

**DOCKETED**

<b>Docket Number:</b>	13-ATTCP-01
<b>Project Title:</b>	Acceptance and Training Certification
<b>TN #:</b>	247642
<b>Document Title:</b>	CEC response for Confidential Designation NEBB Oct 1718, 2022
<b>Description:</b>	N/A
<b>Filer:</b>	Pam Fredieu
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November 22, 2022

**Via Email to** [Tiffany@nebb.org](mailto:Tiffany@nebb.org)

Tiffany Meyers

Executive Vice President  
NEBB  
8575 Grovemont Circle  
Gaithersburg, Maryland 20877

**Application for Confidential Designation - NEBB 2022 Acceptance Test Technician (ATT) Updated Training Materials**

**Docket No. 13-ATTCP-01**

Dear Tiffany Meyers:

The California Energy Commission (CEC) has received NEBB's (NEBB or applicant) applications for confidential designation, docketed October 17, 2022, (TN 246599, 246600) and October 18, 2022 (TN 246625). These three applications request confidentiality for:

NEBB PowerPoint and PDFs of the training material for 2022 ATT NRCA-MCH Forms (pages listed in parenthesis):

02A CAV (49), 02A VAV (48) 03A (57), 04A (49), 05A (60), 06A (38), 07A (43), 08A (29), 09A (32), 10A (31), 11A (36), 12A (24), 13A (36), 14A (26), 15A (35), 16A (27), 17A (34), 18A (37), 19A (28), 20a-H (30), 20b-H (25), 20c-H (26), 20d-H (30), 21-A (35), 22-A (32), 23-A (30). A total of 927 pages

TN 246599, docketed October 17, 2022, covers these five training documents:

Economizers, Duct Leakage, HVAC and Heat Pumps, Constant Air Volume Systems Outdoor Air Acceptance, Variable Air Volume Outdoor Air Acceptance

TN 246600, docketed October 17, 2022, covers these seven training documents:

System Duct Leakage, HRV ERV Verification, Multi-Family Envelope Leakage, Dwelling Ventilation HRVERV Verification, Dwelling Ventilation HRVERV Verification, Dwelling Ventilation IAQ Ventilation Systems, Dwelling Ventilation (Kitchen Range Hoods), Dwelling Ventilation

TN 246625, docketed October 18, 2022, covers these 14 training documents:

Occupied Standby Acceptance, Energy Management Control (EMS) System Acceptance, Condenser Reset Controls Acceptance, Supply Air Temperature Reset Controls Acceptance, Thermal Energy Storage (TES) System Acceptance, Energy Storage for AC Acceptance, AHU & Zone Terminal FDD, Fault Detection and Diagnostics (FDD) - Packaged Units, Demand Shed Control Acceptance, Hydronic Flow Control Acceptance, Water Temperature Reset Acceptance, Valve Leakage Acceptance, Supply Fan Variable Flow Controls, Demand Ventilation Control (DVC) Acceptance

The applicant asserts that the 2022 ATT updated training materials constitute works for sale, are copyrighted, proprietary, and should be considered a trade secret.

The application references Government Code sections 6254(k) and 6276.44, and Evidence Code section 1060, and asserts that the protection of their trade secret qualifies as a basis to designate the material confidential under CEC rules. The applicant asserts the materials should be confidential indefinitely.

A properly filed Application for Confidentiality shall be granted under 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 California Energy Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code section 6254(k); Evid. Code section 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives 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) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code section 3426.1(d); See also Gov. Code sections 6254(k), 6276, 6276.44; Evid. Code section 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), further 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.

The applications (TN 246599, 246600, 246625) address each of the four requirements by stating:

1. *The specific nature of the advantage* – The training materials are copyrighted and constitute works for sale.
2. *How the advantage would be lost* – The advantage would be lost if competitors obtained their proprietary training materials for free.
3. *The value of the information to the applicant* – No dollar value, but the curriculum was developed and made available online for a fee at considerable effort and expense to NEBB.
4. *The ease or difficulty with which the information could be legitimately acquired or duplicated by others* – The information is provided only to vendors and test proctors under the protection of a confidentiality agreement. The material is provided to applications once they have purchased the training and test materials. Applicants must agree to not reproduce the information.

The applicant has made a reasonable claim that the documents contain trade secrets, as defined, and that the Public Records Act authorizes the CEC to keep the record confidential pursuant to California Code of Regulations, title 20, section 2505(a)(3)(A).

#### **Executive Director's Determination**

For the reasons stated, 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 under California Code of Regulations, title 20, section 2506, one may petition to inspect or copy records that the CEC has designated as confidential. A decision on a petition to inspect or copy confidential records is issued by the CEC's chief counsel. Under California Code of Regulations, title 20, section 2507, the executive director may disclose records, or release records previously designated as confidential, in certain circumstances. The procedures for acting on a petition and criteria for disclosing or releasing records previously designated as confidential are set forth in the California Code of Regulations, title 20, sections 2506-2508.

You may request confidentiality for similar data in a future annual report without applying by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

Tiffany Meyers  
November 22, 2022  
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If you have any procedural questions concerning this application for confidential designation, please contact Tanner Kelsey, staff counsel, at [tanner.kelsey@energy.ca.gov](mailto:tanner.kelsey@energy.ca.gov).

Sincerely,

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

Drew Bohan  
Executive Director