

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT OF ILLINOIS
MADISON COUNTY**

HOLIDAY SHORES SANITARY DISTRICT,)
et al., Individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

Case No. 2004-L-000710

SYNGENTA CROP PROTECTION LLC, et al)

Defendants.)

**DEFENDANT SYNGENTA'S RESPONSE TO
PLAINTIFFS' MOTION TO FILE EXHIBITS UNDER SEAL**

Defendant Syngenta Crop Protection LLC ("Syngenta") does not oppose Plaintiffs' motion to file, under seal, exhibits in support of its motion for sanctions, as provided in the Protective Order entered by the Court on August 31, 2009. To the extent, however, Plaintiffs seek to file materials designated as "confidential" under the Protective Order without seal, Syngenta respectfully requests that the Court deny Plaintiffs' motion.

As Plaintiffs motion correctly points out, the Protective Order requires:

[w]here any Confidential Information or information derived from Confidential Information is included in any court filing, the parties shall comply with the applicable Local Rules for the filing of materials under seal, and such filing shall be marked "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN ATRAZINE LITIGATION" and placed in a sealed envelop marked with the caption of the case, filed with the Clerk of the Court and/or Court and held under seal.

¶ 9.

The Protective Order entered in the companion federal action, *City of Greenville, et al. v. Syngenta Crop Protection LLC et al.* contains similar provisions allowing materials designated

as “confidential” to be filed, under seal, in this case, provided the filing party has been granted permission by the designating party. (Ex. 1, City of Greenville Protective Order, ¶¶ 7, 9). Plaintiffs sought and received Syngenta’s permission to file the exhibits referenced in their motion. (Ex 2, March 3, 2011 email chain).

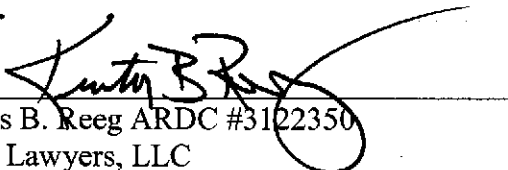
Based on the Plaintiffs’ obvious understanding of the terms and requirements of the Protective Orders entered in this case and *City of Greenville*, Plaintiffs’ only motive for filing their motion was to complain about Syngenta’s confidentiality designations and attempt to circumvent the terms of the Protective Order this Court entered by asking the Court to remove Syngenta’s confidentiality designations and allow Plaintiffs’ to file confidential information without seal. Plaintiffs’ motion is not the appropriate device for such a request.

Paragraph 12 of the August 31, 2009 Protective Order entered by this Court provides that if a party objects to a confidentiality designation, thereby permitting information to be filed without seal, it must notify the designating party in writing of its specific objection. ¶ 12. Paragraph 12 further outlines the procedures for resolving any differences over confidential designations short of seeking intervention from the Court. Plaintiffs have not notified Syngenta in writing of any specific objections to the confidentiality designations of the exhibits to Plaintiffs’ motion for sanctions. Plaintiffs’ *belief* that these documents fail to meet the definition of “confidential information” under the Protective Order is of no moment without first satisfying these requirements. Accordingly, Plaintiffs’ request that the Court allow them to file these exhibits without seal should be denied.

WHEREFORE, Defendant Syngenta Crop Protection, LLC requests this Court deny Plaintiffs’ motion to the extent they seek to file any materials designated as “confidential” under the Protective Order without seal.

Respectfully submitted,

**DEFENDANT SYNGENTA CROP PROTECTION
LLC.**

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**ATTORNEYS FOR DEFENDANT
SYNGENTA CROP PROTECTION, LLC**

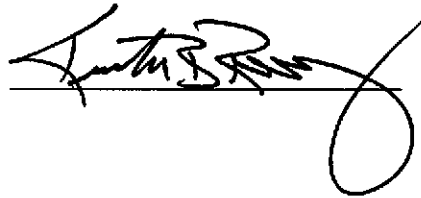
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of April, 2011, I caused to be served the attached via United States mail, properly addressed and postage paid, upon the following counsel:

TO: Stephen M. Tillery, Esq.
Christine Moody, Esq.
Korein Tillery, L.L.C.
U.S. Bank Plaza
505 North 7th Street, Suite 3600
St. Louis, MO 63101,

Mr. Scott Summy
Baron & Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219

**Attorneys for Plaintiffs
HOLIDAY SHORES SANITARY DISTRICT, et al**

A handwritten signature in black ink, appearing to read "Scott Summy", written over a horizontal line. The signature is stylized and includes a large loop at the end.

DM_US 27949330-1.086764.0013

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

CITY OF GREENVILLE, ILLINOIS, et al.,)
)
Plaintiffs,)
)
vs.)
)
SYNGENTA CROP PROTECTION, INC.,)
et al.,)
Defendants.)

Case No.: 10-cv-188-JPG-PMF

PROTECTIVE ORDER

FRAZIER, MAGISTRATE JUDGE:

The discovery phase of this case will involve the exchange of documents and other items containing confidential and sensitive material. The parties were invited to submit a jointly proposed protective order. The parties have agreed to a procedure for handling items containing confidential and sensitive material. Because items exchanged during discovery are not usually part of the public record, the Court elects to track language used in related litigation (*Holiday Shores*) in order to facilitate the free flow of information between the parties and protect the parties from undue burden and expense. All items filed with the Clerk under seal must be accompanied by separate motion showing good cause to exclude the material from the public record. *Citizens First Nat. Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-945 (7th Cir.1999).

1. This Protective Order shall govern the use and dissemination of all information, documents or materials that are produced in this action and designated as Confidential during the discovery phase of this litigation.
2. The term "document" or "documents", as used in this Protective Order, shall have the same meaning as contemplated by the Federal Rules of Civil Procedure.
3. The term "Confidential Information," as used in this Protective Order, is defined to include information that is not in the public domain and contains employee information, financial data and



information, and any other information that may reasonably be characterized by a party as intellectual property, a trade secret, or confidential and proprietary information, including customer lists, rates, structures, price lists, pricing data, financial information, market studies, business plans, computer software and programs, data technologies, systems, structures, and architectures. For purposes of discovery, "trade secret" shall mean any formula, compilation, program, plan, device, design, method, technique, process or other information used in the Producing Party's business and for which confidentiality has been reasonably maintained; and "proprietary" information shall mean any information in which a party has a protectable interest, including, without limitation, information regarding a party's finances, processes, products, services, research and development, sales and marketing, strategies and technologies.

4. Any party to this action or other person or entity, including any third party, who produces or supplies information, documents or other materials used in this action (hereinafter the "Designated Party" or the "Producing Party") may designate as "Confidential Information" any such information, document or material that it reasonably and in good faith believes constitutes or contains Confidential Information. The designation "Confidential Information" shall be made by affixing on the document or material containing such information, and upon each page so designated if practicable, a legend that in substance states: "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN ATRAZINE LITIGATION".

5. Depositions may be designated Confidential by indicating that fact on the record at the deposition. Within ten (10) business days of receipt of the initial deposition transcript, the Designating Party shall advise the court reporter and opposing counsel of the specific pages and lines in which Confidential Information appears. Counsel for the opposing party may have immediate access to the deposition transcript, but prior to the page and line designations, shall treat the entire transcript as Confidential, if so designated at the deposition.

6. Confidential Information that has been produced in this litigation may be disclosed only to:

- a. This Court and its personnel.
- b. Outside counsel of record and in-house counsel in this litigation (including staff persons employed by such counsel). In-house counsel for a Defendant may have access to Confidential Information produced by a Plaintiff, but not that produced by another Defendant.
- c. Any consultant, investigator or expert (collectively, "Expert") who is assisting in the preparation and trial of this litigation, but only to the extent reasonably necessary to enable such Expert to render such assistance. With respect to Experts for the Defendants, only outside retained Experts may have access to the Confidential Information of a co-Defendant.
- d. A deponent, but only in connection with preparation for and during the course of his or her deposition.
- e. A court reporter and a videographer.

7. If a party wishes to disclose Confidential Information to any person not described in paragraph 6 of this Protective Order, permission to so disclose must be requested from the Designating Party in writing. If the Designating Party objects to the proposed disclosure, such disclosure shall not be made unless, upon motion by the party requesting such permission, this Court orders otherwise.

8. Prior to obtaining access to Confidential Information, any person to whom Confidential Information may be disclosed pursuant to paragraphs 6 and 7 hereof, except this Court and its personnel, shall be provided a copy of this Protective Order and shall agree in writing to be bound by its terms by signing a Confidentiality Acknowledgment. Counsel for the party obtaining a person's signature on the Confidentiality Acknowledgment shall retain the original signed acknowledgment. If at any time the Designating Party has a good faith reason to believe that Confidential Information has been disclosed in violation of this paragraph, it may move this Court to obtain copies of the signed acknowledgments.

9. Where any Confidential Information or information derived from Confidential Information is included in any court filing, the parties shall comply with the applicable Local Rules for

the Southern District of Illinois for the electronic filing of materials under seal. Within 14 days, any party may file a separate motion showing good cause why the material should remain under seal.

10. Confidential Information produced during the discovery phase shall not be used for any purpose other than this litigation.

11. Any summary, compilation, notes, copy, electronic image or database containing Confidential Information shall be subject to the terms of the Protective Order to the same extent as the material or information from which such summary, compilation, notes, copy, electronic image or database is made or derived.

12. Any party may object to a designation by notifying the Designating Party in writing of that objection and specifying the designated material to which the objection is made. The parties shall confer in good faith concerning any such objection. If the objection is not resolved, either party may file motion asking the Court to resolve the dispute. The party designating the document as confidential shall bear the burden of proof. If no motion is filed within 30 days after the objection is served, the material may be redesignated as appropriate. If a motion is filed, information subject to dispute shall, until further order of the Court, be treated consistently with its designation. With respect to any material which is re-designated or ceases to be subject to the protection of this Protective Order, the Designating Party shall, at its expense, provide to each party which so requests additional copies thereof from which all confidentiality legends affixed hereunder have been adjusted to reflect the re-designation or removed as appropriate.

13. Inadvertent failure to designate any information as Confidential Information pursuant to this Protective Order shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim and the basis for it is asserted within thirty (30) days of the discovery of the inadvertent failure. At such time, arrangements shall be made for the prompt return, sequestration, or destruction of the specified information and any copies that the receiving party has, and for the substitution, where

appropriate, of properly labeled copies; the receiving party must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. In the case of inadvertently produced privileged and/or work product documents, Fed. R. Civ. P. 26(b)(5)(B) shall apply.

14. In the event the Court determines a lack of good faith in the designation of any document as Confidential, the Court may award attorneys fees and costs to opposing counsel in connection with such designation.

15. Nothing in this Protective Order shall be deemed to restrict in any manner the use by any Designating Party of any information in its own documents and materials.

16. If counsel for any party receives notices of any subpoena or other compulsory process commanding production of Confidential Information that a party has obtained under the terms of this Protective Order, counsel for such party shall, if there are fewer than ten (10) days to comply, within two (2), or if more than ten (10) days, at least seven (7) business days prior to the due date of compliance, notify the Designating Party in writing, and shall not produce the Confidential Information until the Designating Party has had reasonable time to take appropriate steps to protect the material. It shall be the responsibility of the Designating Party to obtain relief from the subpoena or order prior to the due date of compliance, and, to give the Designating Party an opportunity to obtain such relief, the party from whom such information is sought shall not make the disclosure before the actual due date of compliance set forth in the subpoena or order.

17. This Protective Order shall not prevent any of the parties from moving this Court for an order that Confidential Information may be disclosed other than in accordance with this Protective Order. This Protective Order is without prejudice to the right of any party to seek modification of it

from the Court. It shall remain in effect until such time as it is modified, amended or rescinded by the Court. This Protective Order does not affect any party's rights to object to discovery on any grounds other than an objection based solely on the ground that the information sought is Confidential in nature.

18. This Protective Order does not govern the use of Confidential Information at trial or in connection with dispositive motions.

19. This Court shall have continuing jurisdiction to modify, enforce, interpret or rescind this Protective Order, notwithstanding the termination of this action.

20. Within one hundred twenty (120) days after conclusion of this action, including the exhaustion of all appeals, all Confidential Information produced in this litigation (other than those documents filed with the court or used as deposition exhibits) shall be returned to the Designating Party or shall be destroyed. However, documents or materials that contain Confidential Information of a Designating Party and the work product of the party in possession of the documents or materials need not be given to the Designating Party but shall be destroyed within the same time frame. Counsel for any party or third party receiving Confidential Information shall make written certification of compliance with this provision and shall deliver the same to counsel for each Designating Party within one hundred twenty (120) days after the conclusion of this action.

IT IS SO ORDERED.

DATED: October 5, 2010 .

S/ Philip M. Frazier
PHILIP M. FRAZIER
UNITED STATES MAGISTRATE JUDGE

Kurtis ReegMatt Melucci
Clerk of Circuit Court

Third Judicial Circuit, Madison County Illinois

From: Kurtis Reeg
Sent: Wednesday, March 16, 2011 6:31 PM
To: Tillery, Stephen
Cc: Pope, Michael; Mark Surprenant; Deaton, Christie
Subject: Re: HSSD filings - Greenville Protective Order [KT-IWKT01.FID7884]

Same position as to Peter Hertl's deposition. Just let us know which ones you are submitting.
Thanks. K

Sent from my iPhone

On Mar 16, 2011, at 6:05 PM, "Tillery, Stephen" <STillery@KoreinTillery.com> wrote:

Please confirm this applies to all taken—I think we may want to file Peter Hertl's as well.
Thanks.

From: Kurtis Reeg [<mailto:kreeg@reeglawfirm.com>]
Sent: Wednesday, March 16, 2011 4:45 PM
To: Tillery, Stephen
Cc: Pope, Michael; msurprenant; Deaton, Christie
Subject: Re: HSSD filings - Greenville Protective Order [KT-IWKT01.FID7884]

Steve:

We don't have any objection to you filing them under seal, but reserve our objections raised therein and otherwise as we deem appropriate at the hearing.
Thanks. K

Sent from my iPhone

On Mar 16, 2011, at 4:10 PM, "Tillery, Stephen" <STillery@KoreinTillery.com> wrote:

Counsel,

Since not one of you has not seen fit to respond in any way to this request in nearly two weeks, we will present the matter to Judge Frazier. I had hoped to avoid this sort of totally unnecessary dispute.



Steve

From: Tillery, Stephen
Sent: Thursday, March 03, 2011 3:29 PM
To: 'Pope, Michael'; kreed; msurprenant
Subject: HSSD filings - Greenville Protective Order [KT-IWKT01.FID7884]

Counsel,

Pursuant to paragraph 7 of the Protective Order entered by Judge Frazier on October 5, 2010, plaintiffs hereby request permission to file, under seal, the following depositions taken in Greenville, et al. v Syngenta Crop Protection, inc., et al.:

1. Deposition of Jason Fogden taken Thursday, November 11, 2010
2. Deposition of Tobias Meili taken October 26, 2010
3. Deposition of Elizabeth Quarles taken on October 27, 2010
4. Deposition of Jon Atkin taken October 15, 2010
5. Deposition of Christoph Maeder taken October 14, 2010

Portions of these deposition transcripts will be offered into evidence in support of plaintiffs' motions regarding subsidiary access to documents and databases located off shore. Please let me hear from you at your convenience.

Stephen M. Tillery

Korein Tillery, LLC

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St. Louis, MO 63101

Phone: 314.241.4844

Fax: 314.241.3525
