

15A NCAC 02H .0115 PUBLIC ACCESS TO RECORDS

(a) All materials, including records, reports, data, maps, diagrams, draft or final permits, fact sheets, or other documents or information and any public comments, in printed or electronic form, submitted to the Commission, the Secretary, or the Director are public records in accordance with Section 143-215.3C and Chapter 132 of the General Statutes and 40 CFR 122.7(b)-(c) and are subject to disclosure pursuant to G.S. 132-6 unless the materials qualify as confidential information as defined therein.

(b) The Director shall determine which information is entitled to confidential treatment. In the event the Director determines that such information is entitled to confidential treatment, he or she shall take steps to protect such information from disclosure. He or she shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his or her determination of confidentiality.

(c) Confidentiality of Information. Any request for a determination of confidentiality shall be subject to the following:

- (1) Any claim of confidentiality shall be made by marking "confidential" or "trade secret" on each page containing such information.
- (2) Until a claim of confidentiality is made, all materials submitted pursuant to the rules of this Section are public records and subject to disclosure in accordance with G.S. 132-1.
- (3) Upon receiving a request for confidentiality, the Director shall maintain the affected materials separately from public record documents and shall not disclose the materials unless or until he or she determines in accordance with G.S. 143-215.3C and 132-1.2 and 40 CFR 122.7(b)-(c) that the materials do not qualify as confidential information.
- (4) The Director may consult with the EPA Region 4 Administrator regarding whether materials marked as "confidential" or "trade secret" qualify as confidential information.
- (5) Upon reviewing a request for confidentiality, the Director shall notify the applicant of his findings. If the Director determines that the materials or any portions thereof do not qualify as confidential information, those portions shall not be released for at least 60 days following the notification of findings. If the applicant files a contested case in response to the Director's decision, the materials shall not be released until conclusion of the contested case and then according to the court's decision. If the Director determines that the materials or any portions thereof qualify as confidential information, the Director shall continue to protect such information from disclosure.

(d) The following information may not be claimed and shall not qualify as "confidential" or "trade secret":

- (1) The name and address of any permit applicant or permittee;
- (2) Permit applications, including information or data required to be disclosed on the NPDES application forms pursuant to Rule .0105 of this Section or in printed or electronic attachments or appendices to such NPDES application forms; and
- (3) Permits and effluent data.

History Note: Authority G.S. 132-6; 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 143-215.3C; 143-215.65;
Eff. February 1, 1976;
Amended Eff. March 1, 1993; October 1, 1987;
Readopted Eff. May 1, 2020.