



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

September 29, 2022 @ 7:46am

USEPA – Region II  
Regional Hearing Clerk

### EXPEDITED SETTLEMENT AGREEMENT

**DOCKET NO:** CAA-02-2022-1214  
**This ESA is issued to:** Kraft Heinz – Avon  
Kraft Heinz Company  
140 Spring Street  
Avon, New York 14414

This Expedited Settlement Agreement (“ESA”) is being entered into by the U.S. Environmental Protection Agency, Region 2 (“EPA”), by its duly delegated official, and by Kraft Heinz – Avon (“Respondent”) pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (the “Act”), 42 U.S.C. §7413(a)(3) and (d), and 40 C.F.R. §22.13(b). EPA and the United States Department of Justice have jointly determined that EPA may pursue this type of case as an administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. §7413(d)(1).

#### ALLEGED VIOLATIONS

On April 8, 2021 and May 6, 2021, EPA conducted offsite compliance monitoring activities at Respondent’s facility, located 140 Spring Street in Avon, New York to determine compliance with the Act’s Risk Management Program regulations, promulgated at 40 C.F.R. Part 68 pursuant to Section 112(r) of the Act. Pursuant to the offsite compliance monitoring activities, EPA has determined that Respondent violated the RMP regulations described in the attached Risk Management Program Findings (“Findings”). EPA described the violations in a letter sent to Kraft Heinz – Avon by email dated June 2, 2022.

#### SETTLEMENT

In consideration of the penalty assessment factors set forth in Section 113(e) of the Act, 42 U.S.C. §7413(e), and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the Findings for the total penalty amount of **four thousand six hundred dollars (\$4,600)**.

For purposes of this proceeding, Respondent agrees to the following: it waives any objections that it may have regarding jurisdiction; it neither admits nor denies the specific factual allegations contained in the Findings; it consents to the assessment of the penalty as stated herein; and it waives its rights to contest the allegations contained herein, or to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C. §7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations described in the Findings.

After signature, a scanned copy of the signed ESA must be sent by email to Francesco Maimone at the following email address: Maimone.Francesco@epa.gov. The original, signed ESA must be sent by certified mail to:

Francesco Maimone, Physical Scientist  
Air Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007

The ESA, when executed by both parties and the Regional Judicial Officer and filed with the Regional Hearing Clerk, is binding on EPA and Respondent. Upon such filing and Respondent's timely payment of the penalty, EPA agrees it will not take any further civil penalty action against Respondent for the alleged violations of the Act referenced herein.

Nothing in this ESA shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This ESA does not relieve, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.

If the signed ESA is not returned to EPA Region 2 as instructed herein by Respondent within forty (45) days of the date of Respondent's receipt of it (or within ninety (90) days if an extension is requested and granted), the proposed ESA is withdrawn, without any prejudice regarding EPA's ability to file an enforcement action for the alleged violations identified herein.

Respondent agrees to submit a payment in full of **four thousand six hundred dollars \$4,600** within thirty (30) days of the filing of a fully executed copy of this ESA with the Regional Hearing Clerk.

#### PAYMENT INSTRUCTIONS

EPA requests that payments be made through the <http://Pay.gov> website using the following link: <https://www.pay.gov/public/form/start/11751879>.

Please ensure that the following information is included on the payment form:

- i. Amount of payment: \$4,600
- ii. Name of Respondent: Kraft Heinz – Avon
- iii. Docket No.: CAA-02-2022-1214

To ensure your payment is recorded properly, you are required to notify EPA contemporaneously with the payment. Please send an email message or letter that references the date of the payment, the payment amount, the docket number, and your name and address to the following: Francesco Maimone, at his email or address, shown above, and to:

Jean Regna  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 17th Floor  
New York, NY 10007-1866  
email: Regna.Jean@epa.gov

Milton Wise  
U.S. Environmental Protection Agency  
26 W. Martin Luther King Drive  
Attention: FINANCE  
MS: NWD  
Cincinnati, OH 45268  
emails: Wise.Milton@epa.gov and cinwd\_acctsreceivable@epa.gov

and

Karen Maples, Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
email: Maples.Karen@epa.gov

Failure to pay the penalty when due may subject Respondent to a civil action pursuant to Section 113(d) (5) of the CAA, 42 U.S.C. §7413(d)(5), to collect the penalty, including accrued interest, attorney's fees, collection costs, and nonpayment penalties.

For purposes of the requirements of 26 U.S.C. §162(f) of the Internal Revenue Code, the cost of actions taken to come into compliance with the violations identified herein are "restitution or paid to come into compliance with law."

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature: Michael Tolleson

Date: 9/26/2022

Name (print): Michael Tolleson

Title (print): Plant Manager

FOR COMPLAINANT:

\_\_\_\_\_  
*for* Dore F. LaPosta, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 2

Date: \_\_\_\_\_

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

\_\_\_\_\_  
Helen Ferrara  
Regional Judicial Officer  
U.S. EPA, Region 2

Date: \_\_\_\_\_

Risk Management Program Findings  
CAA §112(r) Violations

Kraft Heinz – Avon  
Kraft Heinz Company  
140 Spring Street  
Avon, New York 14414

**COMPLETE THIS FORM AND RETURN IT WITH THE ESA**

**VIOLATION**

**PENALTY AMOUNT**

Subpart D Prevention Program

*Process Hazard Analysis [68.67(e)]*

\$1,500

The owner or operator failed to implement a system to track and document the resolution of Process Hazard Analysis findings and recommendations.

*Mechanical Integrity [68.73(d)(3)]*

\$900

The owner or operator failed to ensure that the frequency of inspections and tests are consistent with good engineering practices.

*Mechanical Integrity [68.73(e)]*

\$900

The owner or operator failed to correct deficiencies in equipment before further use or in a safe and timely manner.

*Compliance Audits [68.79(d)]*

\$300

The owner or operator failed to promptly determine and document responses to findings of the audit and document deficiencies have been corrected.

Subpart G Risk Management Plan

*Required Corrections [68.195(b)]*

\$1,000

The owner or operator failed to submit corrected emergency contact information within thirty (30) days of the change.

**Total Penalty**

**\$4,600**

The approximate cost to correct the above items: \$ Administrative only

Compliance staff name: Michael Tolleson

Signed: 

Date: 9/26/2022