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January 10, 1994

Mark DeLapp, Attorney at Law
12746 S.E. Stark, Plaza 125
Portland, Oregon 97233

Re: Petition for Public Records Disclosure Order:
Building Codes Division Records

Dear Mr. DeLapp:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on January 3, 1994, asks the Attorney General to direct the Building Codes Division to make available all documents regarding that agency's investigation and findings of alleged use of non-rated foam materials by Kalt Manufacturing Company. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. See ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

After discussion with Chuck Monschein, Leadworker, Prefabricated Structures, Building Codes Division, it is apparent that the records you have requested are largely records available for public inspection. Mr. Monschein informs us that the agency now agrees to release those records for inspection. Accordingly, this portion of your petition is denied as moot.

The agency has redacted certain information contained in the records which is exempt from disclosure. Specifically, the agency will not disclose information which would identify the square footage of components, customer names, gross weight and price per

pound of materials purchased, and descriptions of materials used by Kalt in its production process. This information, which is not patented, is closely guarded by Kalt, has actual or potential commercial value and would give its users an opportunity to obtain a business advantage over competitors who do not know it. As such, the information is a business trade secret.[1/] As to such information, we deny your petition on the basis that the information satisfies the exemption from disclosure provided in ORS 192.501(2) for business trade secrets.

You may contact Mr. Monschein directly to make arrangements to view the non-exempt public records.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel
to the Attorney General

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c: Chuck Monschein, Leadworker, Building Codes Division, DCBS

[1/] "Trade secrets" may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. ORS 192.501(2).