Arent Fox

NHTSA
WASHINGTON, DC 20590

2010 SEP -3 P 12: 39

OFFICE OF CHIEF
COUNSEL

September 2, 2010

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VIA FEDEX

O. Kevin Vincent, Esq.
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: PE10-013 – Grote Industries, LLC - Request for Confidential Treatment for Supplemental Voluntary Submission to ODI

Dear Mr. Vincent:

This letter serves as the request for confidential treatment by Grote Industries, LLC ("Grote") with respect to data and information voluntarily submitted by Grote to the Office of Defects Investigation in response to non-compulsory requests in connection with the above-referenced preliminary evaluation. (Grote previously made two submissions and related confidential treatment requests dated July 16, 2010 and July 28, 2010, in response to the Agency's *compulsory* information request.)

In accordance with 49 C.F.R. Part 512.5, Grote is submitting herewith two confidential (unredacted) copies of the submission and one proposed public (redacted) version, along with a Certificate in Support.

Grote seeks confidential treatment for the following enclosures:

- A list of Grote warranty codes and descriptions related to LED marker lamps (confidential treatment sought for descriptions only)
- Two tables listing the numbers of all warranty claims for various Grote part numbers by warranty code and year for the period 2004 through 2006 (confidential treatment sought for warranty claims counts only)
- Tear down report, containing Grote's analysis of a field sample provided by a vehicle manufacturer to NHTSA (confidential treatment sought for report in its entirety)

This information was provided in response to informal, noncompulsory supplemental requests by the Office of Defects Investigation. Grote requests that this information be granted confidential treatment pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act,

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5 U.S.C. § 552(b)(4), on the ground that the information is being submitted voluntarily and that the information is of a kind that Grote does not customarily disclose publicly. *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (information provided voluntarily "will be treated as confidential under Exemption 4 if it is of a kind that the provider would not customarily make available to the public"). *See* Paragraph 5 of the enclosed Certificate in Support (stating that Grote does not customarily make the foregoing information available to the public).

In the alternative, and for the reasons discussed in Grote's July 16, 2010 request for confidential treatment related to the warranty information provided in response to Request No. 3 of the Agency's information request and in Grote's July 28, 2010 request for confidential treatment related to Product Investigations & Evaluations provided in response to Request No. 7 of the Agency's information request, Grote seeks confidential treatment for this information on the ground that it constitutes trade secrets and/or confidential, proprietary information that would likely subject Grote to competitive harm if disclosed. *See* 49 C.F.R. § 512.3(c)(1) and (2); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("commercial or financial matter is 'confidential' . . . if disclosure of the information is likely to . . . cause substantial harm to the competitive position of the person from whom the information was obtained."); *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (a trade secret is a "secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort"); *Center for Auto Safety v. Nat'l Hwy. Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000), *remanded for further proceedings*, 244 F.3d 144 (D.C. Cir. 2001) (air bag specifications representing "years of research and development and enormous financial investment" not subject to FOIA disclosure).

* * *

For the foregoing reasons, Grote requests confidential treatment for an indefinite period of time.

Please contact me if you have questions or if you would like additional information.

Sincerely,

Christopher H. Grigorian

Enclosures
cc: Arturo Hernandez. (Grote)
Timothy W. Brooks (Grote)

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, Timothy W. Brooks, pursuant to the provisions of 49 CFR 512, state as follows:

(1) I am Timothy W. Brooks, Chief Engineer of Grote Industries, LLC ("Grote"), and I am authorized to execute documents on behalf of Grote;

(2) I certify that the information in the accompanying Request for Confidential Treatment is confidential and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. § 552(b)(4);

(3) I hereby request that the information contained in these documents be protected indefinitely;

(4) This certification is based on the information provided by the responsible Grote 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 Grote;

(5) Based upon that information, to the best of my knowledge, information and belief, Grote does not customarily disclose to the public the kind of information contained in these documents.

(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 Grote because of unauthorized or inadvertent disclosure, except as stated in Paragraph 5; and

(7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 1st day of September, 2010.

Timothy W. Brooks
Grote Industries, LLC