



Panel Discussion: Confidentiality



Oregon
Pretreatment
Program

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Confidentiality: What are your responsibilities?

- What constitutes *confidential business information*?
- State expectations for local pretreatment programs: What constitutes a sufficient confidentiality protection procedure?



Reasons of business confidentiality protections

40 CFR 2.201 (e)

Related to the concept of *trade secrecy*,
and related legal concepts –

A business has the right to preserve
confidentiality and to limit use/disclosure of
business information in order to retain the
competitive advantage a business derives
from its information



Confidentiality – Federal Rules

40 CFR 403.8(f)(1)(vii) requires POTWs comply 40 CFR 403.14

40 CFR 403.8(f) requires that POTWs have the legal *authorities* and *procedures* to comply with confidentiality requirements established in 403.14

40 CFR 403.14 says (*paraphrased*):

Any information ... may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission...(as instructed or) by stamping the words “*confidential business information*” on each page containing such information



Federal Criteria for determining Confidential Business Information

40 CFR § 2.208

- The business has asserted a confidentiality claim (which has not expired)
- The business has taken reasonable measures to protect the confidentiality of the information
- The information is not (and has not been) reasonably obtainable without the business's consent by others through legitimate means
- No statute specifically requires disclosure of the information, and ...



Federal Criteria for determining Confidential Business Information

40 CFR § 2.208

The business must either:

- (1) Show that disclosure of the information is likely to cause substantial harm to the business's competitive position; or
- (2) Voluntarily submit the information, and claim its disclosure would be likely to impair the Government's ability to obtain necessary information in the future.



Internal Records Retention Policy

- **Pretreatment Reports:** 5 years after permit superseded or obsolete, destroy
- **Pretreatment Program Authorization:** 3 years after permit superseded or obsolete
- **Enforcement:** Precedent-setting: 20 years after case closed; All others: 5 years
- **NPDES compliance monitoring:** 10 years
- **NPDES Permits:** Retain current and prior