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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91193398
Party	Defendant Waste Management, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GP Harmon Recycling LLC	§	
	§	Opposition No. 91193398
Opposer,	§	
	§	Application Serial Nos. 77/725,583,
v.	§	77/725,585, and 77/725,578
	§	
Waste Management, Inc.,	§	
	§	
Applicant.	§	

**APPLICANT’S RESPONSE IN OPPOSITION TO
OPPOSER’S MOTION FOR PROTECTIVE ORDER**

Applicant Waste Management, Inc. (“WM”) files its Response In Opposition to Opposer’s Motion for Protective Order and in support shows:

Opposer filed its Motion for Protective Order (“Motion”) arguing that the parties’ dispute is limited to whether Opposer’s in-house counsel should be permitted access to WM’s sensitive confidential/trade secret business information and documents (“WM’s Protected Information”) and that the fact that Opposer and Applicant are “competitors” does not prevent its in-house counsel from accessing WM’s confidential business information and documents. *See* Motion, generally. Opposer’s Motion is at best inadvertently misleading and at worse an intentional attempt to mislead the Board. In either event, the Motion should be denied in its entirety.

**I.
BACKGROUND OF PROTECTIVE ORDER DISPUTE**

Opposer initially proposed to WM that the parties agree to jointly enter the protective order attached as Exhibit A to the Motion (hereinafter “Opposer’s Proposed Protective Order”). WM questioned why a protective order was necessary when the Board’s standard protective order already applied. Opposer’s response was that its Proposed Protective Order provided

greater protection to the parties. On this basis, WM agreed to review Opposer's Proposed Protective Order to see if agreement could be reached.

Upon reviewing Opposer's Proposed Protective Order, WM quickly learned that it was vague and confusing, contained internal inconsistencies, was unduly and unnecessarily burdensome on the parties, their witnesses, expert witnesses, and third parties, including court reporters, and permitted employees of Opposer, as well as its unnamed in-house counsel to have unlimited access to WM's Protected Information to the detriment of WM. Contrary to the arguments and position taken by Opposer in its Motion, WM's objection to permitting Opposer's unidentified in-house counsel to have unrestricted access to WM's Protected Information was not based solely on the fact that WM and Opposer are "competitors," but also because Opposer's parent, which wholly owns Opposer, is a current *customer* of WM in a field of business that Opposer's parent and Opposer presumably desire to enter into competition with WM. Thus, permitting any in-house counsel of Opposer, regardless of whether the in-house counsel is "trademark in-house counsel," to have access to WM's Protected Information is inappropriate under the circumstances.

A. Opposer's Protective Order is Vague and Confusing

Opposer's Proposed Protective Order should not be entered because it is vague and confusing. For example, Opposer's Proposed Protective Order omits any reference to the Board's standard protective order that is already in place in this proceeding, or how inconsistencies between the two protective orders would be resolved. Additionally, paragraph 8 (page 5) does not clearly identify who in paragraph 6 is required to sign the "written agreement in the form of Exhibit B attached hereto." Moreover, the "Confidentiality Acknowledgement B" to be signed by third parties refers to a non-existent "paragraph 11(e)(i)(b)." See page 16 of

Opposer's protective order. Further, the style of the Protective Order is misleading because it refers to WM's marks at issue in this proceeding as "Circular design mark," when that description is not entirely correct, if correct at all. In still another confusing aspect, Opposer's Proposed Protective Order includes the undefined terms "Highly Confidential" (without further designation of "Attorneys' Eyes Only") (pages 1, 13-16), "Competitor" (page 16) and "Designating Party" (page 16), and calls for the parties to "carefully maintain" documents, deposition transcripts, etc. (paragraph 14, page 8). Thus, Opposer's Proposed Protective Order should not be entered because it is vague and confusing.

B. Opposer's Proposed Protective Order is Unduly and Unnecessarily Burdensome

Opposer's Proposed Protective Order also should not be entered because it is unduly and unnecessarily burdensome on the parties, witnesses, and third parties. For example, Paragraph 5, at page 4 of Opposer's Proposed Protective Order states that if any information is uncovered in discovery from documents or information that is designated "Attorneys' Eyes Only" or "Confidential" under the protective order, the other party can use that information to bring whatever other legal action it deems appropriate. This type of clause is not only highly unusual for a protective order, it is wholly inappropriate. Use of documents and information under a protective order is always limited to the proceeding in which the documents or information is disclosed.

Additionally, paragraph 8 of Opposer's Proposed Protective Order requires a party to identify its "experts" or other authorized individuals and to get permission from the other party before the expert can be designated or other authorized individual can be permitted access to "Attorneys' Eyes Only" documents and information. In other words, in a dispute, one party would be able to influence and restrict the other party's ability to retain expert witnesses or

otherwise require the other party to file a motion with the Board seeking permission.¹ Such a restriction is not appropriate in a protective order and places an undue burden on the parties, as well as would require the Board to micromanage the discovery phase of the opposition proceeding.

Further, paragraph 9 (page 6) of Opposer's Proposed Protective Order states that in the event of disclosure of another party's "Confidential" or "Attorneys' Eyes Only" documents or information, the disclosing party agrees that the Board can award sanctions that include striking its pleadings and entering judgment against the party. This provision is overly burdensome as there is no "claw-back" for inadvertent disclosure or other unintentional disclosures and leaves a party in a position of having the opposition proceeding decided against it based upon innocent error. This would lead to more motions being filed with the Board because the "aggrieved" party already has the balance in its favor, namely, that the breaching party agrees that "death penalty" sanctions are acceptable. Thus, the parties are incentivized to fight as opposed to attempt to resolve any dispute among themselves with the understanding that the Board has the ability to award sanctions as it deems appropriate without the requirement that the parties agree to the types of sanctions that might be available. Accordingly, Opposer is trying to use Opposer's Proposed Protective Order in this proceeding as a "first step" toward being able to obtain certain sanctions against WM or any other alleged violator of Opposer's Proposed Protective Order. Such gamesmanship is not appropriate for a protective order when the appropriate relief is available by way of motion.

¹ The fact that Opposer filed its Motion without providing WM with any support for allowing its in-house counsel to have access to WM's confidential business information and documents, and without agreeing to *any* of WM's requested changes to Opposer's Proposed Protective Order is conclusive evidence that it believes that if it cannot get its way 100% on any dispute, it will simply file a motion with the Board.

In addition to overly burdening the parties, paragraph 11 of Opposer's Proposed Protective Order places unnecessary burdens on court reporters by requiring them to maintain all of their notes, etc. or deliver their notes, etc. to the attorneys, but does not permit them to destroy their notes. In other words, this provision places a burden on the court reporters that is not necessary and wholly inappropriate because the notes are not testimony or relevant to anything going on in the opposition proceeding. Yet, the court reporters are not permitted to destroy the notes, but instead are to provide them to the attorneys, or make them available to the attorneys, presumable so that the parties can fight about the content of a deposition. Such a restriction on court reporters is unduly and unnecessarily burdensome.

Further, third parties signing either of the "Confidentiality Acknowledgement A" or the "Confidentiality Acknowledgement B" are required to acknowledge that sanctions pursuant to 37 C.F.R. § 2.120(g) automatically apply and that the Board has unlimited "power to impose such relief, which is not required in any such "Acknowledgement." Additionally, the "Confidentiality Acknowledgement B" states that the party signing the "Acknowledgement" cannot work for a "Competitor" (a term that is not defined in Opposer's protective order) of the "Designating Party" (another term that is not defined in Opposer's protective order) for a period of 6 months and that this restriction is "unlikely to impact on my employment opportunities" but if the signatory does wish to work for a "Competitor," the signatory will consult with the "Designating Party" "in an effort to reach an agreement." Opposer's protective order is completely silent as to what happens if an "agreement" cannot be reached. Therefore, this provision is not only unduly restrictive on experts and other individuals who sign the "Acknowledgement," it is open to interpretation and provides no protection for the individuals signing the "Acknowledgement."

Accordingly, Opposer's Proposed Protective Order is unduly and unnecessarily burdensome and should not be entered.

C. Opposer's Proposed Protective Order Provides Insufficient Protection to WM

In addition, Opposer's Proposed Protective Order permits certain parties, including the parties' respective in-house counsel to have access to the other party's sensitive confidential business information and documents. For example, not only would each parties' in-house counsel be able to access the other party's "Attorneys' Eyes Only" designated documents and information, certain other employees of the parties would also have access to the other party's Confidential designated documents and information. See Paragraph 6(c), page 4 of Opposer's Proposed Protective Order. Moreover, there is no limitation in Opposer's Proposed Protective Order as to what information or documents designated Confidential can be shown to "former employees" (see paragraph 6(g), at page 5 of Opposer's protective order), or that any "document or thing" was actually received by any person to whom a document was addressed (see paragraph 6(i), at page 5 of Opposer's protective order). Thus, WM's Protected Information is not adequately protected by Opposer's Proposed Protective Order.

With respect to the allegedly "sole" issue between the parties (according to Opposer in its Motion), WM objects to any in-house counsel of Opposer having access to WM's Protected Information. Currently, Opposer is a customer of WM in that Opposer's parent corporation purchases products from WM for its operations because it is unable to obtain sufficient quantities of these products from other sources. It does not take a strong imagination to realize that, to maximize its profits, Opposer's parent corporation, likely through cooperation of Opposer and its recycling services, will at some point in the future cease being a customer of WM and instead become a competitor of WM by finding its own source of the products that it currently obtains

from WM. Thus, Opposer's parent, and Opposer itself, are likely to move into a field in which neither Opposer, nor its parent, currently competes against WM. Thus, Opposer having access to WM's Protected Information, even if limited to Opposer's in-house counsel, could have catastrophic effects on WM all to the benefit of Opposer. Accordingly, WM submits that Opposer's Proposed Protective Order should not be entered because it does not afford WM sufficient protection.

D. WM's Good Faith Negotiations With Opposer

In light of the foregoing problems with Opposer's protective order, WM suggested changes to Opposer's Proposed Protective Order to replace the vague and confusing language with defined terms, remove the internal inconsistencies, remove the unduly burdensome restrictions placed on the parties, their witnesses, expert witnesses, and third parties, including court reporters, and to provide WM with sufficient reasonable protections to WM's Protected Information. By taking these steps, WM did not simply dismiss Opposer's Proposed Protective Order, but instead, in show of good faith and cooperation -- something Opposer refused to show to WM--, WM incorporated certain provisions from Opposer's Proposed Protective Order into WM's Proposed Protective Order. For the convenience of the Board, attached hereto as Exhibit A is a clean version of WM's Proposed Protective Order and attached hereto as Exhibit B is a marked-up version of WM's and Opposer's Proposed Protective Orders showing the changes suggested by WM.

When providing WM's suggestions to Opposer, WM advised Opposer of the changes that were made and explained why the changes were made. Opposer's response was that its in-house counsel had to be permitted to have access to WM's confidential business information and documents. WM then pointed out that such a situation was not acceptable to WM because

Opposer is a *customer* of WM, and not simply a competitor as alleged by Opposer in this opposition. Without any response to WM, Opposer then filed its Motion seeking entry of Opposer's Proposed Protective Order that it originally proposed to WM without any of WM's suggested changes.² Instead, Opposer misleadingly argues that the sole issue before the Board is whether Opposer's in-house counsel should be permitted access to WM's confidential business information and documents.

Because all of the issues raised by WM, and conveyed to Opposer, are addressed in WM's Proposed Protective Order, which incorporates numerous provisions found in Opposer's Proposed Protective Order (see Exhibit B hereto), WM submits that Opposer has not negotiated in good faith and that Opposer's Proposed Protective Order should not be entered and its Motion should be denied in its entirety.

II. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Applicant Waste Management, Inc. submits that Opposer's Proposed Protective Order is not appropriate for this proceeding because it is vague and confusing, internally inconsistent, unduly burdensome, and lacks appropriate protections for Waste Management, Inc.'s Protected Information. Accordingly, Applicant Waste Management, Inc. respectfully requests that Opposer's Motion for Protective Order be denied in its entirety.

² Despite WM's willingness to work with Opposer on the protective order, Opposer dismissed all of WM's suggested changes out of hand and shows no good faith or cooperation.

Respectfully submitted,

DATED this 18th day of October, 2010.

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ATTORNEYS FOR APPLICANT,
WASTE MANAGEMENT, INC.

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2010, a true and correct copy of the foregoing Applicant's Response In Opposition to Opposer's Motion for Protective Order was served by e-mail on the following:

Leslie J. Lott
ljlott@lfiplaw.com

Jamie Rich Vining
jrvining@lfiplaw.com

/Anthony F. Matheny/
Anthony F. Matheny

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GP Harmon Recycling LLC	§	
	§	Opposition No. 91193398
Opposer,	§	
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Waste Management, Inc.,	§	
	§	
Applicant.	§	

CONSENTED PROTECTIVE ORDER

WHEREAS, Opposer GP Harmon Recycling LLC (“GP Harmon”) and Applicant Waste Management, Inc. (“WM”) recognize that discovery in the instant Opposition Proceeding may require the production or disclosure of trade secrets or other sensitive or confidential scientific, commercial or financial information; and

WHEREAS, GP Harmon, and WM have, either directly or through counsel, stipulated to the entry of this protective order (the “Order”) pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and 37 C.F.R. §§ 2.116(a) and 2.116(g);

IT IS HEREBY STIPULATED AND ORDERED THAT:

1. This Order shall apply to (i) GP Harmon and WM; and, (ii) any non-party witness in this Opposition Proceeding. As used herein, “person” includes GP Harmon, WM, and any non-party witness in this Opposition Proceeding; “Parties” is limited to GP Harmon and WM.

2. This Order shall supersede any previous protective order entered in this Opposition Proceeding directed to the same subject matter or issues addressed herein and, in particular, the Trademark Trial and Appeals Board’s protective order that is currently in place in this Opposition Proceeding pursuant to 37 C.F.R. § 2.116(g).

3. This Order shall be applicable to and govern any record of testimony given at any deposition, trial, or hearing in this Opposition Proceeding, as well as all documents, tangible things or other material and information, including but not limited to drawings, specifications and prototypes, produced, supplied or otherwise made available in any manner or media for inspection or review by any person or party in this Opposition Proceeding, and any exhibits, answers to interrogatories, responses to requests for admission, or any other information exchanged during the Discovery Period or presented during the Testimony Period of this Opposition Proceeding (collectively, the “Discovery Material”).

4. Any party (the “Designating Party”) shall have the right to designate as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” any Discovery Material which it believes in good faith constitutes proprietary information, trade secret information, confidential business information, confidential scientific information, or other material which is not publicly known and which the Designating Party would normally cause third parties to maintain in confidence. Such Discovery Material shall be known hereinafter as “Confidential Material.”

5. A Designating Party shall only make an “ATTORNEYS EYES ONLY” designation with respect to Confidential Material constituting highly sensitive commercial, financial information or current research and development projects in process which the Designating Party believes in good faith will harm its competitive position if it becomes known to a person or party other than the Designating Party.

6. It is the intention of this Order that the following categories of Discovery Material should not be designated as Confidential Material and that this Order should not be construed as governing or affecting a party’s use or disclosure thereof: (a) any Discovery Material that at the time of its disclosure to any other party to this Opposition Proceeding (the “Receiving Party”)

said other party can show is part of the public domain by reason of prior publication or otherwise; (b) any Discovery Material that after its disclosure in this cause the Receiving Party can show has become part of the public domain by reason of prior publication or otherwise through no act, omission or fault on its part; (c) any Discovery Material that at the time of its disclosure in this Opposition Proceeding the Receiving Party can show is rightfully in its possession or in the possession of any other person retained by or for it and under no obligations of confidence to any party or third party with respect to that Discovery Material; or (d) any Discovery Material that after its disclosure in this Opposition Proceeding the Receiving Party can show is rightfully received by the Receiving Party, under no obligations of confidence with respect to that Discovery Material from any third party having the right to make such disclosure.

7. The designation as to Confidential Material comprising documents or other tangible things shall be made by the Designating Party by prominently stamping or otherwise affixing to the Confidential Material the legend “CONFIDENTIAL Opposition Proceeding No. 91193398 (or “CONFIDENTIAL”) or “ATTORNEYS EYES ONLY Opposition Proceeding No. 91193398” (or “ATTORNEYS EYES ONLY”) at the time of its disclosure to counsel of record for the Receiving Party. In the event that a stamp or like affixation is not possible with respect to any such Confidential Material, the designation may be made by a writing accompanying the Confidential Material, and identifying it with sufficient particularity.

8. Deposition transcripts, in whole or in part, may be designated “Confidential Material” before the testimony is recorded, or within fourteen (14) days after the transcript is provided to the Designating Party in which case the transcript of the designated testimony shall be bound in a separate volume and marked “CONFIDENTIAL Opposition Proceeding No. 91193398” (or “CONFIDENTIAL”) or “ATTORNEYS EYES ONLY Opposition Proceeding

No. 91193398” (or “ATTORNEYS EYES ONLY”) by the reporter, as the Designating Party may direct. The Designating Party shall have the right to have all persons who are not entitled to receive such “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” material, except the deponent and court reporter, excluded from a deposition before the taking therein of testimony which the Designating Party designates as Confidential Material subject to this Order. All information disclosed in depositions shall be treated as “ATTORNEYS EYES ONLY” until at least fourteen days after the transcript(s) of said deposition is actually received by the attorneys for each party.

9. Confidential Material designated “CONFIDENTIAL” or “ATTORNEYS EYES ONLY,” or information taken therefrom, shall not be made public by the Receiving Party. If a party desires or is required to file designated Confidential Material with the Trademark Trial and Appeal Board in connection with this Opposition Proceeding, such Confidential Material shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of the instant Opposition Proceeding and a statement that the sealed envelope or other container contains Confidential Material that is not to be displayed or revealed except (1) by written agreement of the Parties or (2) by Order of the Trademark Trial and Appeal Board. Any pleading or other document filed with or delivered to the Trademark Trial and Appeal Board pursuant to this paragraph or any other provision of this Order shall be maintained under seal.

10. Confidential Material designated “CONFIDENTIAL” shall be disclosed only to the following persons:

a. One representative of each party who has executed the declaration in either Exhibit A hereto pursuant to paragraph 12 herein;

b. The Trademark Trial and Appeal Board and its staff and to court reporters and their staff in the performance of their duties in connection with this Opposition Proceeding;

c. Outside counsel of record in this Opposition Proceeding for the Receiving Party or Parties, their partners and associates and their office staffs;

d. Independent experts or consultants of the Receiving Party or Parties who are not employees, consultants or representatives of any Receiving Party, who have been retained by counsel to provide technical advice and consultation in connection with the preparation and trial of this Opposition Proceeding, and who have executed the declaration in either Exhibit A or Exhibit B hereto pursuant to paragraph 12 herein;

e. Outside commercial copying and other litigation support services who have executed the declaration in either Exhibit A or Exhibit B hereto pursuant to paragraph 12 herein;

f. Any witness testifying under oath regarding Confidential Information of the Designating Party and who is a current employee of the Designating Party;

g. Any witness testifying under oath regarding Confidential Information of the Designating Party who is a former employee of the Designating Party and who previously received or reviewed the Confidential Material during the witness' employment with the Designating Party or whose scope of employment with the Designating Party included the topic or subject matter contained in the Confidential Material;

h. Any person who is an author of any document or thing containing Confidential Material;

i. Any person who is an addressee of any document or thing containing Confidential Material, or any person copied thereon, provided that it is first established that such

addressee or person copied thereon actually received the document or thing containing the Confidential Material;

j. Any court reporter, transcriber, or videographer who reports, records, or transcribes testimony in this Opposition Proceeding at a deposition, and who has either executed the declaration in either Exhibit A or Exhibit B hereto pursuant to paragraph 12 herein or otherwise complied with the requirements for court reporters, transcribers, or videographers set forth in paragraph 12 herein; and

k. Such other persons as hereafter may be designated by written agreement of all Parties in this Opposition Proceeding or by Order of the Trademark Trial and Appeal Board, such Order obtained on noticed motion (or on shortened time as the Trademark Trial and Appeal Board may allow), permitting such disclosure.

11. Confidential Material designated “ATTORNEYS EYES ONLY” shall be disclosed only to the persons of paragraphs 10(b) or 10(c), or to the persons of paragraphs 10(d), 10(e), 10(j), or 10(k), and who has executed the declaration in Exhibit B hereto pursuant to paragraph 12 herein.

12. Each person entitled to receive Confidential Material under the terms of paragraphs 10(a), 10(d), 10(e), 10(j), or 10(k) of this Order (hereinafter referred to as “Qualified Person”) shall, prior to receiving any such Confidential Material, execute a written declaration as set forth in either Exhibit A or Exhibit B acknowledging that he or she has read a copy of this Order and agrees to be bound thereby, or, in the case of a deposition, the third party witness, counsel for the third party witness, if any, and the court reporter, transcriber, or videographer have so acknowledge and agreed on the record of the deposition. The attorneys and Parties also hereby represent and warrant that all Confidential Material provided to any Qualified Person

under this Order, including any documents prepared by the Qualified Person based upon the Confidential Material disclosed to him or her, will be returned to the attorneys or destroyed and, at the conclusion of this litigation, the attorneys will provide an acknowledgment to each other that such actions have been taken.

13. No person shall use any Discovery Material that is subject to this Order for any purpose other than for the preparation and trial of this Opposition Proceeding.

14. Except with the prior written consent of the Designating Party, Confidential Material shall not be disclosed except in accordance with the terms, conditions, and restrictions of this Order and all Confidential Material shall be carefully maintained so as to preclude access by persons who are not authorized recipients of the Confidential Material. If Confidential Material is disclosed to any person not entitled to receive disclosure of such material under this Order, the person responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the opposing party, and, without prejudice to other rights and remedies of any party, make a reasonable, good faith effort to retrieve such material and to prevent further disclosure by it or by the person who received such material. The Parties hereto do not waive whatever rights they may have against any party or person responsible in whole or in part for any authorized disclosure hereunder, including the right to apply for immediate injunctive relief. The Parties also do not waive their right to oppose any such application made by another party.

15. The designation of any Discovery Material in accordance with this Order as Confidential Material constituting or containing trade secrets or other confidential scientific or commercial information is intended solely to facilitate the preparation and trial of this Opposition Proceeding, and treatment of such Discovery Material by persons entitled to receive

Confidential Material in conformity with such designation will not be construed in any way as an admission or agreement by any party that the designated Confidential Material constitutes or contains any trade secret or other confidential information.

16. Nothing herein shall prevent disclosure beyond the terms of this Order if the party whose material has been designated Confidential Material consents in writing to such disclosure, or if the Trademark Trial and Appeal Board, after notice to all affected Parties, orders such disclosure.

17. No party shall be obligated to challenge the propriety of any designation, and a failure to do so shall not preclude a subsequent attack on the propriety of such designation. Upon duly noticed motion by any party to the other Parties and to the Designating Party, and for good cause shown, this Order may be modified or made inapplicable to specific Discovery Material.

18. Nothing in this Order shall bar or otherwise restrict counsel for a party from rendering advice to such party(ies) with respect to this Opposition Proceeding and, in the course thereof, referring to or relying upon his or her examination of Confidential Material, provided, however, that in rendering such advice and in otherwise communicating with such party(ies), such counsel shall not directly or indirectly disclose the content of any Confidential Material to anyone who is not authorized to receive such disclosure under the terms of this Order. The Parties agree to cooperate in good faith with respect to any request for permission to disclose Confidential Material for purposes of counseling their clients with respect to this proceeding.

19. The Parties recognize that there may be produced Confidential Material originating with a non-party as to which there exists an obligation of confidentiality. Such material that a party reasonably and in good faith believes is subject to a confidentiality

obligation may be designated as Confidential Material and shall be subject to the restrictions on disclosures specified in this Order.

20. Within sixty (60) days of the final determination of this Opposition Proceeding, except as provided below and unless otherwise agreed to in writing by counsel for the Designating Party, each Receiving Party shall either (1) assemble and return to each Designating Party all Confidential Material received therefrom under this Order, including all copies thereof, with a certification that no copies remain with such party; or (2) destroy all Confidential Material received therefrom under this Order, including all copies thereof, with a certification that no copies remain with such party. Each party receiving such material pursuant to subsection (1) of this paragraph shall acknowledge receipt of such material in writing. Counsel for each party shall be entitled to retain one copy of all pleadings and motions (including exhibits) and discovery requests and responses.

21. Nothing herein shall impose any restriction on the use or disclosure by a party of its own documents, information or other Discovery Material. Further, nothing in this Order requires the return or destruction of attorney work-product or attorney-client communications of either party that is maintained and stored by counsel in the regular course of business. Furthermore, nothing in this Order requires the return or destruction of such information filed with the Trademark Trial and Appeal Board. Insofar as the provisions of any protective orders entered in this Opposition Proceeding restrict the communication and use of the documents produced thereunder, such order shall continue to be binding after the conclusion of this proceeding except that there shall be no restriction on any document that was used as an exhibit in the proceedings unless such exhibit was maintained under seal.

22. If a Receiving Party disagrees with any designation of any Discovery Material as “CONFIDENTIAL” or “ATTORNEYS' EYES ONLY,” the Receiving Party shall notify counsel for the Designating Party and they shall attempt to resolve the dispute by agreement. If the dispute is not so resolved, the Discovery Material shall continue to be kept confidential as designated unless the Trademark Trial and Appeal Board rules otherwise and the Designating Party shall have the burden of showing that the designation was proper. If a Party opposes the proposed disclosure to a third party or entity of any Discovery Material designated as “CONFIDENTIAL” or “ ATTORNEYS EYES ONLY,” the Discovery Material shall not be disclosed to the third party or entity unless the Trademark Trial and Appeal Board rules otherwise, and the Party wishing to make such disclosure shall have the burden of showing that the disclosure would be proper and consistent with this Order.

23. Discovery Material produced without the designation of “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” may be so designated subsequent to production or testimony when the Designating Party failed to make such designation at the time of production or during the testimony through inadvertence or error. If Discovery Material is so designated subsequent to production or testimony, the Receiving Party shall use its best efforts to promptly collect any copies that have been provided to individuals other than those persons identified in paragraphs 10 or 11 of this Order. For purposes of this paragraph, the material will be deemed to be “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” as of the date upon which notice of the designation is received. It shall not be a violation of this Order to disseminate Discovery Material that was not designated as subject to this Order as of the time the Discovery Material was disseminated.

24. If information subject to a claim of attorney-client privilege or work-product immunity is inadvertently produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such claim. If a party has inadvertently produced information subject to a claim of immunity or privilege, upon request, such information shall be returned promptly and, if a document, all copies of that document shall be destroyed. The party returning such information may move the Trademark Trial and Appeal Board for an Order compelling production of such information.

25. The terms and conditions in this Order shall survive and remain in full force and effect after the termination of this Opposition action until canceled or otherwise modified by Order of this Trademark Trial and Appeal Board, or by written agreement of the Parties.

26. The Trademark Trial and Appeal Board shall retain jurisdiction to enforce the provisions of this Order.

27. The Parties have agreed to present this Order to the Trademark Trial and Appeal Board for entry in the above-captioned matter. In addition, this Order shall serve as a stipulation and agreement between the Parties, and shall be effective immediately upon signature by counsel for all Parties.

So stipulated and agreed, this ____ day of September, 2010.

LOTT & FRIEDLAND, P.A.

GREENBERG TRAURIG LLP

s/

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Attorneys for GP Harmon Recycling LLC

Attorneys for Waste Management, Inc.

By Order of the Board, effective _____, 2010.

GEORGE POLOGEORGIS
Interlocutory Attorney
Trademark Trial and Appeal Board

**EXHIBIT A
TO STIPULATED PROTECTIVE ORDER**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Applicant.	§	

DECLARATION

I, _____, pursuant to 28 U.S.C. § 1746, hereby declare that:

I have carefully read and understand the Stipulated Protective Order (the “Order”) in *GP Harmon Recycling LLC v. Waste Management, Inc.*, Opposition Proceeding No. 91193398 before the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office.

I agree that I will be bound by and will comply with all of the provisions of the Order and I will make no disclosures of Confidential Material marked “CONFIDENTIAL Opposition Proceeding No. 91193398” or “CONFIDENTIAL” to any person who is not permitted to have access to such Confidential Material by this Order.

In accordance with Paragraph 12 of the Order, I agree that I will promptly return all Confidential Material which comes into my possession, and documents or things which I have prepared relating thereto, to counsel for the Designating Party.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Name

Signature

**EXHIBIT B
TO STIPULATED PROTECTIVE ORDER**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GP Harmon Recycling LLC	§	
	§	Opposition No. 91193398
Opposer,	§	
	§	Application Serial Nos. 77/725,583,
v.	§	77/725,585, and 77/725,578
	§	
Waste Management, Inc.,	§	
	§	
Applicant.	§	

DECLARATION

I, _____, pursuant to 28 U.S.C. § 1746, hereby declare that:

I have carefully read and understand the Stipulated Protective Order (the “Order”) in *GP Harmon Recycling LLC v. Waste Management, Inc.*, Opposition Proceeding No. 91193398 before the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office.

I agree that I will be bound by and will comply with all of the provisions of the Order and I will make no disclosures of Confidential Material marked “CONFIDENTIAL Opposition Proceeding No. 91193398,” “CONFIDENTIAL,” “ATTORNEYS EYES ONLY Opposition Proceeding No. 91193398” or “ATTORNEYS EYES ONLY” to any person who is not permitted to have access to such Confidential Material by this Order.

In accordance with Paragraph 12 of the Order, I agree that I will promptly return all Confidential Material which comes into my possession, and documents or things which I have prepared relating thereto, to counsel for the Designating Party.

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Name

Signature

EXHIBIT B

Part 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GP Harmon Recycling LLC	§	
	§	Opposition No. 91193398
Opposer,	§	
	§	Application Serial Nos. 77/725,583,
v.	§	77/725,585, and 77/725,578
	§	
Waste Management, Inc.,	§	
	§	
Applicant.	§	

CONSENTED PROTECTIVE ORDER

WHEREAS, Opposer, GP Harmon Recycling LLC, (“GP Harmon”) and Applicant, Waste Management, Inc. (“WM”) recognize that discovery in the instant Opposition Proceeding may require the production or disclosure of trade secrets or other sensitive or confidential scientific, commercial or financial information; and

WHEREAS, GP Harmon, and WM have, either directly or through counsel, stipulated to the entry of this protective order (the “Order”) pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and 37 C.F.R. §§ 2.116(a) and 2.116(g);

IT IS HEREBY STIPULATED AND ORDERED THAT:

1. This Order shall apply to (i) GP Harmon and WM; and, (ii) any non-party witness in this Opposition Proceeding. As used herein, “person” includes GP Harmon, WM, and any non-party witness in this Opposition Proceeding; “Parties” is limited to GP Harmon and WM.

2. This Order shall supersede any previous protective order entered in this Opposition Proceeding directed to the same subject matter or issues addressed herein and, in particular, the Trademark Trial and Appeals Board’s protective order that is currently in place in this Opposition Proceeding pursuant to 37 C.F.R. § 2.116(g).

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3. This Order shall be applicable to and govern any record of testimony given at any deposition, trial, or hearing in this Opposition Proceeding, as well as all documents, tangible things or other material and information, including but not limited to drawings, specifications and prototypes, produced, supplied or otherwise made available in any manner or media for inspection or review by any person or party in this Opposition Proceeding, and any exhibits, answers to interrogatories, responses to requests for admission, or any other information exchanged during the Discovery Period or presented during the Testimony Period of this Opposition Proceeding (collectively, the "Discovery Material").

4. Any party (the "Designating Party") shall have the right to designate as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" any Discovery Material which it believes in good faith constitutes proprietary information, trade secret information, confidential business information, confidential scientific information, or other material which is not publicly known and which the Designating Party would normally cause third parties to maintain in confidence. Such Discovery Material shall be known hereinafter as "Confidential Material."

5. A Designating Party shall only make an "ATTORNEYS EYES ONLY" designation with respect to Confidential Material constituting highly sensitive commercial, financial information or current research and development projects in process which the Designating Party believes in good faith will harm its competitive position if it becomes known to a person or party other than the Designating Party.

6. It is the intention of this Order that the following categories of Discovery Material should not be designated as Confidential Material and that this Order should not be construed as governing or affecting a party's use or disclosure thereof: (a) any Discovery Material that at the time of its disclosure to any other party to this Opposition Proceeding (the "Receiving Party")

said other party can show is part of the public domain by reason of prior publication or otherwise; (b) any Discovery Material that after its disclosure in this cause the Receiving Party can show has become part of the public domain by reason of prior publication or otherwise through no act, omission or fault on its part; (c) any Discovery Material that at the time of its disclosure in this Opposition Proceeding the Receiving Party can show is rightfully in its possession or in the possession of any other person retained by or for it and under no obligations of confidence to any party or third party with respect to that Discovery Material; or (d) any Discovery Material that after its disclosure in this Opposition Proceeding the Receiving Party can show is rightfully received by the Receiving Party, under no obligations of confidence with respect to that Discovery Material from any third party having the right to make such disclosure.

7. The designation as to Confidential Material comprising documents or other tangible things shall be made by the Designating Party by prominently stamping or otherwise affixing to the Confidential Material the legend "CONFIDENTIAL Opposition Proceeding No. 91193398 (or "CONFIDENTIAL") or "ATTORNEYS EYES ONLY Opposition Proceeding No. 91193398" (or "ATTORNEYS EYES ONLY") at the time of its disclosure to counsel of record for the Receiving Party. In the event that a stamp or like affixation is not possible with respect to any such Confidential Material, the designation may be made by a writing accompanying the Confidential Material, and identifying it with sufficient particularity.

8. Deposition transcripts, in whole or in part, may be designated "Confidential Material" before the testimony is recorded, or within fourteen (14) days after the transcript is provided to the Designating Party in which case the transcript of the designated testimony shall be bound in a separate volume and marked "CONFIDENTIAL Opposition Proceeding No. 91193398" (or "CONFIDENTIAL") or "ATTORNEYS EYES ONLY Opposition Proceeding

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No. 91193398” (or “ATTORNEYS EYES ONLY”) by the reporter, as the Designating Party may direct. The Designating Party shall have the right to have all persons who are not entitled to receive such “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” material, except the deponent and court reporter, excluded from a deposition before the taking therein of testimony which the Designating Party designates as Confidential Material subject to this Order. All information disclosed in depositions shall be treated as “ATTORNEYS EYES ONLY” until at least fourteen days after the transcript(s) of said deposition is actually received by the attorneys for each party.

9. Confidential Material designated “CONFIDENTIAL” or “ATTORNEYS EYES ONLY,” or information taken therefrom, shall not be made public by the Receiving Party. If a party desires or is required to file designated Confidential Material with the Trademark Trial and Appeal Board in connection with this Opposition Proceeding, such Confidential Material shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of the instant Opposition Proceeding and a statement that the sealed envelope or other container contains Confidential Material that is not to be displayed or revealed except (1) by written agreement of the Parties or (2) by Order of the Trademark Trial and Appeal Board. Any pleading or other document filed with or delivered to the Trademark Trial and Appeal Board pursuant to this paragraph or any other provision of this Order shall be maintained under seal.

10. Confidential Material designated “CONFIDENTIAL” shall be disclosed only to the following persons:

a. One representative of each party who has executed the declaration in either Exhibit A hereto pursuant to paragraph 12 herein;

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Deleted: Only those persons authorized to receive CONFIDENTIAL information will be allowed to attend that portion of any deposition in which CONFIDENTIAL information is used or elicited from the deponent. Only those persons authorized to receive HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information will be allowed to attend that portion of any deposition in which HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information is used or elicited from the deponent.

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Any court reporter, transcriber or videographer who reports or transcribes testimony in this action at a deposition shall agree by a statement on the record or written statement that all testimony and information revealed at the deposition is and shall remain confidential and shall not be disclosed by such reporter or transcriber except to the attorneys for the Parties and any other person who is present while such testimony is being given, and that all copies of any transcript, reporter's notes or any other transcription records of any such testimony shall be retained in absolute confidentiality and safekeeping by such reporter, transcriber or videographer or shall be delivered to the undersigned attorneys.¶

12.¶

Nothing shall prevent disclosures beyond the terms of this Order if the party that designated the information as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY consents to such disclosure, or if the TTAB, after notice, orders such disclosure.¶

13.¶

All documents and transcripts of deposition testimony including exhibits and/or attachments associated with such transcripts, filed with the TTAB in this proceeding which have been designated, in whole or in part, as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY shall be filed and maintained under seal. ¶

14.¶

All documents, deposition transcripts or other information identified by any party as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY, and all copies thereof, shall not be disclosed to any person who is not an authorized recipient, and shall be carefully maintained so as to preclude access by persons who are not authorized recipients. At the termination of this proceeding (whether by settlement or final judgment and exhaustion of all appeals), unless otherwise ordered by the TTAB, such documents either (a) [... [4]

b. The Trademark Trial and Appeal Board and its staff and to court reporters and their staff in the performance of their duties in connection with this Opposition Proceeding;

c. Outside counsel of record in this Opposition Proceeding for the Receiving Party or Parties, their partners and associates and their office staffs;

d. Independent experts or consultants of the Receiving Party or Parties who are not employees, consultants or representatives of any Receiving Party, who have been retained by counsel to provide technical advice and consultation in connection with the preparation and trial of this Opposition Proceeding, and who have executed the declaration in either Exhibit A or Exhibit B hereto pursuant to paragraph 12 herein;

e. Outside commercial copying and other litigation support services who have executed the declaration in either Exhibit A or Exhibit B hereto pursuant to paragraph 12 herein;

f. Any witness testifying under oath regarding Confidential Information of the Designating Party and who is a current employee of the Designating Party;

g. Any witness testifying under oath regarding Confidential Information of the Designating Party who is a former employee of the Designating Party and who previous received or reviewed the Confidential Material during the witness' employment with the Designating Party or whose scope of employment with the Designating Party included the topic or subject matter contained in the Confidential Material;

h. Any person who is an author of any document or thing containing Confidential Material;

i. Any person who is an addressee of any document or thing containing Confidential Material, or any person copied thereon, provided that it is first established that such

addressee or person copied thereon actually received the document or thing containing the Confidential Material;

j. Any court reporter, transcriber, or videographer who reports, records, or transcribes testimony in this Opposition Proceeding at a deposition, and who has either executed the declaration in either Exhibit A or Exhibit B hereto pursuant to paragraph 12 herein or otherwise complied with the requirements for court reporters, transcribers, or videographers set forth in paragraph 12 herein; and

k. Such other persons as hereafter may be designated by written agreement of all Parties in this Opposition Proceeding or by Order of the Trademark Trial and Appeal Board, such Order obtained on noticed motion (or on shortened time as the Trademark Trial and Appeal Board may allow), permitting such disclosure.

11. Confidential Material designated "ATTORNEYS EYES ONLY" shall be disclosed only to the persons of paragraphs 10(b) or 10(c), or to the persons of paragraphs 10(d), 10(e), 10(j), or 10(k), and who has executed the declaration in Exhibit B hereto pursuant to paragraph 12 herein.

12. Each person entitled to receive Confidential Material under the terms of paragraphs 10(a), 10(d), 10(e), 10(j), or 10(k) of this Order (hereinafter referred to as "Qualified Person") shall, prior to receiving any such Confidential Material, execute a written declaration as set forth in either Exhibit A or Exhibit B acknowledging that he or she has read a copy of this Order and agrees to be bound thereby, or, in the case of a deposition, the third party witness, counsel for the third party witness, if any, and the court reporter, transcriber, or videographer have so acknowledge and agreed on the record of the deposition. The attorneys and Parties also hereby represent and warrant that all Confidential Material provided to any Qualified Person

under this Order, including any documents prepared by the Qualified Person based upon the Confidential Material disclosed to him or her, will be returned to the attorneys or destroyed and, at the conclusion of this litigation, the attorneys will provide an acknowledgment to each other that such actions have been taken.

13. No person shall use any Discovery Material that is subject to this Order for any purpose other than for the preparation and trial of this Opposition Proceeding.

14. Except with the prior written consent of the Designating Party, Confidential Material shall not be disclosed except in accordance with the terms, conditions, and restrictions of this Order and all Confidential Material shall be carefully maintained so as to preclude access by persons who are not authorized recipients of the Confidential Material. If Confidential Material is disclosed to any person not entitled to receive disclosure of such material under this Order, the person responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the opposing party, and, without prejudice to other rights and remedies of any party, make a reasonable, good faith effort to retrieve such material and to prevent further disclosure by it or by the person who received such material. The Parties hereto do not waive whatever rights they may have against any party or person responsible in whole or in part for any authorized disclosure hereunder, including the right to apply for immediate injunctive relief. The Parties also do not waive their right to oppose any such application made by another party.

15. The designation of any Discovery Material in accordance with this Order as Confidential Material constituting or containing trade secrets or other confidential scientific or commercial information is intended solely to facilitate the preparation and trial of this Opposition Proceeding, and treatment of such Discovery Material by persons entitled to receive

Confidential Material in conformity with such designation will not be construed in any way as an admission or agreement by any party that the designated Confidential Material constitutes or contains any trade secret or other confidential information.

16. Nothing herein shall prevent disclosure beyond the terms of this Order if the party whose material has been designated Confidential Material consents in writing to such disclosure, or if the Trademark Trial and Appeal Board, after notice to all affected Parties, orders such disclosure.

17. No party shall be obligated to challenge the propriety of any designation, and a failure to do so shall not preclude a subsequent attack on the propriety of such designation. Upon duly noticed motion by any party to the other Parties and to the Designating Party, and for good cause shown, this Order may be modified or made inapplicable to specific Discovery Material.

18. Nothing in this Order shall bar or otherwise restrict counsel for a party from rendering advice to such party(ies) with respect to this Opposition Proceeding and, in the course thereof, referring to or relying upon his or her examination of Confidential Material, provided, however, that in rendering such advice and in otherwise communicating with such party(ies), such counsel shall not directly or indirectly disclose the content of any Confidential Material to anyone who is not authorized to receive such disclosure under the terms of this Order. The Parties agree to cooperate in good faith with respect to any request for permission to disclose Confidential Material for purposes of counseling their clients with respect to this proceeding.

19. The Parties recognize that there may be produced Confidential Material originating with a non-party as to which there exists an obligation of confidentiality. Such material that a party reasonably and in good faith believes is subject to a confidentiality

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This Order shall not be construed to prevent any person, including a Qualified Person, from making use of designated CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information that was lawfully in his or her possession prior to receipt from the supplying party that (a) appears in any published material available to the general public, without fault of the disclosing party, (b) was or is hereafter obtained from a source or sources not under an obligation of secrecy to the other party or parties, without fault of the disclosing party, or (c) is exempted from the operation of this Order by written consent of the party producing such CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information.¶

17.¶
If a

obligation may be designated as Confidential Material and shall be subject to the restrictions on disclosures specified in this Order.

20. Within sixty (60) days of the final determination of this Opposition Proceeding, except as provided below and unless otherwise agreed to in writing by counsel for the Designating Party, each Receiving Party shall either (1) assemble and return to each Designating Party all Confidential Material received therefrom under this Order, including all copies thereof, with a certification that no copies remain with such party; or (2) destroy all Confidential Material received therefrom under this Order, including all copies thereof, with a certification that no copies remain with such party. Each party receiving such material pursuant to subsection (1) of this paragraph shall acknowledge receipt of such material in writing. Counsel for each party shall be entitled to retain one copy of all pleadings and motions (including exhibits) and discovery requests and responses.

21. Nothing herein shall impose any restriction on the use or disclosure by a party of its own documents, information or other Discovery Material. Further, nothing in this Order requires the return or destruction of attorney work-product or attorney-client communications of either party that is maintained and stored by counsel in the regular course of business. Furthermore, nothing in this Order requires the return or destruction of such information filed with the Trademark Trial and Appeal Board. Insofar as the provisions of any protective orders entered in this Opposition Proceeding restrict the communication and use of the documents produced thereunder, such order shall continue to be binding after the conclusion of this proceeding except that there shall be no restriction on any document that was used as an exhibit in the proceedings unless such exhibit was maintained under seal.

22. If a Receiving Party disagrees with any designation of any Discovery Material as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” the Receiving Party shall notify counsel for the Designating Party and they shall attempt to resolve the dispute by agreement. If the dispute is not so resolved, the Discovery Material shall continue to be kept confidential as designated unless the Trademark Trial and Appeal Board rules otherwise and the Designating Party shall have the burden of showing that the designation was proper. If a Party opposes the proposed disclosure to a third party or entity of any Discovery Material designated as “CONFIDENTIAL” or “ ATTORNEYS EYES ONLY,” the Discovery Material shall not be disclosed to the third party or entity unless the Trademark Trial and Appeal Board rules otherwise, and the Party wishing to make such disclosure shall have the burden of showing that the disclosure would be proper and consistent with this Order.

23. Discovery Material produced without the designation of “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” may be so designated subsequent to production or testimony when the Designating Party failed to make such designation at the time of production or during the testimony through inadvertence or error. If Discovery Material is so designated subsequent to production or testimony, the Receiving Party shall use its best efforts to promptly collect any copies that have been provided to individuals other than those persons identified in paragraphs 10 or 11 of this Order. For purposes of this paragraph, the material will be deemed to be “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” as of the date upon which notice of the designation is received. It shall not be a violation of this Order to disseminate Discovery Material that was not designated as subject to this Order as of the time the Discovery Material was disseminated.

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24. If information subject to a claim of attorney-client privilege or work-product immunity is inadvertently produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such claim. If a party has inadvertently produced information subject to a claim of immunity or privilege, upon request, such information shall be returned promptly and, if a document, all copies of that document shall be destroyed. The party returning such information may move the Trademark Trial and Appeal Board for an Order compelling production of such information.

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25. The terms and conditions in this Order shall survive and remain in full force and effect after the termination of this Opposition action until canceled or otherwise modified by Order of this Trademark Trial and Appeal Board, or by written agreement of the Parties.

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26. The Trademark Trial and Appeal Board shall retain jurisdiction to enforce the provisions of this Order.

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27. The Parties have agreed to present this Order to the Trademark Trial and Appeal Board for entry in the above-captioned matter. In addition, this Order shall serve as a stipulation and agreement between the Parties, and shall be effective immediately upon signature by counsel for all Parties.

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So stipulated and agreed, this ___ day of September, 2010.

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LOTT & FRIEDLAND, P.A.

GREENBERG TRAURIG LLP

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s/ _____
Leslie J. Lott
Jaime Rich Vining
355 Alhambra Circle, Suite 1100
Coral Gables, FL 33134
Telephone: (305) 448-7089
Fax: (305) 446-6191
e-mail: ljlott@lfiplaw.com
e-mail: jrvining@lfiplaw.com

s/ _____
Ben D. Tobor
Anthony F. Matheny
1000 Louisiana Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 374-3583
Fax: (713) 754-7583
e-mail: toborb@gtlaw.com
e-mail: mathenyA@gtlaw.com

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Attorneys for GP Harmon Recycling LLC

Attorneys for Waste Management, Inc.

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By Order of the Board, effective _____, 2010.

GEORGE POLOGEORGIS
Interlocutory Attorney
Trademark Trial and Appeal Board

EXHIBIT A
TO STIPULATED PROTECTIVE ORDER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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	§	Opposition No. 91193398
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DECLARATION

I, _____, pursuant to 28 U.S.C. § 1746, hereby
declare that:

I have carefully read and understand the Stipulated Protective Order (the “Order”) in GP Harmon Recycling LLC v. Waste Management, Inc., Opposition Proceeding No. 91193398 before the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office.

I agree that I will be bound by and will comply with all of the provisions of the Order and I will make no disclosures of Confidential Material marked “CONFIDENTIAL Opposition Proceeding No. 91193398” or “CONFIDENTIAL” to any person who is not permitted to have access to such Confidential Material by this Order.

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GP Harmon Recycling LLC, a Georgia limited liability company, ¶
Opposer, ¶
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v. ¶
¶
Waste Management, Inc., a Delaware corporation, ¶
Applicant. ¶ [5]

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Deleted: party that provided the information to me within sixty (60) days after the conclusion of this action, including the exhaustion of all appeals. If I fail to abide by the terms of this Confidentiality Acknowledgment or the Protective Order, I understand that I may subject the party that provided the information to me with sanctions under 37 C.F.R. §2.120(g) and TBMP §527 of which the TTAB, has, without limitation, the power to impose such relief to remedy contemptuous conduct.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Name

Signature

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Printed Name¶

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Address¶

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Individual or Entity Represented¶

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EXHIBIT B
TO STIPULATED PROTECTIVE ORDER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<u>GP Harmon Recycling LLC</u>	§	
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Opposer, ¶
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v. ¶
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Waste Management, Inc., a Delaware corporation, ¶
Applicant. ¶ [6]

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4. I shall not use or disclose to others, except in accordance with the Protective Order, any Confidential information or Highly Confidential information. I also shall return all Confidential information and Highly Confidential information provided to me in this proceeding to case counsel for the party I represent w[... [7]

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Name

Signature

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Individual or Entity Represented¶

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EXHIBIT B

Part 2

GP Harmon Recycling LLC, a Georgia limited liability company,

Opposer,

v.

Waste Management, Inc., a Delaware corporation,

Applicant.

Opposition No.: 91193398

Application Serial Nos.: 77/725,583;
77/725,585; and 77/725,578

Date of Publication: September 15, 2009

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CONSENT

By stipulation and agreement of the Parties, and for good cause shown, it is hereby ORDERED that the following provisions shall govern the use and dissemination of all information, documents or materials that are produced in this action and designated as Confidential or Highly Confidential by

1.

Any party asked to provide information or discovery in connection with this action may designate all or portions of any information, materials, or documents produced or furnished by such party as CONFIDENTIAL. Any information, document or material that a producing party reasonably and in good faith believes constitutes or contains trade secret information or confidential or sensitive information or information that is otherwise protectable under applicable law may be classified as CONFIDENTIAL.

2.

Any party asked to provide information or discovery in connection with this action may designate all or portions of any information, materials, or document produced or furnished by any such party as HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY. Any information, document or material that a producing party reasonably and in good faith believes constitutes or contains trade secret information or confidential or sensitive information or information that is otherwise protectable under applicable law may be classified as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY.

3.

Any designating Party who produces or supplies information, documents, or other materials in this action may designate as “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY” only information, documents or other materials concerning the following: (a) development of new products; (b) marketing plans and methods having current or future applicability; (c) business planning and financial documents having past, current or future applicability; and (d) other information which constitutes trade secrets when such information is so proprietary or competitively sensitive that its disclosure is likely to cause irreparable injury to the designating Party.

4.

The Parties agree not to designate information as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY for the purpose of harassing the receiving party or for the purpose of unnecessarily restricting the receiving party's access to information concerning this Opposition action.

5.

Any document or transcript (or portions thereof), whether an original or copy, including any exhibits and answers to interrogatories, as well as physical objects, recordings or things that any party deems to contain CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information shall be labeled on the first page and on each subsequent page of such document or on such physical object with the appropriate designation. All CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information not reduced to documentary, tangible or physical form, or which cannot be conveniently labeled, shall be so designated by a party by informing the opposing party in writing. All information disclosed during discovery whether or not labeled CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY may be used only for the purpose of this Opposition action and for no other purpose, except as described in this paragraph. In the event a party elects to produce original documents or other materials for inspection, no markings need be made by the producing party in advance of the inspection, and all such documents shall be considered as marked HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY during and in connection with such inspection and until such time as the producing party designates any such documents or materials differently. In the event that specific information designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY and disclosed during discovery reveals unlawful conduct by a third party, the party receiving such information is not precluded from bringing a legal action against the third party for its unlawful conduct, provided that the producing party is given thirty (30) days advance written notice and the information is maintained, to the extent possible, in accordance with any

CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY designation.

6.

Information or documents designated as CONFIDENTIAL may only be disclosed to:

All attorneys of record in this action, other lawyers regularly employed in their offices and their staff to whom it is necessary that materials be disclosed for purposes of this Opposition action, including secretaries, paralegals, and document clerks;

In-house counsel for the Parties and their staff to whom it is necessary that materials be disclosed for purposes of this Opposition action, including secretaries, paralegals, and document clerks;

Those employees and agents of the receiving party who are involved in or are responsible for this Opposition action and who have a need to know the CONFIDENTIAL information;

Trademark Trial and Appeal Board ("TTAB") personnel;

Outside commercial copying and other litigation support services;

Independent experts or consultants retained by counsel for the purpose of assisting in this Opposition action, including their staff to whom it is necessary that materials be disclosed for purposes of this Opposition action, subject to the provisions in paragraph 8 below;

Any witness testifying under oath who is an employee or former employee of the party that designated such information as CONFIDENTIAL;

A total of no more than three (3) non lawyer party representative(s) attending any depositions, hearings or trials;

Any person who is an author or addressee of any document or thing containing such information, or any person copied thereon; and

Such other persons as hereafter may be designated by written agreement of all parties in this action or by Order of the TTAB, such Order obtained on noticed motion (or on shortened time as the TTAB may allow), permitting such disclosure.

7.

Information or documents designated as HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY may only be disclosed to those persons entitled to receive CONFIDENTIAL information under paragraphs 6(a), 6(b), 6(d), 6(e), 6(f), 6(g), 6(i), or 6(j).

8.

Individuals designed in 6(f) and 6(g) above shall sign a written agreement in the form of Exhibit A hereto prior to receiving any CONFIDENTIAL information. Experts receiving any information or documents designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY, shall sign a written agreement in the form of Exhibit B attached hereto prior to receiving any CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information. Exhibit B need not be disclosed to the opposing party, provided that a copy of executed Exhibit B is retained by counsel for the receiving party.

9.

Persons authorized under paragraphs 6 and 7 to receive information designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY ("Qualified Persons") shall not disclose or disseminate, directly or indirectly, any CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES

ONLY information to persons other than the party that designated the information as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY or to other Qualified Persons, nor shall any Qualified Person make public disclosure of any CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information or use CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information for any purpose other than in connection with this Opposition action, subject to the exception set forth in paragraph 5 above. A party alleging improper disclosure and/or use of information designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY may seek relief from the TTAB, including striking all or part of the pleadings, entering judgment against the disobedient party, or any other relief as set forth in 37 C.F.R. §2.120(g), TBMP §527, if the Parties are not able to resolve the issue in good faith.

10.

Information disclosed at any deposition may be designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY on the record at the deposition or by notifying all parties in writing, within fourteen days of receipt of the transcript by the attorneys for the designating party, of the specific pages and lines of the transcript which contain CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS EYES ONLY information.

11.

Any court reporter, transcriber or videographer who reports or transcribes testimony in this action at a deposition shall agree by a statement on the record or written statement that all testimony and information revealed at the deposition is and shall remain

confidential and shall not be disclosed by such reporter or transcriber except to the attorneys for the Parties and any other person who is present while such testimony is being given, and that all copies of any transcript, reporter's notes or any other transcription records of any such testimony shall be retained in absolute confidentiality and safekeeping by such reporter, transcriber or videographer or shall be delivered to the undersigned attorneys.

12.

Nothing shall prevent disclosures beyond the terms of this Order if the party that designated the information as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY consents to such disclosure, or if the TTAB, after notice, orders such disclosure.

13.

All documents and transcripts of deposition testimony including exhibits and/or attachments associated with such transcripts, filed with the TTAB in this proceeding which have been designated, in whole or in part, as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY shall be filed and maintained under seal.

14.

All documents, deposition transcripts or other information identified by any party as CONFIDENTIAL or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY, and all copies thereof, shall not be disclosed to any person who is not an authorized recipient, and shall be carefully maintained so as to preclude access by persons who are not authorized recipients. At the termination of this proceeding (whether by settlement or final judgment and exhaustion of all appeals), unless otherwise ordered by the TTAB,

such documents either (a) shall be returned to the producing party or (b) shall be destroyed within 60 days of the termination of this proceeding, in which event counsel shall give written notice of such destruction to opposing counsel. In no event shall a party retain a copy of CONFIDENTIAL information or HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY information produced to it, except that outside litigation counsel may keep one copy of any pleadings containing such information for archival purposes. Nothing in this Order requires the return or destruction of attorney work-product or attorney-client communications of either party that is maintained and stored by counsel in the regular course of business. Furthermore, nothing in this Order requires the return or destruction of such information filed with the TTAB. Insofar as the provisions of any protective order entered in this Opposition action restrict the communication and use of the documents produced thereunder, such order shall continue to be binding after the conclusion of this proceeding except that there shall be no restriction on any document that was used as an exhibit in the proceedings unless such exhibit was maintained under seal.

15.

GP Harmon Recycling LLC, a Georgia limited liability company,

Opposer,

v.

Waste Management, Inc., a Delaware

Opposition No.: 91193398

Application Serial Nos.: 77/725,583;

77/725,585; and 77/725,578

Date of Publication: September 15, 2009

corporation,
Applicant.

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CONFIDENTIALITY ACKNOWLEDGEMENT A

I, _____, being duly sworn on oath, state the following:

1.

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GP Harmon Recycling LLC, a Georgia limited liability company,

Opposer,

v.

Waste Management, Inc., a Delaware corporation,

Applicant.

Opposition No.: 91193398

Application Serial Nos.: 77/725,583;

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Date of Publication: September 15, 2009

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CONFIDENTIALITY ACKNOWLEDGEMENT B

I, _____, being duly sworn on oath, state the following:

1. I have been retained by _____ [party] to serve as an Expert in this action.

2. I have read and understand the Protective Order to which this Exhibit B is annexed and I attest to my understanding that access to information designated Highly Confidential may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Protective Order. I

3. I am not currently, and agree that, as a means of further protecting Highly Confidential information, I shall not be an officer, director, employee, consultant or agent (other than outside counsel) of any Competitor of the Designating Party (as defined in paragraph 11(e)(i)(b) of the Protective Order) for a period of six (6) months after I am last given access to any Highly Confidential information. I recognize that, as a practical matter, this limitation is unlikely to have an impact on my employment opportunities, but understand that if I do wish to take a position that would otherwise be barred by virtue of this provision, I shall consult with the Designating Party in an effort to reach an agreement about whether my intended activity with or for a Competitor can be structured in such a way, or the Designating Party can otherwise be reasonably satisfied, that there is not a material risk of unauthorized use or disclosure of Highly Confidential information.

4. I shall not use or disclose to others, except in accordance with the Protective Order, any Confidential information or Highly Confidential information. I also shall return all Confidential information and Highly Confidential information provided to me in this proceeding to case counsel for the party I represent within sixty (60) days after the conclusion of this proceeding, including the exhaustion of all appeals. If I fail to abide by the terms of this Confidentiality Acknowledgment or the Protective Order, I understand that I may be subject to sanctions under 37 C.F.R. §2.120(g) and TBMP §527 of which the TTAB, has, without limitation, the power to impose such relief to remedy contemptuous conduct.