



west virginia department of environmental protection

Division of Air Quality
601 57th Street SE
Charleston, WV, 25304
304-926-0499

Harold D. Ward, Cabinet Secretary
dep.wv.gov

October 23, 2024

Kristin Hall, Chief, Air Section,
USEPA Region III, Enforcement & Compliance Division

Penny Lassiter, Director of Sector Policies and Programs Division
(SPPD) USEPA

RE: **Regulatory Interpretation Request**
Empire Green Generation LLC
Facility ID: 009-00141
Permit No. R13-3555A
Follansbee, WV

Dear Ms. Hall and Ms. Lassiter:

On December 5, 2023, the West Virginia Division of Air Quality (WVDAQ) received a permit application (R13-3555A) from Empire Green Generation (EGG) proposing to modify their existing permit to replace the use of medical waste with plastic as a feedstock in a pyrolytic conversion process. On March 6, 2024, the WVDAQ sent a letter to Christina Fernandez, Director, USEPA, Region III Air and Radiation Division, requesting a regulatory interpretation regarding whether all streams that exit the pyrolysis process need to be evaluated under 40 CFR 241 to determine applicability under 40 CFR 60, Subpart CCCC (see the previously submitted letter and other relevant documents for full details on the request and the process in question). Since that letter was sent, there have been multiple interactions between the WVDAQ, USEPA, and EGG as detailed in the following list:

- 4/30/2024 - USEPA Region III requested a 40 CFR 241 Determination concerning the definition of relevant material as waste/non-waste;
- 5/3/2024 - EGG provided the WVDAQ information concerning the 40 CFR 241 Determination.

Promoting a healthy environment.

- 5/7/2024 - WVDAQ forwarded EGG's 40 CFR 241 Determination to USEPA Region III;
- 6/26/2024 - Virtual Meeting regarding EGG's Regulatory Request between WVDAQ and USEPA Region III;
- 7/3/2024 - USEPA Region III requests the contact information of EGG's Responsible Official;
- 7/3/2024 - DAQ provided the contact information of EGG's Responsible Official to USEPA Region III;
- 7/11/2024 - USEPA Region III provided the WVDAQ a draft list of questions for a Section 114(a) Request for Information (RFI) USEPA was intending to submit to EGG;
- 7/18/2024 - WVDAQ provided USEPA Region III a list of comments/suggestions regarding the draft list of questions;
- 8/1/2024 - USEPA Region III sent EGG a Section 114(a) RFI;
- 8/30/2024 - EGG provides a response to USEPA Region III's Section 114(a) RFI; and
- 9/17/2024 - EPA hosted a virtual Listening Session with interested parties concerning the proposed modification.

As can be seen from the list above, WVDAQ and EGG have been diligent and timely in responding to all requests from USEPA concerning the regulatory request first made in early March of 2024. The WVDAQ now believes USEPA has all relevant information to make a determination as requested in the March letter and strongly requests that USEPA conclude its review of this matter and finalize the determination as soon as possible. The WVDAQ believes that further delay could, with respect to R13-3555A, result in both an unfair burden to the applicant and an impediment to the WVDAQ in carrying out its policy mandate - as given under WV State Code [§22-5-1] - to provide “. . .for the timely processing of permit applications. . .” Thank you for consideration of this matter and please direct any further questions regarding the specifics of this request to Mr. Ed Andrews (the reviewing engineer) at (304) 926-0499 x41244 or Mr. Joe Kessler, NSR Program Manager, at (304) 926-0499 x41271.

Sincerely,

Laura M. Crowder
Director

cc: Cristina Fernandez, Director, EPA Region III, Air and Radiation Division
Fernandez.Cristina@epa.gov
MaryCate Opila, Acting Associate Director, Branch Chief, Permits Branch, USEPA
Region III, Opila.Marycate@epa.gov
Gwendolyn Supplee, Permitting Support, USEPA Region III
Supplee.Gwendolyn@epa.gov
Diana Felix, OAQPS, USEPA
Felix.Diana@epa.gov
Steven Ott, Air Inspector, USEPA Region III,
ott.Steven@epa.gov
Andrew Earley, Esq., Fair Shake Environmental Legal Services
aeary@fairshake-els.org
Frank Rocchio, President, Ohio Valley Environmental Advocates, Inc
frank.rocchio@oveadvocates.org
Bernard Brown, Chief Operating Officer, Empire Green Generation, LLC
bbrown@empirede.com
Farley Wood, P.E., Vice-President of Engineering, Empire Green Generation, LLC
fwood@empirede.com
Joseph Kessler, NSR Program Manager, WVDAQ
Joseph.r.kessler@wv.gov
Ed Andrews, Engineer, WVDAQ
Edward.s.Andrews@wv.gov