

Environmental Protection Agency

§ 350.17

specific chemical identity withheld therefrom.

(iv) The information referred to in paragraph (a)(3)(i)(A) of this section, is of value to competitors.

(v) Competitors are likely to use this information to the economic detriment of the submitter and are not precluded from doing so by a United States patent.

(vi) The resulting harm to submitter's competitive position would be substantial.

(4) The chemical identity is not readily discoverable through reverse engineering. To support this conclusion, the facts asserted must show that competitors cannot readily discover the specific chemical identity by analysis of the submitter's products or environmental releases.

(b) The sufficiency of the trade secrecy claim shall be decided entirely upon the information submitted under § 350.7, or § 350.11(a)(2)(ii).

§ 350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.

(a) The public may request the disclosure of chemical identity claimed as trade secret by submitting a written petition to the address specified in § 350.16.

(b) The petition shall include:

(1) The name, address, and telephone number of the petitioner;

(2) The name and address of the company claiming the chemical identity as trade secret; and

(3) A copy of the submission in which the submitter claimed chemical identity as trade secret, with a specific indication as to which chemical identity the petitioner seeks disclosed.

(c) EPA shall acknowledge, by letter to the petitioner, the receipt of the petition.

(d) Incomplete petitions. If the information contained in the petition is not sufficient to allow EPA to identify which chemical identity the petitioner is seeking to have released, EPA shall notify the petitioner that the petition cannot be further processed until additional information is furnished. EPA will make every reasonable effort to assist a petitioner in providing sufficient information for EPA to identify

the chemical identity the petitioner is seeking to have released.

(e) EPA shall make a determination on a petition requesting disclosure, in accordance with § 350.11 and § 350.17, within nine months of receipt of such petition.

§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.

The address and location to send all claims of trade secrecy under sections 303(d)(2) and (d)(3), 311, 312, and 313 of Title III and all public petitions requesting disclosure of chemical identities claimed as trade secret are posted on the following EPA Program Web sites, <http://www.epa.gov/ceppo> and <http://www.epa.gov/tri>. Any subsequent changes to the address and location will be announced in FEDERAL REGISTER Notices as these changes occur. Also, the changes will be posted on these Web sites. Submitters may also contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424-9346 or (703) 412-9810, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/> to obtain this information.

[68 FR 64724, Nov. 14, 2003]

§ 350.17 Appeals.

(a) *Procedure for filing appeal.* A submitter may appeal an EPA determination under § 350.11(a)(2)(i) or (b)(2)(i), by filing an appeal with the General Counsel. The appeal shall be addressed to: The Office of General Counsel, U.S. Environmental Protection Agency, Mailcode 2310A, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

The appeal shall contain the following:

(1) A letter requesting review of the appealed decision; and

(2) A copy of the letter containing EPA's decision upon which appeal is requested.

(b) Appeal of determination of insufficient claim.

(1) Where a submitter appeals a determination by EPA under § 350.11(a)(2)(i) that the trade secrecy claim presents insufficient support for a finding of trade secrecy, the General Counsel shall make one of the following determinations:

§ 350.18

40 CFR Ch. I (7-1-06 Edition)

(i) The trade secrecy claim at issue meets the standards of sufficiency set forth in §350.13; or

(ii) The trade secrecy claim at issue does not meet the standards of sufficiency set forth in §350.13.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the claim shall be processed according to §350.11(a)(1). The General Counsel shall notify the submitter of the determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision.

(3) If the General Counsel upholds the determination of insufficiency made by the EPA office handling the claim, the submitter may seek review in U.S. District Court within 30 days after receipt of notice of the General Counsel's determination. The General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision, and a statement of the submitter's right to seek review in U.S. District Court within 30 days of receipt of such notice. The petitioner shall be notified by regular mail.

(c) *Appeal of determination of no trade secret.* (1) If a submitter appeals from a determination by EPA under §350.11(b)(2) that the specific chemical identity at issue is not a trade secret, the General Counsel shall make one of the following determinations:

(i) The assertions supporting the claim of trade secrecy are true and the chemical identity is a trade secret; or

(ii) The assertions supporting the claim of trade secrecy are not true and the chemical identity is not a trade secret.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the General Counsel shall notify the submitter of its determination on appeal in writing, by

certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision. The General Counsel shall send the petitioner the notice required in §350.11(b)(1).

(3) If the General Counsel upholds the decision of the EPA office which made the trade secret determination, the submitter may seek review in U.S. District Court within 30 days of receipt of notice of the General Counsel's decision. The General Counsel shall notify the submitter of the determination on appeal in writing, by certified mail (return receipt requested). The notice shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, the basis for the appeal determination, that it constitutes final Agency action concerning the chemical identity trade secrecy claim, and that such final Agency action may be subject to review in U.S. District Court within 30 days of receipt of such notice. The General Counsel shall notify the petitioner by regular mail.

[53 FR 28801, July 29, 1988, as amended at 68 FR 64724, Nov. 14, 2003]

§350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.

(a) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of a determination of the General Counsel under §350.17(b)(3) of this subpart that the trade secrecy claim is insufficient, or under §350.17(c)(3) of this subpart that chemical identity claimed as trade secret is not entitled to trade secret protection, EPA may furnish notice of intent to disclose the chemical identity claimed as trade secret within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(b) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of an EPA determination under