

Trade Secrets and Proprietary Information in Various States

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Arkansas

AOGC Rule B-19

- Requires operators to disclose identity of compounds but an operator can make a written claim that the identity of the compound is entitled to trade secret status.
- The form asks the operator to verify:
 - The operator has not disclosed the information claimed to be a trade secret to any other person;
 - That no law requires public disclosure of the information;
 - That disclosure would likely harm the competitive position of the company; and
 - That the information is not readily accessible through reverse engineering.
- The regulations do not address the right to challenge a trade secret designation but the state freedom of information act provides right to obtain information and bring a suit challenging the denial of that right .

Arkansas

AOGC Rule B-42

- Addresses seismic information and maps submitted with a permit application.
- “The applicant may also file a request in writing that the application with all information and maps be kept confidential for a period not to exceed twelve months from the date of filing from the original application.”
- The application and any information and maps may be introduced by the Commission as evidence in any public hearing regardless of such a request. The permit holder may object to their admissibility and seek a closed hearing or a protective order.

Colorado

2 CCR § 404-1

- Chemical Disclosure: Operators must certify, under penalty of perjury, that the exempt chemical or compound is a trade secret. The chemical family of each proprietary compound will be disclosed. Similar form to the one used in Arkansas.
- The information that constitutes a trade secret is not submitted to regulators and a person could not challenge a trade secret claim by bringing suit to challenge the denial of a public records request.
- Permit Review Process: Operators must submit a comprehensive drilling plan. Within this plan, the permittee may mark certain documents confidential. Those documents will be exempt from public records laws.

Colorado

2 CCR § 404-1: 205

- Access to Records:
- “Information provided to the Commission or the Director under this section that is entitled to protection under state or federal law, including C.R.S. § 24-72-204, as a ***trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data shall be kept confidential and protected against public disclosure unless otherwise required, permitted, or authorized by other state or federal law.*** Any disclosure of information entitled to protection under any state or federal law made pursuant to this section shall be made only to the persons required, permitted, or authorized to receive such information under state or federal law in order to assist in the response to a spill, release, or complaint and shall be subject to a requirement that the person receiving such information maintain the confidentiality of said information.”

Texas

16 TAC § 3.29

- Chemical Disclosure: Companies are not required to disclose trade secret information unless the AG or a court determines the information is not entitled to trade secret protection. A landowner or state agency can challenge a trade secret classification.
- The regulation provides a provision that expressly authorizes certain persons or organizations to assert challenges to a trade secret claim. A challenge must be made in writing to the Texas Railroad Commission. The persons who have standing include:
 - Those who own the land on which the relevant wellhead is located;
 - The owner of the adjacent property; and
 - Any state agency with jurisdiction over a matter to which the claimed trade secret is relevant.

Texas

552 Texas Government Code

- Public records law provides disclosure exemption for geological and geophysical information.
- Confidential material defined to include well logs, geophysical, geochemical, and other similar data, including maps and other interpretations of the material filed with the general land office in connection with any administrative application or proceeding or in compliance with any requirements of any law, rule, lease or agreement.
- The information will be available to the public five years after the filing date or one year from termination of the lease in connection with the confidential material.

Illinois

HB 2615, § 77 (2013)

- **Chemical Disclosure:**
- “The applicant, permittee, or person performing high volume horizontal hydraulic fracturing operations shall submit redacted and un-redacted copies of the documents containing the information to the Department and the Department shall use the redacted copies when posting materials on its website.”
- “Upon submission or within 5 calendar days of submission of chemical disclosure information . . . the person that claimed trade secret protection shall provide a justification of the claim containing the following:
 - A detailed description of the procedures used by the person to safeguard the information from becoming available to persons other than those selected by the person to have access to the information for limited purposes;
 - A detailed statement identifying the persons or class of persons to whom the information has been disclosed;
 - A certification that the person has no knowledge that the information has ever been published or disseminated or has otherwise become a matter of general public knowledge;
 - A detailed discussion of why the person believes the information to be of competitive value; and
 - Any other information that shall support the claim.”