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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2019-0093
)
CENTRAL MANUFACTURING, INC.,) CONSENT AGREEMENT
)
Wapato, Washington)
)
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 Central Manufacturing, Inc. (“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. 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 an alleged violation that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. On October 12, 2018, EPA notified Respondent and the Confederated Tribes and Bands of the Yakama Nation that EPA had found that Respondent committed the alleged violation described in Part III of this Consent Agreement.

2.5. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violation 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. 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.”

3.2. 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.”

3.3. 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.”

3.4. The term “Indian Country” is defined in 18 U.S.C. § 1151 to mean, among other things, “all land within the limits of any Indian reservation under the jurisdiction of the United States government.”

3.5. Pursuant to Sections 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.

3.6. In accordance with 40 C.F.R. § 49.153(a)(1)(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.

3.7. 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.”

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

3.9. 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 (SO₂), volatile organic compounds (“VOC”), coarse particulate matter (“PM-10”), and fine particulate matter (“PM-2.5”).

3.10. In accordance with 40 C.F.R. § 49.151(c)(1)(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).

3.11. At no time relevant to this Consent Agreement 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.

3.12. Respondent is a corporation incorporated in the State of Washington. Therefore, Respondent is a person as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.13. Between February 1, 2018 and April 30, 2018, Respondent installed a hot-mix asphalt plant on or around 250 Cowin Lane, Wapato, Washington (46° 28' 20" N, 120° 30' 50" W) (“Asphalt Plant”).

3.14. Respondent first operated the Asphalt Plant on May 9, 2018.

3.15. At all times relevant to this Consent Agreement, the rated capacity of each piece of the Asphalt Plant has been 310 tons per hour.

3.16. At all times relevant to this Consent Agreement, the Asphalt Plant's potential to emit CO, NO_x, SO₂, VOC, and PM-10 exceeded the rates listed in Table 1 to 40 C.F.R. § 49.153.

3.17. Respondent obtained a Tribal Minor NSR Permit for the Asphalt Plant effective May 22, 2019. At no time prior to May 22, 2019, did Respondent obtain a Tribal Minor NSR permit to construct the Asphalt Plant in violation of 40 C.F.R. § 49.151(c)(1)(iii)(B).

3.18. 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 \$25,000 (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

John Keenan
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Keenan.john@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.

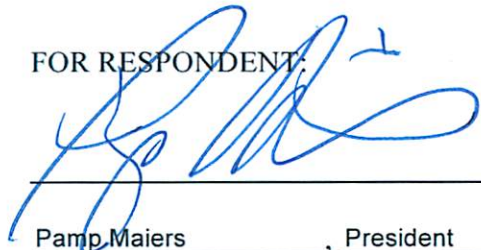
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

June 14, 2019

FOR RESPONDENT:



Pam Maier, President
Print Name Print Position
Central Manufacturing, Inc.

DATED:

6/21/2019

FOR COMPLAINANT:



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-10-2019-0093
)	
CENTRAL MANUFACTURING, INC.)	FINAL ORDER
)	
Wapato, Washington)	
)	
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 violation 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 1st day of July, 2019.



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: Central Manufacturing, Inc., Docket No.: CAA-10-2019-0093**, 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:

Brett S. Dugan
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop 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:

Mr. Pamp Maiers
President
Central Manufacturing, Inc.
P.O. Box 939
Moses Lake, Washington 98837

DATED this 3 day of July 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10