



REGION 4

ATLANTA, GA 30303

SENT VIA ELECTRONIC MAIL

Harold B. Hunt
Complex Manager
Koch Foods of Gadsden, LLC
501 Paden Road
Gadsden, Alabama 35903
Harold.hunt@kochfoods.com

Re: Koch Foods of Gadsden, LLC
Notice of Potential Violation and Opportunity to Confer

Dear Harold Hunt:

Information currently available to the U.S. Environmental Protection Agency suggests that Koch Foods of Gadsden, LLC 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 April 20, 2023, an authorized representative of the U.S. Environmental Protection Agency conducted a compliance monitoring inspection of the Koch Foods of Gadsden, LLC facility located at 501 Paden Road, Gadsden, AL 35903 (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 312 of EPCRA, and the requirements of 40 C.F.R. Part 370, as explained below.

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 the extremely hazardous substances anhydrous ammonia, peracetic acid, and sulfuric acid on-site above the reporting threshold of 500 pounds and stored the hazardous chemicals aluminum sulfate solution, calcium hydroxide, carbon dioxide, diesel fuel, glycerin, magnesium hydroxide, sodium aluminate blend, sodium hydroxide, and sodium hypochlorite on-site above the reporting threshold of 10,000 pounds during calendar year 2020. However, the facility did not submit a Tier II form by March 1, of the following year as required under EPCRA Section 312. The Tier II form for calendar year 2020 was submitted to ADEM on April 1, 2021, and uploaded to e-plan on April 15, 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 312 and 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 312 continues to exist constitutes a separate violation and each day a violation of EPCRA Section 313 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. Failure to report to the EPA or to the state of Alabama 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 Chetan Gala of my staff at (404) 562-9746, or via email at gala.chetan@epa.gov, within **seven (7) calendar days** of receipt of this letter to make arrangements to discuss the potential violations and the EPA's possible enforcement action. Please inform Chetan Gala 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 the show cause meeting 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 Chetan Gala at the contact information identified above.

Sincerely,

TODD
GROENDYKE

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TODD GROENDYKE
Date: 2024.07.17
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Todd Groendyke
Chief
South Air Enforcement Section