



OFFICE OF CIVIL ENFORCEMENT

WASHINGTON, D.C. 20460

April 8, 2024

VIA ELECTRONIC MAIL holly.rink@kobelco.com

RETURN RECEIPT REQUESTED

Ms. Holly Rink
Kobelco Construction Machinery U.S.A.
22350 Merchants Way
Katy, Texas 77449

RE: Request for Information under § 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency (“EPA”) hereby requires Kobelco Construction Machinery U.S.A. and any of its parent organizations, affiliates, predecessors, successors, and assignees (collectively “Kobelco” or “you” or “your”)¹, to provide certain information as part of an EPA investigation. The EPA issues this Request for Information under Section 208(a) of the Clean Air Act (CAA), 42 U.S.C. § 7542(a). Under Section 208(a), the Administrator of the EPA may require persons who are subject to the CAA to provide information necessary to determine whether a manufacturer or other person has acted in compliance with these requirements and the regulations promulgated thereunder. 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.

Appendix A of this letter provides definitions for terms used in this Request for Information (“RFI”). Appendix B provides instructions for your responses to this RFI. Appendix C specifies the information that you must provide in response to this RFI. Appendix D provides information about asserting a claim of confidentiality over information you submit in response to this RFI. Appendix E contains a certification, which must be signed and accompany your response to this RFI, attesting to the truth and completeness of your response.

You must provide information responding to Requests 1 and 2, in Appendix C, 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 deadline, you must contact Greg Orehowsky at (202) 343-9292, or orehowsky.gregory@epa.gov, within seven (7) days of receipt of this Request for Information and, with an appropriate justification, request an extension of time to answer some or all 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 required information may result in a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. It is important that your responses be clear, accurate, organized, and

¹ See definition 2 in Appendix A.

complete. The EPA may regard the submission of information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA or of criminal statutes.

You are entitled to assert a business confidentiality claim covering all or part of the information you provide 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, or line and numeral when identifying the information subject to your CBI claim. Appendix D of this Request for Information 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.

You must provide all requested information under an authorized signature with the following certification, provided in Appendix E:

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, complete, accurate and true. 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.

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

Please submit the requested information electronically within 30 calendar days of your receipt of this letter. You may do so via email to Mr. Greg Orehowsky, Air Enforcement Division, U.S. Environmental Protection Agency, at Orehowsky.gregory@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 Greg Orehowsky at (202) 343-9292, or Orehowsky.gregory@epa.gov.

**MARK
PALERMO** Digitally signed by
MARK PALERMO
Date: 2024.04.08
11:18:33 -04'00'

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

Enclosures:

- Appendix A: Definitions
- Appendix B: Instructions for Responses
- Appendix C: Request for Information
- Appendix D: Confidential Business Information
- Appendix E: Statement of Certification

Appendix A

Definitions

1. All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. §§ 7401–7671q, or the nonroad regulations found at 40 C.F.R. Parts 89, 1039 and 1068.
2. The terms “Kobelco,” “you,” and “your” include, but are not limited to, Kobelco Construction Machinery U.S.A. Inc., Kobelco Construction Machinery Japan Co., Ltd., and any of their affiliates, predecessors, successors, and assignees that are involved with the engines identified in Request 1 of Appendix C.
3. The term “Hino” includes, but is not limited to, Hino Motors, Ltd, Hino Motor Sales U.S.A., and any of their affiliates, predecessors, successors, and assignees.
4. The term “affiliate” means any entity involved with the engines identified in Request 1 of Appendix C that is: related to you by shareholdings or other means of control; associated with you as a parent, subsidiary, sibling, or predecessor entity; associated with you as an agent; or acting in lieu of you or the entities named in Definition 2.
5. The term “entity” means any natural person, corporation, partnership, Limited Liability Company, sole proprietorship, joint venture, or any formal or informal group, organization, or association.
6. The term “information” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how it was recorded, and whether it is an original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail (“email”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and work sheets. The term “information” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “information” also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape, or otherwise. Information bearing any notation not part of the original text is considered separate information. A draft or non-identical copy is separate information within the meaning of this term.
7. The term “person” includes an individual, corporation, partnership, or association (see Section 302(e) of the CAA, 42 U.S.C. § 7602(e)).
8. “Exempted” or “exempt” means relating to engines that are not required to meet otherwise applicable standards, subject to one or more qualifying conditions.
9. “Date” means day, month, and year.

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

11. "Nonroad compression-ignition engine" means an engine regulated under 40 C.F.R. Part 89 or Part 1039.

Appendix B
Instructions for Responses

1. Provide a detailed, complete, accurate, and true response to each of the requests in Appendix C, below. Provide any narrative responses or lists in English.
2. Responses to Request 1 of Appendix C should be provided in a Microsoft Excel® format or other widely available searchable, unlocked electronic spreadsheet format.
3. When a numeric response is provided, precisely specify the units of measure represented by the number.
4. This Request for Information 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 Request for Information.

Appendix C

Request for Information

Pursuant to Section 208 of the Act, 42 U.S.C. § 7542, within thirty (30) calendar days of receiving this letter, you must provide the following information in an organized, unlocked, electronic spreadsheet. You may use the spreadsheet we have included as Attachment A “Kobelco RFI Spreadsheet.”

1. For each nonroad compression ignition engine identified in Attachment A “Kobelco RFI Spreadsheet”, please provide the following information:
 - a. Identify whether the engine was purchased by Kobelco (yes/no);
 - b. The date Kobelco purchased the engine;
 - c. The purchase price paid for the engine;
 - d. The date Kobelco installed the engine into equipment;
 - e. The type of equipment the engine was installed into (such as an excavator or crane);
 - f. The serial number or VIN of the equipment;
 - g. The equipment model number;
 - h. The date the engine, or equipment with the installed engine, was imported into the United States;
 - i. The date Kobelco sold the equipment;
 - j. The name of the purchaser of the equipment;
 - k. If Kobelco exported the equipment with the installed engine or the engine alone out of the United States, provide the date of export.
 - l. With respect to those engines and equipment identified in part k above, provide the country of export;
 - m. The EPA engine family name if missing or different from what is listed in the Kobelco RFI Spreadsheet;
 - n. If the engine is claimed to be exempt from EPA regulations, list the regulation that provides the basis for the exemption.

2. Identify each person responsible for responding to this Request for Information, including their title and the request(s) to which they responded.

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 Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 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 Section 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 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

[This Certification is for signature by the president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or another executive with authority to perform similar policy or decision-making functions of the corporation.]

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Request for Information, issued pursuant to Section 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 _____ [corporate affiliation[s]] to provide the above information on its behalf to 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, complete, accurate and true. 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: _____