above, and was maintained in the regular course of business.

RESPONSE TO REQUEST NO. 9:

Chemetron cannot admit or deny that the documents Bates-numbered RESP002261-2299 is a true and correct copy of the document referenced in Request for Admission No. 8 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The document Bates-numbered RESP002261-2299 is a copy of the document referenced in Request for Admission No. 8 in the manner and form as it currently exists.

REQUEST FOR ADMISSION NO. 10:

Admit that, on or about July 30, 1985, Respondent Chemetron sold all of the outstanding shares of capital stock of CFS, its wholly-owned subsidiary, to Figgie International Inc.

RESPONSE TO REQUEST NO. 10:

Denied as stated. Chemetron admits that on or about July 30, 1985 it entered into a Stock Purchase Agreement with Figgie International Inc. That document speaks for itself.

REQUEST FOR ADMISSION NO. 11:

Admit that, in connection with the transaction referenced in Request for Admission No. 10 above, Respondent Chemetron entered into the following written contracts and agreements: (1) Stock Purchase Agreement, dated as of July 30, 1985 (RESP001485-1540); and (2) Amendment, dated November 26, 1985 (RESP001481-1484).

RESPONSE TO REQUEST NO. 11:

Chemetron admits that it entered into the following written contracts and agreements: (1) Stock Purchase Agreement, dated as of July 30, 1985 (RESP001485-1540); and (2) Amendment, dated November 26, 1985 (RESP001481-1484).

REQUEST FOR ADMISSION NO. 12:

Admit that the documents Bates-numbered RESP001485-1540 and RESP001481-1484 are true and correct copies of the documents referenced in Request for Admission No. 11 above, and were maintained in the regular course of business.

RESPONSE TO REQUEST NO. 12:

Chemetron cannot admit or deny that the documents Bates-numbered RESP001485-1540 and RESP001481-1484 are true and correct copies of the document referenced in Request for Admission No. 11 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The documents Bates-numbered RESP001485-1540 and RESP001481-1484 are copies of the documents referenced in Request for Admission No. 11 in the manner and form as they currently exist.

REQUEST FOR ADMISSION NO. 13:

Admit that, on or about February 20, 1988, Allegheny International, Inc. and four of its wholly-owned subsidiaries, Respondent Chemetron, Sunbeam Corporation, Almet/Lawnlite, Inc., and Sunbeam Holdings Inc., filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Western District of Pennsylvania.

RESPONSE TO REQUEST NO. 13:

Admit.

REQUEST FOR ADMISSION NO. 14:

Admit that, on or about May 3, 1988, certain other subsidiaries of Allegheny International, Inc., including Respondent Chemetron Investments, filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Western District of Pennsylvania.

RESPONSE TO REQUEST NO. 14:

Admit.

REQUEST FOR ADMISSION NO. 15:

Admit that, on or about June 25, 1990, Respondent Chemetron, Respondent Chemetron Investments and Allegheny International, Inc. entered into a Settlement Agreement with Figgie International Inc. and Chemetronics Caribe, Inc. (RESP001465-1479), and that Settlement Agreement was submitted to, and approved by, the United States Bankruptcy Court for the Western District of Pennsylvania.

RESPONSE TO REQUEST NO. 15:

Admit.

REQUEST FOR ADMISSION NO. 16:

Admit that the document Bates-numbered RESP001465-1479 is a true and correct copy of the document referenced in Request for Admission No. 15 above, and was maintained in the regular course of business.

RESPONSE TO REQUEST NO. 16:

Admit.

REQUEST FOR ADMISSION NO. 17:

Admit that, on or about September 28, 1990, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") acquired certain property and assets of Allegheny International, Inc., including all of the outstanding shares of capital stock of Respondent Chemetron and Respondent Chemetron Investments, and assumed certain liabilities of, among other entities, Allegheny International, Inc., Chemetron and Chemetron Investments.

RESPONSE TO REQUEST NO. 17:

Chemetron objects to Request for Admission No. 17 on the ground that the phrase "certain property and assets" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron admits that upon information and belief Sunbeam (f/k/a "Sunbeam/Oster Company, Inc.") entered

into an Asset Purchase Agreement with Allegheny International, Inc on or about September 28, 1990. That document speaks for itself.

REQUEST FOR ADMISSION NO. 18:

Admit that, in connection with the transaction referenced in Request for Admission No. 17 above, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") and Allegheny International Inc. entered into the following written agreements: (1) Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455); and (2) Instrument of General Conveyance and Assumption of Liabilities dated September 28, 1990 (RESP001456-1461).

RESPONSE TO REQUEST NO. 18:

Denied as stated. Chemetron admits upon information and belief that Sunbeam/Oster Company, Inc. and Allegheny International Inc. entered into the following written agreements: (1) Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455); and (2) Instrument of General Conveyance and Assumption of Liabilities dated September 28, 1990 (RESP001456-1461).

REQUEST FOR ADMISSION NO. 19:

Admit that, in connection with the transaction referenced in Request for Admission No. 17 above, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") executed an Acknowledgment of Obligations, dated September 28, 1990 (RESP001463-1464).

RESPONSE TO REQUEST NO. 19:

Denied as stated. Chemetron admits upon information and belief that Sunbeam/Oster Company, Inc. executed an Acknowledgment of Obligations, dated September 28, 1990 (RESP001463-1464).

REQUEST FOR ADMISSION NO. 20:

Admit that the documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are true and correct copies of the documents referenced in Requests for Admission Nos. 18 and 19 above, and were maintained in the regular course of business.

RESPONSE TO REQUEST NO. 20:

Denied as stated. Chemetron cannot admit or deny that the documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are true and correct copies of the documents referenced in Requests for Admission Nos. 18 and 19 above, nor that they were maintained in the regular course of business because Chemetron did not maintain those documents. Upon information and belief, Chemetron believes that documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are copies of the documents referenced in Requests for Admission Nos. 18 and 19 above as maintained by Sunbeam.

REQUEST FOR ADMISSION NO. 21:

Admit that the transaction referenced in Request for Admission No. 17 above was effectuated pursuant to: (a) the July 12, 1990 confirmation by the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court") of the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended (the "Stock Plan"); and (b) the September 13, 1990 confirmation by the Bankruptcy Court of certain modifications to the Stock Plan. Admit further that both of the foregoing confirmations were entered in the bankruptcy proceedings captioned In re. Allegheny International, Inc., et al., Chapter 11 Case No. 88-448- (Bankr. W.D. Pa.).

RESPONSE TO REQUEST NO. 21:

Denied as stated. Chemetron admits upon information and belief that on September 28, 1990, Sunbeam/Oster Company, Inc. entered into an Asset Purchase Agreement dated September 28, 1990 with Allegheny International, Inc.

Chemetron further admits upon information and belief that the United States Bankruptcy Court for the Western District of Pennsylvania confirmed the December 29, 1989 Debtors' Joint Stock Plan of Reorganization on July 12, 1990, and confirmed modifications to the Debtors' Joint Stock Plan of Reorganization on September 13, 1990.

REQUEST FOR ADMISSION NO. 22:

Admit that Respondent Chemetron Investments (then known as "Chemetron Corporation") manufactured the Star ME-1 during the period 1977 to 1982.

RESPONSE TO REQUEST NO. 22:

Denied as stated. Upon information and belief, Chemetron believes that Chemetron Investments, Inc. (f/k/a Chemetron Corporation) manufactured the Star ME-1 at certain times from approximately 1977 until approximately 1982.

REQUEST FOR ADMISSION NO. 23:

Admit that CFS manufactured the Star ME-1 during the period 1982 to 1983.

RESPONSE TO REQUEST NO. 23:

Chemetron objects to this request on the grounds that it is irrelevant to this proceeding. To the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 24:

Admit that CFS was a wholly-owned subsidiary of Respondent Chemetron at all times between August 25, 1982 and July 30, 1985.

RESPONSE TO REQUEST NO. 24:

Denied as stated. Chemetron admits that Chemetron Fire Systems, Inc. was its wholly-owned subsidiary at all times between August 25, 1982 and July 30, 1985.

REQUEST FOR ADMISSION NO. 25:

Admit that Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") assumed certain liabilities and obligations, contingent and otherwise, of Chemetron pursuant to the Asset Purchase Agreement, dated September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 25:

Chemetron objects to Request for Admission No. 25 on the ground that the phrase "certain liabilities and obligations, contingent and otherwise" is vague and ambiguous. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 26:

Admit that Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") assumed certain liabilities and obligations, contingent and otherwise, of Chemetron Investments pursuant to the Asset Purchase Agreement, dated September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 26:

Chemetron objects to Request for Admission No. 26 on the ground that the phrase "certain liabilities and obligations, contingent and otherwise" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 27:

Admit that certain liabilities, contingent and otherwise, of Chemetron were treated as "non-operating expenses" in the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214).

RESPONSE TO REQUEST NO. 27:

Chemetron objects to Request for Admission No. 27 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were treated as 'non-operating expenses'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 28:

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were treated as "non-operating expenses" in the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214).

RESPONSE TO REQUEST NO. 28:

Chemetron objects to Request for Admission No. 28 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were treated as 'non-operating expenses'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 29:

Admit that certain liabilities, contingent and otherwise, of Chemetron were "Product Liability Claims," within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 29:

Chemetron objects to Request for Admission No. 29 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were 'Product Liability Claims,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 30:

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were "Product Liability Claims" within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 30:

Chemetron objects to Request for Admission No. 30 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were 'Product Liability Claims,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 31:

Admit that certain liabilities, contingent and otherwise, of Chemetron were "Assumed Liabilities, " within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 31:

Chemetron objects to Request for Admission No. 31 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were 'Assumed Liabilities,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 32:

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were "Assumed Liabilities," within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

RESPONSE TO REQUEST NO. 32:

Chemetron objects to Request for Admission No. 32 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were 'Assumed Liabilities,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

REQUEST FOR ADMISSION NO. 33:

Admit that the United States Consumer Product Safety Commission was not given actual notice of any hearings, motions or bar dates in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

RESPONSE TO REQUEST NO. 33:

Chemetron objects to this request on the grounds that it is irrelevant to this proceeding. Further, Chemetron cannot admit or deny whether the United States Consumer Product Safety Commission received notice of any hearings, motions, or bar dates in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.) because such information is not within Chemetron's knowledge.

REQUEST FOR ADMISSION NO. 34:

Admit that the United States Consumer Product Safety Commission was not listed as a creditor on any filing made by any of the debtors in the bankruptcy

proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

RESPONSE TO REQUEST NO. 34:

Chemetron objects to this request on the grounds that it is irrelevant to this proceeding.

REQUEST FOR ADMISSION NO. 35:

Admit that, under the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214), the "non-operating expenses" were not liquidated and discharged.

RESPONSE TO REQUEST NO. 35:

Admit upon information and belief.

REQUEST FOR ADMISSION NO. 36:

Admit that Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214), was confirmed by the United States Bankruptcy Court for the Western District of Pennsylvania in the proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448.

RESPONSE TO REQUEST NO. 36:

Admit upon information and belief.

REQUEST FOR ADMISSION NO. 37:

Admit that, after the Effective Date of the Settlement Agreement, dated as of June 25, 1990 (RESP0001465-1479), paragraphs (d) and (h) of the Instrument of Assumption, dated as of August 25, 1982 (RESP0001546-1550), as amended by the Agreement of Amendment, also dated as of August 25, 1982 (RESP0001556-1558), were terminated and had no further force and effect.

RESPONSE TO REQUEST NO. 37:

Admit upon information and belief.

REQUEST FOR ADMISSION NO. 38:

Admit that each of the documents you produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are true and correct copies of the originals.

RESPONSE TO REQUEST NO. 38:

Denied as stated. Chemetron admits that each of the documents Chemetron produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are copies of the documents in the manner and form as they currently exist.

REQUEST FOR ADMISSION NO. 39:

Admit that each of the documents you produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are kept in the regular course of business.

RESPONSE TO REQUEST NO. 39:

Denied as stated. See Response to Request for Admission No. 38.

REQUEST FOR ADMISSION NO. 40:

Admit that each of the documents you produced in response to Complaint Counsel's Second Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are true and correct copies of the originals.

RESPONSE TO REQUEST NO. 40:

Denied as stated. Chemetron admits that each of the documents Chemetron produced in response to Complaint Counsel's Second Set of Requests for Production

of Documents and Things and Complaint Counsel's Second Set of Interrogatories are copies of the documents in the manner and form as they currently exist.

**REQUEST FOR ADMISSION NO. 41:**

Admit that each of the documents you produced in response to Complaint Counsel's Second Set of Requests for Production of Documents and Things and Complaint Counsel's Second Set of Interrogatories are kept in the regular course of business.

**RESPONSE TO REQUEST NO. 41:**

Denied as stated. See Response to Request for Admission 40.

Respectfully submitted,

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*Attorneys for Chemetron Investments, Inc.*


Dated: May 3, 2002

## CERTIFICATE OF SERVICE

I hereby certify that have caused to be served a true and correct copy of the foregoing Respondent Chemetron Investment Corporation's Responses to Complaint Counsel's First Set of Requests for Admission upon all parties and participants of record in these proceedings on this 3rd day of May, 2002, by U.S. mail, postage pre-paid, on:

Michael J. Gidding, Esq.
Mark W. Porter, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

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*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENT CHEMETRON CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to 16 C.F.R. § 1025.34(b), Respondent Chemetron Corporation ("Chemetron"), through its undersigned counsel, hereby serves the following responses to Complaint Counsel's First Set of Requests for Admission in this matter. The responses are made for the purposes of the pending matter only and not for any other purposes, nor may they be used in any other proceedings. *See* 16 C.F.R. § 1025.34(c).

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron objects to the definitions, instructions, and requests to the extent that they seek information protected from discovery by the attorney-client privilege, work-product doctrine, and/or any other applicable privileges or immunities from discovery.

B. Chemetron objects to Complaint Counsel's definitions, instructions, and requests to the extent they seek information that is neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence. By providing such information, Chemetron does not admit the relevance or admissibility thereof.

C. Chemetron objects to the definitions, instructions, and requests to the extent that they seek to impose on Chemetron an obligation to obtain information from entities formerly affiliated with Chemetron or to obtain other information not in Chemetron's current possession, custody, or control, and Chemetron has read the definitions, instructions, and requests to exclude any such obligation.

D. Chemetron objects to the definitions, instructions, and requests to the extent that they seek to require Chemetron to obtain information that was, but no longer is, within Chemetron's current possession, custody, or control, and Chemetron has read the definitions, instructions, and requests to exclude any such obligation.

E. Chemetron objects to each request to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Chemetron has made an effort to respond, where possible, as it understands and

interprets the request.

F. Chemetron objects to each request to the extent that it contains compound questions and/or contentions which should be separated into individual requests.

G. In responding to any of these requests, Chemetron does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

H. Because discovery in this action is ongoing, Chemetron reserves the right to amend and/or supplement these responses.

I. These General Objections are incorporated into every response and shall not be repeated in every response to which they are applicable. By responding to a request, Chemetron does not waive any general or specific objection.

## SPECIFIC OBJECTIONS

J. Chemetron objects to Complaint Counsel's definition of the term "Chemetron" as encompassing entities formerly affiliated with Chemetron, and entities that have yet to be affiliated with Chemetron because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

K. Chemetron objects to Complaint Counsel's definition of the term "Chemetron Investments" as encompassing entities formerly affiliated with Chemetron Investments, and entities that have yet to be affiliated with Chemetron Investments because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such

entities.

L. Chemetron objects to Complaint Counsel's definition of the term "Sunbeam" as encompassing entities formerly affiliated with Sunbeam and entities that have yet to be affiliated with Sunbeam because it is vague, ambiguous, over broad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

## REQUESTS AND RESPONSES

**REQUEST FOR ADMISSION NO. 1:**

Admit that, on or about June 7, 1976, Respondent Chemetron Investments (then known as "Chemetron Corporation") purchased certain property and assets, including property and assets relating to the manufacture of the Star ME-1, from INA Corporation, Safety First Products Corp., Star Sprinkler Corporation, Safety First Products Corp. of California, and Anglam International, Inc.

**RESPONSE TO REQUEST NO. 1:**

Chemetron objects to Request for Admission No. 1 on the ground that the phrase "property and assets relating to the manufacture of the Star ME-1" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron denies the request as stated. Upon information and belief, Chemetron admits that on or about June 7, 1976 Chemetron Investments, Inc. (f/k/a Chemetron Corporation) entered into an Asset Purchase Agreement with INA Corporation, Safety First Products Corp., Star Sprinkler Corporation, Safety First Products Corp. of California, and Anglam International, Inc.

**REQUEST FOR ADMISSION NO. 2:**

Admit that, in connection with the transaction referenced in Request for Admission No. 1 above, Respondent Chemetron Investments (then known as "Chemetron Corporation") entered into an Asset Purchase Agreement, dated June 7, 1976 (RESP001626-1701).

**RESPONSE TO REQUEST NO. 2:**

Denied as stated. Chemetron admits that on or about June 7, 1976 Chemetron Investments (f/k/a Chemetron Corporation) entered into an Asset Purchase Agreement. That document speaks for itself.

**REQUEST FOR ADMISSION NO. 3:**

Admit that the document Bates-numbered RESP001626-1701 is a true and correct copy of the document referenced in Request for Admission No.2 above, and was maintained in the regular course of business.

**RESPONSE TO REQUEST NO. 3:**

Chemetron cannot admit or deny that the document Bates-numbered RESP001626-1701 is a true and correct copy of the document referenced in Request for Admission No. 2 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The document Bates-numbered REP001626-1701 is a copy of the document referenced in Request for Admission No. 2 above in the manner and form as it currently exists.

**REQUEST FOR ADMISSION NO. 4:**

Admit that, on or about August 25, 1982, Respondent Chemetron Investments (then known as "Chemetron Corporation") conveyed certain of its property and assets, including all property and assets relating to manufacture of the Star ME-1, to CFS.

**RESPONSE TO REQUEST NO. 4:**

Denied as stated. Chemetron admits that on or about August 25, 1982 an Instrument of Conveyance and Transfers was executed by Chemetron Investments, Inc. (f/k/a Chemetron Corporation). That document speaks for itself.

**REQUEST FOR ADMISSION NO. 5:**

Admit that, in connection with the transaction referenced in Request for Admission No. 4 above, Respondent Chemetron Investments (then known as "Chemetron Corporation") and CFS entered into the following written contracts and agreements, each dated as of August 25, 1982: (1) Instrument of Conveyance and Transfer (RESP001551-1553); (2) Agreement Regarding Unassignable Contracts; (2) Assignment (RESP001554-1555); (3) Instrument of Assumption (RESP001546-1550); and (4) Agreement of Amendment (RESP001556-1558).

**RESPONSE TO REQUEST NO. 5:**

Denied as stated. Chemetron admits that on August 25, 1982 Chemetron Investments, Inc. (f/k/a Chemetron Corporation) entered into the following written contracts and agreements with a corporation known as Chemetron Fire Systems, Inc.: (1) Instrument of Conveyance and Transfer; (2) Agreement Regarding Unassignable Contracts; (2) Assignment; (3) Instrument of Assumption; and (4) Agreement of Amendment.

**REQUEST FOR ADMISSION NO. 6:**

Admit that the documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are true and correct copies of the documents referenced in Request for Admission No. 5 above, and were maintained in the regular course of business.

**RESPONSE TO REQUEST NO. 6:**

Chemetron cannot admit or deny that the documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are true and correct copies of the document referenced in Request for Admission No. 5 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The documents Bates-numbered RESP001551-1553, RESP001554-1550, and RESP001556-1558 are copies of the documents referenced in Request for Admission No.5 in the manner and form that they currently exist.

**REQUEST FOR ADMISSION NO. 7:**

Admit that, on or about November 9, 1983, CFS conveyed certain of its property and assets, including all property and assets relating to the manufacture of the Star ME-1, to Grunau Sprinkler Manufacturing Company, Inc.

**RESPONSE TO REQUEST NO. 7:**

Chemetron objects to Request for Admission No. 7 on the ground that the phrase "certain of its property and assets" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron denies the request as stated. Upon information and belief, Chemetron believes that on November 9, 1983, Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. entered into a Purchase and Sale Agreement. That document speaks for itself.

**REQUEST FOR ADMISSION NO. 8:**

Admit that, in connection with the transaction referenced in Request for Admission No. 7 above, CFS and Grunau Sprinkler Manufacturing Company, Inc.

entered into Purchase and Sale Agreement, dated November 9, 1983 (RESP002261-2299).

**RESPONSE TO REQUEST NO. 8:**

Chemetron objects to Request for Admission No. 8 on the grounds that the phrase "the transaction referenced in Request for Admission No. 7" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron denies the request as stated. Upon information and belief, Chemetron believes that a corporation known as Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. entered into Purchase and Sale Agreement, dated November 9, 1983 (RESP002261-2299).

**REQUEST FOR ADMISSION NO. 9:**

Admit that the document Bates-numbered RESP002261-2299 is a true and correct copy of the document referenced in Request for Admission No. 8 above, and was maintained in the regular course of business.

**RESPONSE TO REQUEST NO. 9:**

Chemetron cannot admit or deny that the documents Bates-numbered RESP002261-2299 is a true and correct copy of the document referenced in Request for Admission No. 8 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The document Bates-numbered RESP002261-2299 is a copy of the document referenced in Request for Admission No. 8 in the manner and form as it currently exists.

**REQUEST FOR ADMISSION NO. 10:**

Admit that, on or about July 30, 1985, Respondent Chemetron sold all of the outstanding shares of capital stock of CFS, its wholly-owned subsidiary, to Figgie International Inc.

**RESPONSE TO REQUEST NO. 10:**

Denied as stated. Chemetron admits that on or about July 30, 1985 it entered into a Stock Purchase Agreement with Figgie International Inc. That document speaks for itself.

**REQUEST FOR ADMISSION NO. 11:**

Admit that, in connection with the transaction referenced in Request for Admission No. 10 above, Respondent Chemetron entered into the following written contracts and agreements: (1) Stock Purchase Agreement, dated as of July 30, 1985 (RESP001485-1540); and (2) Amendment, dated November 26, 1985 (RESP001481-1484).

**RESPONSE TO REQUEST NO. 11:**

Chemetron admits that it entered into the following written contracts and agreements: (1) Stock Purchase Agreement, dated as of July 30, 1985 (RESP001485-1540); and (2) Amendment, dated November 26, 1985 (RESP001481-1484).

**REQUEST FOR ADMISSION NO. 12:**

Admit that the documents Bates-numbered RESP001485-1540 and RESP001481-1484 are true and correct copies of the documents referenced in Request for Admission No. 11 above, and were maintained in the regular course of business.

**RESPONSE TO REQUEST NO. 12:**

Chemetron cannot admit or deny that the documents Bates-numbered RESP001485-1540 and RESP001481-1484 are true and correct copies of the document referenced in Request for Admission No. 11 above, nor that it was maintained in the regular course of business because of the lack of personnel with sufficient knowledge. The documents Bates-numbered RESP001485-1540 and RESP001481-1484 are copies of the documents referenced in Request for Admission No. 11 in the manner and form as they currently exist.

**REQUEST FOR ADMISSION NO. 13:**

Admit that, on or about February 20, 1988, Allegheny International, Inc. and four of its wholly-owned subsidiaries, Respondent Chemetron, Sunbeam Corporation, Almet/Lawnlite, Inc., and Sunbeam Holdings Inc., filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Western District of Pennsylvania.

**RESPONSE TO REQUEST NO. 13:**

Admit.

**REQUEST FOR ADMISSION NO. 14:**

Admit that, on or about May 3, 1988, certain other subsidiaries of Allegheny International, Inc., including Respondent Chemetron Investments, filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States District Court for the Western District of Pennsylvania.

**RESPONSE TO REQUEST NO. 14:**

Admit.

**REQUEST FOR ADMISSION NO. 15:**

Admit that, on or about June 25, 1990, Respondent Chemetron, Respondent Chemetron Investments and Allegheny International, Inc. entered into a Settlement Agreement with Figgie International Inc. and Chemetronics Caribe, Inc. (RESP001465-1479), and that Settlement Agreement was submitted to, and approved by, the United States Bankruptcy Court for the Western District of Pennsylvania.

**RESPONSE TO REQUEST NO. 15:**

Admit.

**REQUEST FOR ADMISSION NO. 16:**

Admit that the document Bates-numbered RESP001465-1479 is a true and correct copy of the document referenced in Request for Admission No. 15 above, and was maintained in the regular course of business.

**RESPONSE TO REQUEST NO. 16:**

Admit.

**REQUEST FOR ADMISSION NO. 17:**

Admit that, on or about September 28, 1990, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") acquired certain property and assets of Allegheny International, Inc., including all of the outstanding shares of capital stock of Respondent Chemetron and Respondent Chemetron Investments, and assumed certain liabilities of, among other entities, Allegheny International, Inc., Chemetron and Chemetron Investments.

**RESPONSE TO REQUEST NO. 17:**

Chemetron objects to Request for Admission No. 17 on the ground that the phrase "certain property and assets" is vague and ambiguous.

Subject to and without waiving any objection, Chemetron admits that upon information and belief Sunbeam (f/k/a "Sunbeam/Oster Company, Inc.") entered

into an Asset Purchase Agreement with Allegheny International, Inc on or about September 28, 1990. That document speaks for itself.

**REQUEST FOR ADMISSION NO. 18:**

Admit that, in connection with the transaction referenced in Request for Admission No. 17 above, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") and Allegheny International Inc. entered into the following written agreements: (1) Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455); and (2) Instrument of General Conveyance and Assumption of Liabilities dated September 28, 1990 (RESP001456-1461).

**RESPONSE TO REQUEST NO. 18:**

Denied as stated. Chemetron admits upon information and belief that Sunbeam/Oster Company, Inc. and Allegheny International Inc. entered into the following written agreements: (1) Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455); and (2) Instrument of General Conveyance and Assumption of Liabilities dated September 28, 1990 (RESP001456-1461).

**REQUEST FOR ADMISSION NO. 19:**

Admit that, in connection with the transaction referenced in Request for Admission No. 17 above, Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") executed an Acknowledgment of Obligations, dated September 28, 1990 (RESP001463-1464).

**RESPONSE TO REQUEST NO. 19:**

Denied as stated. Chemetron admits upon information and belief that Sunbeam/Oster Company, Inc. executed an Acknowledgment of Obligations, dated September 28, 1990 (RESP001463-1464).

**REQUEST FOR ADMISSION NO. 20:**

Admit that the documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are true and correct copies of the documents referenced in Requests for Admission Nos. 18 and 19 above, and were maintained in the regular course of business.

**RESPONSE TO REQUEST NO. 20:**

Denied as stated. Chemetron cannot admit or deny that the documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are true and correct copies of the documents referenced in Requests for Admission Nos. 18 and 19 above, nor that they were maintained in the regular course of business because Chemetron did not maintain those documents. Upon information and belief, Chemetron believes that documents Bates-numbered RESP001412-1455, RESP001456-1461, and RESP0001463-1464 are copies of the documents referenced in Requests for Admission Nos. 18 and 19 above as maintained by Sunbeam.

**REQUEST FOR ADMISSION NO. 21:**

Admit that the transaction referenced in Request for Admission No. 17 above was effectuated pursuant to: (a) the July 12, 1990 confirmation by the United States Bankruptcy Court for the Western District of Pennsylvania (the "Bankruptcy Court") of the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended (the "Stock Plan"); and (b) the September 13, 1990 confirmation by the Bankruptcy Court of certain modifications to the Stock Plan. Admit further that both of the foregoing confirmations were entered in the bankruptcy proceedings captioned In re. Allegheny International, Inc., et al., Chapter 11 Case No. 88-448- (Bankr. W.D. Pa.).

**RESPONSE TO REQUEST NO. 21:**

Denied as stated. Chemetron admits upon information and belief that on September 28, 1990, Sunbeam/Oster Company, Inc. entered into an Asset Purchase Agreement dated September 28, 1990 with Allegheny International, Inc.

Chemetron further admits upon information and belief that the United States Bankruptcy Court for the Western District of Pennsylvania confirmed the December 29, 1989 Debtors' Joint Stock Plan of Reorganization on July 12, 1990, and confirmed modifications to the Debtors' Joint Stock Plan of Reorganization on September 13, 1990.

**REQUEST FOR ADMISSION NO. 22:**

Admit that Respondent Chemetron Investments (then known as "Chemetron Corporation") manufactured the Star ME-1 during the period 1977 to 1982.

**RESPONSE TO REQUEST NO. 22:**

Denied as stated. Upon information and belief, Chemetron believes that Chemetron Investments, Inc. (f/k/a Chemetron Corporation) manufactured the Star ME-1 at certain times from approximately 1977 until approximately 1982.

**REQUEST FOR ADMISSION NO. 23:**

Admit that CFS manufactured the Star ME-1 during the period 1982 to 1983.

**RESPONSE TO REQUEST NO. 23:**

Chemetron objects to this request on the grounds that it is irrelevant to this proceeding. To the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 24:**

Admit that CFS was a wholly-owned subsidiary of Respondent Chemetron at all times between August 25, 1982 and July 30, 1985.

**RESPONSE TO REQUEST NO. 24:**

Denied as stated. Chemetron admits that Chemetron Fire Systems, Inc. was its wholly-owned subsidiary at all times between August 25, 1982 and July 30, 1985.

**REQUEST FOR ADMISSION NO. 25:**

Admit that Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") assumed certain liabilities and obligations, contingent and otherwise, of Chemetron pursuant to the Asset Purchase Agreement, dated September 28, 1990 (RESP001412-1455).

**RESPONSE TO REQUEST NO. 25:**

Chemetron objects to Request for Admission No. 25 on the ground that the phrase "certain liabilities and obligations, contingent and otherwise" is vague and ambiguous. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 26:**

Admit that Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") assumed certain liabilities and obligations, contingent and otherwise, of Chemetron Investments pursuant to the Asset Purchase Agreement, dated September 28, 1990 (RESP001412-1455).

**RESPONSE TO REQUEST NO. 26:**

Chemetron objects to Request for Admission No. 26 on the ground that the phrase "certain liabilities and obligations, contingent and otherwise" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 27:**

Admit that certain liabilities, contingent and otherwise, of Chemetron were treated as "non-operating expenses" in the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214).

**RESPONSE TO REQUEST NO. 27:**

Chemetron objects to Request for Admission No. 27 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were treated as 'non-operating expenses'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 28:**

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were treated as "non-operating expenses" in the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214).

**RESPONSE TO REQUEST NO. 28:**

Chemetron objects to Request for Admission No. 28 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were treated as 'non-operating expenses'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 29:**

Admit that certain liabilities, contingent and otherwise, of Chemetron were "Product Liability Claims," within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

**RESPONSE TO REQUEST NO. 29:**

Chemetron objects to Request for Admission No. 29 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were 'Product Liability Claims,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 30:**

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were "Product Liability Claims" within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

**RESPONSE TO REQUEST NO. 30:**

Chemetron objects to Request for Admission No. 30 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were 'Product Liability Claims,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 31:**

Admit that certain liabilities, contingent and otherwise, of Chemetron were "Assumed Liabilities, " within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

**RESPONSE TO REQUEST NO. 31:**

Chemetron objects to Request for Admission No. 31 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron were 'Assumed Liabilities,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 32:**

Admit that certain liabilities, contingent and otherwise, of Chemetron Investments were "Assumed Liabilities," within the meaning ascribed to that term in the Asset Purchase Agreement, dated as of September 28, 1990 (RESP001412-1455).

**RESPONSE TO REQUEST NO. 32:**

Chemetron objects to Request for Admission No. 32 on the ground that the phrase "certain liabilities, contingent and otherwise, of Chemetron Investments were 'Assumed Liabilities,'" is vague, ambiguous, and over broad. Therefore, to the extent any response is required, Chemetron states: denied.

**REQUEST FOR ADMISSION NO. 33:**

Admit that the United States Consumer Product Safety Commission was not given actual notice of any hearings, motions or bar dates in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

**RESPONSE TO REQUEST NO. 33:**

Chemetron objects to this request on the grounds that it is irrelevant to this proceeding. Further, Chemetron cannot admit or deny whether the United States Consumer Product Safety Commission received notice of any hearings, motions, or bar dates in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.) because such information is not within Chemetron's knowledge.

**REQUEST FOR ADMISSION NO. 34:**

Admit that the United States Consumer Product Safety Commission was not listed as a creditor on any filing made by any of the debtors in the bankruptcy

proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

**RESPONSE TO REQUEST NO. 34:**

Chemetron objects to this request on the grounds that it is irrelevant to this proceeding.

**REQUEST FOR ADMISSION NO. 35:**

Admit that, under the Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214), the "non-operating expenses" were not liquidated and discharged.

**RESPONSE TO REQUEST NO. 35:**

Admit upon information and belief.

**REQUEST FOR ADMISSION NO. 36:**

Admit that Debtors' Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified (RESP000783-1214), was confirmed by the United States Bankruptcy Court for the Western District of Pennsylvania in the proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448.

**RESPONSE TO REQUEST NO. 36:**

Admit upon information and belief.

**REQUEST FOR ADMISSION NO. 37:**

Admit that, after the Effective Date of the Settlement Agreement, dated as of June 25, 1990 (RESP0001465-1479), paragraphs (d) and (h) of the Instrument of Assumption, dated as of August 25, 1982 (RESP0001546-1550), as amended by the Agreement of Amendment, also dated as of August 25, 1982 (RESP0001556-1558), were terminated and had no further force and effect.

**RESPONSE TO REQUEST NO. 37:**

Admit upon information and belief.

**REQUEST FOR ADMISSION NO. 38:**

Admit that each of the documents you produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are true and correct copies of the originals.

**RESPONSE TO REQUEST NO. 38:**

Denied as stated. Chemetron admits that each of the documents Chemetron produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are copies of the documents in the manner and form as they currently exist.

**REQUEST FOR ADMISSION NO. 39:**

Admit that each of the documents you produced in response to Complaint Counsel's First Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are kept in the regular course of business.

**RESPONSE TO REQUEST NO. 39:**

Denied as stated. See Response to Request for Admission No. 38.

**REQUEST FOR ADMISSION NO. 40:**

Admit that each of the documents you produced in response to Complaint Counsel's Second Set of Requests for Production of Documents and Things and Complaint Counsel's First Set of Interrogatories are true and correct copies of the originals.

**RESPONSE TO REQUEST NO. 40:**

Denied as stated. Chemetron admits that each of the documents Chemetron produced in response to Complaint Counsel's Second Set of Requests for Production

of Documents and Things and Complaint Counsel's Second Set of Interrogatories are copies of the documents in the manner and form as they currently exist.

**REQUEST FOR ADMISSION NO. 41:**

Admit that each of the documents you produced in response to Complaint Counsel's Second Set of Requests for Production of Documents and Things and Complaint Counsel's Second Set of Interrogatories are kept in the regular course of business.

**RESPONSE TO REQUEST NO. 41:**

Denied as stated. See Response to Request for Admission 40.

Respectfully submitted,


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*Attorneys for Chemetron Corporation*


Dated: May 3, 2002

## CERTIFICATE OF SERVICE

I hereby certify that have caused to be served a true and correct copy of the foregoing Respondent Chemetron Corporation's Responses to Complaint Counsel's First Set of Requests for Admission upon all parties and participants of record in these proceedings on this 3rd day of May, 2002, by U.S. mail, postage pre-paid, on:

Michael J. Gidding, Esq.
Mark W. Porter, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

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*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*



Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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|---|---|---|
| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Grucon Corporation | ) | |
| | ) | |

**RESPONDENT CHEMETRON CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S SECOND SET OF INTERROGATORIES TO RESPONDENT CHEMETRON CORPORATION**

Pursuant to 16 C.F.R. § 1025.32(b), Respondent Chemetron Corporation ("Chemetron") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's Second Set of Interrogatories to Respondent Chemetron Corporation.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents protected by the attorney-client privilege, the work-product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Chemetron will provide a log of documents withheld on privilege grounds.

B. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information and/or documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and interrogatories have been read to exclude any such information and/or documents. Chemetron also objects to the definitions, instructions and interrogatories as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Chemetron an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Chemetron objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had possession, custody, or control of the document or any copy thereof," "the number of

pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad, and unduly burdensome.

D. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

E. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Chemetron obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

F. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information that is not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such information, Chemetron does not admit the relevance or admissibility thereof.

G. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek information that is equally accessible to all parties, is available as a matter of public record, or has been provided to Chemetron by the CPSC and/or Complaint Counsel in this matter.

H. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Chemetron an obligation to obtain information or documents from entities formerly affiliated with Chemetron

or to obtain other information or documents not in Chemetron's current possession, custody, or control, and Chemetron has read the definitions, instructions, and interrogatories to exclude any such obligation. Chemetron itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Chemetron Corporation has never manufactured, distributed, or sold Star ME-1 fire sprinklers. Moreover, Chemetron's subsidiary, Chemetron Investments, Inc. (formerly known as Chemetron Corporation) transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Chemetron. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

I. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek to require Chemetron to obtain information or documents that were, but no longer are, within Chemetron's possession, custody, or control, and Chemetron has read the definitions, instructions, and interrogatories to exclude any such obligation.

J. Chemetron objects to the definitions, instructions, and interrogatories to the extent that they seek, or may be construed, to impose on

Chemetron an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Chemetron will search files in its possession, custody, and control where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

K. Chemetron objects to the definition of "You," "your," and "Respondent" insofar as it includes "all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent" whether or not such persons or entities have had any involvement in the events giving rise to this lawsuit, as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

L. Chemetron objects to the definition of "identify" and "identity" with respect to a "person" insofar as it includes residential addresses and telephone numbers of former employees or of persons for whom a business address and telephone number are available, on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and may invade the legitimate expectation of privacy of those persons to the confidentiality of such information to the extent such information may be derived only

from personnel records. Chemetron further objects to this definition insofar as it includes the "employer, employer department and/or subject area in which the person works, business affiliations . . . and the person's relationships or associations, if any, to the Respondents in this action" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

M. Chemetron objects to the definition of "identify" and "identity" with respect to the definition of a business entity, building, or place insofar as it includes "all former names of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action" as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

N. Chemetron objects to the definition of "AI" as encompassing entities formerly affiliated with Allegheny International, Inc., and entities that have yet to be affiliated with Allegheny International, Inc. because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

O. Chemetron objects to the definition of "Sunbeam" as encompassing entities formerly affiliated with Sunbeam Corporation, and entities that have yet to be affiliated with Sunbeam Corporation because it is vague,

ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

P. Chemetron objects to the definition of "Chemetron Investments" as encompassing entities formerly affiliated with Chemetron Investments, and entities that have yet to be affiliated with Chemetron Investments because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

Q. Chemetron objects to the definition of the term "Chemetron" as encompassing entities formerly affiliated with Chemetron and entities that have yet to be affiliated with Chemetron because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Chemetron has read the definition to exclude any such entities.

R. Chemetron objects to each interrogatory to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Chemetron has made an effort to respond, where possible, as it understands and interprets the interrogatory.

S. Chemetron objects to each interrogatory to the extent that it contains compound questions and/or contentions which should be separated into individual interrogatories.

T. In responding to any of these interrogatories, Chemetron does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

U. Because discovery in this action is ongoing, Chemetron reserves the right to amend and/or supplement the information set forth in these responses.

V. These General Objections are incorporated into every interrogatory response and shall not be repeated in every response to which they are applicable. By responding to an interrogatory, Chemetron does not waive any general or specific objection.

W. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia,* pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be produced pursuant to the parties' Confidentiality Stipulation and Order.

## RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail all reasons why Respondent Chemetron Investments (then known as "Chemetron Corporation") conveyed certain of its property and assets, including all property and assets relating to the manufacture of the Star ME-1, to CFS on or about August 25, 1982.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory generally as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 2: Describe in detail all consideration paid or otherwise provided to Respondent Chemetron Investments (then known as "Chemetron Corporation") by CFS or any other person or entity for the property and asset conveyance referenced in Interrogatory No. 1 above.

RESPONSE: Chemetron objects to this interrogatory as overbroad and unduly burdensome to the extent that is seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory generally as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 28 C.F.R. 1025.32(d), Chemetron refers Complaint Counsel to document numbered RESP001546-001550, produced in response to Complaint Counsel's first set of discovery requests.

INTERROGATORY NO. 3: Do you contend that, during the period 1977-1982, the Star ME- 1 was manufactured by Respondent Chemetron Investments, which at that time was known as "Chemetron Corporation"? If so:

(a) set forth in detail the facts that you contend support this contention;
(b) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(d) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any

other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that is seeks information outside the possession, custody, and control of Chemetron.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that it does not make any such contention. Upon information and belief, Star Sprinkler Corporation, a Florida corporation, manufactured some type of Star ME-1 "dry" fire sprinkler prior to 1977. Chemetron Corporation (now known as Chemetron Investments, Inc.) is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between 1977 and mid-1982.

INTERROGATORY NO. 4: Do you contend that Respondent Chemetron was not the corporation that manufactured the Star ME-1 during the period 1977-1982?

RESPONSE: Subject to and without waiving the General Objections, yes. Upon information and belief, Respondent Chemetron Investments, Inc. is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between 1977 and mid-1982.

INTERROGATORY NO. 5: Was CFS a wholly-owned subsidiary of Respondent Chemetron Investments at all times between August 25, 1982 and July 30, 1985? If not, describe in detail the relationship between CFS and each of Respondents Chemetron and Chemetron Investments during that period, identify the dates on which such relationships changed, and explain in detail why such relationships changed.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any

other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that is seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron "explain in detail why such relationships changed."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that upon information and belief, Chemetron Fire Systems, Inc. ("CFS") was a wholly-owned subsidiary of Respondent Chemetron Investments at all times between August 25, 1982 and July 30, 1985; however, CFS was sold in a stock sale to Figgie International Inc. in 1985 and the majority of its records are believed to have been transferred in the sale.

INTERROGATORY NO. 6: With respect to the statement in the July 7, 2000 letter from David H. Baker to Seth B. Popkin (CPSC Star 000120-122) that "[a]ny alleged responsibility of Chemetron Corporation for corrective action for the Star ME- 1 Sprinklers was assumed by Figgie International, Inc., in a Settlement Agreement dated 6/25/90 between Chemetron Corporation and Figgie International Inc. . . ":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron refers Complaint Counsel to the Settlement Agreement previously produced and numbered RESP001465-001479, the terms of which speak for themselves.

**INTERROGATORY NO. 7:** With respect to the statement in the July 7, 2000 letter from David H. Baker to Seth B. Popkin (CPSC Star 000120-122) that "[a]ny liability of Chemetron Corporation for the Star ME-1 Sprinklers, other than that expressly set forth in the 6/25/90 Settlement Agreement with Figgie International Inc., was discharged in the bankruptcy proceedings":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and

calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron refers Complaint Counsel to the United States Bankruptcy Code and documents numbered RESP000783-001216, previously produced in response to Complaint Counsel's first set of discovery requests. Pursuant to 16 C.F.R. § 1025.32(d), Chemetron is also producing documents numbered RESP004022-004030. The terms and provisions of those documents speak for themselves.

INTERROGATORY NO. 8: With respect to the statement in the July 3, 2001 letter from Kenneth R. Bell to Charles B. Miner, Robin Robertson Starr and Figgie International (RESP00043-44) that "Figgie, as successor to Chemetron, is responsible for any liability that either Chemetron or Sunbeam may have for any corrective action that may be ordered or required":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to

the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron refers Complaint Counsel to documents numbered RESP001485-001540 produced in response to Complaint Counsel's first set of discovery requests, the terms and provisions of which speak for themselves.

**INTERROGATORY NO. 9:** With respect to the statement in the Fifteenth Affirmative Defense pleaded in your Answer that ". . . any relief to which the Commission might otherwise be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron refers Complaint Counsel to the United States Bankruptcy Code, the Consumer Product Safety Act's provisions relating to election of remedies, and to documents numbered RESP000678-000716 produced in response to Complaint Counsel's first set of discovery requests. The terms and provisions of the United States Bankruptcy Code, the Consumer Product Safety Act, and RESP000678-000716 speak for themselves.

INTERROGATORY NO. 10: With respect to the statement in the Seventh Affirmative Defense pleaded in your Answer that "[a]ny Star ME-1 fire sprinklers made by this Respondent have conformed to the then-existing state of the art":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron "identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to this statement," without limiting this interrogatory to those

with material factual knowledge and excluding Chemetron's attorneys and consulting experts, and the CPSC.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Chemetron refers Complaint Counsel to documents previously produced and numbered RESP001769-001776, RESP001777-001837, RESP001976-001977, and RESP002979-003007.

INTERROGATORY NO. 11: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement, describe in detail the "liabilities and obligations of the Debtors of every kind and nature which [were] not discharged in bankruptcy through the confirmation of the Modified Plan . . ." Your response should include a detailed description of each and every category of liabilities and obligations included within the definition of "Assumed Liabilities" beyond the broad category definitions contained in the foregoing agreement (*e.g.*, "Allowed Administrative Claims," "Reinstated Claims," Product Liability Claims," "Assumed Indemnity Claims," etc.).

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 12: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect

to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement:

(a) describe in detail, by category and amount, each of the liabilities and obligations of Chemetron and Chemetron Investments that were assumed, as of September 28, 1990, by Sunbeam/Oster Company, Inc. as "Assumed Liabilities";

(b) describe in detail, by category and amount, each of the liabilities and obligations of Chemetron and Chemetron Investments that were discharged through confirmation of the Modified Plan;

(c) identify each and every document that describes, evidences, refers, or otherwise relates in any way to the liabilities and obligations of Chemetron and Chemetron Investments that were assumed, as of September 28, 1990, by Sunbeam/Oster Company, Inc. as "Assumed Liabilities";

(d) identify each and every document that describes, evidences, refers, or otherwise relates in any way to the liabilities and obligations of Chemetron and Chemetron Investments that were discharged through confirmation of the Modified Plan;

(e) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, the liabilities and obligations of Chemetron and Chemetron Investments that were assumed, as of September 28, 1990, by Sunbeam/Oster Company, Inc. as "Assumed Liabilities"; and

(f) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, the liabilities and obligations of Chemetron and Chemetron Investments that were discharged through confirmation of the Modified Plan;

(g) with respect to each person identified in response to subparts (e) and (f) above, describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 13: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement:

(a) identify each and every document that describes, evidences, refers or otherwise relates in any way to the liabilities and obligations that were intended to be included as "Assumed Liabilities" by the parties to the foregoing agreement;

(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to the liabilities and obligations that actually were treated, for accounting, legal or other purposes, as "Assumed Liabilities" by Sunbeam following September 28, 1990;

(c) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the liabilities and obligations that were intended to be included as "Assumed Liabilities" by the parties to the foregoing agreement;

(d) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the liabilities and obligations that actually were treated, for accounting, legal, or other purposes, as "Assumed Liabilities" by Sunbeam following September 28, 1990; and

(e) with respect to each person identified in response to subparts (c) and (d) above, describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 14: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Product Liability Claims," as that term is defined and used in the foregoing agreement, describe in detail all "claims for damages or injuries because of a defect in or other use or consumption of goods manufactured or sold by [Chemetron and Chemetron Investments] or any predecessors thereof, and includ[ing] any such claims arising after the Effective Date for goods purchased prior to the Effective Date." For each such claim your response should include, without limitation, the following:

(a) the identity of the claimant;
(b) the identity of the product or products that were the subject of the claim;
(c) the date of manufacture for each such product;
(d) the identity of each such product's manufacturer (whether Chemetron, Chemetron Investments, a predecessor thereof, or some other entity);
(e) the date of loss or injury;
(f) the nature of the claimed loss or injury (*.eg.*, personal injury, property damage, etc.); and
(g) the circumstances of the loss or injury (*e.g.*, structure fire).

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 15: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Product Liability Claims" as that term was defined and used in the foregoing agreement:

(a) identify each and every document that describes, evidences, refers, or otherwise relates in any way to the claims that were

intended to be included as "Product Liability Claims" by the parties to the foregoing agreement;

(b) identify each and every document that describes, evidences, refers, or otherwise relates in any way to the claims that actually were treated, for accounting, legal, or other purposes, as "Product Liability Claims" by Sunbeam following September 28, 1990;

(c) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the claims that were intended to be included as "Product Liability Claims" by the parties to the foregoing agreement;

(d) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the claims that actually were treated, for accounting, legal, or other purposes, as "Product Liability Claims" by Sunbeam following September 28, 1990; and

(e) with respect to each person identified in response to subparts (c) and (d) above, describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 16:** This interrogatory relates to the document captioned "Schedule 2 - Assumed Liabilities Being Assigned And Assumed By SAHL" (RESP001462). Describe in detail the "Future Product Liability Claims" referenced in that document.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also

objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 17: For the period from June 1, 1976 to November 30, 1983, identify each of your employees, agents, representatives and/or consultants who held a supervisory, management, and/or executive position in the following areas of your company:

(a) any divisions, branches or subsidiaries responsible for the design, manufacture and/or sale of the Star ME- 1 or any component thereof;
(b) sales and marketing;
(c) product design and development;
(d) engineering;
(e) manufacturing and production; and
(f) quality assurance and control.

RESPONSE: Chemetron objects to this interrogatory as overbroad, unduly burdensome, and calling for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests information relating to employees generally, without limiting the interrogatory to employees with specific involvement with the Star ME-1. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information outside the possession, custody, or control of Chemetron. Chemetron further objects to this interrogatory generally as overbroad, unduly burdensome, and calling for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, in response to subparagraph (a), Chemetron refers Complaint Counsel to Chemetron's Responses to Complaint Counsel's First Set of Interrogatories to Respondent Chemetron, Interrogatory No. 17 and to document numbered RESP005616-005617 produced pursuant to 16 C.F.R. § 1025.32(d).

INTERROGATORY NO. 18: With respect to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP000783-1214):

(a) identify each person who prepared or contributed to the preparation of Exhibit 13;

(b) identify each and every document that was relied upon or used in any way to prepare the text and analysis found in Section D ("General Liability Claims") of Exhibit 13 (RESP001185), including but not limited to, the "loss data assembled and recorded by [the] insurance carriers" (referenced on page 13-3 of the document);

(c) identify each and every document that describes, evidences, refers, or relates in any way to the statement on page 13-3 of the document that "Chemetron obligations represent approximately $1.9 million of the foregoing $5.8 million";

(d) describe in detail the nature of the $1.9 million of "Chemetron obligations" referenced on page 13-3 of the document;

(e) identify each and every person Respondent knows and/or believes to have knowledge of, or information relating to, the contents of Exhibit 13; and

(f) identify in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 19: This interrogatory relates to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended." With respect to the following excerpt from page 13-3 of Exhibit 13 (RESP001183): "The following summarizes the 'non-operating expense[s]' ('NOE') of AI and its affiliates[,] which are generally unrelated to the ongoing operations of AI, but which cannot or will not be liquidated and discharged in bankruptcy. These obligations consist of: Retiree health and life benefits; Tax-qualified pension funding; Environmental clean-up costs; Future-arising general liability claims; Reinstated Liberty Mutual insurance policy; and Future umbrella insurance premiums":

(a) describe in detail the nature of the "future-arising general liability claims";

(b) were the "non-operating expenses," in fact, not liquidated and discharged in bankruptcy?;

(c) if the "non-operating expenses" were not liquidated and discharged, describe in detail why they were not liquidated and discharged. Your response to this subpart (c) should include, without limitation, a detailed explanation of why the "future-arising general liability claims," in particular, were not liquidated and discharged; and

(d) identify each and every document that describes, evidences, refers, or otherwise relates in any way to the "future-arising general liability claims."

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 20: This interrogatory relates to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended." With respect to the following excerpt from page 13-3 of Exhibit 13 (RESP001185): "The remaining future general liability relates to asset sale divestitures. These divestitures resulted in surviving corporate shells with substantial intercompany receivables from AI. To the extent that these affiliates produced and shipped goods before the asset sale, and those goods give rise to product liability losses incurred after February 20, 1988, such estimated future losses are considered [non-operating expense] obligations":

(a) describe in detail the "asset sale divestitures," including but not limited to the entities whose assets were divested, the assets divested, and the date of each such divestiture;

(b) identify the "surviving corporate shells";

(c) were Chemetron and Chemetron Investments among the "surviving corporate shells," as that term was used in the above-referenced document?;

(d) describe in detail the nature of the "substantial intercompany receivables from AI," including but not limited to the entities to which such receivables were owed; the transactions or other circumstances that gave rise to such receivables; and the amount of the receivables on each such entity's books at or immediately following September 28, 1990;

(e) identify the "affiliates";

(f) were Chemetron and Chemetron Investments among the "affiliates," as that term was used in the above-referenced document?;

(g) did "goods" produced and shipped by "affiliates" before the asset sale, in fact, give rise to "product liability losses incurred after February 20, 1988"?;

(h) If the answer to subpart (g) is yes, for each instance in which such a loss was incurred, identify the "affiliate" whose "goods" gave rise to the loss; identify the "goods" that gave rise to the loss; provide the date such "goods" were produced and/or shipped by the "affiliate"; and provide the date such loss was incurred;

(i) identify each and every document that you relied on, or otherwise consulted or used, in responding to subparts (a) through (h) above.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to

this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 21: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Alsub Corporation" to "Chemetron Corporation" on or about November 30, 1977.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 22: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Chemetron Corporation" to "Chemetron Investments, Inc." on or about October 4, 1982.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to

this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 23: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Chemetron Investments, Inc." to "Chemetron Corporation" on or about August 18, 1983.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 24: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Chemetron Corporation" to "Chemetron Investments, Inc." on or about February 22, 1984.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 25: Describe in detail all reasons why Respondent Chemetron changed its name from "Alchem, Inc." to "Chemetron Corporation" on or about October 4, 1982.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 26: Describe in detail all reasons why Respondent Chemetron changed its name from "Chemetron Corporation" to "Alchem, Inc." on or about August 18, 1983.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 27: Describe in detail all reasons why Respondent Chemetron changed its name from "Alchem, Inc." to "Chemetron Corporation" on or about February 22, 1984.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 28: With respect to each of the corporate name changes referenced in Interrogatories 21-27 above:

(a) identify each and every person whom Respondents know and/or believe to have knowledge of, and/or information relating to, each corporate name change; and

(b) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 29: For the period July 1, 1976 to July 28, 1977, identify each name under which Respondent Chemetron Investments did business or otherwise was known, the time period during which each name was used, and the date and reason for any name change.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence to the extent that it seeks "the date and reason for any name change."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that Respondent Chemetron Investments was incorporated on July 28, 1977 and therefore had no names prior to its incorporation. On the date of its incorporation, its name was Alsub Corporation.

INTERROGATORY NO. 30: For the period July 1, 1976 to July 29, 1982, identify each name under which Respondent Chemetron did business or otherwise was known, the time period during which each name was used, and the date and reason for any name change.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "the date and reason for any name change."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that Respondent Chemetron was incorporated on July 29, 1982 and therefore had no names prior to its incorporation. On the date of its incorporation, its name was Alchem, Inc.

INTERROGATORY NO. 31: Do you contend that your liability for the relief sought by the Complaint was discharged, in whole or in part, by entry of the orders confirming the Debtor's Joint Stock Plan of Reorganization, dated December 29,

1989, as amended and modified, in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.)? If so:

(a) set forth in detail to what extent you contend such liability was discharged;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that its liability for the relief sought by the Complaint may have been discharged, in whole or in part, by entry of the orders confirming the Debtor's Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified, in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.). Chemetron refers Complaint Counsel to the United States Bankruptcy code and documents numbered RESP000783-001216 produced in response to Complaint

Counsel's first set of discovery requests, the terms and provisions of which speak for themselves.

INTERROGATORY NO. 32: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Settlement Agreement" dated as of June 25, 1990 by and among Allegheny International, Inc., Chemetron Corporation, Chemetron Investments, Inc., Figgie International, Inc., and Chemetronics Caribe, Inc. (RESP001465-1479)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that its liability for the relief sought by the Complaint may have been assumed, discharged, extinguished, transferred or

otherwise altered, in whole or in part under the terms of the "Settlement Agreement" dated as of June 25, 1990 by and among Allegheny International, Inc., Chemetron Corporation, Chemetron Investments, Inc., Figgie International Inc., and Chemetronics Caribe, Inc. The terms of the Settlement Agreement speak for themselves and Chemetron refers Complaint Counsel to the Settlement Agreement previously produced and numbered RESP001465-001479 for an accurate and complete description of its provisions.

INTERROGATORY NO. 33: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Asset Purchase Agreement" and/or the "Instrument of General Conveyance and Assumption of Liabilities," each dated as of September 28, 1990, by and between Allegheny International, Inc. and Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") (RESP001412-1461)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged or otherwise altered;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that its liability for the relief sought by the Complaint may have been assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Asset Purchase Agreement" and/or the "Instrument of General Conveyance and Assumption of Liabilities," each dated as of September 28, 1990, by and between Allegheny International, Inc. and Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc."). The terms of those agreements speak for themselves and Chemetron refers Complaint Counsel to the agreements previously produced and numbered RESP001412-001455 and RESP001456-001462 for an accurate and complete description of their provisions.

INTERROGATORY NO. 34: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Stock Purchase Agreement" dated as of July 30, 1985, and/or the "Amendment" thereto dated November 26, 1985, by and between Chemetron Corporation and Figgie International, Inc. (RESP001485-1540; RESP001481-1484)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that its liability for the relief sought by the Complaint may have been assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Stock Purchase Agreement" dated as of July 30, 1985, and/or the "Amendment" thereto dated November 26, 1985, by and between Chemetron Corporation and Figgie International Inc. The Stock Purchase Agreements and any amendments thereto speak for themselves and Chemetron refers Complaint Counsel to those documents previously produced and numbered RESP001485-001540 and RESP001481-001484 for an accurate and complete description of their provisions.

INTERROGATORY NO. 35: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Purchase and Sale Agreement" dated November 9, 1983 between Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. (RESP002261-2299), and/or the "Assumption Agreement" dated as of November 9, 1983 (RESP002373-2375)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;

(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to subparagraphs (c)-(e) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, yes. Chemetron further states that the "Purchase and Sale Agreement" dated November 9, 1983 between Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. (RESP002261-002299), and the "Assumption Agreement" dated as of November 9, 1983 (RESP002373-002375) speak for themselves and Chemetron refers Complaint Counsel to those documents for an accurate and complete description of their provisions.

**INTERROGATORY NO. 36:** Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by any or all of the following written contracts and agreements, each dated as of August 25, 1982: (1) Instrument of Conveyance and Transfer (RESP001551-1553); (2) Agreement Regarding

Unassignable Contracts; (2) Assignment (RESP001554-1555); (3) Instrument of Assumption (RESP001546-1550); and (4) Agreement of Amendment (RESP001556-1558)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to subparagraphs (c)-(e) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, yes. Chemetron further states that the Instrument of Conveyance and Transfer (RESP001551-001553), Agreement Regarding Unassignable Contracts (RESP001281-001282), Assignment (RESP001554-001555), Instrument of Assumption (RESP001546-001550), and Agreement of Amendment (RESP001556-001558) speak for themselves, and Chemetron refers

Complaint Counsel to those documents for an accurate and complete description of their provisions.

INTERROGATORY NO. 37: Do you contend that your liability for the relief sought by the Complaint will be discharged and/or is dischargeable, in whole or in part, upon entry of one or more orders confirming a plan of reorganization in the bankruptcy proceedings captioned In re Sunbeam Corporation, Chapter 11 Case No. 01-40291 (AJG) (Bankr. S.D.N.Y.), and/or in the bankruptcy proceedings captioned In re AI Realty Marketing of New York, Inc., et al., Chapter 11 Case Nos. 01-40252 (AJG) through 01-40290 (AJG) (Bankr. S.D.N.Y.)? If so:

(a) set forth in detail to what extent you contend such liability will be discharged and/or is dischargeable;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to subparts (c)-(e) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that this interrogatory is not applicable to Chemetron.

INTERROGATORY NO. 38: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990 by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Reinstated Intercompany Claims," as that term was defined and used in the foregoing agreement:

(a) describe in detail all such claims made against Chemetron and Chemetron Investments by any other "Debtor" or "affiliate of any Debtor," as those terms were defined and used in the foregoing agreement;

(b) describe in detail all such claims made by Chemetron and Chemetron Investments against any other "Debtor" or "affiliate of any Debtor," as those terms were defined and used in the foregoing agreement;

(c) for each such Reinstated Intercompany Claim identified in response to subparts (a) and (b) above:
(i) identify the entities to which and from which the claim was owed;
(ii) the date on which the claim arose;
(iii) the amount of money claimed; and
(iv) a description of the nature of the claim (*e.g.*, loan; guaranty; indemnification claim; proceeds of asset or other sale; inventory payable or receivable; etc.);

(d) identify each and every document that describes, evidences, refers, or otherwise relates in any way to the Reinstated Intercompany Claims made by and against Chemetron and Chemetron Investments; and

(e) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, the Reinstated Intercompany Claims made by and against Chemetron and Chemetron Investments.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence. Chemetron further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 39: Identify one or more of Respondent's current officers, employees, or managing agents (as that term is used in Fed. R. Civ. P. 30(b)(6)) who can testify to each of the following matters that are known or reasonably available to Respondent:

(a) Respondent Chemetron Investments' (then known as "Chemetron Corporation") conveyance of certain of its property and assets, including all property and assets relating to manufacture of the Star ME-1, to CFS on or about August 25, 1982, and the negotiations relating to that transaction;

(b) CFS's conveyance of certain of its property and assets, including all property and assets relating to manufacture of the Star ME-1, to Grunau Sprinkler Manufacturing Company, Inc., on or about November 9, 1983, and the negotiations relating to that transaction;

(c) Respondent Chemetron's sale of all of the outstanding shares of capital stock of CFS to Figgie International, Inc. on or about July 30, 1985, and the negotiations relating to that transaction;

(d) the claims and counterclaims made in the civil litigation captioned Chemetron Corporation v. Figgie International, Inc., Civil Action No. 86-2025 (W.D. Pa);

(e) the Settlement Agreement, dated on or about June 25, 1990, among Allegheny International, Inc., Chemetron, Chemetron Investments, Figgie International, Inc., and Chemetronics Caribe, and the negotiations relating to that agreement;

(f) the Asset Purchase Agreement, dated as of September 28, 1990, by and between Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") and Allegheny International, Inc., and the negotiations relating to that agreement; and

(g) negotiations and analyses relating to the treatment or proposed treatment of the "Non-Operating Expenses," as that term was used in RESP001183-1186, in any proposed or actual plan of reorganization in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter II Case No. 88-448 (Bankr. W.D. Pa.).

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any

other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Chemetron identify persons in response to 39(f)-(g).

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states:

(a) Chemetron is unable to locate any persons currently employed by Chemetron who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(b) Chemetron is unable to locate any persons currently employed by Chemetron who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(c) Chemetron is unable to locate any persons currently employed by Chemetron who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(d) Chemetron is unable to locate any persons currently employed by Chemetron who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(e) Chemetron is unable to locate any persons currently employed by Chemetron who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

INTERROGATORY NO. 40: In addition to the persons identified in response to Interrogatory No. 39 above, identify the five persons (whether current or former employees, officers, directors, consultants, auditors, or persons unrelated to Respondent) whom Respondent knows and/or believes to be most knowledgeable of the facts and circumstances relating to each matters identified in Interrogatory No. 39 above, and identify the basis for each such person's knowledge.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, see response to Interrogatory No. 39.

INTERROGATORY NO. 41: Identify each person who executed each of the following contracts and agreements:

(a) "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455; signatures on RESP001455);
(b) "Instrument of General Conveyance and Assumption of Liabilities" dated as of September 28, 1990 (RESP001456-1461; signatures on RESP001461);
(c) "Acknowledgement of Obligations" dated September 28, 1990 (RESP001463);
(d) "Settlement Agreement" dated as of June 25, 1990 (RESP001465-1479; signatures on RESP001478-79);
(e) "Stock Purchase Agreement" dated as of July 30, 1985 (RESP001485-1540; signatures on RESP001540);
(f) "Amendment" dated November 26, 1985 (RESP001481-1484; signatures on RESP001484);
(g) "Purchase and Sale Agreement" dated November 9. 1983 (RESP2261-2299; signatures on RESP002299);
(h) "Instrument of Conveyance and Transfer" dated as of August 25, 1982 (RESP001551-1553; signatures on RESP001553);
(i) "Instrument of Assumption" dated as of August 25, 1982 (RESP001546-1550; signatures on RESP001548); and
(j) "Agreement of Amendment" dated as of August 25,1982 (RESP001556-1558; signatures on RESP001558).

RESPONSE: Chemetron objects to this interrogatory as overbroad, unduly burdensome to the extent that it requests that Chemetron identify persons who have never been employed by Chemetron or any of its subsidiaries or affiliates and seeks information outside the possession, custody, and control of Chemetron. Chemetron also objects to this interrogatory generally as overbroad and unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states:

(a) P.B. Kazarian and S.H. Iapalucci

(b) P.B. Kazarian and S.H. Iapalucci

(c) P.B. Kazarian

(d) S.H. Iapalucci

(e) F.F. Babb

(f) R.L. Weiland

(g) H.C. Graves

(h) F.F. Babb

(i) F.F. Babb

(j) F.F. Babb

INTERROGATORY NO. 42: Identify each of your officers and directors during the period August 1, 1982 through September 30, 1990, and identify the time periods during which each such officer and director served in that capacity.

RESPONSE: Chemetron objects to this interrogatory as overbroad, unduly burdensome, and calling for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection and the General Objections, pursuant to 16 C.F.R. § 1025.32(d) Chemetron will produce documents numbered RESP003962-003998 naming officers and directors during 1983 through 1990.

INTERROGATORY NO. 43: Identify each officer, director, employee or other person who negotiated, or was otherwise involved in negotiations, on your behalf, relating to each of the following contracts and agreements, and describe the scope of each such person's involvement in those negotiations:

(a) "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455);

(b) "Settlement Agreement" dated as of June 25, 1990 (RESP001465-1479);
(c) "Stock Purchase Agreement" dated as of July 30,1985 (RESP001485-1540);
(d) "Purchase and Sale Agreement" dated November 9, 1983 (RESP2261-2299);
(e) "Instrument of Conveyance and Transfer" dated as of August 25, 1982 (RESP001551-1553);
(f) "Instrument of Assumption" dated as of August 25, 1982 (RESP001546-1550); and
(g) "Agreement of Amendment" dated as of August 25, 1982 (RESP001556-1558).

**RESPONSE:** Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information outside the possession, custody, and control of Chemetron. Chemetron further objects to this interrogatory generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 44:** Identify all documents relating to any and all of Respondent's or Allegheny International, Inc.'s representations to, or communications with, creditors, lenders, potential lenders or other outside parties relating to the nature or magnitude of:

(a) the "Assumed Liabilities," as that term is defined and used in the "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455); and
(b) the "Non-Operating Expenses," as that term is used in Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP000783-1214).

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 45: With respect to the bankruptcy proceedings captioned In re Allegheny International, Inc, et al., Chapter 11 Case No. 88-00448 (Bankr. W.D. Pa.), identify:

(a) all claimants that filed proofs of claim relating to the Star ME-1; and

(b) all creditors listed in any of the debtor's petitions, or the schedules thereto, whose claims related to the Star ME-1.

RESPONSE: Chemetron objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 46: With respect to the bankruptcy proceedings captioned In re Sunbeam Corporation, Chapter II Case No. 01-40291 (AJG) (Bankr. S.D.N.Y.), and In re Allegheny Marketing of New York, Inc., et al., Chapter 11 Case Nos. 01-40252 (AJG) through 01-40290 (AJG) (Bankr. S.D.N.Y.), identify:

(c)[sic]all claimants that filed proofs of claim relating to the Star ME-1; and

(d)[sic]all creditors listed in any of the debtor's petitions, or the schedules thereto, whose claims related to the Star ME-1.

RESPONSE: Chemetron objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 47: Identify all documents that you relied on, or which otherwise evidence or support, your answers to these Interrogatories.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that "otherwise evidence or support [Chemetron's] answers to these Interrogatories."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that Chemetron did not rely on any documents that have not already been produced, or that are not now being produced, to Complaint Counsel.

INTERROGATORY NO. 48: Identify by name, address, title and job description each person who provided information to assist you in answering these Interrogatories, identify the Interrogatory answers for which she/he provided information, and provide a general description of the source of her/his knowledge and information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that the following persons (other than outside counsel) provided information to assist in answering these interrogatories:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2515

Marc P. Clements, Esq.
Senior Director - Product Litigation and Compliance
Legal Dept.
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2550

Ronald C. Gahagan, Jr.
Vice President and Assistant
Secretary
Chemetron Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

The information provided in these responses is based solely upon the review of corporate records and documents.

INTERROGATORY NO. 49: Identify all documents that you relied on, or which otherwise evidence or support, your responses to the Requests for Admission.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Chemetron also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence to the extent that it seeks documents that "otherwise evidence or support [Chemetron's] answers to the Requests for Admission."

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that Chemetron did not rely on any documents that have not already been produced, or that are not now being produced, to Complaint Counsel.

INTERROGATORY NO. 50: Identify by name, address, title, and job description each person who provided information to assist you in responding to the Requests for Admission, identify the Request for Admission responses for which she/he provided information, and provide a general description of the source of her/his knowledge and information.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states that the following persons (apart from outside counsel) provided information to assist in responding to the Requests for Admission:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2515

Marc P. Clements, Esq.
Senior Director - Product Litigation and Compliance
Legal Dept.

Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2550

Ronald C. Gahagan, Jr.
Vice President and Assistant
Secretary
Chemetron Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

The information provided in the responses is based solely upon the review of corporate records and documents.

INTERROGATORY NO. 51: With respect to any Request for Admission that you denied in whole or in part, for each such denial, state all facts and identify all documents upon which the denial is based.

RESPONSE: Chemetron objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Chemetron states, *see* Respondent Chemetron's Responses to Complaint Counsel's First Set of Requests for Admissions, which are incorporated herein by reference.

INTERROGATORY NO. 52: Identify by name, address, title, and job description the person(s) answering these Interrogatories and attesting to your answers.

RESPONSE: Subject to and without waiving the General Objections, Chemetron states:

Ronald C. Gahagan, Jr.
Vice President and Assistant
Secretary
Chemetron Corporation
2381 Executive Center Drive
Boca Raton, FL 33431
561/912-4100

As to objections,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Chemetron Corporation*

Dated: May 3, 2002

As to answers:

I hereby declare under penalty of perjury, that after a diligent search and based on any responsive information that could be located, the foregoing answers are true and correct to the best of my knowledge, information and belief.

Ronald C. Gahagan, Jr.
Vice President and Assistant Secretary

For Chemetron Corporation

Dated: May 1, 2002

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Chemetron Corporation's Responses to Complaint Counsel's Second Set of Interrogatories to Respondent Chemetron Corporation upon all parties and participants of record in these proceedings on this 3rd day of May, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Mark W. Porter, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., N.W.
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Karyn A. Temple

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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| In the matter of | ) | |
| | ) | |
| Chemetron Corporation, | ) | |
| f/k/a Chemetron Investments, Inc. | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Chemetron Investments, Inc., | ) | CPSC Docket No.: 02-1 |
| f/k/a Chemetron Corporation | ) | |
| | ) | |
| and | ) | |
| | ) | |
| Sunbeam Corporation | ) | |
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| and | ) | |
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| Sprinkler Corporation of Milwaukee, Inc., | ) | |
| f/k/a Star Sprinkler Corporation, f/k/a | ) | |
| Grunau Sprinkler Manufacturing Company, Inc. | ) | |
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| and | ) | |
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| Grucon Corporation | ) | |
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# RESPONDENT SUNBEAM CORPORATION'S RESPONSES TO COMPLAINT COUNSEL'S SECOND SET OF INTERROGATORIES TO RESPONDENT SUNBEAM CORPORATION

Pursuant to 16 C.F.R. § 1025.32(b), Respondent Sunbeam Corporation ("Sunbeam") hereby serves the following responses and, through undersigned counsel, objections, to Complaint Counsel's Second Set of Interrogatories to Respondent Sunbeam Corporation.

## GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

A. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents protected by the attorney-client privilege, the work-product doctrine, and/or any other applicable privileges or immunities from discovery. Subject to the limitations of B and C below, Sunbeam will provide a log of documents withheld on privilege grounds.

B. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information and/or documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding, and the definitions, instructions, and interrogatories have been read to exclude any such information and/or documents. Sunbeam also objects to the definitions, instructions and interrogatories as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek to impose on Sunbeam an obligation to individually identify and/or provide a privilege log of documents prepared by, created by, or collected from third parties by, or under the direction of, its attorneys relating to the CPSC's investigation of the Star ME-1 giving rise to this proceeding.

C. Sunbeam objects to the instruction with respect to the identification of privileged documents generally insofar as it includes "the present location of the document and all copies thereof," "each person who has or ever had

possession, custody, or control of the document or any copy thereof," "the number of pages, attachments, appendices, and exhibits," and "all further information concerning the document and the circumstances upon which the claim of privilege is asserted" as vague, ambiguous, overbroad, and unduly burdensome.

D. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information or documents beyond the scope permitted by 16 C.F.R. § 1025.31(c).

E. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Sunbeam obligations or duties different from or more onerous than those imposed by the administrative regulations governing this action.

F. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information that is not relevant to the issues in this litigation or that would not lead to the discovery of admissible evidence. By providing such information, Sunbeam does not admit the relevance or admissibility thereof.

G. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek information that is equally accessible to all parties, is available as a matter of public record, or has been provided to Sunbeam by the CPSC and/or Complaint Counsel in this matter.

H. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek to impose on Sunbeam an obligation to

obtain information or documents from entities formerly affiliated with Sunbeam or to obtain other information or documents not in Sunbeam's current possession, custody, or control, and Sunbeam has read the definitions, instructions, and interrogatories to exclude any such obligation. Sunbeam itself has limited discoverable knowledge and/or information, and the information provided in these responses has been based upon the review of corporate records and documents. Sunbeam has never manufactured, distributed, or sold Star ME-1 fire sprinklers. Moreover, Sunbeam's subsidiary, Chemetron Corporation (now known as Chemetron Investments, Inc.), transferred its assets in the Star Sprinkler business to Chemetron Fire Systems, Inc. ("CFS") almost twenty years ago. CFS sold its assets in the Star Sprinkler business in 1983. Upon information and belief, as part of that sale, CFS's general books and records pertaining to Star ME-1 fire sprinklers were transferred to Grunau Sprinkler Manufacturing Company, Inc. and are therefore not in the possession, custody, or control of Sunbeam. In 1985, all of the outstanding stock of CFS was sold to Figgie International Inc.

I. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek to require Sunbeam to obtain information or documents that were, but no longer are, within Sunbeam's possession, custody, or control, and Sunbeam has read the definitions, instructions, and interrogatories to exclude any such obligation.

J. Sunbeam objects to the definitions, instructions, and interrogatories to the extent that they seek, or may be construed, to impose on

Sunbeam an obligation to conduct an unreasonably burdensome search. To the extent that a search is required, Sunbeam will search files in its possession, custody, and control where there is a reasonable likelihood that responsive documents that are reasonably calculated to lead to the discovery of admissible evidence may be located.

K. Sunbeam objects to the definition of "You," "your," and "Respondent" insofar as it includes "all past and present officers, directors, representatives, agents, and employees of the Respondent, all other past and present persons acting or purporting to act on the Respondent's behalf (including, but not limited to, all past or present agents and employees exercising discretion, discharging duties, making policy, or making decisions with respect to the Respondent), and all past and present divisions and branches of the Respondent" whether or not such persons or entities have had any involvement in the events giving rise to this lawsuit, as overbroad, unduly burdensome, calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

L. Sunbeam objects to the definition of "identify" and "identity" with respect to a "person" insofar as it includes residential addresses and telephone numbers of former employees or of persons for whom a business address and telephone number are available, on the grounds that it is overbroad, unduly burdensome, calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and may invade the

legitimate expectation of privacy of those persons to the confidentiality of such information to the extent such information may be derived only from personnel records. Sunbeam further objects to this definition insofar as it includes the "employer, employer department, and/or subject area in which the person works, business affiliations . . . and the person's relationships or associations, if any, to the Respondents in this action" as overbroad, unduly burdensome, calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and purporting to impose obligations beyond those contemplated by the rules of discovery.

M. Sunbeam objects to the definition of "identify" and "identity" with respect to the definition of a business entity, building, or place insofar as it includes "all former names of that business, entity, building, or place, its state of incorporation, registration, or organization, the identity and address of its registered agent in each state where it is present and doing business or has a place of business, its present officers, directors, and shareholders, and its relationship, if any, to the Respondents in this action" as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

N. Sunbeam objects to the definition of "AI" as encompassing entities formerly affiliated with Allegheny International, Inc., and entities that have yet to be affiliated with Allegheny International, Inc. because it is vague,

ambiguous, overbroad, and unduly burdensome in both time and scope. Sunbeam has read the definition to exclude any such entities.

O. Sunbeam objects to the definition of "Chemetron" as encompassing entities formerly affiliated with Chemetron Corporation, and entities that have yet to be affiliated with Chemetron Corporation because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Sunbeam has read the definition to exclude any such entities.

P. Sunbeam objects to the definition of "Chemetron Investments" as encompassing entities formerly affiliated with Chemetron Investments, and entities that have yet to be affiliated with Chemetron Investments because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Sunbeam has read the definition to exclude any such entities.

Q. Sunbeam objects to the definition of the term "Sunbeam" as encompassing entities formerly affiliated with Sunbeam and entities that have yet to be affiliated with Sunbeam because it is vague, ambiguous, overbroad, and unduly burdensome in both time and scope. Sunbeam has read the definition to exclude any such entities.

R. Sunbeam objects to each interrogatory to the extent that it is vague, ambiguous, and uncertain. Notwithstanding and without waiving this objection, Sunbeam has made an effort to respond, where possible, as it understands and interprets the interrogatory.

S. Sunbeam objects to each interrogatory to the extent that it contains compound questions and/or contentions which should be separated into individual interrogatories.

T. In responding to any of these interrogatories, Sunbeam does not concede the relevance, materiality, or admissibility of any information or documents provided and hereby preserves all such objections.

U. Because discovery in this action is ongoing, Sunbeam reserves the right to amend and/or supplement the information set forth in these responses.

V. These General Objections are incorporated into every interrogatory response and shall not be repeated in every response to which they are applicable. By responding to an interrogatory, Sunbeam does not waive any general or specific objection.

W. Certain documents that Respondent is agreeing in this response to provide may be subject to confidentiality protection including, *inter alia*, pursuant to 5 U.S.C. § 552(b), 15 U.S.C. § 2055, and 18 U.S.C. § 1905. Any such documents will be produced pursuant to the parties' Confidentiality Stipulation and Order.

## RESPONSES TO INTERROGATORIES

**INTERROGATORY NO. 1:** Describe in detail all reasons why Respondent Chemetron Investments (then known as "Chemetron Corporation") conveyed certain of its property and assets, including all property and assets relating to the manufacture of the Star ME-1, to CFS on or about August 25, 1982.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any

other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad and unduly burdensome to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory generally as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 2: Describe in detail all consideration paid or otherwise provided to Respondent Chemetron Investments (then known as "Chemetron Corporation") by CFS or any other person or entity for the property and asset conveyance referenced in Interrogatory No. 1 above.

RESPONSE: Sunbeam objects to this interrogatory as overbroad and unduly burdensome to the extent that is seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory generally as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 28 C.F.R. 1025.32(d), Sunbeam refers Complaint Counsel to document numbered RESP001546-001550, produced in response to Complaint Counsel's first set of discovery requests.

INTERROGATORY NO. 3: Do you contend that, during the period 1977-1982, the Star ME-1 was manufactured by Respondent Chemetron Investments, which at that time was known as "Chemetron Corporation"? If so:

(a) set forth in detail the facts that you contend support this contention;

(b) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(d) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad and unduly burdensome to the extent that is seeks information outside the possession, custody, and control of Sunbeam.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that it does not make any such contention. Upon information and belief, Star Sprinkler Corporation, a Florida corporation, manufactured some type of Star ME-1 "dry" fire sprinkler prior to 1977. Chemetron Corporation (now known as Chemetron Investments, Inc.) is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between 1977 and mid-1982.

**INTERROGATORY NO. 4:** Do you contend that Respondent Chemetron was not the corporation that manufactured the Star ME-1 during the period 1977-1982?

**RESPONSE:** Subject to and without waiving the General Objections, yes. Upon information and belief, Respondent Chemetron Investments, Inc. is believed to have manufactured some kind of Star ME-1 "dry" fire sprinkler between 1977 and mid-1982.

INTERROGATORY NO. 5: Was CFS a wholly-owned subsidiary of Respondent Chemetron Investments at all times between August 25, 1982 and July 30, 1985? If not, describe in detail the relationship between CFS and each of Respondents Chemetron and Chemetron Investments during that period, identify the dates on which such relationships changed, and explain in detail why such relationships changed.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad and unduly burdensome to the extent that is seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam "explain in detail why such relationships changed."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that upon information and belief, Chemetron Fire Systems, Inc. ("CFS") was a wholly-owned subsidiary of Respondent Chemetron Investments at all times between August 25, 1982 and July 30, 1985; however, CFS was sold in a stock sale to Figgie International Inc. in 1985 and the majority of its records are believed to have been transferred in the sale.

INTERROGATORY NO. 6: With respect to the statement in the July 7, 2000 letter from David H. Baker to Seth B. Popkin (CPSC Star 000120-122) that "[a]ny alleged responsibility of Chemetron Corporation for corrective action for the Star ME-1 Sprinklers was assumed by Figgie International Inc., in a Settlement

Agreement dated 6/25/90 between Chemetron Corporation and Figgie International Inc . . . .":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam refers Complaint Counsel to the Settlement Agreement previously produced and numbered RESP001465-001479, the terms of which speak for themselves.

INTERROGATORY NO. 7: With respect to the statement in the July 7, 2000 letter from David H. Baker to Seth B. Popkin (CPSC Star 000120-122) that "[a]ny liability of Chemetron Corporation for the Star ME-1 Sprinklers, other than that expressly set forth in the 6/25/90 Settlement Agreement with Figgie International Inc., was discharged in the bankruptcy proceedings":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;

(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam refers Complaint Counsel to the United States Bankruptcy Code and documents numbered RESP000783-001216, previously produced in response to Complaint Counsel's first set of discovery requests. Pursuant to 16 C.F.R. § 1025.32(d), Sunbeam is also producing documents numbered RESP004022-004030. The terms and provisions of those documents speak for themselves.

INTERROGATORY NO. 8: With respect to the statement in the July 3, 2001 letter from Kenneth R. Bell to Charles B. Miner, Robin Robertson Starr and Figgie International (RESP00043-44) that "Figgie, as successor to Chemetron, is responsible for any liability that either Chemetron or Sunbeam may have for any corrective action that may be ordered or required":
(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;

(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam refers Complaint Counsel to documents numbered RESP001485-001540 produced in response to Complaint Counsel's first set of discovery requests, the terms and provisions of which speak for themselves.

INTERROGATORY NO. 9: With respect to the statement in the Fifteenth Affirmative Defense pleaded in your Answer that ". . . any relief to which the Commission might otherwise be entitled under applicable law would be dischargeable in the current Sunbeam bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of New York":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to subparagraphs (b)-(d) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam refers Complaint Counsel to the United States Bankruptcy Code, the Consumer Product Safety Act's provisions relating to election of remedies, and to documents numbered RESP000678-000716 produced in response to Complaint Counsel's first set of discovery requests. The terms and provisions of the United States Bankruptcy Code, the Consumer Product Safety Act, and RESP000678-000716 speak for themselves.

**INTERROGATORY NO. 10:** With respect to the statement in the Seventh Affirmative Defense pleaded in your Answer that "[a]ny Star ME-1 fire sprinklers made by this Respondent have conformed to the then-existing state of the art":

(a) set forth in detail the factual basis for this statement;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to this statement;
(c) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this statement; and
(d) describe in detail the substance of each such person's knowledge. and/or information.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam "identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to this statement," without limiting this interrogatory to those with material factual knowledge and excluding Sunbeam's attorneys and consulting experts, and the CPSC.

Subject to and without waiving the foregoing objections and the General Objections, pursuant to 16 C.F.R. § 1025.32(d), Sunbeam refers Complaint Counsel to documents previously produced and numbered RESP001769-001776, RESP001777-001837, RESP001976-001977, and RESP002979-003007.

**INTERROGATORY NO. 11:** This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement, describe in detail the "liabilities and obligations of the Debtors of every kind and nature which [were] not discharged in bankruptcy through the confirmation of the Modified Plan . . . ." Your response should include a detailed description of each and every category of liabilities and obligations included within the definition of "Assumed Liabilities" beyond the broad category definitions contained in the foregoing agreement (e.g., "Allowed Administrative Claims," "Reinstated Claims," "Product Liability Claims," "Assumed Indemnity Claims," etc.).

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

**INTERROGATORY NO. 12:** This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement:

(a) describe in detail, by category and amount, each of the liabilities and obligations of Chemetron and Chemetron Investments that were assumed, as of September 28, 1990, by Sunbeam/Oster Company, Inc. as "Assumed Liabilities";

(b) describe in detail, by category and amount, each of the liabilities and obligations of Chemetron and Chemetron Investments that were discharged through confirmation of the Modified Plan;

(c) identify each and every document that describes, evidences, refers or otherwise relates in any way to the liabilities and obligations of Chemetron and Chemetron Investments that were assumed, as of September 28, 1990, by Sunbeam/Oster Company, Inc. as "Assumed Liabilities";

(d) identify each and every document that describes, evidences, refers or otherwise relates in any way to the liabilities and obligations of Chemetron and Chemetron Investments that were discharged through confirmation of the Modified Plan;

(e) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, the liabilities and obligations of Chemetron and Chemetron Investments that were assumed, as of September 28, 1990, by Sunbeam/Oster Company, Inc. as "Assumed Liabilities"; and

(f) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, the liabilities and obligations of Chemetron and Chemetron

Investments that were discharged through confirmation of the Modified Plan;

(g) with respect to each person identified in response to subparts (e) and (f) above, describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and information.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

**INTERROGATORY NO. 13:** This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Assumed Liabilities," as that term was defined and used in the foregoing agreement:

(a) identify each and every document that describes, evidences, refers or otherwise relates in any way to the liabilities and obligations that were intended to be included as "Assumed Liabilities" by the parties to the foregoing agreement;

(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to the liabilities and obligations that actually were treated, for accounting, legal or other purposes, as "Assumed Liabilities" by Sunbeam following September 28, 1990;

(c) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the liabilities and obligations that were intended to be included as "Assumed Liabilities" by the parties to the foregoing agreement;

(d) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the liabilities and obligations that actually were treated, for

accounting, legal or other purposes, as "Assumed Liabilities" by Sunbeam following September 28, 1990; and

(e) with respect to each person identified in response to subparts (c) and (d) above, describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 14: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Product Liability Claims," as that term is defined and used in the foregoing agreement, describe in detail all "claims for damages or injuries because of a defect in or other use or consumption of goods manufactured or sold by [Chemetron and Chemetron Investments] or any predecessors thereof, and includ[ing] any such claims arising after the Effective Date for goods purchased prior to the Effective Date." For each such claim, your response should include, without limitation, the following:

(a) the identity of the claimant;
(b) the identity of the product or products that were the subject of the claim;
(c) the date of manufacture for each such product;
(d) the identity of each such product's manufacturer (whether Chemetron, Chemetron Investments, a predecessor thereof, or some other entity);
(e) the date of loss or injury;
(f) the nature of the claimed loss or injury (*e.g.*, personal injury, property damage, etc.); and
(g) the circumstances of the loss or injury (*e.g.*, structure fire).

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 15: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Product Liability Claims," as that term was defined and used in the foregoing agreement:

(a) identify each and every document that describes, evidences, refers or otherwise relates in any way to the claims that were intended to be included as "Product Liability Claims" by the parties to the foregoing agreement;

(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to the claims that actually were treated, for accounting, legal or other purposes, as "Product Liability Claims" by Sunbeam following September 28, 1990;

(c) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the claims that were intended to be included as "Product Liability Claims" by the parties to the foregoing agreement;

(d) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, the claims that actually were treated, for accounting, legal or other purposes, as "Product Liability Claims" by Sunbeam following September 28, 1990; and

(e) with respect to each person identified in response to subparts (c) and (d) above, describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any

other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 16: Did Sunbeam ever establish or maintain accounting reserve(s) relating to the "Assumed Liabilities," as that term was defined and used in the "Asset Purchase Agreement" dated as of September 28, 1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455)? If yes:

(a) identify all accounting periods in which such reserve(s) were in effect, and identify the account descriptions under which such reserves appeared on Sunbeam's financial statements;

(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to such accounting reserve(s), including but not limited to, workpapers created and maintained by Sunbeam's outside auditors;

(c) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, such accounting reserve(s); and

(d) describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 17: Did Sunbeam ever establish or maintain accounting reserve(s) relating to the "Product Liability Claims," as that term was defined and used in the "Asset Purchase Agreement" dated as of September 28,

1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455)? If yes:

(e)[sic]identify all accounting periods in which such reserve(s) were in effect, and identify the account descriptions under which such reserves appeared on Sunbeam's financial statements;

(f)[sic]identify each and every document that describes, evidences, refers or otherwise relates in any way to such accounting reserve(s), including but not limited to, workpapers created and maintained by Sunbeam's outside auditors;

(g)[sic]identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, such accounting reserve(s); and

(h)[sic]describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 18: This interrogatory relates to the document captioned "Schedule 2 - Assumed Liabilities Being Assigned And Assumed By SAHL" (RESP001462). Describe in detail the "Future Product Liability Claims" referenced in that document.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 19: This interrogatory relates to Respondent's response to Interrogatory No. 57 of Complaint Counsel's First Set of Interrogatories. Specifically, with respect to the statement that "the current Sunbeam Corporation was not in existence" during the time period that "a Chemetron entity allegedly manufactured some kind of Star ME-1 'dry' fire sprinkler":

(a) set forth in detail the factual basis for the contention that the "current Sunbeam Corporation" was not in existence at that time; and

(b) identify which "Chemetron entity" was being referred to in the interrogatory response.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states: (a) pursuant to 16 C.F.R. § 1025.32(d), Sunbeam refers Complaint Counsel to documents previously produced and numbered RESP001351 and RESP001353-001356; (b) upon information and belief, Respondent Chemetron Investments.

INTERROGATORY NO. 20: With respect to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP000783-1214):

(a) identify each person who prepared or contributed to the preparation of Exhibit 13;

(b) identify each and every document that was relied upon or used in any way to prepare the text and analysis found in Section D ("General Liability Claims") of Exhibit 13 (RESP001185), including but not limited to, the "loss data assembled and recorded by [the] insurance carriers" (referenced on page 13-3 of the document);

(c) identify each and every document that describes, evidences, refers, or relates in any way to the statement on page 13-3 of the document that "Chemetron obligations represent approximately $1.9 million of the foregoing $5.8 million";

(d) describe in detail the nature of the $1.9 million of "Chemetron obligations" referenced on page 13-3 of the document;

(e) identify each and every person Respondent knows and/or believes to have knowledge of, or information relating to, the contents of Exhibit 13; and

(f) identify in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 21: This interrogatory relates to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended." With respect to the following excerpt from page 13-3 of Exhibit 13 (RESP001183):

"The following summarizes the 'non-operating expense[s]' ('NOE') of AI and its affiliates[,] which are generally unrelated to the ongoing operations of AI, but which cannot or will not be liquidated and discharged in bankruptcy. These obligations consist of: Retiree health and life benefits; Tax-qualified pension funding; Environmental clean-up costs; Future-arising general liability claims; Reinstated Liberty Mutual insurance policy; and Future umbrella insurance premiums":

(a) describe in detail the nature of the "future-arising general liability claims";
(b) were the "non-operating expenses," in fact, not liquidated and discharged in bankruptcy?;
(c) if the "non-operating expenses" were not liquidated and discharged, describe in detail why they were not liquidated and discharged. Your response to this subpart (c) should include, without limitation, a detailed explanation of why the "future-arising general liability claims," in particular, were not liquidated and discharged; and
(d) identify each and every document that describes, evidences, refers, or otherwise relates in any way to the "future-arising general liability claims."

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 22: This interrogatory relates to Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended." With respect to the following excerpt from page 13-3 of Exhibit 13 (RESP001185):

"The remaining future general liability relates to asset sale divestitures. These divestitures resulted in surviving corporate shells with substantial intercompany receivables from AI. To the extent that these affiliates produced and shipped goods before the asset sale, and those goods give rise to product liability losses incurred after February 20, 1988, such estimated future losses are considered [non-operating expense] obligations":

(a) describe in detail the "asset sale divestitures," including but not limited to the entities whose assets were divested, the assets divested, and the date of each such divestiture;
(b) identify the "surviving corporate shells";

(c) were Chemetron and Chemetron Investments among the "surviving corporate shells," as that term was used in the above-referenced document?;

(d) describe in detail the nature of the "substantial intercompany receivables from AI," including but not limited to, the entities to which such receivables were owed; the transactions or other circumstances that gave rise to such receivables; and the amount of the receivables on each such entity's books at or immediately following September 28, 1990;

(e) identify the "affiliates";

(f) were Chemetron and Chemetron Investments among the "affiliates," as that term was used in the above-referenced document?;

(g) did "goods" produced and shipped by "affiliates" before the asset sale, in fact, give rise to "product liability losses incurred after February 20, 1988"?;

(h) if the answer to subpart (g) is yes, for each instance in which such a loss was incurred, identify the "affiliate" whose "goods" gave rise to the loss; identify the "goods" that gave rise to the loss; provide the date such "goods" were produced and/or shipped by the "affiliate"; and provide the date such loss was incurred;

(i) identify each and every document that you relied on, or otherwise consulted or used, in responding to subparts (a) through (h) above.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 23: Did Sunbeam ever establish or maintain accounting reserve(s) relating to the "Non-Operating Expenses" described in Exhibit 13 (RESP001183-1186) to the "Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended"? If yes:

(a) identify all accounting periods in which such reserve(s) were in effect, and identify the account descriptions under which such reserves appeared on Sunbeam's financial statements;
(b) identify each and every document that describes, evidences, refers or otherwise relates in any way to such accounting reserve(s), including but not limited to, workpapers created and maintained by Sunbeam's outside auditors;
(c) identify each and every person whom Respondents know and/or believe to have knowledge of, or information relating to, such accounting reserve(s); and
(d) describe in detail the substance of each such person's knowledge and/or information, and the time periods of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 24: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Alsub Corporation" to "Chemetron Corporation" on or about November 30, 1977.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 25: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Chemetron Corporation" to "Chemetron Investments, Inc." on or about October 4, 1982.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 26: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Chemetron Investments, Inc." to "Chemetron Corporation" on or about August 18, 1983.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to

this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 27: Describe in detail all reasons why Respondent Chemetron Investments changed its name from "Chemetron Corporation" to "Chemetron Investments, Inc." on or about February 22, 1984.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 28: Describe in detail all reasons why Respondent Chemetron changed its name from "Alchem, Inc." to "Chemetron Corporation" on or about October 4, 1982.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 29: Describe in detail all reasons why Respondent changed its name from "Chemetron Corporation" to "Alchem, Inc." on or about August 18, 1983.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 30: Describe in detail all reasons why Respondent Chemetron changed its name from "Alchem, Inc." to "Chemetron Corporation" on or about February 22, 1984.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that after a diligent search, to date it has been unable to locate any information within its possession, custody, or control responsive to this interrogatory.

INTERROGATORY NO. 31: With respect to each of the corporate name changes referenced in Interrogatories 24-30 above:

(a) identify each and every person whom Respondents know and/or believe to have knowledge of, and/or information relating to, each corporate name change; and

(b) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information

which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 32: For the period July 1, 1976 to July 28, 1977, identify each name under which Respondent Chemetron Investments did business or otherwise was known, the time period during which each name was used, and the date and reason for any name change.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "the date and reason for any name change."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that Respondent Chemetron Investments was incorporated on July 28, 1977 and therefore had no names prior to its incorporation. On the date of its incorporation, its name was Alsub Corporation.

INTERROGATORY NO. 33: For the period July 1, 1976 to July 29, 1982, identify each name under which Respondent Chemetron did business or otherwise was known, the time period during which each name was used, and the date and reason for any name change.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to

this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks "the date and reason for any name change."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that Respondent Chemetron was incorporated on July 29, 1982 and therefore had no names prior to its incorporation. On the date of its incorporation, its name was Alchem, Inc.

INTERROGATORY NO. 34: Do you contend that your liability for the relief sought by the Complaint was discharged, in whole or in part, by entry of the orders confirming the Debtor's Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified, in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.)? If so:

(a) set forth in detail to what extent you contend such liability was discharged;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that its liability for the relief sought by the Complaint may have been discharged, in whole or in part, by entry of the orders confirming the Debtor's Joint Stock Plan of Reorganization, dated December 29, 1989, as amended and modified, in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.). Sunbeam refers Complaint Counsel to the United States Bankruptcy code and documents numbered RESP000783-001216 produced in response to Complaint Counsel's first set of discovery requests, the terms and provisions of which speak for themselves.

INTERROGATORY NO. 35: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Settlement Agreement" dated as of June 25, 1990, by and among Allegheny International, Inc., Chemetron Corporation, Chemetron Investments, Inc., Figgie International Inc., and Chemetronics Caribe, Inc. (RESP001465-1479)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that its liability for the relief sought by the Complaint may have been assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part under the terms of the "Settlement Agreement" dated as of June 25, 1990 by and among Allegheny International, Inc., Chemetron Corporation, Chemetron Investments, Inc., Figgie International Inc., and Chemetronics Caribe, Inc. The terms of the Settlement Agreement speak for themselves and Sunbeams refers Complaint Counsel to the Settlment Agreement previously produced and numbered RESP001465-1479 for an accurate and complete description of its provisions.

**INTERROGATORY NO. 36:** Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Asset Purchase Agreement" and/or the "Instrument of General Conveyance and Assumption of Liabilities," each dated as of September 28, 1990, by and between Allegheny International, Inc. and Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") (RESP001412-1461)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged or otherwise altered;

(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that its liability for the relief sought by the Complaint may have been assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Asset Purchase Agreement" and/or the "Instrument of General Conveyance and Assumption of Liabilities," each dated as of September 28, 1990, by and between Allegheny International, Inc. and Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc."). The terms of those agreements speak for themselves and Sunbeam refers Complaint Counsel to the agreements previously produced and numbered RESP001412-001455 and RESP001456-001462 for an accurate and complete description of their provisions.

INTERROGATORY NO. 37: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Stock Purchase Agreement" dated as of July 30, 1985, and/or the "Amendment" thereto dated November 26, 1985, by and between Chemetron Corporation and Figgie International Inc. (RESP001485-1540; RESP001481-1484)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;

(b) set forth in detail the facts and law that you contend support this contention;

(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;

(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and

(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that its liability for the relief sought by the Complaint may have been assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Stock Purchase Agreement" dated as of July 30, 1985, and/or the "Amendment" thereto dated November 26, 1985, by and

between Chemetron Corporation and Figgie International Inc. The Stock Purchase Agreements and any amendments thereto speak for themselves and Sunbeam refers Complaint Counsel to those documents previously produced and numbered RESP001485-001540 and RESP001481-001484 for an accurate and complete description of their provisions.

INTERROGATORY NO. 38: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by the "Purchase and Sale Agreement" dated November 9, 1983 between Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. (RESP002261-2299), and/or the "Assumption Agreement" dated as of November 9, 1983 (RESP002373-2375)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to subparagraphs (c)-(e) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, yes. Sunbeam further states that the "Purchase and Sale Agreement" dated November 9, 1983 between Chemetron Fire Systems, Inc. and Grunau Sprinkler Manufacturing Company, Inc. (RESP002261-002299), and the "Assumption Agreement" dated as of November 9, 1983 (RESP002373-002375) speak for themselves and Sunbeam refers Complaint Counsel to those documents for an accurate and complete description of their provisions.

INTERROGATORY NO. 39: Do you contend that your liability for the relief sought by the Complaint was assumed, discharged, extinguished, transferred or otherwise altered, in whole or in part, by any or all of the following written contracts and agreements, each dated as of August 25, 1982: (1) Instrument of Conveyance and Transfer (RESP001551-1553); (2) Agreement Regarding Unassignable Contracts; (2) Assignment (RESP001554-1555); (3) Instrument of Assumption (RESP001546-1550); and (4) Agreement of Amendment (RESP001556-1558)? If so:

(a) set forth in detail to what extent you contend such liability was assumed, discharged, extinguished, transferred or otherwise altered;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to subparagraphs (c)-(e) of this interrogatory as overbroad, unduly burdensome, and

calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, yes. Sunbeam further states that the Instrument of Conveyance and Transfer (RESP001551-001553), Agreement Regarding Unassignable Contracts (RESP001281-001282), Assignment (RESP001554-001555), Instrument of Assumption (RESP001546-001550), and Agreement of Amendment (RESP001556-001558) speak for themselves, and Sunbeam refers Complaint Counsel to those documents for an accurate and complete description of their provisions.

INTERROGATORY NO. 40: Do you contend that your liability for the relief sought by the Complaint will be discharged and/or is dischargeable, in whole or in part, upon entry of one or more orders confirming a plan of reorganization in the bankruptcy proceedings captioned In re Sunbeam Corporation, Chapter 11 Case No. 01-40291 (AJG) (Bankr. S.D.N.Y.), and/or in the bankruptcy proceedings captioned In re AI Realty Marketing of New York, Inc., et al., Chapter 11 Case Nos. 01-40252 (AJG) through 01-40290 (AJG) (Bankr. S.D.N.Y.)? If so:

(a) set forth in detail to what extent you contend such liability will be discharged and/or is dischargeable;
(b) set forth in detail the facts and law that you contend support this contention;
(c) identify each and every document that describes, evidences, refers, or relates in any way to this contention;
(d) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, this contention; and
(e) describe in detail the substance of each such person's knowledge and/or information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to subparts (c)-(e) of this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

Subject to and without waiving the foregoing objections and the General Objections, yes. Sunbeam refers Complaint Counsel to the United States Bankruptcy Code, the Consumer Product Safety Act's provisions relating to election of remedies, and documents numbered RESP000678-000716 produced in response to Complaint Counsel's first set of discovery requests. The terms and provisions of the United States Bankruptcy Code, the Consumer Product Safety Act, and RESP000678-000716 speak for themselves.

INTERROGATORY NO. 41: This interrogatory relates to the "Asset Purchase Agreement" dated as of September 28, 1990, by and between Sunbeam/Oster Company, Inc. and Allegheny International, Inc. (RESP001412-1455). With respect to the "Reinstated Intercompany Claims," as that term was defined and used in the foregoing agreement:

(a) describe in detail all such claims made against Chemetron and Chemetron Investments by any other "Debtor" or "affiliate of any Debtor," as those terms were defined and used in the foregoing agreement;

(b) describe in detail all such claims made by Chemetron and Chemetron Investments against any other "Debtor" or "affiliate of any Debtor," as those terms were defined and used in the foregoing agreement;

(c) for each such Reinstated Intercompany Claim identified in response to subparts (a) and (b) above: (i) identify the entities to

which and from which the claim was owed; (ii) the date on which the claim arose; (iii) the amount of money claimed; and (iv) a description of the nature of the claim (e.g., loan; guaranty; indemnification claim; proceeds of asset or other sale; inventory payable or receivable; etc.);

(d) identify each and every document that describes, evidences, refers or otherwise relates in any way to the Reinstated Intercompany Claims made by and against Chemetron and Chemetron Investments; and

(e) identify each and every person whom Respondent knows and/or believes to have knowledge of, or information relating to, the Reinstated Intercompany claims made by and against Chemetron and Chemetron Investments.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Sunbeam further objects to this interrogatory to the extent that it calls for a legal conclusion.

INTERROGATORY NO. 42: Identify one or more of Respondent's current officers, employees, or managing agents (as that term is used in Fed. R. Civ. P. 30(b)(6)) who can testify to each of the following matters that are known or reasonably available to Respondent:

(a) Respondent Chemetron Investments' (then known as "Chemetron Corporation") conveyance of certain of its property and assets, including all property and assets relating to manufacture of the Star ME-1, to CFS on or about August 25, 1982, and the negotiations relating to that transaction;

(b) CFS's conveyance of certain of its property and assets, including all property and assets relating to manufacture of the Star ME-1, to Grunau Sprinkler Manufacturing Company, Inc., on or about November 9, 1983, and the negotiations relating to that transaction;

(c) Respondent Chemetron's sale of all of the outstanding shares of capital stock of CFS to Figgie International Inc. on or about July 30, 1985, and the negotiations relating to that transaction;

(d) the claims and counterclaims made in the civil litigation captioned Chemetron Corporation v. Figgie International Inc., Civil Action No. 86-2025 (W.D. Pa);

(e) the Settlement Agreement, dated on or about June 25, 1990, among Allegheny International, Inc., Chemetron, Chemetron Investments, Figgie International Inc., and Chemetronics Caribe, and the negotiations relating to that agreement;

(f) the Asset Purchase Agreement, dated as of September 28, 1990, by and between Respondent Sunbeam (then known as "Sunbeam/Oster Company, Inc.") and Allegheny International, Inc., and the negotiations relating to that agreement;

(g) Sunbeam's treatment, for accounting, legal or other purposes, of the "Assumed Liabilities," as that term is defined in the agreement referenced in subpart (f) above, going forward from September 2.8, 1990 to the present;

(h) Sunbeam's treatment, for accounting, legal or other purposes, of the "Product Liability Claims," as that term is defined in the agreement referenced in subpart (f) above, going forward from September 28, 1990 to the present; and

(i) negotiations and analyses relating to the treatment or proposed treatment of the "Non-Operating Expenses," as that term was used in RESP001183-1186, in any proposed or actual plan of reorganization in the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.).

**RESPONSE:** Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests that Sunbeam identify persons in response to 42(f)-(i).

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states:

(a) Sunbeam is unable to locate any persons currently employed by Sunbeam who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(b) Sunbeam is unable to locate any persons currently employed by Sunbeam who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(c) Sunbeam is unable to locate any persons currently employed by Sunbeam who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(d) Sunbeam is unable to locate any persons currently employed by Sunbeam who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

(e) Sunbeam is unable to locate any persons currently employed by Sunbeam who would have any knowledge in response to this interrogatory. Any information relating to this category would be based solely upon the current review of corporate records and documents, the terms and provisions of which speak for themselves.

INTERROGATORY NO. 43: In addition to the persons identified in response to Interrogatory No. 42 above, identify the five persons (whether current or former employees, officers, directors, consultants, auditors, or persons unrelated to Respondent) whom Respondent knows and/or believes to be most knowledgeable of the facts and circumstances relating to each matters[sic] identified in Interrogatory No. 42 above, and identify the basis for each such person's knowledge.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, see response to Interrogatory No. 42.

INTERROGATORY NO. 44: Identify the outside auditors (including the name and current business address of the audit engagement partners) engaged by Allegheny International, Inc. during the pendency of the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.), and describe in detail the scope of their engagement(s).

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any

other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 45: Identify the outside auditors (including the name and current business address of the audit engagement partners) engaged by Sunbeam for each of the fiscal years 1990 to the present.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 46: Identify all investment banking firms (including the name and current business address of the principals on the engagement) engaged by Allegheny International Inc. during the pendency of the bankruptcy proceedings captioned In re Allegheny International, Inc., et al., Chapter 11 Case No. 88-448 (Bankr. W.D. Pa.), and describe in detail the scope of each such engagement.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 47: Identify each person who executed each of the following contracts and agreements:

(a) "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455; signatures on RESP001455);
(b) "Instrument of General Conveyance and Assumption of Liabilities" dated as of September 28, 1990 (RESP001456-1461; signatures on RESP001461);
(c) "Acknowledgement of Obligations" dated September 28, 1990 (RESP001463);
(d) "Settlement Agreement" dated as of June 25, 1990 (RESP001465-1479; signatures on RESP001478-79);
(e) "Stock Purchase Agreement" dated as of July 30, 1985 (RESP001485-1540; signatures on RESP001540);
(f) "Amendment" dated November 26, 1985 (RESP001481-1484; signatures on RESP001484);
(g) "Purchase and Sale Agreement" dated November 9, 1983 (RESP2261-2299; signatures on RESP002299);
(h) "Instrument of Conveyance and Transfer" dated as of August 25, 1982 (RESP001551-1553; signatures on RESP001553);
(i) "Instrument of Assumption" dated as of August 25, 1982 (RESP001546-1550; signatures on RESP001548); and
(j) "Agreement of Amendment," dated as of August 25, 1982 (RESP001556-1558; signatures on RESP001558).

RESPONSE: Sunbeam objects to this interrogatory as overbroad, unduly burdensome to the extent that it requests that Sunbeam identify persons who have never been employed by Sunbeam or any of its subsidiaries or affiliates and seeks information outside the possession, custody, and control of Sunbeam. Sunbeam also objects to this interrogatory generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states:

(a) P.B. Kazarian and S.H. Iapalucci

(b) P.B. Kazarian and S.H. Iapalucci

(c) P.B. Kazarian

(d) S.H. Iapalucci

(e) F.F. Babb

(f) R.L. Weiland

(g) H.C. Graves

(h) F.F. Babb

(i) F.F. Babb

(j) F.F. Babb

INTERROGATORY NO. 48: Identify each officer, director, employee or other person who negotiated, or was otherwise involved in negotiations, on your behalf, relating to each of the following contracts and agreements, and describe the scope of each such person's involvement in those negotiations:

(a) "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455);
(b) "Settlement Agreement" dated as of June 25, 1990 (RESP001465-1479);
(c) "Stock Purchase Agreement" dated as of July 30, 1985 (RESP001485-1540);
(d) "Purchase and Sale Agreement" dated November 9, 1983 (RESP2261-2299);
(e) "Instrument of Conveyance and Transfer" dated as of August 25, 1982 (RESP001551-1553);
(f) "Instrument of Assumption" dated as of August 25, 1982 (RESP001546-1550); and
(g) "Agreement of Amendment" dated as of August 25, 1982 (RESP001556-1558).

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to

this interrogatory as overbroad and unduly burdensome to the extent that it seeks information outside the possession, custody, and control of Sunbeam. Sunbeam further objects to this interrogatory generally as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 49: Identify all documents relating to any and all of Respondent's or Allegheny International, Inc.'s representations to, or communications with, creditors, lenders, potential lenders or other outside parties relating to the nature or magnitude of:

(a) the "Assumed Liabilities," as that term is defined and used in the "Asset Purchase Agreement" dated as of September 28, 1990 (RESP001412-1455); and

(b) the "Non-Operating Expenses," as that term is used in Exhibit 13 (RESP001183-1186) to the Debtors' Joint Stock Plan of Reorganization, Dated December 29, 1988, As Amended" (RESP00783-1214).

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 50: With respect to the bankruptcy proceedings captioned In re Allegheny International, Inc, et al., Chapter 11 Case No. 88-00448 (Bankr. W.D. Pa.), identify:

(a) all claimants that filed proofs of claim relating to the Star ME-1; and

(b) all creditors listed in any of the debtor's petitions, or the schedules thereto, whose claims related to the Star ME-1.

RESPONSE: Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 51: With respect to the bankruptcy proceedings captioned In re Sunbeam Corporation, Chapter 11 Case No. 01-40291 (AJG) (Bankr. S.D.N.Y.), and In re AI Realty Marketing of New York, Inc., et al., Chapter 11 Case Nos. 01-40252 (AJG) through 01-40290 (AJG) (Bankr. S.D.N.Y.), identify:

(c)[sic]all claimants that filed proofs of claim relating to the Star ME-1; and

(d)[sic]all creditors listed in any of the debtor's petitions, or the schedules thereto, whose claims related to the Star ME-1.

RESPONSE: Sunbeam objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 52: Identify all documents that you relied on, or which otherwise evidence or support, your answers to these Interrogatories.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that "otherwise evidence or support [Sunbeam's] answers to these Interrogatories."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that Sunbeam did not rely on any documents that have

not already been produced, or that are not now being produced, to Complaint Counsel.

INTERROGATORY NO. 53: Identify by name, address, title and job description each person who provided information to assist you in answering these Interrogatories, identify the Interrogatory answers for which she/he provided information, and provide a general description of the source of her/his knowledge and information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that the following persons (other than outside counsel) provided information to assist in answering these interrogatories:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2515

Marc P. Clements, Esq.
Senior Director - Product Litigation and Compliance
Legal Dept.
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2550

The information provided in these responses is based solely upon the review of corporate records and documents.

INTERROGATORY NO. 54: Identify all documents that you relied on, or which otherwise evidence or support, your responses to the Requests for Admission.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery. Sunbeam also objects to this interrogatory as overbroad, unduly burdensome, and calling for information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that it seeks documents that "otherwise evidence or support [Sunbeam's] answers to the Requests for Admission."

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that Sunbeam did not rely on any documents that have not already been produced, or that are not now being produced, to Complaint Counsel.

INTERROGATORY NO. 55: Identify by name, address, title and job description each person who provided information to assist you in responding to the Requests for Admission, identify the Request for Admission responses for which she/he provided information, and provide a general description of the source of her/his knowledge and information.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, Sunbeam states that the following persons (apart from outside counsel) provided information to assist in responding to the Requests for Admission:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2515

Marc P. Clements, Esq.
Senior Director - Product Litigation and Compliance
Legal Dept.
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2550

The information provided in the responses is based solely upon the review of corporate records and documents.

INTERROGATORY NO. 56: With respect to any Request for Admission that you denied in whole or in part, for each such denial, state all facts and identify all documents upon which the denial is based.

RESPONSE: Sunbeam objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege, work-product doctrine, or any other applicable privileges or immunities from discovery.

Subject to and without waiving the foregoing objections and the General Objections, *see* Respondent Sunbeam's Responses to Complaint Counsel's First Set of Requests for Admissions, which are incorporated herein by reference.

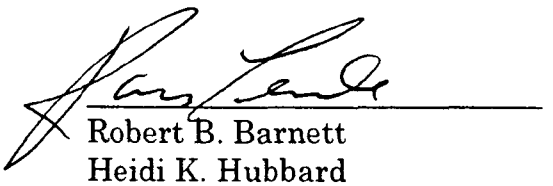
INTERROGATORY NO. 57: Identify by name, address, title and job description the person(s) answering these Interrogatories and attesting to your answers.

**RESPONSE:** Subject to and without waiving the General Objections,

Sunbeam states:

Barbara L. Allen
Corporate Secretary
Sunbeam Corporation
2111 East 37th Street North
P.O. Box 2931
Wichita, KS 67219
316/832-2515

As to objections,



Barbara Wrubel
Bert L. Wolff
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Robert B. Barnett
Heidi K. Hubbard
Karyn A. Temple
WILLIAMS & CONNOLLY LLP
725 - 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Attorneys for Sunbeam Corporation*

Dated: May 3, 2002

As to answers:

I hereby declare under penalty of perjury, that after a diligent search and based on any responsive information that could be located, the foregoing answers are true and correct to the best of my knowledge, information and belief.

Barbara L. Allen
Corporate Secretary

Dated: May 1, 2002

For Sunbeam Corporation

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the foregoing Respondent Sunbeam's Responses to Complaint Counsel's Second Set of Interrogatories to Respondent Sunbeam Corporation upon all parties and participants of record in these proceedings on this 3rd day of May, 2002, by hand-delivery on:

Michael J. Gidding, Esq.
Mark W. Porter, Esq.
Office of Compliance
Consumer Product Safety Commission
4330 East-West Highway, Rm. 613
Bethesda, MD 20814

*Counsel for Complainant, Consumer Product Safety Commission*

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Ave., NW
Suite 242
Washington, DC 20016-2756

with copy by U.S. mail, postage pre-paid to:

Ralph A. Weber, Esq.
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, S.C.
1000 North Water St.
P.O. Box 514000
Milwaukee, WI 53203-3400

*Counsel for Sprinkler Corporation of Milwaukee, Inc. and Grucon Corporation*

Karyn A. Temple

SBP

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

| | |
|---|---|
| In the matter of<br><br>CHEMETRON CORPORATION, f/k/a Chemetron Investments, Inc.<br><br>and<br><br>CHEMETRON INVESTMENTS, INC., f/k/a Chemetron Corporation<br><br>and<br><br>SUNBEAM CORPORATION<br><br>and<br><br>SPRINKLER CORPORATION OF MILWAUKEE, INC., f/k/a Star Sprinkler Corporation, f/k/a Grunau Sprinkler Manufacturing Company, Inc.<br><br>and<br><br>GRUCON CORPORATION | CPSC Docket No.: 02-1 |

**COMPLAINT COUNSEL'S ANSWERS TO RESPONDENTS' (CHEMETRON CORPORATION, CHEMETRON INVESTMENTS, INC., AND SUNBEAM CORPORATION) SECOND SET OF INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel responds as follows to Respondents' (Chemetron Corporation, Chemetron Investments, Inc., and Sunbeam Corporation) Second Set of Interrogatories.

Where current Commission employees are identified in the answers, the present business address of each such employee is as follows, unless otherwise stated: U.S. Consumer Product

Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Where former Commission employees are identified in the answers, the answers include their last known business address or residence address to the extent available to Complaint Counsel.

## GENERAL OBJECTIONS

### First General Objection

Complaint Counsel objects to these interrogatories and to Respondents' definition of "you," "your," "Complainant," and the "CPSC," as follows: a) to the extent the definition refers to the Consumer Product Safety Commission itself ("Commission"), as distinguished from the Commission staff which brought this action; and b) to the extent these requests seek documents or things from or relating to the Commission itself. The Commission itself is not a party to this action. Complaint Counsel's responses to these requests are on behalf of, and reflect documents and things in the possession, custody, or control of, the Commission staff which brought this action, including Complaint Counsel.

### Second General Objection

Complaint Counsel objects to these interrogatories to the extent they seek information or documents prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. Complaint Counsel will provide such information or produce such documents after providing third parties with the opportunity to make confidentiality claims and thereafter in accordance with the confidentiality stipulation agreed upon by the parties. Complaint Counsel responds to the interrogatories to the extent not restricted by the confidentiality requests and will supplement as necessary after lifting of the confidentiality restrictions.

Third General Objection

Complaint Counsel objects to these interrogatories to the extent they seek information or documents protected by the law enforcement investigatory privilege, attorney-client privilege, deliberative process privilege, the work product doctrine, or any other applicable privilege or protection. While Complaint Counsel will undertake to withhold information or documents protected by applicable privileges or doctrines, any inadvertent disclosure of such information or production of such documents shall not be deemed a waiver of any applicable privilege, doctrine, or protection.

Fourth General Objection

Complaint Counsel objects to these interrogatories to the extent they exceed the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

INTERROGATORIES AND ANSWERS

Interrogatory No. 106: Identify the total number of years that you contend a "dry" type fire sprinkler should function before it needs to be replaced with a new fire sprinkler.

Objections: As there are many types, makes, and models of dry fire sprinklers other than the Star ME-1, this interrogatory is overbroad and vague. Complaint Counsel further objects to this interrogatory to the extent it seeks information not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is also vague in that the term "should function" is undefined and unclear.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: Star ME-1 product information materials advise that the sprinklers should be replaced after fifty years of service or if they are painted, damaged, or corroded. Hence, Star ME-1 fire sprinklers should function for at least 50 years. Moreover, fused sprinklers cannot be reassembled or reused. Documents relating to this request that specifically

discuss the Star ME-1 have been subject to confidentiality claims and will be produced as those restrictions are lifted.

With respect to dry fire sprinklers generally, dry fire sprinklers should be replaced when they can no longer operate as intended in the event of a fire. The number of years it takes a particular sprinkler to reach this point will vary based upon many factors. Regarding dry sprinklers in general, until August 1999, NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, required that dry sprinklers be tested every 50 years, and sprinklers that fail such testing should be replaced. The NFPA standard does not specify what tests should be conducted or performance requirements met, but instead leaves these questions to be decided by the relevant jurisdiction or by reference to any state and/or local fire codes. In August 1999, NFPA issued an interim requirement that these sprinklers be tested every 10 years. If the sprinklers pass these tests, the standard calls for retesting every 10 years. If a sprinkler passes these tests, it continues to function. See also the response to Request for Admission 41.

Interrogatory No. 107: Describe in detail the general maintenance requirements for Star ME-1 fire sprinklers.

Answer: See the answers to Interrogatory Nos. 106 and 108. As noted above in the answer to Interrogatory No. 106, documents relating to this request that specifically discuss the Star ME-1 maintenance requirements have been subject to confidentiality claims and will be produced as those restrictions are lifted.

Interrogatory No. 108: State how frequently you contend a "dry" type fire sprinkler must be serviced and/or tested after being installed in order to properly function during a fire.

Objections: As there are many types, makes, and models of dry fire sprinklers other than the Star ME-1, this interrogatory is overbroad and vague. Complaint Counsel objects to this interrogatory to the extent it seeks information not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is also vague in that the term "properly function" is undefined and unclear.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See the answer to Interrogatory No. 106 and see NFPA 25.

Interrogatory No. 109: Identify the standard water pressure, in psi, present in most commercial buildings.

Objections: This interrogatory is vague in that the term "standard water pressure" is undefined and unclear, and the terms "most" and "commercial" are not defined or specific. Complaint Counsel objects to this interrogatory to the extent it seeks information not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: A number for the "standard water pressure" for most commercial buildings is impossible to provide, as there are multiple factors that will determine a given building's water pressure. These factors include the type of water supply system, *e.g.*, city water, gravity tank, or lake, as well as a building's altitude. Moreover, water pressure varies from building to building in a given area, at different sites within one building, at different times of day, and with different demands on a particular water supply system, *e.g.*, once any sprinklers activate in a fire, the water pressure almost certainly will drop for the remaining sprinklers that have yet to be activated.

Interrogatory No. 110: Identify the standard water pressure, in psi, present in most residential structures.

Answer: See the objections and answer to Interrogatory 109. This interrogatory includes vague and undefined terms, such as "standard water pressure" and "residential structures." Again, a precise number is impossible to provide, as many factors will determine a given residential structure's water pressure.

Interrogatory No. 111: Do you contend that the CPSC may reject a remedy elected by a manufacturer, distributor, or retailer under 15 U.S.C. § 2064(d)? If so,

(a) describe in detail the circumstances under which the CPSC may reject a remedy elected by a manufacturer, distributor, or retailer under 15 U.S.C. § 2064(d);

(b) identify each instance within the past ten years in which the CPSC has rejected a remedy elected by a manufacturer, distributor, or retailer under 15 U.S.C. § 2064(d); and for each such instance:

(1) identify the product involved;

(2) identify the manufacturer, distributor, or retailer involved; and

(3) describe in detail the reasons behind the CPSC's decision to reject the remedy elected by the manufacturer, distributor, or retailer.

Objections: This interrogatory calls for a legal conclusion. Moreover, since only the Commission can interpret the law in this area, any response would be speculative, premature, and divorced of any factual context.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows:

(a) Section 15(d) of the Consumer Product Safety Act, 15 U.S.C. § 2064(d) provides, inter alia, that if, after affording interested parties the opportunity for a hearing, the Commission determines that a product distributed in commerce presents a substantial product hazard and

further determines that remedial action under this subsection is in the public interest, the Commission may order the manufacturer, or any distributor or retailer of the product, to take whichever of the remedies of repair, replacement of the product, or refund of its purchase price the person to whom the order is directed elects. Section 15 (e) of the CPSA, 15 U.S.C. § 2064(e), provides that no charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such a remedy.

Taking the two subsections together, while a manufacturer may elect one of the remedies prescribed in the statute, it was clearly Congress' intent that that election not impose on consumers expenditures that might discourage their participation in the recall. To effectuate this intent, an order under section 15(d) may require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the elected action. The plain implication of the statute is that, if the plan is not satisfactory, the Commission may reject it. The Commission, sitting as an adjudicatory body, has not had occasion to consider whether such rejection could result in depriving a person of the right to pursue a specific election.

(b) The agency, during the last ten years, has not litigated any administrative matter to the point at which a party would have to make a formal election and proffer a plan to the Commission.

Interrogatory No. 112: Has the CPSC ever permitted a manufacturer, distributor, or retailer to elect a remedy listed under 15 U.S.C. § 2064(d)? If so:

(a) identify each instance within the past ten years in which the CPSC has permitted a manufacturer, distributor, or retailer to elect a remedy listed under 15 U.S.C. § 2064(d);

(b) identify the manufacturer, distributor, or retailer involved; and

(c) describe in detail the circumstances under which the CPSC permitted the manufacturer, distributor, or retailer to elect a remedy listed under 15 U.S.C. § 2064(d).

Objections: This interrogatory is vague in several respects, including, but not limited to, Respondents' definition of "CPSC" and the usage of that term in this interrogatory. Given its context, however, Complaint Counsel interprets "CPSC" here as meaning the Commission itself, sitting as an adjudicative body, as only the Commission itself can make the decision to accept a remedy in accordance with the provisions of 15 U.S.C. § 2064(d).

Answer: Notwithstanding and without waiving the foregoing objections, and based on Complaint Counsel's interpretation of this request, Complaint Counsel answers as follows: No. See the Answer to Interrogatory 111. The Commission has, however, accepted settlement agreements in which manufacturers have elected to take actions consistent with the remedies listed in 15 U.S.C. § 2064(d).

Interrogatory No. 113: Describe in detail the "similarities in design and defects between the Central Omega sprinklers and other sprinklers, including dry sprinklers and the Star ME-1," as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 5.

Objections: Complaint Counsel objects to this interrogatory to the extent it seeks information protected by the attorney work product doctrine, as well as information prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality. This interrogatory is overbroad and unduly burdensome. Complaint Counsel objects to this interrogatory to the extent it seeks information not relevant to the subject matter of the proceedings and not

reasonably calculated to lead to the discovery of admissible evidence. Complaint Counsel further objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: A key similarity between the Central Omega and the Star ME-1 is the use of an o-ring as a piston-bore seal. The Central Omega and the Star ME-1 share a key defect in that the o-ring sticks in both sprinklers.

With respect to similarities between the Central Omega and other sprinklers, the answer to Interrogatory No. 5 states that the staff received information of such similarities, and that this information was part of what led the staff to investigate the Star ME-1. The staff believes the information it received at the time was general and suggested such similarities. The staff considered that information in combination with other information the staff obtained at the time (described in the answer to Interrogatory No. 5). As part of its Star ME-1 investigation, the staff analyzed the Star ME-1 independent of and beyond the general leads or indications it initially received.

Interrogatory No. 114: Describe in detail the Central Omega Sprinkler.

Objections: Complaint Counsel objects to this interrogatory to the extent it seeks information not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence. Complaint Counsel objects to this interrogatory to the extent it seeks information prohibited from disclosure pursuant to 15 U.S.C. § 2055 or a request for confidentiality.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The Omega series automatic fire sprinklers are a line of automatic

fire sprinklers manufactured by Central Sprinkler Company and designed to suppress and/or extinguish fire. Omegas were installed in homes, apartment buildings, schools, nursing homes, and athletic facilities, among other places. See the publicly available Central Omega documents that Complaint Counsel previously produced to the Respondents. In addition to those documents, the Respondents may also contact Central Sprinkler Company for more detailed information.

Interrogatory No. 115: Describe in detail the factual basis for your belief that the silent recall of Star ME-1's by Mealane Corporation in 1990 resulted from information that Star ME-1's may not operate properly under fire conditions, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 5.

Answer: Star Sprinkler Corporation issued notices and correspondence in 1990 and 1991 specifically stating that specified dry sprinklers (including the Star ME-1) manufactured between 1959 and 1981 by the company then known and existing as Star Sprinkler "may not operate properly under fire conditions." The staff provided these notices to the Respondents as attachments to Seth Popkin's letter to David Baker dated November 30, 2000, and produced them during discovery on February 7, 2002 (elabeled 000096-000098). See those documents. See also the answer to Interrogatory No. 5.

Interrogatory No. 116: Describe in detail the factual basis for your understanding that sales of Star ME-1's by Chemetron occurred from in or about 1976 to in or about 1982, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 20.

Answer: Complaint Counsel believes that its answer to Interrogatory 20 already answers this interrogatory. In addition, in its interrogatory answers, Chemetron stated that it distributed Star ME-1's between 1977 and 1982 (Answer to Interrogatory 25). In the Answer and Defenses of Chemetron Corporation filed November 1, 2001, Chemetron "admits on information and belief that Chemetron, or a former subsidiary of it, manufactured some kind of

Star ME-1 'dry' fire sprinklers at some point during the identified period" (identified as from in or about 1976 to in or about 1982).

Interrogatory No. 117: Describe in detail the factual basis for your contention that although Star ME-1's were largely distributed to contractors and others for installation in buildings, "it is conceivable that some [Star ME-1's] were sold directly to consumers who served as their own contractors or who retained contractors to perform the installation", as stated in your response to Respondents' First Set of Interrogatories Nos. 27-29 and 33.

Objections: See Complaint Counsel's General Objections above.

Answer: Complaint Counsel is unaware of any prohibition on the sales of Star ME-1 sprinklers to consumers, nor has the information that Respondents have produced to Complaint Counsel in discovery shown such a prohibition. Hence, it is "conceivable" that some Star ME-1's were sold to consumers for use in the circumstances described in the original responses.

Interrogatory No. 118: Identify the total number of failure mode analyses conducted by or on behalf of the CPSC on Star ME-1's.

Objections: See Complaint Counsel's General Objections above. Complaint Counsel objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The staff and expert consultants to the staff conducted and reviewed failure mode analyses, failure mode examinations, and product design analyses, and they reviewed such analyses and examinations that the staff and others conducted. These analyses, examinations, and reviews varied in scope, nature, and duration, and, because of these variables, Complaint Counsel cannot state with precision the exact total number of all of them. Complaint Counsel, however, states that the failure mode analyses, failure mode examinations,

and product design analyses, and the reviews of same, have included, but are not necessarily limited to, the following, which were conducted by CPSC staff and expert consultants to CPSC staff (individually, in meetings, and/or in telephone conversations): several (approximately 5) preliminary/preparatory tear downs of Star ME-1's, including some manufactured before 1977, and written reports of these tear downs; 12 tear downs of Star ME-1's manufactured after 1976 and pressure tested by the USNA, and written reports of these tear downs; additional analyses/testing of components of certain of the 12 torn down sprinklers; multiple reviews of Star ME-1 analyses documented by manufacturers, including Grinnell and Star Sprnkler, Inc.; multiple reviews of Star ME-1 engineering drawings and change notices; and multiple reviews of Star ME-1 changes and product design history. In addition, Complaint Counsel directs the respondents to the USNA pressure testing information and documentation previously provided, including 90 previously-installed post-1976 Star ME-1 pressure tests the USNA conducted, the approximately 90 post-1976 Star ME-1 pressure tests conducted by third parties Grinnell, FM, and UL (which periodically provide additional test results that Complaint Counsel will provide in supplemental discovery production/responses to the extent not subject to confidentiality claims), and Star ME-1 pressure tests conducted by Sunbelt Fire Protection (documents to be produced as confidentiality matters finalized). Complaint Counsel previously provided in discovery extensive information and documentation concerning the pressure testing (to the extent not restricted by confidentiality claims of third parties). Star ME-1 analyses, examinations, and reviews included these pressure tests and their results. Analyses and reviews continue. See also Complaint Counsel's responses to Interrogatory No. 54 and the answer to Interrogatory No. 122.

Interrogatory No. 119: Identify the total number of failure mode analyses reviewed by the CPSC staff on Star ME-1's.

Answer: See the objections and answer to Interrogatory No. 118.

Interrogatory No. 120: Identify the total number of product design analyses conducted by or on behalf of the CPSC on Star ME-1's.

Answer: See the objections and answer to Interrogatory No. 118.

Interrogatory No. 121: Identify the total number of product design analyses reviewed by the CPSC staff on Star ME-1's.

Answer: See the objections and answer to Interrogatory No. 118.

Interrogatory No. 122: Identify the total number of pressure tests conducted by or on behalf of the CPSC on Star ME-1's.

Objections: See Complaint Counsel's General Objections above. Complaint Counsel objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The USNA, on behalf of the Commission staff, tested 90 post-1976 previously-installed Star ME-1's. Complaint Counsel has previously provided database printouts showing the results of those 90 tests. The USNA also tested four 1977 Star ME-1's that had not been installed. The USNA conducted the Star ME-1 pressure tests on behalf of the Commission staff, and Complaint Counsel has previously produced in discovery the documents, videotapes, and other information evidencing the USNA's Star ME-1 pressure testing. To the extent that the USNA conducted any additional tests on Star ME-1's (e.g., on pre-1977 sprinklers or sprinklers that had not been installed), that information would be reflected in the USNA documents previously produced. See also Complaint Counsel's answer to Interrogatory 49.

Interrogatory No. 123: Identify the total number of pressure tests reviewed by the CPSC staff on Star ME-1's.

Objections: See Complaint Counsel's General Objections above. Complaint Counsel objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts. This interrogatory is vague because the meaning of the term "pressure tests reviewed" is not clear, as it does not specify whether it means review or observation of the testing itself, the test results, or something else.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The Commission staff reviewed all Star ME-1 pressure test results it received, including those provided by the USNA and by third parties Grinnell, FM, UL, and Sunbelt Fire Protection. See the answer to Interrogatory 122.

Interrogatory No. 124: Describe in detail the factual basis for your estimate that Chemetron Corporation manufactured 200,000 Star ME-1's between 1977 through 1982.

Objections: See Complaint Counsel's Second General Objection relating to confidential information.

Answer: The estimate was based on an extrapolation from data showing the production of Star ME-1's from 1989 through 1998 (which currently remains subject to confidentiality claims) and estimates of the production from 1961 through 1976.

Interrogatory No. 125: Describe in detail the characteristics of a consumer product.

Objection: This interrogatory is overly broad and vague and, to the extent it goes beyond the statutory definition contained in 15 U.S.C. 2052(a), requests Complaint Counsel to engage in speculation.

Answer: Notwithstanding and without waiving the foregoing objections, see 15 U.S.C. 2052(a). Complaint Counsel believes that Respondents' Star ME-1 sprinklers were articles manufactured and distributed for sale to, or for the personal use or enjoyment of, consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

Interrogatory No. 126: Describe in detail the process by which Star ME-1's tested by or on behalf of the CPSC were removed from the buildings in which they were installed.

Answer: Professional sprinkler installers removed the Star ME-1's. The staff also provided the Fire Sprinkler Field Removal Protocol (see, e.g., document 008547 previously produced) to sites and/or contractors performing removal work. That protocol provided that the persons consult procedures the manufacturer prescribes for removal of the sprinklers and comply with those instructions in removing the sprinklers. Sites hired and/or contracted with professional sprinkler installers. In the case of some sites, such as Raley's stores, Grinnell Fire Protection coordinated with Raley's and performed the removals.

Interrogatory No. 127: Describe in detail the factual basis for your belief that the Star ME-1's installed at Raley's supermarket were manufactured by Chemetron.

Answer: The staff believes that the 1981 Star ME-1's in sample lot 00-860-6228 removed from the Raley's in Windsor, CA (listed in the database printout previously produced) were manufactured by Chemetron. The basis for this belief is that Chemetron was the manufacturer of Star ME-1's in 1981, the year in which these Star ME-1's were manufactured.

Interrogatory No. 128: Describe in detail the factual basis for your belief that a Star ME-1 fire sprinkler that does not activate at or below 7 psi when tested has "failed" as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 64.

Objections: See Complaint Counsel's General Objections

Answer: Notwithstanding and without waiving the foregoing objections, see Complaint Counsel's Answer to Respondents' Interrogatory No. 50. Seven psi is a minimum water pressure established in nationally recognized standards designed to assure that a sprinkler, under reasonably foreseeable conditions of installation and use, will provide sufficient water in a sufficient spray pattern to suppress or extinguish a fire. When tested at that 7 psi level, a large portion of Star ME-1 fire sprinklers fail to function.

Interrogatory No. 129: Do you contend that 7 psi is the standard water pressure in most commercial buildings? If so, describe in detail the factual basis for your contention.

Objections: See Complaint Counsel's General Objections above. Also, the terms "standard water pressure" and "most commercial buildings" are vague.

Answer: No, assuming that the term "standard water pressure" refers to the static water pressure. However, a wide variety of factors, such as failures in the water system, flushing toilets, open faucets, and sprinklers that have opened in a fire, may reduce the water pressure at any given sprinkler. See also the answer to Interrogatory No. 109.

Interrogatory No. 130: Do you contend that 7 psi is the standard water pressure in most residential households? If so, describe in detail the factual basis for your contention.

Objections: See Complaint Counsel's General Objections above. Also, the terms "standard water pressure" and "most residential households" are vague.

Answer: No, assuming that the term "standard water pressure" refers to the static water pressure in a building. However, factors such as those listed in the response to Interrogatory 129 may forseeably reduce the water pressure available at any specific sprinkler in a building. See also the answer to Interrogatory No. 110.

Interrogatory No. 131: Do you contend that a Star ME-1 sprinkler that does not activate at a water pressure of 7 psi when tested cannot activate properly in a fire? If so, describe in detail the factual basis for your contention.

Objections: See Complaint Counsel's Objections to Interrogatory 48 of Respondents' First Set of Interrogatories.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: See the Supplemental Answer to Interrogatory 48 of Respondent's First Set of Interrogatories, and Complaint Counsel's Answer to Repsondents' Interrogatory Nos. 50 and 128. See also Complaint Counsel's Response to Request for Admission No. 35. In order for a Star ME-1 fire sprinkler to be tested to determine the pressure at which it will activate, its thermal sensing element must first be fused by heat. Once the element has fused, that particular sprinkler could not be installed and used in a building for fire protection purposes, and, therefore, it could not activate in a fire. Even though a Star ME-1 does not activate at a water pressure of 7 psi when tested, it may activate during such testing at a pressure higher than 7 psi.

Interrogatory No. 132: Were any of the Star ME-1's tested by or on behalf of you altered by paint on the nozzle or sprinkler head? If so, fully explain how this factor was taken into account when testing the sprinkler heads and determining their failure rates.

Objections: See Complaint Counsel's General Objections above. This interrogatory is vague because the meaning of the term "altered by paint on the nozzle or sprinkler head" is not clear.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: To the best of Complaint Counsel's knowledge, and except as may have been noted on documents produced, no.

Interrogatory No.133: Did you or those testing the Star ME-1's on your behalf, consider the prior maintenance history of the Star ME-1's tested? If so, describe in detail how the prior maintenance history of the Star ME-1's was considered when conducting the testing. If not, describe in detail why you did not consider the prior maintenance history of the Star ME-1's when conducting the testing.

Answer: No. The pressure testing protocol (previously produced) did not call for consideration of the prior maintenance history of the Star ME-1's when conducting the testing. That information was not relevant to conducting the pressure testing.

Interrogatory No. 134: Do you contend that the failure of a Star ME-1 fire sprinkler to operate at a water pressure of 7 psi constitutes a substantial product hazard? If so, describe in detail the factual basis for your conclusion.

Objections: See Complaint Counsel's General Objections. This interrogatory calls for a legal conclusion. The interrogatory is also vague. Moreover, assuming that Respondents use the term "substantial product hazard" as it is defined in 15 U.S.C. 2064, the Interrogatory as written cannot be answered because the statute requires consideration of the "pattern of defect" and "the number of products distributed in commerce."

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows. Fire codes and sprinkler systems are designed with the underlying premise that the sprinklers will function properly and disperse water in a prescribed manner at 7 psi and higher pressures. A Star ME-1 fire sprinkler in service that does not operate and/or properly disburse water at a water pressure of 7 psi or higher when the sprinkler is exposed to a fire that causes the thermal element to fuse/melt may not work to suppress or extinguish the fire as required by the sprinkler design and contemplated by the fire codes. Whether a particular individual ME-1 sprinkler will function properly depends on, among other things, the amount of pressure needed to properly activate that sprinkler and the available water pressure at that particular sprinkler. Because the defects in the Star ME-1 sprinklers will cause many of them to

fail to function at 7 psi and much higher pressures in the many real life conditions in which they are expected to function to save lives or prevent injuries, those failures create substantial risk of injury.

Interrogatory No.135: Do you contend that if a Star ME-1 fire sprinkler operates at a 7 psi water pressure level when tested, it does not contain a defect? If so, describe in detail the factual basis for your contention. If not, describe in detail why you do not make such a contention.

Objection: See Complaint Counsel's General Objections above.

Answer: Notwithstanding and without waiving the foregoing objections, no. See Complaint Counsel's Answers to Respondents' Interrogatory Nos. 50, 52, 53, 55, and 64.

Interrogatory No. 136: Describe in detail all tools used by you or by your agents, contractors, employees, or other third parties about whom you have knowledge, when removing for testing Star ME-1's that had been previously installed in buildings.

Answer: See the answer to Interrogatory No. 126. Complaint Counsel does not otherwise have first-hand knowledge of the information sought by this interrogatory.

Interrogatory No. 137: Did you or your agents, contractors or employees damage any Star ME-1's when removing them from buildings for testing? If so, were these Star ME-1's tested?

Answer: The Commission staff and its agents, contractors, or employees did not perform the Star ME-1 sprinkler removal services. See the answer to Interrogatory No. 126. The Commission staff received information that some Star ME-1's were damaged at the time of removal, and those Star ME-1's were not pressure tested.

Interrogatory No. 138: Describe in detail the chain of custody for each Star ME-1 fire sprinkler removed from a building for testing. Your response should include, without limitation, the following:

(a) an identification of all persons who participated in the removal of the Star ME-1 fire sprinkler;

(b) an identification of all locations where the Star ME-1 fire sprinkler has been stored or placed since removal, including whether the location was a secure location;

(c) an identification of all persons who were involved in the storage of the Star ME-1 fire sprinkler;

(d) an identification of all persons who had access to the Star ME-1 fire sprinkler;

(e) an identification of the current location of the Star ME-1 fire sprinkler; and

(f) an identification of all persons who currently have access to the Star ME-1 fire sprinkler.

Objections: Complaint Counsel objects to this interrogatory to the degree it seeks information not in possession of the Commission staff, e.g. the identity all persons involved in the removal of Star ME-1 sprinklers samples, as well as information protected from disclosure because it pertains to consultants or non-testifying experts.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: Commission staff track chain of custody for any samples received for further evaluation and testing by way of the assigned sample numbers (including sub-parts or sub-samples). Set forth below is a list of the ME-1 samples received by CPSC to which sample numbers were assigned.

As CPSC staff were not involved in the actual removal of the star ME-1 samples from buildings, we have set forth in section (a) pertaining to each sample the sample's source, as well as the identification of the parties and/or persons, if known, who were involved in sample removal. Personnel from Grinnell and Sunbelt Fire Protection removed the bulk of the sampled sprinkler from their locations, for which documents have already been produced by Complaint Counsel or will soon be produced, pending resolution of any outstanding confidentiality claims.

Set forth in section (b) pertaining to each sample is a list of the CPSC personnel involved in the chain of custody for the sample and/or select sub-samples, following their arrival at CPSC. Complaint Counsel will be producing shortly any elabeled documents, not already produced, commemorating this chain, including CPSC sample collection reports, sample tracking printouts, and any available chain-of-custody seals used by CPSC staff. As staff generally place custody seals on the box containing the sample, Complaint Counsel will not be producing copies of any seals that remain on the original boxes into which samples or sub-samples were placed. Counsel for Respondents are free to examine any such boxes and seals at a mutually agreeable date and time. CPSC's sample custodian is Tony Johnson.

Set forth in section (c) for each sample and/or select sub-samples is their location within CPSC headquarters upon their arrival, as well as any subsequent storage locations within CPSC our outside the agency. Commission policy dictates that samples are maintained in secure locations, such as locked storage facilities or locked workrooms or desks. In general, any CPSC compliance and enforcement personnel, as well as any other Commission staff assisting on a given investigation, have access to official samples once procedures are followed to ensure the sample's integrity.

<u>00-792-0418 (contains 4 sub-samples)</u>

(a) Tombstone Pizza, Medford, Wisconsin.
(b) Mary E. Wilson-Dawson; Amy Brown; Shawn Cerruti; Tony Johnson.
(c) Office of Compliance/Recalls; Directorate for Engineering Sciences/Mechanical Engineering; Sample Room 3; U.S. Naval Academy (outside testing); Engineering Workroom 605; Patrick Moran (outside expert); Warehouse, Sample Room 1.

<u>00-792-0425 (contains 10 sub-samples)</u>

(a) Warsaw Health Center, Missouri. Tom Wright, Sunbelt Fire Protection.
(b) Mary E. Wilson-Dawson; Amy Brown; Tony Johnson; Shawn Cerruti; Andrea Paterson.

(c) Office of Compliance/Recalls; Directorate for Engineering Sciences/Mechanical Engineering; U.S. Naval Academy (outside testing); Sample Room 3; Warehouse; Compliance Legal Division; Patrick Moran (outside expert).

00-792-0448 (contains 23 sub samples)

(a) Leisure Village Nursing Home, Tulsa, Oklahoma. Sunbelt Fire Protection.
(b) Mary E. Wilson-Dawson; Amy Brown; Shawn Cerruti; Tony Johnson, Andrea Paterson.
(c) Office of Compliance/Recalls; Directorate for Engineering Sciences/Electrical Engineering; Engineering Workroom 605; U.S. Naval Academy (outside testing); Warehouse; Sample Room 3, Compliance Legal Division, Patrick Moran (outside expert).

00-860-6226 (contains 6 sub-samples)

(a) Raley's, Grass Valley, California. Grinnell Corporation.
(b) Thelma E. Tucker; Ralph King; Tony Johnson; Mark Kumagai; Amy Brown; Shawn Cerruti.
(c) Warehouse; Sample Room 3; Directorate for Engineering Sciences/Mechanical Engineering; U.S. Naval Academy (outside testing); Engineering Workroom 605; Sample Room 1.

00-860-6227 (contains 21 sub-samples)

(a) Raley's, Chico, California. Grinnell Corporation.
(b) Thelma E. Tucker; Ralph King; Tony Johnson; Jean Kennedy; Mark Kumagai; Amy Brown, Shawn Cerruti
(c) Warehouse; Sample Room 3; Patrick Moran (outside expert); Directorate for Engineering Sciences/Mechanical Engineering; U.S. Naval Academy (outside testing); Engineering Workroom 605; Office of Compliance/Recalls; Sample Room 1; outside consultant (confidential).

00-860-6228 (contains 22 sub-samples)

(a) Raley's, Windsor, California. Grinnell Corporation.
(b) Thelma E. Tucker; Ralph King; Tony Johnson; William L. Rowe; Dean L. LaRue; Shawn Cerruti; Andrea Paterson.
(c) Warehouse; Directorate for Laboratory Sciences; Office of Compliance/Recalls; Sample Room 3; Mid-Atlantic Service Center (part of Field Operations, Eastern Region); U.S. Naval Academy (outside testing); Compliance Legal Division; Patrick Moran (outside expert)

00-792-0536 (contains 20 sub-samples)

(a) John Knox Village, Missouri. Tony Milz, National Fire Suppression.
(b) Jackie Y. Goins; Shawn Cerruti; Tony Johnson; Andrea Paterson.
(c) Office of Compliance/Recalls; Sample Room 1; Directorate for Engineering Sciences/Electrical Engineering; Engineering Workroom 605; U.S. Naval Academy (outside testing); Sample Room 3; outside consultant (confidential); Compliance Legal Division; Patrick Moran (outside expert).

99-792-0490 (contains 6 sub-samples)

(a) Raley's, Sacramento, California. Grinnell.
(b) Amy Brown.
(c) Sample Room 3.

99-792-7007 (contains 4 sub-samples)

(a) Merck & Co., West Point, Pennsylvania
(b) Judy H. Smith; Amy Brown; Tony Johnson; Shawn Cerruti; Andrea Paterson.
(c) Office of Compliance/Recalls; Sample Room 3; U.S. Naval Academy (outside testing); Warehouse; Compliance Legal Division; Patrick Moran (outside expert).

00-792-0010 (contains 4 sub-samples)

(a) Grunau Project Development.
(b) Jackie Y. Goins; Shawn Cerruti; Tony Johnson.
(c) Directorate for Engineering Sciences/Electrical Engineering; Engineering Workroom 605; Warehouse; Sample Room 3.

99-792-0626 (contains 1 sub-sample)

(a) Prairie View Health Center, Warsaw, Indiana. Ken Shepard, Warsaw Fire Chief, Warsaw, Indiana.
(b) Amy Brown; Shawn Cerruti; Tony Johnson.
(c) Sample Room 3; Directorate for Engineering Sciences/Mechanical Engineering; Engineering Workroom 605; Warehouse; Sample Room 1.

99-792-0417 (contains 18 sub-samples – mix of Star ME-1 sprinklers and E-1 sprinklers)

(a) source confidential (non-testifying consultant/expert).
(b) Amy Brown; Shawn Cerruti; Tony Johnson.
(c) Engineering Workroom 605; Warehouse; Office of Compliance/Recalls; Patrick Moran (outside expert); Sample Room 3.

Interrogatory No. 139: Identify the consultants, manufacturers and third parties referenced in your response to Respondents First Set of Interrogatories, Interrogatory No. 53.

Objections: See Complaint Counsel's General Objections above. Complaint Counsel objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The manufacturers include Star Sprinkler, Inc. and Grinnell Corporation. The third parties include, but are not necessarily limited to, Grunau

Project Development, Inc., Factory Mutual Research Corporation (FM), Underwriters Laboratories Inc. (UL), and Sunbelt Fire Protection, Inc. The consultants include the following: Patrick J. Moran, Ph.D, Mechanical Engineering Department, United States Naval Academy, Annapolis, MD 21402 (business address), 23 Old Sturbridge Road, Arnold, MD 21012 (residence address); Mark Kumagai (see answer to Interrogatory No. 4); and USNA testing/examination consultants Dr. Angela L. Moran, Stephen J. Cruthley, and Anthony F. Antenucci (all of whom Complaint Counsel identified further in the answer to Interrogatory No. 4).

Interrogatory No. 140: Identify the total number of Star ME-1's that you contend have been installed in nursing homes.

Objections: See Complaint Counsel's General Objections above

Answer: Inasmuch as Respondents manufactured and distributed Star ME-1 fire sprinklers, the Respondents are in the best position to provide or obtain the information responsive to this interrogatory. Complaint Counsel lacks the information necessary to answer this interrogatory with respect to the total number. Complaint Counsel directs the Respondents to documents produced and/or that will be produced that the staff obtained from, among others, Egoville & Associates and Sunbelt Fire Protection (including, but not limited to, a spreadsheet listing numerous nursing homes at which Star ME-1's were installed and the quantities installed at those homes, elabeled 008463-008466).

Interrogatory No. 141: Identify the total number of Star ME-1's that you contend have been installed in health care facilities.

Objections: See Complaint Counsel's General Objections above.

Answer: Inasmuch as Respondents manufactured and distributed Star ME-1 fire sprinklers, the Respondents are in the best position to provide or obtain the information responsive to this interrogatory. Complaint Counsel lacks the information necessary to answer this interrogatory with respect to the total number. Complaint Counsel directs the Respondents to documents produced and/or that will be produced that the staff obtained from, among others, Egoville & Associates and Sunbelt Fire Protection (including, but not limited to, a spreadsheet listing numerous health care facilities at which Star ME-1's were installed and the quantities installed at those facilities, elabeled 008463-008466).

Interrogatory No. 142: Identify the total number of Star ME-1's that you contend have been installed in day care centers.

Objections: See Complaint Counsel's General Objections above.

Answer: Inasmuch as Respondents manufactured and distributed Star ME-1 fire sprinklers, the Respondents are in the best position to provide or obtain the information responsive to this interrogatory. Complaint Counsel lacks the information necessary to answer this interrogatory with respect to the total number. Complaint Counsel has received information that approximately 100 Star ME-1's manufactured from 1982 - 1986 are located at the Fermilab Curia I Day Care Center in Batavia, Illinois. Complaint Counsel will be producing additional documents regarding this site.

Interrogatory No. 143: Identify the total number of Star ME-1's that you contend have been installed in schools.

Objections: See Complaint Counsel's General Objections above.

Answer: Inasmuch as Respondents manufactured and distributed Star ME-1 fire sprinklers, the Respondents are in the best position to provide or obtain the information responsive to this

interrogatory. Complaint Counsel lacks the information necessary to answer this interrogatory with respect to the total number. Complaint Counsel directs the Respondents to documents that will be produced that the staff obtained from Egoville & Associates, indicating that at least 6 Star ME-1's have been installed in schools.

Interrogatory No. 144: Identify the total number of Star ME-1's that you contend have been installed in residences or households (as those terms are used in 15 U.S.C. § 2052).

Objections: See Complaint Counsel's General Objections above.

Answer: Inasmuch as Respondents manufactured and distributed Star ME-1 fire sprinklers, the Respondents are in the best position to provide or obtain the information responsive to this interrogatory. Complaint Counsel lacks the information necessary to answer this interrogatory with respect to the total number. See the answers to Interrogatories 140 - 142.

Interrogatory No. 145: Identify the total number of consumers (as that term is understood by you) who are currently exposed to Star ME-1's.

Objections: See Complaint Counsel's General Objections above.

Answer: See Complaint Counsel's Supplemental Answer to Interrogatory 26. Inasmuch as Respondents manufactured and distributed Star ME-1 fire sprinklers, the Respondents are in the best position to provide or obtain the information responsive to this interrogatory. Complaint Counsel lacks the information necessary to answer this interrogatory.

Interrogatory No. 146: Of the 180 Star ME-1's tested by or on behalf of the CPSC, identify the total number that were manufactured by Chemetron.

Objections: See Complaint Counsel's General Objections above. In addition, as noted in the database charts produced to the Respondents, 90 previously-installed Star ME-1's were pressure tested by or on behalf of the Commission staff (not 180), and see the answer to

Interrogatory Nos. 118 and 122 for additional information about Star ME-1's tested by or on behalf of the Commission staff. Third parties pressure tested the balance.

Answer: Twelve or thirteen (see printout previously produced). The charts of Star ME-1 fire sprinkler pressure tests produced to Respondents identify the dates on which each sprinkler tested was manufactured. Respondents are aware of the dates during which they manufactured sprinklers and should be able to determine the response to this interrogatory from the charts or from examination of the sprinklers themselves.

Interrogatory No. 147: Describe in detail the factual basis for your belief that if testing of Star ME-1's has not stopped at the pressures of 40 and 15 psi, the sprinklers tested would have failed to operate at pressures even higher than 40 psi, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 64.

Objections: See Complaint Counsel's General Objections above, and Complaint Counsel's Objections to Interrogatory No. 64. Interrogatory No.147 also misstates Complaint Counsel's Response to Interrogatory No. 64, which states in part that "...many of these sprinklers would have failed to operate at pressures even higher than 40 psi." (Emphasis added).

Answer: The information responsive to this interrogatory relates to expert analysis of the Star ME-1's. Complaint Counsel will provide the requested information to the extent not restricted by the objections and to the extent available in conjunction with identification and disclosure of expert witnesses expected to testify at the hearing. In addition, documents for which third parties have made claims of confidentiality may contain information responsive to this request. Any such information will be provided upon resolution of those claims. Notwithstanding and without waiving the foregoing objections, see also Complaint Counsel's Answers to Interrogatory Nos. 49, 53, 54, 55, 64, and 72, and Complaint Counsel's Supplemental Answer to Interrogatory No. 64. The data showing that a number of sprinklers tested operated at above 40 psi or failed to operate at

all at pressures above 40 psi, analyses and observations of sprinklers that have been pressure tested, as well as the causes of ME-1 failure identified in the Responses to Interrogatory No. 64, provide a factual basis for the staff's belief asserted in its Response to Interrogatory No. 64.

Interrogatory No. 148: Describe in detail the factual basis for your belief that the quantities and pressure levels of failures of Star ME-1's will likely increase, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory no. 64.

Objections: See Complaint Counsel's General Objections above, and Complaint Counsel's Objections to Interrogatory No. 64.

Answer : The information responsive to this interrogatory relates to expert analysis of the Star ME-1's. Complaint Counsel will provide the requested information to the extent not restricted by the objections and to the extent available in conjunction with identification and disclosure of expert witnesses expected to testify at the hearing. In addition, documents for which third parties have made claims of confidentiality may contain information responsive to this request. Any such information will be provided upon resolution of those claims. Notwithstanding and without waiving the foregoing objections, see also Complaint Counsel's Answer to Interrogatory No. 147. Many of the conditions such as the build-up of deposits and O-ring bonding identified in the Answer and Supplemental Answer to Interrogatory No. 64 that result from inadequate design and manufacturing and that lead to Star ME-1 failure develop over time.

Interrogatory No. 149: Describe in detail the "interference and fit problems with the components" of Star ME-1's, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 64.

Objections: See Complaint Counsel's General Objections above. Complaint Counsel objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The information responsive to this interrogatory relates to expert analysis of the Star ME-1's. Complaint Counsel will provide the requested information to the extent not restricted by the objections and to the extent available in conjunction with identification and disclosure of expert witnesses expected to testify at the hearing. In addition, documents for which third parties have made claims of confidentiality may contain information responsive to this request. Any such information will be provided upon resolution of those claims. Complaint Counsel answers further as follows: Star ME-1's have been observed to have close dimensional tolerances between the piston and the bore. Some Star ME-1 pistons have been observed to be cocked.

Interrogatory No. 150: Describe in detail the "minimal engineering changes to the Star ME-1" identified by CPSC staff, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 64.

Objections: See Complaint Counsel's General Objections above. Complaint Counsel objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The information responsive to this interrogatory relates to expert analysis of the Star ME-1's. Complaint Counsel will provide the requested information to the extent not restricted by the objections and to the extent available in conjunction with identification and disclosure of expert witnesses expected to testify at the hearing. In addition, documents for which third parties have made claims of confidentiality may contain information responsive to this request. Any such information will be provided upon resolution of those claims. Complaint Counsel answers further as follows: The staff identified certain minimal

engineering changes to the Star ME-1 in the period of 1977 through 1995, including changes regarding the lubricant, coating, piston, and o-ring supplier.

Interrogatory No. 151: Describe in detail the factual basis for your belief that none of the engineering changes referenced in Interrogatory No. 147 eliminated the defect of the Star ME-1 fire sprinkler, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 64.

Objections: See Complaint Counsel's General Objections above. Complaint Counsel objects to this interrogatory to the extent it exceeds the requirements and limitations of 16 C.F.R. § 1025.31(c)(4) regarding experts. Complaint Counsel notes that Interrogatory No. 147 does not reference any engineering changes, and Complaint Counsel objects on that basis. Complaint Counsel presumes, however, that the Respondents intended to reference Interrogatory No. 150 and responds accordingly.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The information responsive to this interrogatory relates to expert analysis of the Star ME-1's. Complaint Counsel will provide the requested information to the extent not restricted by the objections and to the extent available in conjunction with identification and disclosure of expert witnesses expected to testify at the hearing. In addition, documents for which third parties have made claims of confidentiality may contain information responsive to this request. Any such information will be provided upon resolution of those claims. Complaint Counsel answers further as follows: The factual basis for the staff's belief that none of the engineering changes noted eliminated the defect includes, but is not necessarily limited to, the following: the Star ME-1 pressure test results, including numerous failures; engineering drawings and records; review of engineering and product analyses by manufacturers, third parties, and the staff; and analyses of the documents and other information obtained during

the course of the staff's investigation. The engineering changes noted did not eliminate the failure modes.

Interrogatory No. 152: Describe in detail the factual basis for your belief that the longer a Star ME-1 fire sprinkler has been in use, the greater the likelihood it will fail, as stated in your response to Respondents' First Set of Interrogatories, Interrogatory No. 64.

Objections: See Complaint Counsel's General Objections above, and Complaint Counsel's Objections to Interrogatory No. 64.

Answer: The information responsive to this interrogatory relates to expert analysis of the Star ME-1's. Complaint Counsel will provide the requested information to extent not restricted by the objections and to the extent available in conjunction with identification and disclosure of expert witnesses expected to testify at the hearing. In addition, documents for which third parties have made claims of confidentiality may contain information responsive to this request. Any such information will be provided upon resolution of those claims. Notwithstanding and without waiving the foregoing objections, see also Complaint Counsel's Answers to Interrogatory Nos. 147, 148, 149, and 151.

Interrogatory No. 153: Describe in detail each and every way that you contend that the Star ME-1 fire sprinkler is inadequately designed and/or manufactured.

Objections: See Complaint Counsel's General Objections above, and Complaint Counsel's Objections to Interrogatory No. 64.

Answer: The information responsive to this interrogatory relates to expert analysis of the Star ME-1's. Complaint Counsel will provide the requested information to the extent not restricted by the objections and to the extent available in conjunction with identification and disclosure of expert witnesses expected to testify at the hearing. In addition, documents for which third parties have made claims of confidentiality may contain information responsive to this request. Any such

information will be provided upon resolution of those claims. Notwithstanding and without waiving the foregoing objections, see also Complaint Counsel's Answer and Supplemental Answer to Interrogatory No. 64, and the answers to Interrogatory Nos. 147, 148, 149, and 151.

Interrogatory No. 154: Describe in detail the "defect" in the Star ME-1 fire sprinkler that you contend renders it a substantial product hazard.

Objections: See Complaint Counsel's General Objections above, and Complaint Counsel's Objections to Interrogatory No. 64. This interrogatory also calls for a legal conclusion, and seeks information subject to the attorney work product privilege.

Answer: The Star ME-1 fire sprinkler is likely to fail to activate as intended in a fire and/or to provide sufficient water in a sufficient spray pattern to suppress or extinguish a fire as intended. The failure and likely failure of the Star ME-1, a life safety device, to operate as intended and protect consumers constitutes a "defect" as that term is used in 15 U.S.C. § 2064(a)(2). See also the answers to Interrogatory Nos. 64 and 153.

Interrogatory No. 155: Describe in detail any differences in design and manufacturing between Star ME-1 sprinklers and any dry sprinklers that are currently sold in the United States that you contend do not contain the alleged defect of the Star ME-1 fire sprinklers.

Objections: See Complaint Counsel's General Objections above. This interrogatory is overbroad and unduly burdensome. Complaint Counsel objects to this interrogatory to the extent it seeks information not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: The Commission staff has not had occasion to survey the characteristics of all other dry sprinklers, nor to compare them with those of the Star ME-1 fire sprinkler. However, the Commission staff is aware that Central Sprinkler Company, an affiliate of

Tyco Fire Products LP, is currently replacing 19 types of dry sprinklers, including the Central A-1 and Star ME-1 dry sprinklers, with sprinklers that use Belleville seals instead of silicone O-rings (see the recall notice previously produced). The Commission has no reason to believe at this time that these replacement sprinklers contain the defect identified in the Response to Interrogatory No. 154.

Interrogatory No. 156: Identify the total number of fires that have occurred in locations where Star ME-1's have been installed.

Objections: See Complaint Counsel's General Objections. This interrogatory is also vague because it does not identify what type of fires are the subject of the inquiry, i.e., fires that should have been expected to cause the sprinklers to activate or smaller fires, nor does it describe with specificity what the phrase "in locations where Star ME-1's were installed" means.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel lacks the information necessary to answer this interrogatory. See Complaint Counsel's Responses to Interrogatories 5, 6, 7, and 8 which identify the fires of which Complaint Counsel is aware. Complaint Counsel does not know whether other fires have occurred in locations where Star ME-1 fire sprinklers were installed.

Interrogatory No.157: Identify the total number of failures of Star ME-1's to activate in a fire.

Objections: See Complaint Counsel's General Objections and Objections to Interrogatory Nos. 7 and 74.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel lacks the information necessary to answer this interrogatory. See Complaint Counsel's Responses to Interrogatories 5, 7, and 74. which identify the fires of which Complaint Counsel is aware. In addition to those previous responses, Complaint Counsel notes that 3 Star ME-1 fire

sprinklers failed to activate in the 1993 Troy, Missouri nursing home fire. Complaint Counsel does not know whether other fires have occurred in locations where Star ME-1 fire sprinklers were installed and failed to activate.

Interrogatory No. 158: For each fire in which a Star ME-1 fire sprinkler failed to activate describe in detail the investigation conducted. Your response should include, without limitation, the following:

(a) a description of all steps taken to investigate the fire and the cause of the failure of the Star ME-1 fire sprinkler to activate;

(b) an identification of all persons who participated in the investigation; and

(c) a description of any findings or conclusions rendered as a result of the investigation.

Objections: See Complaint Counsel's General Objections above.

Answer: Notwithstanding and without waiving the foregoing objections, Complaint Counsel answers as follows: Complaint Counsel does not have first-hand knowledge of all investigations conducted regarding all fires in which Star ME-1's failed to activate. The Respondents should be able to obtain this information from the sites themselves and authorities in those jurisdictions. The Commission staff obtained information regarding the fires to the extent it was available given the passage of time between the fires and the period of the staff's investigation.

(a) Regarding the 1991 Indiana fire, see documents produced or to be produced, including, for example, documents elabeled 007181-007187, which include a fire incident report. The Commission staff examined a sprinkler from that fire, which is available for inspection upon mutually agreeable terms. See Sample Collection Report at document elabeled 007927. Regarding the 1993 Missouri fire, see documents to be produced shortly (pending finalization of confidentiality waiver), including, for example, documents from Sprinkler Corporation of Milwaukee,

Inc. (f/k/a Star Sprinkler Corporation) elabeled 001410-001418, and from Sunbelt Fire Protection elabeled 008460-008462 (including facts of the fire and sprinkler analyses). Complaint Counsel and other Commission staff have spoken with Tom Wright, of Sunbelt Fire Protection, regarding the 1993 fire. Other documents produced may also reference these fires and related information sought by this interrogatory.

(b) See documents produced, including those referenced above. Commission staff working on this aspect of the Star ME-1 investigation (previously identified) participated in investigating these matters.

(c) See documents produced, including those referenced above. See also the answer to Interrogatory No. 7.

Interrogatory No. 159: For each manufacturer of Star ME-1's, describe in detail any warranties offered by that manufacturer on Star ME-1's.

Objections: See Complaint Counsel's General Objections. This interrogatory seeks information not relevant to the subject matter of the proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Answer: Inasmuch as Respondents manufactured and distributed Star ME-1 fire sprinklers, the Respondents are in the best position to provide or obtain the information responsive to this interrogatory. Complaint Counsel understands that Sprinkler Corporation of Milwaukee, Inc. (f/k/a Star Sprinkler Corporation) and Star Sprinkler, Inc. each offered a general warranty for a period of one year from the date of shipment that the products furnished will be free from defects and material and workmanship, although Complaint Counsel does not know whether these firms

offered the same warranty for all of the years in which they manufactured ME-1 fire sprinklers.

See also documents identified as RESP002490 and 002730.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2002, I served the attached Complaint Counsel's Answers to Respondents' Second Set of Interrogatories and Complaint Counsel's Answers to Respondents' First Requests for Admissions upon all parties of record in these proceedings, by hand-delivery to:

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