

**EPA's Information Gathering Authority
Under Section 114 of the Clean Air Act**

Under Section 114 of the Act (42 U.S.C. 7414), Congress has given the U.S. Environmental Protection Agency broad authority to secure information needed "for the purpose of (i) developing or assisting in the development of any implementation plan under Section 110 or 111(d), any standard of performance under Section 111, or any emission standard under Section 112, (ii) determining whether any person is in violation of any such standard of any requirement of such a plan, or (iii) carrying out any provision of this Act." Amount other things, Section 114 authorizes EPA to make inspections, conduct tests, examine records, and require owners or operators of emission sources to submit information reasonably required for the purpose of developing such standards. In addition, the EPA Office of General Counsel has interpreted Section 114 to include authority to photograph or require submission of photographs of pertinent equipment, emissions, or both.

Under Section 114, EPA is empowered to obtain information described by that section even if you consider it to be confidential. You may, however, request that EPA treat such information as confidential. Information obtained under Section 114 and covered by such a request will ordinarily be released to the public only if EPA determines that the information is not entitled to confidential treatment.¹ Procedures to be used for making confidentiality determinations, substantive criteria to be used in such determinations, and special rules governing information obtained under Section 114 are set forth in 40 CFR Part 2 published in the Federal Register on September 1, 1976 (40 FR 36902).

Pursuant to § 2.204(a) of EPA's Freedom of Information Act (FOIA) regulation, in the event a request is received, or it is determined that a request is likely to be received, or EPA desires to determine whether business information in its possession is entitled to confidential treatment even though no request for release of the information has been received, please be advised that EPA will seek, at that time, the following information to support your claim as required by § 2.204(e)(4) of EPA's FOIA regulations:

1. Measures taken by your company to guard against undesired disclosure of the information to others;
2. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
3. Pertinent confidentiality determinations, if any, by EPA or other Federal agencies, and a copy of any such determinations, or reference to it, if available; and
4. Whether your company asserts that disclosure of the information would be likely to result in substantial harmful effects on the business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.¹

¹Section 114 requires public availability of all emission data and authorizes disclosure of confidential information in certain circumstances. See 40 FR 36902 - 36912 (September 1, 1976).

[AD-FRL-3906-3]

Disclosure of Emission Data Claimed as Confidential Under Sections 110 and 114(c) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of policy on public release of certain emission data submitted under sections 110 and 114(c) of the Clean Air Act (CAA).

SUMMARY: Section 114(c) of the CAA excludes emission data from the general definition of trade secret information. Certain classes of data submitted to the EPA under sections 110 and 114(a) of the CAA are emission data, and, as such, cannot be withheld from disclosure as confidential pursuant to section 1905 of title 18 of the United States Code. This notice clarifies EPA's current policy, and solicits comment regarding that policy and categories of data which it considers excluded from a trade secret definition.

DATES: Written comments pertaining to this notice are requested by April 22, 1991.

ADDRESSES: Submit comments to: Nancy D. Riley, U.S. Environmental Protection Agency, Emission Standards Division, Pollutant Assessment Branch (MD-13), Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION

CONTACT: Timothy Mohin (telephone: (919) 541-5349 commercial/FTS 629-5349) or Karen Blanchard (telephone: (919) 541-5503 commercial/FTS 629-5503), Pollutant Assessment Branch (MD-13), Emission Standards Division; or Thomas Rosendahl (telephone: (919) 541-5404 commercial/FTS 629-5404), National Air Data Branch (MD-14), Technical Support Division; U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The EPA routinely uses the authority of sections 110 and 114(a) of the CAA to gather technical information from industries

involved in operations that lead to emission of pollutants to the ambient air. This information has been used, among other things, to better characterize emitting facilities and to evaluate the need for and impacts of potential regulation.

Information requests under sections 110 and 114(a) of the CAA typically include questions on uncontrolled and controlled emission rates and emission parameters of the pollutant or group of pollutants of concern. The respondents sometimes claim that its response constitutes trade secret information, and thus, should be treated as confidential. Claims of confidentiality may be made under section 114(c) of the CAA, which states " * * * upon a showing satisfactory to the Administrator by any person that records, reports, or information, or a particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such * * * confidential in accordance with the purposes of section 1905 of title 18 of the United States Code * * * " If the Administrator so determines, the information is not disclosable to the public.

However, section 114(c) of the CAA provides that information claimed to be a trade secret but which constitutes emission data may not be withheld as confidential. Although typically the EPA evaluates whether information constitutes emission data on a case-by-case basis, it believes that some kinds of data will always constitute emission data within the meaning of section 114(c). The purpose of this notice is to describe, without attempting to be comprehensive, that information which the EPA generally considers to be emission data, and which cannot qualify as confidential under either section 114(c) or section 110 (as set forth in 41 CFR 51.321, 51.322, and 51.323) of the CAA. The EPA is issuing this notice to clarify its policy and procedures, to facilitate the use of these data in automated data systems and computer-based simulation models, and to expedite processing of claims for confidentiality or requests for disclosure.

The EPA presently determines that data submitted to it as emission data does not qualify as confidential if it meets the following definition under 40 CFR 2.301(a)(2)(i):

a. Definitions. For the purpose of this section, (1) *Act* means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. (2)(i)

Emission data means, with reference to any source of emission of any substance into the air—

(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 emission 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), or any combination of the foregoing.

(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).

The table below lists the specific data fields which the EPA presently considers to constitute emission data and provides a brief description of what each data field describes. The descriptions are intended to provide general information. This list is not exhaustive, and, therefore, other data might be found, in a proper case, to constitute emission data.

Emission Data Fields

Facility Identification: The following data fields are needed to establish the identity and location of emission sources. This shall also include a description or an identifier of the device, installation, or operation constituting the source. These data are used to locate sources for dispersion evaluation and exposure modeling.

Plant Name and related point identifiers
Address
City
County
AQCR (Air Quality Control Region)
MSA, PMSA, CMSA (Metropolitan Statistical Areas)
State
Zip Code
Ownership and point of contact information
Locational Identifiers:

Latitude & Longitude, or UTM Grid Coordinates	(e.g., the percent of fuel used for space heating)
SIC (Standard Industrial Classification)	Hourly maximum design rate
Emission point, device or operation description information	(e.g., the greatest operating rate that would be expected for a source in a 1-hour period)
SCC (Source Classification Codes)	
Emission Parameters: The following data fields are needed to establish the characteristics of the emissions. This information is needed for the analyses of dispersion and potential control equipment.	The EPA has determined that these data are emission data and releasable upon request. This determination applies to data currently held by EPA as well as to information submitted to EPA in the future. Future requests for information under sections 110 and 114 of the CAA will indicate that these emission data will not be held confidential. This determination applies only to the data listed in the table.
Emission type (e.g., nature of emissions such as CO ₂), particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)	Determinations will continue to be made on a case-by-case basis for data not specified in this generic determination.
Emission rate (e.g., the amount released to the atmosphere over time such as kg/yr or lbs/yr)	After consideration of comments on this policy, a revised policy/determination may be published.
Release height (e.g., height above ground level where the pollutant is emitted to the atmosphere)	Dated: February 8, 1991.
Description of terrain and surrounding structures (e.g., the size of the area associated with adjacent structures in square meters and terrain descriptions such as mountainous, urban, or rural)	Michael Shapiro. Acting Assistant Administrator for Air and Radiation.
Stack or vent diameter at point of emissions (e.g., the inside diameter of vent at the point of emission to the atmosphere in meters)	[FR Doc. 91-4114 Filed 2-20-91; 8:45 am]
Release velocity (e.g., velocity of release in m/sec)	
Release temperature (e.g., temperature of release at point of release in degrees Kelvin)	
Frequency of release (e.g., how often a release occurs in events per year)	
Duration of release (e.g., the time associated with a release to the atmosphere)	
Concentration (e.g., the amount of an emission stream constituent relative to other stream constituents expressed as parts per million (ppm), volume percent, or weight percent)	
Density of the emissions stream or average molecular weight (e.g., density expressed as fraction or multiple of the density of air: molecular weight in g/g-mole)	
Boiler or process design capacity (e.g., the gross heating value of fuel input to a boiler at its maximum design rate)	
Emission estimation method (e.g., the method by which an emission estimate has been calculated such as material balance, source test, use of AP-42 emission factors, etc.)	
Percent space heat	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

**DESIGNATION OF AUTHORIZED REPRESENTATIVE
FOR STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (SECTION
111), NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
(SECTION 112), SOLID WASTE COMBUSTION (SECTION 129), AND FEDERAL OZONE
MEASURES (SECTION 183)**

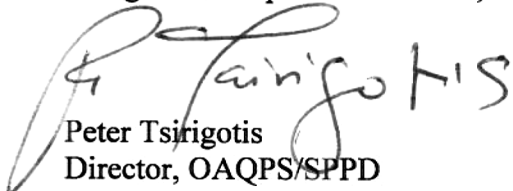
Under contract EP-D-11-084, Research Triangle Institute (RTI) (prime contractor) and BCS, Inc.; Eastern Research Group, Inc.; MACTEC Inc.; Caldwell Environmental, Inc.; Adasphere, Inc.; VEETech, EC/R Incorporated (subcontractors) are hereby designated Authorized Representatives of the Administrator of the United States Environmental Protection Agency for the purpose of assisting in the development of standards of performance for new stationary sources under 42 U.S.C. 7411, national emission standards for hazardous air pollutants under 42 U.S.C. 7412, solid waste combustion under 42 U.S.C. 7429, and Federal ozone measures under 42 U.S.C. 7511 (b).

This designation is made pursuant to the Clean Air Act, 42 U.S.C. 7414. The United States Code provides that, upon presentation of this credential, the Authorized Representatives named herein: (1) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which records required to be maintained under 42 U.S.C. 7414 (a) (1) are located and (2) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under 42 U.S.C. 7414 (a) (1), and sample any emissions that the owner or operator of such source is required to sample.

Authorized Representatives of the Administrator are subject to the provisions of 42 U.S.C. 7414 (c) respecting confidentiality of methods or processes entitled to protection as trade secrets, as implemented by 40 CFR 2.301 (h) (41 FR 36912, September 1, 1976).

Date: 9/13/14

Designation Expires: March 31, 2017


Peter Tsirigotis
Director, OAQPS/SPPD

**Summary of OAQPS
Procedures for Safeguarding Clean Air Act (CAA)
Confidential Business Information (CBI)**

January 2002

1. Purpose:

This memorandum describes policies and procedures set forth by the Office of Air Quality Planning and Standards (OAQPS) for the handling of information claimed as Confidential Business Information (CBI), whether submitted voluntarily or obtained under Section 114 of the Clean Air Act (CAA), and governed by U.S. Environmental Protection Agency (EPA) regulations in 40 Code of Federal Regulations (CFR), Part 2, Subpart B, and other EPA regulations.

2. Reference Documents:

- a. **Clean Air Act as amended.**
- b. **40 CFR, Chapter 1, Part 2, Subpart B - Confidentiality of Business Information.**
- c. **EPA Information Security Manual 2195A1**
- d. **Office of Air Quality Planning and Standards Confidential Business Information Security Manual (January 2009)**

3. Exception:

This document was prepared as a summary of data gathering and handling procedures used by the OAQPS, EPA. Nothing in this document shall be construed as superseding or being in conflict with any applicable regulations, statutes, or policies to which EPA is subject.

4. Definition:

Confidential Business Information (CBI) - Information claimed by the provider to be confidential. This information may be identified with such titles as trade secret, secret, administrative secret, company secret, secret proprietary, privileged, administrative confidential, company confidential, confidential proprietary, or proprietary. NOTE: These markings should not be confused with the classification markings of National Security information identified in Executive Order 11652.

5. Background:

Section 114 (c) of the Clean Air Act as amended reads as follows:

“Any records, reports, or information obtained under subsection (a) shall be available to the public, except that upon satisfactorily showing to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such records, report, or information or particular portion thereof confidential in accordance with the purposes of Section 1905 of Title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.”

The treatment of CBI by EPA, including data obtained under Section 114 of the Clean Air Act, is governed by 40 CFR, Part 2. These regulations require EPA offices to include a notice with each request for information to inform the business of: (1) its right to assert a claim of confidentiality covering part or all of the information, (2) the method for asserting a claim, and (3) the effect of failure to assert a claim at time of submission. In addition, the regulations: (1) set forth procedures for the safeguarding of confidential information; (2) contain provisions for providing confidential information to authorize representatives; (3) contain provisions for the release of information to the Congress, Comptroller General, other Federal agencies, State and local governments, and Courts; (4) permit the disclosure of information within EPA to employees with an official need for the information; and (5) prohibit wrongful use of such information and cite penalties for wrongful disclosure. Further, the regulations contain the Agency’s basic rule concerning the treatment of requests for information under the Freedom of Information Act (5 U.S.C. 552).

6. Procedures:

a. Request for Information

Each request for information made under the provisions of Section 114(a) is signed by the Division Director. The request includes standard enclosure “EPA’s Information Gathering Authority under Section 114 of the Clean Air Act,” which was designed to meet the requirement of 40 CFR Part 2 discussed above.

b. Receipt of CAA Confidential Business Information

Upon receipt of information for which confidential treatment has been requested, the OAQPS Document Control Officer (DCO) logs in the material and a permanent file is established. If part of the material is claimed to be confidential, that portion should be marked “Subject to Confidentiality Claim.” In compliance with Sections 2.204 and 2.208 of 40 CFR Part 2, the Group Leader responsible for the requested information reviews the information to determine the validity of the confidentiality claim as prescribed by the sections. If the information is clearly not confidential, the Group Leader prepares a letter

for the signature of the responsible Division Director to notify the business of this finding.

Information claimed as confidential is hand carried to the OAQPS CBI Office to be logged into the OAQPS CAA CBI tracking system and filed for safekeeping. The OAQPS CAA CBI tracking system provides a brief description of the material (submitter, subject, number of pages, etc.), identifies it with the correct project number, or work assignment number, and lists those persons who are authorized to have access to the information. record of personnel accessing the information (Attachment A) is also kept on file. By regulation, confidential information must be so marked or designated by the originator. EPA takes additional measures to ensure that the proprietary designation is uniformly indicated and immediately observable. All unmarked or undesignated information (except as noted below) may be authorized for public release.

c. Storage of CAA Confidential Business Information

Folders, documents, or material containing CAA CBI (as defined) shall be secured, within the confines of the instructions listed in the OAQPS Security Manual. In addition, the CBI storage area has been identified specifically for this purpose and is equipped with supplementary locking devices. The storage area and files are under the direct control of the OAQPS DCO.

Access to the storage area is limited to the Document Control Officer DCO, Document Control Officer Assistant (DCOA) and the minimum number of persons required to effectively maintain normal business operations as directed by the Director, Central Operations and Resources (CORE).

Files may be issued upon confirmation that the requesting individual is authorized to receive the information. All confidential files must be returned no later than close of business on the same day. The intended user must sign the CBI Control Record when checking out files.

Individuals signing out confidential files are responsible for their safekeeping. Files must never be left unattended. The information must not be disclosed to any non-authorized personnel.

Storage procedures for CAA CBI by an authorized representative of EPA (see Section d. below) must be, at a minimum, as secure as those established for EPA offices within OAQPS. Whenever CBI is removed from the EPA files to be transmitted to an authorized representative, a notation is made in the file's control record and transfer log indicating what information was transmitted, the date, and the recipient. The authorized representative returns a signed receipt to the DCO.

d. Access to CAA Confidential Business Information

Only authorized EPA employees may open or distribute CAA CBI.

Only employees who require, have a need to know and are authorized access to CAA CBI in the performance of their official duties are permitted to review documents and, upon receiving a confidential document, must sign and date the form shown in Attachment A to certify their access to the document.

The Group Leader having primary responsibility for the CAA CBI provides a memorandum to the DCO designating those personnel authorized to access specific CBI. NO person is automatically entitled to access based solely on grade, position, or security clearance. The names of persons granted access to CAA CBI are placed on the CAA CBI access list. The CAA CBI access list indicates the “specific” CBI each person is permitted to see. The Access List is reviewed and updated periodically.

Companies under contract to perform work for the EPA may be designated authorized representatives of EPA. As authorized representatives, contractors may be granted access to CAA CBI. The following conditions apply when it has been determined that disclosure is necessary:

- (1) The contractor designated as a representative and its employees (a) may use such confidential information only for the purpose of carrying out the work required, (b) must refrain from disclosing the information to anyone other than EPA without having received from EPA prior written approval of each affected business or of an EPA legal office, and (c) must return to EPA all copies of the information (and any abstracts or excerpts there from) upon request or whenever the information is no longer required for the performance of the work.
- (2) The authorized contractor designated as a representative must obtain a written confidentiality agreement from each of its employees who will have access to the information.

A copy of each employee agreement (Attachment B) must be furnished to EPA before access is permitted.

- (3) The contractor designated as an authorized representative must agree that the conditions in the contract concerning the use and disclosure of CAA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

Information may be released to or accessed by EPA employees other than OAQPS employees only upon approval of the Director, CORE.

Requests for CAA CBI from other Federal agencies, Congress, the Comptroller General, Courts, etc., are processed in accordance with 40 CFR 2, Subpart B.

Requests under the Freedom of Information Act (FOIA) are handled in accordance with 40 CFR 2, Subpart A. The Freedom of Information Act Coordinator must be consulted prior to responding to any request for information if a claim of confidentiality has been asserted or if there is reason to believe that a claim might be made if the business knew release was intended.

e. Use and Disclosure of CAA Confidential Business Information

The CAA CBI as defined may not be used in publications, supporting document, memoranda, etc., that become a part of the public domain, except as provided for in 40 CFR 2 Subpart B. CAA CBI may not be summarized without the approval of the Group Leader responsible for the CAA CBI. Any authorized reproductions must be logged into the CAA CBI document tracking system and treated according to the same procedures applicable to the original confidential material. Documents, materials, or extracts of information generated by EPA which contain CAA CBI must be stamped "Subject to Confidentiality Claim" and a cover sheet must be attached to identify the material as CBI.

f. Handling of Other Information

Reports, memoranda, documents, etc., prepared by EPA or its authorized representatives are not normally circulated outside EPA for comment or review prior to publication except in such cases as described in section 6 above. However, because industrial-data-gathering visits, plant inspections, and source testing can involve inadvertent receipt of CAA CBI, it is the policy of OAQPS to protect all parties involved in the following manner:

- (1) Prior to or at the inception of a plant inspection, data-gathering visit, or source test, EPA or its authorized representative discusses with a responsible industry official the information sought, how it is to be used, and how it is to be protected. A copy of this summary is usually provided to the industry official being consulted.
- (2) Following an inspection, visit, or test, a trip report is prepared to include, as practicable, all information received by EPA or its authorized representative during the visit or test. The report may be prepared by either EPA or its authorized representative. The draft report is clearly identified, with an attached, yellow cover sheet. A second copy of the draft trip report is forwarded by EPA to the responsible industry official for review. The responsible industry official is requested by cover letter to review the report, clearly mark any information considered to be confidential, and return the marked up-report to the responsible EPA employee within the time specified. The original draft is kept in the CBI file until the marked-up copy is returned by the business firm.
- (3) When the reviewed copy of the report, as marked by the responsible plant official, is received by EPA, information designated confidential is placed in the CBI files as described above. The original draft of the trip report is edited to delete the confidential information and the trip report is authorized for release.

**ATTACHMENT B
EXAMPLE EMPLOYEE AGREEMENT FORM FOR CBI ACCESS**

CAA CBI Security Manual (Appendix A)

I. AUTHORIZATION FOR ACCESS TO CAA CBI FOR FEDERAL EMPLOYEES		
FULL NAME	POSITION	
SSN	OFFICE	
<p>It is the responsibility of each Authorizing Official* to ensure that the employees under his/her supervision who require access to CAA CBI:</p> <ol style="list-style-type: none"> 1. Sign the Confidentiality Agreement for Federal Employees 2. Are fully informed regarding their security responsibilities for CAA CBI. 3. Obtain access only to that CAA CBI required to perform their official duties 		
SIGNATURE OF AUTHORIZING OFFICIAL*	TELEPHONE NO.	DATE
TITLE	LOCATION	
II. CONFIDENTIALITY AGREEMENT FOR FEDERAL EMPLOYEES		
<p>I understand that, in accordance with my official duties, I will have access to certain Confidential Business Information submitted under the Clean Air Act (CAA) (42 U.S.C. 7401 et seq.)</p> <p>I understand that, under 18 U.S.C. 1905 and 18 U.S.C 1924I am liable for a possible fine of up to \$1,000 and/or imprisonment for up to one year, if I willfully disclose CAA Confidential Business Information to any person not authorized to receive it. Additionally, I understand that, I may be subject to disciplinary action for violation of this agreement with penalties ranging up to and including dismissal.</p> <p>I am aware that, I may be subject to criminal penalties under 18 U.S.C. 1001 if I have made any statement of material facts knowing that such statement is false or if I willfully conceal any material fact.</p> <p>I agree that, upon the termination of my duties, transfer or departure from the Environmental Protection Agency, I will return all materials containing CAA Confidential Business Information in my possession to the OAQPS CBI Office.</p> <p>I certify that I have read and understand these procedures and those outlined in the CAA CBI Security Manual.</p>		
SIGNATURE	TELEPHONE NO.	DATE
III. THE UNDERSIGNED CERTIFIES THE ALL TRAINING AND TEST REQUIREMENTS HAVE BEEN MET BY THE EMPLOYEE.		
SIGNATURE CBI MANAGER/DCO	TELEPHONE NO.	DATE
IV. ANNUAL RE-CERTIFICATION: I certify that, in conjunction with my duties, I require access to CAA CBI. I am current with all CBI handling procedures and security guidelines as outlined in the CCA CBI Security Manual.		

Date		Date		Date		Date		Date		Date	
Initial		Initial		Initial		Initial		Initial		Initial	
Date		Date		Date		Date		Date		Date	
Initial		Initial		Initial		Initial		Initial		Initial	

CAA CBI Form 2 (Rev. 01/02) * Must be Division Director (or equivalent) or above.