

4.4 Application and Review Process/ Confidential Information

Applicability:

Relates to claims of confidentiality of information submitted in association with a permit application. The information may be described as a trade secret, confidential business information, proprietary information or with similar language.

Content:

The Missouri Clean Water Law does not provide specific confidentiality provisions or requirements related to information submitted in association with permit applications. Section 644.026.1 (21) and (24) indicates that information received by representatives of the Clean Water Commission (i.e. water pollution control staff) in conjunction with various work activities shall be available to the public unless it constitutes trade secrets or confidential information of the person from whom it was obtained. Exceptions include effluent data and when disclosure of the information is required pursuant to any federal water pollution control act.

The Public Participation rules in 10 CSR 20-6.020(3)(A) address confidential information. This part of the rule indicates that information may be made confidential if trade secrets would be revealed if the department made it available to the public. However, this information cannot include effluent data, documents or reports contained in any issued permit or reports of the Water Pollution Control Branch (formerly Program).

The Code of Federal Regulations is more specific. Rules for the National Pollutant Discharge Elimination System, specifically 40 CFR 122.7, state:

§ 122.7 Confidentiality of information.

(a) In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

(b) *Applicable to State programs, see §123.25.* 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.

(c) *Applicable to State programs, see §123.25.* Information required by NPDES application forms provided by the Director under §122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

Note that the referenced section, 40 CFR 122.21, is the very detailed listing of the mandatory information and other requirements related to NPDES Permit applications. The state permitting program is conducted in accord with the federal NPDES requirements unless equivalent or more stringent state requirements are in place.

Water pollution control staff can receive and review information that an applicant labels as confidential, a trade secret, etc. The information is kept separate from other application information submitted and is returned to the applicant when the review is complete. However, effluent data and any information used to establish a permit limit, a "reasonable potential" for water quality standards violations, monitoring requirements and other permit conditions cannot be considered confidential. Such information is part of the permit application file and is available to the public.

This may result in objections from and communications and negotiations with the applicant. There is no ability to compromise on this requirement. If the information is needed to establish a permit condition or provision, it must be part of the public record for the permit application. If the applicant does not or cannot agree with this, an alternative approach to establishing the permit condition or provision must be utilized.

Legal References:

Missouri Clean Water Law, Chapter 644, RSMo

[644.0026.1 \(21\)](#) Powers and duties of commission--rules, procedure.
[and \(24\)](#)

Code of State Regulations

[10 CSR 20-6.010\(3\)\(A\)](#) Construction and Operating Permits - Continuing Authorities - Required; Characteristics of an Authority

Code of Federal Regulations

[40 CFR 122.7](#) EPA Administered Programs: The NPDES - Confidentiality of information.

[40 CFR 123.25\(a\)\(3\)](#) State Program Requirements - Requirements for permitting.

Other Links:

Key Words:

Confidentiality, trade secrets, proprietary information, confidential business information

Page ID: 4.4 Confidential Information

Revised By: Jim Penfold

Modification Date: January 31, 2006