



November 1, 1999

Ms. Margaret Hoffman  
Environmental Law Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR99-3053

Dear Ms. Hoffman:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128879.

The Texas Natural Resource Conservation Commission (the "commission") received a written request for "all operator's daily logs and/or production reports for the period from January 1, 1997, to the present regarding" Degussa-Hüls Corporation ("Degussa-Hüls"). You state that the commission has released some of the requested information. You contend, however, that certain other documents are excepted from required public disclosure pursuant to section 552.101 of the Government Code, in conjunction with section 382.041 of the Health and Safety Code, and section 552.110 of the Government Code as "trade secrets."<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 382.041(a) of the Health and Safety Code provides:

Except as provided by Subsection (b), a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.

In Open Records Decision No. 652 (1997), this office determined that the definition of a trade secret contained in the Restatement of Torts and adopted by the Texas Supreme Court

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<sup>1</sup>Section 552.110 of the Government Code excepts from public disclosure "trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision."

for use in common law trade secret actions is the appropriate standard to use when determining if information is “relating to the secret processes or methods of manufacture or production” under section 382.041 of the Health and Safety Code. Accordingly, information is protected under section 382.041 if 1) it is established that the information is a trade secret under the definition set forth in the Restatement of Torts, and 2) the information was identified as confidential by the submitting party when it was submitted to the commission. All of the information at issue was identified as being “confidential” when submitted to the commission. Because this office also looks to the Restatement of Torts definition of “trade secrets” when making determinations under section 552.110 of the Government Code, we will consider the applicability of these two provisions together.

There are six factors to be assessed in determining whether information qualifies as a trade secret.<sup>2</sup> This office must accept a claim that information is excepted as a trade secret if a prima facie case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5 (1990). However, where no evidence of the factors necessary to establish a trade secret claim is made we cannot conclude that section 552.110 applies. Open Records Decision No. 402 (1983). In this instance, although you have made assertions that several of the six factors to be considered for trade secret protection may apply, you have not established a prima facie case that the information at issue constitutes trade secrets.

We note, however, that you have also requested an open records decision from this office regarding this matter pursuant to section 552.305 of the Government Code. In accordance with the practice this office established in Open Records Decision No. 575 (1990), we notified representatives of Degussa-Hüls that we received your request for an open records decision regarding this information. In our notification, this office requested an explanation as to why the information at issue was excepted from public disclosure, with the caveat that unless we received such explanation this office would instruct the commission to disclose the information.

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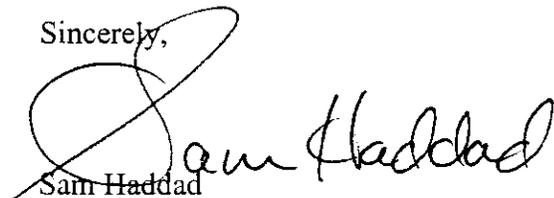
<sup>2</sup>These six factors are

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information; and
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Degussa-Hüls timely responded to our notice and contends that its submissions to the commission should be withheld from the public as trade secrets. After reviewing their arguments and the information at issue, we conclude that Degussa-Hüls has made a prima facie showing that the information at issue is trade secret information. Consequently, the commission must withhold the documents you submitted to this office as Attachments A, B, and C pursuant to section 382.041 of the Health and Safety Code, in conjunction with sections 552.101 and 552.110 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/RWP/ch

Ref.: ID# 128879

Encl. Submitted documents

cc: Ms. Sharon Emerson  
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(w/o enclosures)

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