

§ 113-391.1. Trade secret and confidential information determination; protection; retention; disclosure to emergency personnel.

(a) Legislative Findings. – The General Assembly finds that while confidential information must be maintained as such with the utmost care, for the protection of public health, safety, and the environment, the information should be immediately accessible to first responders and medical personnel in the event that the information is deemed necessary to address an emergency.

(b) Determination and Treatment of Confidential Information. – Information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission and Department has access, if made public, would divulge methods or processes entitled to protection as confidential information pursuant to G.S. 132-1.2, the Commission shall consider the information confidential. In accordance with subsection (b1) of G.S. 113-391, the State Geologist shall serve as the custodian of the confidential information and shall ensure that it is maintained securely as provided in G.S. 132-7. The State Geologist, or the Geologist's designee, shall:

- (1) Review confidential information that concerns hydraulic fracturing fluid, as that term is defined in G.S. 113-389, to ensure compliance with all State and federal laws, rules, and regulations concerning prohibited chemicals or constituents, or exceedances of standards for chemicals or constituents. The State Geologist, or the Geologist's designee, shall issue a written certification within five days of completion of the review that the hydraulic fracturing fluids, including chemicals and constituents contained therein, comply with all State and federal laws, rules, and regulations; (ii) transmit the certification to the Mining and Energy Commission and the Director of the Division of Energy, Mining, and Land Resources; and (iii) transmit a copy of the certification electronically to the permittee. Horizontal drilling and hydraulic fracturing treatments shall not commence until this written certification has been issued and transmitted as required by this subsection.
- (2) Review, in consultation with the State Health Director, confidential information that concerns hydraulic fracturing fluid, as that term is defined in G.S. 113-389, to advise local health departments of additional parameters that should be included in testing for private drinking water wells in their jurisdictions in compliance with the requirements of G.S. 87-97 and the Private Well Water Education Act enacted by S.L. 2013-122.

(c) Exceptions to Disclosure Prohibitions. – Confidential information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, may be disclosed to any officer, employee, or authorized representative of any federal or State agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article. Confidential information shall be disclosed to the following:

- (1) The Division of Emergency Management of the Department of Public Safety. The Division shall maintain this information as confidential except if disclosure is necessary to carry out a proper function of the Division, including for the purposes of emergency planning and emergency response. For purposes of this section, the term "emergency" is defined as provided in G.S. 166A-19.3.
- (2) A treating health care provider who determines that a medical emergency exists and that the information is necessary for emergency or first aid

treatment. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the treating health care provider upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the treating health care provider as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the health purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

- (3) A Fire Chief, as that term is defined in G.S. 95-174, who determines that an emergency exists and that the information is necessary to address the emergency. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the Fire Chief upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the Fire Chief as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the emergency purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this section or as otherwise provided by law, any person who has access to confidential information pursuant to this section and who knowingly and willfully discloses it to any person not authorized to receive it shall be guilty of a Class 1 misdemeanor and shall be subject to civil action for damages and injunction by the owner of the confidential information, including, without limitation, actions under Article 24 of Chapter 66 of the General Statutes.

(e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days of any decision made pursuant to subsection (b) of this section, the Commission shall provide notice to any person who submits information asserted to be confidential (i) that the information is not entitled to confidential treatment and (ii) of any decision to release such information to any person who has requested the information. Notwithstanding the provisions of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the General Statutes, any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information made pursuant to subsection (b) of this section shall have 30 days after receipt of notification from the Commission to appeal by filing an action in superior court and in accordance with the procedures for a mandatory complex business case set forth in G.S.

7A-45.4. Notwithstanding any other provision of G.S. 7A-45.4, the appeal shall be heard de novo by a judge designated as a Business Court Judge under G.S. 7A-45.3. The information may not be released by the Commission until the earlier of (i) the 30-day period for filing of an appeal has expired without filing of an appeal or (ii) a final judicial determination has been made in an action brought to appeal a decision of the Commission. In addition, the following shall apply to actions brought pursuant to this section:

- (1) Such actions shall be set down for immediate hearing.
- (2) The burden shall be on the owner of the information to show that the information is entitled to protection as confidential information pursuant to G.S. 132-1.2.
- (3) The court shall allow a party seeking disclosure of information who substantially prevails to recover its reasonable attorneys' fees if attributed to the information. The court may not assess attorneys' fees against the Commission or the Department, however, but shall impose such fees on the owner of the information asserting confidentiality.
- (4) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess reasonable attorneys' fees against the person or persons instituting the action and award to the prevailing party or parties. (2014-4, s. 8(a); 2014-115, s. 67.)