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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION X

In the Matter of: WHEELER ROCK PRODUCTS & TRINA WHEELER Wapato, Washington, Respondents. Proceeding pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).	DOCKET NO. CAA-10-2018-0260 **FIRST AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

I. PRELIMINARY STATEMENT/INTRODUCTION

1.1. This First Amended Administrative Complaint and Notice of Opportunity for Hearing ("First Amended Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d).

1.2. The Administrator has delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to issue administrative complaints for violations of the CAA to the Regional Administrator for EPA Region 10 who in turn has delegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

1.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations

that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

1.4. On June 16, 2016, EPA notified Respondent Wheeler Rock Products and the Confederated Tribes and Bands of the Yakima Nation that EPA had found that Respondent Wheeler Rock Products committed the alleged violations described in Counts 1 through 4 in Part IV of this First Amended Complaint.

1.5. On March 26, 2018, EPA notified Respondents Wheeler Rock Products and Trina Wheeler and the Confederated Tribes and Bands of the Yakima Nation that EPA had found that Respondents committed the alleged violation described in Count 5 in Part IV of this First Amended Complaint.

1.6. Wheeler Rock Products and Trina Wheeler ("Respondents") are hereby notified that Complainant alleges that Respondents violated the provisions identified herein and seeks the assessment of a civil penalty. This First Amended Complaint also provides notice of Respondents' opportunity to request a hearing.

II. STATUTORY AND REGULATORY BACKGROUND

2.1. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof."

2.2. Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3), 7602(z), and 40 C.F.R. §§ 49.152(b) and 52.21(b)(5), define "stationary source" to mean "any building, structure, facility, or installation which emits or may emit any pollutant."

2.3. The regulation at 40 C.F.R. § 49.123 defines "air pollution source" to mean "any building, structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant."

2.4. Section 111(a)(5) of the CAA, 42 U.S.C. §§ 7411(a)(5), defines "owner or operator" to mean "any person who owns, leases, operates, controls, or supervises a stationary source."

2.5. The term "Indian Country" is defined in 18 U.S.C. § 1151 to mean, inter alia, "all land within the limits of any Indian reservation under the jurisdiction of the United States government."

2.6. Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2), defines "new source" to mean "any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source."

2.7. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated New Source Performance Standards ("NSPS") for specified categories of stationary sources of air pollutants that are "new sources."

2.8. EPA promulgated the Standards of Performance for Nonmetallic Mineral Processing Plants, codified at 40 C.F.R. part 60, subpart OOO ("NSPS 3O"), to set standards of

performance for equipment associated with nonmetallic mineral processing plants constructed after August 3, 1983.

2.9. In accordance with 40 C.F.R. § 60.670(a)(1), NSPS 3O applies to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station.

2.10. The term "nonmetallic mineral processing plant" is defined by 40 C.F.R. § 60.671 to mean "any combination of equipment that is used to crush or grind any nonmetallic mineral wherever located, including lime plants, power plants, steel mills, asphalt concrete plants, portland cement plants, or any other facility processing nonmetallic minerals except as provided in [40 C.F.R.] § 60.670 (b) and (c)."

2.11. The term "crusher" is defined by 40 C.F.R. § 60.671 to mean "a machine used to crush any nonmetallic minerals, and includes, but is not limited to, the following types: Jaw, gyratory, cone, roll, rod mill, hammermill, and impactor."

2.12. The term "initial crusher" is defined by 40 C.F.R. § 60.671 to mean "any crusher into which nonmetallic minerals can be fed without prior crushing in the plant."

2.13. The term "belt conveyor" is defined by 40 C.F.R. § 60.671 to mean "a conveying device that transports material from one location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end."

2.14. The term "screening operation" is defined by 40 C.F.R. § 60.671 to mean "a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces

(screens). Grizzly feeders associated with truck dumping and static (non-moving) grizzlies used anywhere in the nonmetallic mineral processing plant are not considered to be screening operations."

2.15. Pursuant to Section 301(a) and 301(d)(4) of the CAA, 42 U.S.C. § 7601(a) and 7601(d)(4), on July 1, 2011, EPA issued a Federal Implementation Plan that established a minor new source review permit program applicable to sources located in Indian Country ("Tribal Minor NSR Program"). The Tribal Minor NSR Program is codified at 40 C.F.R. §§ 49.151-165.

2.16. In accordance with 40 C.F.R. § 49.153(a)(i)(B), the Tribal Minor NSR Program is applicable to the construction of sources that have a potential to emit a regulated NSR pollutant in quantities greater than or equal to the corresponding minor NSR threshold in Table 1 of 40 C.F.R. § 49.153, which depend on the attainment status of the reservation.

2.17. The term "potential to emit" or "PTE" is defined by 40 C.F.R. § 49.152 to mean "the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or effect it would have on emissions is enforceable as a practical matter."

2.18. The Yakama Indian Reservation is in attainment or unclassifiable for all pollutants.

2.19. In accordance with 40 C.F.R. §§ 49.152(b) and 52.21(b)(50), the term "regulated NSR pollutant" includes carbon monoxide ("CO"), nitrogen oxides (NO_X), sulfur dioxide (SO_2),

volatile organic compounds ("VOC"), coarse particulate matter ("PM-10"), and fine particulate matter ("PM-2.5").

2.20. In accordance with 40 C.F.R. § 49.151(c)(iii)(B), on or after September 2, 2014, a source that is subject to the Tribal Minor NSR Program (that is not an oil and natural gas source) cannot commence construction without first obtaining a permit pursuant to 40 C.F.R. §§ 49.154 and 49.155 (or a general permit/permit by rule pursuant to 40 C.F.R. § 49.156, if applicable).

2.21. At no time relevant to this First Amended Complaint has the Confederated Tribes and Bands of the Yakama Nation administered an EPA-approved minor NSR program for the Yakama Indian Reservation. See 40 C.F.R. § 49.11102.

2.22. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the effective date of any Permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a major source except in compliance with a Permit issued by a permitting authority under Title V of the CAA.

2.23. Section 501(2) of the CAA, 42 U.S.C. § 7661(2), defines "major source" to mean "any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following: . . . (B) A major stationary source as defined in [Section 302 of the CAA, 42 U.S.C. § 7602].

2.24. Section 302 of the CAA, 42 U.S.C. § 7602 and 40 C.F.R. § 71.2, define "major stationary source" to mean "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant

(including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)."

2.25. EPA promulgated the Federal Operating Permit Program on July 1, 1996 at 40 C.F.R. Part 71. 61 Fed. Reg. 34,202.

2.26. In accordance with 40 C.F.R. § 71.4(b), "[EPA] will administer and enforce an operating permits program in Indian Country, as defined in [40 C.F.R.] § 71.2, when an operating permits program which meets the requirements of [40 C.F.R. Part 70] has not been explicitly granted full or interim approval by the Administrator for Indian Country."

2.27. At no time relevant to this First Amended Complaint has the EPA Administrator explicitly granted a full or interim approval of an operating permits program under 40 C.F.R. Part 70 for the Yakama Indian Reservation.

2.28. In accordance with 40 C.F.R. § 71.4(b)(2), the effective date of a part 71 program in Indian Country shall be March 22, 1999.

2.29. In accordance with 40 C.F.R. §§ 71.3(a) and 71.5(a), the owner or operator of a major source must submit a complete application for an operating permit within 12 months after the source becomes subject to the permit program.

2.30. On April 8, 2005, EPA promulgated a Federal Implementation Plan for Indian Reservations in Idaho, Oregon, and Washington ("Federal Air Rules for Reservations"). 70 Fed. Reg. 18074. The Federal Air Rules for Reservations are codified at 40 C.F.R. Part 49, Subparts C and M. The regulations at 40 C.F.R. Part 49, Subpart C include general provisions, while the regulation at 40 C.F.R. Part 49, Subpart M includes specific Federal Implementation Plans for Indian reservations located within EPA Region 10. The specific Federal Implementation Plans

codified at 40 C.F.R. Part 49, Subpart M incorporate the general provisions in 40 C.F.R. Part 49, Subpart C by reference. The Federal Implementation Plan for the Confederated Tribes and Bands of the Yakama Nation, Washington is codified at 40 C.F.R. §§ 49.11101-49.11130.

2.31. In accordance with 40 C.F.R. § 49.11110, the rule for the registration of air pollution sources and the reporting of emissions in 40 C.F.R. § 49.138 applies to air pollution sources located within the exterior boundaries of the Yakama Indian Reservation.

2.32. The regulation at 40 C.F.R. § 49.138 applies to "any person who owns or operates a part 71 source or an air pollution source that is subject to a standard established under section 111 . . . of the Act." The regulation at 40 C.F.R. § 49.138 also applies to "any person who owns or operates any other air pollution source except those exempted in [40 C.F.R. § 49.138(c)]."

2.33. The regulations at 40 C.F.R. § 49.138(d) and (e)(2) require that "after initial registration, the owner or operator of an air pollution source that is not a part 71 source, must re-register with the Regional Administrator by February 15 of each year. The annual registration must include all of the information required in the initial registration and must be updated to reflect any changes since the previous registration."

III. GENERAL ALLEGATIONS

3.1. Respondent Wheeler Rock Products is a corporation incorporated under the laws of the Confederated Tribes and Bands of the Yakama Nation. Therefore, Respondent Wheeler Rock Products is a person as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.2. Respondent Trina Wheeler is an individual. Therefore, Respondent Trina Wheeler is a person as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.3. Since at least June 1, 2015, Respondents have owned and/or operated a facility located at 501 and/or 502 Cowin Lane, Wapato, Washington, with approximate coordinates 46.471476, -120.515192 ("Facility").

3.4. At all times relevant to this First Amended Complaint, the Facility has been located within the exterior boundaries of the Yakama Indian Reservation.

3.5. The Yakama Indian Reservation meets the definition of Indian Country in 18 U.S.C. § 1151 and 40 C.F.R. § 71.2.

3.6. Since at least June 1, 2015, until present, Respondents have owned and/or operated the equipment located at the "Facility."

3.7. On June 1, 2015, Respondents installed a portable nonmetallic mineral processing plant ("NMP Plant"), as that term is defined in 40 C.F.R. § 60.671, at the Facility.

3.8. At all times relevant to this First Amended Complaint, the NMP Plant consisted of: two crushers, two screening operations, and at least eleven belt conveyors, as those terms are defined in 40 C.F.R. § 60.671, each of which commenced construction after August 31, 1983.

3.9. At all times relevant to this First Amended Complaint, the rated capacity of the initial crusher component of the NMP Plant has been at least 240 tons of nonmetallic minerals per hour.

3.10. Therefore, in accordance with 40 C.F.R. § 60.670(a)(1), the two crushers, two screening operations, and at least eleven belt conveyors in the NMP Plant alleged in Paragraph 3.8 are affected facilities subject to NSPS 3O.

3.11. The initial startup of the NMP Plant occurred on or about June 15, 2015.

3.12. On or about June 1, 2015, Respondents installed a concrete batch plant ("Concrete Plant") at the Facility.

3.13. The initial startup of the Concrete Plant occurred on or about June 15, 2015.

3.14. The rated capacity of the Concrete Plant is 120 cubic yards of concrete per hour.

3.15. The Facility is a "stationary source" and "air pollution source" as those terms are defined in 40 C.F.R. §§ 49.123, 49.152(b), and 52.21(b)(5), and Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3), 7602(z). Alternatively, the NMP Plant and Concrete Plant are "stationary sources" and "air pollution sources" as those terms are defined in 40 C.F.R. §§ 49.123, 49.152(b), and 52.21(b)(5), and Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3), 7602(z).

IV. VIOLATIONS

4.1. The allegations in Paragraphs 3.1 through 3.15 are incorporated by reference and realleged herein.

Count 1: Failure to provide notification of initial startup of the NMP Plant

4.2. In accordance with 40 C.F.R. § 60.7(a), owners and operators of new sources subject to an NSPS standard are required to submit notification of the actual date of initial startup of an affected facility. The notification must be postmarked within 15 days after such date. 40 C.F.R. § 60.7(a)(3).

4.3. Respondents failed to provide a notification of initial startup for the 15 affected facilities at the NMP Plant subject to NSPS 3O. Therefore, Respondents violated 40 C.F.R. § 60.7(a)(3) from at least June 30, 2015, to the present.

Count 2: Failure to timely perform an initial performance test and demonstrate compliance with opacity standards

4.4. Pursuant to 40 C.F.R. § 60.672 and Table 3 of NSPS 3O, the owner or operator of affected facilities subject to NSPS 3O must demonstrate compliance with the fugitive emission limits and compliance requirements by conducting an initial performance test that includes opacity observations according to 40 C.F.R. § 60.11 and 40 C.F.R. § 60.675.

4.5. The regulations at 40 C.F.R. § 60.672(b) and 40 C.F.R. § 60.11(e)(1) require that for the purpose of demonstrating initial compliance, opacity observations shall be conducted no later than 180 days after initial startup of the facility.

4.6. Therefore, Respondents were required to perform an initial performance test on the affected facilities in the NMP Plant by December 12, 2015.

4.7. Respondents performed an initial performance test on the NMP Plant on November 22, 2016.

4.8. Therefore, Respondents failed to perform an initial performance test and to demonstrate initial compliance with the emission limits by December 12, 2015 for the 15 affected facilities in the NMP Plant. Therefore, Respondents violated 40 C.F.R. § 60.11(e)(1) and 40 C.F.R. § 60.672(b) from December 12, 2015, to November 22, 2016.

Count 3: Failure to Obtain a Tribal Minor New Source Review Permit

4.9. Respondents commenced construction of the Facility, including the NMP Plant and Concrete Plant, on or around June 1, 2015.

4.10. Prior to August 11, 2017, the NMP Plant, Concrete Plant, and Facility's Potentials to Emit ("PTE") severally and jointly exceeded the thresholds found in Table 1 to 40 C.F.R. § 49.153 for each of the following pollutants: PM and PM-10.

4.11. Respondents obtained Tribal Minor New Source Review permits for the NMP Plant and Concrete Plant on August 11, 2017.

4.12. At no time prior to August 11, 2017, had Respondents obtained a Tribal Minor New Source Review permit to construct and operate the Facility, NMP Plant, or Concrete Plant.

4.13. Between June 1, 2015, and August 11, 2017, Respondents failed to obtain a Tribal Minor New Source Review permit to construct and operate the Facility, NMP Plant, or Concrete Plant pursuant to 40 C.F.R. § 49.154 and 40 C.F.R. § 49.155 (or a general permit / permit by rule pursuant to 40 C.F.R. § 49.156, if applicable). Therefore, Respondents violated 40 C.F.R. § 49.151(c)(iii)(B) from June 1, 2015, to August 11, 2017.

Count 4: Failure to Submit an Application for a Title V Operating Permit

4.14. The allegations in paragraphs 4.2 through 4.13 are incorporated by reference and realleged herein.

4.15. Prior to August 11, 2017, the Facility's PTE for PM-10 exceeded 100 tons per year.

4.16. Prior to August 11, 2017, the Concrete Plant's PTE for PM-10 exceeded 100 tons per year.

4.17. Therefore, prior to August 11, 2017, the Facility and the Concrete Plant met the definition of "major source" as that term is defined in Section 501(2) of the CAA, 42 U.S.C. § 7661(2), and 40 C.F.R. § 71.2.

4.18. Respondents failed to submit a timely and complete application for an operating permit for the Facility or the Concrete Plant earlier than June 15, 2016, which is 12 months following June 15, 2015

4.19. Therefore, Respondents violated 40 C.F.R. § 71.5(a) and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), between June 15, 2016, and August 11, 2017.

Count 5: Failure to Re-register Air Pollution Source with the Regional Administrator

4.20. Pursuant to 40 C.F.R. §§ 49.11101, 49.11110(j), and 40 C.F.R. § 49.138(e)(1), Respondents initially registered the Facility as an air pollution source with the EPA Region 10 Regional Administrator on March 2, 2015. Respondents supplemented the initial registration with a registration dated July 29, 2015.

4.21. In accordance with 40 C.F.R. § 49.138(d) and (e)(2), after initial registration, the owner or operator of an air pollution source must re-register with the Regional Administrator by February 15 of each year.

4.22. Respondents re-registered the Facility with the Regional Administrator on February 16, 2017.

4.23. As of August 11, 2017, the Facility, including the Concrete Plant, is not a Part 71 Source.

4.24. Between February 15, 2018, and the present, Respondents failed to re-register the Facility with the EPA Region 10 Regional Administrator in violation of 40 C.F.R. § 49.138 and 40 C.F.R. § 49.11110(j).

V. PROPOSED PENALTY

5.1. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to assess a civil administrative penalty of up to $25,000 per day of violation, whenever, on the basis of any available information the administrator finds that such person has violated or is violating any other requirement or prohibition of Title I of the CAA or Titles III, IV-A, V, or VI of the CAA, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under the CAA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, the statutory maximum civil penalty has subsequently been raised to $37,500 for each violation that occurred on or after December 6, 2013, through November 2, 2015, and to $46,192 for each violation that occurred after November 3, 2015, and assessed on or after January 15, 2018.

5.2. Complainant requests that a civil penalty up to the maximum amount permitted by law as described in Paragraph 5.1, above, be assessed for each day of violation alleged in Counts 1 through 5 in Section IV of this First Amended Complaint.

5.3. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. See 40 C.F.R. § 22.19(a)(4).

5.4. Section 113(e) of the CAA, 42 U.S.C. § 7413(e), states, "In determining the amount of the penalty to be assessed under this section or section [304(a) of the CAA], the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

5.5. To develop a proposed penalty for the violations alleged in this First Amended Complaint, EPA will take into account the particular facts and circumstances of this case with specific reference to EPA's October 25, 1991, Stationary Source Civil Penalty Policy ("General Penalty Policy"), the February 12, 2008, Memorandum entitled EPA Region 10 Clean Air Act Penalty Guidelines for Indian Reservation ("FARR Penalty Policy"), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19. These policies and regulation provide a rational, consistent, and equitable methodology for applying the statutory penalty factors enumerated in Paragraph 5.4, above, to particular cases.

5.6. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the severity of the violations alleged in this First Amended Complaint is set forth below.

5.7. The General Penalty Policy provides a method for calculating "the gravity component" of the penalty to reflect the severity or seriousness of a violation. The gravity component is determined based on an evaluation of three objective factors: (1) actual or possible harm, (2) importance to the regulatory scheme, and (3) size of violator. Regarding "actual or

possible harm," the General Penalty Policy states that, among other things, the "length of time a violation continues" is an indicator of the actual or possible harm caused by the violation. Regarding "importance to the regulatory scheme" the General Penalty Policy states that "this factor focuses on the importance of the requirement to achieving the goals of the Clean Air Act and its implementing regulations." Regarding the "size of violator" factor, the General Penalty Policy prescribes a penalty amount that increases proportional to the net worth (for corporations) or net current assets (for partnerships or sole proprietorships) of the company. For the purposes of the "size of violator" factor, based on publicly available information, Complainant estimates Respondents' net worth and current assets are between $100,001 and $1,000,000. An evaluation of Counts 1 through 4 based on the remaining two objective factors described in this Paragraph is presented in Paragraphs 5.8 through 5.11, below.

5.8. Count 1: Failure to Provide Notification of Initial Startup of the NMP Plant. The violation is ongoing. The General Penalty Policy lists a "failure to report or notify" as "very significant in the regulatory scheme." The purpose of NSPS 3O is to maintain ambient air quality by ensuring that new nonmetallic mineral processing plants implement the best demonstrated emission control technologies. 73 Fed. Reg. 21,559, 21,561 (Apr. 22, 2008). By failing to submit the required initial notification, Respondents prevented the EPA from assessing compliance with NSPS 3O at the facility.

5.9. Count 2: Failure to timely perform an initial performance test and demonstrate compliance with opacity standards. The violation occurred for 11 months. The General Penalty Policy lists a "failure to conduct required performance testing" as "very significant in the regulatory scheme." In particular, Respondents' failure to conduct the required initial

performance test is a very serious violation of the CAA, because it is not possible to determine if the source is operating in compliance with the emissions standards without conducting the test.

5.10. Count 3: Failure to Obtain a Tribal Minor New Source Review Permit. The violation occurred for 26 months. The purpose of the Tribal Minor New Source Review permit program is to "ensure that air resources in Indian Country [are] protected in the manner intended by the Act" and "provide regulatory certainty to allow for environmentally sound economic growth in Indian Country." 71 Fed. Reg. 48,696, 48,698-99. Accordingly, failure to timely obtain an NSR permit is a serious violation of the CAA, because it prevents the Agency from ensuring the construction and operation of the source is consistent with the CAA. Specifically, an NSR permit is an important means of ensuring that operation of a source does not interfere with maintenance of air quality standards, because the permit sets enforceable emission limits and requires routine monitoring of a source to ensure compliance with the emission limits.

5.11. Count 4: Failure to Submit an Application for a Title V Operating Permit. The Violation occurred for 13 months. The purpose of the Title V Operating Permit Program is to "clarify which requirements apply to a source [and, accordingly,] enhance compliance with the requirements of the Act." 60 Fed. Reg. 20,804, 20,805. Failure to apply for and obtain a Title V Operating Permit is a serious violation because such failure thwarts the intent of Title V of the CAA to centralize all CAA requirements in a comprehensive permit.

5.12. The FARR Penalty Policy provides a method for calculating "the gravity component" of the penalty to reflect the severity or seriousness of a violation. The gravity component is determined based on an evaluation of three objective factors: (1) the seriousness of the violation, (2) the duration of the violation, and (3) the size of the violator. As discussed in

Paragraph 5.7, above, for the purposes of the "size of violator" factor, based on publicly available information, Complainant estimates Respondents' net worth and current assets are between $100,001 and $1,000,000. An evaluation of Count 5 based on the two remaining objective criteria in the FARR Penalty Policy is presented in Paragraph 5.13, below.

5.13. Count 5: Failure to re-register air pollution source with the Regional Administrator. The violation is ongoing. According to the regulation at 40 C.F.R. § 49.138(a), the purpose of the registration requirement is to "allow the Regional Administrator to develop and maintain a current and accurate record of air pollution sources and their emissions within the Indian Reservation." Respondents' failure to re-register the Facility frustrates this purpose and inhibits the Regional Administrator's ability to appropriately implement the Federal Implementation Plan for the Yakama Indian Reservation.

VI. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

6.1. Respondents have the right to request a hearing on the issues raised in this First Amended Complaint. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22 ("Part 22 rules"). A copy of the Part 22 rules accompanies this First Amended Complaint. A request for a hearing must be incorporated in a written answer filed with the Regional Hearing Clerk within 20 days of service of this First Amended Complaint. In its answer, Respondents may contest any material fact contained in the First Amended Complaint. Respondents may also contest the appropriateness of the proposed penalty.

6.2. In accordance with 40 C.F.R. § 22.15, the answer shall directly admit, deny, or explain each of the factual allegations contained in the First Amended Complaint with regard to

which Respondents have any knowledge and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts which Respondents dispute; and (3) the basis for opposing any proposed relief, and (4) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so states, the allegation is deemed denied.

6.3. Any failure of Respondents to admit, deny, or explain any material fact contained in the First Amended Complaint will constitute an admission of that allegation.

Respondents' answer(s) must be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Tel: 206-553-1632
Email: young.teresa@epa.gov

VII. FAILURE TO FILE AN ANSWER

7.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondents must file a written Answer to this First Amended Complaint with the Regional Hearing Clerk within twenty (20) days after service of this First Amended Complaint.

VIII. INFORMAL SETTLEMENT CONFERENCE

8.1 Whether or not Respondents requests a hearing, Respondents may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondents should contact:

Brett S. Dugan, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Suite 900 (Mail Stop ORC-113)
Seattle, Washington 98101
(206) 553-8562

8.2 Note that a request for an informal settlement conference does not extend the 20-day period for filing a written Answer to this First Amended Complaint, nor does it waive Respondents' right to request a hearing.

8.3 Respondents are advised that pursuant to 40 C.F.R. § 22.8, after the First Amended Complaint is issued, the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on this case.

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: 3/28/2018

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

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Brett S. Dugan, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, MS ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Tel: 206-553-8562
Email: Dugan.brett@epa.gov

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: WHEELER ROCK PRODUCTS & TRINA WHEELER Wapato, Washington, Respondents. Proceeding pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).	DOCKET NO. CAA-10-2018-0260 **FIRST AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

I hereby certify that the original of the First Amended Complaint and Notice of Opportunity for Hearing, Docket Number CAA-10-2018-0260 and one true and correct copy were hand-delivered today to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, ORC-113, Seattle, Washington 98101.

I also certify that true and correct copies of the First Amended Complaint (with accompanying copy of the Consolidated Rules of Practice) were sent by Certified Mail, Return Receipt Requested today, to:

Jack Fiander, Attorney at Law
Towtnuk Law Offices, Ltd.
Sacred Ground Legal Services, Inc.
5808A Summitview Avenue, #97
Yakima, Washington 98908

Trina Wheeler, Owner and President
Wheeler Rock Products
P.O. Box 99
Wapato, Washington 98951-0099

DATED this 28 day of March 2018

Mark Wright
U.S. Environmental Protection Agency
Region 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply to: OCE-101

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Jack Fiander
Attorney at Law
Towtnuk Law Offices, Ltd.
Sacred Ground Legal Services, Inc.
5808A Summitview Avenue, #97
Yakima, Washington 98908

Ms. Trina Wheeler
Owner and President
Wheeler Rock Products
P.O. Box 99
Wapato, Washington 98951-0099

Re: In the Matter of Wheeler Rock Products & Trina Wheeler, Docket No: CAA-10-2018-0260 – First Amended Complaint

Dear Mr. Fiander and Ms. Wheeler:

I have enclosed a First Amended Administrative Complaint and Notice of Opportunity for Hearing, Docket No. CAA-10-2018-0260, filed against Wheeler Rock Products and Trina Wheeler under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

As provided in the First Amended Complaint, if you would like to request a hearing, you must do so in your Answer to the Complaint. Failure to file an Answer with the Regional Hearing Clerk within 20 days of receipt of this First Amended Complaint is considered an admission of all facts alleged in the First Amended Complaint and waives your right to contest such factual allegations. Failure to file an Answer also could result in a Default Order assessing the full penalty proposed in the First Amended Complaint.

Also enclosed is a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, which governs this proceeding.

Whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please have your attorney contact Brett Dugan, Assistant Regional Counsel, at (206) 553-8562.

Sincerely,

Edward J. Kowalski
Director

Enclosures

1. First Amended Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits

cc: Mr. JoDe L. Goudy
Chairman Yakama Nation Tribal Counsel