



SC DEPARTMENT of **ENVIRONMENTAL SERVICES**

Bureau of Air Quality Response to Comments on Air Quality

Autumn Timber LLC Ridgeville, Dorchester County, South Carolina Permit Number CP-50000183 v1.0

The following is the South Carolina Department of Environmental Services, Bureau of Air Quality's (SCDES or Department) response to the comments made during the formal comment period held July 23, 2024, through October 17, 2024, regarding the draft synthetic minor construction permit for Autumn Timber LLC (Autumn Timber). A thirty-day public notice period began on July 23, 2024, during which a request for a public hearing was received. The Department granted the request for the hearing and extended the public notice period to October 17, 2024, to provide a thirty-day notice for the hearing. A public hearing was held by the Department on October 15, 2024, to receive oral and written comments on the proposed project.

The written Department Decision, synthetic minor construction permit, statement of basis, this response document, and a letter of notification are located for viewing at the SCDES Columbia office located at 2600 Bull Street, Columbia SC 29201, and on our webpage at <https://des.sc.gov/programs/bureau-air-quality/air-quality-department-decisions>.

Hard copies of all the above-listed documents and written comments received can be requested by contacting our Freedom of Information Office at (803) 898-3882.

During the comment period, a total of ten written and oral comments were received. The Department has reviewed each comment and revised the draft permit where appropriate based on the Department's regulatory authority.

The following is a summary of the changes to the draft permit following the notice period:

- Corrections were made to the units in the algorithm condition.
- Conditions specifying applicable requirements of New Source Performance Standards (NSPS) (Subpart IIII) and National Emission Standards for Hazardous

Air Pollutant (NESHAP) (Subpart ZZZZ) were added to the permit in place of the general engine NSPS and NESHAP condition.

1. General Concerns About Air Pollution and Air Emissions

Comments were received about climate change, carbon dioxide emissions, and the quantity of nitrogen oxides and carbon monoxide emissions from the facility. Other commenters stated general concern about the air pollution from the facility and maintenance of clean air.

Response: The Department's permitting decision is based on a technical review of the application and regulatory requirements in effect at the time the application was submitted, and whether the facility has demonstrated the ability to meet all applicable air quality regulations if operated according to the information provided in the application. Currently, the facility is not required to obtain a permit for greenhouse gas (GHG) emissions, including carbon dioxide.

The facility is being permitted as a synthetic minor source for nitrogen oxides (NO_x) and carbon monoxide (CO). The emission limits for NO_x and CO specified in the permit will restrict the amount of fuel burned in the generators, which in turn will limit the greenhouse gas emissions produced by the facility. Additionally, the generators are designated for emergency use only and are only expected to operate briefly each month for testing and maintenance. As a result, emergency operations will be infrequent, leading to limited actual emissions of GHGs and other pollutants.

The permit includes an algorithm to calculate the monthly emissions of NO_x and CO from the engines at the facility based on fuel usage and approved emission factors. Associated records are to be kept on-site for five years, and the actual tons per year of NO_x and CO emissions are calculated monthly. Reports are required to be submitted to the Department annually. In addition, conditions have been added to the draft construction permit which specify the applicable parts of New Source Performance Standards (NSPS), 40 CFR Part 60 and S.C. Regulation 61-62.60, Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, and National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63 and S.C. Regulation 61-62.63, Subpart ZZZZ, NESHAP for Stationary Reciprocating Internal Combustion Engines.

2. Confidential Business Information

Comments were received in relation to information in the application claimed as confidential business information. The commenter expressed concern about lack of transparency with

regard to redacted information and limited mechanisms to ensure the facility's adherence to emission thresholds.

Response: State statute provides for the protection of trade secrets from public disclosure. The facility has provided the Department with information to support its position that the details redacted from the public version of the application are entitled to protection as "trade secrets," the disclosure of which could expose design elements and operational capacities to competitors and result in diminished competitive position. For a more detailed explanation of the information redacted and facility's stated basis for such redaction, please see the attached letter on behalf of the company. The Department has reviewed the full, unredacted version of the permit application in the course of its permitting review. The information placed on public notice includes facility-wide emissions estimates for all relevant pollutants and other information regarding the referenced facility not claimed as confidential. This facility has accepted federally enforceable limits to restrict emissions below major source thresholds and, as discussed above, is required by the permit to keep records and submit reports to demonstrate compliance with emissions limits.

3. Concerns About Non-Air Quality Environmental Resources

Comments were received expressing concerns about impacts to non-air quality resources, including impacts to water quality, soil, and water usage and supply.

Response: Air permit decisions are guided by the air quality regulations and standards that are applicable at the time of the Department's technical review of a permit application. Based on this review, it has been determined that the proposed facility meets all necessary requirements for the issuance of an air permit. While some commenters raised concerns about other non-air quality environmental resources, such concerns fall outside the scope of the Department's air quality regulations and, as such, are not addressed in the air quality permit. However, we value all feedback, and your input is appreciated as we strive for clarity and transparency in our processes.

Specifically, regarding water-related concerns, the Department further notes that the facility has indicated that the proposed data center will purchase water from a local provider, and therefore the facility will not need a permit from the Department surface or groundwater withdrawal. The local provider is responsible for ensuring that it has the capacity to supply water in connection with the facility.

4. Facility Electrical Usage and Electric Rates

Comments were received expressing concerns about the electricity usage and electric rates of the facility.

Response: The Department does not have authority with regard to electricity usage or associated electric rates for a facility and does not require or maintain such information about regulated facilities. These matters are outside the scope of the issued air quality permit and the Department's air quality regulations. Air permit decisions are based on the applicable air quality regulations and standards in place at the time of the Department's technical review of the permit application.

5. Economic and Community Concerns

Comments were received expressing concerns about tax breaks, business contracts/negotiations, and the price of land. Commenters also asserted that the facility would offer little to no benefit to the local community and that the community is unlikely to gain employment from the data center.

Response: We recognize that a community's well-being and economic vitality hinge on many different factors, but the Department's focus must be on technical and regulatory standards for air permit issuance. It's also important to note that the Department does not have authority over zoning or to make decisions about where a facility will be located, nor is the Department involved in decisions about tax incentives, property transactions, or contract negotiations as those matters are outside the Department's regulatory purview.

6. Environmental Justice

A comment was received expressing concern about EJScreen results for toxic air releases in the area and a low-income population.

Response: At SCDES, we deeply understand the importance of environmental justice and the need for communities to be actively involved in decisions that affect their lives and are committed to engaging with communities, permit applicants, and environmental justice stakeholders to help address concerns and ensure meaningful engagement, particularly for those in overburdened communities. For this permit, SCDES held a public hearing in Dorchester County on October 15, 2024, to allow the local community to be heard and record their concerns for Department consideration during the permitting process.

EJScreen is a tool that can be used to access environmental and demographic information about a given location and to provide comparative data. Per EPA, EJScreen is not intended to be used for purposes such as quantifying specific risk values for a selected area.

Due to the occasional and infrequent use of emergency equipment, emissions from these generators are not expected to interfere with state or federal air quality regulatory standards. The emergency generators will be permitted to run exclusively on diesel, Hydrotreated Vegetable Oil (HVO)—which meets ASTM standards—or blends of these two fuels. This choice of fuels will help reduce the impact of toxic air pollutants compared to other potential fuel options. Additionally, each generator must be equipped with a non-resettable hour meter prior to engine startup to monitor operating time.

7. Groundbreaking

A comment was made concerning the timing of the groundbreaking ceremony, which took place before the public hearing.

Response: The facility is allowed to undertake some activities onsite prior to the issuance of an air quality permit. Groundbreaking is generally one of these types of activities.

8. Generator Usage and Green Energy

A comment was received requesting the facility to use greener energies and reduce the need for large generators and seeking the Department to consider such concerns in issuing a permit.

Response: The Department's air quality permit issuance and the permit's requirements are based on the equipment and operations proposed by the facility in its air permit application. The generators that are addressed by the permit are considered emergency generators that are to be used primarily during emergency power outages and for maintenance and testing. Each generator is to be equipped with a non-resettable hour meter. The fuels that are proposed for these generators are both diesel and hydrogenated vegetable oil (HVO) which generally burns cleaner than diesel fuel alone.

9. General Opposition

Comments were received expressing general support for or opposition to the issuance of the Autumn Timber air construction permit.

Response to Comments on Air Quality
Autumn Timber LLC
Permit Number CP-50000183 v1.0

Response: The Department appreciates the comments and concerns from the community about the draft Autumn Timber construction permit. SCDES understands that you care deeply about how this project might affect your neighborhood. While the Department cannot make permitting decisions based on support or opposition to a project, we want you to know that your feedback matters to us.

ATTACHMENT



Joan W. Hartley
Shareholder
Admitted in SC, NC

October 30, 2024

Via Email (Diana.Zakrzwski@des.sc.gov) and U.S. Mail

Diana L. Zakrzwski, P.E.
Bureau of Air Quality
SC Department of Environmental Services
2600 Bull Street
Columbia, SC 29201

Re: Autumn Timber LLC Application for Permit to Construct (“Application”)
Ridgeville, Dorchester County, South Carolina

Dear Ms. Zakrzwski:

Our firm represents Autumn Timber LLC (“Autumn Timber”) on permitting matters related to its new data center to be constructed in Dorchester County (“Facility”). By letter dated March 8, 2024, Autumn Timber advised the Department that the above-referenced Application included certain confidential, proprietary, and trade secret information and claimed the exemption from public disclosure of such information as confidential trade secrets pursuant to S.C. CODE ANN. § 30-4-40(1). On behalf of Autumn Timber, we are providing additional information in support of the claim that the redacted information in the Application is exempt from disclosure as a public record pursuant to S.C. CODE ANN. §§ 30-4-40(1) and 48-1-270.

The March 8, 2024 letter provided details supporting Autumn Timber’s claim that the quantity of emergency generators, size/rating of emergency generators, make/model and associated data sheets for emergency generators, emission factors in g/kw-hr, and cooling system flowrates are a “trade secrets” under Section 30-4-40(1) because the disclosure of such information could reveal design elements and operating capacity of the Facility to its competitors which would result in a diminished competitive position for the company in its business market. This proprietary information relates to the methods of power and emergency backup power used and contemplated to be used by Autumn Timber. Autumn Timber makes significant investment in data centers to make operations more efficient. Power use and supply, which are the major expense in operating a data center, are crucial elements to maximizing efficiency. Autumn Timber invests significant resources in identifying, designing, constructing, and operating efficient and easily scalable operations, including the determination of appropriate sizes, number and type of backup sources.

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Identifying and designing a site, and determining the optimal server capacity for a particular site can be the product of a multi-year effort by hundreds of workers. When Autumn Timber selects a data center site, it must determine whether there are adequate utility resources, an ample local labor force, and networking capability to reach customers, among other things. The outcome of that search is reflected in the eventual size of the facility, which, for data centers, is measured in server capacity. Backup power supply directly correlates with server capacity. Thus, Autumn Timber's generator information could give its competitors the ability to calculate its server capacity. This server and backup capacity information is the mechanism by which Autumn Timber competitively provides customers with services available twenty-four hours a day, seven days a week. Should its competitors become aware of Autumn Timber's methods, processes, combinations or supplies for competitively powering its data centers, as well as any contemplated methods to provide an alternative power supply that create competitively priced power to our data centers, Autumn Timber may lose its current and future market edge. By knowing the server capacity at the Autumn Timber data center in Dorchester County, Autumn Timber's competitors will be able to take advantage and piggy back off of the significant investment Autumn Timber made to identify the location and deliver the optimal capacity for a parcel with a location and size such as Autumn Timber's facility. Also, competitors could gain insight (without making their own investment) into the data center's operations including strategies for reducing energy usage and optimizing operations. For these reasons, knowledge of our back-up generators and capacity is not available to our competitors as Autumn Timber goes to great lengths to protect that information.

Additionally, the March 8, 2024 letter advised the Department that Autumn Timber works diligently to protect this information. This information is accessible to a limited number of employees within the company and to contractors, all of whom are bound to protect this information through confidentiality agreements. If, and to the extent, a governmental agency requires disclosure of generator information (e.g., through permitting or compliance reporting), Autumn Timber seeks protections from public disclosure available under applicable law, including environmental and public records laws and the assertion of trade secret protection. As such, Autumn Timber has satisfied the requirements for its claim that this information is exempt from disclosure as a public record.

Additionally, Autumn Timber's claim of confidential trade secrets in the Application is further supported by Section 48-1-270 which protects trade secrets submitted to the Department under the Pollution Control Act, S.C. CODE ANN. §§ 48-1-10 *et seq.* ("PCA"), and provides as follows:

Any records, reports or information obtained under any provision of this chapter shall be available to the public. Upon a showing satisfactory to the Department by any person that records, reports or information, or particular parts thereof, other than effluent or emission data, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Department shall consider such record, report or information or particular portion thereof confidential in the administration of this chapter.

S.C. CODE ANN. §§ 48-1-270. The PCA does not provide a definition of “trade secrets” so the definition in Section 30-1-40(1) remains the applicable definition for claims of protection under the PCA. Moreover, as discussed below, while Section 48-1-270 excludes “emission data” from information entitled to protection as trade secrets, the information for which Autumn Timber claims the trade secrets protection is not “emission data” as defined by the Department’s regulations.

The PCA does not define “emission data” in Section 48-1-270 or any other provision of the PCA. However, the Air Pollution Control Regulations and Standards promulgated by the Department under the authority of the PCA incorporates the definition of “emission data” in the EPA regulations governing claims of confidential business information. S.C. CODE ANN. REGS. 61-62.1 § I (28) (“Emission Data - Means the definition contained in 40 CFR 2.301(a)(2), July 1, 1986, is incorporated by reference.”). The EPA regulations adopted by reference by the Department includes the following definition of “emission data”:

(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 emissions 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); and

(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).

40 C.F.R. § 2.301(a)(2)(i) (emphasis added). The courts have interpreted the “necessary to determine” qualification in this regulation to narrowly define “emission data.” *See, e.g., Natural Resources Defense Council v. Leavitt*, No. 04–01295, 2006 WL 667327, at 4 (D.D.C. Mar. 14, 2006) (“a strict interpretation of the ‘necessary to determine’ requirement is warranted in order to ensure that the exception does not swallow the rule”); *see R.S.R. Corp. v. EPA*, 588 F.Supp. 1251, 1255 (N.D. Tex. 1984) (remanding case to EPA to determine if information was “necessary to

determine” emissions); *Graff v. Haverhill N. Coke Co.*, No. 1:09-CV-670, 2014 WL 360013, at *12 (S.D. Oh. Feb. 3, 2014) (applying 40 C.F.R. 2.301 to find that certain equipment, design specification, and operating conditions were not emission data). As discussed below, the trade secrets claimed by Autumn Timber do not fall within this strict interpretation of emission data.

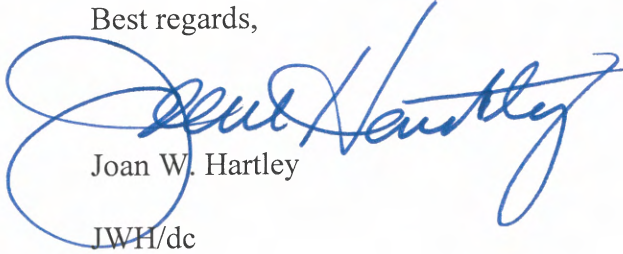
Subsection 2.301(a)(2)(A) does not apply to the information provided in an application for a permit to construct a new source because such information is only that which is “necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which **has been emitted** by the source.” 40 C.F.R. § 2.301(a)(2)(i)(A) (emphasis added). As such, this subsection only applies to data on actual emissions from a permitted source. Similarly, Subsection (C) is not applicable since the information for which Autumn Timber claims trade secret protection is not the “general description of the location and/or nature of the source.” 40 C.F.R. § 2.301(a)(2)(i)(C). The Application provides a general description of the location and nature of the sources, which are identified as emergency generators, storage tanks, and cooling towers. Accordingly, Subsections (A) and (C) are not applicable to Autumn Timber’s trade secret claim.

With respect to subsection (B), this provision should be interpreted strictly under the applicable case law cited above. The information for which Autumn Timber claims the trade secret protection does not fall within that which is “necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit.” 40 C.F.R. § 2.301(a)(2)(i)(B). The Applicant has acknowledged that the potential to emit will exceed major thresholds and seeks to limit actual emissions below that level. The identity, amount, frequency, and concentration of emitted pollutants are detailed in the Application based on grouped sources; therefore, the number of emergency engines and their power output size are not necessary to make this determination. Additionally, the make and model of the equipment are not necessary to estimate emissions data because EPA’s AP-42, *Compilation of Emissions Factors from Stationary Sources*, provides emission factors for internal combustion engines for which the make and model are not required. Similarly, the redacted g/kw-hr data would provide competitors with information on generator size. As such, while the information for which Autumn Timber claims trade secret protection is not necessary to make the determination under Subsection (B), the harm to the company for disclosure of such information to its competitors as set forth herein and in the March 8, 2024 letter fully supports the company’s claim to trade secret protection under S.C. CODE ANN. §§ 30-4-40(1) and 48-1-270. Autumn Timber’s competitors could use the redacted information to understand the facility’s processes, design, and capacity.

Diana L. Zakrzwski, P.E.
October 30, 2024
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We appreciate the opportunity to provide further information in support of Autumn Timber's claim that the redacted information in the Application is exempt from disclosure as a public record pursuant to S.C. CODE ANN. §§ 30-4-40(1) and 48-1-270. Please let us know if you have any additional questions or concerns regarding this Autumn Timber's claim for protection of the confidential trade secret information in its Application.

Best regards,



Joan W. Hartley

JWH/dc

cc: Dawn K. Miller, Esquire (via email only)