



Permitting Division

301 W. Jefferson St., Suite 410, Phoenix, AZ 85003

Phone: 602-506-6010

Email: AQMail@maricopa.gov

Maricopa.gov/AQ



Notice of Confidentiality Information for Applicants

The Maricopa County Air Quality Department (MCAQD) is required to make available all elements in the permit application to the public, per Rule 100 § 402.1. The following must always be made available to the public regardless of an applicant's request for confidentiality, per A.R.S. § 49-487:

1. The name and address of any permit applicant or permittee.
2. The chemical constituents, concentrations and amounts of any emission.
3. The existence or level of a concentration of an air pollutant in the environment.

A claim of confidentiality shall not excuse a person from providing any and all information required or requested by the Control Officer, per Rule 100 § 402.4. A claim of confidentiality shall not be a defense for failure to provide such information, per Rule 100 § 402.5.

To request a record, report, or information be kept confidential, the following rules and statutes must be followed and approved by the Control Officer.

Rule 200 § 411.2 states the MCAQD must receive a notice of confidentiality at the time the application documents are submitted. The notice must contain sufficient information to satisfy both requirements of A.R.S. § 49-487(C):

- a. Precisely identify the information considered confidential in the application documents.
- b. Contain sufficient supporting information to allow the Control Officer to evaluate whether such information satisfies the requirements related to trade secrets or, if applicable, how the information, if disclosed, could cause substantial harm to the person's competitive position.

Trade secret is defined in Rule 100 § 200.131 as information to which **all** of the following apply:

- a. A person has taken reasonable measures to protect from disclosure and intends to continue to take such measures.
- b. The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.
- c. No statute, including A.R.S. § 49-487, specifically requires disclosure of the information to the public.
- d. The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

Trade secrets are very limited in scope and require detailed information. For example, a specific chemical generally is not considered a trade secret. However, the percentage or concentration of that specific chemical within a product may be considered confidential if it meets all definitions set forth in A.R.S. § 49-487 and Rule 100 § 200.131.

Within 30 days of receipt of a notice of confidentiality, the Control Officer shall make a determination as to whether the information satisfies the requirements per A.R.S. § 49-487 and Rule 100 § 200.131. The Control Officer will notify the applicant in writing. If the Control Officer

approves the notice of confidentiality, the notice will be included in the administrative record of the permit application. The notice will pertain only to the approved confidential information.

Referenced Materials:

Rule 100

402 CONFIDENTIALITY OF INFORMATION:

- 402.1** The Control Officer shall make all permits, including all elements required to be in the permit under Rule 210-Title V Permit Provisions of these rules and Rule 220-NonTitle V Permit Provisions of these rules, available to the public.
- 402.2** Any records, reports, or information obtained from any person under these rules shall be available to the public, unless the Control Officer has notified the person in writing as specified in Section 402.3 of this rule and unless a person:
 - a.** Precisely identifies the information in the permit(s), records, or reports, which is considered confidential.
 - b.** Provides sufficient supporting information to allow the Control Officer to evaluate whether such information satisfies the requirements related to trade secrets as defined in this rule.
- 402.3** Within 30 days of receipt of a notice of confidentiality that complies with Section 402.2 of this rule, the Control Officer shall make a determination as to whether the information satisfies the requirements for trade secrets as defined in this rule and so notify the applicant in writing. If the Control Officer agrees with the applicant that the information covered by the notice of confidentiality satisfies the statutory requirements, the Control Officer shall include a notice in the administrative record of the permit application that certain information has been considered confidential.
- 402.4** A claim of confidentiality shall not excuse a person from providing any and all information required or requested by the Control Officer.
- 402.5** A claim of confidentiality shall not be a defense for failure to provide such information

200.131 TRADE SECRETS: Information to which all of the following apply:

- a.** A person has taken reasonable measures to protect from disclosure and the person intends to continue to take such measures.
- b.** The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.
- c.** No statute, including A.R.S. § 49-487, specifically requires disclosure of the information to the public.
- d.** The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

Rule 200

411 PUBLIC RECORDS; CONFIDENTIALITY:

411.1 The Control Officer shall make all permits, including all elements required to be in the permit pursuant to Rule 210 of these rules and Rule 220 of these rules available to the public.

411.2 A notice of confidentiality pursuant to A.R.S. § 49-487(C) shall: a. Precisely identify the information in the application documents, which is considered confidential. b. Contain sufficient supporting information to allow the Control Officer to evaluate whether such information satisfies the requirements related to trade secrets or, if applicable, how the information, if disclosed, could cause substantial harm to the person's competitive position.

411.3 Within 30 days of receipt of a notice of confidentiality that complies with Section 411.2 of this rule, the Control Officer shall make a determination as to whether the information satisfies the requirements for trade secret or competitive position pursuant to A.R.S. § 49-487(C)(1) and so notify the applicant in writing. If the Control Officer agrees with the applicant that the information covered by the notice of confidentiality satisfies the statutory requirements, the Control Officer shall include a notice in the administrative record of the permit application that certain information has been considered confidential.

A.R.S.

49-487. CLASSIFICATION AND REPORTING; CONFIDENTIALITY OF RECORDS:

A. The board of supervisors by rules which are equal to or more restrictive than those adopted by the director of environmental quality shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the board.

B. The owner, lessee, or operator of a potential air contaminant source shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable and required to determine compliance in a manner acceptable to the control officer, and shall supply monitoring information as directed in writing by the control officer. Such devices shall be available for inspection by the control officer during all reasonable times.

C. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the control officer or a county employee, shall be available to the public, except that the information or any part of the information shall be considered confidential on either of the following:

1. A showing, satisfactory to the control officer, by any person that the information or a part of the information if made public would divulge the trade secrets of the person.
2. A determination by the county attorney that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

D. Notwithstanding subsection C of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.
2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.
3. The existence or level of a concentration of an air pollutant in the environment.