

From: Tamara Rubin tamararubin@mac.com
Subject: Re: February 14, 2022 Posting on Certi Pur-US Foam Crib Mattress
Date: February 24, 2022 at 9:09 PM
To: Rick Locker Fbocker@lockerlaw.com



2/24/2022 - Thursday
9:09 p.m. PST

Hello again Rick,

Thanks for this response, too (below - from February 17th). It's been a really busy week for me; sorry to not get back to you sooner. I do truly appreciate your civility and non-adversarial approach... it's always a good beginning! :-)

I want to share some initial follow-up thoughts with you here, and then I'll also respond to some points you raised in the body of your e-mail (below).

First I want to share that several Lead Safe Mama readers and followers of our work have volunteered to send us additional samples of foam from *their* Graco / Storkcraft mattresses for testing, and I will let you know as soon as I have received and thoroughly tested each of those.

I did purchase a *brand-new* "Made in Mexico" version of the mattress model in question from Amazon [production date: January 2022], and that version of the product did test *negative* for any Antimony in the foam, using XRF technology (which is the primary type of testing we do here in-house at Lead Safe Mama, LLC.).

On this new example of the product, there was *trace* Antimony in the *synthetic fabric cover* (preliminary test results were well-under 100 ppm). As noted - via the links in section #2 of my original post (and elsewhere on my website) - *that* amount of Antimony (under 100 ppm) is a *trace contaminant* that is *typical* for synthetic fabrics found in most mattresses (and specifically is something I *often* find in *mattress covers / stuffed animals/ comforters, pillows, etc.*)

While the fact that the foam of this particular mattress (Made in Mexico) was negative for Antimony is only *one more single data point*... *one might* extrapolate the following possible "preliminary hypotheses" from this single data point (which might help direct the inquiry in terms of determining the scope of the issue and the parameters for the potentially impacted batch of mattresses):

- Hypothesis #1) It is possible that the *Made In Mexico* version of the product does not have / never had an issue with additive levels of Antimony in the foam.
- Hypothesis #2) It is possible that versions of the product sent to customers on the *West Coast* do not have / never had an issue with additive levels of Antimony in the foam. [Companies often send different batches to West Coast customers — in accordance with the *stricter regulatory standards* on the West Coast vs. the East Coast.]
- Hypothesis #3) It is possible that versions of the product manufactured *this year (2022)* do not have / never had an issue with additive levels of Antimony in the foam.

In terms of using that information — acknowledging that it is still *only a single data point* — to further direct this inquiry, I have asked my readers to be in touch with me if they have other examples of this mattress from the "*Made In Malaysia*" batch — and specifically manufactured in *2020* (also around *June* of 2020, if possible); I have already found two such examples, and am working on arranging an opportunity to test those.

Since *your client* obviously has more resources than *I* do (and of course, also more at stake) I would encourage them to look in that same direction. If I were in their shoes, I would test a few examples of the “Made in *Mexico*” product (from different manufacturing periods), and if those turn out to also be negative (from all years), then I would focus on your “Made in *Malaysia*” source of foam, as the potential issue that needs to be addressed (testing different batches / different production periods from Malaysia to see if you can further pinpoint the issue as occurring within a specific time-frame - branching out from June of 2020.)

As soon as I have additional test results, I will share them with you, so you have those data points to consider.

If your client would like to write a *letter to my readers*, outlining the course of action they are taking towards determining the scope of the impacted products in response to my findings, and proposing any solutions for customers who may have purchased impacted products, I would be happy to publish that on my website.

Additional comments below in the body of your e-mail... [They are fairly significant - and include quite a few links with more information - so you might want to read this at home with a glass of wine or whatever your “poison” is!]

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<https://tamararubin.com/2017/01/chip-in/>

On Feb 17, 2022, at 12:11 PM, Rick Locker <Fbocker@lockerlaw.com> wrote:

Thank you for your response Tamara. The manufacturer as noted on the tag and here is Storkcraft, not Graco.

Thank you for this clarification.

My intent is to simply investigate the claim.

I appreciate this, and am happy to answer any questions I can about our findings, and our approach to testing.

I note according to the CPSC’s toxicological risk assessment model, the issue presented is whether or not there exists a reasonably likelihood of exposure. This is the same Standard used by any Board Certified Toxicologist. The sole focus is to determine whether or not that is the case based upon your claim. I’d be pleased to forward the CPSC modeling paradigm.

While xrf testing may or may not be adequate for initial screening (depending on use and material), a more detailed analysis is required to come to conclusions on the safety of any product. I'd be pleased to forward their methodology if you are interested.

I am familiar with the CPSC's methodologies and recommendations, and will agree to disagree with the first part of your statement above. XRF testing is seen - across the many and varied consumer goods manufacturing industries - as a very *good* tool for initial screening of consumer goods (key word here being "screening").

I *agree* however, that a more detailed analysis is required – which *is what I suggested in my initial post* (that the manufacturer should do additional testing). I also think (based on my reading of the California legislation relevant to this product - in my capacity as a well educated lay person who has been steeped in this issue for nearly two decades now [someone who is obviously not a lawyer]) that total content limits apply and are relevant in the State of California *regardless* of potential to cause harm for a specific product. Total content limits are set as a way to help *prevent* harm (so actual harm does not need to be established - because if the total content limits are *exceeded*, that means the *potential* to cause harm is more likely). It is for this reason I cited the State of California's total content limit (of 1,000 ppm Antimony in juvenile bedding) in my original post.

Separately of concern (outside of concerns for compliance with regulations and outside of concerns for actual potential to cause harm - or not) is the CertiPUR-US certification which is an assertion that the foam is free of added heavy metals (in addition to the tags on the mattress that also state there were no added flame retardant chemicals.)

This is why we like to use the toxicological risk assessment model and test methods used for toy testing. I'm sure you'd agree that if products meet those Standards, based upon large margins of safety, they are indeed safe for use.

Actually, no — I firmly *disagree* with the contention that if products meet the standards they are safe to use.

This is actually a *fundamental principle* of the advocacy work of Lead Safe Mama, LLC... the contention that (across the board — and supported by a *consensus within the scientific community*) most federal standards are **not** generally strict enough to be protective of human health — and (instead) are set at levels that are considered to be "industry-achievable limits" [often merely based ON the assertions BY industry].

As an example: while one might argue that the CPSC Lead limit / standard (limiting the Lead in the paint and coatings of consumer goods *intended for use by children* to 90 ppm) is possibly sufficient as a hypothetical number in most cases - the additional fact that there are *loopholes* to this legislation that allow for *newly-manufactured baby bottles (in 2021 / 2022)* to be painted with *high-Lead paint* is an illustration (just *one* of so very many examples) of how those standards fail and are insufficient in practice and application. You can read more about my work in that area on this link:

<https://tamararubin.com/2021/12/simplified-summary-of-lead-safe-mama-findings-for-lead-painted-baby-bottles-purchased-on-amazon-in-2021/>

Separately - ever since working with a family whose baby suffered from *Antimony-poisoning* [a child who at four years old was non-verbal — a condition which was likely as a result of that exposure], I have learned that Federally, there are currently (as I understand it — correct me if I am wrong on this) NO comprehensive standards limiting total content of Antimony in consumer goods intended for use by children [or adults]. This is what are consistently finding Antimony

goods intended for use by children [or adults]. This is *why* I am constantly finding Antimony throughout people's homes (as noted above, in stuffed animals; in couches; in bedding; in mattresses; in plastic food packaging; in pajamas; in glassware at very high levels; and elsewhere).

The lack of comprehensive Federal regulatory standards for Antimony - a known carcinogen - in consumer goods is frankly, *outrageous*, and needs to be addressed. I have been telling people for the past 5 years or longer that perhaps we will see some movement in that area in 10 years or so. So with the publishing of the updates to the Nationally-recognized List of Carcinogens [linked in my original post] in December of 2021 - with Antimony being added to that list - at least we are finally seeing some movement in that direction. [Here's my post that discusses the story of that little boy - including his Antimony levels:

<https://tamararubin.com/2020/05/i-heard-that-urine-and-hair-tests-for-heavy-metals-including-lead-were-not-real-or-useful-test-results-why-is-this/>]

If you would like to learn more about my perspective (on the fact that our Federal regulatory standards are insufficient), I invite you to watch the preview screener of my documentary feature film, *MisLEAD: America's Secret Epidemic* [the film has music donated by *The Who* and *Tom Waits*; it also has footage from *my presentation with Bernie Sanders in Flint*, and from *my interview with Noam Chomsky; Jon Fishman (drummer of the band Phish)* is also an Executive Producer of the the project.]

In the film, I travel across the country (and to Canada) interviewing experts in all fields related to childhood Lead-poisoning (and environmental toxicity, and it's impact on children) as well as interviewing families of Lead-poisoned children around the country. Here's the private preview screener link; the runtime is 92 minutes [*and there is a scene in the credits - at the very end of the credits - about increased corporate accountability in the face of consumer demand — and so I encourage you to watch through to the end if you decide to watch it*]. It is also surprisingly *entertaining* — and it contains a fair amount of not-yet-widely-disseminated information; I would bet that you may even learn some new information that could be helpful in your work:

<https://vimeo.com/156169133/7915741044>

I do note that while the brand of xrf handheld scanner used is noted in your web posting, its difficult to confirm from your website the modality of use and whether the test process and results were documented, as we require from CPSC accredited laboratories doing such testing (even for screening purposes) before we have them also do migration testing and assessments.

Lead Safe Mama, LLC is *not a lab, and we are not affiliated with a lab* (and we clearly state this in many places across our website). We are an *advocacy-focused small business and our work is driven by our readership*. As such, we do *not* provide any "formal documentation" of the test results, other than the *publishing of the results on our website* (that *is* our documentation). You can learn more about the testing we do on this link (which is linked in the header menu on each and every page of our website, under the "Lead Testing" tab):

<https://tamararubin.com/2016/12/ask-tamara-what-do-you-use-to-test-for-lead/>

Here also is a link that discusses our unique business model:

<https://tamararubin.com/2021/04/what-kind-of-business-is-lead-safe-mama-llc/>

I have reviewed dozens of cases where xrf testing of non homogeneous materials in products

detected substances, but were not reflective of any hazard with use of a product. Those have included screenings by Washington State, which defers to CPSC determinations on lead in children's products, other heavy metals testing for toys and phthalate testing for toys and childcare articles.

First off I would like to clarify that I don't believe the foam of the mattress (which I tested separately without the cover) can be perceived as non homogeneous. Foam by nature is homogeneous material.

Our concern at Lead Safe Mama, LLC is always about the *total content* of heavy metals - not about "proven risk concerns". It is our stand - fundamentally - that regardless of/beyond the government's (current) determination of risk posed by a specific toxic chemical in a specific application, parents have an inherent right to know what is in the products they buy for their families.

This approach and focus is discussed in the following post:

<https://tamararubin.com/2020/05/i-dont-do-what-i-do-to-spread-fear-i-do-what-i-do-to-educate-so-you-can-make-informed-choices-for-your-family/>

A good example of how we are not simply concerned with the immediate impact/estimate of possible risk to a user (at time of manufacture)— but rather with the "mere" *presence of heavy metals in consumer goods*, is our recent exchange with Williams Sonoma (in response to finding high levels of Lead in dishware sold in 2022), which can be read here:

<https://tamararubin.com/2022/02/communications-from-williams-sonoma-public-relations-team-in-response-to-my-recent-findings-of-lead-and-other-toxicants-in-their-new-2022-dishes/>

Also of note: I have been using an XRF instrument for 13 years now, and am confident in the accuracy and repeatability of any readings I report (the liability of reporting any "questionable" readings would be far too great to publish anything that contained any unreproducible data!)

Here's a copy of my XRF training certificate (from 2009!)

<https://tamararubin.com/2017/09/certificate/>

It's unfortunate that you did not retain the sample tested for follow-up testing. It would have been helpful to have for our investigation.

As noted above, I am seeking out additional samples from this same mattress production batch (and have already located at least two). I was *also* disappointed that the sample was thrown out - sorry about that! At the time that I tested the mattress in question, I was not aware that it was a "certified nontoxic" product - I did not find that out until later (at which point I phoned and asked the owner if she could send me a piece of it to retain for its value as evidence / to use for further testing, and she informed me that the garbage service had already come to pick it up!)

We do take any allegation related to the safety of children's products very seriously, which is why we rely on independent CPSC Accredited laboratories to perform FHSA toxicological determinations and will do so here.

I appreciate this perspective, and hopefully (after reading the links above and watching my film), you will better understand the context of the work of Lead Safe Mama, LLC - as well as the shortcomings of regulations and legislation (especially the shortcomings of the CPSC in its limits of actions - with the baby bottle example being perhaps the best example I can share!)

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On Feb 17, 2022, at 2:16 PM, Tamara Rubin <tamararubin@mac.com> wrote:

Hello Rick!

Thanks for being in touch.

All of the information, including the full test results of my findings are here on this post: <https://tamararubin.com/2022/02/certipur-us-certified-foam-crib-mattress-from-major-u-s-baby-gear-company-positive-for-1185-ppm-antimony-an-identified-cause-of-both-sids-and-cancer/>

The testing methodology I use is also linked and discussed in that post.

Here is the link again:

<https://tamararubin.com/2016/12/ask-tamara-what-do-you-use-to-test-for-lead/>

After reading those posts carefully please let me know if you have any questions. There is nothing to send you beyond that post, that's all there is.

My testing results (for all of the products I test) are accurate, science-based and replicable.

XRF testing is noted by the CPSC as a valid and appropriate testing method to screen consumer goods for toxic heavy metals. The presence of Antimony in the mattress that I tested (which is fully detailed in the first post linked above) is not in question. The margin of error of the test reported demonstrates that it is above the 1,000 ppm limit for the State of California and I just confirmed with the State of Washington that Antimony is considered to be a component in halogenated flame retardants (meaning that it appears to be part of the State of CA restricted chemicals required to be under 1000 ppm).

I did recently have a similar exchange with Medley Home furniture and the folks at CertiPUR-US and you might find it helpful to read each of the posts in that exchange (for context and as an example of independent lab-testing done by a manufacturer confirming my test results and specifically confirming my test results for CertiPUR certified foam products, thus acknowledging the validity of the testing I do.)

Here is the thread regarding the Medley Home situation... hopefully you will find at least some of it entertaining (these are the posts in the order that I published them):

1. <https://tamararubin.com/2021/12/foam-cushion-inserts-from-popular-non-toxic-los-angeles-based-sofa-brand-test-positive-for-lead-arsenic-this-product-is-marketed-as-lead-free/>
2. <https://tamararubin.com/2022/01/a-brief-update-on-medley-home-furniture-including-a-thinly-veiled-threat-from-the-certipur-us-foam-folks-with-input-from-their-legal-team-and-my-response/>
3. <https://tamararubin.com/2022/01/words-with-friends-the-certipur-us-greenwashing->

3. <https://tamararubin.com/2022/01/words-with-friends-the-certipur-us-greenwashing-edition-with-your-host-tamara-rubin-environmental-activist/>
4. <https://tamararubin.com/2022/02/update-letter-from-medley-home-in-response-to-my-findings-of-lead-in-their-certipur-us-foam-certified-cushions/>

I am assuming your client is Graco (the company that makes and sells this mattress), although you did not state that explicitly in your e-mail. Could you please confirm which company is your client?

I have reported this issue to the State of Washington and they responded to me today to let me know that they will be following up with the company (Graco) for an apparent violation of their reporting requirements for Antimony-containing products.

Please understand that I expect Graco was likely not AWARE that their certified non-toxic crib mattresses (at least for the batch identified in my original post- made in Malaysia) contained Antimony. This is more likely an issue of an oversight due to either the company **believing** the certification that went with the foam Or due to a lack of appropriate periodic independent testing done by the manufacturer (and/or the certifying agency.) Unfortunately Incidents like this happen all the time - which is one of the reasons my readers have me periodically test products even though they are certified as non-toxic (by various certification programs and agencies.)

I also followed up with the State of California but have not yet heard back.

I am receiving several additional samples for testing and will be posting those test results on the Lead Safe Mama, LCC website (LeadSafeMama.com / TamaraRubin.com) as soon as they are available.

I am thankful to know (based on your correspondence) that Graco is taking this seriously and has gotten legal counsel involved to help them resolve this issue.

I did hear from several Lead Safe Mama readers that, in communications with Graco representatives, they were told that Graco is not taking responsibility for this and has instead referred customers to Stork Craft (even though this is clearly a Graco branded product.) If your client is, in fact, Graco - you might want to talk to your client about how their customer service reps are responding to this issue. It does not look favorable for Graco to be shifting blame given the branding (and promises of healthfulness) inherent with the marketing related to this product.

I will be publishing the response I received on this issue from the State of Washington and when I have that up I will send you that link as well so that you can have all pieces of this conversation handy.

I think that is important to note that most companies do not approach my work as adversarial but instead see it as a free service. I have provided a free service to Graco by uncovering a problem that they were not previously aware of. I have provided (for free, published on my blog) a reasonable course of action that the company can take to address the issue and repair the relationship with their customers.

The companies who take this approach in response to my findings do far better (in terms of the public perception of the company based on their actions) than the companies who take an adversarial stance. My work is science based. Each statement I write is based in fact and science, if you approach this in this way moving forward we will have a much more

productive relationship than if (for example) you attempt to discredit my findings or otherwise bully me (an activist) to take down my writings from my website. The “good guys” always win here - and Graco has an opportunity to be the good guys here - to repair this / correct this issue quickly and efficiently (with their customer’s best interest at the forefront of their decision making process.)

Please also note that I have heard from two different readers that their children have had respiratory issues since sleeping on these mattresses (with doctors unable to identify any other source of the breathing issues). While of course this is purely anecdotal, I think it is an important data point for your client to have given the pathway for Antimony-based health concerns appears to be inhalation.

Additionally, to clarify: in my writing I did not state “that the product presents an acute or chronic hazard to children.” I stated that ANTIMONY is known to present health hazards to children (which is true).

In any future correspondence, please feel free to call me Tamara. If you insist on something more formal - it’s “Mrs. Rubin” (not Ms. Rubin) :-)

Thank you.

Tamara Rubin

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To support this advocacy work with a contribution, click here:

<https://tamararubin.com/2017/01/chip-in/>

On Feb 17, 2022, at 9:12 AM, Rick Locker <Fbocker@lockerlaw.com> wrote:

Dear Ms. Rubin,

We have been engaged by the manufacturer as independent Product Safety Counsel to review the accuracy and veracity of claims made in the above referenced posting. In doing so we review data in relation to compliance with Statutes and Regulations administered by the U.S. Consumer Product Safety Commission (“CPSC”).

The Consumer Product Safety Improvement Act of 2008 (CPSIA) requires all testing for children’s products subject to a product safety rule to be conducted by an independent third party laboratory that has been accredited by the CPSC. This requirement applies to all testing, including 16 CFR Part 1632 and 1633 flammability testing, for mattresses designed or intended primarily for children twelve and younger. Manufacturers of children’s products must also conduct periodic sampling and testing to assure compliance with all applicable safety standards. For children’s mattresses, this means that manufacturers must conduct Part 1632 and 1633 sample testing as well as other applicable tests such as phthalates and lead testing at regular intervals. In addition these products are required to meet the requirements of the Federal Hazardous Substances Act (FHSA) to assure no unreasonable exposure to any hazardous substance. The FHSA requirements apply to both chronic and acute hazards. [See 15 USC 1261 (f)(1)(A). These requirements are

further defined in CPSC regulations at 16 CFR 1500.39c)(2).

We do note that ordinary XRF screening of non homogeneous polymeric materials is not deemed reliable enough for regulatory purposes and may result in erroneous readings. Therefore, our recommended Toxic Risk Assessment is based upon CPSC developed and scientifically accepted test methodologies to assure no acute or chronic exposure to hazardous substances as required under the FHSA.

For heavy metals, we recommend testing to assess total lead content and soluble migration of other heavy metals, including Antimony, from a children's product.

For this particular model product our initial investigation indicates that Antimony trioxide and other Flame Retardants are required not to be intentionally added to the product. In addition we have noted that the products have been submitted for testing by independent CPSC accredited laboratories to also meet the heavy metal migration limits established under 16 CFR 1250 for toys (a stringent requirement).

We would appreciate if you would forward your test results, a detailed description of the equipment used to obtain the claimed test result and samples for independent review. Please advise immediately if you can do so. We can arrange delivery, at our expense, to an independent accredited CPSC laboratory if you prefer. We sincerely look forward to your cooperation.

If for some reason you do not wish to do so, it would be advisable to remove your posting or qualify statements used to disclaim any determination or inference that the product presents an acute or chronic hazard to children.

Thank you for your anticipated cooperation. We all have a vested interest in assuring the safety of children's products and that they remain in compliance with stringent U.S. Safety Standards. We are also interested in assuring product safety information is accurate and not misleading.

Sincerely,
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