

September 2, 2022

SENT VIA E-MAIL AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Sara Hertz Wu
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Lorenzo Sena
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Re: BCP Ingredients, Inc. – Verona, Missouri;
Initial Response to Section 114 Request received August 19, 2022

Dear Ms. Hertz Wu and Mr. Sena:

On behalf of BCP Ingredients, Inc. ("BCP"), this letter responds to the Clean Air Act Section 7414 Request issued by the Environmental Protection Agency ("EPA") to BCP Ingredients on August 19, 2022 ("114 Request"). BCP is providing documents responsive to this request that contain confidential business information ("CBI") and by this letter provides substantiation for its CBI claims, which are timely provided at the same time BCP is disclosing information to EPA.

Timing of Production

The 114 Request included five requests for information and included a response deadline of 15 calendar days after receipt. Through e-mails dated August 23, 2022, and August 24, 2022, BCP and EPA confirmed the deadline to respond is Tuesday September 6, 2022. The 114 Request indicated that if an extension would be sought, such extension should be made within five calendar days of receipt of the information request. BCP timely sought a 15-day extension from Mr. Sena on August 24, 2022. The extension request was limited to providing a response to Information Request 1. EPA granted the 15-day extension on August 25, 2022. The deadline to respond to Information Request 1 is now September 19, 2022.

With this letter, BCP timely provides its response to Information Requests 2 through 5. BCP will provide its response to Request for Information 1 in a separate production.

General Objections

Although BCP is making diligent efforts to comply with the Information Request, in order to preserve the Company's rights, BCP hereby objects to the Information Request for the reasons set forth below (the "General Objections"). The General Objections pertain to this response as well as all future or supplemental responses. BCP reserves its rights to file supplemental objections throughout its efforts to respond to the Information Request.

1201 Walnut Street, Suite 2900, Kansas City, MO 64106

1. BCP objects to each request in the Information Request to the extent it seeks information outside the scope of EPA's authority pursuant to 42 U.S.C. § 7414. By way of illustration and not by way of limitation, some of the requested information is under the jurisdiction of the Occupational Safety and Health Administration. Moreover, the purpose of the Information Request is overbroad and vague; BCP objects that the Information Request is outside the scope of EPA's authority.
2. BCP objects to each request in the Information Request to the extent EPA seeks information not relevant to the purpose stated in the Information Request, 42 U.S.C. § 7414.
3. BCP objects to each request in the Information Request to the extent that, through that Information Request, EPA imposes an undue burden on the Company, 42 U.S.C. § 7414.
4. BCP objects to the Information Request to the extent that EPA requests BCP to divulge information protected by the attorney-client privilege, the work-product doctrine, or other available privilege or protection. The Clean Air Act does not require a party to divulge such information in response to information requests.
5. BCP objects to providing information that it has previously provided to EPA including, by way of example and not by way of limitation, piping and instrumentation diagrams and process hazard analyses. These requests are duplicative and, therefore, unduly burdensome.
6. BCP objects to any request in the Information Request that is vague, ambiguous or overbroad or too indefinite to be capable of reasonable interpretation and response.
7. BCP objects to each request in the Information Request to the extent that it calls for the Company to make legal conclusions concerning the Clean Air Act Provisions, including the Missouri State Implementation Plan.
8. BCP objects to each request in the Information Request to the extent it seeks confidential business information.
9. BCP objects to each request in the Information Request to the extent it requires BCP to develop or create information and/or documents that do not otherwise exist or that BCP is not otherwise required to create and/or maintain.
10. BCP objects to each request in the Information Request to the extent it seeks information not kept in the ordinary course of BCP's business or not kept in the form requested by EPA in the ordinary course of BCP's business. Requiring BCP to produce information in a form or manner not kept by the Company is unduly burdensome and beyond the scope of Section 114 of the Clean Air Act.
11. BCP objects to each request in the Information Request to the extent it seeks information not in the possession, custody or control of BCP.

Notwithstanding and without waiving these Objections, and subject to them, BCP has prepared this response based upon the information available to it. Where the Information Request is vague, ambiguous, overbroad, unduly burdensome, or beyond the scope of EPA's authority pursuant to Section 114 of the Clean Air Act, BCP is making appropriate and reasonable efforts to provide responsive information based on its interpretation of the Requests. To the extent that information produced herein is not required by law or is outside of the scope that EPA has the authority to request, that information is voluntarily submitted. BCP waives no rights to protection of information that it voluntarily submits.

BCP considers all documents produced pursuant to this response and any future responses and stamped "Confidential Business Information" to be confidential business information or trade secrets (collectively referred to as "CBI") and, therefore, protected from release to third parties pursuant to 5 U.S.C. § 552(b)(4)

and 40 C.F.R. Part 2. BCP is concerned with protecting its CBI and requests that EPA provide BCP with sufficient notice prior to releasing any of this information to any third party so that BCP can timely avail itself of all federal and state laws that protect the Company's CBI.

BCP's Initial Response to 114 Request

In accordance with our understanding of your Request, incorporated into this response, BCP uploaded its Response to the 114 Request to EPA via Dropbox consistent with EPA's request. This includes documents that are bates stamped BCP-VER-EPRMP-0000664 – BCP-VER-EPARMP-0000823. BCP reserves the right to supplement this response as additional responsive information becomes available.

Information Request 1: From January 1, 2020, to the present, provide any and all continuous Ethylene Oxide monitoring data, including, but not limited to, stationary monitors located inside of the facility, personal monitors worn by employees or contractors, monitoring information collected by any other contractor or agency in the possession of BCP, and any other available monitoring data.

BCP Response:

BCP requested and EPA granted an extension to respond to this request. BCP is working to provide a response on or before Sept. 19, 2022. In addition, BCP and EPA technical representatives discussed the scope of this request on August 26, 2022. After discussion, EPA determined it would send BCP a revised request due to the volume of information requested. Via e-mail dated August 26, 2022, EPA revised Information Request 1 to narrow the date range from January 1, 2020, to present to the following dates. EPA's revision states:

With regards to the continuous monitoring data, we decided it would be best if we could limit the amount of data to 60 days (of 24 hour data per day) per year which were randomly selected using a random number generator. The dates we are requesting this information for is as follows:

2020	
January	4, 7, 21, 27, 30
February	4, 6, 15, 19, 23
March	2, 5, 22, 27, 31
April	1, 3, 11, 16, 20
May	4, 5, 9, 21, 25
June	1, 14, 23, 26, 29
July	2, 9, 17, 24, 28
August	3, 7, 15, 19, 30
September	1, 6, 8, 11, 15
October	12, 13, 18, 23, 27
November	1, 5, 16, 18, 30
December	3, 15, 17, 20, 25

2021

January	3, 16, 18, 30, 31
February	2, 7, 12, 22, 26
March	4, 10, 13, 14, 25
April	3, 8, 20, 23, 30
May	13, 17, 19, 26, 29
June	4, 14, 19, 24, 29
July	1, 8, 11, 20, 21
August	3, 10, 13, 17, 24
September	9, 15, 16, 18, 23
October	5, 16, 20, 21, 27
November	7, 9, 11, 12, 28
December	9, 14, 17, 27, 31

2022

January	5, 11, 24, 29, 31
February	6, 13, 16, 18, 23
March	1, 2, 14, 24, 30
April	2, 4, 10, 20, 26
May	3, 4, 12, 28, 30
June	10, 13, 21, 23, 24
July	5, 11, 21, 22, 31
August	2, 4, 5, 9, 20

In addition to these randomly selected dates, I am also requesting that the same information be provided on the day of the ethylene oxide spill (4/8/22).

BCP appreciates EPA's prompt review and response to this request and is working diligently to compile responsive information by the Sept. 19 deadline.

Information Request 2: The current Piping and Instrumentation Diagram (P&ID) detailing the scrubber and all process equipment ducting which flows to the scrubber.

BCP Response:

The documents responsive to Information Request 2 are bates numbered "BCP-VER-EPARMP-0000664" through "BCP-VER-EPARMP-0000677." For reference, several P&IDs were previously provided as confidential business information to EPA's Air and Radiation Division in the most current version available on December 30, 2021, specifically the P&IDs for V8, V10, V25, and EO Unloading.

Information Request 3: The Process Hazard Analysis for process 1000114873, Choline Salts, completed September 20, 2019.

BCP Response:

The document responsive to Information Request 3 is bates numbered "BCP-VER-EPARMP-0000678" through "BCP-VER-EPARMP-0000742." For reference, this information is the same information previously provided at BCP-VER-EPARMP-0000307 on June 17, 2022.

Information Request 4: The Process Safety Management (PSM) manual which includes information pertinent to 40 C.F.R. Part 68 requirements, including written mechanical integrity program, written management of change program, pre-startup safety review, and written program regarding employee participation.

BCP Response:

The documents responsive to Information Request 4 are bates numbered "BCP-VER-EPARMP-0000743" through "BCP-VER-EPARMP-0000820."

Information Request 5: The Management system organizational chart that identifies the responsibilities of each position with regards to its involvement with the RMP program.

BCP Response:

The documents responsive to Information Request 5 are bates numbered "BCP-VER-EPARMP-0000821" through "BCP-VER-EPARMP-0000823." BCP has provided a redacted version of the organizational chart shown to the inspectors during the inspection, and requests that the version containing employee names be treated as confidential business information at all times.

CBI Substantiation

Most of the documents BCP is providing or will provide responsive to this request contain confidential business information, confidential commercial information, trade secrets, proprietary or personally identifying information as those terms are defined under the Freedom of Information Act and EPA's regulations at 40 CFR Part 2. BCP is providing all CBI marked as such, and appreciates EPA handling the information as confidential at all times.

Specifically, all Company compliance audit or corrective action documentation, calculations to support hazard assessments, information regarding internal inspection, testing, and maintenance, chemical inventory, diagrams, checklists, operating procedures, plans, Process Hazard Assessments ("PHAs"), monitoring data, and Piping and Instrumentation Diagrams ("P&ID") information is CBI. BCP requests that all documents and information be wholly treated as confidential in perpetuity because it contains information regarding internal processes, equipment, and business methods, all of which provides the Company with a competitive advantage and which the Company normally protects as secret. Disclosure could destroy this competitive advantage were the information available to BCP's competitors or otherwise in the public domain. BCP has made a similar confidentiality claim when providing these and similar documents to other agencies.

The CBI submitted in response to the request contains information regarding the quantity of chemicals and types of equipment used in the facility and diagrams with details of internal equipment. Disclosure of the information, would not only provide substantive information about BCP's internal processes and calculations, but also would allow competitors to understand BCP's facility and processes in a way they would not otherwise be able to, including understanding BCP's development and implementation of its processes to comport with regulations and industry standards.

The documents, in their entirety, meet the requirements of 40 CFR 2.204(e) to be treated as confidential business information, as described below:

1. Length of confidential treatment and justification: BCP requests the information be treated as confidential permanently. The documents contain specific information that, if made public, would allow competitors or others to glean information about the facility, its equipment, and its processes, and would allow duplication of processes and/or products prepared by and unique to BCP. While changes to the facility and/or its processes will occur over time, these changes are piecemeal. Obtaining detailed information related to specific components of BCP's process is a competitive disadvantage to BCP now and in the future.
2. Measures taken to protect confidential information: BCP takes measures to protect confidential information. For instance, during permitting, reporting, or information request processes, BCP claims confidentiality. BCP's document management system and facility are also both protective of documents and facility and process information. BCP also utilizes non-disclosure and confidentiality agreements. BCP requires its employees to execute non-disclosure agreements and limits internal disclosure of this type of information to only those with a "need to know". BCP does not provide this type of information in publicly available formats.
3. Information not publicly available: The information provided is not publicly available and is not the kind that the Company would release to the public. BCP maintains documents and information at its facility and on private servers, which are not publicly accessible. BCP is a gated facility to prevent entry to the facility by the public. While this is primarily for safety reasons, it also keeps information regarding the equipment and processes at the facility inaccessible to the public, and, as noted above, only to employees who have a "need to know". Further, BCP maintains policies and procedures to prevent the disclosure of this this type of information.
4. No determination as to confidentiality of information: There has not previously been a determination by any governmental body as to the confidentiality of information submitted.
5. Release of information is likely to cause substantial harm to BCP's business: As described above, release of the information submitted would cause harm to BCP as it could allow competitors to understand and/or replicate processes at the facility, to ascertain quantities and types of materials going through the production process, and to utilize BCP's practices and processes or duplicate its proprietary chemicals and products.
6. Voluntary submission: BCP is submitting this information is being submitted voluntarily pursuant to EPA's inspection request to the extent that it provided information outside of the EPA's authority to request.
7. Information is eligible for confidential treatment: The documents do not contain emission data, information collected under Clean Air Act § 211(b)(2)(A), effluent data, a standard or limitation, or information regarding contaminants in drinking water. Rather, it is the type of commercial information intended to be protected as CBI.

For all these reasons, the responsive documents are confidential and not subject to disclosure under the Freedom of Information Act, since said documents contain confidential commercial information. 5 U.S.C. § 552 (b)(4).

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Please let me know if you have any questions about the foregoing information. BCP will separately provide its response to Information Request 1. Thank you.

Sincerely,

Stinson LLP

A handwritten signature in blue ink that reads "Brittany Barrientos". The signature is written in a cursive, flowing style.

Brittany A. Barrientos