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OCT 23 2009

Environmental
Cleanup Office

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-10-2010-0013
This ESA is issued to: Johnny Appleseed / Zirkle Fruit Co.
 226 B&O Road
 Malott, Washington

This Expedited Settlement Agreement (ESA) is being entered into by the Complainant, U.S. Environmental Protection Agency Region 10 (EPA), and by Respondent pursuant to Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On February 23, 2009, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

EPA found that Respondent had violated regulations implementing Section 112(r) of the Act at 40 C.F.R. Part 68 by failing to comply with the regulations as noted on the enclosed Risk Management Plan Inspection Findings and Alleged Violations Summary, which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history, its good-faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations, described in the enclosed Summary for the total penalty amount of \$600.00.

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Summary, and consents to the assessment of the penalty as stated above.

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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 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 listed in the enclosed Summaries and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$600.00 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 docket number of the ESA must be included on the check. (The docket number is located at the top of this ESA.)

This original ESA and a copy of the check must be sent by certified mail to:

Attn: Javier Morales, 112(r) Enforcement Coordinator
Office of Environmental Cleanup
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116
Seattle, Washington 98101

Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Summary. EPA does not waive its right to any other enforcement action for any other violations of the Clean Air Act or any other statute.

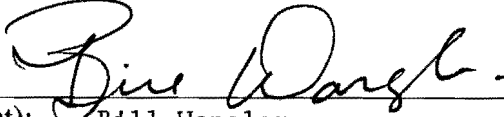
If the signed original ESA with an attached copy of the check is not returned to the EPA at the above address by Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the Summary.



This ESA is binding on the parties signing below.


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

FOR RESPONDENT:

Signature: 
 Name (print): Bill Wangler
 Title (print): CFO/Sec-Treasurer
 Cost to correct violation(s): \$600.00

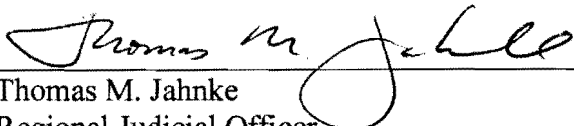
Date: 10/21/2009

FOR COMPLAINANT:


 Wally Moon
 Preparedness and Prevention Team Leader
 Emergency Response Unit
 Office of Environmental Cleanup

Date: 10/30/09

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


 Thomas M. Jahnke
 Regional Judicial Officer
 EPA Region 10

Date: 11/3/09

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in **In the Matter of: Johnny Appleseed/Zirkle Fruit Company, , DOCKET NO.: CAA-10-2010-0013** was filed with the Regional Hearing Clerk on November 3, 2009.


On November 3, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Bob Hartman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on November 3, 2009, to:

Bill Wangler
CFO/Sec-Treasurer
Johnny Appleseed/Zirkle Fruit Co.
226 B&O Road
Malott, Washington 98829

DATED this 3rd day of November 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10

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COPY

THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED ON THE BACK. THE FRONT OF THE DOCUMENT HAS A MICRO-PRINT BORDER. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.

310286 (04/08)



CASHIER'S CHECK

No. 3463500804

93-38
929

DATE: OCTOBER 21, 2009

PAY SIX HUNDRED DOLLARS AND 00 CENTS

\$ 600.00

TO THE
ORDER OF: TREASURER, UNITED STATES OF AMERICA

PURPOSE/REMITTER: ZIRKLE FRUIT COMPANY
ESA Docket No. CAA-10-2010-0013

Location: 3463 SELAH

U.S. Bank National Association
Minneapolis, MN 55480

AUTHORIZED SIGNATURE

⑈ 3463500804⑈ ⑆092900383⑆ 150080235297⑈





U.S. ENVIRONMENTAL PROTECTION AGENCY

Risk Management Program Inspection Findings and Alleged Violations Summary Region 10

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with Section 112(r)(7) accidental release prevention requirements of the Clean Air Act, as amended 1990. The scope of this inspection may include, but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

| | | |
|---|---|---|
| FACILITY NAME Johnny Appleseed / Zirkle Fruit Co. | <input checked="" type="checkbox"/> PRIVATE | <input type="checkbox"/> GOVERNMENTAL/MUNICIPAL |
| | # EMPLOYEES 8 | POPULATION SERVED: |

| | |
|--|---|
| FACILITY LOCATION 226 B&O Road, Malott, WA 98829 | INSPECTION START DATE AND TIME: NA |
| MAILING ADDRESS P.O Box 190, Selah, WA 98942 | INSPECTION END DATE AND TIME: NA |

| | |
|---|---|
| RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER Scott Blackledge, Safety Manager (509) 697-6101 | EPA FACILITY ID# 100000141704 |
|---|---|

| | |
|---|--|
| FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S) | INSPECTOR NAME(S), TITLE(S), PHONE NUMBER(S) Javier Morales, RMP Inspector, (206) 553-1255 |
| | INSPECTOR SIGNATURE <i>Javier Morales</i> DATE 10-15-2009 |

INSPECTION FINDINGS

| | | |
|---|---|--|
| IS FACILITY SUBJECT TO RMP REGULATION (40 CFR 68)? | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185? | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| DATE RMP FILED WITH EPA: 6/21/1999 | DATE OF LATEST RMP UPDATE: 6/18/2004 | |
| 1) PROCESS/NAICS CODE: 49312 | PROGRAM LEVEL: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/> | |
| REGULATED SUBSTANCE: Ammonia (anhydrous) | MAX. QUANTITY IN PROCESS: 14,000 (lbs) | |

DESCRIPTION OF ALLEGED VIOLATIONS

CAA Section 112(r) and its implementing regulations in 40 C.F.R. Part 68 require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in § 68.130) in a process, to develop a Risk Management Plan (RMP) and Risk Management Program including a hazard assessment, prevention program and emergency response program.

The owner or operator must review and update the RMP as specified in paragraph (b) of this section as required by § 68.190(a). Johnny Appleseed / Zirkle Fruit Co. failed to submit the RMP to EPA at least once every five years as required by § 68.190(b)(1). The latest RMP that EPA has on file is dated **6/18/2004**. The five year update was due **6/18/2009**.

| | | |
|--|---|-----------------------------|
| DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES? | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| ATTACHED CHECKLIST(S): | <input type="checkbox"/> PROGRAM LEVEL 1 PROCESS CHECKLIST <input type="checkbox"/> PROGRAM LEVEL 2 PROCESS CHECKLIST <input checked="" type="checkbox"/> PROGRAM LEVEL 3 PROCESS CHECKLIST | |

OTHER ATTACHMENTS: _____

