



SC DEPARTMENT of **ENVIRONMENTAL SERVICES**

Bureau of Air Quality Response to Comments on Air Quality

Gannett Enterprises LLC St. George, Dorchester County, South Carolina Permit Number CP-5000227 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 November 4, 2024, through December 3, 2024, regarding the draft synthetic minor construction permit for Gannett Enterprises LLC.

The written Department Decision, synthetic minor construction permit, statement of basis, this response document, and a letter of notification are available 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 four written comments were received and reviewed.

1. General Concerns About Air Pollution and Air Emissions

Comments were received expressing general concern about environmental health of South Carolinians and pollution emissions and impacts. One comment also requested more information regarding how much diesel generators are planned to be run for maintenance and testing.

Response: The air permit decision is based on all applicable air quality regulations and a review of all technical and other information submitted showing compliance with requirements for issuance of the permit. The generators under this permit are designated for emergency use only and are only expected to operate briefly each month for testing and maintenance. As a result, operations will be infrequent, leading to limited actual emissions of relevant pollutants. Additionally, 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 standards, which were set to be protective of public health, including sensitive and vulnerable populations, and the environment.

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 air emissions produced by the facility. The emergency generators will be permitted to run exclusively on diesel and Hydrotreated Vegetable Oil (HVO)—which meets ASTM standards—or blends of these two fuels. Additionally, each generator must be equipped with a non-resettable hour meter prior to engine startup to monitor operating time.

The permit includes an algorithm to calculate the monthly emissions of NO_x and CO from the engines at the facility based on hours of operation 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. Per 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, each generator can operate a maximum of 100 hours per year in non-emergency operations to be considered an emergency engine. These non-emergency operations are for instances such as maintenance checks and readiness testing. (40CFR60.4211(f)(2))

2. Publicly Available Information

Comments were received in relation to the amount of information publicly available on pollutants released from the facility and expressing concerns about legality and lack of transparency in regards to the facility's redaction of information from the permit application.

Response: Both the Clean Air Act and state statute provide 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 not "emission data" and are entitled to protection as "trade secrets" under the relevant laws, 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 the 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 during its permitting review. The information placed on public notice includes facility-wide emissions estimates for all relevant pollutants and other information not claimed as confidential. Per EPA policy, the facility must base potential emissions for emergency generators on 500 hours per year, even if the expected operation is less than 500 hours. As noted above, these engines are designed for emergencies and,

during regular operation, will only be run for short periods for testing and monthly maintenance checks (totaling no more than 100 hours of non-emergency use to comply with NSPS Subpart IIII). The facility has also accepted federally enforceable limits to restrict emissions below major source thresholds and is required by the permit to keep records and submit reports to demonstrate compliance with emission limits.

3. Concerns About Non-Air Quality Environmental Resources

A comment was received expressing a concern about water usage and supply. Another comment stated a preference for the land remaining forested, providing critical habitat, green space, and leaving the land undisturbed.

Response: The Department lacks authority with respect to where a facility chooses to locate and does not make zoning decisions. 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. Comments and concerns about water, land, and wildlife resources and other non-air quality environmental resources 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 for 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 facility electricity usage and increased electric rates as a result of the facility.

Response: The Department does not have authority with regard to electricity usage or electric rates 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

Commenters asserted that the community is unlikely to gain employment or new services from the data center.

Response: We recognize that a community's well-being and economic vitality hinge on many different factors. However 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.

6. Alternative Generation Systems

A comment was received requesting the facility to explore alternate backup generation systems, such as battery storage and hybrid generation, 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.

7. Environmental Justice

A comment was received asserting that EPA's social justice tool indicates that the surrounding areas are already at risk for low life expectancy, and expressing concern that pollution from the facility would add to existing pollution impacts in the area.

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 we 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 had a thirty-day public notice period to allow the local community to record their concerns for Department consideration during the permitting process. The Department did not receive any requests for a public hearing on this permitting action.

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.

As discussed in the response under Section 1 above, due to the occasional and infrequent use of the emergency equipment, as well as the facility's choice of fuels, emission impacts should be limited, and emissions from these generators are not expected to interfere with state or federal air quality standards.

8. General Opposition

Comments were received expressing general opposition to the issuance of the Gannett Enterprises LLC air construction permit.

Response: The Department appreciates the comments and concerns from the community about the draft Gannett Enterprises LLC 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.



Joan W. Hartley
Shareholder
Admitted in SC, NC

December 17, 2024

HAND DELIVERY

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

Re: Gannett Enterprises LLC Application for Permit to Construct (“Application”)
St. George, Dorchester County, South Carolina

Dear Ms. Zakrzwski:

Our firm represents Gannett Enterprises LLC (“Gannett Enterprises”) on permitting matters related to its new data center to be constructed in Dorchester County (“Facility”). The above-referenced Application submitted to the Department in July 2024 affirmatively stated that the Application includes confidential information and data, and in accordance with the Department’s instructions, Gannett Enterprises submitted two versions of the Application—a complete confidential version of the Application and a public version of the Application. As discussed more fully below, the Application includes certain confidential, proprietary, and trade secret information which is exempt from public disclosure as confidential trade secrets pursuant to S.C. CODE ANN. §§ 30-4-40(1) and 48-1-270.

The information and data redacted in the public version of the Application are “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 Gannett Enterprises. Gannett Enterprises 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. Gannett Enterprises 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. Identifying and designing a site, and determining the optimal server capacity for a particular site can be the

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product of a multi-year effort by hundreds of workers. When Gannett Enterprises 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, Gannett Enterprises' generator information could give its competitors the ability to calculate its server capacity. This server and backup capacity information is the mechanism by which Gannett Enterprises competitively provides customers with services available twenty-four hours a day, seven days a week. Should its competitors become aware of Gannett Enterprises' 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, Gannett Enterprises may lose its current and future market edge. By knowing the server capacity at the Gannett Enterprises data center in Dorchester County, Gannett Enterprises' competitors will be able to take advantage and piggy back off of the significant investment Gannett Enterprises made to identify the location and deliver the optimal capacity for a parcel with a location and size such as Gannett Enterprises' 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 Gannett Enterprises goes to great lengths to protect that information.

Additionally, Gannett Enterprises works diligently to protect the information redacted in the public version of the Application. 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), Gannett Enterprises seeks protections from public disclosure available under applicable law, including environmental and public records laws and the assertion of trade secret protection. As such, Gannett Enterprises has satisfied the requirements for its claim that this information is exempt from disclosure as a public record.

Additionally, Gannett Enterprises' 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 Gannett Enterprises 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 Gannett Enterprises 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 Gannett Enterprises 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 Gannett Enterprises’ 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 Gannett Enterprises 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 Gannett Enterprises 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 fully supports the company’s claim to trade secret protection under S.C. CODE ANN. §§ 30-4-40(1) and 48-1-270. Gannett Enterprises’ competitors could use the redacted information to understand the facility’s processes, design, and capacity.

Diana L. Zakrzwski, P.E.

December 17, 2024

Page 5

We appreciate the opportunity to provide information in support of Gannett Enterprises' 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 Gannett Enterprises' 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)