

James W. Potter
Member
Admitted in SC, AL

HEARING CLERK

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EPA REGION 4

July 12, 2010

VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

The Honorable Susan L. Biro
Chief Administrative Judge
Office of Administrative Law Judges
U.S. EPA
Mail code 1900 L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Chem-Way Corporation Docket No. EPCRA -004-2010-2015

Dear Judge Biro:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

My client, Chem-Way Corporation, recently received the attached letter from the EPA on a TSCA inspection. As you may recall, one of the defenses I plan to raise in this enforcement action relates to our contention that the EPCRA inspection was non-random and in retaliation for assisting a customer in an unrelated EPA enforcement action.

My client has now received this TSCA inspection notice which asserts that it is a "neutral scheme information request" (page one of the Attachment). We are dubious of this assertion in the midst of an enforcement action.

Accordingly, we would ask this Court to:

1. Enjoin or Stay the information request while the pending enforcement action is tried; or in the alternative,
2. Require the author of the attached letter to attend the hearing in Charlotte and testify under oath as to whether Chem-Way Corporation was neutrally chosen for this inspection.

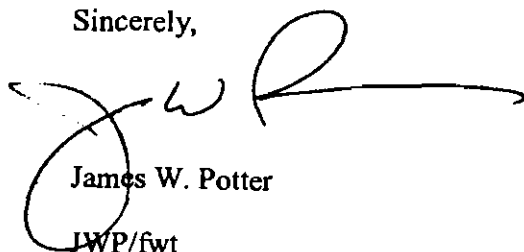
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Attorneys and Counselors at Law

The Honorable Susan L. Biro
July 12, 2010
Page 2

Thank you for your consideration of our request.

Sincerely,

A handwritten signature in black ink, appearing to read 'JWP', with a long horizontal flourish extending to the right.

James W. Potter

JWP/fwt
Enclosure

cc: Jennifer Lewis, Esquire
Regional Hearing Clerk
Curt F. Fehn



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

JUL 08 2010

Mr. Elwood Peabody
Compliance and Regulatory
Chem-Way Corporation
5000 Nations Crossing Road
Charlotte, North Carolina 28217

Re: Information Request Letter
Toxic Substances Control Act

Dear Mr. Peabody:

This letter serves to notify Chem-Way Corporation that the U. S. Environmental Protection Agency (EPA), Region 4, is requesting information about activities at your Charlotte, North Carolina facility that are subject to provisions of the Toxic Substances Control Act (TSCA), 15 USC § 2601 *et seq.* This is a neutral scheme information request meaning that your company was chosen for this action at random pursuant to Section 11 of TSCA, 15 USC § 2610, to determine compliance with Sections 4, 5, 8, 12 and 13 (15 USC §§ 2603, 2604, 2607, 2611, and 2612, respectively). Please report each applicable document individually on compact disk as both a Microsoft[®]-compatible spreadsheet (as applicable) and an Adobe Reader[™]-compatible portable document file (pdf). For Lists 1, 2, 3, and 4, identify those chemicals that are byproducts, impurities, or non-isolated intermediates and make a distinction between the mixtures and reacted products.

Please include the following documents:

- Premanufacture Notices (PMNs¹) submitted by your company, or requests for exemption from the PMN review process, including Low Volume, Test Marketing, and Polymer Exemptions;
- Any *bona fide* intents, Significant New Use Rule Notices and 5(e)/(f) Consent Orders;
- Research and development activities and procedures in effect at the subject facility, specifically as related to compliance with the requirements of a TSCA Research and Development Exemption;
- Recordkeeping and reporting under TSCA Section 8 Rules, including the Preliminary Assessment Information Rule (PAIR), Inventory Update Rule (IUR) and Sections 8(c), 8(d), and 8(e); and

Internet Address (URL) ¹ <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

- Facility or corporate policies developed to ensure compliance with TSCA Sections 4, 5, 8, 12 and 13;
- Occupational health data such as a complaint log or symptoms reported by your employees that may be exposure related (do not include confidential medical information);
- **List # 1:**

Prepare a list of chemical substances (including mixtures) that were manufactured or imported at the subject facility between January 1, 2005, and December 31, 2005, inclusive. The list should include the following:

1. Accepted chemical name(s);
2. Chemical Abstracts Service (CAS) number or the EPA accession number;
3. Percentage of each chemical substance in the mixture;
4. Manufacture or import date;
5. Quantity imported per shipment or quantity produced per batch; and
6. Identification number used to track each chemical shipment/batch;

- **List # 2:**

Prepare a list of all the raw materials (including mixtures) that were used or processed at the subject facility from January 1, 2008, through December 31, 2009. The list should include the following:

1. Accepted chemical name(s);
2. CAS number or the EPA accession number; and
3. The supplier;

- **List # 3:**

Prepare a list of all the chemical substances (including mixtures) that were manufactured or imported at the subject facility between January 1, 2008, and December 31, 2009, inclusive. The list should include the following:

1. Accepted chemical name(s); and
2. CAS number or the EPA accession number; and

- **List # 4:**

Prepare a list of all the chemical substances (including mixtures) that Chem-Way Corporation (subject facility only) exported from the United States between January 1, 2008, and December 31, 2009. The list should include the following:

1. Accepted chemical name(s):
2. CAS number or the EPA accession number;
3. Export date:

4. Final destination; and,
5. Percentage of each chemical substance in a mixture.

Pursuant to the Code of Federal Regulations, Title 40 (40 C.F.R.), Part 2, Subpart B, you are entitled to claim as confidential business information (CBI) any or all of the information provided to EPA; this is applicable only if the claim is consistent with the procedures described in the regulations cited above. You may make a CBI claim covering the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as *trade secret*, *proprietary* or *company confidential*. If you do not assert a confidentiality claim at the time the information is provided to EPA, it may be released to the public without further notice.

If you are unable to provide the identity of the chemical substances or mixtures because your suppliers or customers have a CBI claim on the products that were purchased domestically, imported or exported, please instruct your suppliers/customers to submit to EPA the chemical name, CAS number/EPA accession number and, if applicable, the percentage of the components in each mixture in the manner indicated above.

All information that is submitted to EPA claimed to be CBI must be sent to:

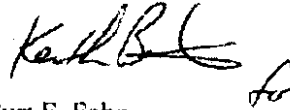
Ms. Mary Summers
Document Control Officer
U.S. EPA Region 4
Chemical Products and
Asbestos Section
61 Forsyth Street
Atlanta, Georgia 30303-8909.

Any non-CBI information may be submitted to:

Mr. Mark Bean
U.S. EPA Region 4
Chemical Products and
Asbestos Section
61 Forsyth Street
Atlanta, Georgia 30303-9000.

Further information regarding the scope of TSCA is available via the World Wide Web at <http://www.epa.gov/lawsregs/laws/tsc.html>. If you have any questions, please contact Mr. Bean of the EPA Region 4 staff at (404) 562-9000.

Sincerely,

A handwritten signature in black ink, appearing to read "Curt F. Fehn", with a stylized flourish at the end.

Curt F. Fehn,
Chief
Chemical Products
and Asbestos Section