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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2019-0063
)
DON HASENOEHRL d/b/a DJR FARMS,) CONSENT AGREEMENT
)
Lewiston, 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 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 issues, and Don Hasenoehrl d/b/a DJR Farms (“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 Enforcement and Compliance Assurance Division, 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. At least 30 days prior to the filing of this matter, EPA notified Respondent and the Nez Perce Tribe that EPA had found that Respondent committed the alleged violations described in Part III of this Consent Agreement.

2.4. 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. § 49.133, the rule for agricultural burning permits, incorporated by reference at 40 C.F.R. § 49.10410(k), applies to any person who conducts agricultural burning.

3.4. 40 C.F.R. § 49.123(a), incorporated by reference at 40 C.F.R. § 49.10410(a), defines “agricultural burning” as the burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

3.5. 40 C.F.R. § 49.133(c)(1), incorporated by reference at 40 C.F.R. § 49.10410(k), requires a person conducting an agricultural burn to apply for a permit to conduct the agricultural burn, obtain approval of the permit on the day of the burn, have the permit available onsite during the burn, and conduct the burn in accordance with the terms and conditions of the permit.

3.6. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.7. On March 14, 2018, Respondent filled out a Nez Perce Reservation Air Quality Permit Application (“the Permit Application”) to conduct an agricultural burn on five fields along Cream Ridge Road northeast of Lenore, Idaho, on the Nez Perce Reservation.

3.8. On September 6, 2018, Respondent received approval from the Nez Perce Tribe’s Air Quality Program staff to conduct an agricultural burn at 1:00 p.m. on September 6, 2018, at a 130-acre field identified as “Field 2” on the Permit Application.

3.9. On September 6, 2018, Respondent commenced the agricultural burn at Field 2 before the approved time.

3.10. At approximately 12:57 p.m. on September 6, 2018, a Nez Perce Tribe Air Quality Program staff member instructed Respondent via telephone to refrain from burning additional fields until Respondent had received approval from the staff member to do so.

3.11. Between approximately 12:57 p.m. and 2:30 p.m. on the same day, Respondent commenced an agricultural burn on a 65-acre field identified as "Field 4" on the Permit Application, without first receiving approval from the Nez Perce Tribé Air Quality Program.

3.12. Respondent did not conduct the burn of Field 2 in accordance with the terms and conditions of the permit, as required by 40 C.F.R. § 49.133(c)(1). Therefore, Respondent violated 40 C.F.R. § 49.133(c)(1), incorporated by reference at 40 C.F.R. § 49.10410(k), when he conducted the agricultural burn.

3.13. Respondent did not conduct the burn of Field 4 in accordance with the terms and conditions of the permit, as required by 40 C.F.R. § 49.133(c)(1). Therefore, Respondent violated 40 C.F.R. § 49.133(c)(1), incorporated by reference at 40 C.F.R. § 49.10410(k), when he conducted the agricultural burn.

3.14. 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 \$47,357 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. 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. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$1,036 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments 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, M/S 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Aaron Lambert
U.S. Environmental Protection Agency
Region 10, M/S 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
lambert.aaron@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty 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 Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall 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 contained herein.

b. 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 Assessed Penalty, 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. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the 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, to any conditions specified in this consent agreement, 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:

7/13/19

FOR RESPONDENT:

Don Hasenoehrl

DON HASENOEHRL, Owner
DJR Farms

DATED:

7/25/2019

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

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

SO ORDERED this 30th day of July, 2019.


RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	DOCKET NO. CAA-10-2019-0063
)	
DON HASENOEHRL d/b/a DJR FARMS,)	FINAL ORDER
)	
Lewiston, 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. The 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.

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Don Hasenoehrl d/b/a DJR Farms, Docket No.: CAA-10-2019-0063**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

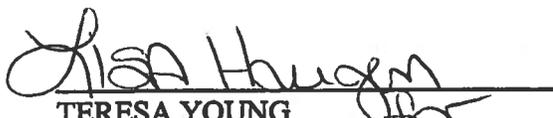
The undersigned certifies that a true and correct copy of the document was delivered to:

Danielle Meinhardt
U.S. Environmental Protection Agency
Region 10, M/S 11-C07
1200 Sixth Avenue, Suite 155
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:

Don Hasenoehrl
Owner
DJR Farms
1724 Hemlock Avenue
Lewiston, Idaho 83501

DATED this 30 day of July 2019.

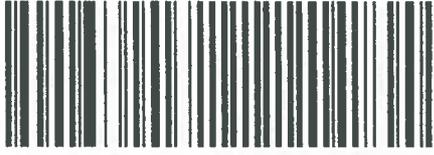

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	

Postmark
Here

Sent To **Don-Hasenoehrl, Owner**
DJR Farms
Street, Apt. No.; **1724 Hemlock Ave**
or PO Box No. **Lewiston, ID 83501**
City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Don Hasenoehrl
Owner
DJR Farms
1724 Hemlock Ave.
Lewiston, ID 83501

2. Article Number

(Transfer from envelope)

7014 1200 0000 0021 4702

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?
if YES, enter delivery address below: Yes No

3. Service Type

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- Insured Mail
- Priority Mail Express™
- Return Receipt for Merchandise
- Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes No