

Dated: November 20, 2014.

**Kimberly Y. Patrick,**  
Acting Director, Office of Small Business  
Programs.

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9920-28-OAR]

### Fuels and Fuel Additives: Request for Substantiations of Claims of Confidential Business Information (CBI) From Businesses That Have Submitted Reports and Transactional Information Under the Renewable Fuel Standard (RFS) Program

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or Agency) has received a request under the Freedom of Information Act (FOIA) for certain records submitted to EPA under the Renewable Fuel Standard (RFS) program between January 1, 2011 and November 2014. These records were submitted to EPA pursuant to the RFS program's annual reporting, quarterly reporting and transactional information reporting within EPA's Moderated Transaction System (EMTS). This notice is a request for substantiations of confidentiality claims from businesses that have submitted any or all of the information listed in this notice and are claiming the information as confidential business information (CBI). The procedures by which businesses may voluntarily substantiate claims of CBI in regard to the information at issue in the FOIA request are provided in this notice, which is referenced in the parties' joint briefing schedule in the case, *Perkins Coie LLP v. McCarthy*, Case 1:13-cv-01799 (D.D.C filed Nov. 11, 2013). EPA's Office of General Counsel (OGC) will review comments received in response to this notice in preparing a Final Confidentiality Determination under 40 CFR part 2, subpart B, to determine whether the information at issue should be released publicly in response to the FOIA request at issue in the above-referenced litigation. If OGC determines after reviewing the substantiations that some or all of the documents responsive to the FOIA request are not entitled to confidential treatment under 40 CFR part 2, and therefore should be released, EPA will provide notice of this determination by letter, prior to release, to businesses who have submitted the information,

allowing such businesses 10 working days to respond, pursuant to 40 CFR 2.205(f).

**DATES:** Written comments must be postmarked or hand delivered to the address listed below, or emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section, by January 9, 2015.

**ADDRESSES:** You<sup>1</sup> may submit your comments by any of the following methods: Email: [larsen.ben@epa.gov](mailto:larsen.ben@epa.gov)  
*U.S. Mail:*  
U.S. Environmental Protection Agency,  
ATTN: Ben Larson,  
Mail Code 6405A,  
1200 Pennsylvania Ave. NW.,  
Washington, DC 20460.  
*Commercial Delivery:*  
U.S. Environmental Protection Agency,  
William Jefferson Clinton Building—  
North,  
ATTN: Ben Larson,  
Mail Code 6405A, Room 6520W,  
1200 Pennsylvania Ave. NW.,  
Washington, DC 20004.

*Instructions:* Address all comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section, postmarked, hand delivered or emailed by January 9, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ben Larson, Compliance Division, Office of Transportation and Air Quality (MC-6405A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460; telephone number: (202) 343-9565; email address: [larsen.ben@epa.gov](mailto:larsen.ben@epa.gov).

**SUPPLEMENTARY INFORMATION:**  
*Worldwide Web (WWW).* In addition to being available in the **Federal Register**, an electronic copy of today's notice will also be available through the WWW. A copy of this notice will be posted on EPA's Renewable Fuel Standard notification Web site at: <http://www.epa.gov/otaq/fuels/renewablefuels/notices.htm>.

This request for substantiation is covered under OMB's Information Collection Request number 2020-0003.

*Organization of this Document:* The following outline is provided to aid in location information in this preamble.

- I. General Information
  - A. Does this notice apply to me?
  - B. What should I consider as I prepare my comments to the EPA?
- II. Background and Purpose of Notice
- III. Description of Data Elements Requested by Category
  - A. Annual Compliance Report

<sup>1</sup> By "you," EPA is referencing here and throughout this notice an authorized representative of a business that has submitted to EPA the information at issue in this notice.

B. Ownership of Renewable Identification Numbers Generated in Years 2012 and 2013

C. Transactional Information Contained in EPA's Moderated Transaction System

IV. Request for Comments

## I. General Information

### A. Does this notice apply to me?

This notice is directed to businesses that have submitted information under 40 CFR part 80 subpart M. If you have further questions regarding the applicability of this action to a particular party, after reviewing the remainder of this notice, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The FOIA request does not identify by name any single company in its request for RFS documents.

### B. What should I consider as I prepare my comments to the EPA?

#### 1. Submitting Information Claimed as CBI in Response to This Notice

Clearly mark as "CONFIDENTIAL" any or all of the comments or information that you claim to be CBI that you submit in response to this notice. For CBI saved on a computer disc or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as "CONFIDENTIAL" and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Do not submit information through email that you consider to be CBI or otherwise protected. Only send or deliver information identified as CBI to the mail or hand/courier delivery address listed within this notice.

Alternatively, businesses can submit example reports with example data filled in within each field. The business can use the example data as a tool for explaining its reasoning.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the section within this notice marked **FOR FURTHER INFORMATION CONTACT**.

#### 2. Tips for Preparing Your Comments

Follow all instructions in this notice and, if you are claiming information as CBI, please respond to each of the eleven questions listed within the "Request for Comments" section below. As necessary, please provide specific examples to illustrate your concerns and suggest alternatives, making any necessary references to applicable statutes, case law or regulations. Explain your views as clearly as possible,

avoiding the use of profanity or personal threats.

Make sure to submit your information and comments by the comment period deadline identified in the preceding section titled **DATES**. You may also provide the name, date, and **Federal Register** citation.

## II. Background and Purpose of Notice

*Background.* The EPA's Office of Transportation and Air Quality (OTAQ) has responsibility for protecting public health and the environment by regulating air pollution from vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. To promote the use of fuels derived from renewable sources, Congress established the Renewable Fuel Standards (RFS) program in Section 211(o) of the Clean Air Act (the CAA or the Act). The CAA specifies increasing annual "applicable volumes" of four categories of renewable fuel—total renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel—to be used in the transportation sector.<sup>2</sup> For purposes of the RFS program, renewable fuel must be derived from "renewable biomass" and meet other definitional requirements, including specified lifecycle greenhouse gas emissions reductions as compared to baseline petroleum fuel. The Act directs EPA to establish a compliance program and annual percentage standards to ensure that the applicable volumes of renewable fuel are used.

EPA implements the RFS through regulations established in 40 CFR part 80 subpart M. EPA requires the submission of compliance reporting information under §§ 80.1451 and 80.1452. Certain additional information must be submitted to EPA for facility registration, and for other purposes. See §§ 80.1449, 1450, 1464, 1465, 1466, 1467, 1469.

*Purpose.* EPA OTAQ has received a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, for certain records submitted to EPA under the RFS reporting requirements, including the Annual Compliance reports submitted by Obligated Parties; RIN Activity or Ownership by Quarter; and transactional information entered into the EPA's Moderated Transaction System (EMTS). The FOIA request does not identify by name any single company in its request for RFS documents. The specific data elements in these reports are defined further

below under the section, "Description of Data Elements Requested by Category." Companies submitting reports under the RFS program have claimed all or some of this information as confidential business information (CBI). In accordance with applicable EPA regulations, 40 CFR part 2, subpart B, the EPA has determined that some companies have asserted CBI claims, and that others might be expected to assert CBI claims, for some or all of the information sought through the FOIA request. Under EPA regulations at 40 CFR part 2, subpart B, the FOIA request has been initially denied to afford companies an opportunity to provide comments and information to substantiate a claim as described below. The FOIA request and corresponding CBI issues are the subject of litigation in federal district court in the District of Columbia, *Perkins Coie LLP v. McCarthy*, Case 1:13-cv-01799 (D.D.C. filed Nov. 11, 2013).

In light of the large number of businesses involved that have made CBI claims or are expected to make CBI claims, EPA is proceeding using a multi-step process as described in the joint proposed briefing schedule in the above-noted case. First, a certain number of businesses have recently received formal requests by certified letter for substantiations, pursuant to 40 CFR 2.204(e). Second, this **Federal Register** notice is to provide the remaining businesses that supplied the information described in this notice with an opportunity to provide information in support of each respective business's confidentiality claims, as further directed below. This submission is not required and a business will not waive any claim by not submitting information in response to this **Federal Register** notice. The EPA's Office of General Counsel (OGC) will consider the responses received from all of the businesses that were contacted by direct letter and through this **Federal Register** notice and issue a final confidentiality determination that covers the information described in this notice. EPA anticipates that the final confidentiality determination for each business will be the same. As to those businesses that have submitted RFS information to EPA but did not receive one of the request letters for substantiation discussed above and chose not to provide information in response to this notice, the EPA anticipates providing determinations pursuant to 40 CFR 2.204(d)(2) and 2.205(f) to those businesses based on the determinations made for the businesses that provide substantiations. Each

business will receive 10 working days' notice prior to release of any information that is not found to be confidential.

Therefore, EPA is providing you the opportunity to make the showings described below, with specific references to those portions of the information you consider to be CBI. Please note that each affected business need only substantiate its claims of confidentiality once during this process. EPA will not be sending out additional letters requesting substantiation following the publication of this notice. By the conclusion of this process, EPA will provide: (1) final confidentiality determinations to the businesses that have submitted responses to this notice or to any directly mailed substantiation request letters, and (2) notice, under 40 CFR 2.204(d)(2) and 2.205(f), to the other businesses on record who have submitted types of RFS information, if any, that EPA determines not to be confidential.

## III. Description of Data Elements Requested by Category

EPA OGC will make a final confidentiality determination on the categories of information described under this section. The categories list the different data elements that an affected business may have submitted to EPA under the RFS program. Certain data elements listed below may not be relevant to every affected business.

### A. Annual Compliance Report

Any obligated party described in § 80.1406 (refiners and importers of gasoline/diesel) or exporter of renewable fuel described in § 80.1430 must submit to EPA reports on an annual basis as described in § 80.1451(a)(1). The time period for the reports, which are responsive to the pending FOIA request, include those submitted from 2011 through November 2014. The format and exact data elements of the annual compliance report has varied between compliance years, but they include the information required by § 80.1451(a)(1), and the following general types of data elements:

#### Report Information

- a. Report Name (RFS0303, RFS0302, etc)—Form ID for the RFS2 Annual Compliance Report;
- b. Report Type (original or resubmission)—Indicates whether this is an original report or resubmission;
- c. CBI (yes or no)—Specifies if the data contained within the report is being claimed as Confidential Business Information (CBI) under 40 CFR part 2, subpart B;

<sup>2</sup> Section 211(o)(7) provides EPA with authority to waive the statutory applicable volumes in whole or in part in certain specified circumstances.

- d. Report Date—Date of report submission;
- e. Compliance Year—Compliance period of the report.
- Compliance Elements
- f. Renewable Volume Obligation (RVO) Name—Indicates to which RVO types (Cellulosic Biofuel, Biomass-Based Diesel, Advanced Biofuel, Renewable Fuel) the reported compliance information is related;
- g. Renewable Fuel Standard Value/Equivalence Value—The renewable fuel standards are defined at § 80.1405. For exporters of renewable fuel, the equivalence value for the exported renewable fuel is found at § 80.1415;
- h. Cellulosic biofuel waiver credits payment method—The method by which payment has been submitted for cellulosic biofuel waiver credits, including pay.gov, fedwire, or U.S. Mail;
- i. Cellulosic biofuel waiver credits ID—Transaction reference ID provided by the U.S. Treasury for purchase of the cellulosic biofuel waiver credits.
- Compliance Activity and Status
- j. Compliance Basis—How obligated parties indicate the compliance level, including as an Aggregated Importer, Aggregated Refiner, Exporter, or facility by facility;
- k. If “Refinery by Refinery” selected for compliance basis, then each facility ID listed out in a separate row;
- l. Renewable Fuel Export Type—For renewable fuel exporters, the type of renewable fuel exported;
- m. Total volume of gasoline and diesel production and Renewable Fuel Exported;
- n. Prior year deficit—Renewable Volume Obligation deficit from prior compliance year;
- o. Current year deficit—Renewable Volume Obligation deficit to be carried into the next compliance year;
- p. Renewable Volume Obligation—Total, in gallons, calculated by combining the non-renewable gasoline, non-renewable diesel, multiplying it by the annual standards, and combining the result with any prior-year deficit as described in § 80.1407;
- q. Current year/Prior year RINs used for compliance (aggregated by D-code, RVO name, and compliance level);
- r. Cellulosic biofuel waiver credits used.

#### *B. Ownership of Renewable Identification Numbers Generated in Years 2012 and 2013*

Producers and importers of renewable fuel generate renewable identification numbers, or “RINs,” for each gallon of renewable fuel they import or produce for use in the United States. RINs are

assigned to batches of renewable fuel by producers and importers of such fuel, and typically separated from those batches by an obligated party or other entity that blends the renewable fuel into conventional fuel. Once separated, RINs may be kept for compliance or sold. Obligated parties comply with their renewable volume obligations by accumulating RINs and then retiring them to demonstrate annual compliance.

RIN ownership is tracked through EPA’s Moderated Transaction System (EMTS). EMTS is a high-volume transaction system that tracks the full RIN lifecycle, including RIN generation, buy/sell, separation, and retirement. RIN ownership totals are continuously captured and maintained within this system.

In addition, companies also report RIN ownership totals through the quarterly compliance “RIN Activity Report” as required in § 80.1451(c)(1). The RIN Activity Report contains RINs owned at the start and end of each quarter for “prior-year” and “current-year” RINs.

This FOIA request seeks ownership information by company for RINs that were generated in years 2012 and 2013.

#### *C. Transactional Information Contained in EPA’s Moderated Transaction System*

As described in the previous section, RFS transactions are entered into EMTS as required under § 80.1451(c)(1)(ii). Elements listed are referenced as they appear in the EMTS users guide posted at <http://www.epa.gov/otaq/fuels/renewablefuels/emtshtml/emtsdocuments.htm>. The time period for the reports, which are responsive to the pending FOIA request, include those submitted from 2011 through November 2014. The following list contains the data elements responsive to this FOIA.

RIN trades (data elements within a “buy” and “sell” transaction)—EMTS system records specific to RINs transferring from one trading partner to another, including specific data elements about the trade.

#### Company Identifying Information

- a. Submitting Company Identifying Info—Company entering the RIN buy/sell transaction into EMTS;
- b. EMTS Transaction Date—The date EMTS processed the transaction;

#### Trading Partner Identifying Information

- c. Trading partner ID—The four digit EPA assigned ID of the company identified as the trading partner;
- d. Trading partner Name—The name of the company identified as the trading partner.

#### Optional Information Provided to Trading Partner

- e. PTD number [optional]—Number on the Product Transfer Document (used for transactions);
- f. Matching Transaction Identifier [optional]—User-specified ID that can be used to match specific transactions (entering the EMTS Transaction ID of the received trade to be matched);
- g. Public Supporting Document [optional]—Any public supporting text used by the company to share with its trading partner;
- h. Public Supporting Document Number [optional]—Tracking/identification numbers that are associated with the public supporting document text;
- i. Public Supporting Document [optional]—Any public supporting text used by the company to share with its trading partner;
- j. Public Supporting Document Number [optional]—Tracking/identification numbers that are associated with the public supporting document text.

#### Compliance Activity

- k. RIN quantity—Amount of RINs involved in the transaction;
- l. Batch volume [conditional]—required for assigned RINs—Volume of batch fuel, in gallons, involved in the transaction;
- m. Fuel Code/“D” Code—Identifies the type of Fuel produced involved in the transaction;
- n. Assignment Code—Status of the RINs (Assigned or Separated);
- o. RIN Year—Generation year of the RINs;
- p. [QAP Service Type Code]—\*\* New in 4Q 2014—Indicates the Quality Assurance Provider (QAP) service associated with the RINs;
- q. Buy/Sell Reason code—The reason the buy/sell transaction is taking place;
- r. Price per RIN [conditional]—required if Price per Gallon is not reported—Price per individual RIN;
- s. Price per Gallon [conditional]—required if Price per RIN is not reported—Price per individual gallon;
- t. Transaction Detail Comment [conditional]—Comment provided by the user on the transaction;
- u. RINs Information for non-FIFO trades [multiple, conditional]—includes: Generate Organization ID, Generate Facility ID, and Batch Number—Information provided by buyer/seller to select specific batches either at the producer level or down to the individual batch level.

#### Other Optional Submitter Provided Information

v. 1—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

w. 1—Supporting Document Number [optional]—ID number associated with the supporting document text;

x. 2—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

y. 2—Supporting Document Number [optional]—ID number associated with the supporting document text.

RIN generation transactions—EMTS system records specific to a registered renewable fuel producer assigning RINs to a batch of renewable fuel, including elements related to the renewable fuel production process.

#### Company Identifying Information

a. Submitting Company Identifying Info—Company entering the RIN generation transaction into EMTS;

b. EMTS Transaction Date—The date EMTS processed the transaction.

#### Compliance Activity

c. RIN Quantity—Quantity of RINs generated for the batch;

d. Batch volume—Total volume of the fuel batch in gallons;

e. Fuel Code/"D" Code—Identifying the type of renewable fuel associated with the batch;

f. Production Process—Process used for producing the renewable fuel;

g. Fuel Category—The renewable fuel (ethanol, biogas, biodiesel, etc);

h. Fuel Production Date—Date the renewable fuel batch was produced

i. Denaturant Volume—The volume of non-renewable fuel added to a volume of ethanol to create the batch volume for a given batch number of renewable fuel;

j. Equivalence Value—A multiplier applied to the batch volume to determine the number of RINs that will be generated per gallon of renewable fuel produced. The equivalence value is directly related to fuel category code;

k. Production Source—Originating Organization—Four digit ID of the organization producing the renewable fuel;

l. Production Source—Originating Facility—Five digit ID of the production facility of the renewable fuel;

m. Batch number—Industry user assigned identification number for the batch of renewable fuel;

n. Production Source—Additional information (text box);

o. Feedstock—Feedstock used to produce the batch of renewable fuel;

p. Feedstock amount—Amount of feedstock used in the production of the batch of renewable fuel;

q. Feedstock—Additional Information (text box);

r. Co-product—Co-products created from the renewable fuel production process;

s. Co-product additional information—Comment provided by the industry user on the co-products produced;

t. [QAP Service Type Code]—\*\* New in 4Q 2014—Quality Assurance Provider service type associated with the RINs;

u. Transaction Detail Comment—Comments provided by the industry user on the EMTS transaction.

#### Other Optional Submitter Provided Information

v. 1—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

w. 1—Supporting Document Number [optional]—ID number associated with the supporting document text;

x. 2—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

y. 2—Supporting Document Number [optional]—ID number associated with the supporting document text.

RIN separation transaction—EMTS system records specific to a RFS registered party separating RINs from renewable fuel, including elements related to the RIN quantity and why the party is separating RINs.

#### Company Identifying Information

a. Submitting Company Identifying Info—Company entering the RIN separation transaction into EMTS;

b. EMTS Transaction Date—The date EMTS processed the transaction;

#### Compliance Activity

c. RIN quantity—Quantity of RINs separated from the fuel;

d. Batch volume—Volume of renewable fuel involved in the transaction;

e. Fuel Code/"D" Code—Identifying the type of renewable fuel;

f. Separate Reason Code—Reason for separating RINs from the renewable fuel;

g. Transaction Date—Date EMTS processes the transaction;

h. RIN Year—Year the RINs involved in the transaction were generated;

i. [QAP Service Type Code]—\*\* New in 4Q 2014—Quality Assurance Provider service type associated with the RINs;

j. Blender Organization Identifier [conditional]—Company ID for upstream delegation for blending;

k. Blender Organization Name [conditional]—Company name for upstream delegation for blending;

l. Transaction Detail Comment [conditional]—User provided comments on the transaction;

m. RINs Information for non-FIFO trades [multiple, conditional—includes: Generate Organization ID, Generate Facility ID, and Batch Number]—Information provided by the Organization involved in the transaction to select specific batches either at the producer level or down to the individual batch level.

#### Other Optional Submitter Provided Information

n. 1—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

o. 1—Supporting Document Number [optional]—ID number associated with the supporting document text;

p. 2—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

q. 2—Supporting Document Number [optional]—ID number associated with the supporting document text.

RIN retirement transaction—EMTS system records specific to a RFS registered party using RINs for compliance or removing RINs from the RFS marketplace for other reasons, including elements related to the RIN quantity and why the party is retiring RINs.

#### Company Identifying Information

a. Submitting Company Identifying Info—Company entering the RIN retirement transaction into EMTS;

b. EMTS Transaction Date—The date EMTS processed the transaction.

#### Compliance Activity

c. RIN quantity—Amount of RINs retired;

d. Batch volume [conditional]—Amount of fuel in gallons involved in the retire transaction;

e. Fuel Code/"D" Code—Identifying the type of renewable fuel;

f. Assignment Code—Status of RINs (assigned or separated);

g. RIN Year—Year RINs involved in the transaction were generated;

h. [QAP Service Type Code]—\*\* New in 4Q 2014—Quality Assurance Provider service type associated with the RINs;

i. Retire Reason code—Reason for retiring the RINs;

j. Transaction Date—Date the EMTS system processes the transaction;

k. Compliance Year [conditional]—If retiring for annual compliance, the compliance year;

l. Compliance Level Code [conditional]—If retiring for annual compliance, the compliance level such as Refiner, Importer, or Exporter;

m. Compliance Facility Identifier [conditional]—If retiring for annual compliance and choosing to comply facility by facility, the five digit facility ID the RINs are being retired under;

n. Transaction Detail Comment [conditional]—Comments provided by the industry user on the EMTS transaction;

o. RINs Information for non-FIFO trades [multiple, conditional—includes: Generate Organization ID, Generate Facility ID, and Batch Number]—Information provided by the Organization involved in the transaction to select specific batches either at the producer level or down to the individual batch level.

#### Other Optional Submitter Provided Information

p. 1—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

q. 1—Supporting Document Number [optional]—ID number associated with the supporting document text;

r. 2—Supporting Document [optional]—Information for the industry user to create user defined data to report supporting document identifiers;

s. 2—Supporting Document Number [optional]—ID number associated with the supporting document text.

#### IV. Request for Comments

The purpose of this notice is to notify you, as an authorized representative of a business that has submitted information to the RFS program, that the EPA OGC will be making a final confidentiality determination concerning the information described within this notice that you have claimed or might be expected to claim as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific when identifying and substantiating the information subject to your claim. Where your claim, as originally made at the time of submission to the Agency or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such

page with brackets around the text that you claim to be CBI. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which the EPA OGC determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied.

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

1. 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, please specify that event.

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? 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 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? If so, specify which.

5. 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?

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

7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and

such harmful effects. How could your competitors make use of this information to your detriment?

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

Please note that *you bear the burden of substantiating your confidentiality claim(s)*. Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI. Your comments must be postmarked or hand delivered to this office, or emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section, by January 9, 2015.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "CONFIDENTIAL" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 CFR part 2, subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**Authority:** 40 CFR 2.204 et. al

Dated: December 4, 2014.

**Byron Bunker,**

*Director, Compliance Division, Office of Transportation and Air Quality.*

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