

EXHIBIT 4

Gerard Harrington

From: Gerard Harrington
Sent: Tuesday, October 07, 2014 11:20 AM
To: 'foiaappeal@dol.gov'
Cc: Paul Hofmann
Subject: FOIA Appeal, Sun Chemical-US Ink-704178, FOIA# 14-083-748449 - Pt.1
Attachments: Ex. A- FOIA Request.PDF; Ex. C - OSHA Combustible Dust program CPL_03-00-008.pdf; Ex. D- NY Times-The Danger of Combustible Dust.PDF; Ex. E - OSHA expert_forum_summary_report.pdf; Sun Chemical-Appeal of OSHA FOIA 14-083-748449.PDF

Attn Solicitor of Labor:

Attached please find an appeal of the FOIA response provided by OSHA in this matter. Also attached are several of the exhibits referred to in the appeal. The additional exhibits referred to therein will be provided in separate emails due to file size restrictions.

If you have any questions, please call us at your convenience.

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To: 'foiaappeal@dol.gov'
Cc: Paul Hofmann
Subject: FOIA Appeal, Sun Chemical-US Ink-704178, FOIA# 14-083-748449 Pt. 2
Attachments: Black and White photocopies of photos in investigation.pdf; OSHA redactions.pdf; OSHA'S general description.pdf

Sirs/Madams:

Attached are some of the documents part of exhibit B of the above referenced appeal.

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From: Gerard Harrington
Sent: Tuesday, October 07, 2014 11:21 AM
To: 'foiaappeal@dol.gov'
Cc: Paul Hofmann
Subject: FOIA Appeal, Sun Chemical-US Ink-704178, FOIA# 14-083-748449 Pt. 3
Attachments: General Materials and investigative materials.pdf; Violations and fines.pdf

Dear Sirs/Madams:

Attached are additional documents part of exhibit B in the above referenced appeal.

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Cc: Paul Hofmann
Subject: FOIA Appeal, Sun Chemical-US Ink-704178, FOIA# 14-083-748449
Attachments: Laboratory Reports on Substances.pdf

Sirs/Madams:

Attached is the final part of exhibit B in the above referenced appeal.

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October 7, 2014

Via email: fojaappeal@dol.gov

Solicitor of Labor
US Department of Labor
Room N2420
200 Constitution Avenue NW
Washington DC 20210

RE: Freedom of Information Act Appeal
Sun Chemical - US Ink - 704178
FOIA # 14-083-748449

Dear Solicitor of Labor:

This is an appeal under the Freedom of Information Act. My law firm is representing Edward Caddell, Kryzstof Jaje and Stanley Prenenski in their action for recovery from serious burns which he sustained as a result of an explosion and fire that occurred on October 9, 2012 at the US Ink plant located at 390 Central Avenue, East Rutherford, NJ 07073. To assist in our understanding of what occurred, we made a FOIA request to obtain any investigation reports and documents completed by OSHA regarding this incident from 10/9/12-present, and any documents in OSHA's possession that are related to this incident.

On May 15, 2014, the request for documents was submitted under the Freedom of Information Act. The request was assigned the following identification number: 14-083-748449. On July 9, 2014, we received a response to the request. As indicated in the response, extensive portions of the narrative information was removed from the documents. The following information was partially withheld by redaction of portions of the documents:

- | | |
|---------------------------|-----------------|
| 1. Investigation Summary | Exemption 7c |
| 2. Inspection | Exemptions 4,7c |
| 3. Health Narrative | Exemption 7c |
| 4. Field Notes | Exemption 7c |
| 5. Contact Numbers and ID | Exemption 7c |
| 6. Sampling | Exemption 7c |
| 7. Diary | Exemption 7c |

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8. Penalty Check	Exemptions 4,7c
9. Penalty Payment Report	Exemption 7c
10. ISA	Exemption 7c

Our office appeals the denial of the information above which was part of our request but was redacted in the documents we received. A copy of the FOIA request and the agency determination which is the subject of this appeal are attached as per regulations. (Ex. A, FOIA request; Ex. B, FOIA response)

The information that was withheld must be disclosed under the FOIA because Exemption 7(C) protects from mandatory disclosure "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(C); 17 C.F.R. 200.80(b)(7)(C). Portions of the documents that were withheld (Investigation Summary, Inspection, Health Narrative, Field Notes, Sampling, Diary etc.) do not present such a "strong interest" in not being associated with illegal activity. Instead, the documents requested provide information about Occupational Health and Safety Administration standards and procedures and how they were carried out. The employer, Sun Chemical, Inc., was assessed a minimal fine for a de minimus violations. No individual or companies are subject to criminal prosecution, and the court action is closed.

The documents partially withheld by the Department of Labor/OSHA do not present a reasonable expectation of causing harm to anyone. On the contrary, the disclosure would help ensure the administration of safety procedures and protect individuals. The information in question should be produced because it is line with the goal of OSHA as well as the FOIA itself.

Information should be disclosed if there is a significant public interest in the records at issue that outweighs the privacy interest. Under the Exemption 7(C) analysis, once a privacy interest has been identified and its magnitude has been assessed, it is balanced against the magnitude of any recognized public interest that would be served by disclosure. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 109 S. Ct. 1468, 103 L. Ed. 2d 774, 57 USLW 4373, 16 Media L. Rep. 1545, 1989 WL 23770 (1989).

Under *Reporters Committee*, the standard of public interest to consider is one specifically limited to the FOIA's "core purpose" of "shed[ding] light on an agency's performance of its statutory duties." Accordingly, information that does not reveal the operations and activities of the government does not satisfy the public interest requirement. The information at issue, which was redacted would provide insight into OSHA's operations and activities with regards to safety standards. Additionally, even if some aspects of the request are within exemption 7(C), the Solicitor should use discretionary release powers to disclose the materials if doing so would be in the public interest.

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The other FOIA Exemption cited to withhold the requested information is Exemption 4. Under Exemption 4 of the Freedom of Information Act (FOIA), agencies can withhold documents pertaining to a trade secret. Courts have operationally defined a "trade secret" as information that provides a competitive advantage. It has also been defined as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Pub. Citizen Health Research Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 227 U.S. App. D.C. 151 (D.C. Cir. 1983). This definition requires that there be a "direct relationship" between the trade secret and the productive process. *Id.* Under the established definitions, the information withheld by OSHA under Exemption 4 (Inspection, Penalty Check) does not give rise to a trade secret. The documents requested shed light onto OSHA safety protocol and the company's compliance with the requirements. This information is distinct from trade secrets which are kept from the public for competition purposes. Also, there is a lack of a direct relationship between the information in question and the productive process.

No identifiable trade secrets are involved here. At issue was the mixture of oil and carbon black, gilsonite and few other chemicals to make black newspaper ink in a big mixture that is some fifty years old. The fire involved was dusts accumulated in ordinary sheet metal duct work and the flame causing the injuries shot out of a common flexible hose.

The public interest would certainly be served by disclosure here. OSHA has reported about hundreds of incidents involving dust explosions resulting in some numerous deaths and multiple injuries. See e.g., exhibit "C", OSHA Instruction Directive CPL 03-00-008 and exhibit D, Chemical Safety Board letter to New York Times, August 24, 2014. As Exhibit E discloses, OSHA is in the process of developing regulations that hopefully will combat this industrial scourge. Ex. E: OSHA Expert Forum, 7/21/11.

OSHA is preparing regulations to combat the industrial hazard of combustible dusts. See Exhibit E, OSHA report of forum on combustible dusts, July, 2011. Thus release of all information related to this dust fire/explosion in the current case may help provide information that will aid worker safety, and OSHA's mission to provide same.

The wholesale redactions that occurred in this matter go way beyond the pale of the spirit of FOIA. Literally, 10 pages of narrative have been withheld, without any legitimate explanation.

In the event this appeal is denied, the Department of Labor is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter. 5 U.S.C. § 552(a)(6)(ii), 7 C.F.R. § 1.8(d). As noted above, time is of the essence in this matter, if this appeal is denied or the Agency's response is not forthcoming within 20 working days, my clients reserve the right under FOIA to seek judicial review.

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The information requested is releasable under FOIA and, may not validly be protected by the Act's exemptions. I trust that upon re-consideration, you will reverse the decision denying access to this material and grant the request. Thank you for your consideration of this appeal.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

HOFMANN & SCHWEITZER

PTH/gh

By: /s/
Paul T. Hofmann

Enc.