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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

_____	)
In the Matter of:	)
Robert Meyer	)
11330 Larue Road	)
Toppenish, Washington, 98948	)
Respondent.	)
_____	)

Docket No. CAA-10-2009-0216  
CONSENT AGREEMENT AND  
FINAL ORDER

**I. AUTHORITIES**

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). The Administrator has delegated the authority to issue the Final Order contained in Section V. of this CAFO to the Regional Administrator of EPA, Region 10, who has in turn re-delegated it to the Regional Judicial Officer.

2. Pursuant to Section 113(d)(1)(B) of the CAA, and in accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation / Termination or Suspension of Permits," 40 C.F.R. Part 22, EPA hereby issues, and Robert Meyer, d.b.a. FMF Excavation and FMF Construction (Respondent) hereby agrees to issuance of the Final Order contained in Section V. of this CAFO. In

accordance with 40 C.F.R. § 22.13(b), this CAFO will simultaneously commence and conclude this matter.

## **II. FACTUAL BACKGROUND**

3. Pursuant to Sections 301(a) and 301(d)(4) of the CAA, EPA has adopted air quality regulations that apply to air pollution sources on Indian Reservations in Idaho, Oregon, and Washington, which are codified at 40 C.F.R. Part 49, Subparts C and M. These rules are known as the Federal Air Rules for Indian Reservations in EPA Region 10 (FARR) and became effective on June 7, 2005.

4. The FARR provisions that apply on the Confederated Tribes and Bands of the Yakama Nation, Washington (Yakama) Indian Reservation are listed at 40 C.F.R. §§ 49.11101 through 49.11110.

5. 40 C.F.R. § 49.11110(g) incorporates by reference the general rule for open burning specified at 40 C.F.R. § 49.131.

6. Pursuant to 40 C.F.R. § 49.131(b), the general rule for open burning applies to any person who conducts open burning.

7. 40 C.F.R. § 49.123(a) defines "open burning" as the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack.

8. 40 C.F.R. § 49.131(d)(2) prohibits all open burning whenever the Regional Administrator declares a burn ban due to deteriorating air quality, except for exempted fires set

for cultural or traditional purposes. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard for particulate matter, and these levels are projected to continue or reoccur over at least the next 24 hours.

9. Due to meteorological conditions in the Yakama Indian Reservation area air shed, the Regional Administrator declared a burn ban for the Yakama Indian Reservation beginning on November 26, 2008, which continued in effect until December 8, 2008.

10. Green Acre Farms, Inc., owns an agricultural business located within the exterior boundaries of the Yakama Indian Reservation, located at 2 Fort Road, Wapato, Washington.

11. Respondent was hired by Green Acre Farms to conduct tree removal and disposal by burning at the aforementioned Green Acre Farms property on Fort Road.

12. Respondent is a "person" as that term is defined by CAA Section 302(e), 42 U.S.C. § 7602(e).

13. EPA staff observed Mr. Bob Meyer burning natural vegetation (push piles of orchard trees) at the Green Acre Farms property on Fort Road on December 5, 2008, at approximately 11:30 a.m.

14. On December 5, 2008, approximately 20% of the total amount of material which had been pushed into piles for burning had already been burned.

15. When EPA staff returned to the Green Acre Farms property on Fort Road at

2:15 p.m. Monday, December 8, 2008, all the previously compiled material had been completely burned.

16. The open burning had continued from Friday, December 5, 2008, until at least Saturday, December 6, 2008.

17. The open burning occurring on the Green Acre Farms property on Fort Road between December 5 and December 8, 2008, were not outdoor fires set for cultural or traditional purposes.

### **III. VIOLATION**

18. The open burning conducted by Respondent at Green Acre Farms property on Fort Road, Wapato, Washington, between December 5 and December 8, 2008, violated 40 C.F.R. §§ 49.131(d)(2) and 49.11110(g).

19. Respondent violated 40 C.F.R. §§ 49.131(d)(2) and 49.11110(g) on one or more days between December 5 and December 8, 2008.

### **IV. CONSENT AGREEMENT**

The parties to this action hereby stipulate as follows:

20. For purposes of this CAFO, Respondent admits the jurisdictional allegations set out in Sections I. and II. of this CAFO.

21. Respondent neither admits nor denies the factual allegations contained in Section II. of this CAFO.

22. Respondent agrees to pay a civil penalty in the amount of two-thousand four-hundred and seventy dollars (\$2,470) within thirty (30) days of the effective date of the Final Order.

23. Respondent consents to the issuance of the Final Order recited herein.

24. Payment under the CAFO shall be made by cashier's or certified check or money order, made payable to the order of "Treasurer of the United States" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall note on the payment Respondent's name and docket number of this case.

25. Respondent shall provide a copy of the payment described in paragraph 24 to the Regional Hearing Clerk and Complainant at the following two addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900 (ORC-158)  
Seattle, Washington 98101

Tribal Specialist  
Inspection & Enforcement Management Unit  
Office of Compliance and Enforcement  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900 (OCE-164)  
Seattle, Washington 98101

26. The penalty described in paragraph 22 of this CAFO represents civil penalties assessed by EPA.

27. Should Respondent fail to pay the penalty assessed by this CAFO against Respondent in full by its due date, the entire unpaid balance of the penalty and accrued interest assessed against Respondent by this CAFO shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed penalty under the CAA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

28. Should Respondent fail to pay the penalties assessed by this CAFO in full by their due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the penalty and interest assessed against Respondent, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly

nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

29. Respondent agrees not to claim or attempt to claim a federal or state income tax deduction or credit covering all or any part of the penalty paid to the United States Treasurer under this CAFO.

30. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

31. The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

32. Respondent explicitly waives its right to contest the allegations contained in this CAFO and to appeal the Final Order contained herein.

33. Except as described in paragraph 28, each party to this action shall bear its own costs in bringing or defending this action.

34. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

STIPULATED AND AGREED

this \_\_\_ day of \_\_\_\_\_, 2009:



Robert Meyer  
Respondent

STIPULATED AND AGREED

this 6th day of October, 2009:



Edward J. Kowalski, Director  
Office of Compliance and Enforcement  
U.S. Environmental Protection Agency, Region 10  
Complainant



V. FINAL ORDER

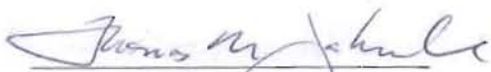
35. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

36. Respondent is assessed a civil penalty of two-thousand four-hundred and seventy dollars (\$2,470).

37. This CAFO constitutes a release and settlement by EPA of all claims for civil penalties pursuant to the CAA for the particular violations alleged in Section III. above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 not the subject of this CAFO. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations and permits issued thereunder.

38. This Final Order shall become effective upon filing.

SO ORDERED this 14<sup>th</sup> day of October, 2009.



Thomas M. Jahnke  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Robert Meyer, DOCKET NO.: CAA-10-2009-0216** was filed with the Regional Hearing Clerk on October 14, 2009.

On October 14, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
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 October 14, 2009, to:

Robert Meyer  
11330 Larue Road  
Toppenish, Washington 98948

James A. Perkins  
Larsen Berg and Perkins  
105 N. 3<sup>rd</sup> St.  
P.O. Box 550  
Yakima, WA 98907

DATED this 14<sup>th</sup> day of October 2009.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10