



OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

June 17, 2024

VIA ELECTRONIC MAIL

IN THE CLEAN AIR ACT MATTER OF: Generac Power Systems Inc.

ATTENTION:

Dan St. Martin
Director Global Product Compliance
Generac Power Systems, Inc.
S45W29290 Highway 59
Waukesha, WI 53189
Dan.St.Martin@generac.com

**Request for Information Under Sections 114(a)(1) and 208(a)
of the Clean Air Act, 42 U.S.C. §§ 7414(a)(1), 7542(a)**

The United States Environmental Protection Agency (“EPA”) hereby requires Generac Power Systems, Inc. (“Generac” or “You” or “Your”),¹ to submit certain information as part of an EPA investigation to determine your compliance with Sections 203(a) and 213(d) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. §§ 7522(a) and 7547(d), and the applicable regulations promulgated under Title II of the CAA.

Appendix A provides definitions. Appendix B provides instructions for your responses to this Request for Information. Appendix C specifies the information that you must submit. Appendix D provides information about asserting a claim of confidentiality over information you submit in response to this Request for Information. Appendix E contains language certifying the truth and completeness of your response.

The EPA issues this Request for Information (“RFI”) under Sections 114(a)(1) and 208(a) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7414(a)(1) and 7542(a). Under Section 208(a), the Administrator of the EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with the CAA’s requirements pertaining to vehicles and engines, and the regulations promulgated thereunder. Section 114(a)(1) authorizes the Administrator

¹ See first definition in Appendix A.

to require any person subject to the CAA's requirements or who the Administrator believes may have information necessary for the purposes of carrying out the CAA, other than manufacturers regulated under Title II of the CAA with respect to a provision of Title II, to provide information reasonably required to carry out the CAA's provisions. The Administrator has delegated this authority to the undersigned Chief of the Vehicle and Engine Enforcement Branch in the Air Enforcement Division, Office of Enforcement and Compliance Assurance.

You must submit this information to the EPA representatives listed below within **thirty (30) calendar days from the date of this Request for Information**. Please carefully review the instructions, definitions, and specific requests as you prepare your response. If you anticipate being unable to fully respond to this Request for Information by this date, you must contact the EPA representatives listed below via email, within ten (10) days of receipt of this Request for Information and, with an appropriate justification, request an extension of time to answer some or all of the requests below. If timely submitted, the EPA will review your request and may extend the time in which your response must be provided.

Failure to provide the requested information may result in a civil action pursuant to Sections 113(b)(2) and 205(b) of the CAA, 42 U.S.C. §§ 7413(b)(2) and 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. These inquiries may include additional written requests, inspections, or depositions as authorized by Sections 208, 114, and 307 of the CAA, 42 U.S.C. §§ 7542(a)-(b), 7414, 7607(a). It is important that your responses be clear, accurate, organized, and complete. The EPA will regard any submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes.

You must submit all requested information under an authorized signature with a properly executed Statement of Certification, as provided in Appendix E.

The EPA may use any information submitted in response to this Request for Information in an administrative, civil, or criminal action.

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this Request for Information, in accordance with the procedures described in 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 emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph, and sentence when identifying the information subject to your CBI claim. Appendix E of this Request for Information specifies the assertion requirements for business confidentiality claims. The EPA may, without further notice, provide the public with any information not subject to a CBI claim.

Please submit the requested information electronically. You may do so via email to Mr. Mario Jorquera, Air Enforcement Division, U.S. Environmental Protection Agency, at jorquera.mario@epa.gov. Please note that the EPA email server will allow attachments up to 20 MB. Alternatively, you may want to provide documents in response to this Request for Information by way of a secure file sharing site. Please let us know how you want to proceed.

Questions concerning this Request for Information should be directed to Mario Jorquera, Engineer, of my staff at (202) 564-1079 (jorquera.mario@epa.gov) or your counsel may contact Carly Brody, Attorney-Advisor, of my staff at (202) 564-3326 (brody.carly@epa.gov).

MARK PALERMO Digitally signed by MARK
PALERMO
Date: 2024.06.17 14:20:47 -04'00'

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

Enclosures

cc: Granta Nakayama, GNakayama@KSLAW.com
William Sauers, WSauers@KSLAW.com

Appendix A

Definitions

All terms used in this Request for Information will have their ordinary meaning unless such terms are otherwise defined herein, in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or the Motor Vehicle and Engine, and Non-Road Regulations including those found at 40 C.F.R. Parts 1054 and 1068.

1. The term “Generac” or “Company” or “You” or “Your” includes, but is not limited to, Generac Power Systems, Inc. and any parent, subsidiary, or other related organization, affiliate, predecessor, successor, and assignee organization at any location.

Appendix B
Instructions for Responses

1. Provide a complete, detailed response to each of the requests in Appendix C, below. Provide any narrative responses or lists in English. Where noted in Appendix C requests, provide answers in the specified format (*e.g.*, electronic, unlocked spreadsheet). If a given spreadsheet response field requested does not apply or is not available, list “n/a” for the corresponding cell.
2. This RFI is a continuing request. You must promptly supplement Your response to any request in Appendix C 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 RFI.
3. For each answer, provide the number of the request to which it responds and identify each person who provided information that was used to prepare that answer. For each document produced, provide the number of the request to which it responds.
4. When a response is provided in the form of a number, specify the units of measure corresponding to the number.
5. Where documents or information necessary for a response are not in Your possession, custody, or control, indicate in Your response why such documents or information are not available or in Your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.
6. Where a request allows or requires documents to be provided in response, provide all documents electronically in a folder specific to that request and labeled with the number of the request. Follow any other formatting or naming conventions specified by the request. All submitted documents should be copies and not original documents.
7. Where You have previously submitted information to the EPA that is also the subject of this RFI, re-submit that information in accordance with these instructions. (Appendix B.) Identify the material that was previously provided, the date on which it was provided, how the information was provided (*e.g.*, electronically, fax, mail), and the individual at the EPA to whom it was provided.

Provide Your response to this RFI in electronic form. All responsive documents and materials (*e.g.*, copies of print media, audio, and visual material) must be provided as an accurate and legible copy in searchable unlocked format, number stamped in sequential order (*e.g.*, BATES stamped). Where spreadsheets are responsive to a Request, produce them in unlocked electronic .xlxs spreadsheet format (locked files are unacceptable).

Appendix C
Information You Are Required to Submit to the EPA

Generac must submit the following information pursuant to Sections 114(a) and 208(a) of the CAA, 42 U.S.C. §§ 7414(a) and 7542(a).

1. Provide copies of the results of all tests conducted during calendar years 2019 and 2020 on engines in test groups LGNXS.4262GA, LGNXS.4262GC, LGNXS.5302GA, and LGNXS.9922GA. Include all test results regardless of the purpose of the testing, even if the testing was conducted for Generac's internal development purposes only.
2. Provide copies of any analysis conducted by Generac's personnel or contractors on all the above tests, including test conclusion reports and internal emails discussing the results of the tests and what to do about them.
3. Provide in tabular form the number of engines in test groups LGNXS.4262GA, LGNXS.4262GC, LGNXS.5302GA, and LGNXS.9922GA that were produced with Phase 2 carburetors, and the number in the same engine families that were manufactured with the Phase 3 carburetors installed. Indicate exactly how many of the engines each of the groups in this table were introduced into commerce in the United States.
4. Provide a listing of all the Production Line Testing (PLT) and Deterioration Factor (DF) testing reports conducted in 2019 and 2020 and submitted to EPA. Indicate whether any of these tests were ones in which Phase 3 carburetors were used in the testing even though the production line was still installing Phase 2 carburetors.

Appendix D
Confidential Business Information

An entity may assert a business confidentiality claim covering all or part of the information provided in response to this Information Request for any business information entitled to confidential treatment under Sections 114(c) and 208(c) of the CAA, 42 U.S.C. §§ 7414(c) and 7542(c), and 40 C.F.R. Part 2, subpart B. Under Sections 114(c) and 208(c) of the CAA, entities are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. 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).

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 Sections 114(c) and 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. If no such business confidentiality claim accompanies the response to this Information Request when it is received by the EPA, then such information may be made available to the public without further notice. *See* 40 C.F.R. § 2.204(a)(3).

Pursuant to 40 C.F.R. § 2.301(h), the EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. To assist in its review and analysis, the EPA may disclose information provided in response to this and other information requests to an EPA contractor, the Eastern Research Group, under contract number 68HERH19C0004.

To assert a business confidentiality claim, an entity must place on (or attach to) all information subject to the claim 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 it provides its response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be provided separately to facilitate identification and handling by the EPA. An entity should indicate whether confidential treatment is only required until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material claimed as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208(a)-(d) and 2.301. Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

Appendix E
Statement of Certification

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Request for Information, issued pursuant to Sections 114(a) and 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by Generac Power Systems, Inc., and its parent organizations, affiliates, predecessors, successors, and assignees, to provide the above information on its behalf to the EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

CERTIFICATE OF MAILING

I, Mark J. Palermo, certify that on this day I sent this Request for Information Under §§ 114(a) and 208(a) of the Clean Air Act, 42 U.S.C. §§ 7414(a) and 7542(a), by electronic mail to:

Generac Power Systems, Inc.

ATTENTION: Dan St. Martin, Director Global Product Compliance
Dan.St.Martin@generac.com

In addition, I certify that on this day I sent a copy of this Request for Information by electronic mail to:

Granta Nakayama and William Sauers, Outside Counsel for Generac
King & Spalding LLP

At the email addresses: GNakayama@KSLAW.com and WSauers@KSLAW.com

MARK PALERMO

Digitally signed by MARK
PALERMO
Date: 2024.06.17 14:21:17 -04'00'

Mark J. Palermo
Chief, Vehicle and Engine Enforcement Branch
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
202-564-8894