

	WATER RESOURCES DIVISION SURFACE WATER ASSESSMENT SECTION RESCISSION OF POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Rescinded Date: August 15, 2017	Subject: Procedure for Requesting and Handling Confidential Product Information		Category: <input type="checkbox"/> Internal/Administrative <input checked="" type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive Type: <input type="checkbox"/> Policy <input checked="" type="checkbox"/> Procedure <input type="checkbox"/> Policy and Procedure
	Program Name: Surface Water Quality Program		
	Number: WRD-SWAS-001	Page: 1 of 1	

Water Resources Division, Surface Water Assessment Section, Policy and Procedure No. WRD-SWAS-001, Procedure for Requesting and Handling Confidential Product Information, dated August 20, 2002, is rescinded. This procedure is no longer needed. Companies that want their products reviewed will provide the required information in a manner that allows us to review the product; if we don't have the information, we can't review the product. We will return or destroy the confidential information once we are done with it should we be asked. Also, any records of our evaluations are subject to FOIA and we cannot guarantee confidentiality.

SECTION MANAGER APPROVAL:



Diana Klemans, Section Manager
Surface Water Assessment Section
Water Resources Division



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Staff shall use the following procedure when requesting confidential product information from a supplier and/or manufacturer.

1. Attachment A is completed and sent to the manufacturer. A copy of Attachment B should also be included. A copy of Attachment A is given to the Section Secretary for log-in purposes on Attachment C. Items logged include the request date and the name of the product, facility name, and requestor. This copy of Attachment A is maintained in the logbook until the information is received and then placed in the facility file or product file.
2. Attachment D is completed and sent to the manufacturer by the Section Secretary if the requested information has not been received in 30 days. The secretary also logs on Attachment C the date this letter is sent.
3. Materials received which are marked: "Confidential-Attention Chief of the Great Lakes and Environmental Assessment Section" should be transmitted unopened to the Chief of the Great Lakes and Environmental Assessment Section (GLEAS). The requestor will be notified that the information has been received. If it is determined that confidentiality can be granted, the documents will be stamped "CONFIDENTIAL" in bold red letters. The requestor and the Section Secretary will prepare Attachment E for transmittal to the sender, which acknowledges receipt of the information and confidentiality. Attachment E is signed by the Chief of the Surface Water Quality Division's (SWQD's) Permits Section who was authorized by Director Russell J. Harding, Department of Environmental Quality, in a delegation memo of December 14, 1999, to grant confidentiality for the SWQD. The Section Secretary will log on Attachment C the date the information is received and the date Attachment E is sent. If confidentiality cannot be granted for all or part of the information, the sender shall be phoned by the Chief of GLEAS. If unresolved on the phone, the information will be returned immediately to the sender.
4. The confidential information will be placed in the Section's locked confidential file by the Section Secretary. A tracking sheet (Attachment F) will be completed by the secretary and placed in the facility or product nonconfidential file. Access to the confidential file is through the Chief of GLEAS or the Section Secretary. A confidential information Out Card (Attachment G) will be attached by the secretary to the confidential information file. The secretary will return all confidential information by certified mail 60 days following the completion of the evaluation using Attachment H.
5. The confidential information will be maintained in the locked file at all times except when checked out by authorized personnel.

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6. GLEAS staff must sign and date Attachment G (Out Card) when removing information from the locked file. This Out Card is to be retained in the files with the confidential information. When the confidential information is returned to the sender, the Out Card will be placed in the nonconfidential file with the tracking sheet (Attachment F) by the secretary.
7. Access to confidential information by other state employees will be based on a demonstrated "need to know." The demonstration must be presented to the Chief of GLEAS in writing along with a copy of the written procedure for maintaining confidentiality that equals or exceeds this procedure. All such access to confidential information must be approved by the Chief of GLEAS using the form entitled "Request for Removal of Confidential Materials from the Great Lakes and Environmental Assessment Section's Locked Files" (Attachment I). This form is to be retained in the files with the confidential information. When the confidential information is returned to the sender, the form will be placed in the nonconfidential files with the tracking sheet. Beyond governmental employees, access to confidential information is allowed only by express written approval of the company submitting the confidential information.
8. Copying or recording of confidential information in any manner or form is absolutely forbidden unless done under the guidance and direction of the Chief of GLEAS.
9. Upon completion of the evaluation of the confidential information the requestor will provide the completion date to the Section Secretary for log-in on Attachment C. The secretary shall note when the 60 day holding period will expire, which will require the secretary to return the information to the sender.

Approved:



Date: 8/20/02

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Attachment A

Name and Address

Dear _____:

We are sending this letter to request compositional, toxicological, and environmental fate data on your product, _____.

We have been asked to evaluate the potential environmental effects of this product in regard to _____ . In order to do a thorough evaluation of this material, it is essential that we have a complete list of all components of this product using the Chemical Abstracts Service Registry name and number (or the common chemical name if this is not available) and a listing of the percent content of each of these by weight. This includes all active ingredients, inert materials, and cross-reaction products of the constituents. Please also include the structural formula for each when known. We would also appreciate any toxicological data or references that are available. Data on acute and chronic toxicity to aquatic and terrestrial organisms, as well as information on the rate of degradation of this product, is requested. A product label and/or bulletin including disposal recommendations for this product would also be helpful.

Confidentiality may be granted for trade secret and commercial information dealing with proprietary formulations under the authority of Section 13 of Act 442 of the Public Acts of 1976, as amended. Confidential information is maintained in locked, limited access files and is accessible only by authorized state and federal employees. Our complete written procedure for maintenance of confidentiality is enclosed. Confidentiality must be requested by you in writing at the time of the initial information transmittal to this office. All confidential information will be returned to you by certified mail 60 days following completion of our evaluation. If this product is discharged to the waters of the state, determination of confidentiality will be consistent with Section 3111 of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and Rule 323.2128 of the Michigan Department of Environmental Quality's General Rules.

If the information is not forthcoming within 30 days, we will be unable to complete our evaluation. Without this complete information, we will recommend that this product not be discharged at this facility. The envelope in which the information is transmitted should be marked "Confidential-Attention Chief of the Great Lakes and Environmental Assessment Section."

If you have any questions, please feel free to contact me.

Sincerely,

Great Lakes and Environmental Assessment Section
Surface Water Quality Division
517-_____

Attachment

cc: Section File, SWQD, DEQ

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Attachment B

PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Michigan Department of Environmental Quality
Surface Water Quality Division
Great Lakes and Environmental Assessment Section

Pursuant to Section 13 of the Freedom of Information Act, 1976 PA 442, as amended:

- (1) A public body may exempt from disclosure as a public record under this act:
 - (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 shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.”

Section 3111 of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, also indicates that “The department shall provide proper and adequate facilities and procedures to safeguard the confidentiality of manufacturing proprietary processes, except that confidentiality shall not extend to waste products discharged to the waters of the state.”

The Great Lakes and Environmental Assessment Section (GLEAS), Surface Water Quality Division (SWQD), is a recipient of such trade secret information, which is necessary for the performance of its duties. The Chief of the Permits Section, SWQD, was authorized by Director Russell J. Harding, Department of Environmental Quality, in a delegation memo of December 14, 1999, to grant confidentiality for the SWQD. The request for confidentiality and the basis for such a request (as per the above Section 13 of Act 442) must be submitted in writing at the time the information is transmitted to GLEAS. The envelopes in which the information is transmitted should be marked “Confidential-Attention Chief of the Great Lakes and Environmental Assessment Section.”

Material received that is marked in the above manner will be transmitted unopened to the Chief of GLEAS. If it is determined that confidentiality be granted, the documents will be stamped “CONFIDENTIAL” in bold red letters. A letter that acknowledges receipt of the information and confidentiality will be transmitted to the sender. The existence of this material will be noted in a nonconfidential file using a tracking sheet and the restricted information then placed in a locked file cabinet. Access to this file is through the Chief of GLEAS or the Section Secretary. All confidential information will be returned by certified mail 60 days following completion of the evaluation. If confidentiality cannot be granted, the material will be returned immediately to the sender.

This policy provides guidance to staff regarding the implementation and interpretation of laws administered by the DEQ. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and it does not have the force and effect of law.

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Attachment D

Name and
Address

Dear _____:

As indicated in our communication to your company on _____ (date) we have been asked to evaluate the potential environmental affects of your product(s), _____.

We noted in the communication that to conduct an adequate review of this material, it is essential that specific constituent identity, concentration, and any toxicological and environmental fate information be provided. Further, it was stated that if such information was not provided within 30 days, our recommendation for no discharge of the material will be generated. The 30 days in which you should have responded to this request is now past. Therefore, we are prepared to make the recommendation against discharge. Should you care to honor our request and supply the information or discuss this situation further, please contact me before _____

Sincerely,

Great Lakes and Environmental Assessment Section
Surface Water Quality Division
517-_____

cc: Section File, SWQD, DEQ

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Attachment E

Name and
Address

Dear _____:

This is in response to your _____ containing the chemical information on _____. Thank you very much for voluntarily making this material available to us. Pursuant to Section 13 of the Freedom of Information Act, 1976 PA 442, as amended, and Section 3111 of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, we acknowledge your request for us to maintain the following information as confidential: _____.

It should be understood that this exemption applies only to the information identified in this letter. Any information we obtain from other sources as detection of these materials in the environment will be public information. All confidential materials will be returned to you by certified mail 60 days following the completion of our evaluation.

These materials will be maintained within locked files with limited access. If you have any questions, please contact _____ at 517-_____.

Sincerely,

_____, Chief
Permits Section
Surface Water Quality Division
517-_____

cc: Section File, SWQD, DEQ

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Attachment F

I. CONFIDENTIAL PROPRIETARY MATERIAL SUBMITTED BY

(Name of Sender and Organization Represented)

ON _____
(Date)

PLACED IN SURFACE WATER QUALITY DIVISION'S LOCKED FILES ON _____
(Date)

(Signature)

II. DESCRIPTION OF INFORMATION SUBMITTED AND CONFIRMATION OF CONFIDENTIALITY BY LETTER DATED

(Date)

(Signature)

III. MATERIALS RETURNED TO _____
(Name of Sender and Organization Represented)

BY LETTER DATED _____
(Date) (Signature)

RATIONALE FOR GRANTING CONFIDENTIALITY _____

(Signature)

(Date)

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Attachment H

Name and
Address

Dear _____:

Enclosed is the confidential information you submitted regarding: _____
_____. This material is being returned to you following a time period of 60
days since our completion of the toxicity evaluations of your products. Thank you for making this
information available to us. The confidentiality of this information was maintained as per your request
of _____ under the authority of Section 13 of the Freedom of Information Act,
1976 PA 442, as amended, and Section 3111 of Part 31, Water Resources Protection Act, 1994 PA
451, as amended.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact me.

Sincerely,

Great Lakes and Environmental Assessment Section
Surface Water Quality Division
517-_____

Enclosure

cc: Section File, SWQD, DEQ

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Attachment I

REQUEST FOR REMOVAL OF CONFIDENTIAL MATERIALS FROM THE
GREAT LAKES AND ENVIRONMENTAL ASSESSMENT SECTION'S LOCKED FILES

Materials Requested: _____

Requested by: _____

Reason for Request: _____

I will maintain the above confidential material within my possession at all times and allow no copies to be made of the material nor review of the material by unauthorized personnel.

Signature

GLEAS Justification: _____

Authorized by:

(Signature)
_____, Chief
Great Lakes and Environmental Assessment Section
Surface Water Quality Division

Date Removed: _____

Signature: _____

Date Returned: _____

Signature: _____