

**Environmental Protection Division, Air Protection Branch**  
**Procedures for Requesting that Submitted Information be Treated as Confidential**  
**January 18, 2000**

The company/applicant must substantiate its confidentiality claim by showing that the information meets the requirements for non-disclosure under the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, Georgia Air Quality Act at O.C.G.A. § 12-9-19, Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 *et seq.*, and the Rules for Air Quality Control at Rules 391-3-1-.03(5) and 391-3-1-.08. Please be advised that Georgia law allows a very limited scope of information to be withheld from the public. While O.C.G.A. § 12-9-19 and Rule 391-3-1-.08 provide that "[i]nformation relating to secret processes, devices, or methods of manufacture or production obtained by the division . . . shall be kept confidential," EPD believes that this phrase is but a general statement of the more specific "trade secrets" exemption found in the Georgia Open Records Act at O.C.G.A. § 50-18-72(b)(1) and defined in the Georgia Trade Secrets Act at O.C.G.A. § 10-1-761(4). Therefore, EPD interprets O.C.G.A. § 12-9-19 and Rule 391-3-1-.08 to provide that substantiated "trade secrets" will be treated as confidential, but that "reports on the nature and amounts of stationary source emissions obtained by the division" will not. In particular, the Air Protection Branch has determined that the following information constitutes "nature and amount" and cannot be treated as confidential:

1. Information necessary to determine the identity, amount, frequency, concentration, stack parameters, or other characteristics (to the extent related to air quality) of any emission which has been or will be emitted by the source (or any pollutant resulting from any emission by the source), or any combination of the foregoing.
2. Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions that, under an applicable standard or limitation, the source is, was, or will be authorized to emit (including, to the extent necessary for such purposes, a description of the manner or the operation of the source).
3. 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).

If the company/applicant believes that some or all of the information contained in any submitted application or other document (including any attachments/exhibits) is entitled to confidential treatment under Georgia law, the company/applicant must specify by page, section and/or item number, those portions of the application/document which the company/applicant considers confidential and support that claim. Therefore, for **each item** of information that the company/applicant claims is subject to confidential treatment, the company/applicant must submit detailed comments addressing each of the following issues:

1. The legal basis of the company's/applicant's confidentiality claim;
2. Why disclosure of this information is not required by the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et. seq.*;
3. If the company/applicant claims that all or some of the information constitutes a trade secret, how that information meets the definition of a "trade secret" in the Georgia Trade Secrets Act, O.C.G.A. § 10-1-760 *et seq.*, at O.C.G.A. § 10-1-761(4).
4. The period of time for which confidential treatment is requested (*e.g.*, until a certain date or until the occurrence of a certain event, etc.);
5. Whether there have been pertinent confidentiality determinations by the United States Environmental Protection Agency (EPA), the Environmental Protection Division (EPD), other State agencies, or other federal agencies. If so, enclose a copy of each such determination; and
6. Any other issues the company/applicant deems relevant.

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Please note that the company/applicant bears the burden of substantiating its confidentiality claim. If relevant facts necessary to the substantiation are themselves claimed to be confidential, please identify them so that EPD may maintain their confidentiality. In the absence of such identification, the company's/applicant's comments will be made available to the public without further notice to the company/applicant. If facts in the substantiation are claimed to be confidential, the company/applicant will need to supply EPD with a public version of any and all submittals with the information claimed to be confidential redacted as indicated herein.

The company's/applicant's substantiation of its confidentiality claim for its application/document (including any attachments/exhibits) and a public version of the application/document (including any attachments/exhibits) as required herein must be submitted with the application/document. Failure to submit such substantiation and public version at that time shall constitute a waiver by the company/applicant of any confidentiality claim the company may have had and EPD will be free to release the information. After the EPD's review of the company's/applicant's substantiation of its confidentiality claim, EPD will notify the company/applicant as to whether and what, if any, information will be treated as confidential at this time. EPD reserves the right to modify its position in the future as to the company's/applicant's confidentiality claim; however, the company/applicant will be notified of such modification. In the event EPD notifies the company/applicant that it will not treat as confidential any or all of the information that the company/applicant claims is confidential, EPD will allow the company/applicant a reasonable amount of time, but not to exceed two weeks, in which to obtain a court order preventing disclosure of the information by EPD. If such order is not obtained, the information that the company/applicant claims is confidential will be subject to disclosure pursuant to the Georgia Open Records Act.

Each page of the application/document (and any attachments/exhibits) containing information claimed to be confidential must be prominently marked with the word "CONFIDENTIAL." Additionally, the following notation must be prominently displayed on the cover page of the company's/applicant's application/document (and any attachments/exhibits) containing information claimed to be confidential:

**“Note: This document contains information that *the company/applicant* deems CONFIDENTIAL.”**

The company/applicant must also submit a public version of the application/document (including any attachments/exhibits) that has the information claimed to be confidential redacted, not replaced, *i.e.*, the reader must be able to ascertain from the application/document itself that information has been excluded. Specifically, the public version must be an exact copy of the application/document (including any attachments/exhibits) submitted to EPD, except for the redaction of information claimed to be confidential. If the company/applicant wishes to add explanatory information in the public version of the application/document (including any attachments/exhibits), such information must be in brackets **and** underlined. Additionally, the words "**Public Copy**" must be prominently displayed on the cover page and every page of the application/document (including any attachments/ exhibits) and the following notation must be prominently displayed on the cover page of the application/document (and any attachments/exhibits):

"Note: Pursuant to a claim of confidentiality, information in this application/document (including attachments/exhibits) has been redacted by *the company/applicant* by [explain how the information was redacted, *e.g.*, by blacking it out or by putting brackets where the information was, etc.]. Information appearing in brackets **and** which is underlined has been added by *the company/applicant*."

**Note:** The words "*the company/applicant*" appearing in the sentences in quotations above shall be replaced by the actual company's/applicant's name.

Lastly, if the applicant's/company's application/document (including attachments/exhibits) is being submitted to EPD electronically or on a diskette, this submission must comply with the instructions contained in this document and the substantiation and public version must be submitted with the application/document.