



REGION 4

ATLANTA, GA 30303

ELECTRONIC MAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

Mike Herzog
Facility Manager
Ben E. Keith Foods Southeast Division
1 Ben E. Keith Way
New Brockton, Alabama 36351
mjherzog@benekeith.com

Re: Ben E. Keith Foods Southeast Division – New Brockton, Alabama
Notice of Potential Violation (NOPV)

Dear Mike Herzog:

Information currently available to the U.S. Environmental Protection Agency suggests that Ben E. Keith Foods Southeast Division 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, as well as 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 May 2, 2024, an authorized representative of the EPA conducted a compliance monitoring inspection at the facility located at 1 Ben E. Keith Way, New Brockton, AL (the facility) to determine compliance with the CAA and RMP regulations, as well as Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations promulgated at 40 C.F.R. Part 370. Based on information gathered, the EPA is concerned that the facility may have violated the CAA and the RMP regulations, as well as Section 312 of EPCRA and the requirements of 40 C.F.R. Part 370, as explained below.

Summary of the Potential RMP Violations:

1. The worst-case release quantity in the offsite consequence analysis was not the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity, as required by 40 C.F.R. § 68.25(b)(1);

2. The owner or operator did not include piping and instrument diagrams (P&IDs) in the process safety information, as required by 40 C.F.R. § 68.65(d)(1)(ii);
3. 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);
4. The process hazard analysis (PHA) did not address engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases, as required by 40 C.F.R. § 68.67(c)(3);
5. The owner or operator did not establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions, as required by 40 C.F.R. § 68.67(e); and
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, as required by 40 C.F.R. § 68.69(a).

Summary of the Potential Section 312 Violations:

EPCRA Section 312, 42 U.S.C. § 11022, and 40 C.F.R. Part 370 state that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370. The form submitted must contain the information required by that Part for hazardous chemicals present at the facility at any one time in the previous calendar year in amounts equal to or greater than 10,000 pounds and contain the information required by that Part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

The information reviewed indicates that the facility stored hazardous chemicals, including anhydrous ammonia, on-site above the reporting threshold of 10,000 pounds during calendar year 2021 and 2023. However, the facility did not submit Tier I or Tier II forms on or before March 1, 2022, and March 1, 2024, as required under EPCRA Section 312, for anhydrous

ammonia. Additionally, the 2022 submission lists “ammonia, solution with more than 10% but not more than 35% ammonia” instead of anhydrous ammonia.

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. Additionally, 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 312. Civil penalties under Section 325(c) of EPCRA may be assessed by administrative order. Each day a violation of EPCRA Section 312 continues to exist constitutes a separate violation. Failure to report to the SERC, LEPC, and Fire Department are considered separate violations of EPCRA Section 312.

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
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Digitally signed by JASON
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Date: 2025.01.14
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Jason Dressler
Chief
North Air Enforcement Section