



OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND ELECTRONIC MAIL

Brian Troyer
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Dynatemp International, Inc.
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Harold B. Kivlan, IV
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Dynatemp International, Inc.
3950 Powhatan Road
Clayton NC 27520-9236

Corporation Service Company
Registered Agent
2595 Interstate Dr #103
Harrisburg, PA 17110

Dynatemp International, Inc. Office
2626 Glenwood Ave Ste 550
Raleigh, NC 27608

Russell Clevenger
Secretary
Dynatemp International, Inc.
409 Parkside Place
Zebulon NC 27597

Re: Clean Air Act Information Request for Dynatemp International, Inc.

Dear Harold Kivlan and Brian Troyer:

The United States Environmental Protection Agency (EPA) hereby requires Dynatemp International, Inc. ("Dynatemp" or "You") to provide certain information, pursuant to its authority under Section 114 of the Clean Air Act (CAA), 42 U.S.C. § 7414, to determine its compliance with the American Innovation and Manufacturing Act (AIM Act), 42 U.S.C. § 7675 and the regulations promulgated thereunder at 40 C.F.R. Part 84 (HFC Allocation Regulations).

The AIM Act provides that Sections 113 and 114 of the CAA, 42 U.S.C. § 7413 and 42 U.S.C. § 7414, apply to the AIM Act and any regulation promulgated thereunder "as though this section were expressly included in title VI of that Act." See 42 U.S.C. § 7675(k)(1)(C).

Pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of EPA is authorized to require any person who is subject to the CAA (including sellers and distributors) to provide certain information to evaluate that person's compliance with the AIM Act, 42 U.S.C. § 7675, and the regulations promulgated thereunder, establish and maintain records, make reports, install and use monitors, sample emissions (in accordance with the procedures and methods that the Administrator shall prescribe) and provide such other information as may reasonably be required for the purpose of, among other things, determining whether any person is in violation of the CAA. This authority has been delegated to the undersigned official. You are hereby required, pursuant to section 114(a) of the CAA, to provide responses to Requests 1 – 15 (Information Request), within 30 calendar days from receipt of this Information Request. Instructions and definitions are provided in Enclosure 1 and the information requested is specified in Enclosure 2.

You are required to attach a properly executed Statement of Certification (see Enclosure 3) with your response to this Information Request. The statement must be signed and dated. You are under an obligation to preserve all Documents requested in this letter until you receive further instructions from the EPA.

Failure to provide the required information is a violation of the Act and may result in one or more of the following actions: 1) issuance of an administrative penalty order pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d); 2) issuance of an order requiring compliance with this Information Request pursuant to section 113(a) of the Act, 42 U.S.C. § 7413(a); 3) initiation of a civil action pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b); and/or 4) initiation of any other action authorized under the Act. In addition, knowingly providing false information in response to this Information Request may be actionable under section 113(c) of the Act, 42 U.S.C. § 7413(c), and 18 U.S.C. §§ 1001 and 1341. The information you provide may be used by the EPA in administrative, civil, and/or criminal proceedings.

Under Section 114(c) of the CAA, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, including 40 C.F.R. § 2.301, you may assert a business confidentiality claim on any information you provide in response to this Information Request, in accord with the

Confidentiality of Business Information (“CBI”) regulations, 40 C.F.R. Part 2, Subpart B. However, no CBI claim may be made with respect to emission data, as defined at 40 C.F.R. § 2.301(a)(2), or to information required to be reported under 40 C.F.R. Part 98 where the Agency has already made a confidentiality determination or emission data determination¹ under 40 C.F.R. § 2.301(d). You must specify the page, paragraph, and sentence or line and numeral when identifying the information subject to your CBI claim. Enclosure 4 of this Information Request specifies the assertion and substantiation requirements for business confidentiality claims. The EPA may, without further notice, provide the public with any information not subject to a CBI claim. See 40 CFR 2.203(a), 41 Fed. Reg. 36,907.

This information collection is exempt from the Paperwork Reduction Act under 44 U.S.C. § 3518(c)(1)(B). Without making a determination that your business or organization is a small business, the EPA is providing you with this Small Business Resources Information Sheet which provides important information that may assist small businesses in identifying and complying with environmental requirements: <https://www.epa.gov/compliance/small-business-resources-information-sheet>.

Please submit the requested information electronically to Nathan Dancher, Air Enforcement Division, U.S. Environmental Protection Agency, at dancher.nathan@epa.gov. Please note that the EPA server will not allow attachments over 20 MB and will not accept documents saved in a .zip file. Alternatively, Dynatemp may want to provide documents in response to this Information Request through a secure file sharing site. Please let us know your preference for electronic document submittal.

If you have any questions regarding this Information Request, please contact Nathan Dancher by email or by phone at (202) 564-0346. Alternatively, legal counsel for Dynatemp may contact Conner Kingsley, Attorney-Advisor, at kingsley.conner@epa.gov or (202) 564-9033.

Sincerely,

MARK
PALERMO

Digitally signed by MARK
PALERMO
Date: 2024.06.20
10:35:33 -04'00'

Mark J. Palermo, Chief
Vehicle and Engine Enforcement Branch
Air Enforcement Division

Enclosures: 1) Instructions and Definitions
2) Information Request
3) Statement of Certification
4) Confidential Business Information Assertion

Cc (by email): Amelie Isin, HFC Enforcement Team Lead

¹ See 76 Fed. Reg. 30782 (May 26, 2011), 76 Fed. Reg. 73886 (Nov. 29, 2011), 81 Fed. Reg. 89188 (Dec. 9, 2016), 77 Fed. Reg. 48072 (Aug. 13, 2012), 78 Fed. Reg. 71904 (Nov. 29, 2013).

ENCLOSURE 1:

A. Instructions

1. This Information Request is a continuing request. You are required to submit all such material within 10 calendar days of discovery in the event you learn that you possess responsive information not yet produced, or if you gain possession, custody, or control of responsive information after initially responding to this information request.
2. Where you have previously submitted information to the EPA that is also the subject of these requests, re-submit the information in accordance with these Instructions. Identify the information that was previously provided, the date on which it was provided, how the information was provided (e.g., electronically, fax, mail), and the person or office at the EPA to whom it was provided.
3. Provide a separate narrative response to each request and subpart set forth in the Information Request. Provide copies of all documents supporting your responses to this Information Request. If you have no responsive information or documents pertaining to a particular request, submit an affirmative statement and explanation.
4. Precede each answer with the number of the request to which it corresponds and at the end of each answer identify the Person(s) (including name, title, and a description of job duties) who provided information that was used or considered in responding to that request, as well as each Person (including name, title, and a description of job duties) who was consulted in the preparation of that response.
5. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the request to which it corresponds. If a document is responsive to more than one request, this must be so indicated and only one copy of the document needs to be provided.
6. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner and the basis for the number provided (e.g., estimated, measured or engineering judgment).
7. Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such documents or information.
8. Narrative documents should be provided in searchable electronic Portable Document Format (PDF) or in Word.
9. Documents scanned from paper should be produced in legible copies.

10. For electronically stored information, including but not limited to computer files or disks, produced in response to this Information Request:
- a. Provide detailed instructions sufficient to enable the federal government to access and retrieve the data contained in each such file or disk.
 - b. If you maintain responsive information in a commercially available software format for spreadsheets, presentations, photographs, etc. (e.g., Microsoft Excel), then:
 - i. Files should be delivered in their unlocked native format.
 - ii. Native files should be collected using a method that preserves all of the files' metadata, folder location, and generates a "hash" value for verification that an exact copy of the file was collected.
 - iii. Files should be organized on the media in folders by component and custodian.
 - c. If you maintain the responsive information in an enterprise database or archiving system, the system must be made available to the government for inspection including any manuals, field lists, data dictionaries, indices, etc. for the government to use to formulate methods for identifying and extracting responsive information into a usable form. Information identified as responsive within the system must be extracted in a forensically sound manner and provided with documentation of the of the procedures used to identify and extract the responsive information from the system.
 - d. Do not de-duplicate the production without prior notice to and consultation with the EPA.
 - e. Ensure that all submissions of electronic data are free of computer viruses and that all passwords protecting files or media are removed or provided with the media.

B. Definitions

All terms used in this Information Request, whether capitalized or lower case, will have their ordinary meaning unless such terms are defined in the AIM Act, 42 U.S.C.A. § 7675(b), or at 40 C.F.R. Part 84.1, in which case the aforementioned definitions shall prevail.²

² For terms used throughout Enclosure 2, including "bulk," "import," and "regulated substance," You should reference the definitions contained in 40 C.F.R. § 84.3, which can be accessed here: <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-84/subpart-A/section-84.3>.

Affiliate or *Affiliated* is used to indicate a relationship to a specified person, and means any person that, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by or is under common ownership or control with such person.

Company means Dynatemp International, Inc. and includes any predecessors, successors, parent corporation, subsidiaries, assignees, joint ventures, whether wholly or partially owned, or other business affiliations.

Consolidated Net Worth means,

- a. with respect to any corporation, limited liability company, limited company or other similar entity, all shareholders' equity in such Person and its subsidiaries, determined on a consolidated basis in accordance with GAAP or IFRS, as applicable (including the value of all assets properly classified as intangible assets under GAAP or IFRS), as set forth on such Person's most recently available consolidated balance sheet (which shall be as of a date not more than one hundred eighty (180) days prior to the date of determination);
- b. with respect to any limited partnership that is a private equity fund, venture capital fund or similar entity, (i) the aggregate partners' equity in such Person, determined in accordance with GAAP or IFRS, as applicable, plus (ii) the aggregate amount of all unfunded or uncalled capital commitments of the partners in such Person (including in the form of shareholder loan commitments to such Person) determined in accordance with such Person's limited partnership agreement or equivalent constituent documents that can be called upon to satisfy obligations of such Person, in each case, determined as of the most recently ended calendar quarter; or
- c. with respect to any individual, the (i) aggregate fair market value of all of the assets owned by such individual (including the value of any assets held jointly or in common with any other Person) minus (ii) the aggregate liabilities of such individual, as of the most recently available date.

Control means (i) the ownership of fifty percent (50%) or more of the direct or indirect equity interest in another Person, or (ii) the power, whether by contract, equity ownership or otherwise, to direct or cause the direction of the policies or management of another Person.

Document and the plural form means all written, recorded, or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The term "document" shall include, but is not limited to, any of the following: receipts; invoices; shipping records; purchase orders; purchase records; books; pamphlets; periodicals; memoranda (including those of telephone or oral conversations); contracts; correspondence, agreements; applications, financial records; notes; diaries; logs; facsimiles (faxes); telegrams or cables prepared, drafted, received, or sent; electronic mail (emails), whether drafted, received, or sent; tapes, transcripts; recordings; minutes and notes of meetings; directives; work papers; charts; drawings; prints; flow sheets; photographs;

infrared camera recordings; film, computer printouts; x-ray photographs; advertisements; catalogs; data; sampling reports, plans, protocols, reports, analyses or any handwritten, recorded, transcribed, punched, taped, filmed, or graphic matter, in your possession, custody, or control or to which you have or have had access.

Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof, and includes Dynatemp International, Inc.

Software means any tangible or non-tangible machine-readable code, information, or instructions.

Dynatemp International, Inc. means you and includes any predecessors, successors, parent corporation, subsidiaries, assignees, joint ventures, whether wholly or partially owned, or other business affiliations.

We, us, and our means the delegate of the Administrator of the Environmental Protection Agency.

You and/or your means Dynatemp International, Inc. and all its agents, servants, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, contractors, and others who are in possession, custody, or control (actual or constructive) of relevant information that is otherwise available to you, or may have obtained information for or on your behalf.

ENCLOSURE 2:

Information Request

You are hereby required, in accordance with Section 114(a) of the CAA, 42 U.S.C. § 7414(a), to provide the following information from January 1, 2022 through the date of response, unless directed otherwise:

1. Provide names, addresses, and a brief description of all entities affiliated with you.
2. Provide an organizational chart showing the relationship of Dynatemp International, Inc. ("Dynatemp") to all Affiliates, including any percentage ownerships.
3. Provide a copy of Dynatemp's or any affiliates' certificate of good standing, articles of incorporation, by-laws, and partnership or membership agreements, as applicable.
4. Provide a list of Dynatemp's officers, directors, and shareholders.
5. Provide a list of any of Dynatemp's employees who work for Dynatemp and one or more of its affiliates.
6. Provide a list of all Persons that have a direct or indirect economic interest in Dynatemp (other than (i) owners of publicly traded securities and (ii) limited partners in managed fund entities).
7. Provide a list of the ultimate parent entity or parent entities that has the right to control, directly or indirectly, Dynatemp. Note that control is defined in Enclosure 1.
8. Provide the Consolidated Net Worth and gross annual revenue for 2023 of (i) Dynatemp and (ii) its ultimate parent.
9. Provide a list of the addresses for all properties that are owned, rented, or operated by Dynatemp.
10. For all bulk HFCs that Dynatemp has produced, imported, conferred, transformed, transferred, used as a process agent, destroyed, reclaimed, repackaged, recycled, sold, distributed, or offered for sale or distribution, since January 1, 2022, provide the following information in an organized electronic spreadsheet:
 - a. Common name;
 - b. Chemical formula;
 - c. The chemical name (*e.g.*, HFC-125, HFC-143a, etc.) or blend name (*e.g.*, R-404A);

- d. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) designation of the regulated substance(s) or blend contained within, and the percentages of the regulated substances if a blend;
- e. The name or brand the HFC is being sold and/or marketed under;
- f. The number and type of ISO tanks, individual cylinders, drums, small cans, or other containers used to store and transport the bulk HFC;
- g. If you did not produce the HFC, provide:
 - i. The name and address of the company that produced the HFC;
 - ii. The name and address of the company that imported the HFC;
 - iii. The name and address of the company that supplied the HFC to you; and
 - iv. The date you purchased the HFC (if applicable).
- h. The date and amount (in kg) you imported;
- i. The date and amount (in kg) you transformed;
- j. The date and amount (in kg) you used as a process agent;
- k. The date and amount (in kg) you destroyed;
- l. The date and amount (in kg) you reclaimed;
- m. The date and amount (in kg) you repackaged;
- n. The date and amount (in kg) you recycled;
- o. The date and amount (in kg) you offered for sale or distribution;
- p. The date and amount (in kg) you sold;
- q. The date and amount (in kg) you distributed;
- r. The name and address of the person to which you sold the HFC;
- s. The name and address of the person to which you distributed the HFC;

- t. If the regulated substance was imported³, provide:
- i. The U.S. Department of Homeland Security's Bureau of Customs and Border Protection (Customs) entry number;
 - ii. Date of import;
 - iii. Port of import;
 - iv. Declared Value;
 - v. Importer of Record number;
 - vi. Harmonized Tariff System code;
 - vii. Country from which the regulated substance was imported;
 - viii. Whether the regulated substance was imported for transformation in containers designed to hold 100 pounds or less of regulated substances;
 - ix. Whether the regulated substance was imported for destruction in containers designed to hold 100 pounds or less of regulated substances; and
 - x. Whether the regulated substance was claimed as a transshipment.
- u. Whether the regulated substance was exported, and if so, the date of export, the amount of regulated substance (in kg) exported, and the country to which the regulated substance was exported;
- v. Any exemption under 40 C.F.R. § 84.23(b)(4));
- w. Indicate whether you repackaged or relabeled any HFC in your possession or if the container was modified or adjusted in any way after importation. If any modification or adjustment was made, specify who made it, when it was made and the nature of such modification or adjustment; and
- x. If Dynatemp has in its possession any bulk HFCs, provide:
- i. The amount (in kg) you currently have in inventory; and
 - ii. The location of the bulk HFC in your inventory.

11. Provide the following documents for each import identified in response to Request 10:

³ See "importer" definition at 40 CFR 84.3 [https://www.ecfr.gov/current/title-40/part-84#p-84.3\(Importer\)](https://www.ecfr.gov/current/title-40/part-84#p-84.3(Importer)).

- a. Customs Entry Form 3461 or 7501;
 - b. Any EPA petitions, non-objection notices, or other documents obtained under 40 C.F.R. §§ 84.25(a), 84.25(b), or 84.31(c)(3); and
 - c. The invoice, packing list, bill of lading, and other shipping documents.
12. Provide the following documents for each purchase or sale identified in response to Request 10 if applicable:
 - a. Copies of the invoice, purchase order, and/or receipt for each bulk HFC that Dynatemp purchased; and
 - b. Copies of the invoice, purchase order, and/or receipt of any bulk HFCs that Dynatemp sold or distributed.
13. For each item identified in response to Request 10 above which Dynatemp claims is covered by an allowance, provide contemporaneous documentation supporting this claim for each allowance, including copies of all notifications and reports that Dynatemp submitted to EPA, and any correspondence between Dynatemp and the manufacturer or supplier pertaining to compliance under 40 C.F.R. Part 84.
14. Provide representative photographs of the labels affixed to each separate type of bulk HFC offered for sale or distribution by Dynatemp.
15. Provide a narrative description and any documents describing any inspections, compliance assurance processes, or procedures you use to ensure that any HFCs introduced into U.S. commerce comply with 40 C.F.R. Part 84.

ENCLOSURE 3:

Statement of Certification

I certify that I am fully authorized by Dynatemp International, Inc. to provide the above information on its behalf to EPA. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations pursuant to section 113(c)(2) of the Clean Air Act, and 18 U.S.C. §§ 1001 and 1341.

(Signature)

(Printed Name)

(Title)

(Date)

ENCLOSURE 4:

Confidential Business Information

An entity may assert a business confidentiality claim covering some portion of the information you provide in response to this Information Request for any business information you believe may be entitled to confidential treatment under section 114(c) of the CAA, 42 U.S.C. § 7414(c); Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4); and 40 C.F.R. Part 2, Subpart B. Under section 114(c) of the CAA, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Exemption 4 under FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential[.]” 5 U.S.C. § 552(b)(4). Under 40 C.F.R. Part 2, Subpart B, business confidentiality means “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 rights in the information.” 40 C.F.R. § 2.201(e).

However, your business confidentiality claims are limited by any confidentiality or emission data determinations the Agency has made through rulemaking for information required to be reported to the Agency under Part 98. In accordance with 40 C.F.R. Section 2.301(d), the general CBI rules at 40 C.F.R. Sections 2.201 through 2.215 do not apply to any information found to be emission data or not otherwise entitled to confidential treatment through rulemaking. *See* 76 Fed. Reg. 30782 (May 26, 2011), 76 Fed. Reg. 73886 (Nov. 29, 2011), 81 Fed. Reg. 89188 (Dec. 9, 2016), 77 Fed. Reg. 48072 (Aug. 13, 2012), 78 Fed. Reg. 71904 (Nov. 29, 2013). If you claim any information already determined to be emission data or not otherwise entitled to confidential treatment through rulemaking, the information may be released without further notice to you in accordance with 40 C.F.R. Section 2.301(d).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in section 114(c) of the CAA, 42 U.S.C. § 7414(c), 40 C.F.R. Part 2, Subpart B, and Exemption 4 under FOIA. **If a business confidentiality claim does not accompany the information submitted to EPA, then EPA may make the information available to the public without further notice to you.** *See* 40 CFR 2.203; 41 Fed. Reg. 36,907.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this Information Request. Allegedly confidential portions of otherwise non-confidential information should be clearly identified and may be submitted separately to facilitate identification and handling by the EPA. Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying the information subject to your claim. Where your claim does not include all information on a page, please place brackets around, or otherwise designate, the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by

you to be CBI contains information which EPA determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. All confidentiality claims are subject to EPA verification. If EPA reviews your CBI claim(s), EPA may send notice to your business and ask you to submit additional information to substantiate the CBI claim(s). See 40 C.F.R. § 2.204(e).

In making its final confidentiality determination, the EPA will consider the relevant substantive criteria in its CBI regulations, under 40 C.F.R. § 2.208(a)-(d), as well as the *U.S. Supreme Court's decision in Food Marketing Institute v. Argus Leader Media (Argus)*, 139 S. Ct. 2356 (2019), which evaluated the definition of "confidential" as used in Exemption 4 under FOIA. In the *Argus* decision, the Court held that at least where "[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." *Argus*, 139 S. Ct. at 2366. The definition of "trade secret" under FOIA is limited to "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires that there be a "direct relationship" between the information at issue and the production process. *Id.*

For each item or class of information that you claim as CBI, please answer the following questions, giving as much detail as possible. EPA will use your responses to these questions to determine whether the information has been shown to be entitled to confidential treatment:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph and sentence when identifying the information subject to your claim.
2. For what period of time do you request that the information be maintained as confidential, *e.g.*, until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you've specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

6. Is there any other explanation you deem relevant to the EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

By submitting this information, you are consenting to a limited release of any confidential business information to EPA interns and contractors pursuant to 40 C.F.R. § 2.209(f). The EPA's interns and contractors are required to sign confidentiality agreements as a requirement of their participation in EPA related matters.