

Idaho Department of Environmental Quality

Guidance Document 98-2: Handling of Trade Secret Information

Date: October 22, 1998

To: All DEQ Staff

From: Wallace N. Cory, Administrator

DEQ needs access to certain business information in order to make informed decisions in applying the various laws we are charged with implementing. The disclosure of trade secret information entrusted to DEQ could result in irreversible, substantial harm to the business from which it was obtained. Recognizing this situation, during the 1998 session the Idaho Legislature added language to the public records statute creating a duty on the part of DEQ to maintain the confidentiality of certain trade secret information in our possession. Any improper disclosure or mishandling of trade secret information by DEQ could have legal implications for you and the division as a whole, and will result in companies being reluctant to voluntarily submit information to DEQ. A cooperative environment is vitally important to our ability to effectively perform our mission. For all these reasons, it is essential that we carefully and properly handle information in our possession claimed to be a trade secret.

Working with the Attorney General's office, we are in the process of reviewing the DEQ public records and records management policies, and promulgating a new rule chapter, to formally adopt revised procedures in response to the new statutory language. You have received training on this subject at the legal workshops currently being conducted at each DEQ office. As you handle trade secrets or documents that are potentially trade secrets, it is important that you follow some basic common sense guidelines:

1. When information is filed in DEQ records, those portions of the document subject to a confidentiality claim must be put in a separate part of the general file that holds that facility's or company's files.
2. Records claimed to be confidential must not be left out of a file cabinet any longer than needed for immediate use; they are to be refiled when not in use, including during times when you are working on another project or have gone home for the evening.
3. Any removal of DEQ records claimed to be confidential from a DEQ office building will not occur unless you have prior approval from your supervisor.
4. DEQ staff access to records claimed to be confidential should be limited to staff who must use the information or otherwise handle it in the course of their duties.
5. Finally, if you receive a public records request that includes within its scope information claimed to be confidential it is imperative that you go through the Attorney General's office before releasing or denying public access to the record.

Balancing and fulfilling our varied and sometimes conflicting duties with regard to public access to DEQ records can be difficult and time consuming, but I am confident that you are up to the task. Your compliance with the guidelines set out above is mandatory. If you have any questions or concerns on this important subject, please share them with your supervisor.