

CONFIDENTIALITY: HOW SAFE ARE YOUR SECRETS?

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Businesses routinely submit detailed, technical information about their plant and operations to regulatory agencies to comply with environmental, health, and safety regulations. Often this information includes trade secrets. Unless you take specific, meticulous steps to protect trade secret information, the public has access to everything submitted to a regulatory agency.

The term "public" includes competitors, potential buyers, customers, sales people, suppliers, neighbors and anyone else with an interest in your plant. Businesses, consultants, attorneys environmental groups and private citizens may review environmental, health and safety files.

What can they find out? Determined researchers can unearth detailed lists of production equipment including manufacturer, model number, capacity and date installed from environmental reports. Files may also hold process flow diagrams, construction specifications, piping and instrumentation diagrams, ventilation diagrams and other detailed technical information. Want to know if a plant is producing up to its capacity? You may find the answer in their regulatory files. A review of environmental health and safety files may also uncover accidents, spills, process upsets, process chemistry, enforcement issues, complaints and even information on competitive bids.

Can you keep confidential information out of the hands of your competitors and the general public? Often yes. State and federal regulatory agencies generally allow you to protect trade secret information. To protect your data, you need to take the following steps:

Treat the information as confidential within your business. Restricting who has access to the information strengthens your claim of confidentiality.

Be Consistent. Request confidentiality for the data everywhere it appears. Failing to claim an item as a trade secret in one part of a report may prevent you from protecting the item as a trade secret anywhere else.

Defend your data. If an agency mistakenly releases confidential data, request that they get the material back and notify the recipients that they cannot use or disseminate the data.

Review your consultant's work. Don't assume your consultant took proper steps to assert confidentiality when submitting reports about your facility. Failure to make the proper confidentiality claim in a monitoring or modeling report can undermine a claim for confidentiality made for data elsewhere, making it public.

State and local data privacy laws do not always conform to the federal Freedom of Information Act. If you submit a report claiming trade secret protection to a local agency, you need to make sure that you have also followed state and federal procedures if these agencies will have access to the report.

If you have trade secret information worth protecting, it is worth reviewing it with an attorney familiar with local, state, and federal data privacy regulations. After you have

made your confidentiality request, you should have your attorney review submittals to the agency to make sure they do not contain information that may compromise your trade secrets.

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