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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
Dallas, Texas

REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of

Kagome Foods, Inc.,

Respondent

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§

Docket No. CAA-06-2021-3334

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**ADMINISTRATIVE ORDER ON CONSENT**

**Preliminary Statement**

1. The U.S. Environmental Protection Agency, Region 6 (EPA), and Kagome Foods, Inc. (Respondent) have agreed to voluntarily enter into this Administrative Order on Consent (Order) for the purposes of carrying out the goals of Section 112(r) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

**Jurisdiction**

2. This Order is entered into pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of Subchapter I of the CAA, which includes, among other things, the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder, the Administrator may issue an order requiring compliance with such requirement or prohibition.

**Parties**

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Kagome Foods, Inc., a corporation incorporated in the state of Arkansas, and authorized to conduct business in the state of Arkansas.

**Statutory and Regulatory Background**

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), mandates that the Administrator establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, EPA promulgated a final rule

known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the chemical accident prevention provisions apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the Occupational Safety and Health Administration process safety management standard, 29 C.F.R. 1910.119.

#### **Definitions**

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

14. The regulation at 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulation at 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

17. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

**EPA Findings of Fact and Conclusions of Law**

18. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
19. Respondent is the owner and operator of the facility located at: 710 North Pearl Street, Osceola, Arkansas 72370 (the Facility).
20. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.
21. The Respondent has a refrigeration process at the Facility, meeting the definition of “process” and “covered process” as defined by 40 C.F.R. § 68.3.
22. On April 18, 2020, there was an incident at the Facility that resulted in an accidental release (“the Incident”).
23. On May 14, 2020 and May 19, 2020 respectively, the EPA requested, and Respondent provided documentation and information concerning the Incident and Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.
24. On January 7, 2021, the EPA sent Respondent a Notification of Potential Violations and Opportunity to Confer letter. On January 11, 2021, the EPA resumed discussions with Respondent as a result of the opportunity to confer and articulated the EPA’s position concerning Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.
25. Ammonia (anhydrous) is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for ammonia (anhydrous), as listed in 40 C.F.R. § 68.130 is 10,000 pounds.
26. Respondent has greater than a threshold quantity of ammonia (anhydrous), in a

process at the Facility.

27. From the time Respondent first had on-site greater than a threshold quantity of ammonia (anhydrous) in a process, Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

28. From the time Respondent first had on-site greater than a threshold quantity of ammonia (anhydrous) in a process, Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because, pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

#### **EPA Findings of Violation**

29. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

#### *Recordkeeping*

30. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.71(b), refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

31. The regulation at 40 C.F.R. § 68.200 requires the owner or operator of a



stationary source to maintain records supporting the implementation of 40 C.F.R. Part 68 at the stationary source for five years, unless otherwise provided in Subpart D of 40 C.F.R. Part 68.

32. At the time of the Incident, Respondent did not maintain sufficient records supporting the implementation of refresher training for each employee at the facility involved in the ammonia process for the past five years.

33. Respondent's failure to maintain records supporting the implementation of refresher training as required by 40 C.F.R. § 68.200 is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

*Training – Refresher Training*

34. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.71(b), refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

35. At the time of the Incident, Respondent had not provided refresher training to an employee involved the ammonia process for a greater than three-year period.

36. Respondent's failure to provide refresher training for a greater than three-year period pursuant to 40 C.F.R. § 68.71(b), as required by 40 C.F.R. § 68.12(d)(3) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

*Training – Means Used to Verify Training*

37. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements

of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.71(c), the owner or operator shall prepare a record which contains the identity of the employees involved in operating a covered process, the date of training, and the means used to verify that each employee understood the training.

38. At the time of the Incident, Respondent had not prepared records which contain the means used to verify that the employees understood the training.

39. Respondent's failure to prepare records which contain the means used to verify that the employees understood the training pursuant to 40 C.F.R. § 68.71(c), as required by 68.12(d)(3) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

*Process Hazard Analysis – Update and Revalidate*

40. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(f), at least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of 40 C.F.R. § 68.67, to assure that the process hazard analysis is consistent with the current process.

41. At the time of the Incident, Respondent failed to update and revalidate the process hazard analysis (PHA) at least every five years after the completion of the initial PHA.

42. Respondent's failure to update and revalidate the PHA pursuant to 40 C.F.R. § 68.67(f), as required by 68.12(d)(3) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

**Order for Compliance**

43. Based on the EPA Findings of Fact and Conclusions of Law and the EPA



Findings of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, Respondent is hereby ORDERED and agrees to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

44. The EPA and Respondent agree that Respondent shall, as expeditiously as possible, but in no event later than ninety (90) days from the effective date of this Order, complete the following actions (Compliance Actions):

- a. In accordance with 40 C.F.R. § 68.200, Respondent shall prepare records supporting the implementation of 40 C.F.R. § 68.71(b) and ensure that records supporting the implementation of 40 C.F.R. § 68.71(b) are maintained for five years. These records shall demonstrate that refresher training has been provided at least every three years, and more often if necessary, to each employee involved in the ammonia process to assure that the employee understands and adheres to the current operating procedures of the process.
- b. Respondent shall ensure that all current employees involved in the ammonia process have completed a refresher training course in accordance with 40 C.F.R. § 68.71(b).
- c. In accordance with 40 C.F.R. § 68.71(c), Respondent shall prepare records which contain the identity of the current employees involved in the ammonia process, the dates of each such employee's refresher training as required by the preceding subparagraph (a), and the means used to verify that the employees understood the training.

**Submissions**

45. Respondent must provide documentation of completion of the compliance actions described above to the EPA within one hundred twenty (120) days of the effective date of this Order. All documentation shall be submitted as set forth in this sub-section.

46. All submissions to EPA required by this Order shall contain the following certification signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

47. All submissions to EPA required by this Order shall be sent by electronic mail to:

Charese Simpson  
Enforcement and Compliance Assurance Division  
Air Enforcement Branch  
U.S. Environmental Protection Agency, Region 6  
1201 Elm Street, Suite 500 (ECDAC)  
Dallas, Texas 75270-2101  
simpson.charese@epa.gov

48. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified and determined to be confidential business information pursuant 40 C.F.R. Part 2, Subpart B.

**Other Terms and Conditions**

49. By entering into this Order, Respondent: (a) consents to and agrees to not contest the EPA's authority or jurisdiction to issue or enforce this Order; and (b) agrees to undertake all actions required by this Order.

50. Respondent neither admits nor denies the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation.

51. Respondent and the EPA agree to bear their respective costs and attorney's fees. Respondent waives its right to seek reimbursement of their costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated thereunder.

**General Provisions**

52. Respondent waives any and all remedies, claims for relief and otherwise available rights to jurisdictional or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

53. Any violation of this Order may result in an additional enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator to:

- a. issue an administrative penalty order under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), assessing a civil penalty not to exceed \$48,762 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- b. bring a civil judicial enforcement action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$102,638 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, or both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); or
- c. request the Attorney General to commence a criminal action pursuant to Section

113(c) of the CAA, 42 U.S.C. § 7413(c).

54. This Order does not resolve any civil or criminal claims for violations alleged in this Order. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude EPA from assessing penalties, obtaining injunctive relief, or taking any other action authorized under the CAA, or other applicable federal laws or regulation. This Order does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

55. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

56. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect the Facility, and/or to request additional information from Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

57. By signing this Order, the undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order, and to execute and legally bind Respondent to this Order.

58. The provisions of this Order shall apply and be binding upon Respondent and its agents, officers, directors, employees, trustees, authorized representatives, successors, and assigns. Respondent shall ensure that any agents, officers, directors, employees, contractors, consultants, firms or other persons or entities acting under or for Respondent with respect to matters included herein comply with the terms of this Order. From the effective date until termination of this Order, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion or interest in

the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

59. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), this Consent Order shall be effective when fully executed, shall not exceed the earlier of one year or the date of a determination by the EPA that Respondent has achieved compliance with all terms of this Order, and shall be nonrenewable.

60. The EPA and Respondent may subsequently amend this Order, in writing, in accordance with the authority of the CAA. In the event of any amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

61. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

62. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Order by electronic mail to the following:

To EPA:

*goudeau.charlotte@epa.gov*

To Respondent:

*chad.welch@kagomeusa.com*

With copy to:

*rgeorge@fridayfirm.com*

**RESPONDENT:**  
**KAGOME FOODS, INC.**

Date: 6/24/2021

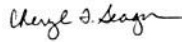
  
\_\_\_\_\_  
Signature

Jerry Wilson  
\_\_\_\_\_  
Name

VP of Operations  
\_\_\_\_\_  
Title



**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**



Digitally signed by CHERYL SEAGER  
DN: cn=U.S. Government,  
ou=Environmental Protection Agency,  
em=CHERYL\_SEAGER,  
c=US, serial=18000300, iso.1.1+6801003651793  
Date: 2021.06.25 14:40:50 -0500

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**Cheryl T. Seager  
Director  
Enforcement and  
Compliance Assurance Division  
U.S. EPA, Region 6**

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I sent a true and correct copy of the original

Administrative Order on Consent in the following manner to the email addresses:

Copy via Email to Complainant:  
goudeau.charlotte@epa.gov

Copy via Email to Respondent:  
chad.welch@kagomeusa.com

Copy via Email to:  
rgeorge@fridayfirm.com

Copy via Email to the EPA, Region 6, Regional Hearing Clerk:  
vaughn.lorena@epa.gov

Goudeau,  
Charlotte

Digitally signed by Goudeau,  
Charlotte  
DN: cn=Goudeau, Charlotte,  
email=Goudeau.Charlotte@epa.gov  
Date: 2021.06.25 15:51:49 -0500

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U.S. Environmental Protection Agency, Region 6