

# Confidentiality justification and notice of public availability of data submitted to the MPCA

## Confidentiality justification

If you are claiming that your application contains information that qualifies for confidential treatment you will need to provide a detailed explanation for why the information qualifies for confidential treatment. Your detailed explanation must cover the following points:

- Why the data is not emissions data as defined in 40 CFR § 2.301; and
- The specific statute under which the information qualifies as confidential.

### References:

- [40 CFR § 2.301](#)
- [Federal Register Vol. 56, No. 35](#)
- [Minn. Stat. § 13.37, subd. 1\(b\)](#)
- [Minn. Stat. § 116.075](#)

Information in a permit application may be considered confidential (or non-public) if any state law makes it so. The two legal provisions most likely to apply to permit applications protect the following kinds of data:

#### **Minn. Stat. § 116.075, subd. 2**

Data furnished to the agency that 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.

#### **Minn. Stat. § 13.37, subd. 1(b)**

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.

**However**, even if the information falls under one of the above categories, **if it is considered emissions data (defined in 40 CFR § 2.301), then the information is considered public.**

Both the Clean Air Act and U.S. Environmental Protection Agency (EPA) regulations require that “emission data” submitted to the MPCA under Title V or Minnesota’s State Implementation Plan must be available to the public.

In addition, EPA has issued guidance on what type of information it generally considers to be emission data (Federal Register Vol. 56, No. 35; February 21, 1991).

Please note that only **specific** data within an application can be considered confidential and not the entire application or permit. If you do not provide the required information, the MPCA will not provide any special protections for your application, and it is possible that your information could be released to the public.

## Notice of public availability of data submitted to the MPCA

The information you submit to the MPCA with your permit application is available to the public under state and federal laws, except for certain specific kinds of information meeting statutory standards for confidential treatment. However, to have your information treated confidentially by the MPCA, you must certify that the information qualifies for confidential treatment and explain why. This document describes the most relevant laws that allow the MPCA to treat application information confidentially, and the steps you must take to obtain confidential treatment of your data.

The MPCA will review your request and respond to you in writing. If your request is approved, the confidential material will be kept in a non-public file at the MPCA. The information will be kept in a locked file until your request is either denied or approved. If you send the MPCA any other documents that contain the confidential data, you must label it and request confidential treatment again.

The MPCA can agree to keep your data confidential. However, if the EPA requests the information from the MPCA, the MPCA will generally require you to provide it directly to EPA. The material will not be treated as confidential by the EPA unless you directly request it. Requests for the EPA to keep data confidential are governed by Part 2 of Title 40 of the *Code of Federal Regulations*. Requests to EPA for confidentiality should be sent to: Chief, Grants Management and Programs Evaluation Section, EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604.