

UNITED STATES OF AMERICA  
MERIT SYSTEM PROTECTION BOARD  
WASHINGTON REGIONAL OFFICE

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DANIEL HOROWITZ, )  
Appellant ) Docket No. DC-0752-18-0622-I-1  
v. ) Administrative Law Judge  
CHEMICAL SAFETY HAZARD ) Sherry A. Zamora  
INVESTIGATION BD, )  
Agency. )  
Date: September 25, 2018  
)

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**PROTECTIVE ORDER**

The Agency avers that during the course of discovery, it may be necessary to disclose certain confidential information relating to the subject matter of this action. I order that certain categories of such information should be treated as confidential, protected from disclosure outside this case, and used only for purposes of litigating this action and any appeals. The Agency requests entry of this Protective Order (“Order”) to limit the disclosure, dissemination, and use of certain identified categories of confidential information. The Appellant objects to the entry of the Order.

The Agency asserts in support of their request that protection of the identified categories of confidential information is necessary because this is an action in which the Appellant has sought discovery of information which may contain personal, private, or confidential information, including personal identifying information, about third parties to this action. The Agency also asserts that Appellant’s counsel has, in the, past, publicly posted documents related to Appellant’s removal. The Agency has also established that current and former employees fear the misuse and/or publication of their personal information. In order to permit the parties to discover and use throughout this proceeding all information relevant to the subject matter of this case without making this information public, and to prevent any potential harassment of Agency witnesses, the Merit Systems Protection Board (“Board”) hereby enters the following Order:

1. This Order is entered solely for the purpose of facilitating the exchange of documents and information between the parties to this action without involving the Board unnecessarily in the process.
2. Information and documentation described in section (a) of this paragraph and that is disclosed by the Chemical Safety Hazard and Investigation Board (“Agency”) in the course of discovery in this case is entitled to protection from public disclosure:
  - a. Testimonial or documentary information related to the employment of current and

former employees of the Chemical Safety Hazard and Investigation Board including, but not limited to, the identity of individual(s) who provides testimony or information. This does not include non-redacted information contained within publicly available reports and/or audits published by the Environmental Protection Agency's Office of Inspector General.

3. In connection with proceedings in this action, the information specified in Paragraph 2, including any document, thing, material, testimony or other information derived therefrom, shall be marked as "Confidential" under the terms of this Order.
4. Confidential documents shall be so designated by stamping copies of the documents produced to a party with the legend "CONFIDENTIAL." Stamping the legend "CONFIDENTIAL" on the cover of any multipage document shall designate all pages of the document as confidential, unless otherwise indicated by the producing party.
5. If the Designating Party has already produced documents or information and seeks to designate any produced documents or information in a document as confidential, then it may so designate by listing the Bates numbers and sending a letter to counsel of record with that designation.
6. Documents, records, and information designated as confidential in accordance with this Order shall be used solely for the purpose of the instant appeal, and those documents, records, and information, and any information contained therein or reasonably inferred therefrom, shall not be disclosed to any person other than (a) Appellant's counsel; (b) Appellant; (c) Agency counsel; (d) the Administrative Judge; (e) any expert retained by the parties; and (f) and other persons with a need to know for the purposes of litigating the instant appeal. Confidential information disclosed to any such person shall not be disclosed by her/him to any other person not included within the foregoing subparagraphs (a) through (f) of this paragraph.
7. Within thirty (30) days after final termination of this action, including any further appeals, Appellant shall (a) return to Agency counsel all originals and copies of confidential documents or documents reflecting confidential information designated by the Agency and (b) certify in writing they have complied with the provisions of this paragraph. Appellant's attorneys may retain a copy of the confidential documents in a secure location in order to comply with any ethical or legal obligations related to Appellant.
8. Appellant will not scan the documents designated as subject to the Order into any computer system unless Appellant owns and controls the computer in question. Appellant's Representative may scan the documents designated as subject to the order into their firm's computer system if the Representative or his firm has performed due diligence to ensure the security of the records housed on the system and the documents designated as subject to the order are subject to the same protections as any other confidential document housed on the firm's computer system. Appellant will delete all of the documents designated as subject to the Order (not including any documents entered into the record of his appeal) within 30 days of a final decision in this matter and the exhaustion of any appeals, if

applicable, and shall so certify to the Agency.

9. Any document, exhibit, or transcript designated confidential information in accordance with this Order, and which is otherwise admissible, may be admitted into the record and/or used at hearing, provided, however, that the parties agree they will consult the Administrative Judge to identify any hearing procedures that will protect and maintain the confidential nature of sensitive information.
10. Nothing in this Order constitutes or may be interpreted as a waiver of any applicable privilege, including the attorney-client or attorney work product privileges.
11. The Protective Order is enforceable by the Board or any court of competent jurisdiction.

ENTERED:

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Administrative Judge

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