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IN RE: ALLEGED MAHWAH TOXIC DUMP SITE
LITIGATION

FILED
JAN 22 2008
JONATHAN N. HARRIS
J.S.C.

SUPERIOR COURT OF
NEW JERSEY

LAW DIVISION:
BERGEN COUNTY

CASE NO. 277 MT

CIVIL ACTION

**STIPULATED ORDER
OF CONFIDENTIALITY**

APPLICABLE TO ALL
CASES

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DOCKET NO. L-489-08

Certain documents, testimony and other information to be disclosed or produced in this litigation contain commercial information as well as other information protected from disclosure by applicable law. To preserve the confidentiality of such information pursuant to *Rule 4:10-3*, and for good cause shown, it is STIPULATED and ORDERED as follows:

I. SCOPE OF THE ORDER

1. This Order shall govern all documents, the information contained therein, and all other information produced or disclosed during this litigation including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any party to this litigation, including their respective corporate parents, subsidiaries, and affiliates and their respective attorneys, agents, experts, consultants, representatives, officers, employees, and others set forth in this Order. This Order is also binding on any party who obtains documents or other Confidential Information produced or disclosed in this litigation pursuant to this Order, including those parties' respective attorneys, agents, experts, consultants, representatives, officers, employees, and others as set forth in this Order.

2. The Receiving Party shall refer to any party to whom Confidential Information is produced in *In Re: Alleged Mahwah Toxic Dump Site Litigation*, Case No. 277 MT. The Supplying Party shall refer to any party that produces Confidential Information in the aforementioned litigation. Third parties who so elect may avail themselves of, and agree to be bound by the terms and conditions of this Order and thereby become a Supplying Party for purposes of this Order.

3. The entry of this Order does not prevent any party from seeking any further orders of this Court.

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

5. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge as set forth in Paragraph 26 below that this Order creates no entitlement to file confidential information under seal, and that all local rules shall apply to a party who seeks permission to file material under seal.

II. DESIGNATION OF CONFIDENTIAL INFORMATION

6. “Confidential Information” as used herein means any information that the Supplying Party believes in good faith constitutes, reflects, discloses, or contains information subject to protection under *Rule* 4:10-3 or other applicable law, whether it is a document (electronic or otherwise), 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 material as “Confidential Information,” the Supplying Party will make such designation only as to the material that it in good faith believes to be entitled to confidential treatment under applicable law or would disclose the parties’ private financial

information, private competitive information, personal or medical information, or other kinds of sensitive information that a party deems confidential.

7. Specific documents and discovery responses produced by the Supplying Party shall, if appropriate, be designated as “Confidential Information” by marking the pages of the document that contain Confidential Information as: “CONFIDENTIAL” or “CONFIDENTIAL—SUBJECT TO STIPULATED ORDER OF CONFIDENTIALITY” or some other similar legend. Except as provided in Paragraphs 9 and 23, documents that do not bear the foregoing designation are not Confidential Information as that term is used in this Order.

8. 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 cover letter referring generally to such matter. Whenever any party to whom Computerized Material designated as confidential is produced reduces such material to hardcopy form, that party shall mark the hardcopy form with the designation “CONFIDENTIAL” or “CONFIDENTIAL—SUBJECT TO STIPULATED ORDER OF CONFIDENTIALITY” or some other similar legend.

9. Any material produced or provided in this litigation for inspection (as opposed to being copied and delivered to the Receiving Party after inspection) is to be treated by the Receiving Party as Confidential Information pending the copying and delivery of any copies of the same by the Supplying Party to the Receiving Party.

10. Information disclosed at a deposition taken in connection with this litigation may be designated as Confidential Information by: (a) designating testimony as confidential on the record during the taking of the deposition, and/or (b) designating the portions of the transcript that are confidential in a letter to be served on the court reporter and opposing counsel within

thirty (30) calendar days of the Supplying Party's receipt of the transcript of a deposition. The court reporter will indicate the portions designated as confidential and segregate them as appropriate. Designations of transcripts will apply to audio, video, or other recordings of the testimony. The court reporter shall clearly mark any transcript released prior to the expiration of the 30-day period as "CONFIDENTIAL" or "CONFIDENTIAL—SUBJECT TO STIPULATED ORDER OF CONFIDENTIALITY" or some other similar legend. Such transcripts will be treated as Confidential Information until the expiration of the 30-day period, but will be available for review by counsel of record in the above-captioned litigation who have agreed to be subject to the terms of this Order.

11. A party in this litigation may designate as 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 pursuant to this Order. If any third party produces information that any party in good faith believes constitutes its Confidential Information, the party claiming confidentiality shall designate the information as such within thirty (30) days of its receipt of such information. Any party receiving information from a third party shall treat such information as confidential during this (30) day period while all parties have an opportunity to review the information and determine whether it should be designated as confidential. Any party designating third party information as confidential shall have the same rights as Supplying Party under this order with respect to such information.

III. PERMISSIBLE DISCLOSURES OF CONFIDENTIAL INFORMATION

12. Subject to Paragraph 17, a Receiving Party may show and deliver Confidential Information only to the following persons:

a. Counsel for the Receiving Party, including any in-house 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;

b. With respect to any Confidential Information produced by any plaintiff or third party with respect to plaintiff, any employee or agent of the Receiving Party to whom it is reasonably necessary to disclose such information;

c. Any plaintiff or claimant who has asserted or intends to assert a claim in this litigation;

d. Any outside consultant or expert to whom it is reasonably necessary to disclose Confidential Information, whether formally retained or not;

e. Any witness for the purpose of conducting an examination of such witness during a trial period or deposition; provided, however, that Confidential Information shall not lose its confidential or restricted status through such use, and that any such witness shall, before being shown any Confidential Information, sign an Acknowledgement, in the form annexed hereto as Exhibit A, acknowledging that he or she has read this Order and agrees to abide by its terms. Defendants' employees, who are already subject to confidentiality agreements of at least equal force and effect as this Order, shall not be required to sign the Acknowledgement to be bound by the terms of this Order;

f. Stenographic employees and court reporters recording or transcribing testimony in this litigation; and

g. This Court, any state or federal court conducting related proceedings, and any member of their staffs to whom it is necessary to disclose Confidential Information.

13. Disclosure of Confidential Information beyond the terms of this Order may be made only if the Supplying Party designating the material as Confidential Information 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 Order shall not apply to any publicly available information or documents.

IV. USE OF CONFIDENTIAL INFORMATION

14. Persons having knowledge of Confidential Information by virtue of their participation in this litigation, or by virtue of obtaining any documents or other Confidential Information produced or disclosed in this litigation pursuant to this Order, shall use that Confidential Information only in connection with this litigation.

15. Notwithstanding any other provisions hereof, nothing herein shall restrict any party's counsel from rendering advice to its clients with respect to this litigation and, in the course thereof, relying upon Confidential Information, provided that in rendering such advice, counsel shall not disclose any other party's Confidential Information other than in a manner provided for in this Order.

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

V. PROTECTION OF CONFIDENTIAL INFORMATION

17. Counsel shall take all reasonable necessary steps to assure the security of any Confidential Information and will limit access to Confidential Information to those persons authorized by this Order.

18. Prior to the disclosure of any Confidential Information to any person identified in Paragraph 12(a) - (e), each putative recipient of Confidential Information shall be provided with a copy of this Order. Such person shall sign an Acknowledgement, in the form annexed hereto as Exhibit A, acknowledging that he or she has read this Order and agrees to abide by its terms. These Acknowledgements are strictly confidential. Counsel for each party shall maintain the Acknowledgements without giving copies to the other side. If the Court finds that any disclosure is necessary to investigate a violation of this Order, the disclosure will be limited to outside counsel only and outside counsel shall not disclose any information to their clients that could

tend to identify any Acknowledgment signatory unless and until there is specific evidence that a particular signatory may have violated the Order, in which case limited disclosure may be made with respect to that signatory.

19. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies of extracts thereof, are not required to execute Acknowledgments but must comply with the terms of this Order.

20. 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.

21. All counsel shall at all times keep secure all notes, abstractions, or other work product derived from or containing 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. Nothing in this agreement requires the Receiving Party's counsel to disclose work product at the conclusion of the case.

22. If a Receiving Party learns of any unauthorized disclosure of Confidential Information, it shall immediately (a) inform the Supplying Party in writing of all pertinent facts relating to such disclosure, (b) make its best efforts to retrieve all copies of the Confidential Information, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons execute the Acknowledgment that is attached hereto as Exhibit A.

23. Within thirty (30) days of the conclusion of this proceeding, including any appeals related thereto, at the written request and option of the Supplying Party, the attorney for the Receiving Party and any persons to whom he or she disclosed Confidential Information pursuant to this Order shall return and surrender any 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 (electric or otherwise), summaries, notes, compilations, and memoranda related thereto; provided, however, that counsel may retain their privileged communications, work product, Acknowledgements pursuant to Paragraph 18, and all court-filed documents even though they contain discovery materials produced by the Supplying Party, but such retained privileged communications and work product shall remain subject to the terms of this Order. At the written request of the Supplying Party, any person or entity having custody or control of recordings, notes, memoranda, summaries, or other written material regarding the discovery materials produced by the Supplying Party (except for privileged communications, work product and court-filed documents as stated above) shall produce an affidavit stating that such materials have been delivered to the Supplying Party in accordance with the terms of this Order.

VI. CHANGES IN AND OBJECTIONS TO DESIGNATION OF INFORMATION

24. Inadvertent production of any document or information without a designation of confidentiality will not be deemed to waive a later claim to its confidential nature or preclude the Supplying Party from designating said document or information as Confidential Information at a later date. Any Supplying Party may designate as Confidential Information or withdraw a Confidential Information designation from any material that it has produced; provided, however, that such redesignation shall be effective only as of the date of such redesignation. Such redesignation shall be accomplished by notifying counsel for each party in writing of such redesignation. Upon receipt of any redesignation that designates material as confidential, the

Receiving Party shall (i) treat such material in accordance with this Order; (ii) take reasonable steps to notify any persons known to have possession of any such material or such redesignation under this Order; and (iii) 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 Paragraph 14.

25. Unless a prompt challenge to a Supplying Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, 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 that elects to initiate a challenge to a Supplying Party's confidentiality designation must do so in good faith and must begin the process by conferring directly with counsel for the Supplying Party. In conferring, the challenging party must explain the basis for its 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 the basis for the chosen designation. If after this meet and confer the Receiving Party continues to challenge a confidentiality designation, then the Receiving Party shall allow the Supplying Party ten (10) days to file a motion to preserve the confidentiality designation. The burden of persuasion in any such challenge proceeding shall be on 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.

VII. FILING PAPERS IN COURT RECORDS

26. Without written permission from counsel of record for the Supplying Party or a Court order secured after appropriate notice to all interested persons, a party may not file in the public record of this litigation any Confidential Information. A party that seeks to file under seal

any Confidential Information must comply with local rules and practice. When submitting deposition testimony pursuant to this paragraph that has been designated confidential, the submitting party shall 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.

VIII. MISCELLANEOUS PROVISIONS

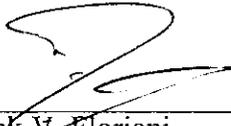
27. The use of Confidential Information during any trial in this litigation will be addressed in a later agreement between the parties; or, if they cannot reach agreement, by further order of the Court.

28. It is expressly understood by and between the parties that, in producing Confidential Information in this litigation, the parties shall be relying upon the terms and conditions of this Order.

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

IT IS SO STIPULATED.

Dated: January 22, 2008

By: 

Frank V. Floriani
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MCGRATH & CANNAVO P.C.
Attorneys for Plaintiffs

Dated: January 22, 2008

By: 

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Dated: 1/22, 2008

By:

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Dated: 1/22, 2008

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Dated: 1/22, 2008

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Dated: 1/22, 2008

By:

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Dated: 1/22, 2008

By:

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Ringwood

PURSUANT TO STIPULATION, AND FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: JANUARY 22, 2008

By:

Hon. Jonathan N. Harris, J.S.C.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned agrees:

I declare under penalty of perjury that I have read in its entirety and understand the Stipulated Order of Confidentiality that was issued by the Superior Court of New Jersey on _____, 2008, in *In Re: Alleged Mahwah Toxic Dump Site Litigation*, Case No. 277 MT. I agree to comply with and to be bound by all terms of this Stipulated Order of Confidentiality and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Order of Confidentiality to any person or entity in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the Superior Court of New Jersey for the purpose of enforcing the terms of this Stipulated Order of Confidentiality, even if such enforcement proceedings occur after termination of these proceedings.

I hereby appoint _____ [print or type full name] of

[print or type full address and telephone number] as my _____ agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Order of Confidentiality.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____