

# Appendix C: Confidentiality Guidance

## Confidentiality and Permit Applications

In general, the information contained in a permit application is public data, and the MPCA will release it to any member of the public when so requested. See Minn. Stat. §116.075. However, an applicant for a permit can request that the MPCA Commissioner hold as confidential the following types of material:

- Sales figures
- Processes or methods of production unique to the owner or operator
- Information which would tend to affect adversely the competitive position of the owner operator
- Security information
- Trade secret information.

The governing statutes are Minn. Stat. §116.075 and §13.37. Copies of the statutes in effect at the time this manual was written are included in this appendix. For the most recent version, see the following website: <http://www.revisor.leg.state.mn.us/stats/>.

## Minnesota Statutes on Data Confidentiality

### Minnesota Statutes 2003

#### 13.37 General nonpublic data.

Subdivision 1. Definitions. As used in this section, the following terms have the meanings given them.

(a) "Security information" means government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.

"Security information" includes crime prevention block maps and lists of volunteers who participate in community crime prevention programs and their home addresses and telephone numbers.

(b) "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(c) "Labor relations information" means management positions on economic and non-economic items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

(d) "Parking space leasing data" means the following government data on an applicant for, or lessee of, a parking space: residence address, home telephone number, beginning and ending work hours, place of employment, work telephone number, and location of the parking space.

(e) "Internal competitive proposal" means a proposal to provide government services that is prepared by the staff of a political subdivision in competition with proposals solicited by the political subdivision from the private sector.

Subd. 2. Classification. The following government data is classified as nonpublic data with regard to data not on individuals, pursuant to section 13.02, subdivision 9, and as private data with regard to data on individuals, pursuant to section 13.02, subdivision 12: Security information; trade secret information; sealed absentee ballots prior to opening by an election judge; sealed bids, including the number of bids received, prior to the opening of the bids; internal competitive proposals prior to the time specified by a political subdivision for the receipt of private sector proposals for the services; parking space leasing data; and labor relations information, provided that specific labor relations information which relates to a specific labor organization is classified as protected nonpublic data pursuant to section 13.02, subdivision 13.

Subd. 3. Data dissemination. Crime prevention block maps and names, home addresses, and telephone numbers of volunteers who participate in community crime prevention programs may be disseminated to volunteers participating in crime prevention programs. The location of a National Night Out event is public data.

HIST: 1980 c 603 s 15; 1981 c 311 s 11,39; 1982 c 545 s 24; 1984 c 436 s 15; 1985 c 248 s 4; 1990 c 573 s 3,4; 1996 c 440 art 1 s 5,6; 1997 c 111 s 6; 1998 c 371 s 1; 1Sp2003 c 8 art 2 s 7

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### **116.075 Hearings and records public.**

Subdivision 1. All hearings conducted by the Pollution Control Agency pursuant to sections 103F.701 to 103F.761 and chapters 115 and 116 shall be open to the public, and the transcripts thereof are public records. All final records, studies, reports, orders, and other documents prepared in final form by order of, or for the consideration of, the agency, are public records. Any documents designated

as public records by this section may be inspected by members of the public at all reasonable hours and places under such rules as the agency shall promulgate.

Subd. 2. Any records or other information obtained by the Pollution Control Agency or furnished to the agency by the owner or operator of one or more air contaminant or water or land pollution sources which are certified by said owner or operator, and said certification, as it applies to water pollution sources, is approved in writing by the commissioner, to relate to (a) sales figures, (b) processes or methods of production unique to the owner or operator, or (c) information which would tend to affect adversely the competitive position of said owner or operator, shall be only for the confidential use of the agency in discharging its statutory obligations, unless otherwise specifically authorized by said owner or operator. Provided, however that all such information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air and land resources so long as such analyses or summaries do not identify any owner or operator who has so certified. Notwithstanding the foregoing, the agency may disclose any information, whether or not otherwise considered confidential which it is obligated to disclose in order to comply with federal law and regulations, to the extent and for the purpose of such federally required disclosure.

HIST: 1971 c 887 s 1; 1973 c 374 s 20; 1985 c 248 s 70; 1987 c 186 s 15; 1990 c 391 art 10 s 3

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## **Trade Secret and Emissions Data Determinations**

Disclaimer: This document is not intended to substitute for a complete reading of the associated State and Federal Laws (provide a link), rather it is intended as supplemental information.

### **Trade Secret**

In order to qualify as confidential information, something must first qualify as a trade secret, but there are good examples provided in the statutes. The definition of "trade secret" in Minn. Stat. §13.37 indicates that certain things are often clearly a trade secret (e.g., a formula, pattern, compilation, program, device, method, technique or process) if the data was supplied by the regulated party, if it was the subject of efforts by the regulated party to keep it secret AND if it has independent economic value as a result of not being generally known.

Under Minn. Stat. §116.075, data submitted to the MPCA can be certified by the regulated party to relate to sales figures, processes or methods of production that are unique to the regulated party, or information which would tend to adversely affect the competitive position of the regulated party if it were generally known. Some information would clearly not be a trade secret (information about non-process units, e.g., boilers used for heat; manufacturer name of standard equipment used by an industry sector, e.g., Graco spray gun). The MPCA cannot automatically accept this criteria as being met. The company must make an effort to show that the information meets the Minnesota Statutory requirements for trade secret. For example, if the regulated party claims confidentiality under Minn. Stat. §116.075, the party must certify the data and show that it fits into one of the three

categories in the statute (using Form CR-03). If it is data from a water pollution source, the Commissioner must approve the certification in writing.

## Emissions Data

When trying to determine if something is emissions data under 40 CFR § 2.301(a)(2)(i), there are three criteria. The first two can be summarized as (A) information used to determine actual emissions, and (B) information used to determine potential or allowable emissions. This includes information used to determine “the identity, amount, frequency, concentration and other characteristics” of the emissions. The third one is not usually difficult (general description of the location and nature of the source).

40 CFR § 2.301(a)(2)(ii) goes on to give some exemptions for R&D data. While this only applies to R&D facilities, it gives further detail as to what data EPA has defined to be emissions data. Since it must be considered public emissions data for an R&D source, it would obviously be public emissions data for a non-R&D source. This can be summarized as information used to determine compliance with a limit or standard, or information used to demonstrate the likelihood of compliance with a limit or standard (e.g., information used to determine the appropriate level of periodic monitoring).

The figure at the end of this document is the Emissions Data Pyramid (Figure C-1). It shows that certain qualifying trade secret information, if requested by the Permittee, can be kept confidential.

Historically, the main area of disagreement is Level 3 of the Pyramid; therefore, the following examples focus on when things under Level 3 can or can't be kept confidential. The examples show that the decision usually hinges on what limits apply to the unit. If a unit is only subject to group limits (e.g., VOC cap), it is likely that unit specific data could be confidential. However, if the individual unit is subject to limits (NSPS, Minn. Performance Standards, etc.), information used to derive the limit and determine compliance or the likelihood of compliance with that limit would all be public.

## Examples

### Example 1

Boiler used to generate process steam. The boiler capacity is used to determine if an NSPS applies. The boiler capacity is 80 MMBtu/hr and was constructed in 1995; therefore, it is subject to NSPS, Subpart Dc. It is capable of burning natural gas and No. 2 fuel oil. The PTE is calculated using EPA published emissions factors from AP-42. While the pyramid might imply that all but a very generic method of estimation could be kept confidential, this is not the case due to the NSPS standard. All of the above information is said to be emissions data since it will be used to determine what emissions limits apply (size, age, and fuels) and the likelihood of compliance with those limits (AP-42). If the company wanted to “hide” the true capacity of the unit, the unit could be permitted at the maximum capacity under the given standard (100 MMBtu/hr). The permit application

would say the capacity was “less than or equal to 100 MMBtu/hr), but then the calculated PTE of the unit would need to be based on 100 MMBtu/hr.

### Example 2

Emission Units in a source category for which there is an NSPS that regulates VOC emissions. The units only emit VOCs. The units are of varying age so only some are affected facilities under the NSPS. The NSPS limit that applies is a limit on total VOC emissions from the NSPS unit. In addition, all of the units are subject to a group limit for VOC. For the units not subject to the NSPS, unit specific capacity and throughput can be kept confidential. The capacity is not used to determine PTE (group VOC limit was the PTE). In addition, compliance with the group limit can be determined with a central tracking system, so individual throughput is not needed for compliance or actual emissions calculations.

For the NSPS-affected units, the NSPS requires actual throughput records for each unit to demonstrate compliance with an NSPS VOC limit. So, for the NSPS-affected units, actual throughput is public information, but maximum capacity can still be held confidential since it is not used to determine actual or potential emissions (potential is set as the NSPS VOC limit) or compliance with the standard.

### Example 3

A process unit subject to a VOC control efficiency limit and a VOC synthetic minor limit. The calculation methodology for PTE and actual emissions is the equation:  
$$\text{VOC usage} * (1 - \text{control}) = \text{emissions}$$

The permit specifies that the control efficiency must be greater than or equal to 95% and the emissions must be less than or equal to 39 tons per year. Any permit language or limit is public information. Since there is only one variable left in the equation, the question of whether or not it can be treated as confidential is moot, since it can be easily determined using the public information. For this particular unit, the capacity of the unit is not used to determine PTE (the limit is) and it is not used to determine the likelihood of compliance with the limit, since this is measured directly through usage. So, capacity can be kept confidential but actual throughput is public.

### Example 4

A spray booth that emits VOC/HAP and PM. The applicable requirements are a facility-wide or group VOC and HAP limit, a unit specific PM limit from the Industrial Process Equipment Rule, and a unit specific PM control efficiency. As stated under Example 2, for a VOC group limit, the capacity of an individual unit might be kept confidential; however, in this case, the unit is also subject to a PM and control efficiency limit. In this case, the airflow is needed to determine the rule allowable emissions rate, so maximum airflow is considered public. The control efficiency, since it is a permit limit, is also public. In addition, the maximum gun capacity, maximum solids content, and worst-case transfer efficiency are used to determine the likelihood of compliance with this limit, so they are also public. If the company wants to “hide” the true maximum gun capacity and solids content, they could specify ones that are significantly above the actual

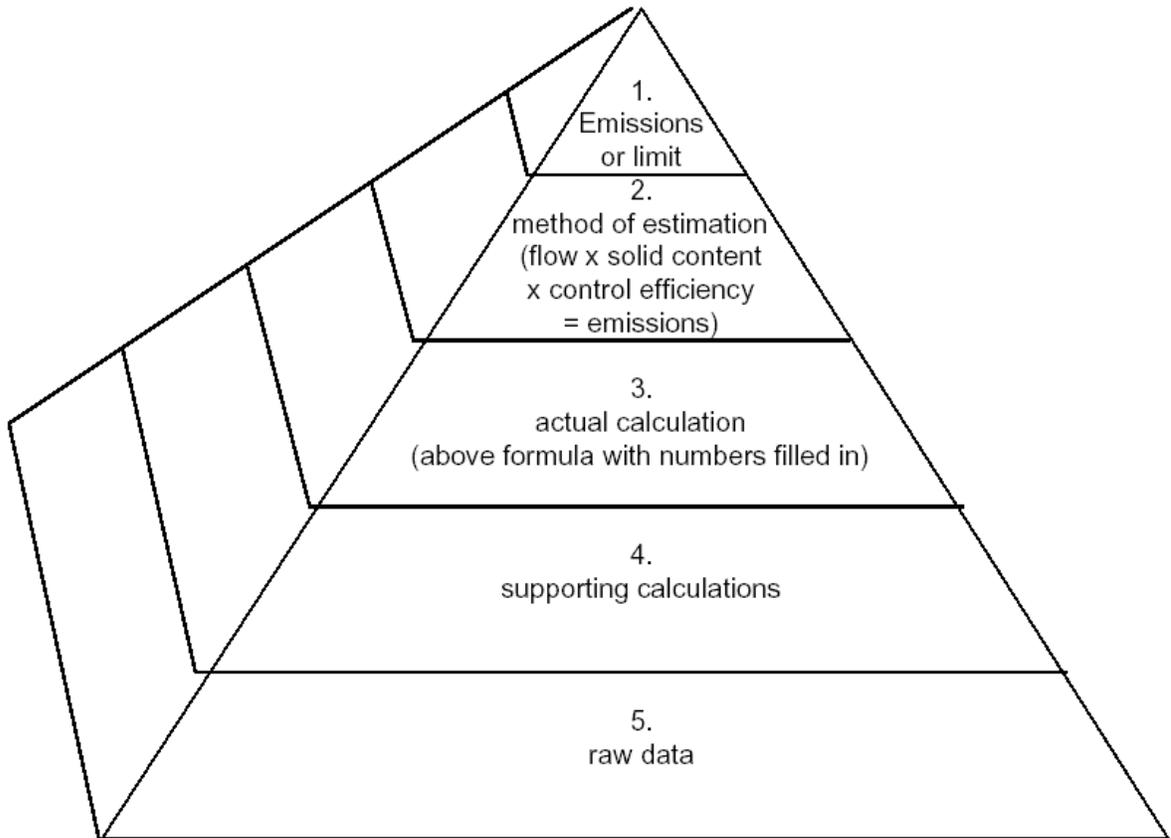
maximums. In this example, the company wants to “hide” the spray gun technology, so they have chosen a transfer efficiency based on the worst-case gun on the market, not their particular guns. However, like in Example 1, the specified transfer efficiency is then used for all analyses and regulatory decisions (e.g., if the new number shows them to be close to the IPER emission limits, more stringent monitoring or testing might be required).

#### **Example 5**

The company uses a unique process to apply coating material. The process emits VOCs, HAPs and PM. The remainder of the emission units emit only VOCs/HAPs. A facility-wide cap limits VOC (and HAP) emissions. The uncontrolled PM emissions are below all thresholds of concern. The company chose not to take credit for PM control equipment or PM use during the application process in order to keep the process confidential. The only applicable requirement for PM is the Industrial Process Equipment Rule. All VOC, HAP and PM emissions can be calculated from material usage records. Therefore, only the method of calculating actual emissions by mass balance and actual facility-wide material usage rates are public information.

Unit-specific throughput, and specific information on true actual PM emissions (versus “PM usage”) can be kept confidential.

**Figure C-1: Emissions Data Pyramid**



Levels 1 and 2: These levels are generally emissions data.  
The MPCA will always have data from these levels.  
Information is public under Clean Air Act.

Level 3: This level is sometimes emissions data.  
The MPCA will always have data from this level.

Level 4: This level is generally not emissions data.  
MPCA may or may not have data from this level in its possession.  
Qualifying trade secrets may be kept confidential.

Level 5: This level is not emission data.  
This information is typically not submitted to MPCA.

## Figure C-2: The Information "Onion"

This figure is one that illustrates "exceptions within exceptions", relevant to determining whether data obtained by the MPCA under the Clean Air Act is Public or Private.

### The Information "Onion"

- Barb Freese  
1997

State-held air-related information is...

