

DOCKETED

Docket Number:	16-ENFORCE-02
Project Title:	Confidential Designation Applications + Miscellaneous Documents
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Document Title:	Response to Application for Confidential Designation for Waterway Plastics Inc. Settlement Communication
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CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

March 14, 2018

Steven B. Getzoff
Lester Schwab Katz & Dwyer, LLP
100 Wall Street
New York, NY 10005 -3701

RE: **Application for Confidential Designation for Waterway Plastics Inc.
Settlement Communication
Docket No. 16-ENFORCE-02**

Dear Mr. Getzoff:

The California Energy Commission is in receipt of an Application for Confidential Designation submitted on behalf of Waterway Plastics Inc. (Applicant). The application seeks confidential designation for your letter dated January 11, 2018 to David Ismailyan and attachments thereto (Confidential Records).

The application states that confidentiality is sought for a confidential settlement communication which contains confidential business information. Applicant states that there is no feasible method for aggregating the Confidential Records to protect the value of the materials and that the Confidential Records have not been disclosed publicly.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505 (a)(3)(A) "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential."

The California Public Records Act, Government Code section 6254(k), exempts from disclosure those records which are exempted or prohibited from disclosure pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. Evidence Code section 1152 exempts settlement communications from disclosure. Evidence Code section 1060 exempts trade secrets from disclosure.

California courts have traditionally used the following definition of trade secret:

"A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it...."

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts vol. 4, § 757, comment b, p.5.)

Customer lists and detailed sales data fit easily within this definition.

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The application is clear that confidentiality is being sought for information provided for the purposes of facilitating ongoing settlement discussions, and the information provided includes trade secrets. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Record from public disclosure.

Applicant requests that the information be kept confidential permanently. Protecting information related to ongoing settlement negotiations and the protection of trade secrets is in the public interest. There is no information to suggest that release of the information would serve a greater public benefit than its protection. Therefore, it is appropriate to grant confidentiality indefinitely.

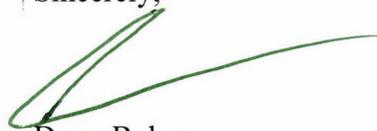
For the reasons state above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential indefinitely.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506. Confidential Records may also be disclosed pursuant to California Code of Regulations, title 20, section 2507.

If Applicant has reason to seek a confidential designation for additional information that is substantially similar to information deemed confidential by way of this letter, Applicant may follow the process set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter please contact Jennifer Martin-Gallardo, Attorney, at (916) 651-3748.

Sincerely,



Drew Bohan
Executive Director

cc: Docket Unit, California Energy Commission
Paul Jacobs, California Energy Commission
David Ismailyan, California Energy Commission
Kirk Oliver, California Energy Commission