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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Adam M. Finkel,)	Civil Action No. 05-5525 (MLC)
Plaintiff,)	
v.)	Hon. Mary L. Cooper
)	
The United States Department)	
Of Labor and)	
Occupational Health and Safety)	
Administration,)	
Defendants.)	

DECLARATION OF DAVID T. BARSTOW

1. I am David T. Barstow. I am making this Declaration in support of the requests by Dr. Adam M. Finkel for workplace data on exposures to toxic substances collected by the U.S. Occupational Safety and Health Administration (OSHA).

2. I am currently an investigative reporter at the *New York Times*. I have written many articles for *The Times* investigating the performance of government agencies regarding issues of public policy. I have a bachelor's of science in journalism from Northwestern University (1986).

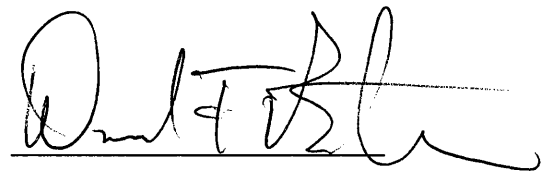
3. I have written two major series of articles in *The Times* about OSHA's response to workplace safety hazards. On January 8-10, 2003, Lowell Bergman and I wrote about OSHA's inability to end a pattern of serious safety violations at foundries owned by McWane, Inc. On December 21-23, 2003, I analyzed OSHA's enforcement and violations database ("IMIS"), and documented OSHA's failure to pursue criminal charges against employers whose willful safety violations resulted in the deaths of their employees. The two series won the 2004 Pulitzer Prize for Public Service.
4. On July 29, 2004, the Southern District of New York ruled for Plaintiff *The New York Times Co. v. DOL*, based on a FOIA request I filed in 2002. DOL had claimed that the workplace injury rates of individual companies were "confidential commercial information." The Court disagreed.
5. Although the two series I wrote on OSHA primarily concerned occupational safety risks, I know many experts believe that for every U.S. worker killed in an industrial accident, many more die prematurely due to occupational exposures to toxic substances. I also know that OSHA devotes most of its enforcement activity to safety concerns, not to health concerns. This policy is of keen interest to me.
6. So far as I know, OSHA's sampling database is by far the single richest source of information about workplace exposures to toxic substances in the U.S. Examination of this database could provide the public with valuable information about worker risks, trends in those risks over time, distribution of risks by geographic area, industry sector, etc., and about the adequacy of OSHA's response to a major public health problem. It could also reveal whether particular companies have repeatedly exposed workers to dangerous concentrations of carcinogenic chemicals. When analyzed together with the

IMIS database, it could help reveal how OSHA responds, or fails to respond, when confronted with employers who persistently violate exposure limits.

7. I understand that OSHA has recently agreed to provide Dr. Finkel with the sampling results, but has withheld data that identifies when and where each sample was taken. For me and other journalists, the sampling data loses a great deal of its usefulness if company names and dates are redacted. I would have no systematic way to identify persistent violators like McWane, and no systematic way to assess OSHA's response to those companies.

8. For these reasons, I urge the Court to compel production of all the data Dr. Finkel has requested. Full access will help journalists like me scrutinize OSHA's performance and identify employers who repeatedly expose workers to high levels of toxins.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed this 17th day of November, 2006, in New York, New York.

A handwritten signature in black ink, appearing to read "David T. Barstow", written over a horizontal line.

David T. Barstow