



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

TRANSMITTED VIA EMAIL
RETURN RECEIPT REQUESTED

Matt Henderson, Environmental Manager
Hilcorp Energy Company
1111 Travis St
Houston, TX 77002
mhenderson@hilcorp.com

Re: Clean Air Act Information Request for Hilcorp Energy Company Production Facilities

Dear Mr. Henderson:

The United States Environmental Protection Agency (EPA) hereby requires Hilcorp Energy Company (Hilcorp) to provide certain information to determine the Clean Air Act (CAA or the Act) compliance status of its oil and natural gas production facilities in New Mexico. You received a letter from Scott M. Cernich, dated December 20, 2022, that is seeking the same information that was intended to assist you in expediting the process by allowing you to begin assembling the required information in advance of receiving this formal EPA request.

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 – 22 (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 4) 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 5. 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.

Please submit the requested information electronically to Daniel Hoyt, U.S. Environmental Protection Agency, at hoyt.daniel@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, Hilcorp 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 Daniel Hoyt by email or by phone at (202) 564-7898. Alternatively, legal counsel for Hilcorp may contact Robert Klepp at klepp.robert@epa.gov or (202) 564-5805.

Sincerely,

**GREGORY
FRIED**

Digitally signed by
GREGORY FRIED
Date: 2023.01.23 13:41:40
-05'00'

Gregory Fried, Chief
Stationary Source Enforcement Branch
Air Enforcement Division

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

cc: Eric Waeckerlin, Hilcorp Outside Counsel, Brownstein Hyatt Farber Schreck, LLP
Ron Tenpas, Hilcorp Outside Counsel, Vinson & Elkins LLP
Scott Cernich, Senior Counsel, U.S. Department of Justice
Jamie Lee, Assistant Regional Counsel, EPA Region 6
Robert Klepp, Senior Attorney, EPA Air Enforcement Division
Christopher Vigil, Assistant Counsel, New Mexico Environment Department
Steve Thompson, Chief, Air Enforcement Branch, EPA Region 6

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 (*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.

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.

Hilcorp Energy Company or *Hilcorp* means You and includes any predecessors, successors, parent corporation, subsidiaries, assignees, joint ventures, whether wholly or partially owned, or other business affiliations.

Owner or *Operator* means any Person who owns, leases, operates, controls, or supervises the Production 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 *Hilcorp Energy Company*.

Production Facilities means all oil and natural gas production operations and associated adjacent or nearby operations that Hilcorp Energy Company is the Owner or Operator of, located in the state of New Mexico.

You and/or *Your* means Hilcorp Energy Company 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

Page numbers reference the slides Hilcorp provided to the U.S. and NMED via email on November 14, 2022 (Hilcorp Presentation). You are hereby required, in accordance with Section 114(a) of the CAA, 42 U.S.C. § 7414(a), to provide the following information and Documents for the Production Facilities:

1. Provide the information requested in the attached MS Excel spreadsheet, Enclosure 3, and provide a native copy of the completed spreadsheet (*i.e.*, a version that can be filtered and sorted with MS Excel functionality).
2. Define the term “Drillout Period” as used on Page 3.
3. Define term “Open Top Period” as used on Page 3.
4. Define the term “Controlled Period” as used on Page 3.
5. Produce all documents, organized by well using the API well number and the well name, that supports Hilcorp’s calculations of “Drillout Period Days,” “Open Top Period Days,” and “Controlled Period Days” set forth on Page 3 of the Hilcorp Presentation.
6. Provide the following information regarding Well No. 30-039-29358 (which is referenced on Page 4 of the Hilcorp Presentation):
 - a. A surface piping schematic showing where and how the well flow rate was controlled to recover the fracturing fluids over the six-day period documented on Page 4 of the Hilcorp Presentation.
 - b. Identify the type of choke or flow control system Hilcorp used on Well No. 30-039-29358 during flowback, and explain how the flow control system used compares to a typical Hilcorp flowback operation.
 - c. All pressure measurements taken upstream and/or downstream of the choke or flow control device.
 - d. The date, time, and precise sampling location for each gas sample taken on Well No. 30-039-29358.
 - e. Describe in detail the gas sample collection procedures.
 - f. How many gas samples were taken from Well No. 30-039-29358? Were the six samples identified on Page 4 the only gas samples taken on this well?
 - g. Produce all lab reports for all gas samples taken on Well No. 30-039-29358.

- h. Was there a post-completion clean-up performed on the well to purge the air contaminated gas from the well prior to the well test and return to production on April 4, 2018? Provide documentation of any post-completion well activities performed prior to the April 4, 2018 well test.
 - i. Was the reported well test on April 4, 2018, performed into the sales line? If so, what were the: i) flowing wellhead pressures, and ii) line pressures downstream of the choke?
 - j. How do Hilcorp's estimated rates during flowback compare to the test rate on April 4, 2018?
 - k. Is Hilcorp's monthly production data for this well based on wellhead metering or group metering? Does the answer apply to all 234 Hilcorp wells referenced on Page 2 of the Hilcorp Presentation?
 - l. What was the allocation factor between the field data and the sales meter?
 - m. Provide the average daily flowing wellhead and sales line pressures for this well for each the 26 days of production in April 2018.
7. Explain how you allocated the 30-day production rates for the newly completed or restimulated zones that you used for the flowback calculations on the 150 Open Top Tank Completion wells.
8. In its estimated flowback rates, how has Hilcorp accounted for 30-day flow periods that span a month-end with significant amounts of production in each month (*e.g.*, production starts on the 15th day of the month production begins)?
9. Explain why Hilcorp believes the production flowing well head pressure or sales line pressure is representative of the backpressure that would be present during flowback to an open top tank. Specifically, why does Hilcorp believe that post-fracturing, "flush-production" would not have resulted in significantly higher gas flowback rates, especially given the apparent production decline rates from the new zones over the first 90 days after recompletion observed on most wells?
10. Why does Hilcorp believe that the Well No. 30-039-29358 measured nitrogen percentages can be extrapolated to wells that cleaned up more quickly (*i.e.*, with shorter flowback periods)?
11. What is the implied nitrogen recovery during flowback (as a percentage of the volume used in the fracture stimulation operations) for all Hilcorp wells when using the Hilcorp Method 1 and Method 2 Emissions estimation methodologies?
12. Many Hilcorp wells were reported to reach a pipeline specification relatively quickly (*i.e.*, <72 hours). What was the average nitrogen concentration for each flowback day

from these wells used for Hilcorp's Method 1 (report in attached MS Excel spreadsheet, Enclosure 3, column "AI")? We understand from Hilcorp's previous presentations that the nitrogen concentration would have to be somewhere between 2% and 20% when production begins. If our understanding is incorrect, please explain?

13. Was the flowback rate control method (*i.e.*, choke or flow control device) on the wells that were reported to have cleaned up quickly (*i.e.*, <72 hours) different than the flowback control method used on Well No. 30-039-29358? If so, detail the difference(s) and provide a supporting piping schematic.
14. Produce the spreadsheet(s) Hilcorp used to create the graphics on Page 4 of the Hilcorp Presentation.
15. For Samples A, B, C, and D referenced on Page 5 of the Hilcorp Presentation, provide the following:
 - a. API Well Number for each sample.
 - b. The date, time, location (*i.e.*, the exact location on the well or associated piping) of sample collection, as well as a description of the operations taking place at the time of sampling.
 - c. Details of the sample collection procedures, including any documentation describing the sampling protocols.
 - d. All lab reports for each sample.
 - e. The volumetric flow rate for the well at the time the sample was collected.
 - f. The Hilcorp records/documents from which Sample A, B, C, and D data were obtained.
 - g. The spreadsheet(s) used to calculate the emissions estimates and create the bar charts.
16. Produce the spreadsheet(s) used to calculate the emission estimates presented on Page 6 of the Hilcorp Presentation.
17. Produce the 94 invoices, and any supporting documentation provided by the contractor, Hilcorp used to prepare the calculations on Page 7 of the Hilcorp Presentation.
18. At the end of the running the production tubing, most wells were blown dry. Identify which wells had this operation and the estimated volume of gas vented or combusted during that operation.
19. Identify each gas sample taken from any of the 234 wells referenced in the Hilcorp Presentation (aside from the samples referenced above) and provide:

- a. API Well Number for each sample.
 - b. The date, time, and location (*i.e.*, the exact location on the well or associated piping) of sample collection, as well as a description of the operations taking place at the time of sampling.
 - c. Details of the sample collection procedures, including any documentation describing the sampling protocols.
 - d. All lab reports for each sample.
 - e. The volumetric flow rate for the well at the time the sample was collected.
20. Identify each of the 234 wells where Hilcorp used a pit flare as a completion combustion device.
21. Identify each of the 234 wells where Hilcorp used a pit flare during the drillout, cleanout, or tubing landing operations.
22. What do the service rigs do with gas that comes to surface during drillout, cleanout, and tubing landing operations, *e.g.*, sent to mud/gas separator, vented, or routed to a flare?

ENCLOSURE 4

Statement of Certification

I certify that I am fully authorized by Hilcorp Energy Company 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 5

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 period of time 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).