

Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality

Part 1: Administrative Regulations

Part 1, Chapter 2: Mississippi Commission on Environmental Quality Regulations Regarding the Review and Reproduction of Public Records.

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Introduction.

This document sets forth procedures for the public review and reproduction of documents of the Mississippi Commission on Environmental Quality (“Commission”), the Mississippi Environmental Quality Permit Board (“Permit Board”), and the Mississippi Department of Environmental Quality (“MDEQ”).

Rule 2.1 Guiding Principle. In 1983 the Mississippi Legislature passed the Mississippi Public Records Act (the Act), Miss. Code Ann. §§ 25-61-1 through 25-61-17 (Rev. 1999). These state statutes define "public records," mandate public access to "public records," require a written explanation of denial to access, declare certain records to be exempt from public access, allow fees to cover costs, and provide a penalty for wrongful denial of access to records.

The Commission, the Permit Board, and MDEQ practice an open records policy and allow individuals the opportunity to review and reproduce records not exempt from disclosure in as expeditious and efficient a manner as is practicable. Examples of records that are exempt as privileged by law and not available for inspection include personnel records, appraisals, attorney communications and work product, and certain enforcement/investigative materials. Further, records furnished to public bodies by third parties which contain trade secrets or confidential

commercial or financial information and that do not concern environmental protection (see Miss. Code Ann. §49-17-39) may be held as confidential.

MDEQ's treatment of file information also is constrained by two statutes which apply only to MDEQ: Miss. Code Ann. §§ 17-17-27 and 49-17-39. These statutes are almost identical. The first applies to information concerning the regulation of nonhazardous and hazardous waste, and the second applies more generally to all information obtained by the Commission, Permit Board, and MDEQ. These statutes require that all information "concerning environmental protection" collected by MDEQ, the Commission, and the Permit Board be treated as "public information" that "shall be made available upon proper request." Although the statutes allow for the protection of trade secrets and some confidential business information, Miss. Code Ann. § 49-17-39 has been interpreted by the Chancery Court of Hinds County as allowing confidentiality protection only for a narrow subset of information obtained by the Commission. Pursuant to §§ 17-17-27 and 49-17-39, only trade secret information or confidential business information that does not concern environmental protection may be treated as confidential. See *Platte Chemical Co. v. Mississippi Commission on Environmental Quality*, Cause No. G-96-1442 S/2 (Hinds County Chancery Court March 31, 1997).

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-17, 17-17-27, 49-17-39, 49-17-17 (i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*

Rule 2.2 Agency Response To Public Document Requests. Public records requests are managed by MDEQ's Freedom of Information Administrator. Any request for access to or copies of public records must be made in writing and addressed to Freedom of Information Administrator, Mississippi Department of Environmental Quality, P.O. Box 2261, Jackson, Mississippi 39225. The request may be faxed to the Freedom of Information Administrator at (601) 961-5118 or sent by e-mail to or through the MDEQ Web Site. The written request should describe in reasonable detail the information sought (including the name and location of the reporting facility, if applicable), the date of the request, and the requestor's name, address, and telephone number.

MDEQ will provide records not exempt from disclosure for review or reproduction as soon as practicable, but no later than 14 working days from the date of the request, as allowed by the Act. On many occasions, MDEQ will be able to honor routine document requests within 2-3 days or less.

When an individual submits a written request, the FOI Administrator determines the exact location of the records requested. All records normally will be reviewed at the MDEQ office location where the records are housed. If an individual seeks to review records that are housed at multiple MDEQ locations, the FOI Administrator will work with MDEQ staff and the individual requesting the record review to set up an appointment at the appropriate MDEQ building.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-17, 17-17-27, 49-17-39, 49-17-17 (i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*

Rule 2.3 Document Reproduction. MDEQ allows individuals submitting a written request for records to copy documents that are not exempt from disclosure or to have the documents copied for them.

The costs of reproduction and certification are payable by the requesting individual, firm, or their representative. Reproductions and certifications will be released once an invoice is signed by the individual, firm, or their representative requesting the records. MDEQ will mail a bill for payment once the invoice is signed, to be paid upon the receipt of the bill. Failure to pay a bill will result in the individual, firm or their representative having to pay in cash prior to the release of subsequent reproductions and certifications.

Source: Miss. Code Ann. §§ 25-61-1 through 25-61-17, 17-17-27, 49-17-39, 49-17-17(i), 49-2-1, et seq., 49-17-1, et seq., and 17-17-1, et seq.

Rule 2.4 Document Reproduction and Certification Costs. The schedule of charges and/or fees will be filed with the Secretary of State's Office, in accordance with the Public Records Act, and will be posted in the File Review Room.

Certification of Documents¹ will be provided at the following cost:

- A. \$ 3.00 for first page or document certified
- B. \$ 1.00 for each additional page or document to be certified
- C. Minimum charge of \$3.00 per request

Additional fees incident to document reproduction may include the cost of postage if reproduction and/or certification of documents are requested to be mailed to the individual making the records review request.¹

Source: Miss. Code Ann. §§ 25-61-1, et seq., 25-61-17, 17-17-27, 49-17-39, 49-17-17(i), 49-2-1, et seq., 49-17-1, et seq., and 17-17-1, et seq.

Rule 2.5 Reproduction by MDEQ Staff. In general, MDEQ is not staffed sufficiently to respond to requests for MDEQ personnel to copy documents for members of the public. Although MDEQ staff will attempt to facilitate document availability and review, MDEQ usually will (and reserves the right to) deny requests to assign MDEQ staff the task of copying records for members of the public.

Source: Miss. Code Ann. §§ 25-61-1, et seq., 25-61-17, 17-17-27, 49-17-39, 49-17-17(i), 49-2-1, et seq., 49-17-1, et seq., and 17-17-1, et seq.

Rule 2.6 Requests for Treatment of Documents as Confidential. Pursuant to Miss. Code Ann. §§ 17-17-27 and 49-17-39, citizens and regulated entities providing information to MDEQ can request that the information be held confidential and not be made available for public inspection. This protection can be claimed properly, however, only for information that does not concern environmental

¹ MDEQ public record files are working documents, and documents are added to the files regularly. No certification will be made that the records reviewed are the "complete" file, only that the document(s) reproduced are certified as a true copy from the records. Certifications will be signed and dated either by the MDEQ Executive Director, his or her designee, or the Freedom of Information Administrator or his or her supervisor

protection. In order to satisfy these statutes, a request for confidentiality must be made in the following manner:

- A. The request must be made, in writing, no later than simultaneously with the submission of the information to MDEQ;
- B. The request must describe the information that the requestor would have treated as confidential and must explain the reason(s) why the information qualifies for confidential treatment; and
- C. The request must allow disclosure of the confidential information "to authorized department employees and/or the United States Environmental Protection Agency (EPA)."

Obviously, this means that merely stamping a document "confidential" is not sufficient to allow the Commission to treat the document as confidential.

In order for the claim of confidentiality to become effective against public review, the claim must then be "determined by the commission to be valid." This determination would be made (or denied) after an evidentiary hearing before the Commission held pursuant to Miss. Code Ann. § 49-17-35.

MDEQ has adopted the following policy in order to minimize the number of Commission hearings on confidentiality claims that need be pursued. When a citizen or regulated entity submits information under a claim of confidentiality, the claim will be honored initially *by MDEQ* if the claim regards information that arguably could be considered as not "concerning environmental protection" and if the claim meets the three requirements set forth above. If a claim of confidentiality is judged to meet these three requirements, and the document is judged arguably to include information not concerning environmental protection, then that information will be treated as confidential *until and unless a member of the public requests to review the information*. At the time the information is placed in an MDEQ confidential file, a notice will be placed in the entity's public record file indicating that additional information to which a claim of confidentiality attaches is included in a confidential MDEQ file.

If and when a member of the public requests access to the information held by MDEQ under a claim of confidentiality, the supplier of the information will be notified of the request and will be given the option either to request a hearing before the Commission concerning the claim of confidentiality or to allow the information to be reviewed. If a hearing is requested, the information will be treated as confidential by MDEQ until the Commission makes a determination on the issue and during the time in which an appeal of that Commission determination could be taken (if the Commission determination is adverse to the person or entity claiming confidentiality).

On the other hand, if an initial claim of confidentiality is judged by MDEQ as not meeting the requirements set forth above, and/or as containing information concerning environmental protection, then the person supplying the information will be notified promptly of MDEQ's

conclusion and will be notified of his or her right to pursue the claim of confidentiality before the Commission at the next available Commission meeting. The claimant will be given ten days from notification of deficiency by MDEQ in which either to correct any deficiency in the confidentiality claim (such as the lack of required permission for EPA review) or to request in writing a hearing before the Commission on the confidentiality claim. After that ten-day period, the information will be treated as public information by MDEQ if no adequate correction of the claim or written request for a hearing has been made. Again, if a timely written request for a hearing is received, MDEQ will treat the information in question as confidential until the Commission makes a final determination and the period for perfecting an appeal regarding that decision has run.

If the Commission denies the claim of confidentiality and the claimant perfects an appeal of that decision to a court of appropriate jurisdiction (by filing a notice of appeal with MDEQ, as required by Miss. Code Ann. § 49-17-41), MDEQ automatically will continue to treat the information at issue as confidential for thirty days after the filing by MDEQ of the record on appeal with the appropriate court. Within that thirty days, the claimant must apply to the court in which the appeal is lodged for any further protection of the information pending appeal (through a temporary restraining order, preliminary injunction, or similar relief). MDEQ will treat the information as public information after that thirty-day period unless a court of appropriate jurisdiction instructs MDEQ to hold the information as confidential or unless all parties to the matter agree otherwise.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-17, 17-17-27, 49-17-35, 49-17-39, 49-17-41, 49-17-17(i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*
