WEST VIRGINIA CODE: §22-5-10

§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.

(a) All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of the person, the director shall consider these records, reports, data or information or a particular portion thereof confidential: Provided, That this confidentiality does not apply to the types and amounts of air pollutants discharged and that these records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: Provided, however, That the officers, employees or authorized representatives of the state or federal environmental protection agency protect these records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

(b) Upon receipt of a request for records, reports, data or information which constitute trade secrets and prior to making a final determination to grant or deny the request, the director shall notify the person claiming that any record, report, data or information is entitled to protection as a trade secret, and allow the person an opportunity to respond to the request in writing.

(c) All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of a request, the director or his or her designate shall by order: (1) Advise the person making the request of the time and place at which the person may inspect and copy the documents, which, if the request addresses information claimed as confidential, may not be sooner than thirty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming the confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

Any person adversely affected by a determination, by order or otherwise, regarding information confidentiality under this article may appeal the determination to the air quality

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board pursuant to the provisions of article one, chapter twenty-two-b of this code. The filing of a timely notice of appeal shall stay any determination, by order or otherwise, to disclose confidential information pending a final decision on the appeal. The scope of review is limited to the question of whether the records, reports, data or other information, or any particular part thereof sought to be inspected or copied, are entitled to be treated as confidential under subsection (a) of this section. The air quality board shall afford evidentiary protection in appeals as is necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records where appropriate.

(d) In lieu of the provision of chapter twenty-nine-b of this code, the provision of this section shall apply to determinations of confidentiality.

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