



Brush Wellman Inc.  
17876 St. Clair Avenue  
Cleveland, Ohio 44110  
216-486-4200

May 11, 2006

Mr. Kevin Ropp  
Director, OSHA Office of Communications  
Room N-3647  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Comment on Notice of FOIA Requests by Adam M. Finkel

Dear Mr. Ropp:

This letter responds to the request for comments published in 71 Federal Register 20732 (April 21, 2006) concerning the possible disclosure of confidential commercial or trade secret information in response to a FOIA request. That notice states that a FOIA request has been submitted for information concerning "all samples taken by OSHA from 1979 to June 1, 2005." The information requested for each sample includes "establishment name and address . . . and other information."

Upon inquiry, it is our understanding that this notice pertains to two overlapping FOIA requests. The first seeks all sampling data for this period where beryllium was analyzed. The second seeks all sampling data for this period for any analyte.

The reasons for these requests, which are not at all specific, vary. The first request is "to conduct statistical analyses of trends in beryllium concentrations by time period, geographic region, industry sector, etc. and to estimate the exposure potential of the OSHA compliance officer workforce." Furthermore, this request aims "to determine the number of instances in which each inspector may have been exposed to beryllium and to estimate the cumulative exposure." The second request is "to analyze a hypothesis of great interest to experts in both the occupational and environmental health fields" does investment in controls to reduce environmental emissions tend to increase exposures to workers?" Furthermore, this request is to compare these OSHA sampling data to "environmental compliance and investment behavior at the individual firm level." In addition, this second request is to examine "national and geographic . . . trends in workplace exposures."

While one wonders as to the ability of the requester to generate these analyses and trends from sampling data due to issues of matching and relevance, the fact remains that the requester has asked for whatever information is contained for this period in OSHA's Salt Lake City Technical Center's analytical database. While Brush Wellman does not know what information is contained within that database, it is concerned that sampling data collected at its facilities would disclose confidential commercial or trade secret information if that data identifies certain types of processes, either by naming the process itself or by naming a job title which discloses the process. This concern arises because sometimes sampling data are identified by the process which generated those data. While process descriptions which are generic – like casting or

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machining – are not a confidentiality concern for Brush Wellman, a concern does arise if the sample description or other information discloses that process is proprietary or used to make a specific product or intermediate in a particular form or a particular compound or alloy. Brush Wellman regards some of these identifiers as confidential commercial or trade secret information, and it would be harmed if such information became available to its competition and potential competition.

As OSHA is aware, the Freedom of Information Act exempts "matters that are . . . trade secrets and commercial or financial information obtained from a person and privileged or confidential." The information that Brush Wellman seeks to protect from disclosure involves the productive processes which it uses and which gives Brush an opportunity to obtain an advantage over competitors who do not know or use it. Disclosure of such information would cause substantial harm to the competitive position of Brush Wellman.

Because of the confidentiality of the use of these processes to produce certain materials, Brush Wellman requests that any such information be denied the requester (who does not appear to need it anyway based upon his stated purposes). Brush Wellman does not specifically name these processes in these public comments. However, if the agency needs a more specific description in order to make a judgment, please have the appropriate person contact me so that we can discuss this matter more specifically.

Sincerely,



Marc E. Kolaniz, CIH  
Vice President  
Environmental Health and Safety

MEK/elm