



Ohio Revised Code

Section 3751.04 Specific chemical identity as trade secret.

Effective: September 29, 2017

Legislation: House Bill 49 - 132nd General Assembly

(A) Except as otherwise provided in division (D) of this section, any person required to provide information under section 3751.03 of the Revised Code may withhold from submission the specific chemical identity, including the chemical name and other specific identification, of the toxic chemical 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 regulations promulgated by the administrator of the United States environmental protection agency under EPCRA, and submits a copy of the required toxic chemical release form that indicates that such a claim has been filed and contains the generic class or category of the identity in place of the identity.

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

(2) It has been determined by the administrator pursuant to those regulations that a trade secret exists.

(B) No person shall withhold the specific identity of a toxic chemical on the grounds that the information is a trade secret in either of the following instances:

(1) From any toxic chemical release form if it has been determined by the administrator pursuant to regulations promulgated under EPCRA that no trade secret exists;

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

(C) The governor may, pursuant to EPCRA, 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 explanations and supplemental information supporting trade secret protection claims regarding facilities located in this state that are subject to this chapter. The governor shall not make any trade secret or confidential information obtained under this division available to any member of the emergency planning commission created in section 3750.02 of the Revised Code or to any member of a local emergency planning committee of an emergency planning district established under section 3750.03 of the Revised Code who is not also an officer or employee of the state or a political subdivision. Any trade secret or confidential business information obtained under this division shall be protected from unauthorized disclosure.

(D)(1) The owner or operator of a facility that is subject to section 3751.03 of the Revised Code shall provide the specific chemical identity of a toxic 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 (D)(4) of this section.

(2) The owner or operator of a facility that is subject to section 3751.03 of the Revised Code shall provide a copy of a toxic chemical release form that contains the specific chemical identity of a toxic 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 (D)(4) of this section and a statement setting forth the conditions listed in divisions (D)(2)(a) to (c) of this section as soon after the disclosure is made as circumstances permit.

(3) The owner or operator of a facility that is subject to section 3751.03 of the Revised Code shall provide the specific chemical identity of a toxic 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 (D)(3) of this section, and a written confidentiality agreement under division (D)(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 (D)(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 (D)(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.

(E) An officer or employee of the environmental protection agency shall not request the owner or operator of a facility subject to this chapter to submit to the officer or employee a trade secret claim, toxic chemical release form required by section 3751.03 of the Revised Code, substantiation of a trade secret claim, or explanation or supporting information or copy thereof pertaining to a trade secret claim, that contains any information claimed or determined to be a trade secret or identified as confidential business information under EPCRA. If any officer or employee of the agency knows or has reason to believe that a trade secret claim, toxic chemical release form, substantiation, or explanation or supporting information pertaining to a trade secret claim contains any such information, the 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.



(F) No officer or employee of the environmental protection agency, health professional, physician, nurse, or other person who receives information claimed or determined to be a trade secret or identified as confidential business information by regulations promulgated by the administrator under EPCRA shall release any information so classified or identified to any person not authorized to have that information under division (C) of this section. A violation of this division is not also a violation of section 2913.02 or 2913.04 of the Revised Code.