

SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT
POLICIES AND PROCEDURES

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Topic:	<u>Handling of Confidential Information</u>		
Distribution:	<u>Engineering Division Staff</u>		

All procedures discussed within this policy pertain to both North and South County offices of the APCD. A flowchart describing the major points of the policy and procedure is enclosed as Attachment 1. This policy and procedure only applies to written ("hardcopy") submittals. The District will accept confidential information submitted on computer-readable media and such material shall be maintained as confidential in the confidential filing cabinet and/or the computer network.

DETERMINING CONFIDENTIALITY

The pertinent statute addressing confidential information is California Government Code Section 6254.7 (Air pollution data; public records; notices and orders to building owners; trade secrets). This statute states that trade secrets are not public records. Trade secrets are defined as (but are not limited to) any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. Attachment 2 is a copy of this statute.

SUBMITTING CONFIDENTIAL INFORMATION

A cover letter must accompany every submittal of confidential material to the District. The letter must be on company letterhead and state clearly that confidential information is being submitted. Because the material submitted to the District will contain both confidential and non-confidential information (sometimes on the same page), the person who submits confidential information to the District must strictly follow the procedure below.

- 1: Starting with one complete copy of all the information, delete all confidential items. The method of deletion is left to the discretion of the company submitting the material. On each page/drawing from which confidential information has been deleted, stamp

"CONFIDENTIAL INFORMATION DELETED" (or equivalent wording). This copy will be maintained in the District's public files.

- 2: As a separate attachment, submit a second copy of the pages/drawings on which there is confidential material. The confidential information on these pages must be highlighted with a yellow highlighter to distinguish it from the non-confidential information. This attachment will be kept in the District's confidential files.
- 3: For permit applications, the company must declare in Section 4.0 of the District's General Permit Application Form -01 that confidential information either is or is not contained with the application package. The District will not treat any application documents as confidential if this Section is not checked "Yes" or if the process detailed in this policy is not strictly adhered to. It is the responsibility of the company to follow these procedures in order for the material(s) to be treated as confidential by the District.

NOTE: Both the public and confidential information submittals must be in the same format with corresponding page numbers. In this way, each page with highlighted material corresponds in page number with the page from which the same information has been deleted.

RECEIVING CONFIDENTIAL INFORMATION

All submittals of information that comply with the above requirements shall initially be treated as confidential. The project manager (or responsible staff person) shall review all claims of confidentiality for credibility. Refer to County Counsel review if staff has any doubt as to the claims of confidentiality. An appointment should be arranged with Counsel to review the material at the District offices. If material submitted as a trade secret is determined not to be a trade secret, the information shall only be made available to the public in accordance with District regulations (*APCD Regulations For Making Public Records Available To The Public Pursuant To The California Public Records Act, Attachment 3*). Any conflict between this policy and procedure and the regulation shall be governed by the regulation.

If the District receives a submittal of information which contains a claim of confidentiality, but which does not comply with the procedures for identifying confidential information stated above, then the District shall return such information to the sender notifying them of the proper procedures. For permit applications, District staff shall review the submittal for conformance with the above requirements. If the information is not submitted properly, the entire application shall be returned to the applicant with a reminder of this Policy and Procedure. If the District retains a copy of information which contains a claim of confidentiality not submitted in compliance with the above requirements, then the District shall treat such information as confidential.

The Engineer Supervisor is responsible for coordinating the process of filing the public and confidential files. Confidential files are only maintained in the South County office.

All confidential information shall be filed in a standard six section file (or equivalent file for non-Engineering work). A minimum of two blue confidential stamps must be placed on the file (one

on the upper left hand corner of the file and another under the name tag). The public file must clearly state that confidential information exists. Permit files shall have a memo on the top of Section Two (Engineering Evaluations) stating that confidential material exists for the source.

STORING CONFIDENTIAL FILES

All confidential files shall be stored in the confidential filing cabinets. A log sheet (Attachment 4) shall be kept on the top of the first file section and shall contain all of the following items:

1. Name of company (specify volume number if applicable)
2. Date and time of access
3. Name of person(s) using the file
4. Purpose of access
5. Name of District Supervisor or Manager authorizing access
6. Signature of key holder obtaining file from confidential filing cabinet
7. Time file was returned.

THE CONFIDENTIAL FILING CABINETS SHALL BE LOCKED AT ALL TIMES.

ACCESSING CONFIDENTIAL FILES

Access to the confidential files shall be by District staff only, on a need-to-know basis as authorized by a District Supervisor or Manager.

The log sheet in each confidential file shall be completed by the key holder prior to giving or handing the confidential file to the authorized user. The District Supervisor or Manager authorizing access shall sign the log sheet or provide the key holder with a signed written Access Authorization Form (APCD Form - 49, Attachment 5). The written authorization shall specify the purpose and time period allowed for access. Written authorization shall only be valid for up to a 3-month period, at which time new authorization must be obtained. A folder with all the current authorization forms shall be maintained by the Lead Office Technician and is to be kept in close vicinity of the confidential filing cabinets.

Representatives of companies with confidential material in District files may have access to their company's file if they provide both clear evidence of employment with that company and personal identification, such as a picture I.D. The employment evidence should be a letter (on company letterhead) from the affected company which states all of the following:

1. The named agent granted permission to view the file
2. The time period in which the agent has the company's permission to view the file

3. The name, position and telephone number of the person granting permission.

The owner of the trade secret who is granting an agent permission to view their file must be called and access rights confirmed before the agent is allowed to view the file.

Keys to the confidential files are kept by:

South County

Lead Office Technician

Division Supervisors/Managers

Administrative Assistant

Only those people listed above are allowed to access the confidential file cabinets. Keys are not to be given over to anyone else. Failure to follow the above procedure will compromise the integrity of the process.

An entry must be made in the confidential file log book each time a file is accessed. The log book shall use the same form (Attachment 4) required for each file as described above. The purpose of this log book is to chronologically track all access to the confidential files and aid in determining whether all confidential files have been returned.

The log book shall be retained in the vicinity of the locked confidential file cabinets at all times along with the authorization form folder.

The key holder shall ensure that all required information in the log book is filled in properly before checking out the file to District staff. All confidential files must be returned to the filing cabinet at the end of each working day.

Once a confidential file has been checked out, the following protocol must be followed:

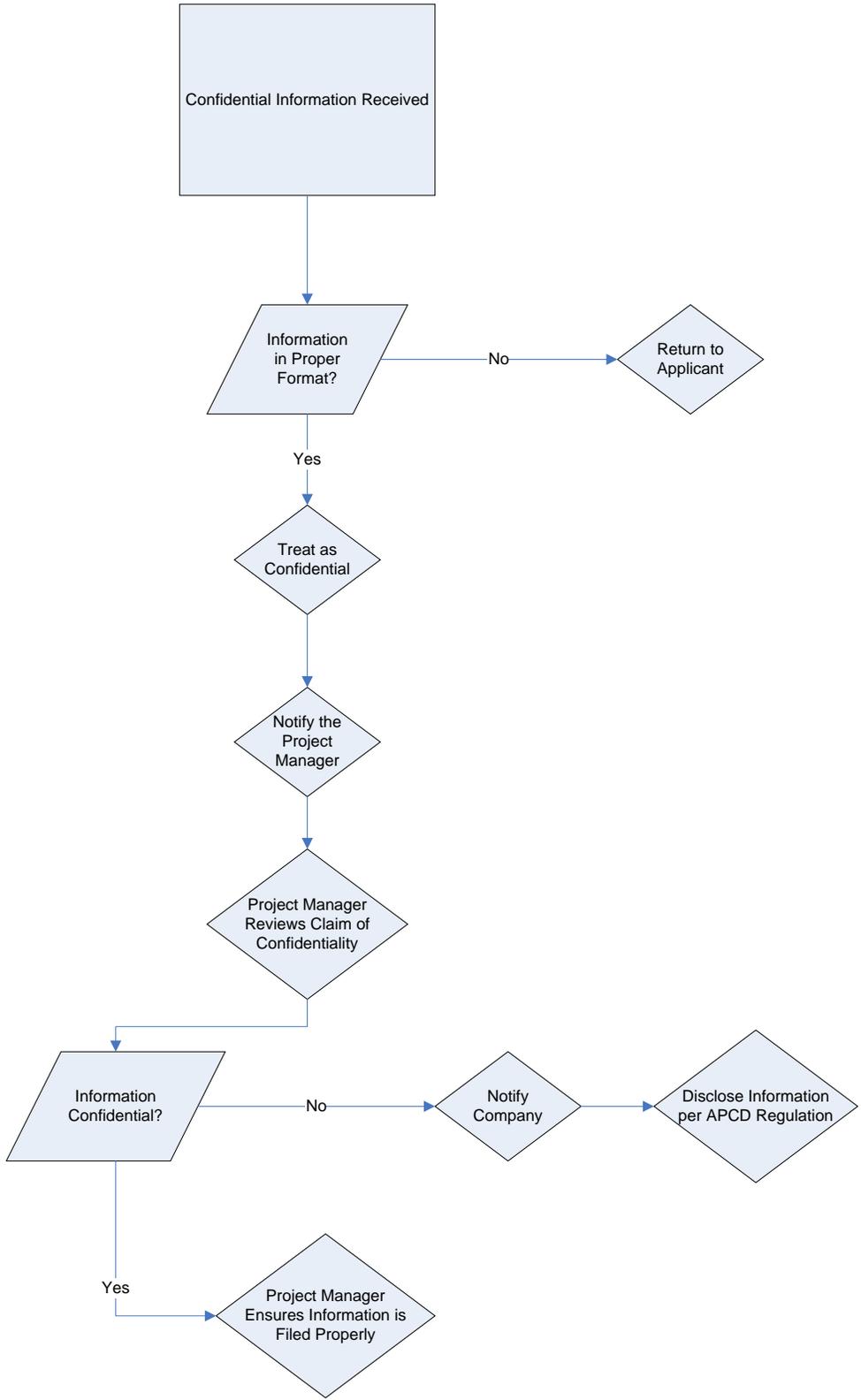
1. A confidential file cannot leave the District offices
2. All confidential files must be locked in a drawer or cabinet in the user's office when not in use (if possible)
3. Photocopying confidential files is not allowed
4. All confidential files must be returned to a key holder no later than 4:45 pm each working day
5. Confidential information and the confidential files shall not be disclosed in any manner.

GENERAL COMMENTS CONCERNING CONFIDENTIAL INFORMATION

Confidential material may only be kept in the South County office. District photographs, inspection notes, and notes based on review of confidential files may also be trade secret information. Such reproductions must also be treated as confidential if they would tend to disclose any trade secrets. Enforcement staff shall abide by the Compliance Divisions' Policy and Procedure for working on projects which have a confidential status.

Note: The original Attachments 1, 2, 3, 4, and 5 have been incorporated into this document.

Attachment 1



Attachment 2

GOVERNMENT CODE

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

6251. This chapter shall be known and may be cited as the California Public Records Act.

6254.7. Air pollution data; public records; notices and orders to building owners; trade secrets

All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

- (a) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.
- (b) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil **Code**, and records of subsequent action with respect to those notices and orders, are public records.
- (c) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education **Code**, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
- (d) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.
- (e) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by

pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

6255.

- (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.
- (b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

Attachment 3

APCD REGULATIONS FOR MAKING PUBLIC RECORDS AVAILABLE TO THE PUBLIC PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT

Article 1. General

1. Scope and Purpose.

This subchapter shall apply to all requests to the state board under the California Public Records Act (Government Code Sections 6250 *et seq.*) for the disclosure of public records or for maintaining the confidentiality of data received by the state board. The APCD's policies and procedures shall govern the internal review of such requests.

2. Disclosure Policy.

It is the policy of the APCD that all records not exempted from disclosure by state law shall be open for public inspection, with the least possible delay and expense to the requesting party.

Article 2. APCD's Requests for Information

3. Request Procedure.

The APCD shall give notice to any person from whom it requests information that the information provided may be released (1) to the public upon request, except trade secrets which are not emission data or other information which is exempt from disclosure or the disclosure of which is prohibited by law, and (2) to the federal Environmental Protection Agency, which protects trade secrets as provided in Section 114(c) of the Clean Air Act and amendments thereto (42 USC 7401 *et seq.*) and, in federal regulations.

4. Submissions of Confidential Data.

Any person submitting to the APCD any records containing data claimed to be "trade secret" or otherwise exempt from disclosure under Government Code Section 6254 or 6254.7 or under other applicable provisions of law shall, at the time of submission, identify in writing the portions of the records containing such data as "confidential" and shall provide the name, address and telephone number of the individual to be contacted if the state board receives a request for disclosure of or seeks to disclose the data claimed to be confidential. Emission data shall not be identified as confidential. The APCD shall not disclose data identified as confidential, except in accordance with the requirements of this subchapter or Section 39660(e) of the Health and Safety Code.

Article 3. Inspection of Public Records

5. Disclosure of Confidential Data.
- (a) This section shall apply to all data in the custody of the APCD.
- (1) Designated "trade secret" prior to the adoption of this subchapter.
 - (2) Considered by the APCD or identified by the person who submitted the data as confidential pursuant to this subchapter, or
 - (3) received from a federal, state or local agency, including an air pollution control district, with a confidential designation, except for the time limits specifically provided in subsection (b), only subsections (c) and (d) of this section shall apply to information submitted pursuant to Health and Safety Code Section 39660(e).
- (b) Upon receipt of a request from a member of the public that the APCD disclose data claimed to be confidential or if the APCD itself seeks to disclose such data, the APCD shall inform the individual designated pursuant to Section 4 by telephone and by mail that disclosure of the data is sought. The person claiming confidentiality shall file with the APCD documentation in support of the claim of confidentiality. The documentation must be received within five (5) days from the date of the telephone contact or of receipt of the mailed notice, whichever first occurs. In the case of information submitted pursuant to Health and Safety Code Section 39660(e), the documentation must be received within 30 days of the date the notice was mailed pursuant to that section. The deadlines for filing the documentation may be extended by the APCO upon a showing of good cause made within the deadline specified for receipt of the documentation.
- (c) The documentation submitted in support of the claim of confidentiality shall include the following information:
- (1) The statutory provision(s) under which the claim of confidentiality is asserted;
 - (2) A specific description of the data claimed to be entitled to confidential treatment;
 - (3) The period of time for which confidential treatment is requested;
 - (4) The extent to which the data has been disclosed to others and whether its confidentiality has been maintained or its release restricted;
 - (5) Confidentiality determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determinations, if available; and
 - (6) Whether it is asserted that the data is used to fabricate, produce, or compound an article of trade or to provide a service and that the disclosure of the data would result in harmful effects on the person's competitive position, and, if so, the nature and extent of such anticipated harmful effects.
- (d) Documentation, as specified in subsection (c), in support of a claim of confidentiality may be submitted to the APCD prior to the time disclosure is sought.
- (e) The APCD shall, within ten (10) days of the date it sought to disclose the data or received the request for disclosure, or within 20 days of that date if the APCO determines that there are unusual circumstances as defined in Government Code Section 6256.1, review the request, if any, and supporting documentation, if received

within the time limits specified in subsection (b) above, including any extension granted, and determine whether the data is entitled to confidential treatment pursuant to Government Code Section 6254, 6255 or 6254.7 or other applicable provisions of the laws and shall either:

- (1) Decline to disclose the data and, if a request was received, provide to the person making the request and to the person claiming the data is confidential a justification for the determination pursuant to Government Code Section 6255; or
 - (2) provide written notice to the person claiming the data is confidential and, if a request was received, to the person requesting the data that it has determined that the data is subject to disclosure, that it proposes to disclose the data, and that the data shall be released 21 days after receipt of the notice by the person claiming confidentiality, unless the APCD is restrained" from so doing by a "court of competent jurisdiction. The APCD shall release the data in accordance with the terms of the notice unless so restrained.
- (f) Should judicial review be sought of a determination issued in accordance with subsection (e), either the person requesting data or the person claiming confidentiality, as appropriate, may be made a party to the litigation to justify the determination.

Attachment 5



**Confidential File
Access Authorization
APCD Form - 49**

Santa Barbara County Air Pollution Control District
PO Box 6447, Santa Barbara, CA 93160-6447

_____ (APCD Employee) has authorization to access the confidential file of:

Company Name _____ FID Number _____

This access is valid from: _____ To: _____

The purpose being:

Manager/Supervisor

Date/Time Field

Manager/Supervisor Signature

Note: This authorization form shall be kept in the authorization form logbook atop the confidential file.

Policies and Procedures Memoranda are intended to provide agency staff, applicants and the public guidance relative to standardized APCD procedures. These policies and procedures shall not be interpreted in conflict with APCD Rules and Regulations or administrative policies, and may be modified or updated periodically without advance notice.