

## **PROCEDURES FOR HANDLING REQUESTS FOR PROTECTION OF TRADE SECRETS as CONFIDENTIAL MATERIAL**

- 1) Any records, reports, or information submitted to the Department may be claimed as confidential trade secrets by the submitter. Any such claim must be asserted at the time of submission in accordance with the provisions of these procedures. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim of confidentiality is asserted, the documents will be reviewed by an attorney in the Legal Division, and a determination made as to whether the information submitted is entitled to protection as a trade secret. Procedures for the receipt, processing and handling of trade secrets are set forth herein as follows.
- 2) It shall be the responsibility of the person claiming any information as confidential under the provisions of paragraph 1) above to clearly mark each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons said person believes that such information is entitled to protection as a trade secret. The affidavit, which may not be claimed as confidential information, must also recite the following:

"The applicant agrees to act as an indispensable party and to exercise extraordinary diligence in any legal action arising from the Department's denial of public access to the documents or information claimed herein to be a trade secret."
- 3) Any document submitted to the Department that contains information for which a claim of confidentiality is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all the information being submitted, including that portion considered to be confidential, and a second part with the confidential information redacted as well as that not deemed by the submitter as confidential.
- 4) No information shall be protected as confidential information by the Department unless it is submitted in accordance with the provisions of paragraphs 2) and 3) above. No information shall be afforded protection as confidential information unless the Department finds that such protection is necessary to protect trade secrets and that such protection will not keep from public disclosure of the identity, amount, frequency, and concentration of the emissions or the characteristics of waste materials and the probable effects of introduction of the waste into the environment.
- 5) Pursuant to 40 C.F.R. § 122.21, information required by National Pollutant Discharge Elimination System ("NPDES") permit application forms may not be

claimed confidential. This exclusion includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

40 C.F.R. § 122.7 states: "Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or permittee;
  - (2) Permit applications, permits, and effluent data."
- 6) For coal mining permits and operations, 30 C.F.R. § 773.6(d)(3)(i) protects information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment. ADEQ will comply with the requirements for the protection of coal exploration information found in 30 C.F.R. § 772.15. 30 C.F.R. § 772.15(b) protects trade secrets, privileged commercial or financial information relating to the rights of the persons intending to conduct coal exploration. It requires that information requested to be held as confidential pursuant to paragraph (b) shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.
  - 7) All information which the Department determines is entitled to protection shall be marked with the term "ACCEPTED" and shall be protected as confidential information.
  - 8) Whenever the Department finds that information has not been submitted in accordance with the requirements of paragraphs (2) and (3) above, or the Department determines that the information cannot be protected as a trade secret, the Department shall mark the information "REJECTED" and promptly return such information, along with the written basis for the determination, to the submitter. The procedures outlined in this paragraph (8) may be in conflict with similar provisions found in APC&EC Regulations 6, 12, 20, and 23. In the event of such conflict, Regulations 6, 12, 20, and 23 will be followed until further modification.

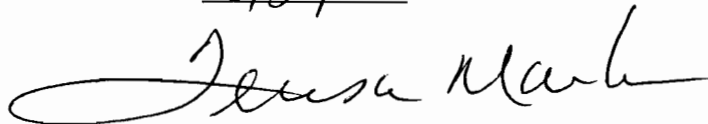
Such person shall have thirty (30) days to: 1) demonstrate the information is entitled to protection as confidential information; or 2) request review of the decision to the Director.

- 9) All information which is accepted as confidential shall be stored in a secure location and only those personnel of the Department specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires such access in order to carry out that person's responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of these procedures or regulations.

- 10) The person(s) designated by the Director to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the dates of such access.
- 11) As necessary to carry out the duties of the Department, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the person who submitted the confidential information is informed of the transmittal<sup>1</sup> and if the information has been acquired by the Department under the provisions of any state law or Arkansas Pollution Control and Ecology Commission Regulation.
- 12) Nothing contained herein shall be construed to limit the Department's authority to release confidential information during emergency situations or as required by court order.

**EFFECTIVE DATE**

This policy is effective on 8/30/12

A handwritten signature in black ink, appearing to read "Jessa Mark". The signature is written in a cursive style with a large, looping initial "J".

---

<sup>1</sup> The Solid Waste Management Act specifically requires the owner or operator of a facility to which the information pertains be informed two weeks prior to the transmittal. Ark. Code Ann. § 8-6-214(d)2(A).