

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:08-CV-396-FL

AMERICAN PETROLEUM )  
INSTITUTE, and AMERICAN FUEL )  
& PETROCHEMICAL )  
MANUFACTURERS ASSOCIATION, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
ROY A. COOPER, III, ATTORNEY )  
GENERAL OF THE STATE OF )  
NORTH CAROLINA, )  
 )  
Defendant, )  
 )  
and )  
 )  
NORTH CAROLINA PETROLEUM )  
AND CONVENIENCE MARKETERS )  
ASSOCIATION, )  
 )  
Intervenor-Defendant. )

ORDER

This matter came before the court for bench trial in February 18-20, 2014, after which the court issued directives and made rulings as summarized in order entered February 21, 2014. (DE 138). The matter comes now before the court on joint report filed by the parties seeking to admit various trial exhibits into evidence and to have parts of the record sealed (DE 147). Also before the court are separate requests to seal case materials (DE 123, 128). Too, there remains pending a motion in limine wherein defendants seek to exclude the 2009 Chevron Report and testimony of Ted Hick (“Hick”) and Dr. Karen Jenni (“Jenni”). The issues raised are ripe for decision, as herein

provided.

I. Final Joint Trial Report (DE 147)

A. Admission Into Evidence

Upon the parties' joint offering of exhibits sought to be admitted into evidence, this order memorializes the court's admission into evidence of the offered exhibits:

No.	Proponent	Description	Confidential
2	Pltfs. (P)	CV of David Preston (2010)	
5	P	Shell Presentation on Blending Economics (12/2009)	
6	Both	Shell Presentation - "Incorrect Amount of Ethanol in Gasoline at Truck Rack" (2010)	
8	Both	PQ Incident Bulletin: Excess Ethanol in Gasoline Leaving Terminal/Depot (12/2009)	
9	D	Email chain from Layne Polocheck to Kevin Autin, Laura Yellig, Paul Cannon, and David Preston re: One arm at SOPUS Anacortes, WA put out E10 gasoline at greater than 10% ethanol (9/24/2010)	
10	D	Compilation of Shell Emails (10/8/2008)	
11	D	Wholesale Marketer Agreement form (9/29/2008)	
16	Both	Marathon Sample Branded Product Supply and Trademark License Agreement	
17	Both	Marathon Addendum to Branded Product Supply and Trademark License Agreement [North Carolina]	
18	Both	Marathon ALIRTS Report, Incident No. 1024-2010 (6/26/2010)	
19	Both	Marathon ALIRTS Report, Incident No. 1334-2009 (11/9/2009)	
20	Both	Marathon ALIRTS Report, Incident No. 1347-2008 (8/30/2008)	
21	Both	Marathon ALIRTS Report, Incident No. 1842-2008 (12/7/2008)	
22	Both	Marathon ALIRTS Report, Incident No. 398-2010 (2/16/2010)	
23	Both	Marathon ALIRTS Report, Incident No. 493-2009 (4/25/2009)	
24	Both	Marathon ALIRTS Report, Incident No. 705-2009 (6/13/2009)	
25	Both	Marathon ALIRTS Report, Incident No. 714-2008 (4/8/2008)	

No.	Proponent	Description	Confidential
26	Both	Marathon ALIRTS Report, Incident No. 868-2007 (12/8/2007)	
27	Both	Marathon ALIRTS Report, Incident No. 873-2008 (5/7/2008)	
35	P	BP Document re Ethanol Blends at Charlotte Terminal (2009)	
38	Both	BP Log re Blending Incidents (8/24/2010)	
39	Both	Email from Jim Nicholas re: FW: BOLs RE: Wilmington. Possible quality issue, high ethanol in loads (12/5/2008)	
40	Both	Email from Betty Ross re: FW: Wilmington NC Hess Terminal Issue- Potentially Too Much Ethanol in Fuel (12/8/2008)	
42	P	Email from Heidi Huff re: High Ethanol Content in Raleigh Station (2/6/2009)	
43	P	Email from David Kovach re: High Ethanol Content in Ultimate from Selma Terminal Representative Station (2/4/2009)	
44	P	Email from Heidi Huff re: High Ethanol Content in Ultimate from Selma Terminal Representative Station (2/6/2009)	
45	D	Email chain from Bill Downes to John Steury re: High Ethanol Content in Premium Sample from Hendersonville, NC Station (3/25/2010)	
46	D	Email chain from John Steury to Jessica Goble re: High Ethanol Content in Premium Sample from Hendersonville, NC Station (3/24/2010)	
47	D	Email chain from Jim Nicholas to Irene Banas and James Simnick re: BOLs, Wilmington - Possible quality issue, high ethanol in loads (12/8/2008)	
49	P	Letter from Liza Clechenko granting waiver to A. Craig Stephenson from requirement to sell finished products along with Temporary Splash Blending Agreement (7/28/2008)	
51	P	Collection of letters from Liza Clechenko revoking splash blending waivers (2008)	
58	P	List of Cruizers / Holmes Oil Sites	
60	D	Invoice from P & F Environmental, Inc. to Holmes Oil Company re: vacuuming out Premium tank bottom and disposal (5/10/2008)	
63	P	Bills of Lading for Fuel Delivery to Cruizers #30 (3/16/2008)	
65	Both	Bills of Lading for Fuel Delivery to Cruizers #44 (3/16/2008)	

No.	Proponent	Description	Confidential
67	P	NCDA&CS Inspection Report 441789, Exxon 13 (5/29/2008)	
70	Both	ExxonMobil Oil Corp.-Holmes Oil Branded Wholesaler PMPA Franchise Agreement (10/13/2010)	
71	P	Response and Objections by Intervenor to Plaintiffs' First Set of Interrogatories (4/25/2011)	
74	P	Email from Scott Driscoll Re: HM Ethanol (3/27/2009)	
80	P	Defendant-Intervenor's Response to Plaintiffs' First and Second Sets of Document Requests to E.J. Pope & Son, Inc. (4/25/2011)	
81	P	Bills of Lading for Fuel Deliveries Driven by Curtis Cox (3/15/2008)	Y
82	P	Bills of Lading for Fuel Deliveries Driven by T Gilbert (3/15/2008)	Y
83	P	Bills of Lading for Fuel Delivery to Circle K #6139 (7/1/2008)	Y
84	Both	Pope Transport Bills of Lading and Trip Sheet for Fuel Delivery to Eno BP (7/4/2008)	Y
85	P	Bills of Lading for Fuel Deliveries Driven by W McKinnon (3/15/2008)	
86	P	U.S. Environmental Protection Agency, Guide on Federal and State Summer RVP Standards for Conventional Gasoline Only (3/2010)	
87	D	Expert Report of Robert E. Reynolds (10/18/2013)	
88	P	Robert Reynolds, The Current Fuel Ethanol Industry Transportation, Marketing, Distribution and Technical Considerations (5/15/2000)	
89	P	Robert Reynolds, Changes in Gasoline & the Classic Auto Report (5/1996)	
91	D	Email with attachment from Alison Chassin to multiple recipients re: SOPUS Seattle Over-Injection of ethanol: Final Holding Statement (7/29/2009)	
92	P	Bills of Lading for Fuel Deliveries to Various Sites (7/2013)	Y
93	Both	Email from John Steury re: High Ethanol Content in Premium Sample from Hendersonville, NC Station (3/24/2010)	
94	Both	Bills of Lading for Fuel Delivery to Abercrombie Oil (9/28/2013)	Y
95	P	Reynolds Presentation on Ethanol Industry Technical Agenda (10/18/2006)	
96	P	National Renewable Energy Lab., Technical Report, Issues Associated with the Use of Higher Ethanol Blends (10/2002)	

No.	Proponent	Description	Confidential
97	Both	Pope Transport, Ethanol Blend Chart (4/16/2007)	
104	Both	Bills of Lading for Fuel Deliveries to Various Sites (7/18/2013)	Y
106	D	NCDOA & CS, Standards Division Analytical Record of Sample Taken, Yadkin County (5/29/2012)	
107	D	NCDOA & CS, Standards Division Analytical Record of Sample Taken, Harnett County (6/27/2012)	
108	D	NCDOA & CS, Standards Division Analytical Record of Sample Taken, Pitt County (8/17/2012)	
109	D	NCDOA & CS, Standards Division Analytical Record of Sample Taken, Wayne County (9/18/2012)	
110	D	NCDOA & CS, Standards Division Analytical Record of Sample Taken, Burke County (10/11/2012)	
111	D	NCDOA & CS, Standards Division Analytical Record of Sample Taken, Greene County (11/30/2012)	
112	D	NCDOA & CS, Standards Division Analytical Record of Sample Taken, Onslow County (1/11/2008)	
113	Both	ASTM International, D4815-09, Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography (10/16/2013)	
115	P	Southern Weight and Measures Association Newsletter (10/2008)	
116	P	Chevron, Analysis of Alternative Methods for Ethanol Blending (4/30/2009)	
117	Both	Email from Dave Roche to Erv Pickell (10/20/2005)	
118	D	Letter from Don Gilstrap to Duong Trinh (12/19/2013)	
119	D	Letter from Don Gilstrap to Dickman Lum (10/25/2012)	
120	D	Letter from Don Gilstrap to Dickman Lum (10/5/2012)	
121	D	Letter from Don Gilstrap to Dickman Lum (9/26/2012)	
122	D	Letter from Karen Means to Dickman Lum (8/15/2011)	
123	D	Letter from Karen Means to Dickman Lum (9/4/2009)	
124	D	Email from Robert Anderson to Don Gilstrap re: Chevron – Martinez Terminal (4/21/2010)	
125	Both	Email from Mark Apman to Brian Taniguchi (12/2/2009)	
126	D	Chevron Chart of Blending Incidents	
127	P	Defendant's Responses to Plaintiffs' First Set of Interrogatories to Defendant Roy Cooper (4/25/2011)	
128	P	Marathon Trademark Registrations	

No.	Proponent	Description	Confidential
129	P	BP Trademark Registrations	
130	P	Shell Trademark Registrations	
133	P	Bills of Lading for Fuel Delivery to Circle K #2705144 (3/15/2008)	Y
134	P	Bills of Lading for Fuel Delivery to Cruizers #31 (3/17/2008)	
135	P	Bills of Lading for Fuel Delivery to Snackers #265 (3/17/2008)	
136	P	Bills of Lading for Fuel Delivery to Chocowinity Handy Mart (3/17/2008)	
137	P	Bills of Lading for Fuel Delivery to Circle K #6264 (3/17/2008)	Y
138	P	Bills of Lading for Fuel Delivery to Circle K #8221 (3/17/2008)	Y
139	P	Bills of Lading for Wilson Mills HandyMart (3/17/2008)	
140	P	Bills of Lading for Fuel Delivery to Cruizers #30 (3/19/2008)	
141	P	Bills of Lading for Fuel Delivery to Cruizers #44 (3/19/2008)	
142	P	Bills of Lading for Fuel Deliveries to Garrett Rd BP and Westside BP (7/1/2008)	Y
143	P	Bills of Lading for Fuel Deliveries to Circle K #8620 and #8627 (7/1/2008)	Y
144	P	Bills of Lading for Fuel Deliveries to HandyMart 36 and HandyMart 65 (7/1/2008)	
145	P	Bills of Lading for All Fuel Deliveries Driven by Joe King (7/1/2008)	Y
148	P	Bills of Lading for Fuel Deliveries to Circle K #6330 and #6312 (7/2/2008)	Y
149	P	Bills of Lading for Fuel Delivery to Circle K #1819 (7/2/2008)	Y
150	P	Bills of Lading for Fuel Delivery to Glennlennon BP (7/2/2008)	Y
151	P	Bills of Lading for Fuel Delivery to Circle K #6329 (7/2/2008)	Y
152	P	Bills of Lading for Fuel Delivery to Circle K #6119 (7/2/2008)	Y
153	P	Bills of Lading for Fuel Delivery to HandyMart 60 (7/2/2008)	
154	P	Bills of Lading for Fuel Deliveries to Knightdale BP and Zebulon BP (7/3/2008)	Y
155	P	Bills of Lading for Fuel Delivery to West Campus BP (7/3/2008)	Y

No.	Proponent	Description	Confidential
156	P	Bills of Lading for Fuel Delivery to HandyMart 68 (7/3/2008)	
157	P	Bills of Lading for Fuel Deliveries to Knightdale BP and Zebulon BP (7/4/2008)	Y
158	P	Bills of Lading for Fuel Deliveries to Circle K #6139 and #6264 (7/4/2008)	Y
159	P	Bills of Lading for Fuel Deliveries to Circle K #6119 (7/4/2008)	Y
160	P	Bills of Lading for Fuel Deliveries to Circle K #8620 and #8627 (7/5/2008)	Y
161	P	Bills of Lading for Fuel Deliveries to Brayton BP and Forest Hills (7/6/2008)	Y
163	P	Bills of Lading for Fuel Deliver to Circle K #8610 (7/7/2008)	Y
166	P	Bills of Lading for Fuel Deliveries to Lake Boone 66 and Spring Forest 66 (7/8/2008)	Y
168	P	NCDA&CS Standards Division Inspection Reports for E.J. Pope (Handy Mart) Locations (1/11/2008 through 12/19/2008)	
169	P	NCDA&CS Standards Division Inspection Reports for E.J. Pope (Handy Mart) Locations (1/22/2009 through 12/11/2009)	
170	P	NCDA&CS Standards Division Inspection Reports for Holmes Oil Locations (2/7/2008 through 11/4/2008)	
171	P	NCDA&CS Standards Division Inspection Reports for Holmes Oil Locations (1/8/2009 through 12/3/2009)	
172	P	ASTM International, D4814-01a, Standard Specification for Automotive Spark-Ignition Engine Fuel (11/10/2001)	
173	Both	API Recommended Practice 1626, Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Filling Stations (8/2010)	
179	P	U.S. Environmental Protection Agency, Regulation to Mitigate the Misfueling of Vehicles and Engines with Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs, 76 Fed. Reg. 44406 (7/25/2011)	
180	P	Email from Steve Benjamin to Rick Thomas [without attachment] (4/23/2010)	
181	P	Ted Hick and Karen Jenni, Presentation, Analysis of Alternative Methods for Ethanol Blending (4/2009)	
182	P	Chevron In-Terminal Blending Error Data (June-Nov. 2013)	

No.	Proponent	Description	Confidential
184	P	Robert Reynolds, Expert Report for In re MTBE Prods. Liab. Litig. (County of Suffolk v. Amerada Hess) (3/22/2007)	
185	P	Robert Reynolds, The Challenge of Expanding the Ethanol Distribution System (10/17/2000)	
188	P	Supplemental Report of John O'Brien (10/17/2013)	
189	P	Terminology & Routes to Conventional Clear, Conventional E10, and RFG (5/28/2010)	
190	P	Typical Tank Truck In-Line Blending System (5/28/2010)	
195	P	How Splash Blending Typically Occurs (10/17/2013)	
198	P	Yoram (Jerry) Wind, A Study to Analyze Whether Consumers of Major Brand Gasoline in North Carolina Are Likely to Be Deceived by the Fact That the Major Brand Gasoline They Purchase Is Blended with Ethanol by a Process That Is Not Approved by the Major Brand Companies (10/2013)	
210	P	Wind Study, Appendix A: North Carolina Screening Results (10/2013)	
211	P	Wind Study, Appendix B: Original Survey Questionnaires (Green and Yellow) (10/2013)	
212	P	Wind Study, Appendix C: Revised Survey Questionnaires (Blue and Red) (10/2013)	
213	P	Wind Study, Appendix D: Field Instructions (10/2013)	
214	P	Wind Study, Appendix E: Verification Questionnaire (10/2013)	
215	P	Wind Study, Appendix E: Verification Certification (10/2013)	
216	P	Wind Study, Appendix F: Computer Tabulation (10/2013)	
217	P	Wind Study, Appendix G1: Verbatim Responses - Green Version (10/2013)	
218	P	Wind Study, Appendix G2: Verbatim Responses - Yellow Version (10/2013)	
219	P	Wind Study, Appendix G3: Verbatim Responses - Blue Version (10/2013)	
220	P	Wind Study, Appendix G4: Verbatim Responses - Red Version (10/2013)	
221	P	Wind Study, Appendix H: Excluded Control Group Verbatim Responses to Q3 and Q5 (10/2013)	
222	P	Wind Study, Appendix I: Statistical Analysis (10/2013)	
223	P	Wind Study, Appendix J, Supporting Data Table 1 (10/2013)	



No.	Proponent	Description	Confidential
224	P	Wind Study, Appendix J, Supporting Data Table 2 (10/2013)	
225	D	Email chain with attachments from Susan Nettleton to Jene Goll re: splash blend option / IN & OH (6/30/2005)	
226	D	Email with attachment from David Tew to Judson Pope and Kaye Thompson re: link for the MSDS for Ethanol (12/20/2007)	
227	D	Ethanol Retail Tank Conversion Checklist from Marathon Petroleum Company LLC (2/14/2008)	
228	D	Memo from BP to BP Jobbers with BP retail sites in North Carolina and South Carolina re: splash blending (3/12/2008)	
229	D	Temporary Splash Blending Waiver Agreement between BP Products North America, Inc. and E J Pope & Son Inc. (3/12/2008)	
230	D	Temporary Splash Blending Waiver Agreement between BP Products North America, Inc. and Holmes Oil Co Inc. (3/12/2008)	
231	D	Email chain with attachments from Steve Seftor to multiple recipients re: last ethanol training call before RVP Changeover - Memphis Makeup and North Carolina Splash Blending (4/8/2008)	
232	D	Pope Transport Bills of Lading and Trip Sheet – BOL 0157611 and related documents (7/1/2008)	Y
233	D	Pope Transport Bills of Lading and Trip Sheet – BOL 0157824 and related documents (7/3/2008)	Y
234	D	Email chain with attachment from Craig Payne to Delmer Wood re: report of Port Tampa verification samples (10/8/2008)	
235	D	Email from David Preston to Delmer Wood re: Tampa ethanol issue (10/9/2008)	
236	D	Email chain with attachment from Craig Payne to Delmer Wood re: balance of results for the sampled gas stations in Tampa, FL (10/9/2008)	
237	D	Email chain from Anne Peebles to Karen Leonardi-Cattolica, Delmer Wood, and David Press re: DOE: Initial Study Shows Few Problems with E15 and E20 Ethanol Blends (10/10/2008)	
238	D	Email with attachment from Jenny Powers to multiple recipients re: Tampa Ethanol Holding Statement - Final (10/10/2008)	
239	D	Email chain from Delmer Wood to Richard Kimsey re: Discussion follow-up (10/13/2008)	

No.	Proponent	Description	Confidential
240	D	Email chain from Jerry LeBus to Kirk Brammer re: Tampa PU (10/14/2008)	
241	D	Email chain from Mark Bryan to Justin Pope re: HM 59 Product, Exxon billing (10/21/2008)	
242	D	Email chain with attachment from Jim Nicholas to James McGetrick, Kelley Lane, and John Steury re: Wilmington NC Hess Ethanol issue (12/5/2008)	
243	D	Email chain from Jim Nicholas to Kenneth Cobbs re: Wilmington NC Hess Terminal Issue - Potentially Too Much Ethanol in Fuel (12/5/2008)	
244	D	Email chain from Jim Nicholas to John Steury, James Bergeron, Petra Steinmetz, and Barbara Bibbs re: cause of Wilmington Hess Terminal Issue (12/6/2008)	
246	D	Letter from Motiva Enterprises to Richard Kimsey, FL Dept. of Agriculture and Consumer Services re: operational issues with blending of Premium and mid-grade gas (12/8/2008)	
247	D	Email chain from David Bunch re: issues loading products at Wilmington Hess terminal (1/7/2009)	
250	D	Talking Points from BP re: Ethanol Splash Blending in North Carolina (4/27/2009)	
251	D	Email with attachment from Kent Daigre to Peter Robison, Daniel Porras, Joy Davis, and Mary Whitaker re: Incident report from Tampa Ethanol investigation (5/28/2009)	
252	D	Branded Jobber Contract between BP and E.J. Pope & Son, Inc. (6/1/2009)	
253	D	Branded Jobber Contract between BP and Holmes Oil Co. (7/21/2009)	
254	D	Email chain from David Preston to multiple recipients re: Seattle E10 Mitigation (7/29/2009)	
255	D	Email chain from Layne Polocheck to Larry Burch, Kevin Autin, and Laura Yellig re: SOPUS Seattle Over-injection of ethanol (7/30/2009)	
256	D	Quality Control Procedures for Gasolines and Diesel Fuel, Branded Wholesaler, by ExxonMobil (1/1/2010)	
257	D	Email without attachment from Mary Beth Kinman to Steve Majid, Rich Russo, John Bates, and Aisha Albimani re: Motiva Fairfax Incident Investigation - Terms of Reference (2/16/2010)	
259	D	Email chain with attachment from John Steury to William Zudic re: High Ethanol Content in Premium Sample from Henderson, NC Station (3/23/2010)	

No.	Proponent	Description	Confidential
260	D	Email chain with attachment from Mary Beth Kinman to Chad Ewing and Delmer Wood re: Nashville State Sample Data (6/3/2010)	
261	D	Email from Delmer Wood to multiple recipients re: Nashville Update (6/6/2010)	
262	D	Email from Karyn Leonardi-Cattolica to multiple recipients re: Approved: Nashville PQ Holding Statement and Q&A (6/7/2010)	
263	D	Email from Delmer Wood to Randy Jennings re: Motiva Nashville Terminal Incident Summary (7/30/2010)	
264	D	Branded Wholesaler PMPA Franchise Agreement between ExxonMobil and E.J. Pope & Son Inc. (8/20/2010)	
265	D	Holmes Oil Company documents re: Cruizers 265 pump out (9/30/2010)	
267	D	Plaintiff American Petroleum Institute's Objections and Responses to Defendants' First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents (12/13/2010)	
269	D	Article from Department of Commerce, Weights and Measures re: Commissioner reassures consumers in areas affected by bad gasoline (10/13/2011)	
276	D	QA Log Database Search: API Discovery NC (Supplemental) (11/20/2013)	
278	D	Ethanol Blending Addendum to Distributor PMPA Franchise Agreement (Branded) between ExxonMobil and Holmes Oil Co Inc.	
279	D	Bill of Lading for Fuel Delivery to MM Fowler (7/8/2008)	Y
280	D	Demonstrative Exhibit of In-line Misblends	
281	P	Demonstrative Exhibits for Testimony of John O'Brien	
282	P	Demonstrative Exhibits for Testimony of Karen Jenni	
283	P	Demonstrative Exhibits for Testimony of Dr. Yoram (Jerry) Wind	
284	P	Demonstrative Exhibit of Shell/Motiva In-line Blending Errors (2008-2010)	
285	P	Demonstrative Exhibit of Marathon In-Line Blending Errors	
286	P	Demonstrative Exhibit of Joint Exhibit 81 (Bills of Lading for Fuel Deliveries Driven by Curtis Cox (3/15/2008))	Y

B. Request to Seal

In the joint report, the parties have noted certain exhibits that are deemed confidential (as referred to above). Consented-to request is made that the court seal designated exhibits for a period of one year after this action has closed and the time for all appeals has run. Good cause having been shown, the request to seal is GRANTED.

In accordance herewith, the clerk is DIRECTED to maintain the following trial exhibit nos. under seal: 81-84, 92, 94, 104, 133, 137-38, 142-43, 145-52, 154-55, 157-66, 232-33, 279, and 286. Moreover, of its own initiative, the court provisionally seals exhibit no. 116, the Chevron Report, and no. 181, Hick and Jenni Presentation, for reasons discussed below.

II. Motion in Limine (DE 118)

Where the court heard the testimony of Hick and Jenni at trial, and reference was made to the Chevron Report, introduced at trial, it is noted here that the court overruled defendants' objections thereto. Moreover, the parties' joint report makes reference to the Chevron Report at exhibit nos. 116 and 181. Accordingly, where this motion was DENIED, the clerk shall conform the record to reflect this.

III. Motions to Seal (DE 123, 128)

In the motion made by defendants (DE 123), defendants seek to seal the cover sheet of the Chevron Report (DE 120), Hick's deposition testimony discussing how the Chevron Report was prepared (DE 121), and Jenni's testimony discussing her qualifications and how the Chevron Report was prepared (DE 122). In the motion made by plaintiffs (DE 128), they seek to seal certain responses of E. J. Pope & Sons, Inc. ("Pope") (DE 126) as well as the Chevron Report (DE 127). The proposed sealed materials have remained provisionally sealed pending final determination by

the court.

Only one part of one of these motions is able now to be decided. Good cause having been shown, the court SEALS responses of Pope (DE 126) and in this part, plaintiffs' motion (DE 128) is ALLOWED.

As to remaining part of plaintiffs' motion, and defendants' motion to seal, in the parties' later filed joint report (DE 147), neither side requested that the Chevron Report be marked as confidential and sealed in connection with its admission at trial. If this report is not to be sealed, it would seem to obviate any need to seal DE 120, the Chevron Report, and likely obviate need to seal corresponding testimony of Hicks and Jenni at DE 121 and DE 122. As such, defendants' motion would be denied as moot and these items unsealed on the record. Similarly, as to remaining part of plaintiffs' motion, where the Chevron Report at DE 127 is sought to be sealed, this sealing action, too, would seem now unnecessary.

Before ruling finally on remaining part of plaintiffs' motion to seal (DE 128) and defendants' motion (DE 123), a party may show cause within ten (10) days hereof, why the court should not now deny these motions as moot in whole or in any remaining part, as it is inclined so to do.

Moreover, out of an abundance of caution, where in light of the pendency of the instant motions to seal, the court provisionally has ordered sealed exhibits nos. 116 and 181, within ten (10) days any party may show cause why this provisional seal should be continued and exhibit nos. 116 and 181 ordered to be sealed in accordance with the terms and conditions of this order. If no cause is offered, in accordance with the parties' joint report, the court will order unsealed these exhibits.

SO ORDERED, this the 11<sup>th</sup> day of August, 2014.

  
LOUISE W. FLANAGAN  
United States District Judge