
Colorado Hazardous Waste Regulations

Part 2

Public Information

(Amended 7/20/04, effective 9/30/04)

To obtain more information regarding the Colorado Hazardous Waste Regulations, please contact the Hazardous Materials and Waste Management Division at 303-692-3300.

PART 2 - PUBLIC INFORMATION

Subpart A -- Requests for Information

Sec.

- 2.100 Definitions.
- 2.101 Policy on disclosure of Division records.
- 2.102 (Reserved)
- 2.103 Partial disclosure of records.
- 2.104 Requests to which this subpart applies.
- 2.105 Existing records.
- 2.106 How to request records.
- 2.107 Misdirected written requests; oral requests.
- 2.108 Form of request.
- 2.109 Requests which do not reasonably describe
- 2.110 Responsibilities of Public Information Officer.
- 2.111 Required Division action.
- 2.112 Time allowed for issuance of determination.
- 2.113 Denials of requests.
- 2.114 - 2.120 (Reserved)

Subpart B -- Trade Secrets, Including Confidential Business Information

Sec.

- 2.201 Substantive Criteria for Use in Trade Secret Determinations.
- 2.202 Protection of Trade Secrets.
- 2.203 - 2.300 (Reserved)

§ 2.100 Definitions.

For purposes of this part:

- (a) "**Department**" means the Colorado Department of Public Health and Environment.
- (b) "**Division**" means the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment.
- (c) "**Director**" means the director of the Hazardous Materials and Waste Management Division.
- (d) "**EPA**" means the U.S. Environmental Protection Agency.
- (e) "**Federal Act or RCRA**" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 *et seq.*
- (f) "**Hazardous waste**" means a hazardous waste as defined in Part 261 of these regulations.
- (g) "**Proceeding**" means any rulemaking, adjudication, or licensing conducted by the Division under the State Act or under regulations which implement the State Act including the issuance of administrative orders and the approval or disapproval of plans (e.g. closure plans) submitted by persons subject to regulation under the State Act, but not including determinations under this subpart.
- (h) "**Record**" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by the Division. It may include copies held by State or Federal agencies. The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by the Division, predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are legally owned by a Division officer or employee in his or her purely personal capacity. Nor does the term include materials published by organizations and which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in the possession of the Division.
- (i) "**Request**" means a request to inspect or obtain a copy of one or more records.
- (j) "**Requestor**" means any person who has submitted a request to the Division.

§ 2.101 Policy on disclosure of Division records.

All Division records shall be available to the public at reasonable times unless disclosure to the public would be contrary to a statutory provision, court order, court rule, or other legal privilege.

§ 2.102 (Reserved)

§ 2.103 If a requested record contains material both subject to public disclosure and protected from public disclosure, the material subject to public disclosure shall be disclosed after the protected material has been deleted.

§ 2.104 Requests to which this subpart applies.

(a) This subpart applies to any written request (other than a request, made by another State or Federal agency) received by the Division, whether or not the request cites the Freedom of Information Act, 5 U.S.C. 552, or Section 24-72-201 *et seq.*, C.R.S.

(b) Any written request to the Division for existing records prepared by the Division for routine public distribution, e.g., pamphlets, copies of speeches, press releases, and educational materials, shall be honored. No individual determination under § 2.111 is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public.

§ 2.105 Existing records.

(a) Neither the Freedom of Information Act, 5 U.S.C. 552, nor Section 24-72-201 *et seq.*, C.R.S. require the creation of new records in response to a request, nor does it require the Division to place a requestor's name on a distribution list for automatic receipt of certain kinds of records as they come into existence. These acts establish requirements for disclosure of existing records.

(b) All existing Division records are subject to routine destruction according to standard record retention schedules.

§ 2.106 How to request records.

(a) A request for records may be filed with:

Public Records Officer
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

§ 2.107 Misdirected written requests; oral requests.

(a) The Division cannot assure that a timely or satisfactory response under this subpart will be given to written requests that are addressed to persons other than the Public Records Officer. Any Division employee who receives a written request for inspection or disclosure of records shall promptly forward a copy of the request to the Public Records Officer, by the fastest practicable means, and shall, if appropriate, commence action under § 2.111. For purposes of § 2.112, the time allowed with respect to initial determinations shall be computed from the day on which the Public Records Officer receives the request.

(b) The Division requires all requests to be in writing.

§ 2.108 Form of request.

A request shall be made in writing, shall reasonably describe the records sought in a way that will permit their identification and location, and should be addressed as described in § 2.106, but otherwise need not be in any particular form.

§ 2.109 Requests which do not reasonably describe records sought.

(a) If the description of the records sought in the request is not sufficient to allow the Division to identify and locate the requested records, the Public Records Officer will notify the requestor (by telephone when practicable) that the request cannot be further processed until additional information is furnished.

(b) The Public Records Officer will make every reasonable effort to assist in the identification and description of records sought and to assist the requestor in formulating his/her request. If a request is described in general terms (e.g. all records having to do with a certain area), the Public Records Officer may communicate with the requestor (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable by the requestor. Such attempts will not be used as a means to discourage requests, but rather as a means to help identify with more specificity the records actually sought.

§ 2.110 Responsibilities of the Public Records Officer.

Upon receipt of a written request, the Public Records Officer shall mark the request with the date of receipt, and shall attach to the request a control slip indicating the date of receipt and, the date by which response is due. The request and control slip shall then be forwarded to the person believed to be responsible for maintaining the records requested. The Public Records Officer shall retain a file copy of the request and control slip, and shall monitor the handling of the request to ensure a timely response.

§ 2.111 Required Division Action.

(a) Whenever the Division becomes responsible for responding to a request, the Division shall:

- (1) Take action under § 2.109, if required, to obtain a better description of the records requested;
- (2) Locate the records as promptly as possible, or determine that the records are not known to exist, or that they are located at another agency and not possessed by the Division;
- (3) When appropriate, take action to obtain payment or assurance of payment;
- (4) Comply with § 2.202 if any located records contain information identified as a trade secret as defined in § 2.201;
- (5) Determine which of the requested records legally may be withheld, and why; and
- (6) Issue all determinations within the allowed period (see § 2.112), specifying (individually or by category) which records will be disclosed and which will be withheld, and signed by a person authorized to issue the determination under § 2.113(b). Denials of requests shall comply with § 2.113.

(b) In determining which records are responsive to a request, the Division shall ordinarily include those records within the Division's possession as of the date of the Division's receipt of the request.

(c) When a request for records encompasses records of another State or Federal agency, the Division shall either:

- (1) Respond to the request after consulting with the originating agency when appropriate; or

§ 2.112

(2) Promptly transfer responsibility for responding to the request to the other agency. Whenever the Division refers a request to another agency, it shall notify the requestor of the referral.

§ 2.112 Time allowed for issuance of determination.

(a) Except as otherwise provided in this section, the Division shall within 10 working days make a written determination specifying which of the requested records will, and which will not, be released and the reason for any denial of a request and shall set a date and hour at which time the records will be available for inspection. The 10 working day period may be extended up to an additional 10 working days only when absolutely necessary and only for so long as necessary in the following circumstances:

- (1) if the Division needs to search for and collect records stored in other locations;
- (2) where the requestor has made a request for a voluminous amount of separate documents or information; or
- (3) additional time is needed to consult with another agency or Division which has a significant interest in the requested documents.

(b) The period of 10 working days shall be measured from the date the request is first received and logged in by the Public Records Officer.

(c) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date that a requestor is notified by the Division under § 2.109 that his/her request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(d) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date that a requestor is notified by the Division that prepayment or assurance of payment of fees is required, and the date that the requestor pays (or makes suitable arrangements to pay) such charges.

(e) There shall be excluded from the period of 10 working days (or any extension thereof) any time required to comply with § 2.202.

(f) Failure of the Division to make a determination pursuant to this section within the time specified in this section shall constitute final agency action which authorizes the requestor to commence an action in an appropriate court to obtain the records.

§ 2.113 Denials of requests.

(a) A denial of a request may be issued only for the following reasons:

(1) A statutory provision, court order, or court rule requires that the information not be disclosed or that the information is privileged;

(2) Section 2.201 requires denial because of a business confidentiality or trade secret determination.

(b) Each denial of a request shall be written, signed, and dated, shall identify the records that are being withheld (individually, or, if the denial covers a large number of similar records, by described category), and shall state the basis for denial of each record or category of records being withheld. However, no denial shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information, or a confidential investigation.

(c) Each initial determination which denies, in whole or in part, a request for Division records shall state that the requestor may appeal the denial pursuant to Section 24-72-204, C.R.S.

§ 2.114 through § 2.120 (Reserved)

Subpart B -- Trade Secrets, Including Confidential Business Information

§ 2.201 Substantive Criteria for Use in Trade Secret Determinations.

"**Trade Secrets**" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession which is secret and of value. The Division shall hold that information is entitled to protection as a trade secret if:

(1) The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;

(2) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

§ 2.202

- (3) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);
- (4) No statute specifically requires disclosure of the information; and
- (5) Either:
 - (i) The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position; or
 - (ii) The information is voluntarily submitted information and its disclosure would be likely to impair the Government's ability to obtain necessary information in the future.

§ 2.202 Protection of Trade Secrets

Trade secrets are protected from disclosure by Section 18-4-408, C.R.S. and Section 7-74-101 et seq., C.R.S. The Division shall not disclose any records in its possession identified as "confidential business information" or as a "trade secret" without giving the party raising the claim notice of the request and an opportunity to contest the release of the information. The burden of proving that the information is protected as a trade secret is upon the party raising the claim. If the Division denies the party's claim, such denial shall constitute final agency action subject to judicial review. The Division shall afford the party 10 working days (calculated from the date the party receives notice of the denial) to seek judicial review before releasing the information.