

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman
Dr. Gary S. Arnold
Dr. Sue H. Abreu

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Clinch River Nuclear Site Early Site Permit
Application)

Docket No. 52-047-ESP

ASLBP No. 17-954-01-ESP-BD01

December 11, 2017

PROTECTIVE ORDER

This Protective Order governs the disclosure and use in this proceeding of certain documents that applicant Tennessee Valley Authority (TVA), or any other Participant in this proceeding, claims contain proprietary trade secrets and/or proprietary commercial or financial information.¹ For purposes of this Protective Order, the term "documents" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer disks, or diskettes, computer storage devices, or any other medium, and includes, without limitation,

¹ The provisions of this Protective Order do not restrict the use by U.S. Nuclear Regulatory Commission Staff counsel, witnesses, employees, consultants, and others representing the NRC Staff (NRC Staff) of documents containing protected material that the NRC has received or may receive apart from its role as a litigant in this proceeding (documents containing information required to be submitted to the NRC by statute, regulation, or license condition, or information submitted to, or acquired by, the NRC in support of a requested licensing action or in fulfillment of its regulatory responsibilities). Instead, NRC Staff use and disclosure of such documents is governed by 10 C.F.R. §§ 2.390, 9.17, and 9.25, and NRC Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program." The provisions of this Protective Order apply to NRC counsel, witnesses, employees, consultants, and others representing the NRC Staff with respect to documents containing protected material that NRC receives solely pursuant to 10 C.F.R. § 2.336 and this Protective Order, except that such persons are not required to execute a Nondisclosure Agreement and Acknowledgement form.

books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts. Pursuant to this Protective Order, counsel, witnesses, employees, members, officers, consultants, and others representing a party in this proceeding (all of whom are referred to herein, collectively, as Participants) shall be permitted access to proprietary documents held by another Participant in this proceeding (Initial Holders) otherwise required to be disclosed in accordance with 10 C.F.R. § 2.336(a) upon the conditions set forth herein. Except as otherwise expressly set forth herein, this Protective Order shall remain in effect until specifically modified or terminated by the Atomic Safety and Licensing Board (Board) or the U.S. Nuclear Regulatory Commission (Commission).

Those persons who (1) are qualified pursuant to paragraph F of this Protective Order; and have executed a Nondisclosure Agreement and Acknowledgment in the form included as Attachment A to this Protective Order, the terms of which are hereby incorporated herein, shall be permitted access to proprietary information that subject to this Protective Order and is relevant to an admitted contention in this proceeding under the following conditions:

A. If the Initial Holder of proprietary information or its counsel has a good faith belief that a document or portion thereof contains information that qualifies as a trade secret and/or commercial or financial information that is proprietary or confidential under 10 C.F.R. § 2.390(a)(4) and (b)(4)(i)-(v), then the Initial Holder or its counsel may designate such document on its proprietary log as a "proprietary document," and it shall be protected in accordance with the terms and conditions of this Protective Order. Such designation shall take place as follows: the Initial Holder shall (1) prominently mark, with a conspicuous "Contains [Insert owner's name] Designated Proprietary Information" label, each proprietary document on the first page and on each other page of the document; and (2) on or before the later of (a) thirty (30) days after the date of this Protective Order, or (b) thirty (30) days after the date a

Participant requests a copy of the proprietary document, produce a copy of the document with the proprietary information unredacted by providing it to the duly authorized representatives of the Participant requesting the proprietary document (as defined in paragraph F below), provided each such representative has signed a Nondisclosure Agreement and Acknowledgment. Upon the request of NRC Staff counsel, the party claiming protected status for a Proprietary Document shall provide an unredacted copy of such document to NRC Staff counsel.

B. Documents that are designated in accordance with paragraph A shall be held in strict confidence pursuant to 10 C.F.R. § 2.390(a)(4) and this Protective Order. This Protective Order, and the good faith representation and designation of documents as proprietary documents by the Initial Holder thereof, serves in lieu of the requirement for an affidavit under 10 C.F.R. § 2.390(b) and allows the NRC Staff to receive proprietary documents and to protect their confidentiality under the Freedom of Information Act. Nothing in this Protective Order shall be interpreted to prevent the NRC or TVA from discharging their obligations to release or retain documents in their possession and control in accordance with, and only to the extent required by, federal regulations or statute.

C. Prior to presenting any dispute arising under this Protective Order to the Board, the parties to the dispute shall consult and endeavor to resolve such dispute, including, but not limited to, the use of redaction. The Board shall resolve any disputes arising under this Protective Order not previously resolved, including those relating to the public release of information in a proprietary document otherwise designated as subject to nondisclosure.

D. Any Participant that objects to the designation of a document as proprietary shall provide a notice of objection to the Initial Holder stating the Participant's objection, and specifying the portions of the document that should be disclosed. Upon such objection, the parties shall have twenty (20) days (the Consultation Period) to engage in good faith efforts to resolve the matter. The objecting party may file a motion with the Board within ten (10) days of the expiration of the Consultation Period. The Initial Holder shall have the burden of showing

that the applicable information in the proprietary document is a trade secret and/or commercial or financial information that is proprietary or confidential so that the Board can determine, as applicable, whether, on balance, protection of the document from public disclosure is warranted under 10 C.F.R. § 2.390. Any such objections shall be submitted no later than sixty (60) days before the first scheduled day of hearing. However, in no case may an Intervenor submit such an objection with respect to a document that is not relevant to that Intervenor's own admitted or adopted contention(s).

E. If a Participant files a motion for disclosure under paragraph D above, pending a ruling by the Board, the proprietary document in question shall continue to be held in confidence. If the Board rules that a document does not qualify for the asserted protection, or that, on balance, the document should be disclosed without the restrictions of this Protective Order, then the unrestricted use of such documents may begin fifteen (15) days after the Board's decision. If, during such time, the party that asserted protected status of the document files an interlocutory appeal or request that the issue be certified to the Commission, such period of time shall be extended until such time as the Board or the Commission rules on the appeal or request for certification.

F. Only individual counsel, consultants, witnesses, employees, members, officers, and others representing a Participant listed in Attachment B who have executed the attached Nondisclosure Agreement and Acknowledgment, and other persons identified in Paragraph H, will be afforded access to proprietary information. Participants may have an additional or substitute person(s) necessary for the preparation of materials for this proceeding be authorized to receive proprietary documents. Participants must advise the Initial Holder by electronic mail of the names of any additional or substitute person(s) for whom access to proprietary information is sought. The notification must certify that the individual to be authorized is either: (a) legal counsel to a Participant; (b) an employee, member, officer, or representative of a Participant; or (c) a consultant, witness, or another individual whose review thereof is necessary

for the preparation of materials for this proceeding. If the Initial Holder agrees to disclose to the additional or substitute designee, the Initial Holder will so notify the Participant, and the individual must execute and serve the attached Nondisclosure Agreement and Acknowledgment prior to receipt of proprietary information. If the Initial Holder declines to disclose to the applicable designee, then the Participant may seek approval from the Board by filing a motion stating that such agreement was sought and declined, and the basis for its belief that such information should be disclosed to the proposed designee. The Initial Holder may challenge such a motion within ten (10) days of receipt of the Participant's filing and the Board will determine the designation of such additional or substitute recipients by further order. Only after the approval of the requested designation by the Board and the individual's execution and filing of the attached Nondisclosure Agreement and Acknowledgment, may such person(s) be granted access to any proprietary information. Nothing in the Protective Order shall be interpreted to waive the existing Order and procedures described in "Tennessee Valley Authority; Clinch River Nuclear Site Early Site Permit Application and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information," 82 Fed. Reg. 16436, 16436-42 (Apr. 4, 2017).

G. Each executed Nondisclosure Agreement and Acknowledgment shall be filed with the Board and served on the other Participants.

H. A proprietary document disclosed pursuant to this Protective Order shall only be used as necessary for the conduct of this proceeding and any further Commission or judicial proceedings in this matter, by approved designees. A proprietary document subject to this Protective Order shall not be disclosed in any manner to any person except (1) the Commission, the Office of the Secretary, the Board, and their respective staffs, (2) the NRC Staff, its counsel, and contractors or consultants employed by the U.S. government, and (3) those persons engaged in the conduct of this proceeding who have executed a Nondisclosure Agreement and Acknowledgment. An individual with access to proprietary documents may make copies of and

take notes on the confidential information contained in the documents, but such copies and notes become proprietary documents subject to the terms of this Protective Order.

I. Counsel, consultants, witnesses, employees, members, officers, and others representing a Participant who receive documents subject to the terms of this Protective Order shall maintain the confidentiality of the information contained therein as required in the attached Nondisclosure Agreement and Acknowledgment, the terms of which are incorporated herein. Even if no longer engaged in this proceeding, every person who has executed a Nondisclosure Agreement and Acknowledgment shall continue to be bound by the provisions of this Protective Order and the attached Nondisclosure Agreement and Acknowledgment.

J. Counsel and others representing a Participant shall take all precautions necessary to assure that proprietary documents and proprietary information are not distributed to unauthorized persons. Counsel and others representing a Participant are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

K. All pleadings, issuances, testimony, exhibits, and correspondence in this proceeding that contain proprietary information shall be treated as confidential, marked in accordance with paragraph A above, and, if served, shall be filed electronically using the E-Filing system. The individual filing the document shall use the Non-Public Submissions option for filing, and shall select as recipients of the document only persons who are authorized to receive information pursuant to this Protective Order. In addition, any document subject to this Protective Order shall include an attached cover sheet bearing prominent markings indicating the attached document contains "Confidential Proprietary Information Subject to Nondisclosure Agreement," and a cover letter that describes the contents of the pleading or correspondence without reference to such information. If the document is to be served on the Board and the parties, the individual filing the document shall include a statement that the filing contains proprietary information in the Document Processing Comments field of the Electronic Information Exchange (EIE). Paper copies of documents subject to this order shall be sent by

U.S. first class, registered, express, or certified mail, internal NRC mail, messenger-courier, or overnight delivery service in a sealed envelope.

L. At any hearing or conference in this proceeding in which a statement is made by a representative of a Participant, or a witness is questioned, concerning a proprietary document or information contained therein, the statement or testimony shall be given in camera or under other suitable conditions as the Board may establish, and the record of that portion of the hearing and any transcript thereof, shall be withheld from distribution to the public and may only be distributed to persons who are authorized to receive such information pursuant to this Protective Order. It shall be the duty of the presenting Participant to notify the Board and the Initial Holder that such testimony or statement will contain proprietary information, at least thirty (30) days prior to the testimony or statement being made.

M. Proprietary documents shall remain available for the purposes of this proceeding until the date that an order terminating this proceeding is no longer subject to judicial review (the Proceeding Termination Date), or as otherwise provided by an adjudicatory order.² The Participants shall, within forty-five (45) days of the Proceeding Termination Date, return all proprietary documents in their possession, or in the possession of their counsel, consultants, employees, members, officers, and agents, to the Initial Holder's counsel or shall destroy that material. Within such time period, each Participant receiving proprietary documents under this Protective Order shall submit to the Initial Holder's counsel an affidavit stating that, to the best of his/her knowledge, all proprietary documents have been returned or destroyed. To the extent that such filings, issuances, transcripts, exhibits, and notes are not returned or destroyed, they shall remain subject to the provisions of this Protective Order.

² The proceeding may be ongoing with respect to some matters for which no proprietary information is required, while the matters for which proprietary information is required have been resolved. If an adjudicatory order provides that the portion of the proceeding for which proprietary information is required has been concluded, all proprietary documents shall be returned or destroyed in accordance with the procedures set out in this paragraph following the Proceeding Termination Date.

N. Counsel, consultants, employees, members, officers, or any other individuals representing a Participant who have reason to believe that proprietary documents may have been lost or misplaced or may have otherwise become available to unauthorized persons during the pendency or following the completion of this proceeding shall notify the Board and the Initial Holder's counsel promptly of such belief and the reasons for it.

O. Any violation of the terms of this Protective Order or a Nondisclosure Agreement and Acknowledgment executed in furtherance of this Protective Order may result in the imposition of such sanctions as the Board may deem appropriate including, but not limited to, referral of the violation to appropriate bar associations and/or other disciplinary authorities.

P. Nothing in this Protective Order precludes any Participant(s) in this proceeding from seeking changes in this Protective Order from the Board, the Commission, or a court as future circumstances warrant.

Q. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking, through discovery in any other administrative or judicial proceeding, any proprietary document or information produced in this proceeding under this Protective Order. In addition, if a document or information identified in this proceeding as proprietary comes into the possession of, or is known by any Participant independently of a proprietary document produced in this proceeding, and such knowledge was acquired without violation of law or other requirement applicable to such Participant directing the Participant to keep such information confidential, use of that document or information in this proceeding, without compliance with the terms of this Protective Order, shall not be a violation of the terms of this Protective Order. The Participant asserting independent knowledge of the contents of a proprietary document or independent access to such a document shall have the burden of proving that such information was independently obtained if the Initial Holder asserts that disclosure of such information or document was a violation of this Protective Order.

R. The Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 11, 2017

ATTACHMENT A

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

**Paul S. Ryerson, Chairman
Dr. Gary S. Arnold
Dr. Sue H. Abreu**

In the Matter of

TENNESSEE VALLEY AUTHORITY

**(Clinch River Nuclear Site Early Site Permit
Application)**

Docket No. 52-047-ESP

ASLBP No. 17-954-01-ESP-BD01

NONDISCLOSURE AGREEMENT AND ACKNOWLEDGEMENT

Under penalty of perjury, I hereby agree and acknowledge that (i) access to "proprietary documents," as that term is defined in the Atomic Safety and Licensing Board's Protective Order dated December 11, 2017, issued in Docket No. 52-047-ESP, ASLBP No. 17-954-01-ESP-BD01 (Protective Order), may be provided to me pursuant to the terms and restrictions of the Protective Order; (ii) I have been given a copy and have read the Protective Order; and (iii) I agree to be bound by the terms of the Protective Order. I understand and agree that proprietary documents, their contents, or any notes or other memoranda summarizing or otherwise describing their contents, or any form of information that derives from the proprietary documents and copies or discloses the contents of the proprietary documents, shall be held in strict confidence and shall not be disclosed to anyone except in accordance with that Protective Order, and shall be used only for purposes of this proceeding. I acknowledge that a violation of this Nondisclosure Agreement and Acknowledgment or the Protective Order, which incorporates the terms of this Nondisclosure Agreement and Acknowledgment, constitutes a violation of an order of the U.S. Nuclear Regulatory Commission and may result in the imposition of such

sanctions as the Atomic Safety and Licensing Board or the U.S. Nuclear Regulatory Commission may deem to be appropriate. I also acknowledge that a violation of this Nondisclosure Agreement and Acknowledgment of the Protective Order shall entitle the Initial Holder or owner of the proprietary document(s) or proprietary information contained therein to seek immediate injunctive relief prohibiting such violation.

WHEREFORE, I do solemnly agree to protect such proprietary documents, and their contents, as may be disclosed to me in this proceeding, in accordance with the terms of the attached Protective Order and this Nondisclosure Agreement and Acknowledgment.

Name (printed): _____

Title: _____

Employed by or Representing: _____

Signature: _____

Executed on (date): _____

ATTACHMENT B

**Individuals Approved to Receive Proprietary Documents Upon Execution of
Nondisclosure Agreement and Acknowledgement**

Tennessee Valley Authority

Christopher C. Chandler (Counsel for TVA)
Blake J. Nelson (Counsel for TVA)
Ryan Dreke (Counsel for TVA)

Southern Alliance for Clean Energy and Tennessee Environmental Council

Diane Curran (Harmon, Curran, Spielberg & Eisenberg LLP – Counsel for SACE and
TEC)
Dr. Edwin S. Lyman (Expert Witness for SACE and TEC)
M.V. Ramana (Expert Witness for SACE and TEC)
Sara Barczak (Representative of SACE)
Donald Safer (Representative of TEC)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

TENNESSEE VALLEY AUTHORITY

**(Early Site Permit Application
for Clinch River Nuclear Site)**

Docket No. 52-047-ESP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **PROTECTIVE ORDER** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16B33
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

**U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16B33
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov**

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001
Paul S. Ryerson, Chairman
Dr. Gary S. Arnold, Administrative Judge
Dr. Sue H. Abreu, Administrative Judge
Kimberly C. Hsu, Law Clerk
Joseph D. McManus, Law Clerk
E-mail: paul.ryerson@nrc.gov
Gary.Arnold@nrc.gov
Sue.Abreu@nrc.gov
kimberly.hsu@nrc.gov
joseph.mcmanus@nrc.gov

Counsel for Intervenor, SACE and TEC:
Diane Curran, Esq.
Harmon Curran Spielberg & Eisenberg LLP
1725 DeSales St., N.W., Ste. 500
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-14A44
Washington, DC 20555-0001
Ann Hove, Esq.
David Roth, Esq.
Susan Vrahoretis, Esq.
Anthony Wilson, Esq.
Jody Martin, Esq.
E-mail: ann.hove@nrc.gov
david.roth@nrc.gov
susan.vrahoretis@nrc.gov
anthony.wilson@nrc.gov
jody.martin@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

Counsel for Licensee, Tennessee Valley Authority:
Christopher Chandler, Esq.
Blake Nelson, Esq.
Ryan Dreke, Esq.
Tennessee Valley Authority
400 W. Summit Hill Drive, WT 6A-K
Knoxville, TN 37902
E-mail: ccchandler0@tva.gov
bjnelson@tva.gov
rcdreke@tva.gov

**Dated at Rockville, Maryland
this 11th day of December, 2017**

[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ENERGY SOLUTIONS, INC.,
ROCKWELL HOLDCO, INC.,
ANDREWS COUNTY HOLDINGS, INC.,

and

WASTE CONTROL SPECIALISTS LLC,

Defendants.

Civil Action No. 1:16-cv-01056-GMS

JOINT PROPOSED STIPULATED PROTECTIVE ORDER

In the interests of (i) ensuring efficient and prompt resolution of this Action; (ii) facilitating discovery by the Parties litigating this Action; and (iii) protecting confidential information from improper disclosure or use, the Parties stipulate to the provisions set forth below. The Court, upon good cause shown and pursuant to Fed. R. Civ. P. 26(c)(1),

ORDERS as follows:

A. Definitions

1. As used herein:

(a) "Action" means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

(b) "Confidential Information" means any trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or any document, transcript, or other material containing such information that has not been published or otherwise made publicly available.

(c) "Disclosed" means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

(d) "Document" means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).

(e) "Investigation" means the pre-Complaint inquiry into the matters at issue in this Action by the U.S. Department of Justice.

(f) "Investigation Materials" means non-privileged documents, testimony or other materials that (i) any non-Party provided to any Party, either voluntarily or under compulsory process, in the course of and relating to the Investigation; (ii) any Party provided to any non-Party in the course of and relating to the Investigation; or (iii) any Defendant, or affiliated person or entity, provided to Plaintiff, either voluntarily or under compulsory process, in the course of and relating to the Investigation.

(g) "Litigation Materials" means non-privileged documents, testimony, or other materials that (i) any non-Party provides to any Party, either voluntarily or under compulsory process, in connection with and during the pendency of this Action; (ii) are exchanged between any Party and any non-Party in connection with and during the pendency of this Action; (iii) any Defendant provides to Plaintiff, either voluntarily or under compulsory process, in connection with and during the pendency of this Action and/or (iv) Plaintiff provides to any

Defendant, either voluntarily or under compulsory process, in connection with and during the pendency of this Action.

(h) "Outside Counsel of Record" means the firm(s) of attorneys representing a Defendant in this proceeding.

(i) "Party" means the United States or any Defendant in this Action. "Parties" means collectively Plaintiff and Defendants in this Action.

(j) "Person" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

(k) "Protected Person" means any Person (including a Party) that has provided Investigation Materials or whose documents, testimony or other materials are provided in this Action by any Party or non-Party to a Party, either voluntarily or in response to a discovery request or subpoena.

B. Notice to Non-Parties

2. This Order is considered executed and binding once signed by both parties and filed with the Court.

3. Once executed, each Party shall have two business days to send by email, facsimile, or overnight delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

4. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information, it may, within seven business days after receipt of a copy of this Order, seek additional protection from the Court for its Confidential Information. If a non-Party Protected Person seeks additional protection from the Court, the materials for which

additional protection has been sought will not be provided to other Persons until the Court has ruled.

C. Designation of Confidential Information

5. DESIGNATION OF INVESTIGATION MATERIALS. Investigation Materials submitted by a Protected Person, or any other materials that are entitled to confidentiality under the Antitrust Civil Process Act, 15 U.S.C. § 1313(c) (3), the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a(h), or any other federal or state statute, regulation, or precedent concerning documents in the possession of the Plaintiff, and any information taken from any portion of such document, shall be treated in the first instance as Confidential Information under this Order during pretrial proceedings. Such material may be disclosed only in accordance with the procedures set forth in this Order. Any such materials produced by any Party in this Action will be marked with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility or audibility. Where Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk or other medium. The confidentiality of such materials may be later challenged under the provisions of Section D below.

6. DESIGNATION OF LITIGATION MATERIALS. The following procedures govern the process for Protected Persons to designate as Confidential any information that they disclosed in this Action after this Order is entered, including but not limited to information in response to requests under Fed. R. Civ. P. 30, 31, 33, 36 and 45, and documents disclosed in response to Fed. R. Civ. P. 33(d), 34(b)(2) and (c), or 45:

(a) **Testimony.** All transcripts of depositions taken in this Action after entry of this Order will be treated as Confidential Information in their entirety for 21 days after the date

when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable). Within five business days of receipt of the final transcript, the Party who noticed the deposition shall provide the final transcript to the deponent. Within 21 days following receipt of the final transcript, the deponent may designate as Confidential, any portion of the deposition transcript, by page(s) and line(s); and any deposition exhibits provided by the deponent or the deponent's employer. To be effective, such designations must be provided in writing to Plaintiffs and Defendants' counsel listed at the end of this Order. Any portion of the transcript or exhibits not so designated pursuant to this subparagraph 6(a) shall not be treated as Confidential, despite any prior designation of confidentiality.

(b) Documents: Where a Protected Person produces after entry of this Order hard copies of documents or electronic version of documents that are not in a native format, such documents shall be designated by the Protected Person for protection under this Order by stamping or otherwise marking each page containing Confidential Information with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility or audibility. If the entire document is not Confidential Information, the Protected Person shall stamp or label only those pages that contain Confidential Information.

(c) Electronic Documents and Data: Where a Protected Person produces electronic files and documents in native electronic format after entry of this Order, such electronic files and documents shall be designated by the Protected Person for protection under this Order by appending to the file names or designators information indicating whether the file contains Confidential Information, or by any other reasonable method for appropriately designating such information produced in electronic format, including by making such designations in reasonably accessible metadata associated with the files. Where Confidential

Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk or other medium. When electronic files or documents in native form are printed for use at deposition, in a court proceeding, or for provision in printed form to any person described in subparagraph 9(g), the Party printing the electronic files or documents shall affix a legend to the printed document saying "CONFIDENTIAL" and include the production number and designation associated with the native file.

(d) Whenever discovery is sought from a non-Party in this Action, a copy of this Order shall accompany the discovery request or subpoena. Non-Parties may designate materials as Confidential pursuant to the procedures in this paragraph.

7. Any production of documents or testimony not designated as Confidential will not be deemed a waiver of any future claim of confidentiality concerning such information if it is later designated as Confidential. If at any time prior to the trial of this Action, a Protected Person realizes that it should have designated as Confidential any documents, testimony, or other materials that Person previously produced during discovery in this Action, it may so designate such documents, testimony, or other materials by notifying the Parties in writing. The Parties shall thereafter treat such materials pursuant to the Protected Person's new designation under the terms of this Order. No prior disclosure of newly designated Confidential Information shall violate this Order.

8. In the event of a disclosure of any Confidential Information to any person(s) not authorized to receive such disclosure under this Order, the Party responsible for having made such disclosure shall promptly notify the Protected Person whose material has been disclosed and provide to such Protected Person all known relevant information concerning the nature

and circumstances of the disclosure. The disclosing Party shall also promptly take all reasonable measures to retrieve the improperly disclosed material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made. Unauthorized or inadvertent disclosure shall not change the confidential status of any disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

D. Challenges to Confidential Designation

9. Any Party who objects to any designation of confidentiality may at any time before the trial of this Action provide a written notice to the Protected Person who provided the materials and all other Parties stating with particularity the grounds for the objection. All materials objected to shall continue to be treated as Confidential Information pending resolution of the dispute. If the objecting Party and the Protected Person cannot reach agreement on the objection within 5 business days of the Party's written notice, the Protected Person may address the dispute to this Court in accordance with the Scheduling Order. The Protected Person bears the burden of persuading the Court that the material is in fact Confidential Information within the definition set forth in paragraph 1(b). The designated information shall be treated in accordance with its Confidential Information designation under this order until the Court rules on the designating Protected Person's timely filed motion. If the Protected Person fails to move the Court in accordance with this paragraph, or if the Court finds the designation of Confidential Information to have been inappropriate, the designation of confidentiality shall be considered rescinded. The Parties thereafter shall not be required to treat the information as Confidential Information under this Order. The Parties' entry into this order shall not preclude or prejudice either the Protected Person or the objecting Party from arguing for or against any designation,

establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

E. Disclosure of Confidential Information

10. Confidential Information may be disclosed only to the following persons:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters in the courtroom, and stenographic or clerical personnel;

(b) counsel for the Plaintiff and its attorneys, in-house economists, paralegals and other professional personnel (including support and IT staff), and agents or independent contractors retained by the Plaintiff to assist in this Action whose functions require access to the information;

(c) Outside Counsel of Record for Defendants, including any attorneys, paralegals, and other professional personnel (including support and IT staff) that such outside counsel assigns to this Action whose functions require access to the information (in-house counsel for Defendants, however, are excluded and shall not have access to any Confidential Information under this Order, unless and until modified);

(d) outside vendors or service providers (such as copy-service providers, outside court reporters retained for depositions, and document-management consultants) retained by a Party to assist that Party in this Action provided that they shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto;

(e) any mediator, arbitrator, or special master that the Parties engage in this Action or that this Court appoints;

(f) persons who are authors, addressees, and recipients of the document, to the extent they have previously had lawful access to the document disclosed or to be disclosed; or

persons whom counsel for a Party believes in good faith previously received or had access to the document, unless the person indicates that he or she did not have access to the document;

(g) any person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who assist the expert's work in this Action, provided that they shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto; and

(h) outside trial consultants (including, but not limited to, graphics consultants) provided that they shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto.

11. Counsel for the Party making the disclosure must retain the original of the Agreement Concerning Confidentiality in the form of Appendix A attached hereto until final resolution of this Action.

12. Each individual described in paragraph 9 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other individual, except as provided in this Order.

13. Recipients of Confidential Information under this Order may use such material solely for the prosecution and defense of this Action and not for any business, commercial, or competitive purpose or in any other litigation proceeding. Nothing contained in this Order, however, will affect or restrict the rights of any Party with respect to its own documents or information produced in this Action. Further, nothing contained in this Order prevents Plaintiff, subject to taking appropriate steps to preserve the confidentiality of such information, from disclosing such information designated as Confidential (i) in the course of any other legal

proceeding in which the U.S. Department of Justice is a party; (ii) for the purpose of securing compliance with a Final Judgment in this Action; or (iii) for law enforcement purposes.

14. Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

15. Nothing in this Order:

(a) limits a Protected Person's use or disclosure of its own information designated as Confidential Information;

(b) prevents disclosure of Confidential Information with the consent of the Protected Person that designated the material as Confidential;

(c) prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt in discovery in this Action; (iii) previously produced, disclosed and/or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to an order of a court or as may be required by law;

(d) prevents Plaintiff's retention or use or disclosure of Investigation Materials or Litigation Materials outside the context of this Action to the extent permitted by applicable law or regulation governing such pre-complaint discovery including the Hart-Scott-Rodino

Act, 15 U.S.C. § 18a and the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-14, or for law enforcement purposes, or as required by law, court order or regulation.

F. Use of Information Designated Confidential in This Action

16. If any documents, testimony, or other materials designated under this Order as Confidential Information are included in any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file must file such Confidential Information under seal, in accordance with D. Del. LR 5.1.3. Nothing in this Order shall restrict the Parties or any interested member of the public from challenging the filing of any Confidential Information under seal. Nothing in this Order shall apply to Plaintiff's complaint previously filed in this action; however, this Order shall apply to Confidential Information underlying allegations in Plaintiff's complaint. Nothing in this order restricts Defendants' right to seek to have information underlying Plaintiff's complaint protected as Confidential Information.

17. Disclosure at trial of documents and testimony and other materials designated as Confidential Information will be governed pursuant to Court order. The parties shall meet and confer before trial and submit a recommended order outlining those procedures.

G. Procedures upon Termination of This Action

18. The obligations imposed by this Order survive the termination of this Action unless the Court, which shall retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise. Within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this litigation, all persons having received information designated as Confidential Information must either make a good faith effort to return such material and all copies thereof to the Protected Person (or the person's counsel if represented by counsel) that produced it, or destroy or delete all such Confidential Information. Counsel for Plaintiff and

Defendants will be entitled to retain court papers, deposition and trial transcripts and exhibits, and work product, provided that the Parties and their counsel do not disclose the portions of court papers, deposition transcripts, exhibits, or work product containing information designated as Confidential Information to any person except pursuant to Court order or agreement with the Protected Person that produced the Confidential Information or as otherwise permitted herein. All Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in accordance with this paragraph. Nothing in this Paragraph, however, restricts the rights of the Parties under paragraphs 13 or 15 of this Order.

H. Right to Seek Modification

19. Nothing in this Order limits any person, including members of the public, Party or Protected Person from seeking further or additional protections of any of its materials or modification of this Order upon motion duly made pursuant to the Rules of this Court, including, without limitation, an order that certain material not be produced at all or is not admissible evidence in this Action.

20. Nothing in this Order limits the right of the Parties to seek modifications to this Order, and the fact that the Parties stipulated to this Order shall not be ground for an objection to any future request by any Party for amendment of this Order.

I. Persons Bound by This Order

21. Once executed, this Order shall be binding on the Parties to this Action, their attorneys, and their successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

Dated: December 2, 2016

AGREED TO:

By Counsel for the Plaintiff United States:

/s/ Jennifer Hall

JENNIFER HALL (#5122)

Assistant United States Attorney

United States Attorney's Office

1007 Orange Street, Suite 700

Wilmington, DE 19801

(302) 573-6277

jennifer.hall@usdoj.gov

/s/ Travis R. Chapman

JULIE ELMER

JOHN LINDERMUTH

TRAVIS R. CHAPMAN

United States Department of Justice

450 5th St. NW, Suite 7100

Washington, D.C. 20530

(202) 353-9006

travis.chapman@usdoj.gov

By Counsel for Defendants Energy Solutions and Rockwell Holdco:

/s/ Robert S. Saunders
ROBERT S. SAUNDERS
Skadden, Arps, Slate, Meagher & Flom LLP
920 N. King Street
Wilmington, DE 19801

TARA REINHART
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, D.C. 20005

By Counsel for Defendants Andrews County Holdings and Waste Control Specialists:

/s/ Joseph Ostovich
JOSEPH OSTOYICH
Baker Botts LLP
1299 Pennsylvania Avenue, NW
Washington, D.C. 20004

SO ORDERED:

Dated this day of December, 2016

HONORABLE GREGORY M. SLEET
UNITED STATES DISTRICT JUDGE

APPENDIX A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 1:16-cv-01056-GMS

ENERGY SOLUTIONS, INC.,
ROCKWELL HOLDCO, INC.,
ANDREWS COUNTY HOLDINGS, INC.,

and

WASTE CONTROL SPECIALISTS LLC,

Defendants..

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____ as _____

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the District of Delaware solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE