

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 MATERI

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.¹

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

¹ 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

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

Date: September 12, 2019

Respectfully submitted,

By: /s/ Eric J. Mahr
Eric J. Mahr (D.C. Bar No. 459350)
Andrew J. Ewalt (D.C. Bar No. 493433)

By: /s/ Mike. G. Cowie

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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PUBLIC

CERTIFICATE OF SERVICE

CERTIFICATE FOR ELECTRONIC FILING

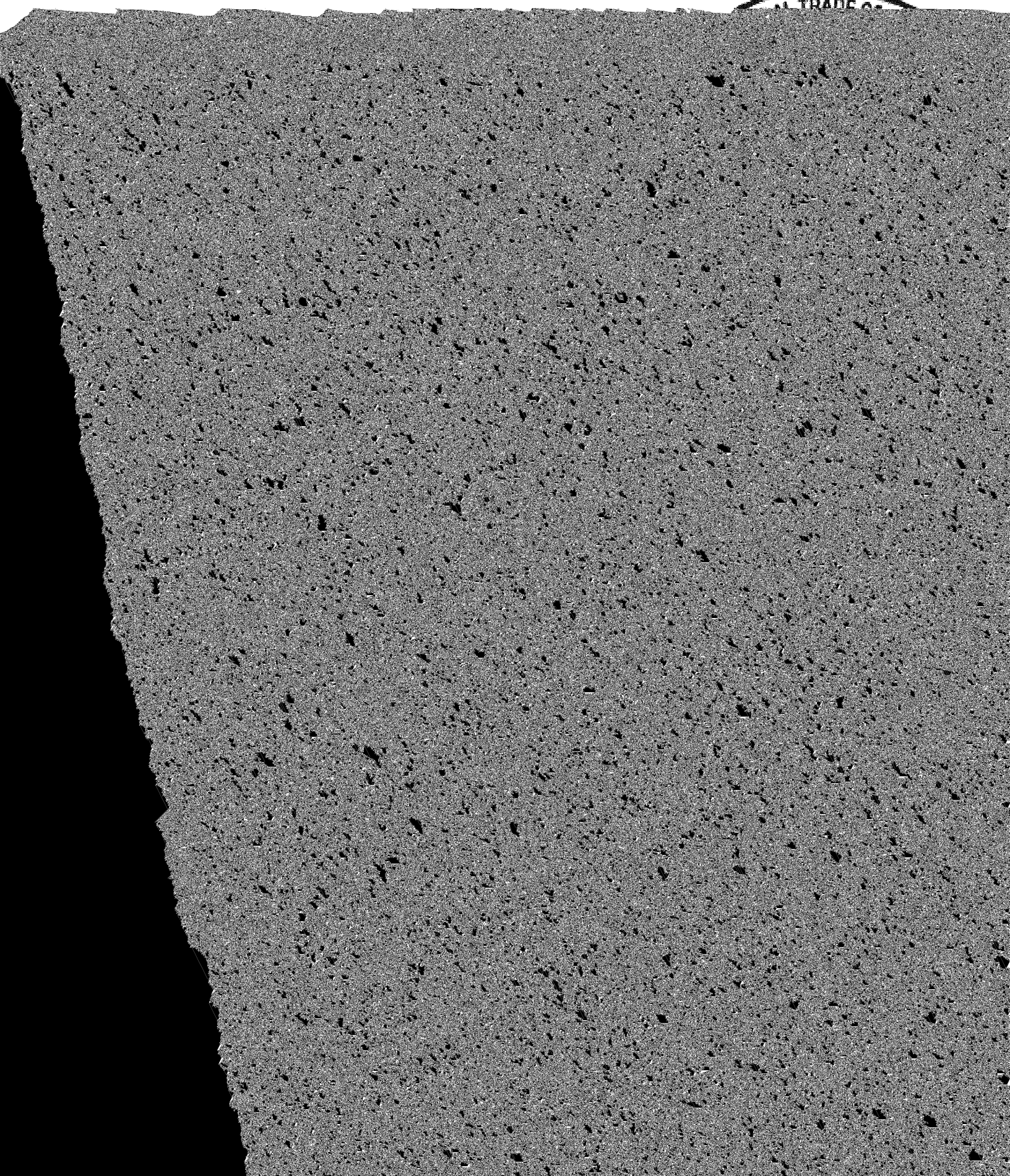
I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: September 12, 2019

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

EXHIBIT A

TRADE MARK



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