

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

**RAG-stiftung,**  
**Evonik Industries AG,**  
**Evonik Corporation,**  
**Evonik International Holding B.V.,**  
**One Equity Partners Secondary Fund,**  
**L.P.,**  
**One Equity Partners V, L.P.,**  
**Lexington Capital Partners VII (AIV I),**  
**L.P.,**  
**PeroxyChem Holding Company LLC,**  
**PeroxyChem Holdings, L.P.,**  
**PeroxyChem Holdings LLC,**  
**PeroxyChem LLC**  
**and**  
**PeroxyChem Cooperatief U.A.**

Docket No. 9384

**RESPONDENTS' UNOPPOSED MOTION TO UNSEAL EXPERT MATERIALS**

Respondents RAG-Stiftung; Evonik Industries AG; Evonik Corporation; Evonik International Holdings B.V.; One Equity Partners Secondary Fund L.P.; One Equity Partners V, L.P.; Lexington Capital Partners VII (AIV I), L.P.; PeroxyChem Holding Company LLC;

PeroxyChem Holdings, L.P.; PeroxyChem Holdings LLC; and PeroxyChem Cooperatief U.A. (together, **Respondents**) hereby move for entry of an order to unseal the expert reports and deposition testimony of Dr. Nicholas Hill from *In re Tronox/Cristal USA*, F.T.C. Dkt. No. 9337, to the extent necessary to allow Complaint Counsel to produce those materials to Respondents with redactions that remove information that parties and third parties in *Tronox* designated as confidential in that case. Complaint Counsel does not oppose this Motion.

As the FTC's expert economist in *Tronox*, Dr. Hill prepared expert reports and gave deposition testimony in that matter. Those reports and deposition testimony were granted *in camera* treatment for purposes of the administrative proceeding by an order entered on May 30, 2018 (the **May 30, 2018 Order**). See Ex. A. Several of the FTC attorneys who entered appearances in *Tronox* – and who had access to Dr. Hill's expert reports and deposition testimony from that case – have also appeared here.<sup>1</sup>

Respondents have engaged Dr. Hill in this matter to analyze Evonik's proposed acquisition of PeroxyChem and offer his expert opinion on the transaction's likely effects. To minimize the potential that Complaint Counsel's familiarity with Dr. Hill's work in *Tronox* would give them an unfair advantage in this case, Respondents propounded a formal document request seeking production of "expert reports and testimony submitted in the Tronox Matter, including all expert deposition testimony."

Complaint Counsel objected to that request and declined to produce expert reports and deposition testimony in part because the "requested documents are non-public and contain non-public information that is protected from discovery by [...] Orders issued by Judge Chappell

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<sup>1</sup> Compare *In re Tronox/Cristal USA*, F.T.C. Dkt. No. 9337 (noting appearances of Steven Dahm, James Rhilinger, Dominic Vote, and Cecelia Waldeck) with *In re Evonik/PeroxyChem*, FTC Dkt. No. 9384 (noting appearances of Steven Dahm, James Rhilinger, Dominic Vote, and Cecelia Waldeck).

granding [*sic*] in camera treatment to documents and information” in *Tronox*. During a meet-and-confer session on September 6, 2019, Respondents explained their position that, while the May 30, 2018 Order prevented Dr. Hill’s expert reports and deposition testimony from being entered in the public record in *Tronox*, the Order did not prohibit the FTC from producing those materials in response to a valid discovery request in this case. *See* 16 C.F.R. § 3.45(a) (specifying that material subject to an *in camera* order “will be kept confidential and not placed on the public record of the proceeding in which it was submitted”) (emphasis added). Complaint Counsel agreed that they would not oppose a motion requesting that Dr. Hill’s expert reports and deposition testimony be unsealed, provided that Complaint Counsel could redact information that parties and third-parties in *Tronox* designated as confidential.

For the foregoing reasons, Respondents respectfully request entry of the accompanying Proposed Order, which would unseal Dr. Hill’s expert reports and deposition testimony only to the extent necessary to allow Complaint Counsel to produce them to Respondents with redactions that remove information that parties and third parties in *Tronox* designated as confidential in that case.

Date: September 12, 2019

Respectfully submitted,

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Holding Company LLC, PeroxyChem  
Holdings L.P., PeroxyChem Holdings LLC,  
PeroxyChem LLC, and PeroxyChem  
Cooperatief U.A.*

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

RAG-stiftung,

Evonik Industries AG,

Evonik Corporation,

Evonik International Holding B.V.,

One Equity Partners Secondary Fund,  
L.P.,

One Equity Partners V, L.P.,

Lexington Capital Partners VII (AIV I),  
L.P.,

PeroxyChem Holding Company LLC,

PeroxyChem Holdings, L.P.,

PeroxyChem Holdings LLC,

PeroxyChem LLC

and

PeroxyChem Cooperatief U.A.

Docket No. 9384

**[PROPOSED] ORDER GRANTING RESPONDENTS'  
UNOPPOSED MOTION TO UNSEAL EXPERT MATERIALS**

Upon consideration of Respondents' Unopposed Motion to Unseal Expert Materials, and for good cause shown, it is HEREBY ORDERED that said Motion is GRANTED. Dr. Hill's expert reports and deposition testimony from *In re Tronox/Cristal USA*, F.T.C. Dkt. No. 9337,

are HEREBY UNSEALED to the extent necessary to allow Complaint Counsel to produce them to Defendants with redactions that remove information that parties and third parties in *Tronox* designated as confidential in that case.

It is so ORDERED this \_\_\_\_\_ day of September, 2019.

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D. MICHAEL CHAPPELL  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2019, I filed the foregoing documents using the FTC's E-Filing System, which will send notification of such filing to:

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission,  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via email:

Amy Dobrzynski  
Cecelia Waldeck  
Daniel Matheson  
Dominic Vote  
Frances Anne Johnson  
James Rhilinger  
Michael Blevins  
Michael Lovinger  
Sean Hughto  
Stephen Santulli  
Steven Dahm  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

*Complaint Counsel*

Dated: September 12, 2019

By: /s/ Laura C. Onken  
Laura C. Onken

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: September 12, 2019

By: /s/ Laura C. Onken  
Laura C. Onken

# EXHIBIT A

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

\_\_\_\_\_)  
In the Matter of )  
)  
Tronox Limited )  
a corporation, )  
)  
National Industrialization Company )  
(TASNEE) )  
a corporation, )  
)  
National Titanium Dioxide Company )  
Limited (Cristal) )  
a corporation, and )  
)  
Cristal USA Inc. )  
a corporation, )  
)  
Respondents. )  
\_\_\_\_\_)

DOCKET NO. 9377

**ORDER ON RESPONDENT TRONOX'S SECOND  
SUPPLEMENTAL MOTION FOR *IN CAMERA* TREATMENT**

**I.**

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the Scheduling Order entered in this matter, Respondent Tronox Limited ("Tronox") filed a second supplemental motion for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter ("Second Supplemental Motion"). Federal Trade Commission ("FTC" or "Commission") Complaint Counsel does not oppose Tronox's Motion.

**II.**

By Order issued May 15, 2018, Tronox's initial motion for *in camera* treatment was granted ("May 15 Order"). In its Second Supplemental Motion, Tronox explains that it seeks *in camera* treatment for documents falling into two groups: (1) seven exhibits that are expert reports or expert deposition transcripts designated as exhibits by Complaint Counsel after Tronox

filed its prior motions for *in camera* treatment; and (2) one transcript of a third-party deposition, where the third-party is a customer of Tronox who has not sought *in camera* treatment on its own behalf. For this deposition, Respondent states it has a confidentiality interest in the passages of the transcript that relate to Tronox's prices and seeks *in camera* treatment for only those passages. Tronox explains that each of the documents fall under the categories of documents for which it sought and received *in camera* treatment through its initial motion. The legal standards governing the Tronox's Second Supplemental Motion for *in camera* treatment are stated in the May 15 Order.

For the reasons set forth in the May 15 Order, Tronox's Second Supplemental Motion is GRANTED.

Tronox is hereby instructed to prepare a proposed order listing the documents that have been granted *in camera* treatment by expiration date and exhibit number.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: May 30, 2018

Notice of Electronic Service

**I hereby certify that on May 30, 2018, I filed an electronic copy of the foregoing Order on Respondent Tronox's Second Supplemental Motion for In Camera Treatment, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
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Washington, DC, 20580

**I hereby certify that on May 30, 2018, I served via E-Service an electronic copy of the foregoing Order on Respondent Tronox's Second Supplemental Motion for In Camera Treatment, upon:**

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