Message

From: Klepp, Robert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1857DAFCBCC441888C06A473F38D0D93-BKLEPP]
Sent: 3/1/2019 4:25:31 PM
To: Knight, Andrew, NMENV [Andrew.Knight@state.nm.us]
Subject: RE: CBI Protection in NMAC - 20.2.1.115

Thank you. I left a voicemail with Hilcorp's counsel yesterday and am waiting to hear back.
Bob

Robert G. Klepp, Attorney
Office of Civil Enforcement -- Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
(202) 564-5805

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From: Knight, Andrew, NMENV <Andrew.Knight@state.nm.us>
Sent: Friday, March 01, 2019 10:37 AM
To: Klepp, Robert <Klepp.Robert@epa.gov>
Subject: RE: CBI Protection in NMAC - 20.2.1.115

Ex. 5 AC AWP DP / Ex. 7(A) 7(E) Ex. 4 CBI

Andrew P. Knight
Assistant General Counsel
New Mexico Environment Department
Office: (505) 222-9540
Cell: (505) 907-8836

From: Klepp, Robert <Klepp.Robert@epa.gov>
Sent: Thursday, February 28, 2019 2:28 PM
To: Knight, Andrew, NMENV <Andrew.Knight@state.nm.us>
Subject: [EXT] RE: CBI Protection in NMAC - 20.2.1.115

Andrew,

Ex. 5 AC AWP DP / Ex. 7(A) 7(E) Ex. 4 CBI

Ex. 5 AC AWP DP / Ex. 7(A) 7(E) Ex. 4 CBI

Please call me if you would like to discuss the matter further.

Thanks,
Bob Klepp

Robert G. Klepp, Attorney
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From: Knight, Andrew, NMENV <Andrew.Knight@state.nm.us>
Sent: Tuesday, February 26, 2019 5:42 PM
To: Klepp, Robert <Klepp.Robert@epa.gov>
Subject: CBI Protection in NMAC - 20.2.1.115

Bob,
Just initially, here is the section of NMAC dealing with CBI:

20.2.1.115 CONFIDENTIAL INFORMATION PROTECTION:

A. Definitions: As used in this section:

(1) "Claimant" refers to a person or business who makes a claim of confidentiality.

(2) "Confidential business information" refers broadly to information that, if made public, would harm a business' competitive position. This includes trade secrets and may include data relating to the profits and costs of the owner or operator which have not previously been released to the public.

(3) "Nature and amount of emissions" means information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant emission and includes a general description of the location and nature of the source.

(4) "Source" or **"stationary source"** means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this section, at the discretion of the secretary.

(5) "Trade secret" refers to a secret plan or process, tool or mechanism unique to the owner or operator of a business.

B. Confidentiality determinations: The environment department shall keep confidential trade secrets or confidential business information under applicable legal principles to the extent that:

(1) business information furnished to or obtained by the environment department concerning air contaminant sources shall be considered for confidential treatment if specifically marked as confidential at the time such information is submitted;

(2) the department is not required to disclose this information pursuant to a statutory provision; and

(3) the following conditions are satisfied:

(a) the claimant has asserted a claim of confidentiality which has not been waived, withdrawn or denied;

(b) the claimant 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;

(c) the information is not, and has not been, reasonably obtainable without the business' consent; and

(d) the claimant has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business' competitive position.

C. This Section (20.2.1.115 NMAC) shall not be construed to prohibit disclosure of records and information:

(1) to other officers, employees or authorized representatives of the department, the local agency, the environmental improvement board, or the local board concerned with carrying out the *Air Quality Control Act*;

(2) to officers, employees or authorized representatives of the United States environmental protection agency concerned with carrying out the federal act;

(3) when relevant, in any proceeding under the *Air Quality Control Act* or the federal act;

(4) of data concerning the nature and amount of emissions from any source; or

(5) limit the use of such records or information in any civil or criminal action, subject to such protection as the court may give.

D. Procedures for handling requests for confidentiality:

(1) The department's office of general counsel (OGC) in each case shall determine whether and to what extent the information qualifies for confidential treatment under this section.

(2) If the department determines it will need additional information in order to decide whether information submitted by the claimant qualifies for confidential treatment, the department shall send the claimant a written notice requesting additional information.

(a) The claimant shall submit the requested additional information within thirty (30) days of receiving the department's request. The department shall keep the claimant's information confidential and not disclose it to the public during that thirty (30) day time period.

(b) If the claimant does not submit the requested additional information within the thirty (30) day time period, then the department shall assume that the claimant has abandoned or withdrawn the claim of confidentiality, and may release the information to the public upon request (following the expiration of the thirty (30) day period).

(3) Within thirty (30) days of receiving material marked as confidential or within thirty (30) days of receiving any additional information the department requested, the department shall determine whether and to what extent the information qualifies for confidential treatment under this section.

(4) Once a decision is reached, the department shall send the claimant a written notice of the decision by certified mail.

(5) If the department notifies a claimant that his or her claim of confidentiality will not be honored, the department shall not make the information available for public inspection or copying for thirty (30) days in order to give the claimant an opportunity to request administrative review of the decision. The department shall not make the information available for public inspection or copying while an administrative review, or legal action to prevent disclosure, is pending.

(6) Business information that has been determined to be confidential shall not be made a part of any public record unless the claimant expressly agrees to its publication.

E. Administrative review: Every claimant has the right to request additional review of any denial of a request for confidential treatment of business information or documents. The secretary shall be responsible for conducting reviews of denials made by department personnel. The secretary shall use his or her best efforts to review denials within thirty (30) days of receiving the request for review.

[10/27/95; 20.2.1.115 NMAC - Rn, 20 NMAC 2.1.115, 10/31/02]