



REGION 9

SAN FRANCISCO, CA 94105

Via Email: sarah.kaiser@kraftheinz.com

In Reply Refer to:

Kraft Heinz San Diego

Sarah Kaiser
Operational Risk Manager
Kraft Heinz San Diego
7878 Airway Road
San Diego, California 92154

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

Dear Sarah Kaiser:

As you know, representatives from the U.S. Environmental Protection Agency, Region 9 ("EPA") conducted an inspection on June 25, 2024, of the Kraft Heinz San Diego facility ("Facility"), owned by Kraft Heinz Foods Company (the "Company") located at 7878 Airway Road, San Diego, California. The purpose of the inspection was to determine compliance with 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; and the Risk Management Program ("RMP") of section 112(r)(7), of the Clean Air Act ("CAA"), 42 U.S.C. § 7412.

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 the EPCRA, 42 U.S.C. § 11045(c) and (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 section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and their respective implementing regulations.

Specifically, EPA is considering the allegations described below against the Company.

EPCRA, 40 C.F.R. part 370

- 1) **EPCRA section 312, Tier II Reporting.** The Tier II inventory was submitted late in 2023, in violation of 40 C.F.R. § 370.45(a). (Area of Concern (AOC) 2 in the EPA Inspection Report sent to the Facility on September 4, 2024)

CAA, 40 C.F.R. § 68 – Risk Management Program (“RMP”)

- 2) **Management.** The Facility did not provide an organizational chart that showed the names or positions of staff with responsibilities in the Risk Management Program and the lines of authority, in violation of 40 C.F.R. § 68.15(c). (AOC 3)
- 3) **Process Safety Information (PSI).** EPA identified multiple deficiencies in the Company’s PSI for the Facility:
 - a) The Facility did not maintain an accurate maximum intended inventory of anhydrous ammonia, in violation of 40 C.F.R. § 68.65(c)(1)(iii). (Adapted from AOC 1)
 - b) The exhaust fans from Engine Rooms vented in the direction of passersby¹, in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 4)
 - c) The nameplate of the high pressure receiver was blocked and only partially visible², in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 5)
 - d) The two engine rooms were not tightly sealed³, in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 6)

¹ The International Institute of All-Natural Refrigeration (IIAR) 2-2021 Section 6.14.2 states, “General Ventilation and Air Conditioning Equipment. Machinery room ventilation fans and air conditioning equipment that are not part of an emergency ventilation system shall be automatically de-energized and associated fan dampers, where provided, shall automatically close upon detection of ammonia in accordance with Section 6.13.2.3. **EXCEPTION:** Exhaust fans that are not designated as emergency exhaust fans are permitted to remain energized upon detection of ammonia in accordance with Section 6.13.2.3. Such exhaust fans shall be in accordance with Sections 6.14.3.2 through 6.14.3.6.” Section 6.14.3.3 states, “Machinery room exhaust shall be to the outdoors not less than 20 ft (6 m) from a property line or openings into buildings. **EXCEPTION:** Machinery room exhaust is permitted to be installed within 20 ft. (6m) of tight-fitting machinery room doors and roof hatches that are not designated for emergency egress and that have signage indicating they must be closed after passage.”

² Section 5.14.5.1 of IIAR 2-2021 states, “Equipment shall have a nameplate with minimum data that describes or defines the manufacturer’s information and design limits and purpose as specified in Chapter 8 through Chapter 16.” Also, IIAR 6-2019 Safety Inspection Checklist for Pressure Vessels requires facilities to confirm: “a) Equipment is labeled and the nameplate and ASME # are legible and secure per ANSI/IIAR 2?”

³ IIAR 2-2021 Section 6.2.1 states, “Separation and Fire Protection. The machinery room shall be separated from the remainder of the building by tight-fitting construction...” Section 6.10.2 states, “Machinery room doors shall be self-closing and tight-fitting.” Section 7.3.9.2 of IIAR 9-2020 also states, “[m]achinery room doors shall be self-closing and tight fitting.”

- e) Pipes were not adequately supported⁴, in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 7)
- f) The signage for the switches outside of Engine Room #1 did not clearly state the switches' functions⁵, in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 8)
- g) Ammonia alarm settings were inconsistent⁶, in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 9)
- h) There was inadequate protection of evaporators and their associated piping against forklift strikes⁷, in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 11)
- i) There was no confined space signage outside the spiral freezers⁸, in violation of 40 C.F.R. § 68.65(d)(2) and (3). (AOC 12)

4) **Process Hazard Analysis.** The Facility did not properly track recommendations from its 2020 process hazard analysis (new AOC).

⁴ IIAR 2-2021 Section 6.2.2 states, "Where piping is supported by the floor, roof, or ceiling structure, the structure or foundation supporting the piping shall be designed to support the expected static and dynamic loads, including seismic loads. Foundations and supports shall be in accordance with the building code."

⁵ IIAR 9-2020 Section 7.3.11.1 states, "Emergency Stop Switch. A clearly identified emergency shut-off switch with a tamper-resistant cover shall be located outside and adjacent to the designated principal machinery room door. The switch shall provide off-only control of refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves located in the machinery room. The function of the switch shall be clearly marked by signage near the controls." Also, Section 7.3.11.2 states, "Emergency Ventilation Control Switch. A clearly identified control switch for emergency ventilation with a tamper-resistant cover shall be located outside the machinery room and adjacent to the designated principal machinery room door unless the continuous ventilation operates at a rate at or above that required for emergency ventilation. The switch shall provide "ON/AUTO" override capability for emergency ventilation. The function of the switch shall be clearly marked by signage near the controls."

⁶ According to IIAR 2-2021 Section 6.13.2.2, "Detection of ammonia concentrations equal to or exceeding 25 ppm shall activate visual indicators, audible alarms, and provide a notice to a monitored location. The visual indicator and audible alarm shall be permitted to reset automatically if the ammonia concentration drops below 25 ppm." Section 6.13.2.3 states, "Detection of ammonia concentrations equal to or exceeding 150 ppm (1/2 IDLH) shall activate visual indicators and an audible alarm and shall activate emergency ventilation, where such is required in accordance with Section 6.14.7. Once activated, emergency ventilation, and visual indicators shall continue to operate until manually reset by a switch located in the machinery room. Audible alarms shall continue to operate until they are manually reset by a switch located in the machinery room or alternatively in an area remote from the machinery room." Sections 17.7.2 and 17.7.2 for Level 1 and 3 ammonia detection and alarms states, "The detector shall activate an alarm that reports to a monitored location so that corrective action is taken at an indicated concentration of 25 ppm or higher."

⁷ IIAR 9-2020 Section 7.2.12.1 states, "Protection from Physical Damage. Where ammonia-containing equipment is installed in a location subject to physical damage, guarding or barricading shall be provided."

⁸ Part 1910.146(c)(1) of Occupational Safety and Health Administration's Occupational Safety and Health Standards states, "The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces." Part 1910.146(c)(2) 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." Part 1910.146(b) also defines confined space and permit-required confined space.

- 5) **Operating Procedures.** EPA identified multiple deficiencies in the Company's operating procedures for the Facility:
- a) There were no RMP-related operating procedures written in Spanish, despite staff mentioning that Spanish appeared to be the dominant language for at least one ammonia refrigeration operator, in violation of 40 C.F.R. § 68.69(a). (AOC 13)
 - b) An operating procedure stored in the Control Room office was not the most recent version, in violation of 40 C.F.R. § 68.69(b). (AOC 14)
- 6) **Training.** EPA identified multiple deficiencies in the Company's training program for the Facility:
- a) It was unclear if ammonia refrigeration system operators completed initial and refresher training, and it was unclear if all employees received ammonia safety awareness training, in violation of 40 C.F.R. § 68.71(a)(1)-(2) and (b). (AOC 15)
 - b) Spanish appeared to be the dominant language for at least one ammonia refrigeration operator, but operator training materials were not provided in Spanish, in violation of 40 C.F.R. § 68.71(b). (AOC 16)
- 7) **Mechanical Integrity.** EPA identified multiple deficiencies in the Company's mechanical integrity program for the Facility:
- a) Ammonia sensors were overdue for calibration, in violation of 40 C.F.R. § 68.73(d)(1)-(3).⁹ (AOC 17)
 - b) There were missing records of daily round logs, in violation of 40 C.F.R. § 68.73(d)(1)-(4).¹⁰ (AOC 18)
 - c) There were sticky notes on compressors #2-4 in Engine Room 1, in violation of 40 C.F.R. § 68.73(d)(4). (AOC 19)
 - d) Several pressure relief valves (PRVs) lacked installation/ replacement date tags, and several were overdue for replacement, in violation of 40 C.F.R. § 68.73(e).¹¹ (AOC 20)
 - e) There was ice accumulation and corrosion on ammonia equipment in various locations of the Facility, in violation of 40 C.F.R. § 68.73(e).¹² (AOC 21)

⁹ IIAR 6-2019 Table 12.3 indicates that calibration of all ammonia sensors should be done semiannually. Also, Table 5.2 defines semiannual as "occurring twice per 12 consecutive months. The minimum period between ITM tasks is 4 months. The maximum is 8 months."

¹⁰ IIAR 6-2019 requires daily inspections for certain ammonia refrigeration system equipment. For example, Table 6.1 requires daily inspections of various features of compressors, and Table 7.1.h requires daily inspections for visually inspecting pump assemblies for oil leaks and connective tubing for integrity.

¹¹ IIAR 6-2019 Section 13.1.1 - "All pressure relief valves (PRVs) that relieve to atmosphere shall be recertified or replaced on the 5-year time-based frequency. 13.1.1.1 The service life of the PRV shall not exceed 5 years of service after it is installed on the system." Also, Table 5.2 defines five years as "occurring once every 60 months. The minimum period between ITM tasks is 54 months. The maximum is 66 months."

¹² IIAR 2-2021 Section 13.4.2 states, "Refrigerant piping shall be isolated and supported to prevent damage from vibration, stress, corrosion, and physical impact." IIAR 9-2020 Section 7.2.6.1 states, "Condensation and Frost Control. Piping and equipment surfaces not intended for heat exchange shall be insulated, treated, or otherwise protected to mitigate condensation and excessive frost buildup where the surface temperature is below the dew point of the surrounding air during normal operation and in an area where condensation and frost could develop and become a hazard to occupants or cause damage to the structure, electrical equipment, or refrigeration system." IIAR 6-2019 Section 11.1.1 states, "Where pitting, surface damage, general corrosion, or a combination

- f) Concerns identified by a contractor with several ammonia sensors were not addressed in a timely manner, in violation of 40 C.F.R. § 68.73(e). (AOC 23)
 - g) The Facility did not address recommendations from the Mechanical Integrity Audit in a timely manner, in violation of C.F.R. § 68, in violation of 40 C.F.R. § 68.73(e). (AOC 24)
 - h) The Facility did not address corrosion and icing concerns in a timely manner, in violation of 40 C.F.R. § 68.73(e). (AOC 25)
 - i) Dirt accumulation on the air louvers may impact the ventilation rate in Engine Room #1, in violation of 40 C.F.R. § 68.73(e). (AOC 26)
 - j) There did not appear to be appropriate follow-up to address an issue with Rice Freezer 1, in violation of 40 C.F.R. § 68.73(e). (AOC 27)
- 8) **Management of Change.** The Facility did not sign off on Management of Change (MOC) forms, and the MOC log was unclear, in violation of 40 C.F.R. § 68.75(b)(4) and (5). (AOC 28)
- 9) **Compliance Audits.** The Facility did not promptly address compliance audit findings, in violation of 40 C.F.R. § 68.79(d). Action items from the 2023 compliance audit were not completed by their due dates. There were also several findings that were identified in a 2017 audit and were repeated in 2020 and 2023 audits. (New AOC)
- 10) **Incident Investigation.** The Facility did not adequately assign and resolve incident report findings and recommendations following releases of RMP substances, in violation of 40 C.F.R. § 68.81(e). (AOC 29)
- 11) **Contractors.** The Facility's contractor policy does not adequately explain the contractor evaluation rating system, in violation of 40 C.F.R. § 68.87(b)(1) and (5). (AOC 32)
- 12) **Emergency Response Coordination Activities.** The Facility did not coordinate RMP activities with the fire department in 2022, in violation of 40 C.F.R. § 68.93(a). (AOC 33)
- 13) **Emergency Response Applicability.** The Facility's procedures about notifying the fire department of releases and responding to releases were unclear, and the Facility's Emergency Action Plan contains contradictory information and elements inappropriate for a non-responding facility, in violation of 40 C.F.R. § 68.90(b)(3). (AOC 34)
- 14) **Updates.** The Facility did not submit its five-year RMP resubmission on time, in violation of 40 C.F.R. § 68.190(b)(1). (AOC 35)

thereof, is visually observed on a metal surface of the piping, deficient areas shall be further evaluated per Sections 11.1.1.1 - 11.1.1.3." IIAR 6-2019 Section 5.6.8 states, "Equipment and piping shall be kept free from excessive ice build-up." IIAR 6-2019 Table 11.1.c regarding inspecting the state of equipment states, "Visually inspect for damage or moisture incursion insulation (i.e., dampness, condensation, frost, ice buildup)."

- 15) **Required Corrections.** The Facility did not correct its emergency contact information in the RMP within one month after the emergency contact changed at the facility, in violation of 40 C.F.R. § 68.195. (AOC 36)

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

- 16) **General Duty Clause.** Under the Clean Air Act Section 112(r)(1), the General Duty Clause states: “The owners and operators of stationary sources producing, processing, handling or storing such substances [i.e., a chemical in 40 C.F.R. part 68 or any other extremely hazardous substance] have a general duty [in the same manner and to the same extent as the general duty clause in the Occupational Safety and Health Act (OSHA)] to identify hazards which may result from (such) releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.” EPA identified multiple deficiencies associated with the General Duty Clause at the Facility:
- a) **Identify Hazards.** The Facility did not provide a hazard analysis for carbon dioxide. (AOC 37)
 - b) **Design and Maintain a Safe Facility.**
 - i) There was a damaged vapor barrier on carbon dioxide piping in the attic.¹³ (AOC 39)
 - ii) Eyewash/shower stations did not have tags that document recent inspections, and the Facility did not provide documentation showing that the eyewash/shower stations have been inspected in accordance with industry standards.¹⁴ (AOC 40)
 - c) **Minimize Consequences.** There were no carbon dioxide sensors in the attic.¹⁵ (AOC 38)

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

¹³ Section 53.3.1.1 of National Fire Protection Association (NFPA) 1-2018 states, that “Refrigeration systems shall be operated and maintained in a safe and operable condition, free from accumulation of oil, dirt, waste, excessive corrosion, other debris or leaks, and in accordance with ASHRAE 15, Safety Standards for Refrigeration Systems, and the mechanical code.”

¹⁴ IIAR 6-2019 Table 12.5 includes requirements for weekly and annual inspections, testing, and maintenance of emergency showers and eyewash stations.

¹⁵ According to the Compressed Gas Association (CGA) P-76 2018, “Hazards of Oxygen Deficient Atmospheres”, Edition 1, “Oxygen analyzers and detectors are critical equipment and shall be maintained and calibrated in accordance with manufacturer’s instructions. It is also important to ensure that fixed and portable analyzers and detectors are positioned to measure a representative sample of the atmosphere...Periodically confirm that the oxygen analyzer/detector is operating in accordance with the manufacturer’s instructions. All oxygen analyzers and detectors should be fitted with an alarm device to indicate possible defects, for example, low battery. Testing the oxygen levels at various heights is required since some gases can accumulate at different levels due to their density. This testing shall also be performed at various locations in the area.” As stated in Section 2, “Although carbon dioxide is not an inert gas, most of the information in this publication is applicable as it too will cause oxygen depletion.” Also, CGA G-6 (2003) states, “Indoor installations are discouraged... Monitoring carbon dioxide concentrations is recommended for all indoor installations.”

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. EPA has authority to use the information requested herein in an administrative, civil, or criminal action. 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 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"¹⁶ ("112(r) Penalty Policy") and 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").¹⁷ These policies are subject to inflation adjustments under the Civil Monetary Inflation Adjustment Rule, as well as other potential changes in EPA guidance.¹⁸

*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, johnson.bridget@epa.gov and Rebecca Ringler, Regional Counsel, Office of Regional Counsel, ringler.rebecca@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 Rebecca Ringler, Regional Counsel, at (415) 972-3401 or ringler.rebecca@epa.gov, to schedule a meeting or conference call. We thank you in advance for your cooperation.

¹⁶ www.epa.gov/sites/production/files/documents/112rcep062012.pdf

¹⁷ www.epa.gov/sites/production/files/documents/epcra304.pdf

¹⁸ Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule, <https://www.epa.gov/sites/production/files/2020-01/documents/2020penaltyinflationruleadjustments.pdf>; see also Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule, www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf

Thank you for your prompt attention to this matter.

Sincerely,

**RICHARD
SAKOW**

Digitally signed by RICHARD
SAKOW
Date: 2025.06.26 09:55:40
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Rick Sakow, Manager
Hazardous Waste and Chemicals Section
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cc (via email):

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