


**San Joaquin Valley**  
**Unified Air Pollution Control District**  
Permit Services

**Confidential Information Classification and Handling**

Approved By: 	Approval Date: <u>December 13, 1999</u>
Arnaud Marjollet Director of Permit Services	Revision Date: <u>September 26, 2017</u>

**I. Purpose**

The purpose of this policy is to identify a procedure to designate information as confidential and to specify a procedure for handling information once confidential status has been granted. This policy also addresses the handling of information currently in District files that was informally designated confidential by the applicant before this policy was in place.

**II. Applicability**

This policy applies to all information supplied to the District. It does not apply to information, reports, etc. produced or generated by the District, except and to the extent such District documents disclose information claimed to be confidential.

**III. Background**

Rule 1030 allows any person furnishing records to label them as "trade secrets." If the District finds the trade secrets label to be justified, the records will be treated as confidential and will not be considered part of the public record.

Historically, confidential classification requests and material classified as confidential were handled in a variety of ways in predecessor air districts. In some cases it is not clear whether the predecessor district actually deemed requested information confidential or not and in some cases there is no written documentation of the justification for confidential classification of information exists. Addressing this uncertainty through the procedures below is critical to our efforts to avoid the release of confidential trade secrets.

#### **IV. Definitions**

The following definitions from Rule 1030 are applicable to this policy:

##### **A. Public Records:**

All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any source operation will produce, which the District or any other state or local agency or district requires any applicant to provide before such applicant builds, erects, alters, replaces, operates, sells, rents, or uses such source operation, are public records.

All air and other pollution monitoring data, including data compiled from stationary sources, are public records.

All air pollution emission data, including those emission data which constitute trade secrets, as defined in Section 4.0, are public records. Data used to calculate emission data are not emission data for the purpose of this policy. Data which constitute trade secrets and which are used to calculate emission data are not public records.

##### **B. Trade Secrets:**

Trade secrets are not public records under this rule and shall be treated as confidential. Trade secrets may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

## V. Procedures for Designating Material Confidential

- A. To designate material as confidential, the applicant must submit a written request specifying exactly which material they wish to designate as confidential and justifying how the information qualifies as trade secrets pursuant to the definition in Rule 1030, Confidential Information.
- B. If District staff receives information marked confidential by the applicant, but without proper justification, we must notify the applicant **in writing and within 10 days** that justification must be provided (see attached form letters and "Application for Confidential Classification of Source Data"). The same procedure applies if a review of District files pursuant to a public record request reveals information that has been marked confidential by a permittee, but lacks proper justification. Such information must not be part of the public record while the applicant is notified of the requirement for justification and while confidential status is under review. Contacting the permittee, submission of the written justification for confidential classification, and the determination of confidential classification should all transpire in less than ten days if we have already received a public information request for such information. Pursuant to Rule 1031, public information requests must be responded to within 10 days of receipt (or such longer period as can be justified provided notification is given to the requesting party within 10 day as to when the requested information will be made available). The Director of Permit Services' approval is required before informing a requestor that information will not be available within ten days of a request.
- C. Upon receipt of a request for confidential classification for source data, we must notify the applicant of the decision to grant or deny confidential classification within ten working days (see attached letters).

## VI. Procedures for Filing Material Designated Confidential

When information in a document is deemed confidential pursuant to District Rule 1030, staff shall make two versions of the document:

- An original complete version stamped or otherwise designated as “confidential”
- A redacted version that will be publically available

When creating these two documents, staff shall use the procedures detailed below:

### **Original version containing confidential material:**

Each complete original document containing confidential material shall be scanned into the EDMS system using the appropriate EDMS designation to reflect the confidential status of each document. Upon approval of the request for confidentiality, the original document containing confidential information is NOT made available to the public

If working with a paper copy of the original document, staff shall:

- Staff shall ensure the first page of document contains a stamp indicating the document contains confidential information.
- Prior to submitting the document for EDMS scanning, staff shall ensure the **confidential status is set to “Yes”** on the EDMS coversheet.

If working with an electronic copy of the original document, staff shall:

- Staff shall ensure the first page of the document contains a **“Confidential” watermark or other stamp** indicating the document contains confidential information prior to uploading into EDMS.
- Refer to FYI – 330 for the procedure on how to upload documents into EDMS via the OnBase software.

### **Redacted version that will be publically available:**

Upon approval of the request for confidentiality, a redacted version of each original document shall be created and scanned into the EDMS system using the appropriate EDMS designation to reflect the non-confidential status of each document. The redacted copy is made available to the public.

If working with a paper copy of the original document, staff shall use the following procedures:

- A. If the majority of the information on a page in the original document is confidential, create a replacement page on paper with the heading, “Information on this page has been designated confidential, and has been removed from this file. The confidential

information includes the following: (Describe the type of information removed, such as 'chemical formulas' or 'process diagram', etc.).

- B. If only part of the information on a page in the original document is to be designated confidential, create a replacement page by photocopying the original page containing confidential information, and alter the photocopy in such a way that the confidential material is not discernable in any way. Make a photocopy of the altered photocopy. This photocopy will be used to create a redacted document. Shred the altered photocopy.
- C. Create a redacted copy of the document by replacing each confidential page in the original document with the appropriate replacement page.
- D. Staff shall ensure the confidential status is set to "No" on the EDMS coversheet for the redacted copy of the document.

If working with an electronic copy of the original document, staff shall use the following procedures:

- A. Create a redacted copy of the document using the Redact Tool in Adobe Acrobat Pro to alter each page containing confidential information in the document in such a way that the confidential material is not discernable in any way.

Refer to FYI – 330 for the procedure on how to use Adobe Acrobat Pro software to create a redacted copy of an electronic document.

- B. Upload the redacted public document into EDMS via the OnBase software, using the appropriate EDMS designation to reflect the confidential status of the document.

Refer to FYI – 330 for the procedure on how to upload documents into EDMS via the OnBase software.

**Note:** The procedures described above apply to the Permit Services Division's application review if material classified as confidential appears in the application review. Our Authority to Construct, Permit to Operate, and Emission Reduction Credit Banking Certificate documents are public records. Confidential information may be referred to in such documents, but should not be disclosed in such documents.

Date

Company Name  
Address  
City, State

RE: Confidential Classification of Source Data

Dear XXXX:

We are in receipt of XXXX and support information submitted by you on XXXX. In the information received, some material was identified as confidential.

In order to classify material confidential, you must specify in writing exactly which material you feel qualifies as confidential information and justify how it qualifies as a "trade secret" pursuant to the attached definition. You may use the attached "Application for Confidential Classification of Source Data" to make your written request. If you do not show how the material qualifies, it will be part of the public record.

Thank you for your cooperation. Should you have any questions, please contact XXXX of Permit Services at (XXX) XXX-XXXX.

Sincerely,

Arnaud Marjollet  
Director of Permit Services

XXXXXXXXXXXX  
Permit Services Manager

Enclosures

XXX

Date

Company Name  
Address  
City, State

RE: Confidential Classification of Source Data

Dear XXXX:

During a recent review of files for XXXXX (company name and file description), we discovered material labeled confidential. There did not appear to be any written justification for District approval of the request for confidential classification.

If you wish to classify material contained in District files as confidential, you must specify in writing exactly which material you feel qualifies as confidential information and justify how it qualifies as a "trade secret" pursuant to the attached definition. You may use the attached "Application for Confidential Classification of Source Data" to make your written request. If you do not show how the material qualifies, it will be part of the public record.

Thank you for your cooperation. Should you have any questions, or would like to receive a copy of the material marked as confidential, please contact XXXX of Permit Services at (XXX) XXX-XXXX.

Sincerely,

Arnaud Marjollet  
Director of Permit Services

XXXXXXXXXXXXX  
Permit Services Manager

Enclosures

XXX

Date

Company Name  
Address  
City, State

RE: Confidential Classification of Source Data

Dear XXXX:

The District has reviewed your request dated XX/XX/XX asking the District to designate as confidential certain specific information pertinent to facility X-XXXX, project XXXXXX. Based on this review, confidential status has been granted for the subject information only. The confidential information will be kept separate from the public record.

Thank you for your cooperation. Should you have any questions, please contact XXXX of Permit Services at (XXX) XXX-XXXX.

Sincerely,

Arnaud Marjollet  
Director of Permit Services

XXXXXXXXXX  
Permit Services Manager

Enclosures

XXX



Date

Company Name  
Address  
City, State

RE: Confidential Classification of Source Data

Dear XXXX:

The District has reviewed your request dated XX/XX/XX asking the District to designate as confidential certain specific information pertinent to facility X-XXXX, project XXXXXX. Based on this review, confidential status cannot be granted, since the subject information is specifically identified as "public records" by section 3.0 of Rule 1030, Confidential Information. Please be advised that the information is part of the public record.

Thank you for your cooperation. Should you have any questions, please contact XXXX of Permit Services at (XXX) XXX-XXXX.

Sincerely,

Arnaud Marjollet  
Director of Permit Services

XXXXXXXXXX  
Permit Services Manager

Enclosures

XXX

**REQUEST FOR CONFIDENTIAL CLASSIFICATION OF INFORMATION**

Company name \_\_\_\_\_

General nature of business \_\_\_\_\_

Applicant's name \_\_\_\_\_ Title \_\_\_\_\_  
(please print)

Mailing address \_\_\_\_\_ Zip \_\_\_\_\_

Location at which equipment is operated \_\_\_\_\_

Specific information for which the request is made \_\_\_\_\_

Type of source operation \_\_\_\_\_

Justification for confidential classification (attach additional sheets if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: Materials which are defined in the Clean Air Act as being public records are: ambient air monitoring data, emission data, and any other information other than trade secrets used in evaluating an application for Authority to Construct or Permit to Operate. Such materials CANNOT be classified as confidential. See attachment for definition of trade secrets.**

**Certification:** I, \_\_\_\_\_ (applicant's signature) hereby certify that the information submitted with this application is to the best of my knowledge true and correct.

## **DEFINITION OF TRADE SECRETS**

### **Rule 1030, Section 4.2**

“Trade secrets are not public records under this section. ‘Trade Secrets,’ as used in this section may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors, who do not know or use it.”