



**Issue Date: 06 December 2004**

CASE NO. 2004-SWD -00003

*In the Matter of:*

**Steve and Virginia Wallace,**  
Complainants,

vs.

**CH2M Hill Group, Inc.,**  
Respondent.

**PROTECTIVE ORDER**

On consideration of Respondent's Renewed Motion for Protective Order and the opposition filed by Claimants, it is ordered:

- 1) This Protective Order shall govern the production and use of "Confidential Information" as defined in this Order, during the pendency of this action and thereafter.
- 2) If any party claims that material sought in discovery is privileged, rather than Confidential Information, that party shall first attempt to resolve the dispute informally. If that proves unsuccessful, the party claiming the privilege shall file an appropriate motion under Rule 26(b)(5), F. R. Civ. P. and Standards 24 through 27 of the *Civil Discovery Standards* of the American Bar Association.
- 3) Any party may designate as Confidential Information any document, material or other information (written or oral) which is produced to any other party in the course of this action, as specified in paragraph 5. A party may designate as "Confidential Information" any material which, in the good faith opinion of the party producing the material, constitutes or reveals confidential or proprietary financial, personnel, or business information. For example, formal and informal personnel records and files, performance evaluations, employee ratings, Employee Concerns Program files, and similar documents may be treated as Confidential Information. Information which is publicly-available or which becomes publicly-available (other than through a violation of this Protective Order or some other applicable confidentiality agreement) shall not constitute Confidential Information. All Confidential Information shall be stored and maintained in a manner that will prevent access to that information by unauthorized persons.

- 4) Confidential information may be used for purposes of this litigation only and may be disclosed only to the following persons (“Qualified Persons”), who will not further disclose or disseminate the Confidential Information:
  - a) In-house and outside counsel for the parties to this action, including associate counsel and secretarial, paralegal and support staff, to whom disclosure is necessary for work on this action;
  - b) The parties to this action;
  - c) The presiding administrative law judge, the Administrative Review Board, other DOL personnel (to the extent necessary to perform assigned duties), and a reviewing court;
  - d) Witnesses at depositions and hearings, to the extent reasonably deemed necessary by counsel, provided that the witness first signs the Declaration attached as Exhibit A. The declarations referred to in the preceding sentence shall be maintained by counsel of record, and provided to opposing counsel upon request;
  - e) Experts or consultants who are employed, retained or otherwise consulted by counsel in this litigation to the extent reasonably deemed necessary by counsel for the purpose of assisting in this litigation, provided that the experts or consultants first sign the Declaration attached as Exhibit A;
  - f) Such other persons upon whom the parties may specifically agree in writing; such agreement will not be unreasonably withheld by the parties or the parties’ counsel.
- 5) Confidential Information shall be designated in the following manner:
  - a) Documents containing Confidential Information shall have the notation “Confidential” placed on the face of each page of each document containing Confidential Information, by the producing party. Marking the first page of a multi-page document with a Confidential notation raises a presumption that the entire document is to be treated as Confidential Information;
  - b) Confidential Information disclosed at a deposition either may be designated on the record at the deposition by the disclosing party, or may be designated with particularity, in writing, by the disclosing party within 30 days of the date of the deposition.
- 6) Confidential Information shall be used solely for purposes of the prosecution and/or defense of this case, and will be disclosed only to persons authorized to receive it under the terms of this Protective Order. Qualified Persons, as set forth in paragraph 4, who obtain Confidential Information shall take appropriate

measures to maintain the confidentiality of the material, shall share the information only with persons authorized to receive it under the terms of this Protective Order, and shall retain the material in a secure manner.

- 7) Before disclosing any Confidential Information to any qualified person, disclosing counsel shall advise those persons of the provisions of this Protective Order. Before receiving any Confidential Information, or being informed of the contents thereof, any persons specified in paragraphs 4(d), (e), or (f) who are not employees of the parties, also must agree in writing by signing a Declaration in the form of Exhibit A:
  - a) to be bound by the terms hereof;
  - b) to maintain the Confidential Information in confidence; and
  - c) not to disclose the Confidential Information to anyone other than in accordance with the terms of this Protective Order.
- 8) Any party may challenge an opponent's designation of any material as Confidential Information by serving written notice detailing the basis for the challenge, on counsel for the producing party. The party seeking to designate material as Confidential Information shall respond in writing within ten (10) business days. If the parties are unable to resolve their dispute, the party seeking to protect the material as Confidential Information may file an appropriate motion with the presiding administrative law judge. The motion shall seek a protective order with respect to the disputed material, and shall be accompanied by affidavits or declarations demonstrating that an exemption to disclosure applies. The party opposing the designation shall file an answer within ten (10) days after service of the motion, which may be accompanied by appropriate counter-affidavits or declarations demonstrating that no exemption to disclosure applies. During any dispute under this paragraph, the material that is the subject of the dispute shall be treated as Confidential Information until the matter is resolved between the parties or by order of the presiding administrative law judge.
- 9) At the conclusion of this proceeding (i.e., after a decision and order has been entered by the presiding administrative law judge, a final order entered by the Administrative Review Board acting for the Secretary of Labor, or a mandate is issued in review proceedings conducted by an Article III court, which ever is last), all material containing Confidential Information produced to the opposing party shall be destroyed by the opposing party or returned to counsel for the producing party. Counsel for each party may retain, under seal, one copy of the pleadings for their case file. The file shall be maintained in a manner that preserves the confidentiality of the Confidential Information.

- 10) The final determination or settlement of this action shall not relieve any person who has received Confidential Information from the obligations imposed by this Protective Order, and the Presiding Administrative Law Judge, the Administrative Review Board, and a reviewing court, as appropriate, shall retain jurisdiction after such final determination or settlement to enforce the provisions of this Protective Order.

**A**  
William Dorsey  
Administrative Law Judge