

**DOCKETED**

<b>Docket Number:</b>	13-ATTCP-01
<b>Project Title:</b>	Acceptance and Training Certification
<b>TN #:</b>	244326
<b>Document Title:</b>	CSPTC Response to CEC TN 244175
<b>Description:</b>	Response to CEC Determination for Confidential Designation TN 244175, referencing initial application TN 243825
<b>Filer:</b>	Kate McDermott
<b>Organization:</b>	California State Pipe Trades Council
<b>Submitter Role:</b>	Applicant
<b>Submission Date:</b>	8/5/2022 12:53:38 PM
<b>Docketed Date:</b>	8/5/2022



## APPLICATION FOR CONFIDENTIAL DESIGNATION (Title 20 Cal. Code. Regs., § 2505 et seq.)

CEC-13 (Revised 11/2021)

CALIFORNIA ENERGY COMMISSION

**All confidential filings:** Individual documents may not exceed 30 MB<sup>1</sup> or be password protected.<sup>2</sup> The application must be a separate document from the confidential materials. The application itself is not confidential and is a public record. The application will be reviewed and acted upon by the Executive Director in consultation with the Chief Counsel of the Energy Commission. (§ 2505, subd. (a))

If you have questions, contact the Docket Unit at (916) 654-5076 or email: [docket@energy.ca.gov](mailto:docket@energy.ca.gov).

**Existing proceedings:** Applications for confidentiality and the confidential documents must be uploaded directly to the Docket Unit through the e-filing system. Paper copies or CDs do not need to be submitted. Links to the e-filing system are provided on most proceeding webpages labeled "Submit e-filing." Alternatively, go to: [https://efiling.energy.ca.gov/Login.aspx?perms\\_1&returnurl=http%3A//efiling.energy.ca.gov/EFiling/EfileSelect/Proceeding.aspx](https://efiling.energy.ca.gov/Login.aspx?perms_1&returnurl=http%3A//efiling.energy.ca.gov/EFiling/EfileSelect/Proceeding.aspx). Registration is necessary the first time documents are uploaded. Once registration is complete, to submit a confidential filing click on **Quick Actions** from the **DASHBOARD** and select **Submit Confidential e-filing** from the dropdown list. The application must be uploaded first followed by one or more confidential files.

**Filings not associated with any proceeding:** Applications for confidentiality and the confidential materials must be submitted directly to the **Docket Unit** in paper form or on a CD, but not by email. Two copies must be submitted, on separate media if electronic, each marked with a descriptive title and "Confidential." (§ 1208.1)

### TO: Energy Commission Docket Unit

Applicant: California State Pipe Trades Council

Address: 1121 L Street, Suite 207, Sacramento, CA 95814

Phone and E-mail: 916-446-7311, [kate@calpipes.org](mailto:kate@calpipes.org)

Proceeding or Project Name: ATTCP

Docket Number: 13-ATTCP-01

- 1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. **Information or data seeking a designation of confidentiality must be included with this application.**

2022 CSPTC ATCP Update Cover Letter (3 pages), 2022 CSPTC Application Update and Appendices (41 pages), 2022 CSPTC MATT Instructor Training Manual - Tracked Changes (492 pages), 2022 CSPTC MATT Instructor Training Manual - Clean (548), 2022 MATT Recertification Examination (1 page), 2022 ATE Recertification

- 1(b). Specify the part(s) of the information or data for which you request confidential designation.

Cover Letter, Application and Appendix, Training Manual, and Examinations in their entirety; or, in the alternative, Examinations in their entirety and pages 96-127 of the Training Manual and pages 84-115 of the Training Manual - Tracked Changes version. By letter dated July 22, 2022, the CEC approved the confidentiality designation for the Examinations

<sup>1</sup> Contact the Docket Unit if you cannot reduce the size of your file.

<sup>2</sup> If you wish to protect the files while in transit, you may combine them in a password-protected .zip file..



**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**(Title 20 Cal. Code. Regs., § 2505 et seq.)**

CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

- 2. State and justify the length of time the Energy Commission should keep the information or data confidential.

For the duration of the Acceptance Test Technician Certification Program. These training materials including proprietary information developed at the expense of the State Pipe Trades Council and its affiliates, and limited to the sole use of those affiliates and our members.  
See attached correspondence and certification under Cal. Code Regs., tit. 20, § 2505(a)(4).

- 3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

See attached correspondence and certification under Cal. Code Regs., tit. 20, § 2505(a)(4).

- 3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

See attached correspondence and certification under Cal. Code Regs., tit. 20, § 2505(a)(4).

- 4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

The information is unable to be aggregated, as it does not involve data. See attached correspondence and certification under Cal. Code Regs., tit. 20, § 2505(a)(4).

- 5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

See attached correspondence and certification under Cal. Code Regs., tit. 20, § 2505(a)(4).

I certify under penalty of perjury under the laws of the State of California that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: August 5, 2022

Signed: *M. B. Hawley*



**APPLICATION FOR CONFIDENTIAL DESIGNATION**  
**(Title 20 Cal. Code. Regs., § 2505 et seq.)**  
CEC-13 (Revised 03/17)

CALIFORNIA ENERGY COMMISSION

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Name (print or type): Mike Hartley  
Title: (print or type) Executive Director  
Representing: California State Pipe Trades Council

Include additional signature blocks if there are multiple partners in the project with shared responsibilities for making the request.

## Cal. Code Regs. tit. 20, §2505(a)(4) Certification

I, Mike Hartley, declare as follows:

1. I am the Executive Director of the California State Pipe Trades Council (“Council”).
2. In February 2020, the Council applied for a confidentiality designation with respect to the Council’s ATTCP Training Manual, Cover Letter, Application Update and Appendices, and Recertification examinations. On April 15, 2020, the California Energy Commission approved the application for confidentiality in its entirety. Attached as Exhibit 1 is a true and correct copy of the letter from Drew Bohan to then-California State Pipe Trades Council Executive Director Aaron Stockwell granting approval of the application for confidential designation, which is available under Docket No. 13-ATTCP-01.
3. On July 1, 2022, the Council applied for a confidentiality designation with respect to the Council’s recently revised ATTCP Training Manual (in clean and tracked changes versions), Cover Letter, Application Update and Appendices, and MATT and ATE Recertification examinations. These documents contain information that is substantially similar to the information contained in the Council’s 2020 submission, as to which the CEC approved the application for confidentiality. The 2022 materials are updated to reflect regulatory changes, but no other significant changes were made.
4. On July 22, 2022, the CEC approved the confidentiality designation with respect to the Recertification examinations and denied the confidentiality designation with respect to the ATTCP Training Manual, Cover Letter, and Application Update and Appendices. Because ATTCP Training Manual, Cover Letter, and Application Update and Appendices contain information that is substantially similar to the Council’s 2020 submission, they should be designated as confidential under Cal. Code Regs., tit. 20, §2505(a)(4).

I certify under penalty of perjury under the laws of the State of California that the information contained in this application is true and correct and complete to the best of my knowledge. I certify that I am authorized to make this application and certification on behalf of the applicant. Executed this 5th day of August 2022 in Sacramento, California.

  
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Mike Hartley

# EXHIBIT 1

**DOCKETED**

<b>Docket Number:</b>	13-ATTCP-01
<b>Project Title:</b>	Acceptance and Training Certification
<b>TN #:</b>	232747
<b>Document Title:</b>	CSPTC Confidentiality Approval
<b>Description:</b>	N/A
<b>Filer:</b>	Pamela A Fredieu
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	4/15/2020 2:19:40 PM
<b>Docketed Date:</b>	4/15/2020



April 15, 2020

Mr. Aaron Stockwell  
California State Pipe Trades Council  
1121 L Street, Suite 207  
Sacramento, California 95814

RE: Application for Confidential Designation for Updated Application, Training,  
and Study Materials, Docket No. 13-ATTCP-01

Dear Mr. Stockwell:

The California Energy Commission (CEC) received your Confidentiality Application (Application) that you filed on February 14, 2020 on behalf of California State Pipe Trades Council (CSPTC) (Applicant). You seek confidential designation for the following documents that you submitted comprising updated training, testing, and application materials (Documents):

- 1) 2019 CSPTC ATCP Update Cover Letter, 2020 – 3 pages
- 2) 2019 CSPTC Application Update and Appendices, 2020 – 40 pages
- 3) 2019 CSPTC MATT Instructor Training Manual, 2020 – 432 pages
- 4) 2019 CSPTC ATE Training Manual, 2020 – 62 pages
- 5) 2019 MATT Certification Examination, 2020 – 27 pages
- 6) 2019 MATT Recertification Examination, 2020 – 3 pages

You requested confidential designation of the Documents in their entirety, pursuant to California Code of Regulations, title 20, section 2505, on the grounds that they include proprietary training and trade information distributed only to United Association members and signatory contractors.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [CEC] to keep the record confidential." The California Public Records Act allows for the non-disclosure of corporate proprietary information including trade secrets. (Gov. Code, sections 6254(k), 6276.44; see also Evid. Code, section 1060; Civ. Code, section 3426.1.)



California courts have traditionally used the following definition of trade secret:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(*Uribe v. Howe* (1971) 19 Cal. App. 3d 194, 207-208, from the Restatement of Torts, vol. 4, section 757, comment b, p. 5.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state:

- 1) the specific nature of the advantage;
- 2) how the advantage would be lost;
- 3) the value of the information to an applicant; and
- 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Your Application states the Documents include proprietary training and trade information, and were developed at the expense of the Applicant and the Training Programs of United Association (UA) California locals. Your Application also states that the Documents are provided only to UA members and their signatory contractors for training and not otherwise distributed or disclosed. You state that the information cannot be aggregated. Your Application requested that the Documents remain confidential until the Acceptance Test Technician Certification Program ends.

Beyond the bases you identified, it also appears that the Documents could allow prospective students to cheat by obtaining testing materials which would diminish the effectiveness of the entire program. The Public Records Act specifically allows for the non-disclosure of test questions, scoring keys, and other examination data used to administer various types of examinations. (Gov. Code, section 6254(g).)

You have made a reasonable claim that the law allows the CEC to grant your Application. The Applicant developed the testing forms, which contain information that is not public. There is no information to suggest that release of the information would serve a greater public benefit than its protection.

Aaron Stockwell  
April 15, 2020  
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Based on the discussion above, the Applicant's confidentiality Application is granted. The information subject to this confidentiality designation will be kept confidential until the Acceptance Test Technician Certification Program ends.

Be advised that persons may petition to inspect or copy records that the CEC has designated as confidential, the Executive Director may disclose or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506-2508.

In the future, you may request confidentiality for any similar document without submitting an application by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have any questions concerning this matter, please contact Ralph Lee, attorney, at [ralph.lee@energy.ca.gov](mailto:ralph.lee@energy.ca.gov) or (916) 645-3953.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal flourish extending to the right.

Drew Bohan  
Executive Director



**CALIFORNIA STATE  
PIPE TRADES COUNCIL**  
PUBLIC, LABOR AND GOVERNMENTAL RELATIONS

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Sacramento, CA 95814  
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August 5, 2022

Drew Bohan  
Executive Director  
California Energy Commission  
715 P St.  
Sacramento, CA 95814

Re: Application for Confidential Designation: ATTCP Docket No. 13-ATTCP-01

Dear Mr. Bohan:

The California State Pipe Trades Council is an approved provider of Title 24 ATTCP training and certification. I am writing in response to your letter dated July 22, 2022 regarding the Council's application for confidential designation with respect to our revised ATTCP training materials. Our ATTCP training materials represent a substantial investment of resources on the Council's part to effectively position United Association ("UA") affiliates and their signatory contractors to secure a portion of the highly competitive market for certified Acceptance Test Technicians.

The application for confidential designation should be approved in its entirety, with the Training Manual (in clean and tracked changes versions), Cover Letter and Application and Appendices all designated as confidential, both because those materials are substantially similar to earlier versions of our training materials as to which the CEC granted confidential designation in 2020, and because those materials are trade secrets. In the alternative, we request that pages 96-127 of the Training Manual (and pages 84-115 of the Tracked Changes version) be designated as confidential.

The CEC's July 22, 2022 letter stated that the confidentiality designation was approved with respect to the Council's MATT and ATE recertification exams. Therefore, we address the Council's other training materials below.

## 1) The 2022 Application Is Substantially Similar to the Approved 2020 Application

Our July 1, 2022 application for confidential designation should have been approved because it is substantially similar to our 2020 application that was approved in its entirety. Under Cal. Code Regs., tit. 20, §2505(a)(4), when an applicant seeks a confidential designation for “information that is substantially similar to information that was previously deemed confidential by the Commission,” the general application requirements are inapplicable. Instead, any application that has a sworn certification that the information is substantially similar will be approved.

Our 2022 application should be approved under §2505(a)(4). We have attached a certification stating, under penalty of perjury, that these documents are substantially similar to previously approved documents.

## 2) The Application Materials Qualify for Confidential Designation

Even if our 2022 submission were not substantially similar as to the materials the Commission deemed confidential in our 2020 submission, our application for a confidentiality designation should nevertheless be approved. Cal. Code Regs., tit. 20, §2505(a)(1)(D) states that materials can be designated as confidential if the Public Records Act allows. The materials we submitted readily qualify as trade secrets under the PRA.

The Application, Cover Letter, and Training Manual are an integrated whole, with the Application and Cover Letter summarizing the modifications made to the Manual to reflect recent regulatory changes. Therefore, all of these materials should be deemed protected from disclosure under the Public Records Act.

### a) The Application Materials are Trade Secrets Under the PRA

Under Civil Code §3426.1(d), a “trade secret” has two primary components: (1) it must derive “independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use”; and 2) it must be “the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Our materials satisfy these requirements.

#### i) *Independent Economic Value*

Our Training Manual has independent economic value. A trade secret’s “[i]ndependent economic value can be evidenced by ‘circumstantial evidence of the resources invested in producing the information.’” *Mattel, Inc. v. MGA Entertainment, Inc.*, 782 F.Supp.2d 911, 972 (C.D. Cal. 2011) (quoting *Religious Tech. Ctr. v. Netcom On-Line Commc’n Servs., Inc.*, 923 F.Supp. 1231,

1253 (N.D. Cal. 1995)). Training materials are often found to be trade secrets. *See, e.g. Lizalde v. Advanced Planning Services, Inc.*, 875 F.Supp.2d 1150, 1165-66 (S.D. Cal. 2012) (proprietary roadmap of how to market and implement the firm’s products was a trade secret); *Art of Living Found. v. Does 1-10*, No. 5:10-CV-05022-LHK, 2012 WL 1565281, at \*18-21 (N.D. Cal. May 1, 2012) (plaintiff sufficiently established that teaching manuals were trade secrets to overcome motion to strike); *see also Bridge Publications, Inc. v. Vien*, 827 F.Supp. 629, 632-33 (S.D. Cal. 1993) (instructional materials were trade secrets).

The independent economic value of the Training Manual primarily consists of our investment in creating it. As stated in our July 1, 2022 application, the materials were “developed at the expense of the Council and the Training Programs of UA California Locals.” We invested in compiling the material into an integrated training course in order to train our members employed by contractors who are signatory to collective bargaining agreements with UA local unions to perform work in the market for Acceptance Test Technicians. This training makes our signatory contractors, and our members who work for those contractors, more competitive that important and expanding market.

*ii) Reasonable Efforts*

We have taken reasonable efforts to protect the secrecy of these materials. Reasonable efforts include advising those to whom the secret is disclosed to keep it secret and limiting access to those who need to know it. *Religious Tech. Ctr.*, 923 F.Supp. at 1253. As noted in the application, we have taken such steps to protect these documents. The documents are “intended for, and distributed only to, United Association members and their signatory contractors for training.” We do not make the training materials available to the general public.

b) The Application Materials Meet the Criteria of Section 2505(a)(1)(D)

Our application materials also meet the requirements of Cal. Code Regs., tit. 20, §2505(a)(1)(D). The regulation requires an applicant to “state the specific nature of that advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.” Our materials satisfy each of these criteria.

*i) Specific Nature of Advantage*

As discussed above, training materials provide a competitive advantage to UA members, affiliates, and signatory contractors, as it becomes more desirable to become a member or a signatory contractor to obtain access to our high-quality training program. Our July 1, 2022 application stated that the materials “include proprietary training and trade information,”

referring to this specific advantage.

*ii) Loss of Advantage*

The fact that disclosure would result in the loss of the competitive advantage provided by secrecy follows directly from the nature of the advantage conferred on our affiliates and signatory contractors by access to our proprietary training materials. If the Council's training materials were subject to public disclosure, any competitors in our industry could save themselves substantial resources by using our training materials rather than investing in the development of their own. That would cause our members and signatory contractors to lose a competitive advantage in the market for certified Acceptance Test Technicians, because those competitors would now have access to the same high-quality training materials without having expended the resources to independently develop their own materials.

*iii) Value to Applicant*

We expended significant resources in developing these materials because the advantage they give to our members is valuable, for the reasons discussed above. As stated in our July 1, 2022 application, the training materials were "developed at the expense of the Council," demonstrating the value to us of this information.

*iv) Difficulty of Acquisition*

As stated in our July 1, 2022 application, the training materials are "intended for, and distributed only to, United Association members and their signatory contractors for training," establishing that these materials cannot easily be legitimately acquired by others. Our members and contractors are not permitted to share these materials with others. Only authorized instructors and employees of authorized contractors receive access to the Training Manual, and only employees of authorized contractors are then provided single-use links to access the certification exam.

**3) Portions of the Training Manual Are Protected as Test Questions**

Government Code §6254(g) states that testing questions and materials designed for licensing programs qualify for confidentiality under the Public Records Act. Pages 96-127 of the Training Manual (pages 84-115 of the Tracked Changes version) feature test questions and recommended solutions. Therefore, even if the CEC ultimately determines that the entire Manual is not protected as a trade secret, those pages should be protected from disclosure under the PRA.

In conclusion, our training materials should have been designated confidential in their entirety because they are substantially similar to our approved 2020 application. In any event, our training materials qualify as trade secrets. If the CEC determines otherwise, we request that at

least pages 96-127 of the Training Manual, and pages 84-115 of the Tracked Changes version of the Training Manual, be designated as confidential under Government Code §6254(g).

Sincerely,



Mike Hartley  
Executive Director