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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HEARINGS CLERK
EPA -- REGION 10

In the Matter of:

Whitley Fuel, LLC

Respondent.

)
) DOCKET NO. CAA-10-2011-0030
)
)

)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Whitley Fuel, LLC, (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA,

42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Pursuant to Section 301(a) and (d)(4) of the CAA, 42 U.S.C. § 7601(a) and 7601(d)(4), 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 Region 10 (FARR) and became effective on June 7, 2005.

3.2. The FARR provisions that apply on the Colville Indian Reservation are incorporated by reference at 40 C.F.R. § 49.9960(a) through (m).

3.3. 40 C.F.R. § 49.138(d), which is incorporated by reference at 40 C.F.R. § 49.9960(l), requires any person who owns or operates an air pollution source subject to this section on the Colville Indian Reservation, except for Part 71 sources (major sources), to register the source with the Regional Administrator and submit reports as specified in 40 C.F.R. § 49.138(e).

3.4. Under 40 C.F.R. § 49.138(e)(1), the owner or operator of an air pollution source that existed on the effective date of the FARR, must initially register the source with EPA no later than February 15, 2007.

3.5. Under 40 C.F.R. § 49.138(e)(2), after initial registration, the owner or operator of an air pollution source must re-register with EPA by February 15 of each year.

3.6. Respondent did not submit to EPA an initial registration as required by 40 C.F.R. § 49.138(d) and (e)(1) on or before February 15, 2007, for its fueling facility located at 335

N. Van Duyn, Okanogan, Washington (“Okanogan facility”) which is located within the exterior boundaries of the Colville Indian Reservation.

3.7. Respondent did not submit to EPA an initial registration as required by 40 C.F.R. § 49.138(d) and (e)(1) on or before February 15, 2007, for its fueling facility located at 340 Dayton Street, Omak, Washington (“Omak facility”) which is located within the exterior boundaries of the Colville Indian Reservation.

3.8. Respondent did not submit to EPA an annual registration as required by 40 C.F.R. § 49.138(d) and (e)(2) on or before February 15, 2008, for its Okanogan facility.

3.9. Respondent did not submit to EPA an annual registration as required by 40 C.F.R. § 49.138(d) and (e)(2) on or before February 15, 2008, for its Omak facility.

3.10. Respondent did not submit to EPA an annual registration as required by 40 C.F.R. § 49.138(d) and (e)(2) on or before February 15, 2009, for its Okanogan facility.

3.11. Respondent did not submit to EPA an annual registration as required by 40 C.F.R. § 49.138 (d) and (e)(2) on or before February 15, 2009, for its Omak facility.

3.12. Respondent failed to comply with the initial and annual registration requirements of 40 C.F.R. § 49.138(d) and (e), beginning February 15, 2007, and continuing annually until Respondent submitted a late initial registration and annual updates to correct these violations on February 12, 2010.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations set forth in Part III of this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into consideration the size of the business, the economic impact of the penalty on the

business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is **three-thousand seven-hundred and fifty dollars (\$ 3,750.00)**.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check 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 979077
St. Louis, MO 63197-9000

Respondent must note on the check Respondent's name and address, the case name and the docket number of the case.

4.6. Respondent must deliver photocopies of the check described in Paragraph 4.5 via United States mail to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Donald Dossett
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-164
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), together with interest, fees, costs, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order set forth in Part IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) the United States' enforcement expenses, including but not limited to attorneys 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 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V.

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

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3-31-11

FOR RESPONDENT:



Signature

Print Name: JEANNE WHITLEY

Title: Member

DATED:

3/31/2011

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these terms of settlement.

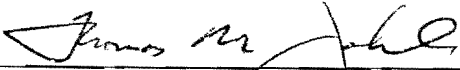
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder.

5.3. Respondent shall pay a civil penalty in the amount of **three-thousand seven-hundred and fifty dollars (\$ 3,750.00)**, as provided in Part IV above.

5.4. In accordance with 40 C.F.R. § 22.34(b), issuance of this CAFO pursuant to 40 C.F.R. § 22.13 satisfies the notice requirement of that section and Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

5.5. This Final Order is effective upon filing.

SO ORDERED this 5th day of April, 2011.



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: Whitley Fuel, LLC, DOCKET NO.: CWA-10-2011-0030** was filed with the Regional Hearing Clerk on April 5, 2011.

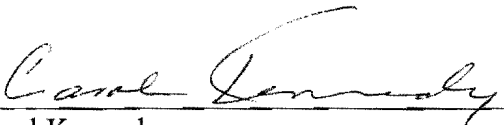
On April 5, 2011, the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, Esq.
1200 Sixth Avenue
Suite 900, M/S ORC-158
Seattle, Washington 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 April 5, 2011, to:

Whitley Fuel LLC
Jeanne Whitley, Member
P.O. Box 907
Okanogan, WA 98840

DATED this 5th day of April 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10