

US EPA ARCHIVE DOCUMENT

HAZARDOUS WASTE DISCLOSURE REGULATIONS

WHEREAS, there is a need to provide specific regulations for the disclosure of information involving the management of hazardous waste, the following regulations are adopted by the Department of Natural Resources and Environmental Control pursuant to 7 Del. C. §6304(c).

1.00 DEFINITIONS

1.01 "DNREC" means the Department of Natural Resources and Environmental Control.

1.02 "Division" means the Division of Air & Waste Management.

1.03 "Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which information can be retrieved and copied relating to hazardous waste, including informal writings, drafts, and information, but not including materials readily available to the public, such as books, journals, and periodicals available through reference libraries, etc.

1.04 "Request" means a request to inspect or obtain a copy of one or more records.

1.05 "Requestor" means any person who has submitted a request for information to DNREC or the Division.

2.00 POLICY ON DISCLOSURE OF RECORDS

2.01 The Division will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons in business information entitled to confidential treatment, and the need for DNREC to promote frank internal policy deliberations and to pursue its official activities without undue disruption.

2.02 All Division records shall be available to the public unless they are exempt from disclosure. Opinions, orders, regulations, press releases, pamphlets, educational materials, statements of policy, printed speeches, and such other documents of general public interest shall be available for review without a formal request being presented.

2.03 All nonexempt records shall be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor.

2.04 If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed, after the exempt material has been deleted.

2.05 This section applies to any written request for a record relating to hazardous waste.

2.06 Only existing records may be requested, and there is no obligation to honor a request for automatic receipt of records as they come into existence.

2.07 Existing records may be subject to routine destruction under a standard record retention schedule and there is no obligation to otherwise retain records.

3.00 FORM OF REQUEST

3.01 A request shall be made in writing, shall reasonably describe the records sought in a way that will permit their identification and location, but otherwise need not be in any particular form.

3.02 While the Division will attempt in good faith to comply with oral requests for inspection or disclosure, such oral requests are not required to be processed in accordance with this subpart.

3.03 If the description of the records sought in the request is not sufficient to allow the Division to identify and locate the requested records, the Division will notify the requestor (by telephone when practicable) that the request cannot be further processed until additional information is furnished.

3.04 The Division will make every reasonable effort to assist in the identification and description of the records sought and to assist the requestor in formulating his request. If a request is described in general terms, the Division may communicate with the requestor (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable by the requestor. Such attempts will not be used as a means to discourage requests, but rather as a means to help identify with more specificity the records actually sought.

4.00 RESPONSIBILITY TO RESPOND

4.01 Each written request shall be marked with the date of receipt and the date by which the response is due. This request shall be forwarded immediately to the office believed to be responsible for maintaining the records requested. If the records are believed to be at separate offices, each office shall be furnished a copy of the request and date of receipt and date the response is due.

4.02 Except as otherwise provided in this section, not later than the 10th working day after the date of receipt of a request for records, the Division shall be responsible for notifying the requestor that the request is granted or denied. If the records are not known to exist or are not in the Division's possession, the requestor shall be notified. Excluded from the 10 working day period is the time which elapses when the requestor is notified that his request does not reasonably identify the records sought and the date the requestor furnishes a reasonable identification. Also excluded from the 10 working day period is any time which elapses between the date that a requestor is notified that prepayment or assurance of payment of fees is required, and the date that the requestor pays (or makes suitable arrangements to pay) such charges. The 10 working day period may also be extended for an additional 10 working days when the Division is unable to respond to the request within the original 10 day period provided that the requestor is notified of such extension and the reason for the delay. The extension of the original 10 day period shall be for one of the following reasons:

(a) Need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) Need to search for, collect, and examine a voluminous amount of separate and distinct records demanded in a single request; or

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(c) Need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

In the event that the Division does not act within the 10 day period, as above defined, the requestor may proceed as though his request has been denied as set out in paragraph 4.05.

4.03 An initial denial of a request may be issued only for the following reasons:

- (a) A statutory provision or court order requires that the information not be disclosed;
- (b) The record is exempt from mandatory disclosure;
- (c) A third person must be consulted in connection with a business confidentiality claim.

4.04 Each initial determination to deny shall be in writing, shall identify the records that are being withheld, shall state the basis for denial of each record or category of records being withheld. However, no initial determination shall reveal the existence or nonexistence of records if the mere fact of the existence or nonexistence of those records would reveal confidential business or personal information, or a confidential investigation. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure or that the State has denied the request in order to resolve a claim of business confidentiality. Each initial determination which denies, in whole or in part, a request for one or more existing, located Division records shall state that the requestor has the right to judicial review of such determination as provided by 29 Del. C. §10005(b).

4.05 Any requestor whose request is denied has the right to judicial review of such determination as provided by 29 Del. C. §10005(b). Suit must be brought within 60 days of such denial and shall be brought by filing a complaint in a court of competent jurisdiction in the county or city where DNREC is located or where the requestor resides.

4.06 Attorney fees and reasonable litigation costs may be assessed against the Department of Natural Resources and Environmental Control by the reviewing court in the event the requestor substantially prevails on judicial review.

5.00 EXEMPT FROM DISCLOSURE

5.01 Records exempt from disclosure are the following:

- (a) Records specifically authorized to be kept secure in the interest of national defense or foreign policy;
- (b) Records related solely to the internal personnel rules and practices of an agency;
- (c) Records specifically exempted from disclosure by statute leaving no discretion on the issue;
- (d) Trade secrets and commercial or financial information obtained from a person as privileged or confidential;

(e) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, to the extent that the production of such records would (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial of an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedures; or (6) endanger life or physical safety of law enforcement personnel;

(h) Examination, operating or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

5.02 Exempt documents may be released at the discretion of the Division if no important purpose would be served by withholding the records.

5.03 A claim of business confidentiality must at the first opportunity provided be asserted by a person claiming confidentiality, or the State may release the information without further notice to the person. A business confidentiality claim must be asserted at the time of submission of information in connection with a permit, permit application or interim status under the hazardous waste program implemented by DNREC. Business confidentiality shall include trade secrets and other related legal concepts which gives or may give a business the right to limit disclosure in order to obtain or retain business advantages it derives from its rights in the information. Any claim of confidentiality as to the name and address of any permit applicant or permittee will be denied. Business information is entitled to confidential treatment if the business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn; the business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures; the information is not, nor has been, reasonably obtainable without the business' consent by other persons (other than governmental bodies) by the use of legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding); no statute specifically requires disclosure of the information; and either (1) the business has satisfactorily shown that disclosure is likely to cause substantial harm to its competitive position or (2) the information is voluntarily submitted and its disclosure would likely impair the State's ability to obtain necessary information in the future.

6.00 FEES

6.01 Fees will be charged for searching for and producing requested records in accordance with the following schedule:

(a) Record search time.

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- (b) Personnel cost per each hour or portion of hour based on rate of pay.
- (c) Reproduction of documents at \$.25 per page.
- (d) Other costs of searching for or duplicating records, which shall be actual direct costs to the DNREC.
- (e) No charge will be made for furnishing records by or for the official use of a federal agency, EPA contractors or subcontractors involved in a contract or grant with DNREC.
- (f) All fees are due and payable in advance or within thirty (30) calendar days of billing; If payment is not received at the end of thirty (30) calendar days, interest and a late payment handling charge will be assessed. Further, if the amount has not been paid within ninety (90) calendar days, a penalty charge will be applied.
- (g) Waiver or reduction of fees chargeable under this section may be granted when the request is by the public news media or the Division determines that the request serves a public interest because furnishing the information can be considered as primarily benefitting the general public.