

FILED

July 16, 2024

10:15 A.M. PST

U.S. EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:) DOCKET NO. CAA-10- 2024-0151
)
ZIRKLE FRUIT COMPANY) **EXPEDITED SETTLEMENT**
) **AGREEMENT**
Prosser, Washington)
)
Respondent.)
)

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited Settlement Agreement (“ESA”) is being entered into by the U.S. Environmental Protection Agency Region 10 (EPA), by its duly delegated official, and by Zirkle Fruit Company (“Respondent”) pursuant to Section 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b).

2. On November 27, 2022, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

3. EPA has determined that Respondent violated the Risk Management Program (“RMP”) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the CAA, as explained in the enclosed Expedited Settlement Alleged Violations and Final Adjusted Penalty Summary (“Summary”), which is hereby incorporated by reference.

4. In consideration of the penalty assessment factors set forth in CAA Section 113(e), 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 at the facility located at 101 Benitz Road in Prosser, Washington, as described in the enclosed Summary.

5. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$9,100 (the "Assessed Penalty").

6. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

7. Payments under this Expedited Settlement Agreement ("Agreement") and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

8. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 7, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Mhara Coffman
U.S. Environmental Protection Agency
Region 10
Coffman.mhara@epa.gov

9. In signing this Agreement, for purposes of this proceeding, Respondent:

(a) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged above; (b) neither admits nor denies the factual allegations contained in this Agreement; (c) consents to the assessment of this penalty and any conditions stated in this Agreement; and (d) waives any right to contest the allegations above, and its right to appeal the proposed attached Final Order.

10. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent:

(a) has corrected the alleged violations listed in the Summary; (b) agrees to pay the Assessed Penalty; (c) agrees to submit a true and accurate proof of payment of the Assessed Penalty as set forth in Paragraph 5.

11. Upon the effective date of this Agreement and subsequent payment of the Assessed Penalty as set forth in Paragraph 5 Respondent shall be resolved of liability for Federal civil penalties for the violation(s) and facts alleged herein.

12. The penalty, including interest, paid by Respondent pursuant to the requirements of this Agreement, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local income taxes.

13. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of CAA, any other federal statute or regulation, or this Agreement. Nothing in this Agreement or Final Order is intended to, nor shall be construed to operate in any way to resolve, any criminal liability of Respondent, and nothing in this Agreement or Final Order shall be construed to limit EPA's authority to take any action against

Respondent in response to conditions that may present an imminent and substantial endangerment.

14. Each party shall bear its own costs and attorney's fees, if any.

15. The Agreement authorized by EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

16. This Agreement is binding on the parties signing below. Upon signature of the parties and approval by the Regional Judicial Officer, this Agreement and Final Order shall be filed with the Regional Hearing Clerk. In accordance with 40 C.F.R. § 22.31(b), the Final Order is effective upon filing with the Regional Hearing Clerk.

17. The undersigned representative certifies that he/she is authorized to execute this Agreement and to legal bind Respondent.

IT IS SO AGREED,

Respondent Name (print): Scott C. Cluff

Respondent Title (print): CFO / Treasurer

Respondent Signature: Scott C. Cluff Date: 7-8-24

APPROVED BY EPA:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:)	DOCKET NO. CAA-10-2024-0151
)	
ZIRKLE FRUIT CO)	FINAL ORDER
)	
Prosser, Washington)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Expedited Settlement Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Expedited Settlement Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under CAA for the violations alleged in the Expedited Settlement Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of CAA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: ZIRKLE FRUIT CO, Docket No.: CAA-10-2024-0151**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Mhara Coffman
RMP/EPCRA Inspector and Case Officer
U.S. Environmental Protection Agency
Region 10
Coffman.mhara@epa.gov

Mr. Scott Blackledge
Safety Manager
Zirkle Fruit Co
scottb@zirklefruit.com

Regional Hearing Clerk
EPA Region 10