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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Ed Stuivenga,

Grangeville, Idaho,

Respondent.

)  
) DOCKET NO. CAA-10-2013-0090

)  
) **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 delegated 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 issues, and Ed Stuivenga (“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) and 22.18(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 CAA Section 113(d),

42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative 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 301(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 Reservations (“FARR”) and became effective on June 7, 2005.

3.2. The FARR provisions that apply on the 1863 Nez Perce Indian Reservation are incorporated by reference at 40 C.F.R. § 49.10406(a)-(p), and specifically include 40 C.F.R. §§ 49.123 and 49.133.

3.3. EPA delegated 40 C.F.R. § 49.133, Rule for agricultural burning permits, incorporated by reference at 40 C.F.R. § 49.10410(k), to the Nez Perce Tribe for implementation.

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(b), incorporated by reference at 40 C.F.R. § 49.10410(k), applies to any person who conducts agricultural burning.

3.6. 40 C.F.R. § 49.133(c)(1), incorporated by reference at 40 C.F.R. § 49.10410(k), states that a person must apply for a permit to conduct an 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.

3.7. Respondent is a "person" as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

3.8. Respondent burned about 32 acres of crop residue on October 17, 2012, without first obtaining approval of his permit to conduct agricultural burning from the Nez Perce Tribe.

3.9. Respondent burned about 400 acres of crop residue on October 18, 2012, without first obtaining approval of his permit to conduct agricultural burning from the Nez Perce Tribe.

3.10. Respondent violated 40 C.F.R. § 49.133(c)(1), incorporated by reference at 40 C.F.R. § 49.10410(k), by burning crop residue on October 17 and 18, 2012, without approval of his permit by the Nez Perce Tribe on the days of the burns.

#### **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 violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violations, as well as other relevant factors. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is five thousand, five hundred and thirty-six dollars (\$5,536).

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 contained in Part V of this CAFO.

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 one of the following addresses based on the method of delivery:

By U.S. Postal Mail:

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

By UPS, Federal Express, or overnight mail:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
St. Louis, MO 63101  
314-418-1028

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-184  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. Should Respondent fail 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 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. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.7.1. Interest. Any unpaid portion of the assessed penalty policy 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.

4.7.2. 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 accrued from 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 of this CAFO. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the order pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

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:

FOR RESPONDENT:

April 23, 2013

Ed Stuiivenga

Signature

Print Name: Ed Stuiivenga

Title: Owner

DATED:

FOR COMPLAINANT:

4/30/2013

Edward J. Kowalski

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 five thousand, five hundred and thirty-six dollars (\$5,536), as provided in Part IV above.

5.4. This Final Order is effective upon filing.

SO ORDERED this 1<sup>st</sup> day of May, 2013.



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 the Matter of: Ed Stuvenga, Docket No.: CAA-10-2013-0090**, 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:

Kris Leefers, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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:

Ed Stuvenga  
1460 Luke's Gulch Road  
Grangeville, Idaho 83530

DATED this 1<sup>st</sup> day of May, 2013

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

