

G/p

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. CAA-III-025  
: :  
DENNIS ANDERSON CONSTRUCTION : :  
CORPORATION, : :  
: :  
Respondent. : :

ORDER

In order to maintain the confidentiality of information contained in a certain document, to conduct a fair and impartial proceeding, to assure that the facts are fully elicited, and to adjudicate all issues and avoid delay, IT IS ORDERED that:

1. The EPA Office of Inspector General shall provide Complainant with a copy of Investigative Report, File Number 94-007 ("OIG Report").
2. Complainant shall provide a copy of the OIG Report to Respondent's Counsel subject to the agreed-to Protective Order.
3. Complainant shall provide a copy of the OIG Report, under seal, to the Court. The Court shall treat the OIG Report as confidential.

SO ORDERED this 6<sup>th</sup> day of June, 1994.

  
Administrative Law Judge

IN THE MATTER OF DENNIS ANDERSON CONSTRUCTION CORP.

Respondent

Docket No. CAA-III-025

CERTIFICATE OF SERVICE

I certify that the foregoing Order Authorizing Release of  
OIG Report, dated June 6, 1994, was sent in the  
following manner to the addressees listed below:

Original by Pouch Mail to:

Lydia A. Guy  
Regional Hearing Clerk  
U.S. EPA, Region 3  
841 Chestnut Bldg.  
Phila, PA 19107


Copy by Certified Mail to:

Counsel for Complainant:

Benjamin Cohan  
Assistant Regional Counsel  
U.S. EPA  
841 Chestnut Bldg.  
Phila, PA 19107

Counsel for Respondent:

Francis J. Pelland, Esquire  
Bell, Boyd & Lloyd  
1615 L Street, NW  
Suite 1200  
Washington, DC 20036-5601

  
Aurora M. Jennings  
Legal Staff Assistant  
Office of Administrative  
Law Judges

Dated:

June 6, 1994  
Washington, DC

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. CAA-III-025  
: :  
DENNIS ANDERSON CONSTRUCTION :  
CORPORATION, :  
: :  
Respondent. : STIPULATION AND  
: PROTECTIVE ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), and Respondent Dennis Anderson Construction Corporation hereby stipulate that discovery in this case will involve the production of a Report which has been prepared by the EPA Office of Inspector General ("OIG") ("the OIG Report"), contains information which may be protected from disclosure under the Privacy Act, 5 U.S.C. § 552a, and, therefore, is entitled to confidential treatment. In view of this stipulation, the Court finds that good cause exists for issuance of an Order requiring limited disclosure of such information. As used herein, the term "the Court" shall mean the Administrative Law Judge assigned to this case and any successor Administrative Law Judge who may be assigned to this case. This Stipulation and Protective Order ("Protective Order") shall remain in effect and be binding during any period of administrative or judicial appeal unless expressly set aside by the appropriate appellate authority.

Upon consideration of the Motion for such an order filed by the parties hereto, IT IS HEREBY ORDERED:

1. Complainant shall submit the OIG Report containing information which may be entitled to confidential treatment to the Respondent's Counsel. The OIG Report shall be handled in accordance with the terms of this Protective Order. Complainant shall produce the OIG Report to Respondent's Counsel only after Respondent's Counsel has executed the enclosed Confidentiality Agreement and forwarded a copy to Complainant.

2. As used in this Protective Order, the term "confidential information" means the information contained in the OIG Report, entitled Investigative Report, File Number 94-007, which may be entitled to protection under 5 U.S.C. § 552a.

3. The OIG Report produced by Complainant pursuant to this Protective Order shall be stamped conspicuously by the Complainant with the word "CONFIDENTIAL" on the top of each page of the document prior to production to Respondent. Complainant's transmittal of information designated as confidential shall be accomplished by certified mail, return receipt requested, and shall state that the information designated as confidential is subject to this Protective Order.

4. Respondent's Counsel, upon receipt of information designated as confidential hereunder, shall not disclose or permit disclosure of this information to any other person, including without limitation, Respondent or any officer, director, employee, agent, or representative of Respondent, Respondent's Counsel, or any nonparty, except in the following circumstances:

a. Disclosure may be made to Respondent or employees of Respondent or of Respondent's Counsel who have responsibility for the preparation and trial of this action or any appeal therein. Any employee to whom disclosure is made shall be advised of, and become subject to, the provisions of this Protective Order prior to such disclosure by executing the Confidentiality Agreement attached hereto. Employees do not include persons, firms or corporations engaged by Respondent or Respondent's Counsel on a contract basis, who shall be subject to the requirements of subparagraph (b) of this Paragraph.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts (hereinafter collectively referred to as "Expert(s)") employed or otherwise engaged by any party or counsel to any party to assist in the preparation and trial of this litigation. Prior to disclosure to any Expert(s), the Expert(s) must agree to be bound by the terms of this Protective Order by executing the Confidentiality Agreement attached hereto. A copy of each executed Confidentiality Agreement shall be furnished to the Complainant not less than five (5) business days prior to disclosure to the Expert(s).

5. Respondent, Respondent's Counsel, and any other person subject to this Protective Order who obtains information designated as confidential hereunder, shall take all necessary and appropriate measures to maintain the confidentiality of the information, including, but not limited to, maintaining of all information in a locked cabinet with limited access. Respondent,

Respondent's Counsel, and any other person subject to this Protective Order who obtains information designated as confidential hereunder, shall share such information only with persons authorized to receive it pursuant to this Protective Order, and shall retain the information in a secure manner. Except as provided in Paragraph 4 above, no other person shall be permitted access to the information.

6. Any person who obtains access to information designated as confidential under this Protective Order may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof only for the purpose of preparation for litigation in this matter. All copies, duplicates, extracts, etc. shall be subject to the terms of this Protective Order to the same extent and manner as original documents.

7. Any information designated as confidential under this Protective Order to be filed with the Court must be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this litigation, the word "CONFIDENTIAL", and a statement substantially in the following form:

This envelope, containing documents which are filed in this case by \_\_\_\_\_ ("the producing party"), is not to be opened and the contents are not to be displayed or revealed except by order of the Court or consent of the producing party.

In addition, if such documents have been sealed and filed with the Court, the other parties to this action shall be

informed of this by the filing party at the time of filing.

8. Within 60 days after termination of this action by judgment, settlement or otherwise, or as may be determined by the court or Complainant:

a. Any person who obtained information designated as confidential hereunder shall assemble and return such information to Complainant, including all copies, duplicates, extracts, summaries, or descriptions of the information or portions thereof. Such return shall be certified in writing by the person who obtained the information from EPA. All such information covered by this Protective Order which constitutes the work product of Counsel for the Respondent shall be destroyed; and,

b. The Clerk of the Court shall maintain under seal all papers filed under seal until the Court orders otherwise.

Dated:

4/22/94

*Francis J. Pelland*  
Francis J. Pelland  
BELL, BOYD & LLOYD  
Attorneys for Respondent

Dated:

4/28/94

*Matthew C. Frank*  
Matthew C. Frank  
Assistant Regional Counsel  
U.S. EPA - Region III

SO ORDERED this

16<sup>th</sup>

day of

June

, 1994..

*Richard M. Head*  
Administrative Law Judge

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REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. CAA-III-025  
: :  
DENNIS ANDERSON CONSTRUCTION :  
CORPORATION, :  
: :  
Respondent. :

**CONFIDENTIALITY AGREEMENT**

The undersigned is currently working for \_\_\_\_\_  
which is located at \_\_\_\_\_. During the  
past year the undersigned has been employed or otherwise engaged  
as a consultant or contractor by the following company located at  
the following address:

\_\_\_\_\_  
\_\_\_\_\_

The undersigned hereby acknowledges that he/she (i) has read  
the foregoing Stipulation and Protective Order ("Protective  
Order") executed by the attorneys of record for the parties in  
the action presently pending before the United States  
Environmental Protection Agency, entitled In the Matter of Dennis  
Anderson Construction Corp., EPA Docket Number CAA-III-025; (ii)  
understands the terms thereof; and (iii) agrees, upon threat of  
penalty of contempt, to be bound by such terms. Accordingly,  
among other responsibilities, the undersigned shall only share  
such information with persons specifically authorized to receive  
the information pursuant to the Protective Order, shall retain  
the information in a secure manner, and shall use such



information only for the purposes authorized by the Protective Order. The undersigned understands that the pledge of confidentiality under this Agreement continues after the lawsuit is over. Furthermore, the undersigned understands that a breach of the Protective Order may subject him/her to civil claims for damages and to criminal prosecution.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

IN THE MATTER OF DENNIS ANDERSON CONSTRUCTION CORP.,  
Respondent  
Docket No. CAA-III-025

CERTIFICATE OF SERVICE

I certify that the foregoing Stipulation and Protective Order, dated June 6, 1994, was sent in the following manner to the addressees listed below:

Original by Pouch Mail to:

Lydia A. Guy  
Regional Hearing Clerk  
U.S. EPA, Region 3  
841 Chestnut Bldg.  
Phila, PA 19107


Copy by Certified Mail to:

Counsel for Complainant:

Benjamin Cohan, Esquire  
Assistant Reg'l Counsel  
U.S. EPA  
841 Chestnut Bldg.  
Phila. PA 191907

Counsel for Respondent:

Francis J. Pelland, Esq.  
Bell, Boyd & Lloyd  
1615 L Street, NW  
Suite 1200  
Washington, DC 20036-  
5601

  
Aurora M. Jennings  
Legal Staff Assistant  
Office of Administrative  
Law Judges

Dated:

June 6, 1994  
Washington, DC