



COMMONWEALTH OF PENNSYLVANIA ENVIRONMENTAL
HEARING BOARD

NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 4 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at
<https://ehb.pa.gov/>

(rev'd June 2024)



COMMONWEALTH OF PENNSYLVANIA ENVIRONMENTAL
HEARING BOARD

NOTICE OF APPEAL FORM
APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

Shell Chemical Appalachia LLC
300 Frankfort Road
Monaca, PA 15061
Attn: Kimberly Kaal, Environmental Manager
Kimberly.Kaal@shell.com

2. Describe the subject of your appeal:

(a) What action of the Department do you seek to have the Board review (for example, a permit, license or order issued or denied by the Department, an assessment of a civil penalty or some other determination made by the Department)?

August 26, 2025 “Final Response” of DEP regarding Shell’s requested confidential treatment of facility data

(b) Which Department official took the action (usually the person identified on any written notice that you received)?

Sherri L. Guerrieri, P.E., Environmental Engineer Manager
Southwest Regional Office – Air Quality Control Program

(c) What is the location of the operation or activity which is the subject of the Department's action (the municipality and/or county where the activity takes place or will take place)?

Monaca, Beaver County

(d) How, and on what date, did you receive notice of the Department's action? Please specify whether through public notice, a letter or email from the Department, or some other source.

Shell received notice of the Department's August 26, 2025 letter on or about August 26, 2025.

(e) Did you receive written notification of the Department's action (for example, letter, order or permit that you are appealing)? If yes, you **must** attach a copy of the notification to this Notice of Appeal. If you are appealing a permit, you may attach the first page rather than the entire document. In lieu of attaching the document, you may provide a link to notice of the action in the *Pennsylvania Bulletin*. See filing instructions for further instruction.

Yes. Attached as Exhibit A.

3. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

There are no pending, relevant appeals before the Board. But the DEP's August 26, 2025 letter relates to an overarching Right-to-Know-Law Request and a September 5, 2025 Final Determination thereof. The Requester in that proceeding has until September 26, 2025 to file an appeal with the Office of Open Records ("OOR").

Because Shell is appealing DEP's underlying determinations that the data at issue constitutes "emission data," the data being considered for release by DEP and/or the OOR is directly at issue in that proceeding as well.

NOTICE OF APPEAL FORM APPEAL INFORMATION, CONT.

4. Describe your objections to the Department's action in separate, numbered paragraphs. Rather than use the space on this form, you may type your objections on separate paper if you require more space. **NOTE:** The objections may be factual or legal and must be specific. It is important that you include **ALL** your objections in this section. Although you may be able to amend your appeal to add new objections, you may require permission of the Board to do so, and you may not be able to raise omitted objections later in the appeal process.

Attached as Exhibit B.

NOTICE OF APPEAL FORM PROOF OF SERVICE

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

(1) Environmental Hearing Board 2 nd Floor Rachel Carson State Office Bldg. 400 Market St., P.O. Box 8457 Harrisburg, PA 17105-8457	<i>via</i>	☐ first class mail, postage paid ☐ overnight delivery ☐ personal delivery ☒ electronic filing
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(2) Department of Environmental Protection Office of Chief Counsel Attn: Administrative Officer 16 th Floor Rachel Carson State Office Bldg 400 Market Street, P.O. Box 8464 Harrisburg, PA 17105-8464	<i>via</i>	☐ first class mail, postage paid ☐ overnight delivery ☐ personal delivery ☒ electronic filing
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(3) The officer of the Department who took the action being appealed	<i>via</i>	☐ first class mail, postage paid ☐ overnight delivery ☐ personal delivery ☒ electronic filing
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Note to Attorneys who electronically file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel and officer who took the action. There is no need for you to independently serve the Department.

(4) If your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following:

The entity to whom the permit, license approval, or certification was issued.	<i>via</i>	☐ first class mail, postage paid ☐ overnight delivery ☐ personal delivery
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(5) Where applicable, you should also serve a copy of your appeal on any of the following:

- ☐ In appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7, any affected municipality, its municipal authority, and the

proponent of the request, when applicable, and any municipality or municipal authority whose official plan may be affected by a decision of the Board in the appeal.

- ❑ A mining company, well operator, or owner or operator of a storage tank in appeals involving a claim of subsidence damage, water loss or contamination.

NOTICE OF APPEAL FORM
SIGNATURE PAGE

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 3 of this form on the following date: September 25, 2025.



Signature of Appellant or Appellant's Counsel

Date: **9/25/2025**

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Attorney Name (Type or Print)

Christina Manfredi McKinley
Amy Joseph Coles
Stephen C. Zumbrun

Address

Blank Rome, LLP
501 Grant Street
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Pittsburgh, PA 15219
412-932-2733

Christina.mckinley@blankrome.com

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TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.



EXHIBIT A to Notice of Appeal



Pennsylvania
Department of Environmental Protection



SOUTHWEST REGIONAL OFFICE-AIR QUALITY PROGRAM

August 26, 2025

VIA EMAIL: Kimberly.Kaal@shell.com

Kimberly Kaal, Environmental Manager
Shell Chemical Appalachia LLC
300 Frankfort Road
Monaca, PA 15061

Re: Final Response
Shell Confidentiality Requests dated June 11, 2025 and July 3, 2025
Shell Chemical Appalachia LLC, Shell Polymers Monaca Site
Plan Approvals PA-04-00740A, PA-04-00740B, and PA-04-00740C
Potter and Center Townships, Beaver County

Dear Kimberly Kaal:

This letter is in response to Shell Chemical Appalachia LLC's ("Shell")'s letters dated June 11, 2025 and July 3, 2025, requesting confidential treatment of information submitted to the Department.

Shell's June 11 Letter requests confidential treatment of fourteen photographs submitted by Shell in connection with the Department's investigation of a June 4, 2025 malfunction at the facility. The Department has determined that the photographs will be treated as confidential under Section 13.2 of the Air Pollution Control Act because Shell has shown that the disclosure of the photographs could reveal processes or production information unique to Shell that could adversely affect Shell's competitive position by revealing trade secrets, including intellectual property rights associated with the equipment photographed. The redacted versions of the documents that Shell provided on June 11, 2025 will be made part of the public file.

Shell's July 3 Letter requests confidential treatment of certain gas flow and gas composition data submitted to the Department in connection with a malfunction report relating to the June 4, 2025 malfunction at the facility. The Department is granting the July 3 request in part and denying the request in part.

The Department has determined that the following information for which Shell has requested confidential treatment is "emission data" under Section 13.2 of the Air Pollution Control Act and thus cannot be considered confidential. The subject information is necessary to determine the identity, amount, and concentration of emissions from the Ethane Cracking Furnaces during the June 4, 2024 malfunction event.



Page and Line Numbers	Information Description
Page 9 of 17, Section 1, Table Columns 2 and 3	Cracked gas actual and intended flow rates
Page 11 of 17, Section 5, Table Columns 2 and 3	Cracked gas actual and Intended flow rates
Page 12 of 17, Section 8, Table Columns 1, 2, and 3	Cracked gas composition

The Department has determined that the following information will be treated as confidential under Section 13.2 of the Air Pollution Control Act because the information is not “emission data”; it is not information that is necessary to determine emissions from the source. In addition, Shell has shown that the disclosure of the information could adversely affect Shell’s competitive position by revealing trade secrets, including intellectual property rights associated with the applicable equipment.

Page and Line Numbers	Information Description
Page 10 of 17, Section 4, Entire Table	Cracked gas composition

Note that under Section 13.2 of the Air Pollution Control Act, confidential information may be disclosed to Federal, State or local representatives as necessary for the purpose of administration of any Federal, State or local air pollution control laws, or when relevant in any proceeding under the Air Pollution Control Act.

Please also note that the information subject to these confidentiality requests is responsive to a Right-to-Know-Law Request that the Department received on or about July 24, 2025. The Department’s response to the RTKL Request is due on or about **September 2, 2025**.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board’s rules of practice and procedure may be obtained from the Board. The appeal form and the Board’s rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the Board within 30 days. You do not need a lawyer to file an appeal with the Board.



IMPORTANT LEGAL RIGHTS ARE AT STAKE. YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD AT 717-787-3483 FOR MORE INFORMATION. YOU DO NOT NEED A LAWYER TO FILE A NOTICE OF APPEAL WITH THE BOARD.

If you have any questions regarding this determination or require further assistance, please contact me at 412-442-4174 or via email at shguerrieri@pa.gov or contact Alexander Sandy via email at asandy@pa.gov.

Sincerely,

Sheri L. Guerrieri, P.E./slg

Sheri L. Guerrieri, P.E.
Environmental Engineer Manager

cc: Case 04-00740
Alexander Sandy
SWRO Operations – Stephen Wiedemer; Scott Beaudway
Olivia Law
Mark Gorog
Stephen Hepler
Onbase



EXHIBIT B to Notice of Appeal

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

SHELL CHEMICAL APPALACHIA LLC,	)	
<i>Appellant,</i>	)	
	)	
v.	)	
	)	EHB Docket No. _____
COMMONWEALTH OF PENNSYLVANIA,	)	
DEPARTMENT OF ENVIRONMENTAL	)	
PROTECTION	)	
<i>Respondent.</i>	)	
	)	

APPELLANT’S OBJECTIONS FOR NOTICE OF APPEAL

Appellant Shell Chemical Appalachia LLC (“Shell”) objects to the Department of Environmental Protection’s (the “Department” or DEP) “Final Response” dated August 26, 2025 (the “Decision”) concluding that certain data produced by Shell Polymers Monaca facility is “emission data,” and as such, is not entitled to confidential treatment, including withholding from production under Pennsylvania’s Right-to-Know-Law.

In summary and as further elaborated below, the Department’s decision with respect to the data at issue is contrary to the Air Pollution Control Act and the Clean Air Act, is not adequately supported factually, was not based on any analysis or rationale, and is otherwise unreasonable, unlawful, and an abuse of discretion. A summary of the background facts of this matter is critical to understand why the Decision is unreasonable, unlawful, and an abuse of discretion.

Background

1. Shell operates an ethylene cracker facility, known as the Shell Polymers Monaca Facility, in Monaca, Beaver County, Pennsylvania (the “Facility”).

2. Shell is subject to various air permits, and, pursuant to those permits, regularly reports to DEP.

3. Following a malfunction with one of the Facility’s furnaces (Furnace 5) on June 4, 2025, DEP required Shell to provide it with certain reporting related to the incident.

4. On June 11, 2025, Shell provided information to DEP regarding the malfunction, which included 14 photographs.

5. Shell requested receive confidential treatment under Section 13.2 of the Air Pollution Control Act (“ACPA”), 35 P.S. § 4013.2. DEP agreed to treat those photographs as Confidential Business Information (“CBI”).

6. On July 3, 2025, Shell made an additional report to DEP, satisfying the malfunction reporting requirements.

7. In that report, Shell identified certain gas flow and gas composition data contained in four separate sections of its report as containing Confidential Business Information under Section 13.2 of the ACPA and the Clean Air Act’s (“CAA”) regulations, 40 C.F.R. § 2.301.

8. Shell asserted that under those provisions, the data was not “emission data,” and is Confidential Business Information.

9. In Shell’s July 3 Letter, it provided the bases for its confidentiality designations in “Attachment B - Confidential Information Log,” attached to the Shell July 3 Letter. The relevant portions of the Confidential Information Log are pasted below for ease of reference:

Attachment B - Confidential Information Log

Page and Line Number	Information Description	Basis for Confidential Treatment as Identified in the Pennsylvania Air Pollution Control Act, Section 13.2, 35 P.S. § 4013.2.
Page 9 of 17, Section 1, Table Columns 2 and 3	Cracked gas actual and intended flow rates	This information, if released to the public, could adversely affect the competitive position of SPM and adversely affect Shell's competitive position by revealing trade secrets, including intellectual property rights associated with the equipment. Furnace 5 is located within SPM's Ethane Cracking Unit (ECU). ECU was designed by original equipment manufacturer Linde and all construction design information is covered under confidential agreement with Linde. Cracked gas flow rate within ECU at specific dates and times may be used to reverse-engineer the design ethane-cracking and conversion capabilities of a furnace and ECU and adversely affect Shell's competitive position.
Page 10 of 17, Section 4, Entire Table	Cracked gas composition	This information, if released to the public, could adversely affect the competitive position of SPM and adversely affect Shell's competitive position by revealing trade secrets, including intellectual property rights associated with the equipment. Furnace 5 is located within SPM's Ethane Cracking Unit (ECU). ECU was designed by original equipment manufacturer Linde and all construction design information is covered under confidential agreement with Linde. Cracked gas composition is contained within Linde design heat and material balance documentation labeled as confidential. Cracked gas composition may be used to reverse-engineer the design ethane cracking and conversion capabilities of a furnace and ECU and adversely affect Shell's competitive position.
Page 11 of 17, Section 5, Table Columns 2 and 3	Cracked gas actual and intended flow rates	This information, if released to the public, could adversely affect the competitive position of SPM and adversely affect Shell's competitive position by revealing trade secrets, including intellectual property rights associated with the equipment. Furnace 5 is located within SPM's Ethane Cracking Unit (ECU). ECU was designed by original equipment manufacturer Linde and all construction design information is covered under confidential agreement with Linde. Cracked gas flow rate within ECU at specific dates and times may be used to reverse-engineer the design ethane-cracking and conversion capabilities of a furnace and ECU and adversely affect Shell's competitive position.
Page 12 of 17, Section 8, Table Columns 1, 2, and 3	Cracked gas composition	This information, if released to the public, could adversely affect the competitive position of SPM and adversely affect Shell's competitive position by revealing trade secrets, including intellectual property rights associated with the equipment. Furnace 5 is located within SPM's Ethane Cracking Unit (ECU). ECU was designed by original equipment manufacturer Linde and all construction design information is covered under confidential agreement with Linde. Cracked gas composition is contained within Linde design heat and material balance documentation labeled as confidential. Cracked gas composition may be used to reverse-engineer the design ethane cracking and conversion capabilities of a furnace and ECU and adversely affect Shell's competitive position.

10. Thereafter, on July 24, 2025, DEP received a Right-to-Know-Law ("RTKL") Request filed by Sarah Kula of Environmental Integrity Project concerning the records Shell produced in conjunction with DEP's investigation of the June 4, 2025 furnace malfunction.

11. On August 26, 2025, DEP issued a letter to Shell informing it that it was granting in part and denying in part its request to treat the July 3 gas flow and gas composition data as confidential.

12. In the August 26 Decision, the Department agreed with Shell that the information on Page 10 of 17 be treated as confidential, but denied Shell’s request to treat the other information on Page 9 of 17, Page 11 of 17, and Page 12 of 17 as CBI (*see* red boxes above).

13. Specifically, DEP determined the following constituted “emission data”:

Page and Line Numbers	Information Description
Page 9 of 17, Section 1, Table Columns 2 and 3	Cracked gas actual and intended flow rates
Page 11 of 17, Section 5, Table Columns 2 and 3	Cracked gas actual and Intended flow rates
Page 12 of 17, Section 8, Table Columns 1, 2, and 3	Cracked gas composition

14. In doing so, the Department determined that the information on Pages 9, 11, and 12 is “emission data” under Section 13.2 of the APCA and thus, cannot be considered confidential.

15. As justification for its determination, DEP stated that certain of the data “is necessary to determine the identity, amount, and concentration of emissions from the Ethane Cracking Furnaces during the June 4, 2024 [sic] malfunction event.”

16. Thereafter, DEP received an extension of its deadline to respond to the RTKL Request, from September 2, 2025, to September 5, 2025.

17. On September 3, 2025, and at DEP’s request, Shell submitted additional supporting information to DEP refuting its determination that the data was “emission data.”

18. In that September 3, 2025 letter, Shell specifically asked DEP to reconsider its August 26, 2025 determination in light of the supplemental submission.

19. In addition, as part of its September 3 submission, Shell also re-reviewed its redactions and provided the DEP with a slightly less redacted version of the July 11 submission, specifically, a less redacted version of page 12 of 17.

20. Shell did not receive a response from DEP as to its September 3 submission.

21. Instead, on September 5, 2025, DEP issued its Final Determination on the RTKL request.

22. In that September 5, 2025 Final Determination, DEP did not reference Shell's September 3 supplemental response, its less redacted document, or even its request that DEP reconsider the August 26 Decision that Shell's data constituted "emission data."

23. Thus, notwithstanding that: (1) DEP's August 26 Decision did not provide Shell with adequate notice that it was a "final" decision, and (2) did not resolve Shell's request for reconsideration based on its September 3 supplemental submission, in an abundance of caution, Shell hereby files this appeal to ensure it satisfies the 30-day appeals deadline.

Shell's Objections to the Order

The Department's actions in issuing the Order are unlawful, unreasonable, arbitrary, an abuse of discretion, without legal authority, and without sufficient factual support, for reasons that include the following:

Conflict with State and Federal Law

A. Under Pennsylvania's Right-to-Know-Law ("RTKL"), it is true that "records in possession of a Commonwealth agency like the Department are presumed 'public' unless they are: (1) exempted by Section 708 of the RTKL; (2) protected by a privilege; or (3) exempted 'under any other Federal or State law or regulation or judicial order or decree.'" *Highmark Inc. v. Voltz*, 163 A.3d 485, 490 (Pa. Commw. Ct. 2017) (citations omitted). But "[s]tate statutes that

designate public or nonpublic nature supersede the RTKL.” *Id.* at 490 (citations omitted). Thus, in a case like this one, which is governed by the Clean Air Act and the Air Pollution Control Act, those statutes supersede the RTKL in defining what records are public versus nonpublic.

B. Section 13.2 of the APCA protects from public disclosure certain CBI; however, the protection does not extend to “emission data.”

C. “Emission data” is not defined in the APCA, not defined in DEP regulations, and Shell is unable to find EHB or Pennsylvania case law construing this term.

D. Section 13.2 of the APCA provides that the Department shall implement this section consistent with Sections 112(d) and 114(c) of the federal Clean Air Act, 42 U.S.C. §§ 7412(d) and 7414(c).

E. Section 114(c) of the CAA provides similar protections from disclosure of CBI as provided for in Section 13.2 of the APCA and similarly excludes from the protection “emission data.”

F. EPA regulations define “emission data” to mean, *inter alia*, 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....” *See* 40 C.F.R. § 2.301(2)(i)(A).

G. Under the Clean Air Act (administration of which has been delegated to the DEP) and its regulations, “emission data” is defined as:

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 (emphases added).

H. Federal courts reviewing 40 C.F.R. § 2.301(2) have narrowly construed this regulatory definition as requiring that the information be “necessary to determine,” *i.e.*, the only information available to determine the characteristics of the emission. *See RSR Corp. v. E.P.A.*, 588 F. Supp. 1251, 1255 (N.D. Tex. 1984) (holding that EPA’s decision that some information related to a material balance calculation was “emission data,” but other information was not, without determining whether the information was the only practical way to determine the amount of pollution emitted or explaining its rationale, was arbitrary and capricious); *see also Nat. Res. Def. Council v. Leavitt*, No. CIV.A. 04-01295, 2006 WL 667327, at *4 (D.D.C. Mar. 14, 2006) (upholding EPA’s narrower construction of 40 C.F.R. § 2.301(2) and determination that methyl bromide stockpiles were not “emission data”).

I. Consistent with Shell’s prior submissions to DEP, the redacted information in Shell’s July 3 Letter is not “emission data” within the meaning of Section 13.2 of the APCA or 40 C.F.R. § 2.301. Under federal regulations, emission data refers narrowly to information “necessary to determine” the identity, amount, frequency, concentration, or other characteristics of substances actually emitted into the air.

J. The redacted information does not meet this definition. Courts have interpreted emission data narrowly and excluded background or upstream process information from its scope. *See Nat. Res. Def. Council v. Leavitt*, No. Civ. 04-01295, 2006 WL 667327 (D.D.C. Mar. 14, 2006); *R.S.R. Corp. v. EPA*, 588 F. Supp. 1251 (N.D. Tex. 1984). As detailed below, the redacted information constitutes process data, not emission data.

1. AC Reactor Flow and Intended Flow (Page 9 of 17, Section 1, Table Columns 2 & 3): This data reflects flows through process equipment, and was used to perform a material balance to determine unaccounted mass flow at the AC Reactor. The unaccounted mass flow was then used to determine the total mass lost in subsequent sections of the calculation. In other words, it is not itself emission data, but process data.
2. Gas in Firebox Flow and Intended Flow (Page 11 of 17, Section 5, Table Columns 2 & 3): Similar to the AC Reactor Flow and Intended Flow, this data is not emission data as it is process equipment flows.
3. Uncombusted Gas Composition Breakdown (Page 12 of 17, Section 8, Table Columns 1–3): Columns 1 and 2 are the same CBI information that is also provided in the Gas Composition Breakdown (Page 10 of 17, Section 5, Entire Table), which DEP agrees is CBI. Column 3 reflects the emission data. Nevertheless, as a compromise, Shell revisited the redacted version originally submitted on July 2, and offers a “less redacted” version of the document (*e.g.*, more information is shown) attached hereto as Exhibit A for the Department’s consideration.

K. Indeed, as the Department is well aware, Shell routinely provides emission data to the DEP through required regulatory submissions, including regular emissions reports and malfunction reports. These documents are publicly available through the Department’s online Shell Polymers Monaca information portal. The redacted information on Pages 9, 11, and 12 of Shell’s July 2 Letter are not required submissions under Shell’s permit and are not designated as routine emissions compliance documents. Accordingly, they do not fall within the category of emission data Shell is required to publicly disclose.

L. In sum, the redacted information reflects internal operational data leading up to emissions and is not required to determine **emissions themselves**. As such, Shell is entitled to seek protection of the information as CBI under the APCA and the CAA and its regulations.

M. Further, Shell's position remains that the redacted information qualifies as CBI under Section 13.2 of the APCA, as it includes proprietary technical data, site-specific procedures, and operational methods used at Shell's facility. Disclosure of this information would reveal unique production methods and process flow designs that competitors could use to reverse-engineer Shell's operations.

N. Moreover, Shell operates the Monaca Facility under multiple confidentiality and licensing agreements. In this case, Furnace 5 is located within the Facility's Ethane Cracking Unit, which was designed by Linde. Shell's agreements with Linde prohibit disclosure of covered technical and process information without Linde's express permission. These agreements further underscore the confidential nature of the data. Shell has implemented robust internal safeguards, including access controls, labeling protocols, and contractor NDAs, to protect this sensitive information from unauthorized access or disclosure.

Other Objections

O. The Department relied on an insufficient and/or incorrect factual basis to issue the Order, in that:

1. The Department did not adequately explain why the data at issue constituted "emission data," including its conclusion that such data is "necessary" to calculate emissions.
2. There is no state or federal case law to support the Department's determination.
3. The Department did not contend with the fact that Shell was not required to report this data as part of its routine emissions reporting and malfunction reporting.

4. The Department ignored the fact that Shell historically has sought—and the Department has granted—confidential treatment of this type of data.
5. The Department did not consider Shell’s supplemental September 3 submission in its reliance on the August 26 Decision as a “final” order.
6. The Department also did not consider Shell’s supplemental September 3 submission in issuing its September 5 Final Determination of the RTKL Request.

P. The Department’s action in issuing the Decision is otherwise arbitrary, unreasonable, an abuse of discretion, and/or unlawful for many of the same reasons, including:

1. The Department did not adequately explain why the data at issue constituted “emission data,” including its conclusion that such data is “necessary” to calculate emissions.
2. There is no state or federal case law to support the Department’s determination.
3. The Department did not contend with the fact that Shell was not required to report this data as part of its routine emissions reporting and malfunction reporting.
4. The Department ignored the fact that Shell historically has sought—and the Department has granted—confidential treatment of this type of data.
5. The Department did not consider Shell’s supplemental September 3 submission in its reliance on the August 26 Decision as a “final” order.
6. The Department also did not consider Shell’s supplemental September 3 submission in issuing its September 5 Final Determination of the RTKL Request.

Q. Shell reserves the right to amend this Notice of Appeal and/or introduce additional objections in this proceeding based upon, *inter alia*, the subsequent discovery of any additional information that would tend to provide additional bases for challenging the Department’s action and Order regarding the Facility or the application of law or regulation.