



Ohio Revised Code

Section 3750.09 Withholding of specific chemical identity as trade secret.

Effective: July 1, 1996

Legislation: Senate Bill 2 - 121st General Assembly

(A) Except as otherwise provided in division (E) of this section, any person who is required to provide information to the emergency response commission, the local emergency planning committee of the emergency planning district in which a facility owned or operated by the person is located, or the fire department having jurisdiction over the facility, under the reporting requirements in sections 3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code or the rules adopted under division (B)(1)(d) or (e) of section 3750.02 of the Revised Code, may withhold from submission to the commission, committee, fire department, or any other person the specific chemical identity, including the chemical name and other specific identification, of an extremely hazardous substance or hazardous chemical identified or listed by rules adopted under division (B)(1)(a) or (b) of section 3750.02 of the Revised Code on the grounds that the information constitutes a trade secret if either of the following conditions is met:

(1)(a) At the time of submitting the information sought to be classified as a trade secret, the owner or operator of the facility submits a claim for protection of that information as a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code and submits a copy of the required report that indicates that such a claim has been filed and contains the generic class or category of the chemical identity in place of the specific chemical identity and that is accompanied by a copy of the substantiation supporting the trade secret claim that was submitted to the administrator of the United States environmental protection agency. The owner or operator may withhold from the copy of the substantiation submitted to the commission, committee, or fire department the specific chemical identity claimed to be a trade secret and information identified as confidential business information in rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code.

(b) A determination of the claim remains pending pursuant to those rules.

(2) It has been determined pursuant to those rules that a trade secret exists.



(B) Except as otherwise provided in division (E) of this section, any person who is required to provide information to the commission, the local emergency planning committee of the emergency planning district in which a facility owned or operated by the person is located, or the fire department having jurisdiction over the facility, under the reporting requirements in section 3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code or the rules adopted under division (B)(1)(d) or (e) of section 3750.02 of the Revised Code may withhold from submission to the committee, fire department, or any other person the specific chemical identity, including the chemical name or other specific identification, of an extremely hazardous substance or hazardous chemical identified or listed in rules adopted under division (C)(5) of section 3750.02 of the Revised Code on the grounds that the information constitutes a trade secret if either of the following conditions is met:

(1)(a) At the time of submitting the information sought to be classified as a trade secret, the owner or operator of the facility submits a claim to the commission for protection of that information as a trade secret pursuant to rules adopted under division (B)(5) of section 3750.02 of the Revised Code along with the report that the owner or operator is required to submit to the commission and submits to the committee or fire department a copy of the required report that indicates that such a claim has been filed with the commission and that contains the generic class or category of the chemical identity in place of the specific chemical identity and that is accompanied by a copy of the substantiation supporting the trade secret claim that was submitted to the commission. The owner may withhold from the copy of the substantiation submitted to the committee or fire department the specific chemical identity claimed to be a trade secret and information identified as confidential business information in rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code.

(b) A determination of the claim remains pending pursuant to those rules and division (B)(14) of that section.

(2) It has been determined pursuant to those rules and division (B)(14) of that section that a trade secret exists.

(C) No person shall withhold the specific identity of a chemical on the grounds that it is a trade secret:



(1) From any report enumerated in division (A) or (B) of this section, if it has been determined pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code, or pursuant to division (B)(14) and rules adopted under division (B)(5) of that section, that no trade secret exists;

(2) In any notification of a release required by section 3750.06 of the Revised Code;

(3) When required to provide the specific chemical identity to a health professional, physician, or nurse pursuant to division (E) of this section.

(D) The governor may, pursuant to section 322 of the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1747, 42 U.S.C.A. 11042, request the administrator of the United States environmental protection agency to provide specific chemical identities that are claimed or have been determined to be trade secret information or the substantiations, explanations, or supplemental information supporting trade secret protection claims submitted to or determined by the administrator pursuant to that section and rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code regarding facilities located in this state that are subject to this chapter. The governor shall not make available to any member of the commission or committee who is not also an officer or employee of the state or a political subdivision any information claimed or determined to be a trade secret or confidential business information obtained under this division or pursuant to rules adopted under division (B)(5) of section 3750.02 of the Revised Code. Any trade secret and confidential business information obtained under this division or pursuant to rules adopted under division (B)(5) of that section shall be protected from unauthorized disclosure in accordance with rules adopted under division (B)(1)(i) of that section.

(E)(1) The owner or operator of a facility that is subject to section 3750.07 or 3750.08 of the Revised Code shall provide the specific chemical identity of an extremely hazardous substance or hazardous chemical, if the specific chemical identity is known, to any health professional who submits to the owner or operator a written request and statement of need for the specific chemical identity. The written statement of need shall be a statement of the health professional that the health professional has a reasonable basis to believe that all of the following conditions pertain to the request:

(a) The information is needed for purposes of diagnosis or treatment of an individual;



(b) The individual being diagnosed or treated has been exposed to the chemical concerned;

(c) Knowledge of the specific chemical identity of the chemical will assist in diagnosis and treatment.

An owner or operator to whom such a written request and statement of need is submitted shall provide the requested information to the health professional promptly after receiving the request and statement of need, subject to division (E)(4) of this section.

(2) The owner or operator of a facility that is subject to section 3750.07 or 3750.08 of the Revised Code shall provide a copy of a material safety data sheet or emergency and hazardous chemical inventory form that contains the specific chemical identity of an extremely hazardous substance or hazardous chemical, if the specific chemical identity is known, to any treating physician or nurse who requests that information if the physician or nurse determines that all of the following conditions pertain to the request:

(a) A medical emergency exists;

(b) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first aid diagnosis or treatment;

(c) The individual being diagnosed or treated has been exposed to the chemical concerned.

The owner or operator shall provide the requested information to the physician or nurse immediately upon receiving such a request. The owner or operator shall not require any such treating physician or nurse to provide a written confidentiality agreement or statement of need as a precondition for disclosure of a specific chemical identity under this division; however, the owner or operator may require the treating physician or nurse to provide a written confidentiality agreement under division (E)(4) of this section and a statement setting forth the conditions listed in divisions (E)(2)(a) to (c) of this section as soon after the request is made as circumstances permit.

(3) The owner or operator of a facility that is subject to section 3750.07 or 3750.08 of the Revised



Code shall provide the specific chemical identity of an extremely hazardous substance or hazardous chemical, if the specific chemical identity is known, to any health professional, including, without limitation, a physician, toxicologist, or epidemiologist, who is either employed by or under contract with a political subdivision and who submits to the owner or operator a written request for the information, a written statement of need for the information that meets the requirements of division (E)(3) of this section, and a written confidentiality agreement under division (E)(4) of this section. The owner or operator shall promptly after receipt of the written request, statement of need, and confidentiality agreement provide the requested information to the local health professional who requested it.

The written statement of need for a specific chemical identity required by division (E)(3) of this section shall describe with reasonable detail one or more of the following health needs for the information:

- (a) To assess exposure of persons living in a local community to the hazards of the chemical concerned;
 - (b) To conduct or assess sampling to determine exposure levels of various population groups to the chemical concerned;
 - (c) To conduct periodic medical surveillance of population groups exposed to the chemical concerned;
 - (d) To provide medical treatment to individuals or population groups exposed to the chemical concerned;
 - (e) To conduct studies to determine the health effects of exposure to the chemical concerned;
 - (f) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.
- (4) Any person who obtains information under division (E)(1) or (3) of this section shall, as a precondition for receiving that information, enter into a written confidentiality agreement with the



owner or operator of the facility from whom the information was requested that the person will not use the information for any purpose other than the health needs asserted in the statement of need provided thereunder, except as otherwise may be authorized by the terms of the agreement or by the person providing the information.

(F)(1) A member of the commission, officer or employee of the environmental protection agency, member or employee of a committee, or officer or employee of a fire department shall not request the owner or operator of a facility subject to this chapter to submit to the member, officer, or employee a trade secret claim or copy thereof; report required by section 3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code; substantiation of a trade secret claim or copy thereof or explanation or supporting information pertaining to a trade secret claim or copy thereof, that contains any information claimed or determined to be a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code or identified as confidential business information by rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code. If any such member, officer, or employee knows or has reason to believe that any such trade secret claim, report, substantiation, or explanation or supporting information pertaining to a trade secret claim contains any such information, the member, officer, or employee immediately shall return it to the owner or operator of the facility who submitted it without reading it and shall request the owner or operator to submit the appropriate report or substantiation that does not contain the information claimed or determined to be a trade secret or so identified as confidential business information.

(2) A member of the commission who is not also an employee of the state or a political subdivision, member or employee of a committee, or officer or employee of a fire department shall not request the owner or operator of a facility subject to this chapter to submit to the member, officer, or employee a trade secret claim or copy thereof; report required by section 3750.04, 3750.05, 3750.07, or 3750.08 of the Revised Code; substantiation of a trade secret claim; or explanation or supporting information pertaining to a trade secret claim or copy thereof, that contains any information claimed or determined to be a trade secret pursuant to division (B)(14) of section 3750.02 of the Revised Code and rules adopted under division (B)(5) of that section or any information identified as confidential business information by rules adopted under division (B)(1)(h) of that section that pertains to such a claim. If any such member, officer, or employee knows or has reason to believe that any such trade secret claim, report, substantiation, or explanation or supporting information pertaining to any such trade secret claim contains any such information, the member, officer, or



employee immediately shall return it to the owner or operator of the facility who submitted it without reading it and shall request the owner or operator to submit the appropriate report or substantiation that does not contain the information so claimed or determined to be a trade secret or so identified as confidential business information.

(G) No member of the commission or designee of a member of the commission, officer or employee of the environmental protection agency, member or employee of a committee, health professional, physician, nurse, or other person who receives information claimed or determined to be a trade secret pursuant to rules adopted under division (B)(2)(d) of section 3750.02 of the Revised Code or pursuant to division (B)(14) of that section and rules adopted under division (B)(5) of that section, or who receives confidential business information identified in rules adopted under division (B)(1)(h) of section 3750.02 of the Revised Code shall release the information to any person not authorized to have that information under division (C) of this section or rules adopted under division (B)(1)(i) of that section. A violation of this division is not also a violation of section 2913.02 or 2913.04 of the Revised Code.