



February 9, 2006

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U.S. Department of Transportation  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

LEGAL COUNSEL

Attention: Otto G. Matheke, III, Senior Attorney

Re: Confidentiality Determination/EA05-005

Dear Sirs:

Thank you for your letter of January 27, 2006. On behalf of The Dow Chemical Company, I respectfully request reconsideration of your denial of our request for confidentiality treatment of the information provided under EA05-005 information request. I further request that the confidential information submitted be retained confidential until a decision is made on this request for reconsideration.

The specific confidential information provided is the specific formulation details of the Dow fluid formulation. This is contained on one sheet of the submission which provides the answer to Question 3 of your original request.

From your letter it appears that two items were missing. First, that the time period that this information is to be kept confidential was not included and that the confidential document was not marked "Confidential".


Therefore, enclosed herewith is a new disk and new hard copies of the information requested under the above-mentioned information request. The two copies of the document containing confidential information are marked "confidential" and a redacted copy of that page is provided. The pages of the submission which do not contain confidential information and the redacted copy are not marked confidential. The original request asked that the confidential information be retained confidential for an indefinite time. Your response implies that the request must state a specific time period, therefore a specific time period of confidentiality is hereby requested.

Brake fluid compositions are sold typically for the life of the vehicle and for a significant period thereafter in order to allow for replacement fluids. Therefore, a significant period of confidentiality is needed relative to the composition of this formulation, and therefore Dow requests that this information be kept confidential for a period of 25 years from the submission date of August 15, 2005.

We now believe that the request for confidentiality is now complete and respectfully request that the composition of the relevant brake fluid be held confidential according to the confidentiality regulations set forth in 49 CFR Part 512. Also, enclosed are copies of the original submission with the above-mentioned changes. A copy of this letter has also been sent to Kathleen C. DeMeter with all of the appropriate attachments.

If you require further information, please feel free to contact me at your earliest convenience.

Sincerely,



Norman L. Sims  
Patent Counsel  
Dow Automotive  
1250 Harmon Road  
Auburn Hills, MI 48326  
248/391-6455-phone  
248/391-8550-facsimile  
248/391-8505-alternate fax  
nlsims@dow.com

NLS:mfm

Enclosures

cc: Kathleen C. DeMeter, Office of Defects Investigation Enforcement,  
U.S. Department of Transportation, National Highway Safety  
Administration, 400 Seventh Street, S.W., Washington, DC 20590



# The Dow Chemical Company

Midland, Michigan 48674

August 15, 2005

Chief Counsel of the National Highway  
Traffic Safety Administration  
Room 5219  
400 Seventh Street, S.W.  
Washington, D.C. 20590

**Re: This is in Request to National Highway Transportation Safety Administration  
Request NVS-215 BBY EA05-005 for Information from Dow Automotive with Respect  
to Brake Fluids.**

Dear Sirs:

This is a request that certain information submitted pursuant to a request from the National Highway Traffic Safety Administration be retained as confidential pursuant to 49 CFR 512. In particular, this is a request that the answer of the Dow Automotive Business Unit of The Dow Chemical Company (TDCC) with respect to information about its Brake Fluid HD 50-4 provided in response to a letter dated July 21, 2005 received from Kathleen C. DeMeter, Director Defects, Investigation, Enforcement, related to the above-mentioned investigation be retained as confidential.

The information requested contains confidential business information which gives rise to this request for confidential treatment of the specifically identified information below. In particular, the specific confidential information is the information about the components of the formulation and the amounts of each of the components in the formulation. This information is requested to be retained as confidential under the confidentiality standards of 47 CFR 512.15, sections a, b and d. In particular, the information is a trade secret of TDCC under Section a, TDCC would suffer significant competitive harm if this information was provided to a third party competitor because it would allow competitors to produce an identical formulation without having to go through the expense of developing their own formulation and would also allow them to qualify the formulation with Ford Motor Company without having to do all of the necessary testing required to qualify such a competitive formulation. Further, under 49 CFR 512.15, Section d, this information is produced voluntarily and TDCC does not release this information to the public.

Pursuant to the requirements of 49 CFR 512.8, it is asserted that this information is a trade secret because this formulation information is sold by TDCC commercially.

August 15, 2005

therefore is used commercially, and it provides a competitive advantage over competitors who do not know the formulation. The specific information identified as confidential is not provided to the public and cannot be analyzed. It provides competitive advantage because the competitors can not make an identical copy of the formulation and therefore to compete must develop and qualify alternative formulations. To provide the formulation information to competitors would result in harm to TDCC in that the competitors could manufacture and sell such a composition without going through the expense of developing the composition and going through full qualifications with the customer and therefore which would significantly reduce the potential return that TDCC receives from the sale of this composition. This information is retained as a trade secret by not disclosing it to the public or customers, except as required in MSDS for safety purposes. The Research and Development and Production sites where this was developed and is produced are secure facilities with limited access. The information provided is only provided to those employees who have a need to know it to do their job. TDCC requests that this information be held confidential indefinitely as this composition has been used for several years commercially while retaining its trade secret status. TDCC intends to continue using this formulation for an indefinite period of time and therefore could not specifically state a time period over which this needs to be kept confidential.

Attached is an Affidavit from John HacsKaylo attesting to the confidential nature of this information. Also, enclosed are three copies of the requested information, two of which are unmarked and one which is redacted. Only the Word document disclosing the specific components and their amounts contains Confidential Business Information. Also, attached is a cover letter to the requestor of the information to complete your file. All correspondence with respect to this matter should be sent to the attention of the undersigned at the following address or e-mail address. If you require information, please feel free to contact the undersigned at your earliest convenience.

Sincerely,



Norman L. Sims  
Patent Counsel  
Dow Automotive  
1250 Harmon Road  
Auburn Hills, MI 48326  
248/391-6455-phone  
248/391-6550-facsimile  
nlsims@dow.com

NLS:mfm

Attachments



# The Dow Chemical Company

Midland, Michigan 48674

August 15, 2005

Ms. Kathleen C. DeMeter, Director  
Office of Defects Investigation Enforcement  
U.S. Department of Transportation  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Re: NVS-214 BBY EA05-005 Request for Brake Fluid Information from Dow Automotive

Dear Ms. DeMeter:

Please find enclosed answers relative to your request for information dated July 21, 2005 relative to the above-referenced matter. Please be aware that Dow Automotive is a Business Unit of The Dow Chemical Company and the proper corporate entity for future reference is The Dow Chemical Company. In response to your request, attached are three copies of the requested documents and a disc with an electronic copy of the documents. Of the three copies, two are unmarked and the third is redacted to remove confidential information. Also, attached is a copy of a letter to the Chief Counsel for the National Highway Transportation Safety Administration requesting that certain of the information contained in the above-referenced documents be treated as confidential business information. In particular, the confidential business information contained in the documents is information about the components and amounts of components contained in the brake fluid for which you have requested information. Pursuant to 49 CFR 512.20, this information must be retained as confidential until such time as ruling is issued by the Chief Counsel for your agency.

Submitted herewith relative to the information Request 1 is an Excel spreadsheet showing the model, year and part number of brake fluids sold by The Dow Chemical Company to Ford for the requested models and years. Relative to Request 2, enclosed please find an MSDS for brake fluid 50-4. With respect to Request 3, enclosed please find a Word document containing the composition information of the single fluid used for all of the requested makes and model years. This document also confirms that no significant changes in the composition were made since introduction of the brake fluid. Only the Word document disclosing the specific components and their amounts contains Confidential Business Information.

If you require further information, please feel free to contact the undersigned at your convenience.

Sincerely,

Norman L. Sims  
Patent Counsel  
Dow Automotive  
1250 Harmon Road  
Auburn Hills, MI 48326  
248/391-6455-phone  
248/391-6550-facsimile  
nlsims@dow.com

NLS:mfm

Attachment

**AFFIDAVIT –Certificate in Support of Request for Confidentiality**

**STATE OF MICHIGAN)**

**) ss.**

**County of Oakland )**

**I, John Hacskeyto, pursuant to the provisions of 49 CFR Part 512, state as follows:**

- 1. I am the Global R&D Director for the Dow Automotive Business of The Dow Chemical Company (TDCC) and I am authorized by (TDCC) to execute this certificate on its behalf;**
- 2. I certify that the information contained in MSDS and Word Documents containing the specific compositional information about TDCC Brake Fluid HD50-4 is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b) (4) (as incorporated by reference in and modified by the statute under which the information is being submitted);**
- 3. I hereby request that the information contained in MSDS and Word Documents containing the specific compositional information about TDCC Brake Fluid HD50-4 be protected indefinitely;**
- 4. This certification is based on the information provided by the responsible (TDCC) personnel who have authority in the normal course of business to**

release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (TDCC):

5. Based upon that information, to the best of my knowledge, information and belief, the information for which (TDCC) has claimed confidential treatment has never been released or become available outside (TDCC):

6. I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside (TDCC) because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

I certify under penalty of perjury that the foregoing is true and correct.

Executed on this the 15 day of August 2005.

*ms*



John J. Hacskeylo

Sworn to and subscribed before me this 15 day of August

2005.



(Notary Public)

**Mildred Folsom McKenzie**  
NOTARY PUBLIC, OAKLAND COUNTY, MICHIGAN  
MY COMMISSION EXPIRES DECEMBER 19 2010

(SEAL)

*ms*

**PACKET WITH CONFIDENTIAL INFORMATION**



