

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF NORTH CAROLINA,)
)
 Defendant,)
)
 CATAWBA RIVER WATER SUPPLY PROJECT,)
)
 Defendant-Intervenor,)
)
 DUKE ENERGY OF THE CAROLINAS, LLC,)
)
 Defendant-Intervenor.)
)

No. 138, Original
 Before the Special Master
 Hon. Kristin Linsley Myles

**STIPULATED PROTECTIVE ORDER CONCERNING
 UNIMIN CORPORATION’S CONFIDENTIAL DOCUMENTS**

1. This Protective Order is made and entered under the Federal Rules of Civil Procedure, including, but not limited to, Rule 26(c).
2. On August 6, 2009, Defendant State of North Carolina served a subpoena *duces tecum* on non-party Unimin Corporation (“Unimin”) in the above-captioned action for certain documents, including, but not limited to, documents relating to its use and discharge of water in the Catawba River Basin. The Case Management Plan dated January 7, 2009 (“CMP”), including the “Confidentiality” provisions of § 8, applies to and governs all materials furnished by Unimin in this action. This Protective Order applies to Unimin’s production of responsive documents that are designated as “Confidential” in accordance with § 8 of the CMP (“Confidential Documents”).
3. All knowledge and information gained or developed from viewing the Confidential Documents produced by Unimin shall be used solely and exclusively for the limited purpose of prosecuting or defending the claims in this action and shall not be used under any

circumstances for any other purpose whatsoever (including, but not limited to, business, commercial, competitive, educational, instructional or personal purposes).

4. Confidential Documents furnished by Unimin in connection with this action may not be viewed, copied, transmitted, altered, used, downloaded or accessed by any party or person except as expressly stated in this Protective Order. Unimin will furnish its Confidential Documents through a secure internet site maintained by its counsel, Kilpatrick Stockton LLP. The Confidential Documents may be viewed only by those persons authorized under this Protective Order to do so. Access will be provided to each designated person through an individual password which provides access to a temporary secure internet site. The secure internet site will monitor and record the identity of each person accessing the confidential documents including but not limited to the time, date and duration of each such viewing (“Access Records”). The Access Records will be confidentially maintained by Kilpatrick Stockton. The Parties will not be entitled to information regarding viewing activities of other designated viewers. Access to the Confidential Documents shall be subject to the following further conditions:

(a) Regardless of whether so marked, the Unimin Confidential Documents shall be treated as if designated **“CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER.”**

(b) Each Party to this action may designate the following persons to receive remote access to the Confidential Documents: (i) no more than three (3) persons who are counsel of record in this action or members of such counsel’s office assigned to work on this action and (ii) no more than three (3) persons who are consulting and/or trial experts or members of such expert’s support staff assigned to work on this action, which experts have been engaged by counsel of record to assist in the prosecution or defense of claims in this action and who, in

the good faith judgment of counsel of record, have a legitimate need for such access. No Party shall have more than a total of six (6) authorized persons view the Unimin Confidential Documents; provided that any Party may, for good cause, obtain additional designations by application to Kilpatrick Stockton or if such application is denied, by appeal to the Special Master and/or the Supreme Court. All designations shall be made in the form attached as Exhibit B hereto and shall be submitted to Kilpatrick Stockton, and shall be treated as confidential Access Records.

(c) Before being provided access, each person (and, if employed by a corporation or other business entity, his or her employer) authorized to receive access to Unimin Confidential Documents hereunder shall read this Order and sign the Acknowledgment, Agreement and Declaration attached as Exhibit A hereto and provide a copy thereof to counsel for Unimin. Upon receiving an executed copy of Exhibit A from an authorized person meeting the criteria in subparagraph 4(b) of this Order, Kilpatrick Stockton shall provide a password for the designated individual.

(d) Under this Protective Order, the designated experts and designated counsel shall be permitted to view the Confidential Documents as their analysis reasonably requires. However, designated experts and designated counsel shall not download or copy the Confidential Documents. Within ninety (90) days after the Unimin Confidential Documents are first made available by Kilpatrick Stockton, any Party may seek an order from the Special Master to authorize greater use of the Unimin Confidential Documents. For purposes of this subparagraph 4(d), the term “greater use” shall mean use of the Unimin Confidential Documents in a manner that is not otherwise authorized by this Protective Order. Nothing in this Protective Order

precludes Unimin from opposing the entry of such order or requesting a protective order pursuant to Rule 26(c)(1), Fed. R. Civ. P. In order to facilitate a decision on this issue, Unimin agrees to provide the Special Master with an *in camera* review of the Unimin Confidential Documents. The party seeking greater use of the Unimin Confidential Documents shall have the burden of showing that such greater use is necessary and appropriate. After reviewing the Unimin Confidential documents and weighing the claim for greater use against the claimed need for privacy, the Special Master may for good cause shown issue an order allowing greater use of the Unimin Confidential Documents or may deny the request for greater use of the Unimin Confidential Documents in whole or in part.

(e) Any documents (regardless of form or format) that refer to Unimin Confidential Documents shall be created and used for the sole and exclusive purpose of, and only to the extent necessary for, this litigation including but not limited to gaining an understanding of the Unimin Confidential Documents, creating submissions under seal to the Special Master and/or Court, as deemed necessary by any Party to this action, or for presentation to the Special Master and/or Court at hearings or at trial. Any person creating or generating any document that references Unimin Confidential Documents, in a way that might reveal a portion of its contents, shall immediately upon its creation mark each page of it as “**CONFIDENTIAL–SUBJECT TO PROTECTIVE ORDER**” at the top and bottom of each page or other conspicuous location. Unless the Special Master rules otherwise in accordance with the provisions of subparagraph 4(d), the Unimin Confidential Documents shall only be filed under seal and shall not be made public or used or disclosed outside of the express terms of this Order.

(f) Within 60 days after first providing access to the Unimin Confidential Documents and following 24 hours notice to all designated persons who had access to the Confidential Documents, Kilpatrick Stockton may terminate all remote access to the Unimin Confidential Documents.

(g) It is agreed that the Access Records maintained by Kilpatrick Stockton are the work product of the Parties and/or their experts. Accordingly, these records will be kept confidential and Kilpatrick Stockton shall not disclose the Access Records to anyone other than Unimin; provided, however, a Party may obtain the Access Records by order of the Special Master and/or Court upon a showing of good cause that the Access Records are reasonably anticipated to lead to the discovery of a claim that this Protective Order might have been violated.

5. Unimin Confidential Documents shall also be protected from disclosure as set out in the CMP. To the extent that discrepancies exist between the protections and restrictions under the CMP and this Order, the more protective and restrictive of the two shall apply.

6. This Order shall remain in full force and effect after termination of this action, or until canceled or otherwise modified by Order of the Special Master and/or Court, or by written agreement of the Parties and Unimin. This Order shall be enforceable by the Special Master, the Supreme Court or any federal court within the jurisdiction where Unimin is located or resides, except that this Order shall not operate as a waiver of objections to personal jurisdiction that may be available to a defendant in an action to enforce this Protective Order.

7. If any Party or its counsel or consultants/experts receives a request, demand, subpoena or order that calls for disclosure of Unimin Confidential Documents, or if any action is

brought to compel such person to disclose Unimin Confidential Documents, such person shall promptly notify counsel for Unimin, shall oppose such disclosure and shall reasonably cooperate with Unimin's own efforts to oppose such disclosure.

8. Unimin Confidential Documents, and any documents referring to, reflecting or disclosing Unimin Confidential Documents, or any portion thereof, are protected from any public disclosure under the North Carolina Public Records Act, the South Carolina Freedom of Information Act, the Federal Freedom of Information Act, and any other statute, regulation, rule or law that may otherwise require the disclosure of such material in a manner other than in strict compliance with the terms of this Order. In support of the foregoing, the Special Master enters the following findings

(a) Unimin Confidential Documents are being provided to the Parties under a special procedure as a consequence of the Subpoena being served upon Unimin, and shall be used by the Parties only for the limited purposes of this case.

(b) The Parties acknowledge that they do not have control of the Unimin Confidential Documents. As a result, Unimin Confidential Documents, and any documents referring to the foregoing, do not qualify as "agency records" and/or "public records" under the Federal Freedom of Information Act, the North Carolina Public Records Act and/or the South Carolina Freedom of Information Act. A purpose of this Protective Order is to preclude any Unimin Confidential Documents from being treated as a public record under N.C. Gen. Stat. § 132-1 *et seq.*, S.C. Code Ann. § 30-4-10 *et seq.* or otherwise.

(c) The Unimin Confidential Documents constitute business or technical information, pursuant to N.C.G.S. § 66-152(3), that derives independent, actual or potential commercial value

from not being generally known or readily ascertainable by persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(d) The Unimin Confidential Documents constitute unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information pursuant to S.C. Code. Ann. § 30-4-40.

(e) Accordingly, the Unimin Confidential Documents are confidential trade secrets of Unimin, and are entitled to qualification and protection as confidential information under N.C.G.S. § 132-1 *et seq.* and/or S.C. Code Ann. § 30-4-10 *et seq.* or other similar classification under any other public records statute or law.

Based on a review of the record, the Special Master HEREBY ORDERS:

(i) The Unimin Confidential Documents are confidential “trade secrets” as defined in N.C.G.S. § 66-152(3) and S.C. Code. Ann. § 30-4-40;

(ii) The Unimin Confidential Documents are commercially valuable property of Unimin (a private “person” as defined by N.C.G.S. § 66-152(2) and S.C. Code. Ann. § 30-4-20(b));

(iii) To the extent that the Unimin Confidential Documents are being disclosed to the designated Parties in this case, including North Carolina and South Carolina public agencies, this disclosure is in compliance with Rule 17 of the Rules of the Supreme Court of the United States

and Rule 45 of the Federal Rules of Procedure as adopted by Case Management Order No. 7 of Special Master Kristin Linsley Myles, dated September 18, 2008;

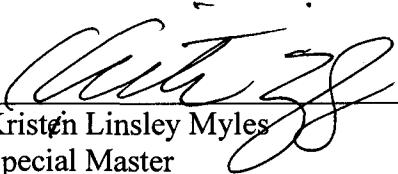
(iv) Unimin Confidential Documents have been and will continue to be designated “confidential” (or other similar designation) from the time of initial disclosure to the public agency;

(v) Unimin Confidential Documents fall under the statutory exemptions for public disclosure, including but not limited to, 5 U.S.C. § 552(b)(4), N.C.G.S. § 132-1.2 and S.C. Code Ann. § 30-4-40;

(vi) Unimin Confidential Documents are not public records nor shall they be treated as public records under N.C.G.S. § 132-1 *et seq.* and/or S.C. Code Ann. § 30-4-10 *et seq.* or other similar classification under any other public records statute or law. Any public disclosure of Unimin Confidential Documents under the North Carolina Public Records Act, the South Carolina Freedom of Information Act and/or the Federal Freedom of Information Act is strictly prohibited; and

(vii) The disclosure, access, and use of Unimin Confidential Documents shall be in accordance with this Protective Order.

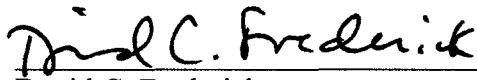
SO ORDERED:



Kristin Linsley Myles
Special Master

9/21/10
Date

SO STIPULATED AND AGREED:




David C. Frederick
Scott K. Attaway

8-30-2010

Date

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Todd Evans & Figel PLLC
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The State of South Carolina***


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Mary L. Lucasse

9-15-2010

Date

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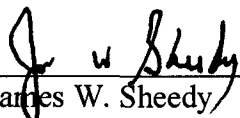
***Counsel for Defendant
The State of North Carolina***

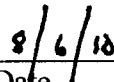
Virginia A. Seitz
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James W. Coleman

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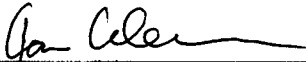
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Susan E. Driscoll


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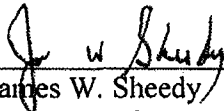


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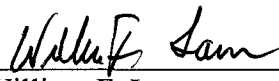


James W. Sheedy
Susan E. Driscoll

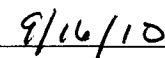
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Counsel for Non-Party Unimin Corporation

EXHIBIT A
ACKNOWLEDGMENT, AGREEMENT AND DECLARATION

I, the undersigned hereby acknowledge, agree and declare that:

1. I have received and fully read and understand the Stipulated Protective Order Concerning Unimin Corporation's Confidential Documents, entered ____, __, ____, in the case of *South Carolina v. North Carolina*, No. 138, Original, pending in the Supreme Court of the United States (the "Protective Order"). I hereby agree to be bound thereby and to comply therewith.

2. I have received and/or expect to receive access to material or information furnished by Unimin Corporation ("Unimin") including documents which have been designated "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL" pursuant to the terms and restrictions of the Protective Order. I shall maintain all such material as confidential and will not disclose these confidential documents to anyone except in strict compliance with the Protective Order.

3. I shall retain control of all material or information, as well as any copies thereof relating to the Unimin Confidential Documents. Upon completion of my assigned duties, I shall be responsible for the identification and disposition of all such material, including any copies thereof, pursuant to the terms of the Protective Order. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of the Protective Order. If I am provided remote access to Unimin Confidential Documents via Kilpatrick Stockton LLP, I shall keep the password assigned to me confidential and shall not allow any other person to use my password, nor shall I make any effort to copy, download or print the Unimin Confidential Documents. If I have reason to believe that another person (other than Kilpatrick Stockton) has obtained my password, I shall immediately notify Kilpatrick Stockton.

4. I shall not, under any circumstances, use any material or information furnished by Unimin pursuant to the Protective Order, or any knowledge I gain from reviewing such material

or information, for any purpose whatsoever (including, but not limited to, business, commercial, competitive, educational, instructional or personal purposes), other than for the limited purpose of prosecuting or defending the claims in this action. I shall not, under any circumstances, access, view or use any Unimin Confidential Documents or any excerpt from the Unimin Confidential Documents except in strict compliance with the Protective Order.

Witness: _____

Signed: _____

Printed Name:

Date:

Employer:

Party Affiliation:

EXHIBIT B

Party Designation for Access to Unimin Confidential Documents

Pursuant to ¶ 4(b)(i)-(ii) of the Stipulated Protective Order Concerning Unimin Corporation's Confidential Documents, entered _____, __, _____, in the case of *South Carolina v. North Carolina*, No. 138, Original, pending in the Supreme Court of the United States, _____ hereby designates the following persons to have access to Unimin Confidential Documents under the conditions set out in the Protective Order:

[Name]
Counsel for the [Party]