

**PATTON BOGGS** LLP

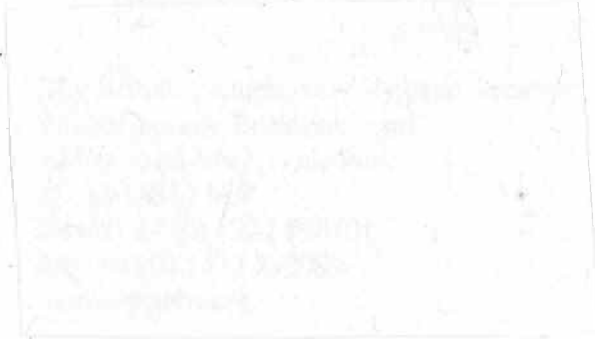
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January 31, 2012

Henry Chajet  
202-457-6511  
[hchajet@pattenboggs.com](mailto:hchajet@pattenboggs.com)

**VIA FEDERAL EXPRESS, FACSIMILE & ELECTRONIC MAIL**



**Re: Diesel Exhaust Study of Miners – Notice of Court Orders**

To whom it may concern,

Scientific experts identified your journals and/or publication as likely potential publishers of papers submitted by NIOSH and/or NCI researchers, on the Diesel Exhaust in Miners Study. If your journals or other publications have received these papers, and/or are contemplating publishing these papers, we suggest that you provide this letter and its attachments to your counsel, and ask that they contact us.

This study and its resultant papers are the subject of ongoing litigation, and both court-imposed mandates and restrictions, as well as oversight and directives by the United States Congress. We respectfully request that you and your counsel carefully consider any intent to publish these papers, as well as the impact and consequences of any such publication or distribution, if it would occur before HHS/NIOSH/NCI have fully complied with applicable court orders and congressional directives. We believe that compliance with these court orders and congressional directives by HHS/NIOSH/NCI has not occurred, and we have notified the U.S. Justice Department accordingly.

January 31, 2012

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Attachment 1 is an order from a United States federal district court, prohibiting publication or other distribution, prior to a 90-day review period of study data, documents and drafts, by our client, the MARG Coalition, and the U.S. House of Representatives Committee on Education and the Workforce.

Attachment 2 is the most recent letter from the U.S. House of Representatives Committee to HHS, seeking compliance with the Committee's data and document requests and the court orders.

Attachment 3 is the notice of appeal filed by HHS, in the United States Court of Appeals for the Fifth Circuit, which is ongoing, seeking review of a federal district court order prohibiting distribution or publication prior to a 90-day review period of the data, documents, and drafts by MARG and the Congressional Committee.

We respectfully request that if you are contemplating publication or any distribution of these studies, you do not act precipitously to disturb the status quo, or to frustrate, violate, or interfere with the expected Circuit Court's ruling, the District Court's order, and the congressional requests. To do so could cause our clients serious harm.

Thus, we provide you with advance notice of this situation in the hope that, if you are considering publication or distribution of these papers, you will refrain from doing so, until the court orders and congressional directives are complied with, or otherwise resolved.

Sincerely,

  
Henry Chaujet

Enclosures

cc: Helen L. Gilbert, United States Department of Justice  
Chairmen of the U.S. House of Representatives Committee on Education and the  
Workforce and Subcommittee on Worker Protections

RECEIVED  
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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION

METHANE AWARENESS RESOURCE  
GROUP, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al,

Defendants.

Civil No. 96-2430

Judge Haik

ORDER

After consideration of Plaintiffs' Motion for Civil Contempt and Injunctive Relief and Defendants' Motion for an Order Extending the Provisions of the Order Dated June 23, 2010, as well as all materials submitted in support thereof and in opposition thereto, it is hereby:

ORDERED that Defendants' Motion is DENIED and Plaintiffs' Motion is GRANTED;

IT IS FURTHER ORDERED that Defendants shall comply with this Court's June 5, 2001 FINAL ORDER and immediately produce to Plaintiffs and the United States House of Representatives Committee On Education and the Workforce, all non-confidential documents, data, draft reports, publications, and draft results or risk notification materials, relating to Papers I - VII of the "Diesel Exhaust in Miners Study" (the "Study").

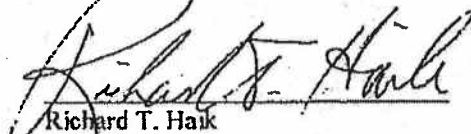
IT IS FURTHER ORDERED that Defendants immediately inform all recipients, including journals, of the above described study draft reports, not yet published, that they are prohibited from further distribution of said drafts until at least 90 days after Defendants have complied with this Order;

IT IS FURTHER ORDERED, as agreed to by Plaintiffs, that Plaintiffs and Plaintiffs' counsel, agents, or contractors shall not disclose or disseminate further the drafts, data or materials produced hereunder during the 90 days commencing on the date that Defendants send those drafts to Plaintiffs, except for the purpose of making comments about the drafts to defendants, the publishing journals, or to the Congressional Committee.

IT IS FURTHER ORDERED that Defendants are found to be in contempt of court;

IT IS FURTHER ORDERED that Defendants shall pay all attorneys' fees, expenses and costs associated with Plaintiffs' efforts made in connection with the motions considered, and the fees and expenses of the Expert retained by Plaintiffs to provide the Declaration for this Court's consideration and the forthcoming review of the documents and data withheld from Plaintiffs to date.

Done and signed this 18<sup>th</sup> day of August 2011 in Lafayette, Louisiana.

  
Richard T. Haik  
United States District Judge



COMMITTEE ON EDUCATION AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES  
2181 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6100

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December 22, 2011

The Honorable John Howard, MD, MPH, JD, LLM  
Director  
National Institute for Occupational Safety and Health  
Humphrey Building, Room 715-H  
200 Independence Avenue, SW  
Washington, DC 20201

RE: *NIOSH/NCI Study*

Dear Dr. Howard:

Thank you for providing draft copies of the final three journal articles to the committee. As your staff has been informed, these are secured in the committee's offices and all staff have signed confidentiality agreements prior to reviewing the materials. We understand that the National Institute for Occupational Safety and Health (NIOSH) is preparing to deliver the underlying data for the final articles after the data has been converted into a readable computer format.

On December 7, 2011, the Fifth Circuit Court of Appeals held oral arguments regarding the delivery of this information to the committee and plaintiffs. The arguments offered by the Department of Justice's (DOJ) attorney suggested that the committee has received all of the requested information. However, we have not received a complete response to our extensive request for information sent to you on July 8, 2011 (attached). As of December 12, NIOSH staff confirmed the data for the remaining studies had not been transmitted to the committee.

On December 13, 2011, DOJ continued to misrepresent the committee's oversight request in a letter to the court. Contrary to the assertions of the DOJ letter, the committee's request has not been altered or narrowed. We ask that you make clear to all interested parties – including DOJ – that all of the requested information has not yet been provided to the committee, and the remaining

The Honorable John Howard, MD, MPH, JD, LLM  
December 22, 2011  
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information should be provided as soon as is reasonably possible. We look forward to working with you to resolve any outstanding issues on this issue of long standing interest to the committee.

Sincerely,



JOHN KLINE  
Chairman  
Committee on Education and the Workforce



TIM WALBERG  
Chairman  
Subcommittee on Workforce Protections

cc: Henry Chajet, MARG Coalition

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

AKZO-NOBEL, INC.; GENERAL	)	CIVIL ACTION NO. 96-2430
CHEMICAL CORP.; MISSISSIPPI	)	
LIME MANAGEMENT CO.; MORTON	)	
INTERNATIONAL; OCI OF WYOMING;	)	
LONNY BADEAUX; JOSEPH VENDETTI;	)	JUDGE RICHARD T. HAIK, SR.
METHANE AWARENESS RESOURCE	)	
GROUP; DIESEL COALITION	)	
	)	
VERSUS	)	MAGISTRATE JUDGE HANNA
	)	
UNITED STATES OF AMERICA; DONNA E.	)	
SHALALA; LINDA ROSENSTOCK;	)	
<u>RICHARD KLAUSNER</u>	)	

NOTICE OF APPEAL

All defendants (the United States; Kathleen Sebelius, Secretary of Health and Human Services; John Howard, Director, National Institute for Occupational Safety and Health; and Harold Varmus, Director, National Cancer Institute) hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order dated August 18 and entered August 19, 2011, ECF No. 152.<sup>1</sup>

Respectfully submitted,

STEPHANIE A. FINLEY  
United States Attorney

s/ Janice E. Hebert  
JANICE E. HEBERT (#20218)  
Assistant United States Attorney  
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Lafayette, Louisiana 70501-6832  
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<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), defendants Sebelius, Howard, and Varmus are automatically substituted as defendants for their respective predecessors.