



REGION 4

ATLANTA, GA 30303

VIA ELECTRONIC MAIL

CONFIRMATION OF EMAIL RECEIPT REQUESTED

Michael Poffinbarger
Refresco Beverages US Inc.
2090 Bartow Road
Lakeland, Florida 33801
Michael.Poffinbarger@refresco.com

Re: Refresco North America – Lakeland, Florida
Notice of Potential Violation and Opportunity to Confer

Dear Michael Poffinbarger:

Information currently available to the U.S. Environmental Protection Agency suggests that Refresco North America may have committed violations of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requirements. 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 September 14, 2023, an authorized representative of the EPA sent an information request letter to the facility located at 2090 Bartow Road, Lakeland, Florida (the facility) to determine compliance with Section 312 of EPCRA, 42 U.S.C. § 11022, and Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated at 40 C.F.R. Parts 370 and 372, respectively. Based on information gathered, the EPA is concerned that the facility may have violated Section 313 of EPCRA and the requirements of 40 C.F.R. Part 372, as explained below.

Summary of the Potential Section 313 Violations

EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372 require the owner or operator of a facility to use readily available data, or reasonable estimates of the amounts of toxic chemicals involved, for completing a toxic chemical release inventory form (Form R or Form A). The completed toxic chemical release inventory form must be submitted to the Administrator of the EPA and to the official designated by the governor of the state in which the facility is located by July 1 of each year, for each toxic chemical listed under EPCRA Section 313(c) and in 40 C.F.R § 372.65 that is manufactured, processed, or otherwise used

in quantities exceeding the threshold quantity established in EPCRA Section 313(f) and set forth in 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the preceding calendar year, provided the following elements are satisfied: (a) The facility has 10 or more full-time employees; and (b) the facility is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System (NAICS) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c).

The information reviewed indicates that the facility otherwise used more than 10,000 pounds of nitric acid during calendar year 2020. However, the facility did not report to either the EPA or to the state of Florida by July 1, 2021.

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of EPCRA Section 313. Civil penalties under Section 325(c) of EPCRA may be assessed by administrative order. Each day a violation of EPCRA Section 313 continues to exist constitutes a separate violation. Failure to report to the EPA or to the state of Florida are considered separate violations of EPCRA Section 313.

To resolve the potential violations identified above, the EPA requests that a representative of the facility contact Tony Spann of my staff at (404) 562-8971, or via email at Spann.Tony@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 inform Tony Spann if you intend to have legal representation present during these discussions.

The facility may voluntarily submit any documentation or information that it 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 the facility decides to submit such documentation or information, the EPA respectfully requests that the facility does so two weeks in advance of any teleconference on the matter. 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 Tony Spann at the contact information identified above.

Sincerely,

JASON
DRESSLER

Digitally signed by JASON
DRESSLER
Date: 2024.03.18
12:50:38 -04'00'

Jason Dressler
Chief
North Air Enforcement Section