UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

IN THE MATTER:	)	
	)	
ARKANSAS VALLEY COOPERATIVE ASSOCIATION	)	Docket No. CERCLA-VIII-92-20
302 MAIN STREET	)	
LA JUNTA, COLORADO 81050	)	
Respondent.	)	

PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION

Having reviewed Respondent's Motion For Entry Of Protective Order Regarding Confidential Information and being fully advised in the premises, it is Ordered:

1. Any document produced by any party herein to any other party herein in response settlement negotiations or discussions, Prehearing Exchanges, any request for production of documents, subpoena duces tecum or interrogatory may be designated, in accordance with the provisions of this Order, as "Confidential Information" by stamping the work "CONFIDENTIAL" upon the face of such document. Other information provided through discovery, such as specific answers to interrogatories, specific responses to requests for admissions, and specific deposition testimony, etc., may be similarly designated as "Confidential Information" by stamping the specific portion of the discovery response "CONFIDENTIAL" and in the case of deposition testimony, by serving on counsel within twenty (20) days of service by the court reporter of the transcript of any deposition, a written designation of the specific pages and lines of the deposition that are alleged to contain "Confidential Information." All documents and other information designated as "Confidential Information" shall not be utilized by any opposing party, or the agents or employees thereof, except in accordance with the terms of this Order.

2. "Confidential Information" shall not be disclosed to any persons other than (1) counsel for the party to this proceeding, including necessary professional, secretarial and clerical personnel assisting such counsel; (2) qualified persons taking or recording testimony involving such documents or information and necessary stenographic, videographic and clerical personnel therefor; (3) in-house counsel, officers, directors and employees of the party to this litigation; (4) independent consultants and technical experts and their staff who are engaged directly in this litigation; (5) third party witnesses who have previously written or received confidential documents (but only with respect to such documents); and (6) the Court.

3. All consultants and technical experts or witnesses who in the course if this case see or learn of any documents produced in this litigation that are designated as "Confidential Information," or who learn of any other matters designated as "Confidential Information," or who have access to any such documents or matters, shall be required to sign a confidentiality agreement in the following form:

> I, _____, have read a copy of the attached Protective Order entered in this case. I recognize that during my participation in the handling and development of this case I may have occasion to read or hear about documents produced in this litigation or other matters that are designated "Confidential Information." I agree to use any such documents and matters solely in connection with my participation in this case. I agree to abide by said Protective Order in every respect.
>
> _____
> Signature
>
> _____
> Date

Counsel for each party shall collect the signed confidentiality agreement for their respective independent consultants and technical experts and retain them until the conclusion of the case.

4. This Order is without prejudice to the rights of any party to seek an Order from this Court imposing greater, lesser or different restrictions on the dissemination of "Confidential Information," or to seek to rescind, modify, alter, or amend this Order with respect to specific documents or information. A party through its counsel may, at any time, serve a written notice of objection to the designation of any material as "Confidential Information" pursuant to this Order. Such notice shall identify specifically the material or information as to which the objecting party wishes to have the designation removed. Within ten (10) days the designating party shall (i) review the material to which the objection applies and (ii) notify the objecting party in writing whether the designating party will agree to remove the designation as requested. If no agreement can be reached, the objecting party shall be free to move the Court for an order of declassification of the specified material, and may submit the material under seal for review by the Court in camera. Nothing in this Order shall abridge the rights of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Court concerning the issue of the status of "Confidential Information."

5. Nothing herein shall prevent disclosure beyond the terms of this Order if each and every party designating the information

as "Confidential Information" consents to such disclosure, or if the Court, after notice to all affected parties, orders such disclosure. Nor shall anything herein prevent any counsel of record from utilizing "Confidential Information" in the examination or cross-examination of any person who is alleged to be or has claimed to be the author or source of the "Confidential Information," irrespective of which party produced such information.

6. Nothing in this Order shall affect the admissibility into evidence of "Confidential Information" or other matters.

7. After this case is finally completed, including the final exhaustion of all appeals, all documents produced and all matters designated as "Confidential Information" shall either be returned to the producing party, or at the written request of the producing party, shall be destroyed by the party, person, or firm in possession.

8. Agreement by a party to entry of this Protective Order does not constitute an acknowledgment by such party that any discovery materials produced by any other party are in fact confidential or otherwise legally protectable. By making discovery materials available for use in this litigation, the parties have not waived or compromised any confidentiality or protectability of the same.

Dated this 8th day of September, 1994.

Daniel M. Kent

Administrative Law Judge

IN THE MATTER OF ARKANSAS VALLEY COOPERATIVE ASSOC. Respondent
Docket No. CERCLA-VIII-92-20

CERTIFICATE OF SERVICE

I certify that the foregoing Protective Order Regarding Confidential Information, dated Sept. 8, 1994, was sent in the following manner to the addressees listed below:

Original by Regular Mail to:

Joanne McKinstry
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region VIII
999 18th Street
Denver, CO 80202-2405

Copy by Certified Mail, Return Receipt Requested to:

Counsel for Complainant:

Daisy Kathleen Curry, Esquire
Office of Regional Counsel
US EPA, Region VIII
Denver Place, Suite 500
999 18th Street
Denver, CO 80202-2405

Counsel for Respondent:

Ted T. Svitavsky, Esquire
12835 E. Arapahoe Road
Tower One - Suite 100
Englewood, CO 80112

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

Dated: Sept. 8, 1994
Washington, DC