BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 03-22
	)	(Enforcement)
SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274
(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today served on the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies each of **RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S RESPONSE TO COMPLAINANT'S MOTION TO COMPEL, AFFIDAVIT OF N. LADONNA DRIVER, AFFIDAVIT OF WRAY C. HISER; RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S MOTION FOR LEAVE TO FILE A REPLY TO COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER; RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S REPLY TO COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER and AFFIDAVIT OF WRAY C. HISER**, copies of which are herewith served upon you.

Respectfully submitted,

SAINT-GOBAIN CONTAINERS, INC.,
Respondent,

By: LaDonna D
One of Its Attorneys

Dated: November 24, 2003

N. LaDonna Driver
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

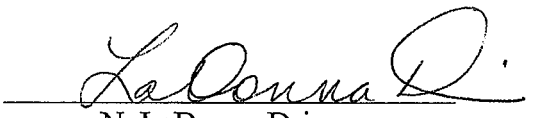
I, N. LaDonna Driver, the undersigned, hereby certify that I have served the attached RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S RESPONSE TO COMPLAINANT'S MOTION TO COMPEL, AFFIDAVIT OF N. LADONNA DRIVER, AFFIDAVIT OF WRAY C. HISER; RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S MOTION FOR LEAVE TO FILE A REPLY TO COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER; RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S REPLY TO COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER and AFFIDAVIT OF WRAY C. HISER upon:

Delbert D. Haschemeyer, Esq.
Assistant Attorney General
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on November 24, 2003.



N. LaDonna Driver

SGCO:001/Fil/NOF-COS –Response to Motion to Compel

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 03-22
	)	(Enforcement)
SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
Respondent.	)	

RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S
RESPONSE TO COMPLAINANT'S MOTION TO COMPEL

NOW COMES Respondent, SAINT-GOBAIN CONTAINERS, INC. (hereinafter "Saint-Gobain" or "Respondent"), by and through its attorneys, HODGE DWYER ZEMAN, pursuant to 35 Ill. Admin. Code § 101.500(d), and hereby responds to the Complainant's Motion to Compel.

On or about September 15, 2003, Complainant served Complainant's First Set of Supplemental Interrogatories and Supplemental Request for Production. On or about October 13, 2003, Respondent served its response to Complainant's Supplemental Request for Production and Complainant's First Set of Supplemental Interrogatories. Respondent filed a Motion for Protective Order for certain documents responsive to Complainant's supplemental discovery requests, namely records concerning operation of Respondent's glass furnace and two pages of unaudited financial information.

Thereafter, on or about November 12, 2003, Complainant served on Respondent a Motion to Compel. The Motion to Compel seeks production of records concerning operation of Respondent's glass furnace as well as certain financial information. Specifically, Complainant seeks for production the following financial documents: income

tax returns, annual reports, audited and/or unaudited financial reports, and 10(k) reports. Respondent stated in its response to supplemental discovery requests that it did not have within its possession or control any of the requested financial documents, except for the two pages of unaudited financial information at issue with the Motion for Protective Order.

Subsequent to receiving Complainant's Motion to Compel, Respondent agreed to furnish Complainant with the furnace documents requested pursuant to Complainant's Motion to Compel. See Affidavit of N. LaDonna Driver. Consequently, the only issue left for decision on this Motion to Compel deals with the financial information.

As indicated in Respondent's Response to Complainant's First Set of Supplemental Requests For Production, Respondent does not have in its possession or control the requested income tax returns, annual reports, audited financial reports, or 10(k) reports for a multiplicity of reasons, which Respondent has set forth in its Response to Complainant's First Set of Supplemental Requests For Production and Complainant's First Set of Supplemental Interrogatories. Respondent indicated in its Response to Complainant's First Set of Supplemental Interrogatories[1] that federal income taxes for

[1] Hereinafter cited to as "Resp. to Supp. Int. No. ___."

income generated by Respondent are filed by the holding company, Saint-Gobain Corporation, of which Respondent is a wholly-owned subsidiary. Resp. to Supp. Int. No. 2. Additionally, Respondent indicated that Illinois state income taxes for income generated by Respondent are filed by its affiliate, CertainTeed Corporation. Resp. to Supp. Int. No. 2. Furthermore, Respondent indicated in its Response to Complainant's Supplemental Requests For Production[2] that it did not have any annual reports nor audited financial reports. Resp. to Supp. RFP No. 3 and 4. Finally, Respondent indicated in its Response to Complainant's First Set of Supplemental Interrogatories that neither it nor any entity related to Respondent files SEC reports which reflect, relate, or take into account information relating to Respondent. Resp. to Supp. Int. No. 5.

Complainant states at paragraph seven of its Motion to Compel that it does not find credible Respondent's claim that it does not have copies of income tax returns, annual reports, financial reports or 10(k) reports that reflect Respondent's operations. However, as evidenced in the attached sworn affidavit of Wray C. Hiser, Associate General Counsel for Respondent, Respondent is a wholly-owned subsidiary of Saint-Gobain Corp., a holding company for the American businesses of the French parent, Compagnie de Saint-Gobain. Affidavit of Wray C. Hiser at ¶ 2. As a wholly-owned subsidiary of a privately-held company, Respondent is not a publicly traded company and therefore, does not file

[2] Hereinafter cited to as "Resp. to Supp. RFP No. ___."

any 10(k) reports with the SEC. Affidavit of Wray C. Hiser at ¶3. Furthermore, for the same reasons, Respondent does not publish any annual reports. Affidavit of Wray C. Hiser at ¶4. Similarly, the holding company is not publicly traded and therefore, files no reports with the SEC. Affidavit of Wray C. Hiser at ¶3.

The financial information Complainant requests from Respondent are fully consolidated into the financial information of the holding company. Affidavit of Wray C. Hiser at ¶6. Respondent does not have any audited or unaudited financial information or annual reports of the holding company or the French parent company. Affidavit of Wray C. Hiser at ¶7. Therefore, Respondent files no tax returns and no copy of said tax returns is provided to Respondent. Affidavit of Wray C. Hiser at ¶6.

It is a well-established principle among the courts of this state and others, that a party cannot be compelled to produce that which is not within its possession or control. Robert J. Wiebusch v. Alan Taylor, 97 Ill. App. 3d 210, 422 N.E.2d 875 (Ill. App. 5th Dist. 1981). In this case, Respondent has shown through its response to Complainant's Request for Production and Responses to Supplemental Interrogatories and through the Affidavit of Wray C. Hiser, that because Respondent is a subsidiary of a privately-held holding company, Respondent does not file any state or federal tax returns, does not produce any annual reports nor audited financial reports, and does not, nor does any entity related to it, file any reports with the SEC. Therefore, Respondent cannot be compelled to produce that which is not in its possession or control.

In a further attempt to locate documents that are responsive to Complainant's requests, Respondent found a 2002 brochure published by its French parent company.

This brochure appears to contain some financial information (in euros) for the French parent company and industry sectors within the French parent company. To the extent that Respondent's financial information may be a part of those figures, Respondent will produce the brochure to Complainant. See Affidavit of N. LaDonna Driver.

As to the confidential unaudited financial information, which Respondent has within its control, Respondent has allowed Complainant to view said documents at Respondent counsel's office, for use in this matter. See Affidavit of N. LaDonna Driver.[3] Respondent has objected to the disclosure of said documents to persons or entities outside such litigation because dissemination would harm, and be unreasonably disadvantageous to, Respondent's business, as explained in Respondent's Motion for Protective Order and Respondent's Reply to Complainant's Response in Opposition to Respondent's Motion for Protective Order, which Respondent incorporates herein.

Section 101.614 of the Board's procedural rules provides, in pertinent part, as follows:

* * *

[3] Respondent notes that in its Motion to Compel, counsel for Complainant has asserted facts that are not of record in the proceeding and has failed to file an affidavit in support thereof. Counsel for Complainant states, in pertinent part, as follows:

> The undersigned attorney has briefly reviewed the material Respondent has indicated it will provide upon entry of a protective order and, although not allowed to copy or make notes regarding the substance of the contents, did observe two sheets of papers purporting to be the financial documents and four boxes of documents which appear to be glass furnace operating records.

Motion to Compel at 3. As stated above, these facts which Complainant assert, pursuant to Section 101.504 of the Board's procedural rules, "must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]." 35 Ill. Admin. Code § 101.504.

> The hearing officer will deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, or harassment, or to protect materials from disclosure consistent with Section 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

35 Ill. Admin. Code § 101.614. "There is ample precedent for the entry of a protective order preventing dissemination of sensitive discoverable materials to third parties or for purposes unrelated to the lawsuit." May Centers, Inc. v. S.G. Adams Printing & Stationary Co., 153 Ill. App. 3d 1018, 1021, 506 N.E.2d 691, 694 (5th Dist. 1987). (Citations omitted.) Additionally, there is precedent for the entry of a protective order preventing dissemination of financial materials outside of the present litigation. Donald A. Statland v. Charles E. Freeman, 112 Ill. 2d 494, 493 N.E.2d 1075 (Ill. 1986).

WHEREFORE, for the above and foregoing reasons, Respondent SAINT-GOBAIN CONTAINERS, INC., respectfully requests the Hearing Officer to issue an order denying Complainant's Motion to Compel production of purported financial documents.

Respectfully submitted:

SAINT-GOBAIN CONTAINERS. INC.,
Respondent,

By: LaDonna D.
One of its Attorneys

Dated: November 24, 2003

N. LaDonna Driver
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

SGCO:001/Fil/Response to Motion to Compel

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 03-22
	)	(Enforcement)
SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

AFFIDAVIT OF N. LADONNA DRIVER

N. LaDonna Driver, being first duly sworn, deposes and states as follows:

1. I am a licensed Illinois attorney, and the counsel of record for Respondent, Saint-Gobain Containers, Inc.

2. I met with Delbert D. Haschemeyer, counsel for Complainant when he came to review Respondent's confidential unaudited financial information at my office, for use in this matter.

3. I have orally notified counsel for Complainant that Respondent will be producing the furnace operating documents as part of supplemental discovery responses that will include a 2002 report for the French parent company, Compagnie de Saint-Gobain.

4. The statements made in this Affidavit are true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

N. LaDonna Driver

Subscribed and sworn to before
me this 24th day of November 2003.

Notary Public

OFFICIAL SEAL
PATTI L. TUCKER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4-11-2004

SGCO:001/Fil/Affidavit – RMTC - NLD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 03-22
	)	(Enforcement)
SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
Respondent.	)	

AFFIDAVIT OF WRAY C. HISER

Wray C. Hiser, being first duly sworn, deposes and states as follows:

1. I am Associate General Counsel for Saint-Gobain Containers, Inc.

2. Saint-Gobain Containers, Inc., is a wholly-owned subsidiary of Saint-Gobain Corporation, a holding company for the American businesses of the French parent company, Compagnie de Saint-Gobain.

3. Saint-Gobain Containers, Inc., is not a publicly traded company and makes no 10(k) or 10(q) filings with the Securities and Exchange Commission. The holding company, Saint-Gobain Corporation, is not a publicly traded company and files no reports with the Securities and Exchange Commission.

4. Saint-Gobain Containers, Inc., does not publish an Annual Report.

5. Saint-Gobain Containers, Inc., does have its own unaudited financial information, but does not have an audited financial statement.

6. The financial results of Saint-Gobain Containers, Inc., are fully consolidated into the financial information for the holding company, Saint-Gobain Corporation. The holding company, Saint-Gobain Corporation, files U.S. income tax

returns for the entire holding company. Consequently, Saint-Gobain Containers, Inc., files no U.S. income tax return. An affiliate, CertainTeed Corporation, files Illinois state income tax returns that includes the financial information for Saint-Gobain Containers, Inc.

7. Saint-Gobain Containers, Inc. does not have copies of the tax returns of CertainTeed Corporation or Saint-Gobain Corporation, nor does it have any audited or unaudited financial statements or annual reports of the holding company, Saint-Gobain Corporation or of CertainTeed Corporation, or of the French parent company.

8. I have reviewed Saint-Gobain's Response to Complainant's Motion to Compel.

9. The matters set forth in Saint-Gobain's Response to Complainant's Motion to Compel are true and correct to the best of my knowledge and belief.

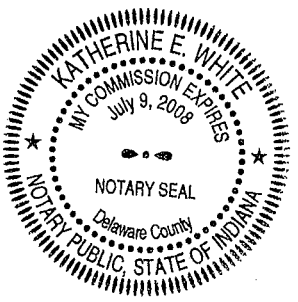
10. The statements made in this affidavit are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Wray C. Hiser

Subscribed and sworn to before me
this 21 day of November 2003.

Katherine E. White
Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 03-22
	)	(Enforcement)
SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
Respondent.	)	

RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S MOTION FOR LEAVE TO FILE A REPLY TO COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER

NOW COMES Respondent, SAINT-GOBAIN CONTAINERS, INC. (hereinafter "Saint-Gobain" or "Respondent"), by and through its attorneys, HODGE DWYER ZEMAN, and pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") procedural rules, 35 Ill. Admin. Code §101.500(e), moves the Board for leave to file its Reply to Complainant's Response in Opposition to Respondent's Motion for Protective Order ("Response").

1. On or about September 15, 2003, Complainant served Complainant's First Set of Supplemental Interrogatories and Supplemental Request for Production.

2. On or about October 13, 2003, Respondent served its response to Complainant's Supplemental Request for Production and Complainant's First Set of Supplemental Interrogatories.

3. On or about October 29, 2003, Respondent filed a Motion for Protective Order for certain documents responsive to Complainant's supplemental discovery

requests, namely records concerning operation of Respondent's glass furnace and two pages of unaudited financial information.

4. On or about November 12, 2003, Complainant served on Respondent a Motion to Compel and a Response in Opposition to Respondent's Motion for Protective Order.

5. Under the Board's procedural rules, a moving party is not entitled to file a reply, except as permitted by the Board or the Hearing Officer to prevent material prejudice. 35 Ill. Admin. Code § 101.500(e).

6. Since the filing of Complainant's Motion to Compel, Respondent has offered to produce the furnace operating documents in supplemental discovery responses. See Affidavit of N. LaDonna Driver in support of Respondent's Response to Complainant's Motion to Compel. Therefore, many points in Complainant's Response are no longer relevant and are inapplicable to the remaining issue concerning the two pages of unaudited financial information.

7. Saint-Gobain believes that Complainant's Response does not completely or accurately represent Section 7 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/7) and 35 Ill. Admin. Code Part 130.

8. Saint-Gobain believes that due to the above-mentioned inaccuracies in law, Complainant has also incorrectly applied the law to the circumstances here.

9. Furthermore, in its Response, counsel for Complainant has asserted facts that are not of record in the proceeding and has failed to file an affidavit in support thereof in accordance with 35 Ill. Admin. Code § 101.504.

10. Allowing the Respondent to file the Reply would avoid material prejudice that would result if Complainant's Response was allowed to stand on inaccuracies in both law and the application of law to the circumstances here.

WHEREFORE, for the above and foregoing reasons, Respondent SAINT-GOBAIN CONTAINERS, INC., respectfully requests that the Board grant it leave to file its Reply to Complainant's Response in Opposition to Respondent's Motion for Protective Order.

Respectfully submitted,

SAINT-GOBAIN CONTAINERS. INC.,
Respondent,

By: LaDonna D.
One of its Attorneys

Dated: November 24, 2003

N. LaDonna Driver
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

SGCO:001/Fil/Motion for Leave to File Reply

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
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SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

RESPONDENT SAINT-GOBAIN CONTAINERS, INC.'S REPLY TO COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER

NOW COMES Respondent, SAINT-GOBAIN CONTAINERS, INC. (hereinafter "Saint-Gobain" or "Respondent"), by and through its attorneys, HODGE DWYER ZEMAN, pursuant to 35 Ill. Admin. Code §§ 101.500(d) and 101.500(e), and hereby replies to Complainant's Response in Opposition to Respondent's Motion for Protective Order ("Response").

On or about September 15, 2003, Complainant served Complainant's First Set of Supplemental Interrogatories and Supplemental Request for Production. On or about October 13, 2003, Respondent served its response to Complainant's Supplemental Request for Production and Complainant's First Set of Supplemental Interrogatories. Respondent filed a Motion for Protective Order ("Motion") for certain documents responsive to Complainant's supplemental discovery requests, namely records concerning operation of Respondent's glass furnace and two pages of unaudited financial information.

On November 12, 2003, counsel for Respondent received Complainant's Response to Respondent's Motion. Complainant appears to contend that Respondent's Motion did

not meet the requirements of Sections 7 and 7.1 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/7) or 35 Ill. Admin. Code Part 130. Complainant also apparently contends that Respondent's Motion should have, but did not, address issues beyond those statutory and regulatory provisions. This Reply demonstrates that Complainant's position is inaccurate both in law and in application of the law to the circumstances here.

First, in the spirit of cooperation, Respondent has offered to forego its request for protective order for the furnace documents. See Affidavit of N. LaDonna Driver in support of Respondent's Response to Complainant's Motion to Compel. While that has not, thus far, allowed the parties to come to an agreement on a protective order for the two pages of unaudited financial information, Respondent will nevertheless treat the two pages of unaudited financial information as the only remaining issue for purposes of the current dispute over the Motion. Thus, Respondent will not reply to portions of

Complainant's Response that deal with trade secret issues, which could only apply to the furnace documents.[1] This eliminates discussion of Sections 7(a)(i) and (iv), 7(c) and 7.1 of the Act, as well as 35 Ill. Admin. Code §§ 130.110, 130.200, 130.201 and 130.203. See pages 4-11 of Complainant's Response.

[1] The Act defines "trade secret" as: "the whole or any portion or phrase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes." 415 ILCS 5/3.490. While the furnace operating documents could come within this definition, the two pages of unaudited financial information would not come within this definition.

A. Respondent Meets the Requirements for Protection of Information Under Section 7 of the Act and 35 Ill. Admin. Code Part 130.

By focusing only on trade secret issues, Complainant has not included in its Response some very important statutory and regulatory provisions. Section 7(a) of the Act provides, in pertinent part, as follows:

> Sec. 7. Public inspection; fees
>
> > (a) All files, records, and data of the Agency, the Board, and the Department shall be open to reasonable public inspection and may be copied upon payment of reasonable fees to be established where appropriate by the Agency, the Board, or the Department, except for the following:
> >
> > (i) information which constitutes a trade secret;
> > (ii) information privileged against introduction in judicial proceedings;
> > (iii) internal communications of the several agencies;
> > (iv) information concerning secret manufacturing processes or confidential data submitted by any person under this Act.

415 ILCS 5/7(a). (Emphasis added.)

Thus, trade secrets are not the only information that can be protected from disclosure. There is another category that can be so protected, which has been addressed in the Illinois Pollution Control Board's ("Board") Part 130 regulations as non-disclosable information. Section 130.100(b) makes clear that the provisions in Subparts B and C of Part 130, which are those provisions with which Complainant argues that Respondent did not comply, only apply to trade secrets. Complainant makes no mention of Subpart D of Part 130, which, according to Section 130.100(b)(3), applies to non-disclosable information other than trade secrets.

In its Motion, and in the Affidavit attached thereto, Respondent met all of the requirements set forth in Subpart D of Part 130. Specifically, Section 130.404(e) provides the requirements for applications for non-disclosure. Section 130.404(e)(1) requires that the applicant identify the particular non-disclosure category that is applicable. Paragraphs three and six of the Motion refer to the documents at issue as "confidential." In addition, the fifth paragraph[2] of the Affidavit accompanying the Motion states that the documents to be produced under the protective order "contain confidential data." Thus, Respondent made it abundantly clear that the category of non-disclosable information was that of "confidential data."

Section 130.404(e)(2) requires a concise statement of the reasons for requesting non-disclosure. Paragraph three of Respondent's Motion, as well as the fifth paragraph of the Affidavit accompanying the Motion, state that disclosure of the confidential financial reports to certain persons or entities outside of the instant litigation would harm Saint-Gobain's business. Thus, Respondent has provided a concise statement of its reasoning for requesting non-disclosure. If Complainant feels that this statement is too concise, Respondent has attached to this Reply an affidavit providing some further explanation of its concerns regarding disclosure of the confidential financial reports.

Section 130.404(e)(3) requires that the application for non-disclosure contain information on the nature of the material that is sought to be protected from disclosure as well as identification of the number and title of all persons familiar with the data and information, and a statement of how long the material has been protected from disclosure.

[2] Respondent notes that the paragraphs in the Affidavit accompanying the Motion were inadvertently misnumbered and apologizes for any confusion this may cause.

Paragraph three of Respondent's Motion and the fifth paragraph of the Affidavit accompanying the Motion identify the material that is sought to be protected as confidential financial reports, that if disclosed to persons or entities outside of the instant litigation, would harm the Respondent's business. The sixth paragraph of the Affidavit accompanying the Motion states that the persons at Respondent's company who have access to the confidential financial reports are management, support staff, attorneys and agents who require access to the information to perform their duties. The seventh paragraph of the Affidavit accompanying the Motion states that the confidential financial reports have been precluded from disclosure to other persons from the time of their creation to the present. Thus, Respondent has clearly and satisfactorily addressed each requirement in Section 130.404(e)(3).

Finally, Section 130.404(e)(4) requires that facts in the application be verified by affidavit. The Affidavit accompanying the Motion meets this requirement.

Accordingly, Respondent's Motion, and its accompanying Affidavit, followed the requirements of Part 130, Subpart D. Thus, Respondent met the requirements for protecting non-disclosable information under the requirements of the Act and the Board's regulations.

Complainant also argues that it is subject to the Illinois Freedom of Information Act ("FOIA") and thus would be under an obligation to disclose Respondent's financial information despite an agreed protective order, under Section 7(1)(a) of FOIA and the City of Carbondale case cited in Complainant's Response. Response at 12. While Complainant recognizes that Section 7(g) of FOIA provides protection for commercial or

financial information obtained from a person or business where the information is confidential, or where disclosure of the information may cause competitive harm, Complainant states that Respondent has not met its burden of establishing that the confidential financial information at issue falls under the above-mentioned FOIA exemption, because Respondent did not make the requisite showing for non-disclosure under the Act and the Board's regulations. However, as set forth herein, Respondent's Motion and Affidavit accompanying the Motion clearly follow the requirements for protection of non-disclosable information. Therefore, Respondent has met its burden to show that the confidential financial information at issue meets the FOIA exemption at Section 7(g).

B. Respondent Has Demonstrated Its Need for a Protective Order

Complainant also seems to argue in Sections I and II(C) of its Response that in order to secure a protective order, Respondent needs to meet certain requirements beyond the statutory and regulatory provisions set forth above, and that Respondent does not meet those requirements. Complainant infers that these statutory and regulatory provisions contain all the protection that Respondent needs for the material at issue and that Respondent has not shown good cause why a protective order should be issued.

Respondent draws Complainant's attention to 35 Ill. Admin. Code §§ 130.100(b)(3) and 130.400. There, the Board's regulations for protection of non-disclosable information make very clear that those regulations apply only to filings of information with the Board. Thus, submission of the confidential financial reports at issue in Respondent's Motion, to the Complainant in discovery responses, even with an

application for non-disclosure under 35 Ill. Admin. Code Part 130, Subpart D, would not guarantee that the Complainant would be bound by 35 Ill. Admin. Code Part 130's non-disclosure provisions. The Board would be bound not to disclose the information if it is used in a hearing in this matter, but according to Sections 130.100 and 130.400, the Complainant could arguably disclose the information provided to it in discovery.

Because Respondent feels so strongly that this information must be protected from disclosure to parties outside of this litigation, Respondent is concerned about the Complainant's ability to release the information it acquires through discovery and the gap in non-disclosure protection afforded by 35 Ill. Admin. Code Part 130, Subpart D, discussed above. That is why Respondent filed the Motion in the first place. The very fact that Complainant has taken the position that the material at issue could not be protected from disclosure is why there is good cause for the Motion to be granted. Without the Board's protective order, Respondent would be forced to produce confidential financial information that Complainant has stated it will not protect from disclosure.

The Board provided for the issuance of protective orders amid the discovery process at 35 Ill. Admin. Code Part 101. If the terms of Section 7 of the Act and Part 130 of the Board's regulations were sufficient to protect material produced in discovery from disclosure to parties outside of the litigation, there would seem to be no need for the Board to issue protective orders at all. That premise would render the Board's provision for protective orders a nullity. Such an approach is nonsensical and dangerous.

As Complainant points out, the language of the protective order provision at 35 Ill. Admin. Code § 101.616 follows closely that of Illinois Supreme Court Rule 201(c)(1), which provides:

> The court may at any time on its own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage or oppression.

Ill. S. Ct. Rule 201(c)(1). Case law interpreting Supreme Court Rule 201(c)(1) states that the Court has the discretion, where appropriate, to issue protective orders to shield particularly sensitive materials from unnecessary disclosure. Doris Burger v. Lutheran General Hospital, 198 Ill. 2d 21, 759 N.E.2d 533 (Ill. 2001).

In May Centers v. S.G. Adams Printing, the Illinois Appellate Court, Fifth District, referenced authority recognizing the "inherently sensitive nature of financial data and the need to protect such data from exploitation in the process of discovery except as necessary to prepare the parties to try the lawsuit." May Centers v. S.G. Adams Printing and Stationary Co., 153 Ill. App. 3d 1018, 1022, 506 N.E.2d 691, 695-696 (Ill. App. 5th Dist. 1987) The court noted there that the party contesting the protective order for the financial information would not have been precluded access to discoverable information by the protective order. Id. Similarly, Respondent has stated in its Motion and in its proposed Protective Order that Complainant may have access to the confidential financial information at issue. The protective order would only preclude parties outside of the litigation from having access to the information.

As noted by the Illinois Supreme Court in Statland v. Freeman, Complainant would only have access to Respondent's confidential financial information at issue via the

discovery process in this litigation. Donald A. Statland v. Charles E. Freeman, 112 Ill. 2d 494, 500, 493 N.E.2d 1075, 1078 (Ill. 1986). Thus, the Board has broad authority, "as justice requires," to protect this information from disclosure to parties outside of this litigation. Id. at 499. That is all that Respondent is seeking for the two pages of confidential financial information at issue in Respondent's Motion.

WHEREFORE, for the above and foregoing reasons, Respondent SAINT-GOBAIN CONTAINERS, INC., respectfully requests that the Hearing Officer enter Respondent's Protective Order attached hereto as Exhibit A.

Respectfully submitted,

SAINT-GOBAIN CONTAINERS. INC.,
Respondent,

By: LaDonna Q.
One of its Attorneys

Dated: November 24, 2003

N. LaDonna Driver
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

SGCO:001/Fil/Reply to Complainant's Response to Respondent's Motion for Protective Order

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 03-22
	)	(Enforcement)
SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

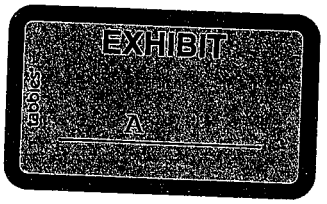
PROTECTIVE ORDER

This cause comes before the Hearing Officer on Respondent SAINT-GOBAIN CONTAINERS, INC.'S ("Saint-Gobain") Motion for Protective Order. Having considered the forgoing, and being duly advised, the Hearing Officer hereby finds that said Motion should be GRANTED.

It is, therefore, ORDERED that documents produced by Saint-Gobain in response to Complainant's Supplemental Requests for Production in this matter are subject to the following Protective Order:

1. Any and all confidential financial reports that Saint-Gobain produces in response to Complainant's Supplemental Request for Production in this matter, and that Saint-Gobain marks "CONFIDENTIAL: NON-DISCLOSABLE INFORMATION" shall be made available to the Complainant for review, but shall not be copied, in whole or in part, by the Complainant without further Order from the Hearing Officer.

2. Complainant and any other party in this case against Saint-Gobain filed before the Illinois Pollution Control Board ("Board"), that receives any Saint-Gobain Non-Disclosable Information pursuant to Saint-Gobain's response to Complainant's Supplemental Requests for Production in this matter, or otherwise:



(a) shall use such documents only for litigation or settlement of this matter;

(b) shall store such documents in a manner that will prevent the disclosure of such documents to any person or entity that is not a party to this matter, or to any attorney, employee, or other agent of such person or entity;

(c) shall not disclose such documents to any person or entity that is not a party to this matter, or to any attorney, employee, or other agent of such person or entity, unless:

(i) a Court of competent jurisdiction has ordered such disclosure, or Saint-Gobain has first expressly agreed to such disclosure in writing; and,

(ii) the person or entity to whom the documents are to be disclosed has first expressly agreed in writing to be bound by the terms of this Protective Order;

(d) shall not submit such documents to this Board in support of a Motion or otherwise except under seal;

(e) shall not present such documents as evidence at the Hearing of this matter or of any future case against Saint-Gobain filed before this Board without:

(i) prior notice to Saint-Gobain's counsel; and

(ii) consultation with Saint-Gobain's counsel and the Hearing Officer regarding how the documents at issue can be used as evidence at Hearing while preventing the disclosure of such documents to persons or entities that are not parties to this litigation; and,

(f) shall immediately notify counsel for Saint-Gobain, in writing, of any subpoena from or request by any person or entity that is not a party to this matter seeking, or Order by a Court ordering or regarding, the disclosure of such documents.

3. This order does not limit Complainant's right to disclose Saint-Gobain Non-Disclosable Information to its counsel, or to legal associates, paralegals, clerical or other support staff, or other agents of such counsel, except that:

(a) such disclosure shall be made only as necessary for the litigation or settlement of such matter; and,

(b) said persons are also bound by the terms of this Protective Order, and shall be informed of the terms hereof.

ENTERED:_____

_____
Hearing Officer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 03-22
	)	(Enforcement)
SAINT-GOBAIN CONTAINERS, INC., a Delaware corporation,	)	
	)	
	)	
Respondent.	)	

AFFIDAVIT OF WRAY C. HISER

Wray C. Hiser, being first duly sworn, deposes and states as follows:

1. I am Associate General Counsel for Saint-Gobain Containers, Inc.

2. Saint-Gobain Containers, Inc., is a wholly-owned subsidiary of Saint-Gobain Corporation, a holding company for the American businesses of the French parent company, Compagnie de Saint-Gobain. As such, Saint-Gobain Containers, Inc. does not prepare any type of reports or filing regarding its financial information.

3. The financial information about Saint-Gobain Containers, Inc. contained on the two page unaudited financial statement at issue for the Motion for Protective Order is considered extremely confidential by the Company. It is only provided to employees of the Company that must have access to the information to perform their duties. Respondent's unaudited financial information is not made public in any way.

4. Any disclosure of this confidential financial information could be detrimental to the Company in a number of ways, such as providing beneficial information to our competitors about the financial strength and profitability of this Company, to labor unions representing our hourly workforce in union contract

negotiations, or to our customers and suppliers in negotiating supply contracts with our Company.

5. Disclosure of this sensitive unaudited financial information to parties outside of this litigation would be detrimental to Respondent's business interests.

6. I have reviewed Saint-Gobain Containers, Inc.'s Reply To Complainant's Response In Opposition to Respondent's Motion for Protective Order.

7. The matters set forth in Saint-Gobain Containers, Inc.'s Reply To Complainant's Response In Opposition to Respondent's Motion for Protective Order are true and correct to the best of my knowledge and belief.

8. The statements made in this affidavit are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Wray C. Hiser

Wray C. Hiser

Subscribed and sworn to before me
this 24th day of November 2003.

Susan C. Flack

Notary Public