

<b>IN RE ALLEGED ENVIRONMENTAL CONTAMINATION OF POMPTON LAKES</b>	<b>SUPERIOR COURT OF NEW JERSEY</b>  <b>LAW DIVISION: BERGEN COUNTY</b>  <b>FILED</b>  <b>FEB 15 2011</b>  <b>CIVIL ACTION</b>  <b>BRIAN R. MARTINOTTI</b> <i>Order # 3 S.C.</i>
---	---

**STIPULATED PROTECTIVE ORDER**

WHEREAS, certain materials that will be produced in discovery may contain trade secret or other confidential information subject to protection in accordance with Rule 4:10-3 of the Rules Governing Civil Practice in the Superior Court of the State of New Jersey, and

WHEREAS, to facilitate discovery in a timely fashion and minimize the necessity, delay, and burdens attendant to pre-production and pre-disclosure motions for a protective order(s),

NOW, THEREFORE, it is hereby agreed and stipulated among the Parties and

**ORDERED** pursuant to Rule 4:10-3 as follows:

**I. Scope of Order**

A. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, provided by any party to this proceeding (the "Supplying Party") to any other party to this proceeding (the "Receiving Party"). This Protective Order is binding upon all parties to this proceeding at the time this Protective Order is entered, including their respective corporate parents, subsidiaries, and affiliates, and their respective attorneys, principals, experts, consultants, representatives, directors, officers, employees, and others as set forth in this Protective Order. If additional parties are added other than parents, subsidiaries or affiliates of current parties to this litigation, then their ability to receive

Confidential Information and/or Highly Confidential Information as set forth in this Protective Order will be subject to them being bound, by agreement or Court Order, to this Protective Order.

B. Third Parties who so elect may avail themselves of, and agree to be bound by, the terms and conditions of this Protective Order and thereby become a Supplying Party for purposes of this Protective Order.

C. The entry of this Protective Order does not preclude any party to this proceeding from seeking a further order of this Court, including an order modifying the terms of this Protective Order.

D. Nothing herein shall be construed to affect in any manner the admissibility at trial or in any other Court proceeding of any document, testimony, or other evidence.

E. This Protective Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords extends only to the specific information or items that are entitled to protection under the applicable legal principles for treatment as confidential.

## **II. Designation of Confidential Information and Highly Confidential Information**

A. "Discovery Material" as used herein means any information, document, or tangible thing, response to discovery requests, deposition testimony or transcript, and any other similar materials, or portions thereof. To the extent that matter stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, Internet sites, discs, networks, or tapes) ("Computerized Material") is produced by any party in such form, the Supplying Party may designate such matters as confidential by a designation of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the media. Whenever any party to

whom Computerized Material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL is produced reduces such material to hardcopy form, that party will treat the hardcopy form in accordance with the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation on the media for the Computerized Material.

B. “Competitor” as used herein shall mean any company, other than the Supplying Party, that is engaged in the business of the Supplying Party; provided, however, that environmental and remediation consultants or experts retained by the parties to this litigation shall not constitute “Competitors” to any party to this litigation for purposes of this Protective Order.

C. “Confidential Information” is defined herein as information that the Supplying Party in good faith believes constitutes, reflects, discloses, or contains trade secret or other confidential or proprietary business, financial, or commercial information, whether it is a document, information contained in a document, information revealed during a deposition or other testimony, information revealed in an interrogatory response, or information otherwise revealed. In designating Discovery Materials as Confidential Information, the Supplying Party shall do so in good faith consistent with the provisions of this Protective Order and rulings of the Court and consistent with the Supplying Party’s belief that the designated material would be entitled to the protections accorded to Confidential Information under this Protective Order if such had first been sought by formal motion by the Supplying Party. Nothing herein shall be construed to allow for global designations of all documents as “Confidential.” Further, in the event of a dispute concerning the designation of materials as “Confidential,” nothing in this paragraph shall be deemed to provide protection to Discovery Materials that would not have been accorded to those Discovery Materials had protection first been sought by formal motion. Any transcript of deposition taken in this proceeding, or

portion thereof, that contains Confidential Information may be designated as such either on the record or by written notice to all counsel of record within 45 days following the date of the deponent's deposition testimony or 15 days following the designating party's receipt of the transcript of the deposition, whichever period is shorter.

D. "Highly Confidential Information" is defined herein as Confidential Information that, if disclosed to a Competitor, could result in possible antitrust violations or substantial business harm. In designating Discovery Materials as Highly Confidential Information, the Supplying Party shall do so in good faith consistent with the provisions of this Protective Order and rulings of the Court, and consistent with the Supplying Party's belief that the designated material would be entitled to the protections accorded to Highly Confidential Information under this Protective Order if such had first been sought by formal motion by the Supplying Party. Nothing herein shall be construed to allow for global designations of all documents as "Highly Confidential." Further, in the event of a dispute concerning the designation of materials as "Highly Confidential," nothing in this paragraph shall be deemed to provide protection to Discovery Materials that would not have been accorded to those Discovery Materials had protection first been sought by formal motion.

E. For each document produced by the Supplying Party that contains or constitutes Confidential Information or Highly Confidential Information pursuant to this Protective Order, each page shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER", or "HIGHLY CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" or comparable notices.

F. Specific discovery responses produced by the Supplying Party shall, if appropriate, be designated as Confidential Information or Highly Confidential Information by marking the pages of the document that contain such information with the notation

“CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER,” or “HIGHLY CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” or comparable notices.

G. Any party in this proceeding may designate as Confidential Information or Highly Confidential Information any document or information produced by, or testimony given by, any other person or entity that the party reasonably believes qualifies as such party’s Confidential Information or Highly Confidential Information under this Protective Order. If any party in good faith believes that any third party produced information constitutes its Confidential Information or Highly Confidential Information, the party claiming confidentiality shall designate the information as such within 30 calendar days of its receipt of such information. Any party designating third party information as Confidential or Highly Confidential shall have the same rights as a Supplying Party under this Protective Order with respect to such information.

**III. Access to Confidential Information**

A. In the absence of written permission from the Supplying Party or an order of the Court, any Confidential Information produced in accordance with the provisions of this Protective Order shall be used solely for the purposes of this proceeding or as permitted by this paragraph and its contents shall not be disclosed to any person other than:

1. the Receiving Party;
2. counsel for the Receiving Party, including outside counsel (consisting of any law firm or attorney that represents any Party) and any in-house counsel (consisting of attorney employees of any Defendant), and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel to whom it is reasonably necessary to disclose the Information for purposes of the litigation;

3. any employee or agent of the Receiving Party to whom it is reasonably necessary to disclose such information;
4. independent consultants and/or experts, consulted with, employed, and/or formally retained to advise or to assist counsel in the preparation and/or trial of this litigation;
5. stenographic employees and court reporters recording or transcribing testimony in this proceeding;
6. the Receiving Party may show Confidential Information to any witness during a deposition if (a) the Supplying Party consents to such disclosure; or (b) the witness affirms on the record not to disclose such confidential material to anyone outside the deposition. Confidential Information shown to any witness during a deposition shall not lose its confidential status through such use, and counsel shall exercise their best efforts and take all steps reasonably required to protect its confidentiality during such use. If, after a deposition is noticed or a hearing or trial is set, the Supplying Party objects to Confidential Information being shown to that witness, the Supplying Party shall attempt to confer with counsel to resolve the issue. If counsel are unable to resolve the issue themselves, counsel may seek an order from the Court prohibiting or limiting such use or for other relief. Following a deposition, the parties will comply with the provisions set forth in Section II(G);
7. the Court, any court personnel, any state or federal Court conducting related proceedings, and any members of their staffs to whom it is necessary to disclose the information;

8. vendor agents retained by the parties or counsel for the parties;
9. any individual(s) who authored, prepared, or previously received the information; and
10. plaintiffs' treating physicians.

B. In the absence of written permission from the Supplying Party or an order of the Court, any Highly Confidential Information produced in accordance with the provisions of this Protective Order shall be used solely for the purposes of this proceeding or as permitted by this paragraph and its contents shall not be disclosed to any person other than:

1. the Receiving Party. However, if the Receiving Party is a co-Defendant or a Competitor of the Supplying Party, the Receiving Party may not receive Highly Confidential Information, except as provided by Paragraph III(B)(2);
2. outside counsel and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel to whom it is reasonably necessary to disclose the Information for purposes of the litigation;
3. independent consultants and/or experts, consulted with, employed, and/or formally retained to advise or to assist counsel in the preparation and/or trial of this litigation;
4. stenographic employees and court reporters recording or transcribing testimony in this proceeding;
5. the Receiving Party may show Highly Confidential Information to a witness during a deposition, hearing, or trial if (a) the Supplying Party consents to such disclosure; or (b) the witness affirms on the record not to disclose such Highly Confidential material to anyone outside the

deposition. Highly Confidential Information shown to any witness during a deposition shall not lose its Highly Confidential status through such use, and counsel shall exercise their best efforts and take all steps reasonably required to protect its confidentiality during such use. If after a deposition is noticed or a hearing or trial is set, the Supplying Party objects to Highly Confidential Information being shown to that witness, the Supplying Party shall attempt to confer with the supplying party before the deposition, hearing or trial to resolve the issue. If counsel are unable to resolve the issue themselves, counsel may seek an order from the Court prohibiting or limiting such use or for other relief. Following a deposition, the parties will comply with the provisions set forth in Section II(G);

6. the Court, any court personnel, any state or federal court conducting related proceedings, and any members of their staffs to whom it is necessary to disclose the information;
7. vendor agents retained by the parties or counsel for the parties;
8. any individual(s) who authored, prepared, or previously received the information; and
9. plaintiffs' treating physicians or other health care providers.

C. Disclosure of Confidential Information or Highly Confidential Information to Employees or Consultants of Competitors:

1. Before disclosing Confidential Information or Highly Confidential Information to any person who is a current employee or consultant of a Competitor of the Supplying Party, the party wishing to make such disclosure shall provide the counsel who designated such information as



Confidential or Highly Confidential with notice of their intention to share Confidential Information or Highly Confidential Information with such person. The notice, which must be provided by email, shall contain information concerning the proposed recipient that does not identify the proposed recipient but is sufficient to permit an informed decision to be made with respect to any potential objection to the provision of Confidential or Highly Confidential information to that individual. The Supplying Party shall have 10 days from service of the notice to deliver to the notifying party its good-faith written objections, which must be provided by e-mail, to such disclosure. Absent timely objections, the employee or consultant shall be permitted to receive Confidential Information or Highly Confidential Information. If there is no consent to the disclosure, within 5 days of serving its objections, the party objecting to the disclosure may seek a protective order from the Court and failure to timely seek a protective order shall result in the proposed recipient being permitted to receive Confidential or Highly Confidential Information. As part of that motion, the objecting party will have an opportunity to (1) request that the Court direct the party wishing to make disclosure to produce additional information about the proposed recipient, and (2) submit any other papers and argument necessary to allow the Court to make an informed decision. It shall be the burden of the party seeking to prevent such disclosure to demonstrate good cause for prohibiting disclosure. Once the party objecting to disclosure files a motion for a protective order, the party seeking disclosure may not disclose any

Confidential Information or Highly Confidential Information to the proposed recipient unless and until the Court has permitted such disclosure and ten days have elapsed after the appeal period from any such order. If the Court allows disclosure of the Confidential Information or Highly Confidential Information, the information shall remain Confidential Information or Highly Confidential Information and the proposed recipient shall be bound by this Protective Order. This section shall not apply to documents shown during a deposition, which shall be governed by Paragraphs III.A.6 or III.B.5.

D. Prior to the disclosure of any Confidential Information or Highly Confidential Information to any person identified above, each putative recipient of Confidential Information or Highly Confidential Information shall be provided with a copy of this Protective Order, which he or she shall read.

E. With respect to documents produced to plaintiffs, documents designated as Highly Confidential will be treated in the same manner as documents designated Confidential except that Plaintiffs may not disclose Highly Confidential Information to current employees of any Competitor of the Supplying Party.

F. Disclosure of Confidential Information or Highly Confidential information beyond the terms of this Protective Order may be made only if the Supplying Party who designated the material as confidential consents in writing to such disclosure, or if the Court, after reasonable written notice to all affected parties, orders such disclosure. The terms of this Protective Order shall not apply to any publicly-available information or documents.

#### **IV. Filing of Confidential Information with the Court**

A. Where a party seeks to submit Court papers containing Confidential Information or Highly Confidential Information, that party must file under seal any Confidential Information or Highly Confidential Information, consistent with applicable law, until further order of Court. When submitting deposition testimony that has been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” the submitting party shall propose to submit to the extent reasonably possible only those pages of the deposition transcript that are cited, referred to, or relied on by the submitting party.

B. Pursuant to R.1:38, nothing relating to Section V.A. of this Protective Order shall be filed with the Court unless prior notice is given to the Court and a specific order is signed permitting the document(s) to be filed under seal.

#### **V. Protection and Use of Confidential Information**

A. Persons receiving or having knowledge of Confidential Information or Highly Confidential Information by virtue of their participation in this proceeding, or by virtue of obtaining any documents or other Confidential Information or Highly Confidential Information produced or disclosed under this Protective Order, shall use the Confidential Information or Highly Confidential Information only as permitted by this Protective Order. Counsel shall take all reasonable and necessary steps to assure the security of any Confidential Information or Highly Confidential Information and will limit access to Confidential Information or Highly Confidential Information to those persons authorized by this Protective Order.

B. Nothing herein shall restrict any party’s counsel from rendering advice to its clients with respect to this proceeding or a related action in which the Receiving Party is permitted by this Protective Order to use Confidential Information or Highly Confidential Information, and in the course thereof, rely upon Confidential Information or Highly

Confidential Information, provided that in rendering such advice, counsel shall not disclose any other party's Confidential Information or Highly Confidential Information other than in a manner provided for in this Protective Order.

C. Nothing herein shall restrict a person qualified to receive Confidential Information or Highly Confidential Information under this Protective Order from making working copies, abstracts, digests, and analyses of such information for use in connection with this proceeding and such working copies, abstracts, digests, and analyses shall be deemed to have the same level of protection under the terms of this Protective Order. A qualified recipient shall at all times keep secure all notes, abstractions, or other work product derived from or containing Confidential Information or Highly Confidential Information; shall be obligated to maintain the confidentiality of such work product; and shall not disclose or reveal the contents of said notes, abstractions or other work product after the documents, materials, or other things, or portions thereof (and the information contained therein) and information are returned and surrendered pursuant to Paragraph VI.

G. Nothing in this agreement requires the Receiving Party's counsel to disclose work product or privileged information at the conclusion of the case.

D. Nothing contained in this Protective Order shall preclude any party from using its own Confidential Information or Highly Confidential Information in any manner it sees fit, without prior consent of any party or the Court.

E. Any party that is served with a subpoena or other notice compelling the production of Discovery Materials produced by another party must immediately give written notice of such subpoena or other notice to the original Supplying Party. Upon receiving such notice, the original Supplying Party shall bear the burden of opposing, if it deems appropriate, the subpoena on grounds of confidentiality.

F. If a Receiving Party learns of any unauthorized disclosure of Confidential Information or Highly Confidential Information by parties or counsel in these Coordinated Actions, it shall immediately inform the Supplying Party in writing of all pertinent facts relating to such disclosure.

G. Within 30 calendar days of the conclusion of any attorney's last case in this proceeding, including any appeals related thereto, at the written request of the Supplying Party, such attorney and any persons to whom he or she disclosed Confidential Information and Highly Confidential Information under this Protective Order shall return and surrender any Confidential Information or Highly Confidential Information or copies thereof to the Supplying Party at the Supplying Party's expense. Such persons shall return or surrender any Discovery Materials produced by the Supplying Party and any and all copies (electronic or otherwise), summaries, notes, compilations, and memoranda related thereto; provided, however, that counsel may retain their privileged communications, work product, materials required to be retained by applicable law, and all court-filed documents even though they contain Discovery Materials produced by the Supplying Party, but should be retained bearing the appropriate description.

H. Upon receipt of any re-designation and replacement image that designates material as Confidential Information or Highly Confidential Information, the Receiving Party shall (1) treat such material in accordance with this Protective Order; (2) take reasonable steps to notify any persons known to have possession of any such material of such re-designation under this Protective Order; and (3) promptly endeavor to procure all copies of such material from any persons known to have possession of such material who are not entitled to receipt under this Protective Order.

I. A Receiving Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is

disclosed. A Receiving Party may challenge a Supplying Party's confidentiality designation or re-designation by notifying the Supplying Party, in writing, of its good faith belief that the confidentiality designation was not proper and must give the Supplying Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain, in writing within 14 calendar days, the basis of the designation. If a Receiving Party elects to press a challenge to a confidentiality designation after considering the justification offered by the Supplying Party, the Receiving Party shall, in writing, notify the Supplying Party that a resolution cannot be reached regarding the confidentiality designation of a document, and the Supplying Party shall, within 21 calendar days of receiving such notice from the Receiving Party, file and serve a motion that identifies the challenged material and sets forth in detail the basis for the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation. In connection with such a motion, the proponent of the designation being challenged shall bear the burden of demonstrating that good cause under Rule 1:38 and applicable case law exists for the continued treatment and protections of the challenged document under applicable law. The determination of whether good cause exists to protect the subject document or information shall be made as if (a) no party had ever entered into this Protective Order, (b) the subject document or information was never subject to this Protective Order, and (c) the motion for protective order concerning the subject document or information was filed *ab initio* by the Supplying Party. Until the Court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Supplying Party's designation. If, after the expiration of 21 calendar days, the Supplying Party has not filed a motion with the Court, the designation will automatically be removed. If a document was originally designated as "HIGHLY CONFIDENTIAL," how it will be designated and treated depends on what the challenge alleges. If a resolution is reached regarding the confidentiality designation of a challenged document, the Supplying Party shall serve on all parties a notice specifying the documents and the nature of the resolution within 10 calendar days of reaching the resolution.

## **VI. Inadvertent Production of Documents**

Inadvertent production of documents (hereinafter “Inadvertently Produced Documents”) subject to work-product immunity, the attorney-client privilege, or other legal privilege protecting information from discovery shall not constitute a waiver of the immunity or privilege, provided that the Supplying Party shall notify the receiving party in writing within a reasonable period of time from the discovery of the inadvertent production. If such notification is made, such Inadvertently Produced Documents and all copies thereof shall, upon request, be returned to the Supplying Party, all notes or other work product of the receiving party reflecting the contents of such materials shall be destroyed, and such returned or destroyed material shall be deleted from any litigation-support or other database. If the Receiving Party elects to file a motion as set forth below, the Receiving Party, subject to the requirements below, may retain possession of the Inadvertently Produced Documents as well as any notes or other work product of the receiving party reflecting the contents of such materials pending the resolution by the Court of the motion below. If the Receiving Party’s motion is denied, the Receiving Party shall promptly comply with the immediately preceding provisions of this paragraph or such other directives as may be issued by the Court. No use shall be made of such Inadvertently Produced Documents during depositions or at trial, nor shall they be disclosed to anyone who was not given access to them prior to the request to return or destroy them. The party receiving such Inadvertently Produced Documents may, after receipt of the Supplying Party’s notice of inadvertent production, move the Court to oppose the Supplying Party’s request for return of the subject materials. Each party retains all rights and arguments as to any proceeding regarding Inadvertently Produced Documents.

**VII. Miscellaneous Provisions**

It is expressly understood by and between the parties that in producing Confidential Information or Highly Confidential Information in this litigation, the parties shall be relying upon the terms and conditions of this Protective Order. Notwithstanding the foregoing, the parties preserve all rights to challenge or oppose a challenge to a confidentiality designation, in accordance with the procedures set forth herein.

By written agreement of the parties, or upon motion and order of the Court, the terms of this Protective Order may be amended or modified. This Protective Order shall continue in force until amended or superseded by express order of the Court, and shall survive and remain in effect after the termination of this proceeding.

**IT IS SO ORDERED**



---

Hon. Brian R. Martinotti, J.S.C.