

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
APCD/Stationary Sources Program

INTER-OFFICE COMMUNICATION

TO: Permit Engineers, Inspectors, and Records Custodian

FROM: Julie Wrend
Legal Administrator

Jill E. Cooper
Legal Administrative Assistant

DATE: 16 July 1997 and 3 October 1997

RE: Confidentiality Requests and Disclosure of Emission Data Claimed as Confidential

The Air Pollution Control Division ("Division") often receives documents from sources that has been stamped "CONFIDENTIAL" by the source with permit applications and during enforcement actions. The Division staff have a legal obligation to separate and keep any document stamped confidential from the public file, until the Legal Administrator makes a determination as to whether the document can be kept from the public files pursuant to the Open Records Act.

Review of External Documents

Division staff that handle permit application and enforcement documents and allow confidential documents to be placed in the public files may be held criminally liable. Thus, it is imperative that permit engineers, inspectors, and the records custodian carefully review each document submitted for confidential stamps. Upon finding a document stamped confidential, the permit engineer, inspector, or records custodian should place the document stamped confidential in a separate file and keep it separate from the public file for that source. The permit engineer, inspector, or records custodian should review all of the documents submitted and then give the file with the documents stamped confidential to the Legal Administrator. The Legal Administrator or Legal Administrative Assistant will make a determination as to whether the document is to be kept confidential or placed in the public file for that source.

An issue that often arises is whether emission data can be held confidential. At times a company will provide emission data along with other information and documents and request it be held confidential. Emission data does not fall within the purview of confidential business information or data. You should recommend that companies provide the emission data in another form separate from any other information the company wants held as confidential.

The Office of the Attorney General has developed and provided the attached memorandum to the Division describing the U.S. EPA's policy on and legal requirements concerning disclosure of emission data claimed as confidential by sources. This memorandum provides a detailed definition of "emission data" to assist you in making a determination as to whether information is emission data. In addition, this memorandum includes a list of emission data fields or examples of types of data and information that is considered emission data and releasable upon request.

We recommend that you use this memorandum when making a determination as to whether information provided the Division is confidential or not confidential and releasable to the public.

Review of Internal Documents and Comments

There is another level of confidentiality that permit engineers, inspectors, and the records custodian must be aware. Before any document is released pursuant to a Open Records Act request, Division staff must review the documents for any confidential writings or language the Division has included in a source's permit or enforcement file. This includes all internal correspondence, predecisional notes and memoranda, and **any** handwritten comments or notes added by any Division staff to documents in a permit or enforcement file, except for handwritten calculations or inspection reports. To expedite the review process and prevent confidential comments from being mistakenly released pursuant to an Open Records Act request, all Division staff should refrain from writing on or marking any original documents placed in a source's enforcement or permit file. If comments are necessary, the staff member should make a photocopy of the original document and keep the marked copy in his or her own personal files.

Your cooperation in this effort is greatly appreciated. If you have any questions concerning this issue, please contact Julie Wrend at ext. 3111 or Jill Cooper at ext. 3269.

"Disclosure of Emission Data Claimed as Confidential Under Sections 110 and 114(c) of the Clean Air Act," 56 Fed. Reg. 7042 (Feb. 14, 1991)

Memorandum by the Colorado Office of Attorney General

Typically persons submitting information pursuant to sections 110 and 114(a) of the Clean Air Act, concerning controlled and uncontrolled emission rates and emission parameters of a pollutant or group of pollutants, do so under a claim of confidentiality under section 114(c) of the Act. Section 114(c) provides "[a]ny records, reports or information obtained under subsection (a) . . . shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential[.]. In 56 Fed. Reg. 7042 (Feb. 14, 1991), EPA published its official policy concerning what classes of data submitted to it under sections 110 and 114(a) of the Clean Air Act constitute "emission data" and as such cannot be withheld from disclosure as confidential, as follows.

EPA presently determines that data submitted to it as emission data does not qualify as confidential if it meets the following definition under 40 CFR 2.301(a)(2)(i):

- a. Definitions. For the purpose of this section: (2)(i) Emission data means, with reference to any source of emission of any substance into the air--
 - (A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
 - (B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emission which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source), or any combination of the foregoing;
 - (C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

The table below lists the specific data fields which EPA presently considers to constitute emission data and provides a brief description of what each data field describes. The descriptions are intended to provide general information. This list is not exhaustive and, therefore, other data might be found, in a proper case, to constitute emission data.

Emission Data Fields

Facility Identification: The following data fields are needed to establish the identity and location of emission sources, this shall also include a description or an identifier of the device,

installation, or operation constituting the source. These data are used to locate sources for dispersion evaluation and exposure modeling.

Plant name and related point identifiers

Address

City

County

AQCR (Air Quality Control Region)

MSA, PMSA, CMSA (Metropolitan Statistical Areas)

State

Zip code

Ownership and point of contact information

Locational Identifiers: Latitude & Longitude, or UTM Grid Coordinates

SIC (Standard Industrial Classification)

Emission point, device or operation description, information

SCC (Source Classification Code)

Emissions Parameters: The following data fields are needed to establish the characteristics of the emissions. This information is needed for the analyses of dispersion and potential control equipment.

Emission type (e.g., nature of emissions such as CO₂, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)

Emission rate (e.g., the amount released to the atmosphere over time such as kg/yr or lbs/hr)

Release height (e.g., height above ground level where the pollutant is emitted to the atmosphere)

Description of terrain and surrounding structures (e.g., the size of the area associated with adjacent structures in square meters and terrain descriptions such

as mountainous, urban, or rural)

Stack or vent diameter at point of emissions (e.g., the inside diameter of vent at the point of emission to the atmosphere in meters)

Release velocity (e.g., velocity of release in m/sec)

Release temperature (e.g., temperature of release at point of release in degrees Kelvin)

Frequency of release (e.g., how often a release occurs in events per year)

Duration of release (e.g., the time associated with a release to the atmosphere)

Concentration (e.g., the amount of an emission stream constituent relative to other stream constituents expressed as parts per million (ppm), volume percent, or weight percent)

Density of the emissions stream or average molecular weight (e.g., density expressed as fraction or multiple of the density of air; molecular weight in g/g-mole)

Boiler or process design capacity (e.g., the gross heating value of fuel input to a boiler at its maximum design rate)

Emission estimation method (e.g., the method by which an emission estimate has been calculated such as material balance, source test, use of AP-42 emission factors, etc.)

Percent space heat (e.g., the percent of fuel used for space heating)

Hourly maximum design rate (e.g., the greatest operating rate that would be expected for a source in a 1-hour period)

The EPA has determined that the above data are emission data and releasable upon request. Future requests for information will indicate that these emission data will not be held confidential. This determination applies only to the data listed in the table. Determinations will continue to be made on a case-by-case basis for data not specified in this generic determination.

AG File No. E9219042.41