IN RE ALLEGED ENVIRONMENTAL CONTAMINATION OF POMPTON LAKES	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY CASE NO. 290 CIVIL ACTION ORDER #7

FILED
FEB 22 2011
BRIAN R. MARTINOTTI
J.S.C.

ORDER REGARDING THE PRESERVATION OF DOCUMENTS AND ELECTRONICALLY STORED INFORMATION

This matter, having been opened to the Court by counsel for the Parties, and the Parties having consented, stipulated and agreed to entry of the within Order, and good cause appearing therefore;

IT IS, on this 22nd day of February 2011, hereby **ORDERED** as follows:

I. GENERAL

This Order governs the preservation of potentially relevant Documents, Data and Tangible Things within the Parties' possession, custody and/or control relevant to allegations and defenses and/or that may lead to the discovery of admissible evidence, in cases filed or coordinated in this Court as *In re Alleged Environmental Contamination of Pompton Lakes*, Superior Court of New Jersey, Law Division, Bergen County, Case No. 290 and to every action that is or will in the future become a part thereof (collectively "the Litigation"). This Order applies prospectively following its entry. The Order does not create any preservation obligation applicable to the period prior to its entry; nor does it provide any shield or defense to any failure to preserve Documents, Data or Tangible Things prior to its entry.

II. DEFINITIONS

A. As used herein, "Documents, Data, and Tangible Things" shall be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, E-mail, document image files, Web pages, databases, spreadsheets, books, ledgers, journals, orders, invoices, bills, vouchers, checks statements, worksheets, summaries, compilations, computations, charts, diagrams, PowerPoint presentations or other demonstrative media, graphic presentations, drawings, films, charts, digital or chemical process photographs, video, tape or digital records and any transcripts thereof, drafts, jottings and notes, studies or drafts of studies or other similar such material, electronically stored information ("ESI") on hard drives, servers, removable storage devices such as USB or thumb drives, databases, computers, handheld devices, CD-ROM, or other devices for digital data storage and transmission. Information that serve to identify or locate such material, such as file inventories, file folders, indices, and metadata are also included in this definition. No Party is under an obligation to preserve voicemail, backup tapes or instant messages.

B. As used herein, "Preservation" shall be interpreted to accomplish the goal of maintaining the integrity of potentially relevant Documents, Data and Tangible Things and shall include taking reasonable steps to prevent the partial or full destruction, alteration, shredding, or deletion of such materials. Provided that reasonable steps have otherwise been taken to preserve potentially relevant materials in accordance with this Order, the Parties may continue the practice of rewriting and/or reusing backup tapes and media. Electronic documents and data will be maintained and preserved in their native format, except as authorized by § IV below. To the extent a party may desire to change the format of preserved materials other than format changes effected

in the normal course of business or operations, such party will consult with other parties before making any change.

III. GENERAL PRESERVATION OBLIGATIONS

All Parties shall take reasonable steps, including the dissemination of Legal Hold Notices to all employees and/or individuals likely to possess information relating to the claims and defenses of the Litigation including information relating to the former DuPont facility at Pompton Lakes, New Jersey ("Pompton Lakes Facility") as it relates to the claims and defenses at issue in this action, to ensure the preservation of Documents, Data and Tangible Things that are reasonably likely to be the subject of discovery in the Litigation.

IV. ACCEPTABLE METHODS OF PRESERVATION - PLAINTIFFS' OBLIGATIONS

A. The preservation activities set forth below satisfy the preservation obligations of the Plaintiffs in the Litigation.

(1) Preserve any documents or Electronically Stored Information (ESI) relating to claims or defenses at issue in this action that is stored on the hard drive of a computer owned by the Plaintiff. This obligation does not require a plaintiff to copy or create a duplicate image of the hard drive. Plaintiff's obligation is fulfilled if the relevant ESI and documents are retained on the hard drive, however, if the computer is replaced the Plaintiff will retain the old computer hard drive or will create and maintain complete hard copies of any such documents that were saved to the hard drive, in order to satisfy its preservation obligation.

(2) Preserve any documents or ESI relating to claims or defenses at issue in this action that is stored on any server, network or removable media owned by the Plaintiff. This obligation does not require a plaintiff to copy or create a duplicate image of the media. Plaintiff's obligation is fulfilled if the relevant documents are retained on the media or Plaintiff creates and maintains complete hard copies of any documents on the media.

(3) Preserve any email, text messages or SMS messages in reasonably accessible electronic format relating to claims or defenses at issue in this action stored in any email account, including a business email account or email provided by any other Internet Service Provider. Plaintiff must make reasonable efforts to inform the business or Internet Service Provider of

their duty to preserve such email as a result of this litigation. If such email may be automatically deleted due to circumstances outside of Plaintiff's control, Plaintiff must print such emails and all related attachments prior to their deletion and continue to preserve the hard copies for the pendency of this litigation.

(4) Preserve any documents or ESI in reasonably accessible electronic format relating to the claims or defenses at issue in this action located on a server or network not owned by the Plaintiff. Plaintiff must make reasonable efforts to inform the business or Internet Service Provider hosting the server on which the documents or ESI is located of their duty to preserve such information as a result of this litigation. If such documents or ESI may be automatically deleted due to circumstances outside of Plaintiff's control, Plaintiff must print such documents and ESI and continue to preserve the hard copies for the pendency of this litigation.

(5) Preserve any hard copy documents relating to the claims and defenses issue in this action.

V. ACCEPTABLE METHODS OF PRESERVATION – DEFENDANTS' OBLIGATIONS

The following methods of preserving Documents, Data, and Tangible things shall satisfy Defendants' duty to preserve in the Litigation. Individual Plaintiffs' obligations are governed by Section IV above and this section is not applicable to such Plaintiffs.

A. Legal Hold Notices

To the extent not already performed, each Defendant shall, within 10 days of the entry of this Order, transmit a letter—a Legal Hold Notice—to all employees and/or departments that are reasonably likely to possess Documents, Data, or Tangible Things relating to the claims or defenses at issue in the Litigation. Without limitation, such Documents, Data, or Tangible Things shall include all such materials regarding: (1) environmental conditions or sampling at (a) DuPont's former manufacturing facility located at 2000 Cannonball Road in Pompton Lakes, New Jersey (the "DuPont Site") and the area adjacent to the DuPont Site that was acquired by John Royle and Sons in 1976 (the "Royle Site"), (b) the Plaintiffs' properties at issue in these actions,

or (c) the groundwater plume area of Pompton Lakes between the DuPont Site and Pompton Lake (the "Off-Site Area"); (2) remediation of (a) the DuPont Site and the Royle Site, (b) the Plaintiffs' properties at issue in these actions, or (c) the Off-Site Area; and (3) the Defendants' (a) use, disposal and/or release of chlorinated volatile organic compounds and (b) disposal and/or release of cutting, lubricating or heating oils, gasoline or diesel fuels at the DuPont Site or Royle Site, and/or the storage at the DuPont Site or the Royle Site of such cutting, lubricating and heating oils, gasoline or diesel fuels but only to the extent that more than 300 gallons of such cutting, lubricating and heating oils, gasoline and diesel fuels were or are stored on-site at any one time, excluding gasoline or diesel fuel inside any motor vehicle.

B. <u>E-mail</u>

The Defendants shall preserve potentially relevant e-mail communications (including associated attachments) of employees and/or departments receiving a Legal Hold Notice, relating to claims or defenses at issue in this action by either:

(1) Creating an electronic snapshot of email accounts of employees who may have emails relating to claims or defenses at issue in this action; or

(2) Maintaining e-mail files on a server or within an electronic archive that is not subject to a deletion schedule.

Furthermore, the Defendants shall suspend all deletion policies and schedules for all such email accounts by issuing a litigation hold notice to all employees and/or departments that are reasonably likely to possess information relating to claims or defenses at issue in this action.

C. <u>Databases</u>

The Defendants shall preserve potentially relevant data relating to the claims or defenses at issue in this action held in databases by either:

(1) Maintaining such data in accessible electronic systems

(2) Creating an electronic snapshot of relevant database; or

Furthermore, if technologically possible, the Defendants shall suspend all deletion policies and schedules for all such databases by issuing a Legal Hold Notice to all employees and/or departments that are reasonably likely to possess information relating to the claims or defenses at issue in this action.

D. Electronic documents contained in shared or personal directories

Where potentially relevant electronic documents are stored in shared or personal directories (*e.g.*, word processing documents, spreadsheets, and PowerPoint presentations), the Defendants shall preserve potentially relevant documents relating to the claims or defenses at issue in this action by either:

(1) Maintaining such directories and files contained therein in accessible electronic systems; or

(2) Creating an electronic snapshot of relevant shared drive or personal directory servers;

Furthermore, the Defendants shall suspend all deletion policies and schedules for all such directories by issuing a Legal Hold Notice to all employees and/or departments that are reasonably likely to possess information relating to the claims or defenses at issue in this action.

E. Electronic documents contained on computer hard drives

The Defendants shall preserve potentially relevant documents contained on computer hard drives of employees and/or departments receiving a Legal Hold Notice, relating to claims or defenses at issue in this action by either:

(1) Maintaining such documents in accessible electronic form; or

(2) Create an electronic copy of such documents.

This obligation does not require the Defendants to create forensic images of any hard drives. If a computer containing relevant documents is no longer functional or needs to be replaced, the Defendants will retain the old computer hard drive in order to satisfy its preservation obligation.

F. Hard copy documents

The Defendants shall preserve any hard copy documents relating to the claims and defenses at issue in this action.

VI. RESERVATION OF RIGHTS

The Parties do not concede that any of the information subject to this Order is discoverable, relevant, or admissible, and the Parties expressly reserve the right to challenge any specific discovery request concerning any such information. The Parties also reserve the right to challenge the competency, relevance, materiality, privilege, and/or admissibility into evidence of such documents, information, or material in these or any subsequent proceedings or at the trial of these or any other actions, in this or any other jurisdiction.

VII. DURATION OF ORDER

This Order shall become effective when So Ordered by the Court. It shall remain effective until the final conclusion of all of the cases comprising the Litigation, including the determination of any final appeal or the lapse of the period of time for taking any final appeal.

IT IS SO ORDERED:

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