



Requesting the Recognition of Trade Secret Protection

The Ohio Environmental Protection Agency (Ohio EPA) uses the following process to recognize an entity's entitlement to trade secret protection. Note that this is merely a guide and neither supplements nor replaces obligations under Federal or State laws.

Defining Trade Secrets

Ohio Revised Code Section 1333.61(D) defines trade secrets as:

"...[I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It 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.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Required Documents

In order to assert a trade secret claim, you shall, at the time of the submission of the underlying documents, submit to Ohio EPA:

- An unredacted copy (identified as such) of the underlying documents, with each page numbered consecutively from beginning to end;
- A proposed public copy (identified as such) of the underlying documents, with each page numbered consecutively from beginning to end;
- A statement that describes each item of information for which trade secret protection is claimed, and that identifies the location of each item in the underlying documents; and
- A sworn or affirmed signature, attesting that the statements made in the submission are true and accurate.

Tip

Ohio Administrative Code 3745-49-03(A) makes it clear that the burden of establishing entitlement to trade secret protection is upon the party requesting that protection.

Tip

Ohio EPA does not have the authority to bestow trade secret status on records that do not constitute trade secrets. Ohio Revised Code 3734.12(G) merely authorizes the Ohio EPA to ensure "only that 'all information entitled to trade secret protection as trade secrets' be accorded confidential status" State ex. rel. Lucas Cty. Bd. of Commrs. v. Ohio Environmental Protection Agency, 88 Ohio St.3d 166, 171, 724 N.E.2d 411 (2000).

Tip

A "proposed public copy" is a copy of the underlying documents with the trade secret information redacted or otherwise removed.

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Required Detail

In addition, you must explain in sufficient detail, with reference to the specific page number in the underlying documents, the following:

- ❑ The nature of the information for which you are seeking protection (i.e. scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone number);
- ❑ How the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use;
- ❑ The efforts used to maintain its secrecy; and
- ❑ An attestation that the information is not generally known outside of your organization or otherwise discoverable in other public documentation.

Tip

If you are entitled to trade secret protection, Ohio EPA will not share the information without your explicit permission, unless otherwise authorized by State or Federal law.

Contact

For more information or questions, please contact the Office of Legal Services at (614) 644-3037 or visit our website at epa.ohio.gov/DivisionsandOffices/LegalServices.