	AIR QUALITY DIVISION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: June 21, 1996 Revised Date: October 21, 1996 and February 28, 1997 Reformatted Date: January 29, 2014	Subject: Procedures for Handling of Confidential Materials and Freedom of Information Requests for Confidential Materials		Category: <input type="checkbox"/> Internal/Administrative <input checked="" type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive
	Program Name: Permits to Install and Renewable Operating Permits		
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A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

INTRODUCTION:

There are cases when a company may submit to the Air Quality Division (AQD) certain types of information that it considers confidential. This information may be received as portions of permit applications, emission inventory reports, as supplemental information, or during field inspections. Michigan Air Pollution Code describes the types of information (e.g. trade secrets) that are exempt from disclosure under the Freedom of Information Act (FOIA). The regulations also provide a time frame for the company to demonstrate to the AQD why the information designated as confidential should not be disclosed.

Historically, this information, when received, has consistently been separated from the public files and placed into locked cabinets by AQD staff. However, until Operational Memorandum (Op Memo) 10 was developed in June 1996, the AQD did not have a formal procedure in place for handling a FOIA request for public files which contained confidential information. This Policy and Procedure document outlines a proactive approach in the receipt and management of confidential information that streamlines their handling at the time of a FOIA request. Additionally, this document provides for the FOIA coordinator or district staff designee to send the requester the non-confidential portion of the files as well as a formal letter of denial for the confidential portion from the FOIA coordinator. And finally, this document replaces Operational Memorandum No. 10.

AUTHORITY:

The Freedom of Information Act (FOIA), Public Act 442 of 1976, provides for the release of information held by public bodies within five (5) business days of a request. It also contains provisions for the public body to exempt from disclosure records of information according to statute. Public Act 451 of 1994, the Natural Resources and Environmental Protection Act, Part 55, Section 5516 provides the statute whereby the AQD may exempt from disclosure information that is determined to meet the criteria for confidentiality.

Also, Section 13 of the Freedom of Information Act, Public Act 442 of the Public Acts of 1976, identifies specific types of information that are exempt from disclosure under the Act. Additional documents relating to the release of information under the Freedom of Information Act are identified as The Attorney General Opinion No. 5500 published on July 23, 1979 and a Director's Letter authorizing the Division Chief to write letters of denial.

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The time allowed for a public body to respond to a request is contained in Section 5 of the Freedom of Information Act. Additionally, Page 269 of The Attorney General Opinion No. 5500 published on July 23, 1979 specifies that the response period starts the day after a request "sufficiently describing" the public record is received. It should be noted that if Lansing staff receive a request that may only be filled from the district office, the response period (5 days) starts on the date that the district receives the request from Lansing, as long as the request was forwarded in a reasonable time frame.

See Appendix A for citations and wording from Public Acts 442 and Act 451 for further information regarding the Authority for this Policy and Procedure document.

POLICY:

The AQD will use a proactive approach in the handling of confidential information. Information received will be screened upon receipt to determine if confidential information is present. The information marked as confidential will be reviewed to determine if it meets the criteria for confidentiality. This approach will insure that all information filed as confidential meets the statutory requirements of Section 5516(2) and (3) of Public Act 451 of 1994. Confidential information shall be reviewed during the technical review by either a Lansing permit engineer or district staff assigned to the source. This approach will help to ensure that further screening, reviewing, and justification is not required when FOIA requests are received and processed for public files containing information marked confidential.

If the above mentioned criteria are not met, the company supplying the information shall be notified and asked to justify their assertion that the material is confidential. Once the justification is received, the AQD shall make the final decision as to whether or not the information is confidential.

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PROCEDURES:

I. FOR INFORMATION MARKED CONFIDENTIAL, RECEIVED PRIOR TO THE ORIGINAL EFFECTIVE DATE OF THIS DOCUMENT, AND NOT PREVIOUSLY REVIEWED AGAINST CONFIDENTIALITY CRITERIA:

Step	Who	Does What
FOIA request for document which contains information marked confidential but not previously reviewed against confidentiality criteria	FOIA Coordinator and/or District Staff	<ul style="list-style-type: none"> • Provide the requester with the public files while withholding the confidential information. • Notify the FOIA coordinator. • FOIA coordinator sends a formal letter of denial to the requester.
Company asked to provide written justification for confidentiality	FOIA Coordinator/Company Representative	<ul style="list-style-type: none"> • Notify the company that written justification for the confidentiality of the information must be provided. • Company will provide a demonstration, to the satisfaction of the AQD, that the information should not be disclosed. Company allowed 25 days from receipt of the notification described above.
Justification not submitted and/or denied by AQD	FOIA Coordinator/District Staff	<ul style="list-style-type: none"> • Company asserting confidentiality notified that after 8 business days of receipt of notice, the withheld information will be sent to the FOIA requester.

II. FOR GENERAL SUBMITTALS:

General handling of confidential information that may be obtained during field inspections, contained in applications, supplemental materials, emission inventory data, or otherwise submitted to the AQD, will be handled as follows:

Step	Who	Does What
Application and/or miscellaneous material received by the AQD	AQD Staff	<ul style="list-style-type: none"> • Screen to determine if material contains information marked confidential by the company.

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Submittal <u>does not</u> contain material marked confidential	AQD Staff	<ul style="list-style-type: none"> • Process the material/information using normal procedures for public files.
Submittal <u>contains</u> information marked confidential and meets statutory requirements	AQD Staff	<ul style="list-style-type: none"> • Separate the confidential portion from the public files. • Include in permit file the notice "Confidential Information Notice Permit to Install No." This document provides a brief description of the following information: <ul style="list-style-type: none"> (i) A statement that notes that a portion of the document is classified confidential. (ii) A general description of the type of information contained in the confidential portion. (iii) Specifies the location where the confidential portion is filed. • Staff person assigned to the facility will review the confidential portion of the submittal, within a reasonable timeframe, to determine if statutory criteria is met. • Attach note to the document(s) stating that, "we reviewed and agree that the information is confidential". • Place confidential information in designated locked cabinet.
Submittal <u>does not</u> meet statutory requirements	AQD Staff	<ul style="list-style-type: none"> • Notify company and specify which item(s) do not meet the criteria for confidentiality. The company must respond to this notification. • Information marked confidential is contained in the confidential files until staff determines if confidentiality claimed is valid.
Company response received—All items addressed	Company Representative/AQD Staff	<ul style="list-style-type: none"> • AQD staff reviews response to ensure all items have been addressed. • If company has <u>changed</u> its assertion of confidentiality: <ul style="list-style-type: none"> ○ Staff should request unmarked information to replace the original "marked confidential" information; or ○ Return the information to the company; or ○ Attach a note stating that "the information has been reviewed and determined to not be confidential", and place in the public file.

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Company response received—All items <u>not</u> addressed	Company Representative/AQD Staff/AQD Division Chief	<ul style="list-style-type: none"> • Follow chain-of-command when denying the request for confidentiality. Currently, the Division Chief has the responsibility for denials. • Division Chief notifies the company by certified letter. This letter shall specify the exact items which do not meet the statutory requirement for confidentiality. • The information is considered to be non-confidential and releasable to the public upon request. • Staff maintains the information in the locked cabinets until dispute is resolved.
Company response received—determined <u>not</u> to be confidential	AQD Staff	<ul style="list-style-type: none"> • AQD has determined that information is not confidential, but necessary to maintain in the files. • Staff will attach note stating: "the material is not confidential" and place in the public files. (The company may supply unmarked information to replace the original).

III. FOR PERMITS TO INSTALL (PTI); NEW SOURCE REVIEW (NSR):

Application and miscellaneous material receipt and handling:

Step	Who	Does What
PTI application	Company/AQD Staff	<ul style="list-style-type: none"> • Application screened for presence of confidential information. Application is assigned to permit engineer for review. • Permit engineer determines whether any information marked "confidential" meets appropriate criteria, which is: <ul style="list-style-type: none"> ○ A "trade secret" or "secret process" or, ○ Production, commercial, or financial information that if released would jeopardize the company's competitive position. • Permit engineer to separate the information they determined to be confidential from the rest of the application. <ul style="list-style-type: none"> ○ The confidential information is placed in locked cabinet.

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AQD staff disagrees with confidentiality claim	AQD Staff/Company	<ul style="list-style-type: none"> • Permit engineer notifies company of disagreement regarding confidentiality claim. <ul style="list-style-type: none"> ○ This can be done via telephone call with written follow-up documentation. ○ This step to occur after engineer performs cursory review of application. • Permit engineer notifies their immediate supervisor and district staff assigned to the source. • Normal chain-of-command decision making must be followed. Currently, the Division Chief has the responsibility for denials.
AQD and company agree— information does not meet criteria for confidentiality	AQD Staff	<ul style="list-style-type: none"> • Under <u>no</u> circumstance is AQD staff to cross-out, white-out, or otherwise alter a confidential stamp. • The information should be returned to the company or shredded and replaced by the company with the same information that has <u>not</u> been marked confidential. • The material may be placed in the public files with a note stating the information is not considered confidential.
Handling outdated, confidential information	AQD Staff	<ul style="list-style-type: none"> • Discuss with the unit supervisor. • Return information to company; or • Shred it; or • Place in public file with note attached. • Notify district staff of action.
Permit review complete; permit approved	AQD Staff	<ul style="list-style-type: none"> • Permit engineer insures that the non-confidential file indicates that confidential information is available and is located in a designated locked cabinet. This is accomplished by including in permit file the notice "Confidential Information Notice Permit to Install No."
<ul style="list-style-type: none"> • Permit engineers shall inform district staff whenever they challenge a claim of confidentiality. Likewise, district staff shall notify permit section staff if they receive and challenge a company's claim of confidentiality. 		

IV. FOR RENEWABLE OPERATING PERMITS (ROP):

Receipt and handling of Confidential Information for ROP:

Step	Who	Does What
ROP application received at district office	AQD District Staff	<ul style="list-style-type: none"> • AQD district office secretary notes if application received has been sent to the correct district office. • If correct district office, the application is date stamped and logged in. • If incorrect district office, the secretary will forward the application to the correct district office.

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Step	Who	Does What
ROP application checked for confidential information	AQD District Staff	<ul style="list-style-type: none"> • AQD district secretary checks for presence of confidential information (prior to administrative completeness check). • If information marked confidential is present, it is separated from the application and placed in a designated, locked file cabinet. • The application is placed in a file folder which is marked "confidential information for this source". • The application is reviewed for administrative completeness. • If information marked confidential is not present in the application, the application is reviewed for administrative completeness.
Review of information marked confidential	AQD District Staff	<ul style="list-style-type: none"> • The information marked confidential is reviewed during the technical review of the ROP application. • AQD reviewer determines if the information is: <ul style="list-style-type: none"> ○ A "trade secret" or "secret process", or ○ Production, commercial, or financial information which the disclosure would jeopardize the competitive position of the company from whom the information was obtained. • AQD reviewer determines if the information meets the criteria for confidential information. <ul style="list-style-type: none"> ○ The information is maintained in locked file cabinets while decision is being made.
AQD district staff disagree with confidentiality claim	AQD District Staff	<ul style="list-style-type: none"> • AQD reviewer notifies the company of disagreement regarding confidentiality claim. <ul style="list-style-type: none"> ○ The company must demonstrate to the satisfaction of the AQD that the information meets the criteria for confidentiality. ○ Information is maintained in locked cabinets while the dispute is being resolved. • AQD reviewer notifies immediate supervisor. • Normal chain-of-command decision making shall be followed. Currently, the Division Chief has the responsibility for denials.

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Justification for confidentiality claim is submitted	Company/AQD District Staff	<ul style="list-style-type: none"> • The information is reviewed by AQD staff. • If it is determined that the information does <u>not</u> meet the criteria of confidentiality; <ul style="list-style-type: none"> ○ The confidential stamped information is returned to the company; or shredded; or replaced by the company. ○ If it is determined that the information is necessary to the files, a note may be attached which states information was reviewed and <u>not</u> considered "confidential" and placed in public files.
AQD district staff agrees with confidentiality claim	AQD District Staff	<ul style="list-style-type: none"> • If AQD reviewer agrees with the confidentiality claim, the information is maintained in locked file cabinets. • A note is attached to the information stating that it has "been reviewed and agree is confidential".

V. FOR FOIA HANDLING:

Receipt and handling of FOIA requests:

Step	Who	Does What
FOIA request received	FOIA Coordinator/AQD Staff	a. Immediately forward to the FOIA coordinator, or district staff designee. b. Request reviewed and sent to the appropriate staff person.
FOIA request can be filled	FOIA Coordinator/AQD Staff	<ul style="list-style-type: none"> • The information requested is readily available and the request can be processed within the 5 day timeline.
FOIA request cannot be filled	FOIA Coordinator/AQD Staff	<ul style="list-style-type: none"> • Request cannot be processed within 5 days due to: <ul style="list-style-type: none"> ○ Additional time required to prepare the document, or ○ The document is located at another location or in archive storage. (In this case, a one-time 10 day extension may be requested. However, the request must be made within 5 days of receipt of the FOIA request).

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Public file indicates portion of the information is confidential	FOIA Coordinator/AQD Staff	<ul style="list-style-type: none"> • If public file indicates that a portion of the information has been determined to meet the criteria for confidentiality and is located in the confidential file, then: <ul style="list-style-type: none"> ○ A formal letter of denial for the FOIA officer's signature is prepared. Letter will indicate the exact reason (including brief description—Section 13 of PA 442 of 1976) why a portion of the file was withheld. ○ Letter for partial denial of the files will be signed and mailed with the non-confidential portion of the files to the requester.
Request for confidential information	FOIA Coordinator/AQD Staff	<ul style="list-style-type: none"> • Notify the company that their files have been requested through FOIA and that confidential information has been withheld from the requester.
Confidential information status questioned by AQD staff	AQD Staff/Company Representative	<ul style="list-style-type: none"> • Information claimed as confidential is questioned by AQD staff due to a change in technology; the information was not previously reviewed against statutory requirements for confidentiality; or company has to be notified that the document has been requested through FOIA. • Company has 25 days from receipt of notification to respond to the AQD demonstrating confidentiality of information. <ul style="list-style-type: none"> ○ This also applies if AQD staff reviews the information at the time of the FOIA request and disagrees with a former AQD determination because technology has changed; equipment no longer patented, etc.. Then, the AQD will decide as follows: <ul style="list-style-type: none"> ▪ Agree with company and keep information confidential. AQD staff will inform company of the decision. ▪ Disagree with the company and notify them that the AQD will release the information within 8 working days after the company has received notification, by certified mail, of the decision to release the information.
FOIA requested document is confidential	AQD Staff/FOIA Coordinator	<ul style="list-style-type: none"> • FOIA officer must be notified immediately by AQD staff that the information requested is confidential. • Denial letter is sent to the requester. • Company is notified as indicated above.

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FOIA requested document does not exist	FOIA Coordinator/AQD Staff	<ul style="list-style-type: none">• Letter sent to requester indicating the information does not exist. This is done after attempts to locate the information, which reasonably fit the description of the requested information, does not identify that such information exists.
<p>NOTE: The AQD Division Chief has been delegated the authority to issue letters of denial for information requested through FOIA. Where indicated FOIA officer above, the AQD Division Chief has this authority.</p>		

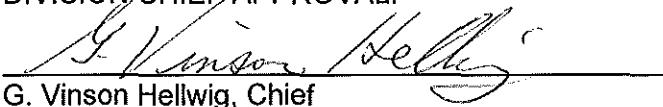
REFERENCES:

Public Act 442 of 1976, as amended
Public Act 451 of 1994, Part 55, as amended
Attorney General's opinion
Director's delegation letter

APPENDICES:

Excerpts from Public Act 442 of 1976
Public Act 451 of 1994, Part 55, Section 5516
Template for PTI files entitled "Confidential Information Notice Permit to Install No."
Office of Attorney General Opinions can be found at:
http://www.michigan.gov/documents/ag/FOIA_Pamphlet_380084_7.pdf?20131204074943
Specifically, Attorney General Opinion No. 5500 published on July 23, 1979 is found here.

DIVISION CHIEF APPROVAL:


G. Vinson Hellwig, Chief
Air Quality Division

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Appendix A

Excerpts from Public Act 442 of 1976,
Public Act 451 of 1994, Part 55, Section 5516

The Freedom of Information Act, Public Act 442 of the Public Acts of 1976, specifies in Section 3 that "(1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body..."

Confidentiality of submitted information related to external communications is addressed in Section 13(1)(d) and (f), (i) through (iii) Public Act 442 of the Public Acts of 1976.

The following are the pertinent conditions under which confidentiality may be claimed:

Sec. 13(1) A public body may exempt from disclosure as a public record under this act any of the following:

(d) Records or information specifically described and exempted from disclosure by statute.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

Public Act 451 adds more conditions onto the restrictions for confidentiality with the following:

Sec. 5516(2) A copy of each permit, permit application, order, compliance plan and schedule of compliance, emissions or compliance monitoring report, sample analysis, compliance certification, or other report or information required under this part, rules promulgated under this part, or permits or orders issued under this part shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

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(3) A person whose activities are regulated under this part may designate a record or other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents, as being only for the confidential use of the department. The department shall notify the person asserting confidentiality of a request for public records under section 5 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.235 of the Michigan Compiled Laws, the scope of which includes information that has been designated by the regulated person as being confidential. The person asserting confidentiality has 25 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process, or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained, and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part demonstrates to the satisfaction of the department that the information should not be disclosed. If there is a dispute between the person asserting confidentiality and the person requesting information under Act No. 442 of the Public Acts of 1976, the department shall make the decision to grant or deny the request. After the department makes a decision to grant a request, the information requested shall not be released until 8 business days after the regulated person's receipt of notice of the department's decision. This does not prevent the use of the information by the department in compiling or publishing analyses or summaries relating to ambient air quality if the analyses or summaries do not identify the person or reveal information which is otherwise confidential under this section. This section does not render data on the quantity, composition, or quality of emissions from any source confidential. Data on the amount and nature of air contaminants emitted from a source shall be available to the public.

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Appendix B
Confidential Information Notice

Permit to Install No. _____.

In accordance with Section 5516(3) of the Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended, confidential information submitted with, or in support of, this permit, or created as a result of the review of this permit, has been removed from this file and placed in a separate file in a secure location. The information contained in the separate confidential file (also identified as No. _____) consists of:

- Detailed process description
- Process flow diagrams
- Detailed emission calculations
- Detailed equipment list
- Equipment drawings
- Financial information
- Process information, which may include material usage rates, energy and mass balances, operating temperatures and pressures, production/processing rates, formulation data, or reaction chemistry.
- Other (*describe below*):
DESCRIPTION

Non-confidential information submitted with, or in support of, this permit, or created as a result of the review of this permit, remains in this file. Section 5516(3) provides that any information related to the quantity, composition, or quality of air pollutant emissions is non-confidential.

The Air Quality Division provides this notification as required by Section 14 of the Freedom of Information Act, 1976 P.A. 442, as amended.

Permit Reviewer: _____

Date: _____

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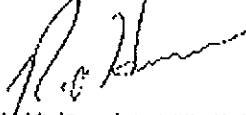
MICHIGAN DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT

INTEROFFICE COMMUNICATION

EXECUTIVE ORDER 2009-45
DELEGATION LETTER

Letter No.: AQD-55-01
Effective Date: October 1, 1995
Revised Date: May 8, 2001
Revised Date: August 23, 2010

TO: All Unit Supervisors

FROM: Rebecca A. Humphries, Director 

SUBJECT: Delegation Pursuant to Executive Order 2009-45 and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (Act 451) – General Delegations

I hereby delegate all statutory authority, power, duties, functions, and responsibilities of Part 55, as outlined below, unless circumstances in individual cases warrant a decision at a higher level. The powers and duties are delegated for the purposes of administering the program pursuant to statute and rules. Authorities, powers, duties, functions, and responsibilities of Part 55 that are reserved for the director or a deputy director of the Department of Natural Resources and Environment (DNRE) and not delegated are at the end of this document.

This delegation includes anyone acting in the capacity of the position named in the delegation below. Any authority or power delegated to a subordinate position may be exercised by a position higher in that position's chain of command on a case-by-case basis, as circumstances warrant.

Description of Authority or Responsibility	Authority	Authority or Responsibility Delegated To:
1. Authority to encourage cooperation in controlling air pollution and encourage plans by cooperative groups for controlling air pollution.	MCL 324.5503	All AQD Staff
2. Authority to cooperate with other agencies in control of air pollution.	MCL 324.5503	All AQD Staff
3. Authority to conduct studies and research as well as educational programs about air pollution.	MCL 324.5503	All AQD Staff
4. Authority to provide technical advice to local communities.	MCL 324.5503	All AQD Staff
5. Authority to require reports and to specify required information.	MCL 324.5503 MCL 324.5522 R 336.202	Chief of the AQD