

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

BUREAU OF AIR QUALITY CONTROL

CONFIDENTIALITY POLICY

A. DESCRIPTION OF SYSTEM:

The basic goal of this procedure is to provide a system whereby confidential information received from the regulated community can be adequately protected from disclosure to unauthorized persons in accordance with the Freedom of Information Act (Section 30-4-40 of the 1976 Code of Laws), and the Pollution Control Act (Section 48-1-270 of the 1976 Code of Laws).

A separate filing system will be used by the Bureau to control confidential information submitted by the regulated community. A locked confidential file will hold documents designated as confidential by the originator and other material judged to require confidential treatment.

B. GENERAL POLICY:

1. An originator must make a claim of confidentiality when the information is submitted; failure to do so waives the Department's obligation to protect the information.
2. To facilitate handling and identification, the originator must not mix confidential and non-confidential information together on a page or in a bound document.
3. The originator shall submit only information required by the Department and if such is considered to be of confidential nature, it shall be well marked as "Confidential". Any confidential material, that is not required by the Department, will be returned to the originator by Return Receipt Requested, Registered Mail.
4. Any information on file, both confidential and non-confidential, may be entered into the National Emission Inventory System/Point Source computer program. All confidential information is so coded to indicate that fact. Emission data can not be considered as confidential. USEPA will be responsible for protection, as required by their procedures.
5. If possible, the originator should specify a time limit after which confidential treatment is no longer necessary for the submitted material.
6. When confidential material is no longer needed by the Department, it will either be destroyed by burning or shredding in the presence of a Bureau staff member or returned to the originator.

C. UPON RECEIPT OF INFORMATION CLAIMED TO BE CONFIDENTIAL:

1. If it is clearly set forth in a letter of transmittal what is confidential, each page of the confidential material will be stamped CONFIDENTIAL, in bold letters, if such has not been done by the originator.
2. Send the originator of the confidential information an acknowledgement.
3. A cross-reference will be made in the public files that the originator has material in the confidential file.
4. No determination of confidentiality will be made at this time, but will be deferred until a request for access to the information is received.

D. ACCESS TO CONFIDENTIAL FILES:

1. Confidential material will be accessible only to the Department and/or USEPA representatives who have a need to know.
2. Confidential material will not be removed from the files overnight or left unprotected on a desk top.
3. Confidential files will, not be copied in any manner, except as required to forward to USEPA.
4. Information designated as confidential will not be released to anyone, except authorized staff, without the written consent of the Bureau Chief, or, upon a finding, by the Department, that the information cannot be held as confidential.

E. WHEN A REQUEST IS RECEIVED FOR INFORMATION HELD IN THE CONFIDENTIAL FILE:

1. The originator of the confidential information will bear the burden of proof that information is entitled to continued protection.
2. The originator will be given fifteen (15) working days written notice, by certified mail that it must make a satisfactory showing to the Department that the information constitutes a particular secret of a person and not a general secret of a trade; is known only to certain individuals who have a confidential or contractual relationship with the originator; is of commercial value and peculiar to the originator's business; and disclosure or use of the information must be shown to have the effect of causing irreparable injury to the originator. If no response is received, the information will be released to the requester.
3. An evaluation of the originator's defense will be made by the Department to determine if the confidentiality of the information is valid. If there has been a previous determination (state or federal) that the information is worthy of confidentiality then this precedent will stand.

4. Both the requestor and the originator of the information must be notified of the result of the evaluation.
5. If confidentiality is denied, ten (10) working days must be allowed (from the notification in 4 above) before the information is released to the requestor. Any appeal, by the originator must be made during this period.

F. APPEAL:

1. Either the requestor or the originator of confidential information may appeal the final determination made by the Department.
2. All appeals must be made in writing to the South Carolina Board of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201 with a copy to the Bureau of Air Quality Control, same address.
3. Confidentiality will continue to be maintained during any appeal or further litigation.