

## § 312.30

### **§ 312.30 Commonly known or reasonably ascertainable information about the property.**

(a) Throughout the inquiries, persons to whom this part is applicable per § 312.1(b) and environmental professionals conducting the inquiry must take into account commonly known or reasonably ascertainable information within the local community about the subject property and consider such information when seeking to identify conditions indicative of releases or threatened releases, as set forth in § 312.1(c), at the subject property.

(b) Commonly known information may include information obtained by the person to whom this part applies in § 312.1(b) or by the environmental professional about releases or threatened releases at the subject property that is incidental to the information obtained during the inquiry of the environmental professional.

(c) To the extent necessary to achieve the objectives and performance factors of § 312.20(e) and (f), persons to whom this part is applicable per § 312.1(b) and the environmental professional must gather information from varied sources whose input either individually or taken together may provide commonly known or reasonably ascertainable information about the subject property; the environmental professional may refer to one or more of the following sources of information:

(1) Current owners or occupants of neighboring properties or properties adjacent to the subject property;

(2) Local and state government officials who may have knowledge of, or information related to, the subject property;

(3) Others with knowledge of the subject property; and

(4) Other sources of information (e.g., newspapers, Web sites, community organizations, local libraries and historical societies).

### **§ 312.31 The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.**

(a) Persons to whom this part is applicable per § 312.1(b) and environmental professionals conducting an in-

## 40 CFR Ch. I (7-1-08 Edition)

quiry of a property on behalf of such persons must take into account the information collected under § 312.23 through 312.30 in considering the degree of obviousness of the presence of releases or threatened releases at the subject property.

(b) Persons to whom this part is applicable per § 312.1(b) and environmental professionals conducting an inquiry of a property on behalf of such persons must take into account the information collected under § 312.23 through 312.30 in considering the ability to detect contamination by appropriate investigation. The inquiry of the environmental professional should include an opinion regarding additional appropriate investigation, if any.

## **PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION; AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS**

### **Subpart A—Trade Secrecy Claims**

Sec.

350.1 Definitions.

350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR part 2.

350.5 Assertion of claims of trade secrecy.

350.7 Substantiating claims of trade secrecy.

350.9 Initial action by EPA.

350.11 Review of claim.

350.13 Sufficiency of assertions.

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

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

350.17 Appeals.

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

350.19 Provision of information to States.

350.21 Adverse health effects.

350.23 Disclosure to authorized representatives.

350.25 Disclosure in special circumstances.

350.27 Substantiation form to accompany claims of trade secrecy, instructions to substantiation form.

APPENDIX A TO SUBPART A—RESTATEMENT OF TORTS SECTION 757, COMMENT B

## Environmental Protection Agency

## § 350.1

### Subpart B—Disclosure of Trade Secret Information to Health Professionals

350.40 Disclosure to health professionals.

AUTHORITY: 42 U.S.C. 11042, 11043 and 11048 Pub. L. 99-499, 100 Stat. 1747.

SOURCE: 53 FR 28801, July 29, 1988, unless otherwise noted.

### Subpart A—Trade Secrecy Claims

#### § 350.1 Definitions.

*Administrator* and *General Counsel* mean the EPA officers or employees occupying the positions so titled.

*Business confidentiality* or *confidential business information* includes the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its right in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905.

*Chief Executive Officer of the tribe* means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the tribe.

*Claimant* means a person submitting a claim of trade secrecy to EPA in connection with a chemical otherwise required to be disclosed in a report or other filing made under Title III.

*Commission* means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *commission* means the emergency response commission for the tribe under whose jurisdiction the facility is located. In the absence of an emergency response commission, the Governor and the chief executive officer, respectively, shall be the commission. Where there is a cooperative agreement between a State and a Tribe, the commission shall be the entity identified in the agreement.

*Facility* means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). *Facility* shall include man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

*Indian Country* means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

*Indian tribe* means those tribes federally recognized by the Secretary of the Interior.

*Local emergency planning committee* or *committee* means the local emergency planning committee appointed by the emergency response commission.

*Petitioner* is any person who submits a petition under this regulation requesting disclosure of a chemical identity claimed as trade secret.

*Sanitized* means a version of a document from which information claimed as trade secret or confidential has been omitted or withheld.

*Senior management official* means an official with management responsibility for the person or persons completing the report, or the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for

### § 350.3

### 40 CFR Ch. I (7-1-08 Edition)

certifying similar reports under other environmental regulatory requirements.

*Specific chemical identity* means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance. Where the trade name is reported in lieu of the specific chemical identity, the trade name will be treated as the specific chemical identity for purposes of this part.

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction and Indian Country.

*Submitter* means a person filing a required report or making a claim of trade secrecy to EPA under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III.

*Substantiation* means the written answers submitted to EPA by a submitter to the specific questions set forth in this regulation in support of a claim that chemical identity is a trade secret.

*Title III* means Title III of the Superfund Amendments and Reauthorization Act of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986.

*Trade secrecy claim* is a submittal under sections 303 (d)(2) or (d)(3), 311, 312 or 313 of Title III in which a chemical identity is claimed as trade secret, and is accompanied by a substantiation in support of the claim of trade secrecy for chemical identity.

*Trade secret* means any confidential formula, pattern, process, device, information or compilation of information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it. EPA intends to be guided by the Restatement of Torts, Section 757, Comment b.

*Unsanitized* means a version of a document from which information claimed as trade secret or confidential has not been withheld or omitted.

*Working day* is any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days; all other days are.

[53 FR 28801, July 29, 1988, as amended at 55 FR 30644, July 26, 1990]

#### **§350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR part 2.**

(a) *Applicability of subpart.* Sections 350.1 through 350.27 establish rules governing assertion of trade secrecy claims for chemical identity information collected under the authority of sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, and for trade secrecy or business confidentiality claims for information submitted in a substantiation under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III. This subpart also establishes rules governing petitions from the public requesting the disclosure of chemical identity claimed as trade secret, and determinations by EPA of whether this information is entitled to trade secret treatment. Claims for confidentiality of the location of a hazardous chemical under section 312(d)(2)(F) of Title III are not subject to the requirements of this subpart.

(b) *Priority where provisions conflict.* Where information subject to the requirements of this subpart is also collected under another statutory authority, the confidentiality provisions of that authority shall be used to claim that information as trade secret or confidential when submitting it to EPA under that statutory authority.

(c) *Interaction with 40 CFR part 2, EPA's Freedom of Information Act procedures.* (1) No trade secrecy or business confidentiality claims other than those allowed in this subpart are permitted for information collected under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III.

(2) Except as provided in §350.25 of this subpart, request for access to chemical identities withheld as trade secret under this regulation is solely through this regulation and procedures hereunder, not through EPA's Freedom