



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

VIA ELECTRONIC MAIL

Mike Cusumano
Vice President of Compliance
FW Logistics
1100 East Parkway South
Memphis, Tennessee 38114
mikec@fwresults.com

Re: FW Logistics – Memphis, Tennessee
Notice of Potential Violation and Opportunity to Confer

Dear Mike Cusumano:

Information currently available to the U.S. Environmental Protection Agency suggests that FW Logistics may have committed violations of Section 112(r)(7) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r)(7), and its Risk Management Program (RMP) regulations found at 40 C.F.R. Part 68. By this letter, the EPA is extending to you an opportunity to advise the Agency via a conference call, or in writing, of any further information the EPA should consider with respect to the potential violations.

Specifically, on October 26, 2022, an authorized representative of the EPA conducted a compliance monitoring inspection at the facility located at 1100 East Parkway South, Memphis, Tennessee (the facility) to determine compliance with the CAA and RMP regulations, and observed the following potential violations:

1. The facility is a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, and the owner or operator did not comply with the requirements of 40 C.F.R. Part 68 by the latest of the following dates, as required by 40 C.F.R. § 68.10(a):
 - (1) June 21, 1999;
 - (2) Three years after the date on which a regulated substance is first listed under § 68.130;
 - (3) The date on which a regulated substance is first present above a threshold quantity in a process; or
 - (4) For any revisions to 40 C.F.R. Part 68, the effective date of the final rule that revises 40 C.F.R. Part 68;
2. The owner or operator did not identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and at least one alternative release scenario to represent all flammable substances held in covered processes, as required by 40 C.F.R. § 68.28(a);

3. The owner or operator did not investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release, as required by 40 C.F.R. § 68.60(a);
4. The owner or operator did not document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
5. The owner or operator did not perform an initial process hazard analysis on processes covered by 40 C.F.R. Part 68, as required by 40 C.F.R. § 68.67(a);
6. The owner or operator did not develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and that address all required elements, as required by 40 C.F.R. § 68.69(a);
7. The owner or operator did not perform inspections on process equipment, as required by 40 C.F.R. § 68.73(d)(1);
8. The inspection and testing procedures did not follow recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.73(d)(2); and
9. The owner or operator did not coordinate response needs with local emergency planning organizations at least annually, and more frequently if necessary, to address changes: At the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan, as required by 40 C.F.R. § 68.93(a).

The EPA has authority under Section 113 of the CAA, 42 U.S.C. § 7413, to pursue enforcement actions for violations of Section 112(r)(7) of the CAA and its RMP regulations found at 40 C.F.R. Part 68, including the issuance of compliance orders, the assessment of administrative penalties and/or the initiation of civil or criminal actions. To resolve the potential violations identified above, the EPA requests that a representative of the facility contact Jordan Noles, of my staff at (404) 562-9105, or via email at noles.jordan@epa.gov, within **seven (7) calendar days** of receipt of this letter to make arrangements to schedule a teleconference to discuss the potential violations and the EPA's possible enforcement action. Please note that the EPA will have legal representation during these discussions. Please inform Jordan Noles if you intend to have legal representation present as well.

You may voluntarily submit any documentation or information that you would like the EPA to review in advance of any teleconference on the matter as to why you believe the EPA should not take an enforcement action with respect to the above-mentioned potential violations. If you decide to submit such documentation or information, the EPA respectfully requests that you do so two weeks in advance of the teleconference. If you have questions regarding the type of information that should be submitted to the EPA or any other questions regarding this matter, please contact Jordan Noles at the contact information identified above.

Sincerely,

**JASON
DRESSLER**

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Jason Dressler
Chief
North Air Enforcement Section