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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 extend 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
SIC (Standard Industrial Classification)
Emission point, device or operation description information
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.

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)
Emission rate
(e.g., the amount released to the atmosphere over time such as kg/yr or lbs/yr)
Release height
(e.g., height above ground level where the pollutant is emitted to the atmosphere)
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)
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)
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
(e.g., the percent of fuel used for space heating)
Hourly maximum design rate
(e.g., the greatest operating rate that would be expected for a source in a 1-hour period)

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. Determinations will continue to be made on a case-by-case basis for data not specified in this generic determination.

After consideration of comments on this policy, a revised policy/determination may be published.

Dated: February 8, 1991.

Michael Shapiro.

Acting Assistant Administrator for Air and Radiation.

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