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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2016-0071
Cloninger's Harvest Foods,)	
)	CONSENT AGREEMENT
Kamiah, Idaho,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement 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. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," C.F.R. Part 22, EPA issues, and Cloninger's Harvest Foods ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order 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 an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this Consent Agreement 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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. 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 Reservations (“FARR”) and became effective on June 7, 2005.

3.2. The FARR provisions that apply on the Nez Perce Reservation are incorporated by reference at 40 C.F.R. § 49.10410.

3.3. 40 C.F.R. § 49.138, the rule for registration of air pollution sources and the reporting of emissions, incorporated by reference at 40 C.F.R. § 49.10410, requires a person who owns or operates an air pollution source subject to the requirement to register the air pollution

source annually with the EPA Regional Administrator by February 15 of each year in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

3.4. An air pollution source is subject to the requirements of 40 C.F.R. § 49.138(d) if it does not meet the exemptions listed in 40 C.F.R. § 49.138(c).

3.5. 40 C.F.R. § 49.138(d), which is incorporated by reference at 40 C.F.R. § 49.10410, requires any person who owns or operates an air pollution source subject to this section on the Nez Perce Reservation, except for Part 71 sources (major sources), to register the source annually with the Regional Administrator and submit reports by February 15 of each year in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

3.6. 40 C.F.R. § 49.123(a), incorporated by reference at 40 C.F.R. § 49.10410, defines “owner or operator” as any person who owns, leases, operates, controls, or supervises an air pollution source.

3.7. Respondent is a corporation, registered in the State of Idaho, and is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.8. Respondent owns a facility on the Nez Perce Reservation, located at 508 3rd Street, Kamiah, Idaho, that is not a Part 71 source, as defined in 40 C.F.R. § 49.123.

3.9. Respondent emits more than two tons of an air pollutant per year, and does not meet the exemptions listed in 40 C.F.R. § 49.138(c), and is therefore subject to the rule for the registration of air pollution sources and the reporting of emissions.

3.10. Respondent submitted its 2011 re-registration to the Regional Administrator on March 29, 2012, one month after the February 15, 2012 deadline.

3.11. Respondent submitted its 2012 re-registration to the Regional Administrator on March 12, 2013, one or more days after the February 15, 2013 deadline.

3.12. Respondent submitted its 2013 re-registration to the Regional Administrator on May 8, 2014, two months after the February 15, 2014 deadline.

3.13. Respondent submitted its 2014 re-registration to the Regional Administrator on April 13, 2015, one month after the February 15, 2015 deadline.

3.14. The failure to timely submit annual re-registration of air pollution sources by February 15 is a violation of 40 C.F.R. § 49.138(e)(2). Therefore, Respondent violated 40 C.F.R. § 49.138(e)(2), incorporated by reference at 40 C.F.R. § 49.10410.

3.15. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per violation per day.

IV. TERMS OF SETTLEMENT

4.1. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account 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, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$576.

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

4.5. Payment under this Consent 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: <http://www2.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 979077
St. Louis, Missouri 63197-9000

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

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on 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-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
luna.teresa@epa.gov

Aaron Lambert
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
lambert.aaron@epa.gov

4.7. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, 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 collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. 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 contained herein.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay 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 ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

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

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

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

4-22-16

FOR RESPONDENT:

Tara P. Wilkins

Name: Tara Wilkins

Position: Vice-president
Cloninger's Harvest Foods

DATED:

4/27/2016

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2016-0071
Cloninger's Harvest Foods,)	
)	FINAL ORDER
Kamiah, Idaho,)	
)	
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 Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. This Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent 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 the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

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

SO ORDERED this 29th day of April, 2016.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Cloninger's Harvest Foods, Docket No.: CAA-10-2016-0071**, 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 to:

Grace Hwang, Attorney Advisor
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
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 to:

Cloninger's Inc.,
P.O. Box 728
Kamiah, Idaho 83536

DATED this 29 day of April, 2016.



TERESA LUNA
Regional Hearing Clerk
EPA Region 10

