

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2021-0131
)
THERRAL JACKSON,) **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 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 Therral Jackson (“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. On May 3, 2021, EPA notified Respondent and the Nez Perce Tribe of Idaho 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 Section 301(a) and (d)(4) of the CAA, 42 U.S.C. § 7601(a) and (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.

3.2. These rules are known as the Federal Air Rules for Reservations (FARR) and became effective on June 7, 2005.

3.3. The FARR provisions that apply on the Nez Perce Reservation are incorporated by reference at 40 C.F.R. § 49.10410(a) - (p).

3.4. 40 C.F.R. § 49.123, General provisions, incorporated by reference at 40 C.F.R. § 49.10410(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. Open burning includes burning in burn barrels.

3.5. 40 C.F.R. § 49.132, Rule for general open burning permits, incorporated by reference at 40 C.F.R. § 49.10410(j), establishes a permitting program for open burning within the Nez Perce Reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter.

3.6. 40 C.F.R. § 49.132(d)(1) requires a person to apply for and obtain a permit for the open burn, have the permit available on-site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.

3.7. 40 C.F.R. § 49.10411(a) requires that, beginning June 7, 2005, a person must apply for and obtain a permit under § 49.132 Rule for general open burning permits before conducting an open burn on the Nez Perce Reservation.

3.8. Pursuant to 40 C.F.R. § 49.122, EPA has delegated the authority to administer 40 C.F.R. §§ 49.132(d)(1) and 49.10411(a) on the Nez Perce Reservation to the New Perce Tribe, including the authority to receive applications for open burn permits and to issue such permits. See 70 FR 54639 (Sept. 16, 2005).

3.9. Respondent is a person as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.10. Allotment 1414A is owned by Respondent and within the Nez Perce Reservation.

3.11. On July 22, 2020, Respondent conducted an open burn on Allotment 1414A.

3.12. On August 23, 2020, Respondent conducted an open burn on Allotment 1414A.

3.13. On August 25, 2020, Respondent conducted an open burn on Allotment 1414A.

3.14. Respondent had not applied for or obtained an open burn permit from the Nez Perce Tribe to conduct open burning on Allotment 1414A on July 22, August 23, or August 25, 2020.

3.15. Respondent violated 40 C.F.R. § 49.132(d)(1), incorporated by reference at 40 C.F.R. § 49.10410(j), by not applying for and obtaining a permit prior to conducting open burns on Allotment 1414A on the Nez Perce Reservation on July 22, August 23, and August 25, 2020.

3.16. 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 \$48,762 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 \$743 (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, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Sara Conley
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
conley.sara@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. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.11. 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.

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

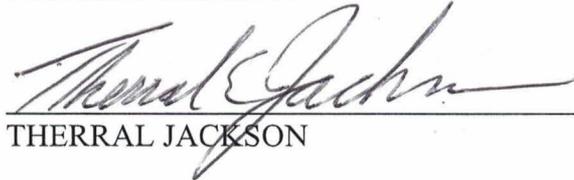
4.13. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

5-26-2021

FOR RESPONDENT:



THERRAL JACKSON

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

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Date: 2021.05.27
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EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0131
)	
THERRAL JACKSON,)	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. 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.

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

SO ORDERED this _____ day of _____, 2021.

**RICHARD
MEDNICK**

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RICHARD MEDNICK
Date: 2021.06.01
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RICHARD MEDNICK
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: THERRAL JACKSON, Docket No.: CAA-10-2021-0131**, 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:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
vergeront.julie@epa.gov

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:

Therral Jackson
1342 Ridgewood Drive
Kamiah, Idaho 83536
jacksonsbst@yahoo.com

DATED this ____ day of _____, 2021.

TERESA
YOUNG

Digitally signed by
TERESA YOUNG
Date: 2021.06.02
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TERESA YOUNG
Regional Hearing Clerk
EPA Region 10