



REGION 9

SAN FRANCISCO, CA 94105

Via Email: jstout@deltapacking.com

In Reply Refer to:

Delta Packing Co.
6021 E. Kettleman Lane
Lodi, California 95240

Jim Stout
Operations Manager
Delta Packing Co.
6021 E. Kettleman Lane
Lodi, California 95240

RE: Notification of Potential Enforcement Action for Violations of Section 312 of the Emergency Planning and Community Right-to-Know Act and Sections 112(r)(1) and 112(r)(7) of the Clean Air Act

Dear Operations Manager Stout:

As you know, representatives from the U.S. Environmental Protection Agency, Region 9 ("EPA") conducted an inspection on September 16, 2021, of the Delta Packing Company's (the "Company") facilities located at 6021, 5950, and 5990 E. Kettleman Lane, Lodi, California (the "Facility"). The purpose of the inspection was to determine compliance with the requirements under the Emergency Planning and Community Right-to-Know Act ("EPCRA") sections 304-312, 42 U.S.C. §§ 11004-11022; the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") section 103, 42 U.S.C. § 9603; the Risk Management Program ("RMP") in section 112(r)(7) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412; and the General Duty Clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Based upon the information obtained during our investigation, EPA is prepared to initiate a civil administrative action against the Company to ensure compliance with federal law and assess a penalty pursuant to sections 325(c) and (d) of EPCRA, 42 U.S.C. § 11045(c)-(d), and section 113 of the CAA, 42 U.S.C. § 7413. The anticipated administrative action includes violations of EPCRA section 312, 42 U.S.C. § 11022, and sections 112(r)(1) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(1) and (7), and the respective implementing regulations.

After reviewing the Company's responses to EPA's previous information requests, EPA is considering the allegations described below against the Company. For each allegation, the corresponding area of concern ("AOC") mentioned in EPA's Inspection Report sent to the Facility on January 18, 2022, is provided below.

EPCRA, 40 C.F.R. part 370

- 1) **EPCRA section 312, Tier II Reporting.** The Company did not submit Hazardous Materials and Waste Inventory Reports (or Tier II inventories) in 2018 and 2019, for all three of its refrigeration systems at the Facility. (AOC 28)

CAA, 40 C.F.R. § 68 – Risk Management Program

2) Applicability, Submission, and Updates.

- a) Although the Company reported an inventory of 24,050 pounds of ammonia in the North Refrigeration System to the California Environmental Reporting System (“CERS”) in 2013, the Company did not complete an RMP submission to EPA until August 20, 2018, in violation of 40 C.F.R. §§ 68.10(a)(3) and 68.150(b)(3). (AOCs 1.a and 24)
- b) Prior to May 14, 2020, the Company’s calculations indicated that the Southwest Refrigeration System at the Facility contained more than the threshold quantity of 10,000 pounds of anhydrous ammonia and is considered an RMP-covered process. The Company did not update the RMP to include the Southwest Refrigeration System RMP-covered process, in violation of 40 C.F.R. §§ 68.10(a)(3) and 68.190(b)(4). (AOCs 1.b and 25)

3) Documentation. The Company did not document the rationale for the selection of the specified alternative release scenarios, in violation of 40 C.F.R. § 68.39(b). (AOC 3)

4) Five-year Accident History and Required Corrections. On May 15, 2019, a release from the Southwest Refrigeration System resulted in seven employee injuries and one employee death. The Southwest Refrigeration System was subject to RMP requirements prior to May 2019. The two reporting violations relating to this event are as follows:

- a) The Company did not document the May 15, 2019, release in its five-year accident history, in violation of 40 C.F.R. § 68.42(a). (AOC 4)
- b) The Company did not submit information pertaining to the May 15, 2019, release in its RMP within six months of the event, in violation of 40 C.F.R. § 68.195(a). (AOC 26)

5) Process Safety Information.

- a) The Company failed to provide the following information pertaining to the equipment in the process:
 - i) The materials of construction for the Facility’s ammonia refrigeration pipe and equipment that was supplied or installed at the Facility before April 13, 2021, in violation of 40 C.F.R. § 68.65(d)(1)(i). (AOC 5.a)
 - ii) The allowable backpressure and allowable piping length calculations for the relief valve discharge piping calculations, in violation of 40 C.F.R. § 68.65(d)(1)(iv). (AOC 5.b)
 - iii) The ventilation system design documentation for the Company’s three Ammonia Machinery Rooms, in violation of 40 C.F.R. § 68.65(d)(1)(v):
 - (1) The 2020 version of the documentation does not provide design basis or supporting calculations for the ventilation systems. (AOC 5.c.i)
 - (2) The 2021 version of the documentation does not provide sufficient supporting data and calculations showing that the ventilation systems were designed consistently with the codes and standards referenced. (AOC 5.c.ii)
- b) The Company did not document that all equipment at the Facility complied with recognized and generally accepted good engineering practices (“RAGAGEP”), and for existing equipment designed and constructed in accordance with codes, standards or practices that are no longer in use, the Company did not determine and document that equipment was designed, maintained, inspected, tested and was operating in a safe manner, in the following instances, in violation of 40 C.F.R. § 68.65(d)(2) and (d)(3) (AOCs 6 and 7):
 - i) Results from the Ammonia Refrigeration Room (“AMR”) ventilation system tests from 2018-2021 showed that the ventilation systems at the Facility were not operating in accordance with RAGAGEP (AOC 6.a);

- ii) A compressor lacked the feature to shut down when high-discharge-temperature was detected, according to compressor inspections in 2020¹ (AOC 6.c);
- iii) In the North Refrigeration System AMR 1, the door leading to the outside and the adjacent roll-up door were not tight-fitting at the bottom, and in the Southwest Refrigeration System AMR, the door leading outside and the roll-up door were not tightly sealed at the bottom² (AOC 7.a);
- iv) The Company's relief analysis for the relief valve discharge piping for the liquid transfer vessel in the North Refrigeration System AMR 1 was insufficient to ensure that excessive back pressure would not develop³ (AOC 7.b);
- v) There was a fan in front of the opening of ARM 1 that could have blown ammonia laden exhaust through a square opening in the wall between the North Refrigeration System AMR 1 and the loading dock area potentially exposing personnel⁴ (AOC 7.c);
- vi) In the North Refrigeration System AMR 1, there were unsealed wall penetrations that could have allowed leakage of ammonia vapor to adjoining spaces and/or affect the fire rating of the AMR.⁵ (AOC 7.d);
- vii) There were no confined space warning signs on the cold room bunkers of the North Refrigeration System⁶ (AOC 7.e);
- viii) Piping for several oil drain lines was unsupported⁷ (AOC 7.f);
- ix) Window louvers in the North Refrigeration System AMR 2 were in the open position when they should have been closed⁸ (AOC 7.i);
- x) There was insufficient labeling and tagging of a vessel, pipes, and control valves on the roof of the North Refrigeration System⁹ (AOC 7.k); and
- xi) The electrical panel/motor control center in the Southwest Refrigeration System AMR was missing an arc flash warning sign¹⁰ (AOC 7.l).

¹ American National Standards Institute ("ANSI")/International Institute of Ammonia Refrigeration ("IIAR") 9-2020 Section 7.4.5 states, "[c]ompressors shall be provided with high-discharge-pressure limiting device to shut down the compressors when the safe ranges are exceeded." Also, Section 8.2.4 of ANSI/IIAR 2-2021 states, "[c]ompressors shall be provided with high-discharge-temperature, low-suction-pressure, and high-discharge-limiting devices to shut down the compressors when the safe ranges are exceeded."

² Section 7.3.9.2 of ANSI/IIAR 9-2020 states, "[m]achinery room doors shall be self-closing and tight fitting."

³ Section 15.3.8.1 of ANSI/IIAR 2-2021 states, "[p]ressure relief devices shall have sufficient mass flow-carrying capacity to limit the rise in protected equipment to prevent its catastrophic failure."

⁴ Section 7.3.2.5 of ANSI/IIAR 9-2020 states, "[a]ir shall not flow to or from any portion of a premises that is routinely accessible to or occupied by people ... through a machinery room unless the air is ducted and sealed to prevent ammonia leakage from entering the airstream."

⁵ Section 7.3.6.2 of ANSI/IIAR 9-2020 states, "[p]ipes penetrating the machinery room envelope shall be sealed to walls ...through which they pass to prevent leakage of ammonia vapor to adjoining spaces and to maintain the fire rating of the machinery room envelope."

⁶ Section 1910.146(c)(2) of Occupational Safety and Health Administration states, "if the workplace contains [confined] permit spaces, the employer shall inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the [confined] permit spaces. NOTE: A sign reading DANGER -- PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER or using other similar language would satisfy the requirement for a sign."

⁷ Section 7.2.7.1 of ANSI/IIAR 9-2020 states, "[p]iping, tubing, and equipment shall be supported to prevent excessive vibration and movement."

⁸ Section 7.3.14.3.5 of ANSI/IIAR 9-2020 states, "[m]otorized louvers or dampers, where utilized, shall fail to the open position upon loss of power."

⁹ Section 7.2.9.2 of IIAR 9-2020 states, "[r]efrigeration equipment shall be provided with labels indicating the equipment's name or identifier Section 7.2.9.4 of IIAR 9-2020 states, "[a]mmonia piping mains, headers, and branches shall be identified with the following information 1) 'AMMONIA' 2) Physical state of the ammonia 3) Relative pressure level of ammonia, being low or high as applicable 4) Pipe service, which shall be permitted to be abbreviated 5) Direction of flow." Item j on Page 96 of the Ammonia Refrigeration Safety Inspection Checklist for Piping of IIAR 6- 2020 states, "[a]re critical ... control valves, tagged ...?"

¹⁰ Section 110.16 of National Fire Protection Association (NFPA) 70-2020, states, "[e]lectrical equipment, such as switchboards, switchgear, panelboards, industrial control panels, meter socket enclosures, and motor control centers ... and is likely to require examination, adjustment, servicing, or maintenance while energized, shall be field or factory marked to warn qualified persons of potential electric arc flash hazards. The marking shall meet the requirements in 110.21(B) and shall be located so as to be clearly visible to qualified persons before examination, adjustment, servicing, or maintenance of the equipment."

6) Process Hazard Analysis.

- a) The Company did not perform an initial process hazard analysis ("PHA") for the North Refrigeration System from 2013 until 2018, in violation of 40 C.F.R. § 68.67(a). The Company had records of one PHA completed prior to 2018, but because it was not dated, there is no documentation of an initial PHA. (AOC 8)
- b) The Company's 2018 PHA relied on engineering and administrative controls (i.e., safeguards) that were not valid, in violation of 40 C.F.R. § 68.67(c)(3), including:
 - i) Safeguard #5 stated, "[a]ll relief valves have capacity which meets or exceeds the requirement of ANSI/IIAR 2-2014 § 15.3.7." (AOC 9.a);
 - ii) Safeguard #6 stated, "[a]ll shutdown switches are adequately protected from vandals and not likely to be accidentally activated." See Other Concern #IV for a description of how this safeguard may not be valid. (AOC 9.b); and
 - iii) Safeguards #16 and 19 stated, "[c]eiling suspended evaporators (Hallway Coils 2 and 3) are hung higher than forklifts or pallets are capable of reaching" and "Delta Packing has an administrative control in place to prevent forklift drivers from stacking pallets near the ceiling suspended evaporators." (AOC 9.c).
- c) The Company's documentation was deficient, in violation of 40 C.F.R. § 68.67(e), as follows:
 - i) The Company assigned untimely deadlines to recommendations in the Company's first PHA, which was not dated but supposedly completed in either 2011 or 2014 (AOC 10.a);
 - ii) The recommendation in the 2018 PHA to fix an incorrect set pressure for a pressure relief valve was not tracked to completion (AOC 10.b); and
 - iii) There was inaccurate recommendation tracking regarding the connection of all alarms to the programmable logic controller ("PLC") (AOC 10.c).
- d) The Company did not retain the PHA for the Southwest Refrigeration System of the Facility for the life of the process, in violation of 40 C.F.R. § 68.67(g). (AOC 11)

7) Operating Procedures.

- a) The Company's standard operating procedure ("SOP") had vague instructions and did not provide clear instructions for safely conducting activities for several steps, in violation of 40 C.F.R. § 68.69(a), including that:
 - i) TSOP 001 and SOP 008 did not provide clear instructions for normal shutdown regarding hose connection and checking for leaks before opening the valves, respectively (AOC 12.a); and
 - ii) SOP 001 included a step that did not have enough detail about valve positions. (AOC 12.b).
- b) The Company's emergency shutdown procedures did not include conditions under which emergency shutdown was required and/or the assignment of shutdown responsibility to qualified operators, in violation of 40 C.F.R. § 68.69(a). (AOC 13)
- c) The Company's SOPs, including SOP 009, did not adequately identify operating limits determined to be safe for the process, consequences of deviating from those limits, or the steps that employees are required to take if a deviation from those safe operating limits is observed, in violation of 40 C.F.R. § 68.69(a)(2)(i) and (ii). (AOC 14)
- d) The Company's SOP for "Draining Oil Out of a Pressure Vessel Drop Leg" did not clearly state which personal protective equipment (PPE) must be worn by employees executing the procedure, and it also did not describe the precautions necessary to prevent exposure, in violation of 40 C.F.R. § 68.69(a)(3)(ii). (AOC 15)
- e) The Company's Line Break procedure had the following deficiencies, in violation of 40 C.F.R. § 68.69(a)(3)(ii):
 - i) The Company's reference to the Line Break procedure in other SOPs was confusing because it stated multiple times that it "will be developed as a separate document," indicating that the procedure

might not have been developed yet rather than referencing SOP 011 where it was located (AOC 16.a);

- ii) The Line Break procedure did not specify PPE that should be used (e.g., use of suitable gloves, chemical proof apron, full-face respirator, ammonia meter, etc.) in the event of a line break, which is often different than the PPE that should be used during normal operating conditions (AOC 16.b); and
- iii) The Company's Line Break procedure did not document Safeguard #28 from the 2018 PHA, which stated, "Delta Packing refrigeration personnel are not allowed to engage in line-break activities." (AOC 16.c).

3) Mechanical Integrity.

- f) The Company did not begin annual vibrational analyses for its compressors until 2021, in violation of 40 C.F.R. § 68.73(b). (AOC 17)
- g) The Company used inspection worksheets with listed inspection and testing frequencies but did not include inspection and testing for the following equipment, in violation of 40 C.F.R. § 68.73(d)(2):
 - i) Manual override, testing to verify functionality, and loss of power of the emergency ventilation¹¹ (AOC 18.a);
 - ii) Power loss for ammonia detection and alarm systems¹² (AOC 18.b); and
 - iii) Eyewash stations and safety showers¹³ (AOC 18.c).
- h) The Company's 2019 non-destructive evaluation ultrasonic thickness testing results did not include a calculation of the corrosion rate and the remaining life for each vessel, the next inspection interval, and the recommendations based on the completed evaluation, in violation of 40 C.F.R. § 68.73(d)(2).¹⁴ (AOC 18.d)
- i) The Company did not document that the frequency of inspections and tests of process equipment were consistent with applicable manufacturers' recommendations and good engineering practices¹⁵, in violation of 40 C.F.R. § 68.73(d)(3). (AOCs 19.b.i-19.b.iv)
- j) The Company failed to correct the following equipment deficiencies, in violation of 40 C.F.R. § 68.73(e):
 - i) The Facility was operating ten pressure vessels that lacked sufficient safety documentation, including material data sheets, Maximum Allowable Working Pressure ("MAWP"), and legible nameplates with National Board Numbers (AOCs 20.a.i-20.a.iii);
 - ii) The Company did not address severe corrosion in Suction Accumulator 1-1 (AOC 20.b);
 - iii) The Company did not set its emergency ventilation in the North Refrigeration System to activate at an ammonia concentration of 25 ppm, according to a September 2021 test that documented a set point of 35 ppm (AOC 20.c);
 - iv) The Company did not replace an unsuitable pressure relief valve on a liquid transfer vessel that was first identified in the 2018 PHA until December 21, 2020 (AOC 20.e);

¹¹ Table 12.1 of IIAR 6-2019 requires the Facility to "[f]unctionally test manual override of emergency ventilation" annually; "[e]xpose ammonia detector(s) to calibration test gas and verify function of ventilation equipment" annually; and "[f]unctionally test notification to a monitored location for the loss of power to or failure of the emergency ventilation system" annually.

¹² Table 12.3 of IIAR 6-2019 requires the Facility to "[f]unctionally test the power failure trouble signal to a monitored location for a power loss to the ammonia detection system" annually.

¹³ Table 12.5 of IIAR 6-2019 requires the Facility to weekly "[e]nsure that each unit's water supply valve turns from "off" to "On" in one (1) second or less" weekly, and "[e]nsure that each unit's water supply remains at full flow without the use of the user's hands" annually.

¹⁴ American Petroleum Institute (API) 510-2014, Section 5.6.2.1 states that for condition monitoring locations ("CML"s) (i.e., ultrasonic thickness test locations): "[c]orrosion rates, the remaining life, and next inspection intervals should be calculated to determine the limiting component. CMLs with the highest corrosion rates and least remaining life shall be part of those included in next planned examinations.

¹⁵ ANSI/IIAR 6-2019 Table 12.1 includes the following testing requirements: "Functionally test manual override of emergency ventilation"; "Expose ammonia detector(s) to calibration test gas and verify function of ventilation equipment"; "Test sail switches, air flow sensors, or other means to verify function of emergency exhaust equipment"; and "Test function of intake louvers".

- v) The Company's 5-year Mechanical Integrity Audit completed in August 2018 identified several concerns, including undersized relief valve termination piping, a fan with unknown ventilation design, and a non-functioning ventilation system in the North AMR, and it failed to address these concerns in a timely manner (AOCs 20.f.i-20.f.iii);
 - vi) The Company did not replace a pressure relief valve ("PRV") for the North Room 3 Accumulator within five years (the PRV was installed in December 2015 and was replaced in September 2021)¹⁶ (AOC 20.g); and
 - vii) Compressor 3 in the Southwest System had an illegible nameplate.¹⁷ (AOC 20.h)
- 8) **Emergency Response.** The Company did not document that it coordinated its emergency action plan with the local fire department in 2019 and did not submit its emergency procedures to CERS to coordinate with the Local Emergency Planning Committee ("LEPC") for 2017, 2018, or 2019, in violation of 40 C.F.R. § 68.93(a), (b), and (c). (AOC 23)

CAA, 40 C.F.R. § 68 - General Duty Clause

- 9) **General Duty Clause.** The Company reported 800 pounds of methyl bromide at the Facility in CERS in 2020. Methyl bromide is an Extremely Hazardous Substance. The Company's Hazard Assessment for methyl bromide at the Facility is inadequate because the recommendations for the scenarios are all the same and state "Contain, notify, restrict, replace" with no other explanation. The recommendations do not include any engineering controls or other safeguards to reduce the "probability" of an incident occurring. Additionally, the hazard assessment does not characterize an accidental release and specifically the potential effects of a release on the public and the environment. For these reasons, the Company failed to adequately identify hazards that may result from accidental releases in violation of the CAA section 112(r)(1). (AOC 27)

Before filing a Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing ("Complaint"), EPA is extending to the Company an opportunity to advise EPA of any other information that the Company believes should be considered before the filing of such a Complaint. Relevant information may include any evidence of reliance on compliance assistance, additional compliance tasks performed subsequent to the inspection, or financial factors bearing on the ability to pay a civil penalty. EPA has reviewed the documents included in the Company's previous transmittals. These documents do not need to be resubmitted.

Please note that, pursuant to regulations located at 40 C.F.R. Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of any submitted information as defined in 40 C.F.R. § 2.201(c). Asserting a business confidentiality claim does not relieve you from the obligation to respond fully to this letter. Failure to assert such a claim makes the submitted information subject to public disclosure upon request and without further notice to you, pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 et seq. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in the above-cited regulation. In addition, EPA has not waived any rights to take enforcement action for past or future violations.

Any penalty proposed for violation of the CAA and EPCRA will be calculated pursuant to EPA's June 2012 "Combined Enforcement Policy for Clean Air Act section 112(r)(1), the General Duty Clause, and Clean Air Act section 112(r)(7) and 40 C.F.R. Part 68, Chemical Accident Prevention Provisions"¹⁸ ("112(r) Penalty Policy") and

¹⁶ Section 13.1.1 of IIAR 6-2019 states, "[t]he service life of the PRV shall not exceed 5 years of service after it is installed on the system."

¹⁷ Section 8.4.2 of IIAR 2-2021 states, "[a] compressor without a nameplate per the requirements of Section 8.4.1 shall not be used unless the applicable compressor operating limitations have been verified through the identification of the manufacturer and the manufacturer's model number of the compressor from casting numbers or similar positive identification. Documentation of these operating limits shall be provided to the owner of the system."

¹⁸ www.epa.gov/sites/production/files/documents/112rcep062012.pdf

EPA's September 30, 1999 "Enforcement Response Policy for sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" ("EPCRA Penalty Policy"), respectively.¹⁹ These policies are subject to inflation adjustments pursuant to Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended per the Civil Monetary Inflation Adjustment Rule, and EPA guidance.²⁰

EPA may, as a matter of enforcement discretion, consider the Company's performance of a Supplemental Environmental Project ("SEP") as one factor in determining an appropriate settlement. EPA evaluates proposed projects under the framework established in the Supplemental Environmental Projects Policy 2015 Update.²¹ A SEP is an environmentally beneficial project or activity that is not required by law, but that a respondent agrees to undertake as part of the settlement of an enforcement action. SEPs secure environmental and/or public health benefits in addition to those achieved by compliance with applicable laws.

*Your response to this letter must be made by a letter, signed by a person or persons duly authorized to represent the Company. Please send any such response **by email** to Bridget Johnson, Life Scientist, johnson.bridget@epa.gov, and Ylan Nguyen, Assistant Regional Counsel, Office of Regional Counsel, nguyen.ylan@epa.gov. **Please provide such information so that it is received no later than thirty (30) calendar days after receipt of this letter.** EPA anticipates filing a Complaint in this matter within sixty (60) days after receipt of this letter unless the Company first advises EPA, with supporting information, of substantial reasons not to proceed as planned.*

Even if you are unaware of any mitigating or exculpatory factors, EPA encourages the Company to explore the possibility of settlement. If you are interested in commencing settlement discussions, please contact Bridget Johnson of my staff at (415) 972-3766 or johnson.bridget@epa.gov, or have your counsel contact Ylan Nguyen, Assistant Regional Counsel, at (415) 972-3875 or nguyen.ylan@epa.gov, to schedule a meeting or conference call. We thank you in advance for your cooperation.

Thank you for your prompt attention to this matter.

Sincerely,

LYDIA DORRANCE

Digitally signed by LYDIA
DORRANCE
Date: 2024.03.07 09:25:21 -08'00'

Lydia Dorrance, Acting Manager

Rick Sakow, Manager

Hazardous Waste and Chemicals Section

Enforcement and Compliance Assurance Division

cc (via email):

Haza Saeed, San Joaquin County Environmental Health Department, hsaeed@sjgov.org

John Alaniz, San Joaquin County Environmental Health Department, alaniz1@sjgov.org

Elizabeth Brega, California Environmental Protection Agency, elizabeth.brega@calepa.ca.gov

¹⁹ www.epa.gov/sites/production/files/documents/epcra304.pdf

²⁰ Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2024), <https://www.epa.gov/system/files/documents/2024-01/amendmentstotheepacivilpenaltypolicyinflation011524.pdf>.

²¹ <https://www.epa.gov/sites/default/files/2015-04/documents/sepupdatedpolicy15.pdf>