



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street San Francisco, CA 94105



EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA (112r)-09-2024-0015

This ESA is issued to: Kroger Company DBA Tolleson Dairy
500 South 99th Avenue
Tolleson, Arizona 85353

For: Violation of Section 112(r)(7) of the Clean Air Act.

At: Tolleson Dairy, 500 South 99th Avenue, Tolleson, Arizona

This Expedited Settlement Agreement (“ESA”) is being entered into by the United States Environmental Protection Agency (“EPA”), Region IX, by its duly delegated official, Amy C. Miller-Bowen, Director, Enforcement and Compliance Assurance Division, and Kroger Company DBA Tolleson Dairy (“Respondent”) pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 2 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

EPA alleges Respondent’s failure to:

Submit its Risk Management Plan report in a timely manner (50 days late), in accordance with Section 112(r)(7) of the Clean Air Act and 40 C.F.R. § 68.12(a).

SETTLEMENT

In consideration of Respondent’s size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of \$2,000.

This settlement is subject to the following terms and conditions:

- 1) The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, and consents to the assessment of the penalty as stated above. Respondent waives its rights 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 attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and has sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields). EPA encourages electronic payments, but **alternatively you may send a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of \$2,000 in payment of the full penalty amount to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment. Please send a copy of your payment confirmation and the signed ESA to Andrew Chew at chew.andrew@epa.gov. Additionally, please send the original signed ESA and a copy of the payment to:

Andrew Chew (ENF 2-2)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

- 2) Pursuant to CAA § 114(a)(1)(B) [42 U.S.C. § 7414(a)(1)(B)] **please provide documentation to USEPA Region IX describing how each area of identified non-compliance has been addressed**. Such documentation is due to EPA within 45 calendar days of your receipt of this letter. If you have corrected non-compliance and intend to resolve EPA's penalty action through the enclosed ESA, your signature affirms that the listed violations have been corrected. When you return the signed ESA to EPA, please provide documentation describing how each area of identified non-compliance was addressed along with an estimate of the cost you incurred fixing those deficits.

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed ESA with an attached copy of the payment is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of the proposed ESA and EPA has not granted an extension of its offer to settle, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT: Kroger Company DBA Tolleson Dairy

Signature: Grant Tabor Digitally signed by Grant Tabor
Date: 2023.11.29 15:40:53 -07'00' Date: 11/29/23

Name (print): Grant Tabor

Title (print): Senior Engineering Leader

FOR COMPLAINANT: Environmental Protection Agency

AMY MILLER-
BOWEN

Digitally signed by AMY
MILLER-BOWEN
Date: 2023.12.13
15:23:37 -08'00'

Date: _____

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. EPA Region IX

It is hereby ORDERED that this ESA be entered.

BEATRICE
WONG

Digitally signed by
BEATRICE WONG
Date: 2023.12.27
12:20:44 -08'00'

Date: _____

Beatrice Wong
Regional Judicial Officer
U.S. EPA Region IX

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Expedited Settlement Agreement in the matter of Kroger Company DBA Tolleson Dairy, Docket No. CAA(112r)-09-2024-0015 was filed with the Regional Hearing Clerk, Region IX, 75 Hawthorne Street, San Francisco, California, and that copies were sent by electronic mail to:

RESPONDENT:

Cel Arias
500 South 99th Avenue
Tolleson, Arizona 85353
Direct: (623) 936-2458
Cel.Arias@kroger.com

COMPLAINANT:

Andrew Helmlinger
Assistant Regional Counsel
Helmlinger.Andrew@epa.gov
U.S. EPA – Region IX
75 Hawthorne Street
San Francisco, CA 94105
Helmlinger.Andrew@epa.gov

PONLY TU Digitally signed by PONLY TU
Date: 2024.01.02 14:33:34
-08'00'

Ponly J. Tu
Regional Hearing Clerk
U.S. EPA – Region IX