UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-11293-SVW-JPR	Date	July 14, 2023
Title	*California Department of Toxic Substances Control et al. v. NL Industries, Inc. et al.*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: ORDER ANSWERING THE QUESTIONS AT DKT. 864

Before the Court are questions presented by various defendants in advance of the August 1, 2023 Divisibility Trial. The Court answers as follows:

1. Ekco and Quemetco were differently situated from the other defendants because the Court found that all they sent to the Plant were spent lead-acid batteries. The Court found that they met their burden in meeting SREA's requirements and that Plaintiffs did not meet their burden in showing an exception to the SREA exemption applied. Therefore, these defendants had a complete defense to CERCLA and HSAA liability. The other defendants shipped materials that are not SREA-eligible (batteries or scrap metal) and that are not useful products, so they did not have a complete defense to liability.
2. Ekco did also send battery tops, but the Court found that those were useful products as to Ekco. In the alternative, they were scrap metal and qualified for SREA protection. In any event, the Court found persuasive that Ekco did not break the batteries themselves to obtain those tops and instead that the tops would have been sent by Ekco's customers. The Court

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did not credit manifests purporting to show shipments of other materials by Ekco for the reasons identified in Ekco's posttrial brief. The Court found that none of the other materials the defendants sent were useful products. The Court held that recycling is "treatment" within the meaning of CERCLA. The Court did not find that any arranger/transporter defendant intended to make a disposal, however, and credited testimony from each relevant defendant that each intended to recycle.

3. The Court credited the testimony of Dr. Laton in determining that releases to the subsurface occurred after 1986, for instance, that the pipe system leaked after being lined. The Court agreed with Plaintiffs that paving the Plant did not shield the ground from releases.
4. The motion at Dkt. 629 will be denied as moot because this theory of "treatment" was not the theory advanced by Plaintiffs. In other words, Plaintiffs asserted that the defendants, by intending to recycle the lead through the smelting process, thereby intended to "treat" hazardous substances. Plaintiffs did not contend that the defendants intended to treat the substances because they would eventually turn into air emissions. If the Plaintiffs feel differently, they should so inform the Court.

Defendants' proposed method of briefing is acceptable to the Court. In light of the briefing word count battle that ensued before the Liability Trial, the parties are cautioned that the Court's orders do not necessarily get filed on the docket in real time, so they should not be perturbed and should wait at least one business day to follow up if it appears the Court has issued a minute order without taking into account some recent filing.

IT IS SO ORDERED.

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