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EPA--REGION 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

_____	)	
In the Matter of:	)	
	)	
Dale Lunders	)	Docket No. CAA-10-2010-0019
2214 Reubens Road	)	
Reubens, Idaho 83548	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Respondent.	)	
_____	)	

**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 VI. 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 Dale Lunders (Respondent) hereby agrees to issuance of, the Final Order contained in Section VI. of this CAFO. In accordance with 40 C.F.R. § 22.13(b), this CAFO will simultaneously commence and conclude this matter.

## **II. 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 1863 Nez Perce Indian Reservation are incorporated by reference at 40 C.F.R. § 49.10406(a) through (p), and specifically include 40 C.F.R. §§ 49.123, 49.131 and 49.132.

5. 40 C.F.R. § 49.131, the General Rule for Open Burning, applies to any person who conducts open burning and to the owner of any property on which open burning is conducted.

6. 40 C.F.R. § 49.132, the Rule for General Open Burning Permits, 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)(1) prohibits the open burning of any of the following materials:

- (i) Garbage;
- (ii) Dead animals or parts of dead animals;
- (iii) Junked motor vehicles or any materials resulting from a salvage operation;
- (iv) Tires or rubber materials or products;

- (v) Plastics, plastic products, or styrofoam;
- (vi) Asphalt or composition roofing, or any other asphaltic material or product;
- (vii) Tar, tarpaper, petroleum products, or paints;
- (viii) Paper, paper products, or cardboard other than what is necessary to start a fire or that is generated at single-family residences or residential buildings with four or fewer dwelling units and is burned at the residential site;
- (ix) Lumber or timbers treated with preservatives;
- (x) Construction debris or demolition waste;
- (xi) Pesticides, herbicides, fertilizers, or other chemicals;
- (xii) Insulated wire;
- (xiii) Batteries;
- (xiv) Light bulbs;
- (xv) Materials containing mercury (e.g., thermometers);
- (xvi) Asbestos or asbestos-containing materials;
- (xvii) Pathogenic wastes;
- (xviii) Hazardous wastes; or
- (xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

9. 40 C.F.R. § 49.132(d)(1) requires a person to apply for and obtain a permit for the open burn, to have the permit available on-site during the open burn, and to conduct the open burning in accordance with the terms and conditions of the permit.

### **III. GENERAL FINDINGS**

10. Dale Lunders (hereinafter "Respondent") is a "person" as that term is defined in CAA § 302(e), 42 U.S.C. § 7602(e).

11. On February 24 and 25, 2009, Nez Perce air quality staff observed Respondent conduct open burning at property located adjacent to Crosswell Avenue in the Southeast area of Reubens, Idaho, within the exterior boundaries of the 1863 Nez Perce Reservation.

12. Respondent was informed by the Nez Perce air quality staff on the morning of February 24, 2009, that he was burning without a permit.

13. On the afternoon of February 25, 2009, the Nez Perce air quality staff returned to the same burn site of the previous day and observed the fire still smoldering. Respondent had failed to extinguish the burn.

14. Respondent did not apply for or receive a permit to conduct open burning on February 24 or 25, 2009.

15. Some of the materials observed in the burning pile on February 24, and the smoldering debris toward the end of the burn on February 25, included, among other things the following prohibited materials: demolition waste, tires and tire rims, 5-gallon paint or oil metal buckets, scrap metal, a car fender with its plastic inner lining burning, a mattress with its melted plastic, old appliances, and wire.

#### **IV. VIOLATIONS**

16. Respondent violated 40 C.F.R. § 49.10406(j), which incorporates by reference § 49.132(d)(1), by conducting open burning at property within the exterior boundaries of the 1863 Nez Perce Reservation on February 24 and February 25, 2009, without having applied for and obtaining a permit.

17. Respondent violated 40 C.F.R. § 49.10406(i), which incorporates by reference § 49.131(d)(1), by openly burning prohibited materials on February 24 and February 25, 2009, at property within the exterior boundaries of the 1863 Nez Perce Reservation.

#### **V. CONSENT AGREEMENT**

The parties to this action hereby stipulate as follows:

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

19. Respondent neither admits nor denies the factual allegations contained in Section III. of this CAFO.

20. Respondent agrees to pay a civil penalty in the amount of three-thousand and fifteen dollars (\$3,015) within thirty (30) days of the effective date of the Final Order.

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

22. 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.

23. Respondent shall provide a copy of the payment described in paragraph 22 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 and 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

24. The penalty described in paragraph 20 of this CAFO represents civil penalties assessed by EPA.

25. 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.

26. 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 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.

27. 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.

28. 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.

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

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

31. Except as described in paragraph 26, each party to this action shall bear its own costs in bringing or defending this action.

32. 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

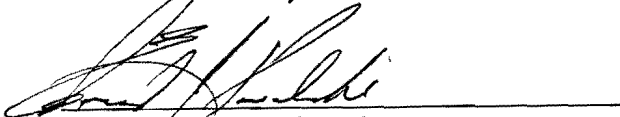
this 9 day of Dec, 2009:



Dale Lunders  
Respondent

STIPULATED AND AGREED

this 1st day of December, 2009:



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



## VI. FINAL ORDER

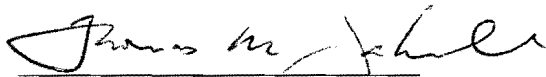
33. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

34. Respondent is assessed a civil penalty of three-thousand and fifteen dollars (\$3,015).

35. 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.

36. This Final Order shall become effective upon filing.

SO ORDERED this 18<sup>th</sup> day of December, 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: Dale Lunders, DOCKET NO.: CAA-10-2010-0019** was filed with the Regional Hearing Clerk on December 18, 2009.

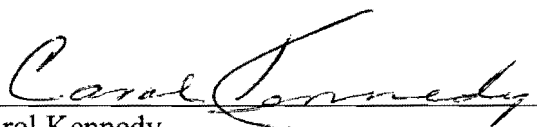
On December 18, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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 December 18, 2009, to:

Dale Lunders  
2214 Rubens Road  
Reubens, Idaho 83548

DATED this 18<sup>th</sup> day of December 2009.

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