

AIR MANAGEMENT PROGRAM FACT SHEET



How to Request Confidentiality for Business Information

October 2023

Information submitted to the Wisconsin Department of Natural Resources (DNR) is considered an open record and available for any person to review upon request, according to the State of Wisconsin's open records law. A business may request confidentiality for some information it submits to the DNR and, after review and notice to the public, the DNR may grant in full, deny in full, or grant in part and deny in part the confidentiality request.

The surest way to keep information confidential is to not submit unnecessary information to the DNR. Before submitting information with a confidentiality request, the facility is encouraged to contact the appropriate DNR staff (compliance inspector, permit writer) to discuss if submitting such information is needed for permit application or compliance purposes. Some information submitted by the facility may be deemed a "trade secret" and can be kept confidential, but all other information submitted to the DNR will be made available in response to open records requests, so facilities are encouraged to limit the amount of extraneous information submitted to the DNR.

Once facility-specific information is submitted to the DNR, it can be protected from disclosure outside the agency if the facility receives confidential status. For the DNR to grant confidential status, the applicant must follow the procedures described in s. NR 2.19, Wis. Adm. Code, to show that the information is a "trade secret." Prior to the submittal of the confidentiality request information, the facility is encouraged to have an initial consultation call with a DNR Confidentiality Request Liaison to discuss the review process. The DNR's confidentiality request review process includes the following steps:

1. Facility submits confidentiality request
2. DNR grants interim confidential status
3. DNR makes a preliminary decision to fully grant, fully deny, or grant in part and deny in part a confidentiality request
4. The facility and the public are given notice and the opportunity to contest the preliminary decision
5. DNR issues a final confidentiality determination

Once granted, final confidential status is permanent as long as confidentiality is maintained. It is the responsibility of the applicant to maintain confidential status of the requested information at the facility and to follow the procedures in this document when submitting confidential information to the DNR in the future. Any breach of confidential information, such as posting the information to an external website, submitting the information in a subsequent non-redacted document, or failing to clearly mark applicable information submitted to the DNR as "CONFIDENTIAL" may result in revocation of confidential status.

What is “trade secret?”

Before requesting that any information be treated as confidential, the applicant must evaluate whether the information can be considered a “trade secret.” The burden of proof for showing that specific information constitutes a trade secret is upon the applicant. Under s. 134.90(1)(c), Wis. Stats., there are three elements to a “trade secret:”

1. The material in question must be a formula, pattern, compilation, program, device, method, technique, process, or other type of information.

2. The information 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.

To satisfy this requirement, the confidentiality request should include the actual or potential economic value of the information (in dollars), and details to support this contention. Relevant details may include:

- Why or how the information gives the company a competitive advantage over its competitors
- The work hours and staffing required to develop the information
- Whether the company is the sole possessor of the information
- Whether the general public has knowledge of the information
- Any other relevant factors

3. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

To assist the DNR in establishing whether this requirement is satisfied, the facility is encouraged to provide details in the confidentiality request relating to the level of access to the information. Relevant details may include:

- The number and type of employees with access to the information
- Persons outside of the company with knowledge of the information
- Steps taken to notify employees and others of the confidential nature of the information
- Previous disclosure of the information to another governmental agency and requests to, or approval by, another agency of confidential treatment
- Any other persons or groups the company has disclosed the information to and why
- Past marking of the information as “confidential,” or the existence of any non-disclosure agreements (NDAs) affecting the disclosure of the information
- Other efforts to maintain secrecy
- Any other potentially relevant information

Can the entire submittal be listed as confidential?

No. The applicant must clearly state which portions of the submittal are included in the request for confidential treatment, which may include selected calculations, emission unit descriptions or specifications, data/graphs, portions of permit application forms, compliance reports, etc. Emission data and air pollution control permits issued by the DNR cannot be given confidential status.

What should the facility submit with the request?

The following information shall be included when submitting a request for confidentiality.

1. A notarized and signed affidavit that includes the following:

- The company name, facility location address and the facility identification number (FID #) of the applicant
- The name, position and mailing address of the individual filing the application

- The specific information for which confidential status is sought, including the emission unit ID, the emission unit description and specific data associated with the unit. An example of information that should be included is the actual annual throughput rate in gallons per year for a specific storage tank.
- The type(s) of document(s) that contain this requested information (i.e.: permit application, emission inventory report, inspection report, etc.)
- Specific justifications for each assertion that information meets all three elements of a “trade secret,” as defined in s. 134.90(1)(c), Wis. Stats., and listed under “What is trade secret?” above

2. Two sets of the documents:

- One set of the complete application documents for the public file with the information requested to be treated as confidential redacted
- A second set of complete application documents for the DNR’s confidential file with the information requested to be treated as confidential visible, and clearly labeled as confidential

Where should the request be submitted?

Do not submit any documents that contain confidential information through email. Do not submit any documents that contain confidential information to any regional offices. Do not use certified mail or FedEx to deliver the submittal. Mail the request package to the following address:

Wisconsin Department of Natural Resources
Air Management Program, AM/7
Attention: Permits
101 S. Webster Street
PO Box 7921
Madison, WI 53707-7921

What happens after a request is submitted?

The DNR will conduct a preliminary assessment of the confidentiality request package. The DNR may request additional information if needed. Once the complete request package is received, the DNR will grant “interim confidential status” and keep the requested information confidential until a final determination is made.

After the DNR completes the review of the confidentiality request application, the DNR may propose to grant in full, deny in full, or partially grant and partially deny the request. Depending on the decision, the following procedures are used:

1. Confidentiality request granted in full

The DNR will send a “preliminary grant of confidentiality” letter to the facility and publish a public notice of the preliminary decision. Interested parties and the applicant have 10 days to request an adjudicatory hearing. If no hearing is requested, the DNR will send a “final decision on confidentiality” letter to the facility. If a hearing is requested, a hearing will be held before an administrative law judge (ALJ). Testimony would be under oath and would be subject to cross-examination. The facility would have the burden of showing that its information is entitled to confidential status. The ALJ is required to exercise discretion to determine which individuals may have access to the confidential information and impose protective measures necessary to safeguard confidentiality of the information during and after the hearing. Once the ALJ has made a final decision, this becomes a DNR determination subject to further appeal.

2. Confidentiality request denied in full

The DNR will issue a denial letter to the facility. The facility has 15 days from the date of mailing to appeal the denial decision and request an adjudicatory hearing. Information for which confidential status has been denied will not be open to public scrutiny until 40 days after issuance of the denial. If the denial is appealed, the information is treated as confidential for 40 days after the completion of all appeals.

3. Confidentiality request is granted in part and denied in part

The DNR will issue separate partial grant and partial denial letters to the facility. The partial grant will follow the procedure established in (1) above, while the partial denial will follow the procedures in (2). If partial confidentiality is granted, the facility will need to submit a revised public copy of the document that redacts only the granted confidential information.

The DNR tracks the processing of confidentiality requests using a tracking number derived from the facility's nine-digit facility identification (FID) number and the year of the request. Similar to permit progress monitoring, the processing status of confidentiality requests can be viewed online through the [Air Permit Search Tool](http://dnr.wi.gov/topic/AirPermits/Search.html) (<http://dnr.wi.gov/topic/AirPermits/Search.html>).

1. enter the FID or facility name
2. click the tab for "Permits and Permit Applications"
3. select the permit # with "CONFID" for the documents and milestones associated with this confidentiality request

How is confidentiality maintained?

After information has been granted confidential status, it is the responsibility of the DNR and applicant to maintain confidentiality of the approved information. The applicant must take steps to ensure confidentiality is maintained, including verifying the information is not available to the public online, training staff on how to properly handle confidential information, clearly marking submittals of approved confidential information to the DNR as "CONFIDENTIAL," and by submitting confidential information by hardcopy mail only. The applicant must ensure subsequent submittals of public documents (air permit application, compliance monitoring reports, etc.) to the DNR do not include any confidential information. If confidential information is made publicly available, even for a short time, it may no longer meet the criteria of a trade secret. If any breaches of confidentiality occur, the DNR may need to revoke the confidential status.

Where can a facility go for questions or assistance?

For additional assistance with submitting a confidentiality request, or clarification on the information provided here, contact the Air Management Program at (608) 266-7718 or dnramairpermit@wisconsin.gov (**Do not submit any confidential information through email**).

DISCLAIMER —The Wisconsin Department of Natural Resources (DNR) is committed to promoting diversity, fairness, equity and the principles of environmental justice. We ensure that we do not discriminate in employment, programs, decisions, actions or delivery of services. If you have questions or to request information in an alternative format (large print, Braille, audio tape, etc.), please contact us at 888-936-7463 or <https://dnr.wi.gov/About/Nondiscrimination>



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