

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
RIGHT TO KNOW
TRADE SECRET CLAIM INSTRUCTIONS

Trade secret claims may be filed by employers who are subject to the Worker and Community Right to Know Act to maintain the confidentiality of information. Regulations regarding trade secrets were jointly adopted by the Department of Environmental Protection (DEP) at N.J.A.C. 7:1G-6 and the Department of Health at N.J.A.C. 8:59-3.

NOTE: Please read this entire information packet thoroughly before filing a trade secret claim. To avoid unnecessary expenditure of time and resources, you should also review the regulations. This guide provides references to the regulations to assist your preparation of trade secret claims.

I. WHAT IS A TRADE SECRET? (see N.J.A.C. 7:1G-1.2)
DEP regulations define a trade secret as any formula, plan, process, production, data, information or compilation of information which:

1. Is not patented;
2. Is known only to the employer and certain other individuals;
3. Is used in the fabrication and production of an article of trade or service; and
4. Gives the employer possessing it a competitive advantage over businesses that do not possess it.

Or

5. Is certified as secret by an appropriate official of the federal government for national defense purposes.

The DEP will find that the chemical name and Chemical Abstracts Service (CAS) number of the substances is a trade secret only if the employer can establish that a substance is unknown to competitors or is included in a formula or process that meets the above listed criteria.

II. PROHIBITED CLAIMS (see N.J.A.C. 7:1G-6.5)

Department regulations set conditions where a trade secret claim may not be made to the DEP. For a list of prohibited claims see N.J.A.C. 7:1G-6.5.

III. PROCEDURES FOR FILING A TRADE SECRET CLAIM (see N.J.A.C. 7:1G-6.4 [General Provisions] and 6.6 [Procedures for Filing a Claim]).

Trade secret claims must be filed as follows:

- A. Submit to the DEP two different sets of each survey on which trade secrets are claimed.
 - 1a. The first set which will be treated as confidential must contain all of the information requested, including any information claimed to be a trade secret.
 - b. Information you are claiming as a trade secret must be marked, either by underlining or highlighting.
 - c. The top of each page of the survey shall display the word “Confidential” in bold type or stamp.
 - d. The outside of the envelope containing the information claimed to be a trade secret and any other envelopes containing supporting information must display the word “CONFIDENTIAL” on both sides. This envelope must be enclosed in a plain envelope addressed for mailing.
2. The second set, which will go into DEP’s public files, must be identical to the first set except that it shall not contain information which the employer alleges to be a trade secret. The second set shall indicate “trade secret claim” or “TSC” where such omissions have been made.
- B. Send copies of the survey prepared for DEP’s public file (as directed in A.2 above) to the appropriate agencies.
- C. When filing a claim, you must submit to the DEP documentation to support your trade secret claim. See N.J.A.C. 7:1 G- 6.6 (c) for a list of what shall be submitted. You may summarize information on that list. The documentation may encompass all the trade secret claims; you do not need to submit separate documentation for each item.
- D. You must provide the names of reference documents used as the basis for stated conclusions (N.J.A.C. 7: G- 6.6 (f)).
- E. You must update information affecting a pending or approved trade secret claim within 60 days of your knowledge of new pertinent information (N.J.A.C. 7:1G-6.6 (i)).
- F. In addition to the required documentation, an employer may submit any other relevant information to support a claim (N.J.A.C. 7: 1G-6.6(e)).
- G. Unless otherwise requested, an employer is not required to submit supporting information with its trade secret claim on the Release and Pollution Prevention Report regarding the following items:
 1. The description of the use of environmental hazardous substances (EHS) on the site;

2. The quantity of EHS produced on site;
3. The quantity of EHS brought on site;
4. The quantity of EHS consumed on site;
5. The quantity of EHS shipped offsite either as a product or in the product (N.J.A.C. 7:1G- 6.6 (K))

H. Fill out and return with your claim the attached trade secret claim form.

I. Your claims and all documentation supporting your claim must be submitted to the DEP by certified mail, return receipt requested by personal delivery, or by other means which require verification of receipt, date of receipt, and the name of the person who receives the document at the department (N.J.A.C. 7:1G – 6.4(e)).

J. Submit to MC 22-03C
 NJDEP
 Bureau of Local Environmental Management and Community Right to Know
 P.O. Box 420
 Trenton, New Jersey 08625-0420

IV. EVALUATION OF TRADE SECRET CLAIM

Criteria for the DEP's determination of a claim are explained in N.J.A.C. 7:1G - 6.9

V. APPEAL OF DEP'S DETERMINATION

See N.J.A.C. 7:1G – 6.13 regarding an appeal of a determination with the DEP

State of New Jersey
Department of Environmental Protection

“WORKER AND COMMUNITY RIGHT TO KNOW ACT”

TRADE SECRET CLAIM FORM

(for N.J.S.A. 34:5A-1et. seg., N.J.A.C. 7:1G)

Please Print of Type – Complete Both Sides

Name of Employer _____

Address of Facility _____

North American Industrial Classification System (NAICS) Code _____

FACID (11 digit number located on the mailing label affixed to survey form) _____

Check the survey(s) for which a claim is being submitted:

_____ Community Right to Know Survey

_____ Release and Pollution Prevention Report

Information claimed to be a trade secret:

All of the following are required by N.J.A.C. 7:1G-6.6(c). If you are unable to provide any of the following information, your claim is considered incomplete. Please check what is provided:

- | | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------|
| 1. | Prior trade secret determination made by NJDEP or another agency or court, concerning this trade secret claim, and a copy of such determination or reference to it; | Yes_____ | No_____ |
| 2. | Whether or not the information is know outside the employer’s business; | Yes_____ | No_____ |
| 3. | Whether the information is patented; | Yes_____ | No_____ |
| 4. | What, if any, would be the harmful effects of its disclosure; | Yes_____ | No_____ |
| 5. | The period of time for which trade secret designation is requested, if appropriate; | Yes_____ | No_____ |
| 6. | The ease of difficulty with which the information could be disclosed by analytical techniques, laboratory procedures, or other means; | Yes_____ | No_____ |
| 7. | Whether the substance is used in the research and development or, fabrication and production, of an article of trade or service; | Yes_____ | No_____ |

8. Whether the trade secret is a formula, plan, pattern, process, production data, information, or compilation of information. Yes_____ No_____

CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining the information, I believe the submitted information is true, accurate and complete.

To be signed by Chief Executive Officer or equivalent. Please have this signature witnessed.

Name (Print or Type)_____ Title_____

Address_____

Phone ()_____

Signature_____

WITNESS

Name (Print or Type)_____ Title_____

Signature_____ Date_____

If you wish to designate a person other than the person signing the certification statement for NJDEP to communicate with further on this trade secret claim, print or type the information below.

Name of Designated Person_____ Title_____

Address_____

Phone ()_____