



REGION 3

PHILADELPHIA, PA 19103

July 31, 2024

VIA ELECTRONIC MAIL
RETURN RECEIPT REQUESTED

Bernard Brown
Chief Technology Officer
Empire Green Generation, LLC
801 Koppers Rd
Follansbee, WV 26037
bbrown@empirede.com

Request for Information under § 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a)

Dear Mr. Brown:

The United States Environmental Protection Agency (EPA), Region 3 hereby requires Empire Green Generation, LLC (Empire Green Generation or the Facility), located at 801 Koppers Rd, Follansbee, WV to provide certain information as part of an EPA investigation to determine the Facility's compliance with applicable standards and requirements under the federal Clean Air Act, 42 U.S.C. §7401 et seq., (CAA or the Act).

Pursuant to Section 114(a) of the CAA, 42 U.S.C. §7414(a), the Administrator of EPA is authorized to require any person who owns and/or operates an emission source to establish and maintain records, make reports, and provide such information as he/she may reasonably require for the purposes of determining whether such person is in violation of any provision of the Act. In order for EPA to determine whether a violation has occurred, you are hereby required, pursuant to Section 114(a) of the CAA, to provide responses to the following questions and requests for information regarding your facility. Therefore, you are hereby required to respond to questions and requests for information in Appendix B (see Appendix A for instructions and definitions). All information submitted in response to this request must be certified as true, correct, accurate, and complete by an individual with sufficient knowledge and authority to make such representations on behalf of Empire Green Generation. On the last page of your response(s) to this questionnaire, please include the certification contained in Appendix C.

The EPA issues this Request for Information under Section 114(a) of the CAA, 42 U.S.C. § 7414(a). Under Section 114(a), Part A – Air Quality and Emission Limitations, 42 U.S.C. §§ 7414 – Recordkeeping, Inspection, Monitoring, and Entry, the Administrator of the EPA may require any person who is subject

to the CAA to perform tests and provide information necessary to determine whether the person is acting or has acted in compliance with the CAA and the regulations promulgated thereunder. The Administrator has delegated this authority to the undersigned Division Director, of the Enforcement and Compliance Assurance Division, in EPA Region 3.

In order for the EPA to determine whether a violation has occurred, you are hereby required, pursuant to Section 114(a) of the CAA, to provide responses to the questions and requests for information in Appendix B to this letter. Failure to provide the required information may result in the issuance of an Order requiring compliance with the requirements, or the initiation of a civil action pursuant to Section 113(b) of the Act, 42 U.S.C. §7413(b). In addition, Section 113(c)(2) of the Act provides that any person who knowingly makes any false statement, representation, or certification in, or omits material information from any document required pursuant to this Act shall upon conviction be punished by a fine pursuant to Title 18 of the United States Code, or by imprisonment for not more than two years, or both. The information you provide may be used by EPA in administrative, civil, and criminal proceedings.

EPA requires Empire Green Generation to submit the requested information electronically no later than **thirty (30) calendar days** from the date of your receipt of this letter. You may submit your response using one of the following options: A) via email to ott.steven@epa.gov or B) by requesting a link from ott.steven@epa.gov for a secure EPA file transfer site where you may upload your response. Please note, the EPA cannot receive compressed files (.zip) via email. If you wish to submit compressed files, please select option B above. If you prefer not to send documents that you have claimed as confidential business information (CBI) to the EPA by email, please send them as electronic files through the EPA's secure file transfer site (option B). Prior to submitting your response, please send an email to ott.steven@epa.gov indicating which option you have selected to submit your response to this request.

Failure to provide all the requested information, and in the format requested, may result in additional inquiries, and may result in the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). It is important that your responses be clear, accurate, organized, and complete. We will regard any submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes.

You must submit all requested information under an authorized signature with the following certification (provided in Appendix C):

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

Finally, 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 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.

Please submit the requested information electronically within **30 calendar days of your receipt of this letter**. You may do so via email to Steve Ott, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency Region 3, at ott.steven@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.

This request is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks the collection of information from specific individuals or entities as part of an administrative action or investigation.

If you have any questions regarding this information request, please contact Steve Ott, of the Enforcement and Compliance Assurance Division at (215) 814-2267 or ott.steven@epa.gov. Additionally, please visit the small business resources information sheet for assistance and information at <https://www.epa.gov/compliance/small-business-resources-information-sheet>.

Sincerely,

Karen Melvin
Director
Enforcement and Compliance Assurance Division

Enclosures:

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

cc: Jesse Adkins, WVDEP, jesse.d.adkins@wv.gov
Laura Crowder, WVDEP, laura.m.crowder@wv.gov

Appendix A

INSTRUCTIONS AND DEFINITIONS

A. Instructions

1. Please provide a separate narrative response to each question and subpart of a question set forth in this Information Request. Please provide the **requested non-narrative information in spreadsheet format, preferably in Excel.**
2. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the question to which it corresponds.
3. Provide as much information possible to completely answer each question. This includes all supporting documentation, such as performance test reports, inspection records, memorandums, facility records, etc. Failure to completely respond to any questions may increase the time necessary to determine compliance with all applicable regulations.
4. For each document provided in response to these questions, provide an accurate and legible copy, which can be used to determine completeness of this request. For any information submitted electronically, clearly label to which question(s) the data is responsive.
5. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
6. 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 is not available or in your possession and identify any source that either possesses or is likely to possess such information.

B. Definitions

1. All terms used in the Information Request will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C Section 7410 or 40 C.F.R. Part 60, Part 61, or Part 63. The terms "Facility" and "EGG" shall mean the Empire Green Generation, LLC facility, located at 801 Koppers Rd, Follansbee, WV.
2. EPA Region 3 includes the states of Maryland, Pennsylvania, Virginia, West Virginia, Delaware, and the District of Columbia.
3. Except for in question 4, processing shall maintain its ordinary meaning.

Appendix B

REQUEST FOR INFORMATION

1. Provide a plot plan or map of facility.
2. Provide a process diagram and corresponding description of the facility.
3. Identify what type(s) of materials EGG intends to process, and:
 - a. If plastic will be material processed, identify the percentage of each plastic type intended to be processed (i.e., HDPE, PVC, ABS, PET, etc).
 - b. What is the anticipated amount of plastic processed daily?
 - c. What is the maximum possible daily capacity of material? Provide calculations.
 - d. What are the caloric values of each plastic type being processed?
 - e. How is the plastic processed prior to being delivered to EGG?
 - f. Does EGG plan to process medical waste as permitted by the WVDEP under Permit R13-3555?
4. Does EGG consider pyrolysis to be “processing” as defined in 40 CFR 241.2? Provide supporting evidence.
5. For each pyrolysis unit provide the following:
 - a. Make/model of the pyrolysis unit.
 - b. Will there be batch processing or continuous processing of plastics?
6. What is the oxygen content inside of the pyrolysis unit during normal operations? Please use either ppm or percentage of air.
 - a. How will the oxygen content be controlled?
 - b. How will the oxygen content be monitored?
 - c. How will oxygen be purged during start-up operations?
7. Provide calculations for the conversion of plastic (tons) to hydrochloric acid (gallons, tons, and concentration).
 - a. Describe how, and where in the process, the hydrochloric acid will be separated from other gases in the process.
 - b. Will water be added to the produced hydrochloric acid to change the final volume or concentration?
 - c. If water is added, will it be sourced from well/municipal water or derived from the pyrolysis/combustion process?
 - d. Will a scrubber be used to remove any residual acid forming gas, prior to the generator sets? If so provide make, model, capacity, and what type of scrubbing media material will be used.

8. How will the generated hydrochloric acid be stored and offloaded (drums, truck, or rail)
 - a. Provide details regarding truck/rail transfers, if applicable, and how emissions will be controlled?
 - b. Does EGG currently have a buyer(s) for the produced hydrochloric acid?
 - i. What are the specifications required by the buyer(s) such as %Hydrochloric Acid, purity?
 - ii. How will EGG determine if the buyer specification is met or not, please identify the analytic method(s) and type of instruments to be used?
 - iii. Who is/are the buyer(s)?
 - iv. What will EGG do with any off-spec HCL?
9. For each product of pyrolysis (oils, solids, tars, and syngas) provide a safety data sheet.
 - a. What is the expected chlorine content, by weight and percentage, found in solid and liquid streams.
 - b. Provide calculations for the conversion of plastic (tons) to each product, include expected yield of oil, solids, tars, and syngas.
10. For any syngas storage onsite provide:
 - a. Volume of storage vessel(s)
 - b. Type of storage vessel i.e. floating roof tank, totes, etc.
 - c. Pressure the gas will be stored at.
 - d. If stored as pressurized gas, where does the pressure relief device for the storage vessel vent to?
11. Provide waste determination(s) from each company/entity in which EGG intends to obtain plastics to process.
 - a. If EGG and its recycling partners are mutually held by a parent company/entity, describe the relation.
12. Pursuant to 40 CFR part 241 provide a non-hazardous secondary materials determination for all plastics intended to be processed.
13. Pursuant to 40 CFR part 241 provide a non-hazardous secondary materials determination for all products of pyrolysis prior to gas cleanup.
14. Pursuant to 40 CFR part 241 provide a non-hazardous secondary materials determination for all products of pyrolysis prior to gas cleanup.

15. For each generator set, provide the following information in an excel sheet:
 - a. Make/model
 - b. Make/model of the engine.
 - c. Serial No of each engine.
 - d. Type of engines.
 - e. Fuel type of each engine.
 - f. Power output rating of the engine.
 - g. Make/model and capacity of electric generators.
 - h. Will generated electricity be used onsite or sold to the local electrical grid?

16. For each vitrifier (process heater), provide the following:
 - a. internal and external dimensions in feet/inches
 - b. Describe the process by which the vitrifier will be used and how the generated heat will interact with the process material.
 - c. Make/Model/Heat Input Rating of the burners for each vitrifier, also please specify heat input rating by type of fuel.
 - d. Please note or identify any other streams entering the vitrifier?
 - e. What streams are leaving the vitrifier? Please describe the make-up of these streams and where any of these streams are considered and/or to as a waste.

17. For the dryer, provide the following:
 - a. Source of the heat energy for the dryer.
 - b. Make/model/fuel type/heat input capacity of burner(s) if equipped.

18. For the gas cleaning trains, please provide the following:
 - a. Please describe how the different streams (tars, oils, hydrochloric acid, solids (char), and synthetic gas) are going to be separated using the gas cleaning trains/equipment.
 - b. Please identify the type(s) of equipment going to be used in the gas cleaning trains.
 - c. Please identify the operating conditions needed to perform the desired separations.
 - d. Please identify any additional inlet streams that are necessary to perform the desired separations.
 - e. Please identify all outlet streams to include any wastewater.

Appendix C

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.

Empire Green Generation is submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") request for information, issued pursuant to Section 114(a) of the Clean Air Act, to determine whether the facility is in compliance with the Clean Air Act.

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

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

Appendix D

CONFIDENTIAL BUSINESS INFORMATION

You may assert a business confidentiality claim covering all or part of the information you provide in response to this information request for any business information entitled to confidential treatment under section 114(c) of the Clean Air Act (the Act), 42 U.S.C. § 7414(c), and 40 C.F.R. Part 2, Subpart B (which governs treatment of CBI under both the CAA and RCRA). 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. 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 114(c) of the Act and 40 C.F.R. §§ 2.201-2.311. **If you fail to furnish a business confidentiality claim with your response to this information request, the EPA will construe your failure as a waiver of that claim, and the information may be made available to the public without further notice to you.** See 40 C.F.R. § 2.203(c).

Pursuant to Section 114 of the Act and 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. In order to assist in its review and analysis, and in accordance with the requirements of 40 C.F.R. § 2.301(h)(2), the EPA may disclose information provided in response to this and other information requests to any person under contract or subcontract to the United States government to perform work in support of EPA in connection with the Act or regulations which implement the Act. In accordance with the requirements of 40 C.F.R. § 2.301(h)(3), the EPA may also disclose such information to State and/or local governmental agencies which have duties or responsibilities under the Act, or under regulations which implement the Act.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential 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.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying the information subject to your claim. Where your claim, as originally made 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. 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 our Office of Regional Counsel determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event. All confidentiality claims

are subject to EPA verification. If the EPA reviews your CBI claim(s) then the 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).

The criteria the EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 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 of the Freedom of Information Act, 5 U.S.C. § 552. 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.

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. § 7414(c); 40 C.F.R. § 2.301(e).