

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violations
of Articles 27 and 71 of the
Environmental Conservation Law (ECL) of
the State of New York and Section 360
of Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York (6 NYCRR),

**RULING ON MOTION
TO COMPEL PRODUCTION
OF DOCUMENTS**

by

TILCON NEW YORK, INC.,

DEC Case No.
R2-20130827-532

Respondent.

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (John Nehila of counsel), for staff of the Department of Environmental Conservation

- Sullivan PC (Peter Sullivan of counsel), for respondent Tilcon New York, Inc.

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (DEC or Department) staff charges respondent Tilcon New York, Inc. (Tilcon) with failing to: (i) provide daily records of incoming and outgoing solid waste material; (ii) submit a site plan and survey documenting the extent and volume of solid waste materials stored longer than eighteen months; and (iii) remove at least 20,000 cubic yards of solid waste materials stored longer than eighteen months, in violation of an order on consent with respondent relating to Tilcon's construction and demolition (C&D) debris processing facility located at 980 East 149th Street, Bronx, New York.

I previously ruled on Department staff's motion for an order striking, or directing clarification of affirmative defenses (see Matter of Oldcastle, Inc., Ruling of the ALJ, dated February 29, 2016) and respondent's motion to dismiss and

to compel production (see Matter of Oldcastle, Inc., Ruling of the ALJ, dated October 12, 2016).¹

By motion dated February 10, 2017, Department staff moved to compel production of documents. In support of staff's motion, staff submitted the affirmation of John Nehila, Esq. (Nehila Affirmation), dated February 10, 2017, with eleven exhibits attached. Respondent opposed the motion to compel production through the affirmation of Peter Sullivan, Esq. (Sullivan Affirmation), dated March 3, 2017, with one exhibit attached. See Appendix A attached hereto.

PROCEEDINGS

Department staff moves to compel disclosure of documents identified by respondent as attorney work product and material prepared in anticipation of litigation. Department staff requests respondent be directed to produce all responsive, non-privileged documents in respondent's possession, custody and control. Staff specifically argues that respondent be directed to produce five draft surveys identified by respondent as privileged. In regards to the five draft surveys identified by respondent as privileged, staff argues the stated privileges do not apply and requests a privilege log listing all documents withheld and explaining the basis of the privilege asserted for each document.

In opposition to staff's motion, respondent asserts that the surveys are attorney work product, are prepared in anticipation of litigation and are protected by the attorney-client privilege. Respondent claims any other documents referenced in Department staff's motion have been transmitted to the Department. Respondent argues that a January 31, 2017, letter to the Department described the draft surveys and explained the privileges claimed for the surveys (see Sullivan Affirmation ¶¶ 4-5; Nehila Affirmation ¶ 4, Exhibit 3). As such, respondent argues that the letter satisfies the information required by CPLR 3122.

By letter dated May 15, 2017, I directed respondent to provide me with the withheld documents for my in camera review

¹ The October 12, 2016 ruling dismissed the proceeding against respondents Oldcastle, Inc. and Oldcastle Materials, Inc. Department staff and respondent Tilcon New York, Inc. removed the Oldcastle respondents from the caption in their papers. The caption is amended accordingly.

together with a privilege log.² By cover letter, dated May 23, 2017, respondent provided me with the following:

- (1) "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C. (Site Plan No. 1);
- (2) "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C. with hand drawn circles around features and notes (Site Plan No. 2);
- (3) "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C. with additional contour lines and other details (Site Plan No. 3);
- (4) "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014 prepared by Spectra Engineering, Architecture and Surveying P.C. and marked as "DRAFT" (Site Plan No. 4);
- (5) "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014, updated November 10, 2014 for "Pile Survey", prepared by Spectra Engineering, Architecture and Surveying P.C. (Site Plan No. 5);
- (6) "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014, updated November 10, 2014 for "Pile Survey" and November 24, 2014 for "Volume Note Added", prepared by Spectra Engineering, Architecture and Surveying P.C. and marked as "DRAFT" (Site Plan No. 6);
- (7) Invoice from Spectra Engineering, Architecture and Surveying P.C. to Peter Sullivan, Sullivan Gardner P.C., dated November 12, 2014;

² Respondent failed to provide the undersigned with a privilege log as directed.

- (8) Invoice from Spectra Engineering, Architecture and Surveying P.C. to Peter Sullivan, Sullivan Gardner P.C., dated December 8, 2014; and
- (9) Drawing "08-06-2015 Bronx Recycle Facility (P8 Contours)" Tilcon New York dated August 6, 2015, prepared by H2H Associates, LLC marked as "Figure 1".

Respondent's attorney states that the site plans are attorney work product because the plans were prepared at the attorney's request and claims the site plans were prepared in anticipation of litigation (see Sullivan Affirmation ¶¶ 6 and 7). Respondent also advises the drawing prepared by H2H was already submitted to DEC (see transmittal letter from Peter Sullivan, dated May 23, 2017 [May 23, 2017 Sullivan Letter], submitting site plans for in camera review, at 2). Respondent also claims each survey is a draft prepared with confidential client information and is protected as an attorney-client communication (see Sullivan Affirmation at ¶ 10). Respondent claims that the hand drawn circles on the January 2013 site plan should be protected as an attorney-client communication because respondent's attorney believes the hand drawn circles were made by a representative of respondent Tilcon as part of conversations between attorney and client (see May 23, 2017 Sullivan Letter at 2).

DISCUSSION

The scope of discovery under the Department's Uniform Enforcement Hearing Procedures is as broad as that provided under the CPLR. (See 6 NYCRR 622.7[a]; CPLR article 31; Matter of U.S. Energy Develop. Corp., Ruling of the Chief ALJ on Motion for Leave to Conduct Depositions, May 9, 2014, at 4; Matter of U.S. Energy Develop. Corp., Ruling of the Chief ALJ on Renewed Motion to Compel Disclosure, December 23, 2015, at 2-3.) Any matter that is material and necessary in the prosecution or defense of an administrative enforcement proceeding must be disclosed unless it is otherwise protected from disclosure as privileged or attorney work product. (See CPLR 3101[a], [b], and [c]; State Administrative Procedure Act [SAPA] § 306[1].) Privileges such as the attorney-client privilege (CPLR 4503), attorney work product (CPLR 3101[c]), and material prepared in anticipation of litigation (CPLR 3101[d][2]) are applicable to proceedings conducted under part 622. The ALJ "must give effect

to the rules of privilege recognized by New York State law." (6 NYCRR 622.11[a][3].)

Attorney-client privilege and attorney work product privileges are absolute unless waived (CPLR 3101[b] and [c]; see Hoffman v. Ro-San Manor, 73 AD2d 207, 211 [1st Dept 1980]). The privilege created by CPLR 3101[d][2] for materials prepared in anticipation of litigation is a conditional privilege, and if the conditions are satisfied, the litigation materials may be ordered disclosed. (Hoffman, 73 AD2d at 211.) Respondent carries the burden to establish that each of the claimed privileges applies (see e.g. Spectrum Sys. Intl. Corp. v Chem. Bank, 78 NY2d 371, 377 [1991]).

Attorney-Client Privilege

Confidential communications made between an attorney and a client are immune from disclosure unless waived by the client (see CPLR 4503[a][1]). As noted above, respondent generally claims the draft surveys are prepared with confidential client information and are protected as an attorney-client communication (citing Stenovich v. Wachtell, Lipton, Rosen & Katz, 195 Misc2d 99, 106-108 [Sup Ct, NY County 2003]). Respondent also asserts that hand drawn circles on a copy of the January 2013 site plan (Site Plan #2) were made by the client and, therefore, that site plan is protected from disclosure by the attorney-client privilege.

This matter is distinguishable from Stenovich. In that case, early drafts of attorney prepared documents containing attorney-client communications, if kept confidential, did not lose privileged status simply because the final version of the document was given to third parties. In this matter, respondent's attorney did not prepare the surveys. In addition, the privilege is limited to communications, not the underlying facts (see Upjohn Co. v U.S., 449 US 383, 395-396 [1981]).

Moreover, respondent has not demonstrated how the surveys contain communications covered by the privilege or how each survey is anything more than a depiction of the underlying facts at the time of the survey. Respondent does not allege that it instructed the surveyors, Spectra Engineering, Architecture and Surveying P.C. (Spectra), not to disclose the subject "communications" to persons unrelated to respondent Tilcon. Nor

does respondent allege that Spectra has kept such communications confidential.

With one exception, I conclude that the site plans do not constitute legal communications between counsel and respondent and are not protected by the attorney-client privilege (see e.g. OMNI Health & Fitness Complex of Pelham, Inc. v P/A-Acadia Pelham Manor, LLC, 33 Misc3d 1211[A], 2011 NY Slip Op 51895[U] at *5 [Sup Ct, Westchester County 2011]). The hand drawn circles on Site Plan No. 2 that respondent's attorney claims were drawn by respondent are ostensibly a communication from client to attorney (see e.g. OMNI Health & Fitness Complex of Pelham, Inc. v P/A-Acadia Pelham Manor, LLC, supra, at *8). Accordingly, I conclude Site Plan No. 2 is protected from disclosure as an attorney-client communication.

Attorney Work Product

The absolute privilege applied to an attorney's work product applies to "materials which are uniquely the product of a lawyer's learning and professional skills, such as materials which reflect his legal research, analysis, conclusions, legal theory, or strategy." (ACWOO International Steel Corp. v Frenkel & Company, 165 AD2d 752, 753 [1st Dept 1990], citing Hoffman v Ro-San Manor, 73 AD2d at 211; see CPLR 3101 [c].) The work product of an attorney "is a very narrowly construed concept, including only materials prepared by an attorney, acting as an attorney, which contain his analysis and trial strategy." (Graf v Aldrich, 94 AD2d 823, 824 [3d Dept 1983] [internal citation omitted]; see Kinge v State, 302 AD2d 667, 669 [3d Dept 2003].) Correspondence with a third party is not protected from disclosure by the attorney work product privilege if the documents "were not prepared by an attorney and contain no legal reasoning, strategy or analysis." (Bras v Atlas Constr. Corp., 153 AD2d 914, 915 [2d Dept 1989]; see, Bloss v Ford Motor Co., 126 AD2d 804 [3d Dept 1987]; Graf v Aldrich, 94 AD2d at 824.)

Staff argues that the surveys are not attorney work product because respondent's attorney does not perform the preparation and revision of property surveys, and because the surveys are not the unique product of an attorney's learning and professional skills. (See Nehila Affirmation ¶ 5.) Respondent argues that absolute privilege is afforded to the work product of an attorney and "extends to experts retained as consultants

to assist in analyzing or preparing the case." (See Sullivan Affirmation ¶ 6, quoting Beach v Touradji Capital Mgt., LP, 99 AD3d 167, 170 [1st Dept 2012].) However, this privilege "only affords protection to facts and observations disclosed by the attorney." (Beach, 99 AD3d at 170.)

Based on my in camera review of the surveys, I find no evidence of facts or observations disclosed by respondent's attorney that were conveyed to the surveyors in the preparation of the surveys. Notably, the invoices from the surveyors to respondent's attorney indicate that the surveyors were performing site surveys, mapping, volume analysis and calculation, and updates to the site plan. The invoices do not list any time spent coordinating with respondent's attorney in the preparation of the site plans and updates. In addition, the invoices only reflect work performed during September, October and November 2014 billed to respondent's attorney.

Respondent has failed to demonstrate that the surveyors were retained as consultants to assist in analyzing or preparing the case as an adjunct to the lawyer's strategic thought processes (see e.g. Hudson Insurance Co. v Oppenheim, 72 AD3d 489 [1st Dept 2010]). Moreover, conclusory assertions that materials or items constitute attorney work product or material prepared in anticipation of litigation will not suffice to satisfy respondent's burden (see Graf v Aldrich, 94 AD2d at 824; Wheeler v Frank, 101 AD3d 1449 [3d Dept 2012]).

I conclude that the site plans are not uniquely the product of respondent's attorney and do not reflect the legal research, legal theory, or strategy of the attorney. Accordingly, I conclude that the withheld site plans are not protected from disclosure by the attorney work product privilege.

Materials Prepared in Anticipation of Litigation

Materials prepared in anticipation of litigation "by or for another party, or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent)," are protected from disclosure. (CPLR 3101[d][2].) Materials that would otherwise be discoverable, but were prepared in anticipation of litigation or for trial "may be obtained only upon a showing that the party seeking discovery has substantial need of the materials . . . and is unable

without undue hardship to obtain the substantial equivalent of the materials by other means." (Id.)

Respondent has the burden to demonstrate that materials sought to be immune from discovery were exclusively prepared for litigation. (Oppedisano v New York Mut. Underwriters, 111 AD2d 452, 453 [3d Dept 1985]; see CPLR 3101 [d] [2].) It has been previously held that "[m]ulti-motived reports do not warrant the immunity if litigation is but one of the motives." (Westhampton Adult Home, Inc. v Natl. Union Fire Ins. Co. of Pittsburgh, Pa., 105 AD2d 627, 628 [1st Dept 1984], citing Chemical Bank v National Union Fire Ins. Co., 70 AD2d 837, 838 [1st Dept 1979]; New England Seafoods v Travelers Cos., 84 AD2d 676 [4th Dept 1981]; Mold Maintenance Serv. v General Acc. Fire & Life Assur. Corp., 56 AD2d 134 [4th Dept 1977].)

Respondent has failed to demonstrate that the withheld site plans were exclusively prepared for litigation. Site Plan Nos. 1, 2 and 3 demonstrate that the site plan was updated on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013 for the SPCC Plan. A SPCC Plan is not described in the site plans, but Site Plan Nos. 1, 2 and 3 on their face, were updated for a purpose other than litigation.³ Respondent failed to demonstrate that Site Plan Nos. 1, 2 and 3 were prepared solely in anticipation of litigation.

Site Plan Nos. 4, 5 and 6 appear to be prepared, in part, to satisfy the requirements of the September 16, 2014 Order on Consent as the site plans depict the areal extent and volume of waste piles. The Order on Consent required respondent to "submit a site plan and survey which document, to the Department's satisfaction, the extent and volume of solid waste materials that have been stored onsite in excess of eighteen (18) months" within thirty (30) days of the effective date of the Order on Consent. (See Nehila Affirmation ¶ 7, Exhibit 4.) Site Plan Nos. 4, 5, and 6 contain information required by the Order on Consent. The Order on Consent is a settlement document between staff and respondent. It is disingenuous for respondent to claim that the materials prepared to comply with the terms of settlement are prepared in anticipation of litigation. Again,

³ Typically, a SPCC plan is a spill prevention, control, and countermeasure plan required by the United States Environmental Protection Agency as set forth in 40 CFR part 112. A site plan is one component of an SPCC plan, a plan designed to prevent and address petroleum spills.

respondent failed to demonstrate that Site Plan Nos. 4, 5 and 6 were prepared solely in anticipation of litigation.

Each site plan, by its own notations, exhibits a purpose other than litigation for the preparation of the plan. Respondent's attorney states "these site plans were prepared at my request in anticipation of litigation, in response to communications and investigations by the DEC and others dating back to at least 2008 or earlier" (see May 23, 2017 Sullivan Letter at 2). Such a conclusory assertion is not enough to satisfy respondent's burden. In addition, the invoices only reflect work performed by Spectra in September, October and November 2014 billed to respondent's attorney. The invoices do not support respondent's broad statement that the invoices show the attorney retained Spectra as early as 2008. Additionally, the invoices do not contain any time charged for consultation with respondent or respondent's attorney.

I conclude that respondent failed to demonstrate that the site plans were solely prepared in anticipation of litigation. Accordingly, the site plans are not entitled to exemption from discovery as material prepared in anticipation of litigation.

Inadvertent Disclosure

If a privileged document is disclosed to the other party, the disclosure is treated as a waiver of the privilege unless it is shown (1) the document was intended to be confidentially maintained, (2) steps were taken to prevent disclosure, (3) after discovery of disclosure, prompt action was taken to remedy the situation, and (4) if a protective order against use of the documents is issued, the party that received the documents will not suffer an undue burden. (See New York Times Newspaper Div. of New York Times Co. v Lehrer McGovern Bovis, Inc., 300 AD2d 169, 172 [1st Dept 2002]; Christine Baliva and Rino Baliva v State Farm Mutual Automobile Insurance Company, 275 AD2d 1030, 1031.)

Respondent claims that the surveys submitted to Department staff dated September 16, 2014, and August 6, 2015, in response to the September 16, 2014, Order on Consent are privileged. (See Nehila Affirmation ¶ 7.) Respondent sent the September 16, 2014, and August 6, 2015, surveys to Department staff after the 2014 Order on Consent was executed. (See Nehila Affirmation ¶ 5, Exhibit 4.) Respondent submits that the August 6, 2015

drawing prepared by H2H Associates, LLC was mistakenly included as a privileged document and confirms it was previously submitted to the Department (see May 23, 2017 Sullivan Letter at 2). Regarding the September 16, 2014 site plan, respondent failed to demonstrate that steps were taken to prevent the survey from being sent or that respondent took prompt action to remedy the situation. Accordingly, respondent waived any privilege that may have attached to that site plan.

CONCLUSION

Based on my in camera review, I conclude that respondent failed to demonstrate that Site Plan Nos. 1, 3, 4, 5 and 6 are protected from disclosure by any of the asserted privileges.

I also received papers from Department staff in opposition to motion to quash DEC subpoena. I, however, have not received any motion that requires such a response. The parties were directed in Matter of Oldcastle, Inc., Ruling of the ALJ, dated October 12, 2016, to file hard copies of all papers with the Office of Hearings and Mediation Services at the time they are served on the opposing parties. As there is no motion to quash subpoena before me, I do not consider Department staff's response in opposition to that purported motion.

RULING

Department staff's motion to compel disclosure is granted, in part, as follows:

1. Within ten (10) days of the date of this ruling, respondent Tilcon New York, Inc. shall produce the following documents to Department staff:
 - A. "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C.;
 - B. "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra

Engineering, Architecture and Surveying P.C. with additional contour lines and other details;

- C. "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014 prepared by Spectra Engineering, Architecture and Surveying P.C. and marked as "DRAFT";
 - D. "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014, updated November 10, 2014 for "Pile Survey", prepared by Spectra Engineering, Architecture and Surveying P.C.; and
 - E. "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014, updated November 10, 2014 for "Pile Survey" and November 24, 2014 for "Volume Note Added", prepared by Spectra Engineering, Architecture and Surveying P.C. and marked as "DRAFT";
2. Department staff's motion to compel the production of "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C. with hand drawn circles around features and notes is denied; and
3. Pursuant to 6 NYCRR 622.7(c)(3), if respondent Tilcon New York, Inc. fails to produce in accordance with this Ruling, respondent shall be precluded from introducing any of the requested documents at hearing, and the undersigned and the Commissioner may draw the inference that the material demanded is unfavorable to respondent's position.

/s/
Michael S. Caruso
Administrative Law Judge

Dated: July 24, 2017
Albany, New York

APPENDIX A

Matter of Tilcon New York, Inc.
DEC File No. R2-20130827-532
Motion to Compel Production of Documents

Department Staff's papers

- A. Motion to Compel Production of Documents, dated February 10, 2017.
- B. Affirmation John Nehila, Esq., dated February 10, 2017, in Support of Motion to Compel Production of Documents, attaching the following exhibits:
1. Department staff's Notice for Discovery and Inspection, dated December 13, 2016.
 2. Respondent Tilcon New York, Inc.'s Responses and Objections to Notice for Discovery and Inspection, dated January 12, 2017.
 3. Correspondence from Peter Sullivan, Esq. to John Nehila, Esq., dated January 31, 2017.
 4. Matter of Tilcon New York, Inc., Order on Consent, Case No. R2-20130827-532, dated September 16, 2014.
 5. Department staff's Subpoena Duces Tecum, dated February 10, 2017, addressed to Robert C. LaFluer and John H. Shafer, P.E., Owners, Spectra Engineering, Architecture and Surveying P.C.
 6. Department staff's Subpoena Duces Tecum, dated February 10, 2017, addressed to Paul Hodor, L.S., Director of Surveying Services, Spectra Engineering, Architecture and Surveying P.C.
 7. Department staff's Subpoena Duces Tecum, dated February 10, 2017, addressed to Ed Davidson, Project Manager, Spectra Engineering, Architecture and Surveying P.C.
 8. Department staff's Subpoena Duces Tecum, dated February 10, 2017, addressed to Charles H. Kincaid, P.E., Vice President and Director of Syracuse & Utica Offices, Spectra Engineering, Architecture and Surveying P.C.

9. Department staff's Subpoena Duces Tecum, dated February 10, 2017, addressed to Dr. Richard A. Hisert, Ph.D., Principal, H2H Associates, LLC.
10. Department staff's Subpoena Duces Tecum, dated February 10, 2017, addressed to Mark Emmet Farber, Manager of 3D Scanning & Mapping Department, H2H Associates, LLC.
11. Department staff's Subpoena Duces Tecum, dated February 10, 2017, addressed to Michael Van Flue, Assistant Project Manager, H2H Associates, LLC.

Respondent's Papers

1. Cover letter from Peter Sullivan, Esq. dated March 3, 2017.
2. Affirmation of Peter Sullivan, Esq., dated March 3, 2017, in Opposition to Motion to Compel Production of Documents, attaching the following exhibit:
 - A. Notice of Violation, dated December 4, 2008 with Inspection Report, dated November 18, 2008 attached.
3. Cover letter from Peter Sullivan, Esq., dated May 23, 2017, attaching the following for in camera review:
 - "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C.;
 - "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C. with hand drawn circles around features and notes;
 - "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated August 12, 2002, updated for "SPCC Plan" on October 25, 2006, May 24, 2011, September 12, 2012 and January 3, 2013, prepared by Spectra Engineering, Architecture and Surveying P.C. with additional contour lines and other details;
 - "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014 prepared by Spectra

Engineering, Architecture and Surveying P.C. and marked as "DRAFT";

- "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014, updated November 10, 2014 for "Pile Survey", prepared by Spectra Engineering, Architecture and Surveying P.C.;
- "Site Plan, Tilcon New York Inc., Bronx Recycling Facility" dated September 16, 2014, updated November 10, 2014 for "Pile Survey" and November 24, 2014 for "Volume Note Added", prepared by Spectra Engineering, Architecture and Surveying P.C. and marked as "DRAFT";
- Invoice from Spectra Engineering, Architecture and Surveying P.C. to Peter Sullivan, Sullivan Gardner P.C., dated November 12, 2014;
- Invoice from Spectra Engineering, Architecture and Surveying P.C. to Peter Sullivan, Sullivan Gardner P.C., dated December 8, 2014; and
- Drawing "08-06-2015 Bronx Recycle Facility (P8 Contours)" Tilcon New York dated August 6, 2015, prepared by H2H Associates, LLC marked as "Figure 1".