



OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

April 30, 2024

TRANSMITTED VIA EMAIL
RETURN RECEIPT REQUESTED

Keith Sharon
Area Gas Operations Manager for Texas/Oklahoma
Waste Management
3623 Wilson Road
Humble, TX 77396

Re: Clean Air Act Information Request for the Atascocita Recycling and Disposal Facility located in Humble, Texas

Dear Mr. Sharon:

The United States Environmental Protection Agency (EPA) hereby requires the Atascocita Recycling and Disposal Facility (the Facility) to provide certain information to determine the Clean Air Act (CAA or the Act) compliance status of its Landfill located at 3623 Wilson Road, Humble, Texas.

Pursuant to section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of the EPA is authorized to require any person who owns or operates an emissions source to 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 he may reasonably require 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 – 10 (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 criminal proceedings.

Under section 114(c) of the Act, 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 confidential business (CBI) claim on any information you provide to the EPA that involves trade secrets and is regarded as CBI by you. Any asserted CBI claim must conform to the requirements of 40 C.F.R. § 2.203(b). Note that emission data cannot be claimed as confidential under section 114(c). For detailed instructions, please see Enclosure 4. Information that you claim as CBI will be handled in a manner that is consistent with EPA's CBI regulations under 40 C.F.R. Part 2, Subpart B. If a CBI claim does not accompany the information submitted to EPA, then EPA may make the information available to the public without further notice to you.

This information collection is exempt from the Paperwork Reduction Act under 44 U.S.C. § 3518(c)(1)(B).

Please submit the requested information electronically to Steve Rapp, U.S. Environmental Protection Agency, at rapp.steve@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, Atascocita Recycling and Disposal Facility 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 Steve Rapp by email or by phone at 202-250-8961. Alternatively, legal counsel for the Atascocita Recycling and Disposal Facility may contact [Kayla Steinberg at steinberg.kayla@epa.gov](mailto:kayla.steinberg@epa.gov).

Sincerely,

GREGORY FRIED

Digitally signed by GREGORY
FRIED
Date: 2024.04.30 14:44:51 -04'00'

Gregory Fried, Branch Manager
Stationary Source Enforcement Branch
Air Enforcement Division

Cc: Dave Thorley, WM
Heather Lehrmann, WM

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

ENCLOSURE 1

A. Instructions

1. This Information Request is a continuing request. You are required to submit all such material **within 30 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 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 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, such as performance test reports, inspection records, memorandums, facility records, permits, etc. 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 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 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 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 Clean Air Act, in which case the definitions in the CAA and the regulations shall prevail.

Abandoned means, when used in reference to a component of the gas collection system, a component that has been cut off below the surface, capped, and backfilled.

Atascocita Recycling and Disposal Facility means You and includes any predecessors, successors, parent corporation, subsidiaries, assignees, joint ventures, whether wholly or partially owned, or other business affiliations.

Document and the plural form thereof 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 are not limited to: any 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; security instruments; disbursements; checks; bank statements; time records; accounting or 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, however produced or reproduced, in Your possession, custody, or control or to which You have or have had access.

Facility means all operations located 3623 Wilson Road, Humble, Texas, and associated adjacent or nearby operations owned or operated by the Atascocita Recycling and Disposal Facility.

Gas Collection System means an active or passive system of wells or similar collection components used to collect and move gas at the landfill.

Gas Collection and Control System, or *GCCS*, means an active or passive system of wells or similar collection components to move gas at the landfill.

Gas Collection and Control System Design Plan, or *Design Plan*, means a plan that is developed by the landfill and meets the requirements of 40 CFR 63.1981(d).

Gas Control System shall mean a system of active or passive components that treat and/or destroy landfill gases collected by the Gas Collection System.

Landfill means the MSW landfill operated by Waste Management at 3623 Wilson Road, Humble, Texas.

Landfill Air Regulations refers to 40 C.F.R. Part 60, Subpart WWW; 40 C.F.R. Part 60, Subpart XXX; 40 C.F.R. Part 62, Subpart OOO; 40 C.F.R. Part 62, Subpart GGG; 40 C.F.R. Part 63, Subpart AAAA; and

State Plans for the Control of Emissions from Existing Municipal Solid Waste Landfills incorporated under 40 C.F.R. Part 62 pursuant to 40 C.F.R. Part 60, Subpart Cf or Cc.

Leachate means liquids, including landfill gas condensate, that has percolated through the landfill and leached out contaminants.

Nondegradable Waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

Owner or Operator means any Person who owns, leases, operates, controls, or supervises the Facility.

Person or its plural or any synonym thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local or any agency of the government of a foreign country), or any other entity, and includes the Atascocita Recycling and Disposal Facility.

Radius of Influence means the distance from the well center to a point in the landfill where the pressure gradient applied by the blower or compressor approaches zero.

Surface Emission Monitoring or SEM means monitoring surface concentrations of methane at collection areas of a landfill, as required by 40 C.F.R. §§ 60.755(c), 60.765(c), 62.16720(c), and 63.1960(c)&(d) and parallel provisions under the Landfill Air Regulations.

You and/or Your means the Atascocita Recycling and Disposal Facility 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 for the Facility:

1. Provide all agreements between Waste Management of Texas (or other previous operators of the Facility) and any other corporate entities, including contractors, pertaining to responsibilities for:
 - a. Operation of the Gas Collection System at the Facility;
 - b. Gas routing and operation of controls for gas collected from the Facility;
 - c. Clean Air Act reporting and compliance requirements at the Facility; and
 - d. Waste and other operations at the Facility.
2. Provide all reports pertaining to the Facility related to the following:
 - a. The active construction permit(s) and permit application(s);
 - b. All applicability determination requests to and responses from Texas Commission on Environmental Quality (TCEQ) or the EPA between January 1, 2019, and the date of this request;
 - c. Any requests for alternatives submitted under the Landfill Air Regulations to and responses from TCEQ or the EPA;
 - d. The initial performance test report required under 40 C.F.R. § 63.7 related to the GCCS, including the information required by 40 C.F.R. § 63.1981(i) and parallel provisions under the other Landfill Air Regulations;
 - e. Performance test reports for each gas control system device used at the Landfill, including initial and any additional performance test reports between January 1, 2019, and the date of this request; and
 - f. All wellhead higher operating values approvals under 40 C.F.R. §§ 63.1958(c)(2) and 63.1961(a)(5)(ix), and parallel provisions under the other Landfill Air Regulations since January 1, 2019, along with approvals of any alternative timelines or corrections in that time.
3. Pertaining to the Landfill, provide for the period between January 1, 2019, and the date of this request:
 - a. Copies of all enforcement documents, including but not limited to notices of violation, consent orders, consent order terminations, and equivalent documents issued to the Atascocita Recycling and Disposal Facility regarding Clean Air Act compliance at the Landfill and
 - b. Copies of all citizen suits and resulting agreements related to Clean Air Act compliance at the Landfill.
4. Identify on what dates, since 1991, the Landfill became, was subject to, or opted-in to the below Federal programs, in part or in whole, as applicable. Provide copies of the relevant initial design capacity reports required under 40 C.F.R. § 63.1981(a) and parallel provisions under the Landfill Air

Regulations.

- a. 40 C.F.R. Part 60, Subpart WWW;
- b. 40 C.F.R. Part 60, Subpart XXX;
- c. 40 C.F.R. Part 62, Subpart OOO; and
- d. 40 C.F.R. Part 63, Subpart AAAA.

- 5. In an unlocked Excel-compatible electronic spreadsheet format, provide the annual quantity of waste accepted at the Facility between January 1, 2019, and the date of this request, including:
 - a. Indicate the types of waste which are classified as “Nondegradable Waste” per 40 C.F.R. Part § 60.761 and parallel provisions under the other Landfill Air Regulations, if Nondegradable Wastes are excluded from the maximum expected gas generation calculation in the Design Plan; and
 - b. Indicate the types of waste that are classified as “inert” in facility reports for Greenhouse Gas Reporting Program per 40 CFR § 98.346(c).
- 6. Provide the following information pertaining to the GCCS at the Facility:
 - a. Please indicate whether or not the document entitled, “Revised Landfill Gas Collection and Control System Design Plan,” dated November 2011, is the most recently approved GCCS for the Facility.
 - i. If the 2011 Design Plan is not the most recently approved, provide copies of all Design Plans and corresponding approvals that have been active since 2011 and the date of this request;
 - ii. Provide documentation of any changes made to the Landfill that deviates from the most recent Design Plan, including approvals of such deviations."
 - b. In an unlocked Excel-compatible electronic spreadsheet format, a list of all present and historical gas wells and Leachate collectors that are connected to the GCCS, including the following for each well:
 - i. Drill and decommission dates, as applicable; if a well was installed pre-2019, then the drill date is not needed;
 - ii. Indicate whether the collectors were redrilled, decommissioned, Abandoned, shut down, or closed, including the date on which each of these activities occurred, as applicable. For redrilled wells, provide the justification for the redrilling;
 - iii. Indicate whether a gas well is a vertical or horizontal well. If horizontal wells are used to control areas subject to the collection requirements of the Landfill Air Regulations, provide a description of the spacing (vertical and horizontal) and a map of the extent of the collectors;
 - iv. Identify the cell and phase in which each gas well is located;
 - v. Indicate whether each gas well has a pump for liquids removal; and
 - vi. Indicate all higher operating value or alternative operating procedure for gas wells.

- c. Provide copies of the engineering studies, calculations, and reports related to each Gas Collection System well conducted by the Facility or a third party between January 1, 2019, and the date of this request, including:
 - i. Well placement;
 - ii. Well depth;
 - iii. Well density;
 - iv. Amount of vacuum applied; and
 - v. Estimated Radius of Influence.
 - d. Provide the current topographic site map(s) displaying the following information:
 - i. Gas well locations and identifiers, including gas lines and gas header lines;
 - ii. A schematic depicting each Landfill gas collection well and its current, estimated Radius of Influence; and
 - iii. Areas excluded from gas collection, including explanation(s) for the exclusion.
 - e. A description of the design of the main gas header, including:
 - i. Diameter size;
 - ii. Maximum design rated flow rate capacity; and
 - iii. Maximum allowable pressure drop.
 - f. A description of each standard operating procedures (SOPs) or internal guidelines relating to well dewatering at the Facility.
7. In an unlocked, Excel-compatible electronic spreadsheet format, provide all GCCS monitoring records, including dates and descriptions of all monitoring activity and corrective actions taken as a result of monitoring at the Facility between January 1, 2019, and the date of this request, including the following:
- a. Monthly GCCS wellhead measurements, including (if applicable):
 - i. Methane;
 - ii. Hydrogen;
 - iii. Carbon monoxide;
 - iv. Flow rate;
 - v. Oxygen/Nitrogen;
 - vi. Pressure;
 - vii. Temperature; and
 - viii. Notes taken by technicians, or Landfill staff, during monitoring, corrective actions, and re-monitoring measurements.
 - b. Measurements of vacuum and oxygen collected at the lateral headers, landfill gas transmission piping, and isolated segments of the GCCS;
 - c. A list of gas wells not monitored during monthly monitoring and the explanation for exclusion;
 - d. Gas well parameter exceedances and associated corrective actions taken, including enhanced monitoring due to fires and subsurface oxidation events;
 - e. Landfill gas collection system main header data on an hourly basis, including:
 - i. Date and hour;
 - ii. Average system pressure (inches of water column, in. w.c.);
 - iii. Average gas flow rate collected (standard cubic feet per minute, scfm);
 - iv. Average landfill gas temperature (degree Fahrenheit, °F); and

- v. Average methane concentration.
 - f. All measurements from monitoring of liquid depth in wells, including:
 - i. Identification of percent of perforation obstructed;
 - ii. Depth-to-bottom and depth-to-water measurements for gas wells;
 - iii. Length of perforated pipe;
 - iv. Percentage of perforation; and
 - v. Corrective actions taken as a result of measurements.
8. Provide a description of the Gas Control System at the Facility, including:
- a. Information pertaining to the design of the control systems and back-up controls, including design specifications for each control device:
 - i. As-built, final design documents;
 - ii. Make and model;
 - iii. Installation date;
 - iv. The maximum expected life of the equipment;
 - v. Maximum exit velocity permitted or recommended by the manufacturer;
 - vi. Rated maximum operating capacity, e.g., heat input or output;
 - vii. Rated maximum flow rate capacity; and
 - viii. Temperature and flow rate setpoints for normal and emergency operations of the control(s).
 - b. All user manuals and manufacturer's recommendations for each control or blower system.
 - c. For each control device, in unlocked Excel-compatible electronic spreadsheet format, provide monitoring data, between January 1, 2019, and the date of this request, as 15-minute data intervals (or shorter if stored as such), including but not limited to:
 - i. Temperature or heat sensing data;
 - ii. Blower gas flow and vacuum data;
 - iii. Gas flow rates, including total gas flow rate, individual flow rate to each device (if more than one control device or a bypass is present), and gas flow to each flare pilot flame;
 - iv. Gas flow rates to the Gas Plant and Control System;
 - v. Operating hours on a monthly basis; and
 - vi. Dates of bypass incidents.
 - d. Descriptions of control, filtration, treatment system, and collection system downtime, including:
 - i. Dates, times, and corrective actions; and
 - ii. An explanation of the terms used to describe control device downtime, including but not limited to, "VFD Install," "Flare Fault," "Blower Fault," and "Plant Fault."
 - e. Monthly inspection, maintenance, and repair logs and records for each control device conducted between January 1, 2019, and the date of this request; and
 - f. Copies of all performance tests conducted on gas processing or gas control equipment.

9. Provide information related to each SEM conducted between January 1, 2019, and the date of this request, including:
- a. All SEM reports, including but not limited to the most recent SEM report even if not yet part of the final semi-annual report.
 - b. For each SEM event, provide:
 - i. Notes, drawings, and/or other records of the actual path traversed by the SEM technician;
 - ii. A description of areas not monitored and an explanation for the exclusion;
 - iii. Maps of the monitoring route traveled, including the GPS track of the path taken; and
 - iv. Maps of areas not monitored (e.g., where spacing greater than 30 meters).
 - c. In an unlocked, Excel compatible electronic spreadsheet format, where applicable:
 - i. Date(s) and description(s) of the monitoring activity;
 - ii. SEM data, including but not limited to, methane concentrations and exceedances;
 - iii. GPS latitude and longitude coordinates of the monitored points;
 - iv. Follow-up monitoring data for methane concentration exceedances above 500 parts per million, ppm; and
 - v. Descriptions of corrective actions performed to reduce methane concentrations for each exceedance,
 - d. Post-inspection SEM follow-up information, including:
 - i. For each of the exceedance locations identified by the EPA during the inspection on March 15, 2023, provide:
 - 1. The SEM concentrations recorded during each corresponding follow-up corrective monitoring event and the corrective actions completed or planned at each location and
 - 2. The location of all new piping and wells installed as a result of the SEM corrective actions, including both before and after SEM exceedances (e.g., the replacement or new wells); and
 - ii. Approvals of any alternatives to expansion of the GCCS or alternative compliance timelines.
 - e. Records or reports of additional Surface Emissions Monitoring activity contracted by the Facility, including but not limited to drone, satellite, and tower-based monitoring; and
 - f. Any guidance or training materials provided for the SEM technicians, including all contractors.
10. Provide the following information concerning the gas probes located at the boundary of the Facility between January 1, 2019, and the date of this request, including:
- a. A map of the probe locations;
 - b. In an unlocked Excel-compatible electronic spreadsheet format:
 - i. A list of gas probes;
 - ii. All gas measurements made at the probes, including dates of the measurements; and
 - iii. Corrective actions taken in response to each exceedance found by a gas probe.

ENCLOSURE 3

Statement of Certification

I certify that I am fully authorized by Atascocita Recycling and Disposal Facility 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 (CBI) Assertion

You may assert a business confidentiality or CBI claim covering all or part 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 Clean Air Act (the Act), 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 Act, 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).

Information covered by a CBI claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in section 114(c) of the Act, Exemption 4 under FOIA, and 40 C.F.R. §§ 2.201-2.311. **If a CBI 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 C.F.R. § 2.203(c).

To assert a CBI claim, you must place on (or attach to) all information you desire to assert as CBI 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, EPA will consider the relevant substantive criteria in its CBI regulations, 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 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). EPA’s interns and contractors are required to sign confidentiality agreements as a requirement of their participation in EPA related matters.

Emission data, as defined at 40 C.F.R. § 2.301(a)(2)(i), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. *See* 42 U.S.C. § 7414(c); 40 C.F.R. § 2.301(e). Emission data is defined as:

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.301(a)(2)(i).