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HEARINGS CLERK
EPA - REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|-------------------------------|---|-----------------------------|
| In the Matter of: |) | |
| |) | DOCKET NO. CAA-10-2018-0257 |
| |) | |
| Granite Construction Company, |) | CONSENT AGREEMENT |
| Okanogan, 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 Granite Construction Company ("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 Office of Compliance and Enforcement, 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 January 30 and 31, 2018, EPA notified Respondent and the Confederated Tribes of the Colville Reservation, respectively, of EPA's finding 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, 42 U.S.C. § 7601(a) and 7601(d)(4), on July 1, 2011, EPA issued a Federal Implementation Plan that establishes a minor new source review permit program applicable to sources located in Indian country ("Tribal Minor NSR Program").

3.2. The Tribal Minor NSR Program is codified at 40 C.F.R. §§ 49.151-165 and applies in "Indian Country" where there is no EPA-approved minor new source review program.

3.3. The Tribal Minor NSR Program provides for the issuance of general permits. A general permit is a permit issued by a reviewing authority to apply to a number of similar emissions units or sources so as to simplify the permit issuance process for similar facilities. See 40 C.F.R. § 49.156.

3.4. EPA has issued a General Air Quality Permit for New or Modified Minor Source Hot Mix Asphalt Plants ("HMA General Permit") and one for Stone Quarrying, Crushing and Screening Facilities ("SQCS General Permit") under the Tribal Minor NSR Program, with effective dates of June 1, 2015. See 80 Fed. Reg. 25068 (May 1, 2015).

3.5. For purposes of the HMA General Permit, a hot mix asphalt plant (“HMA plant”) is a facility which manufactures hot mix asphalt by heating and drying aggregate and mixing with asphalt cements. An HMA plant is comprised of any combination of the following activities: dryers, liquid asphalt storage tanks, fuel oil storage tanks, auxiliary heaters (including hot oil heaters), material storage handling and transfer systems, generators, storage bins/silos, storage piles, and haul roads. An HMA plant can be constructed as a permanent plant, a skid-mounted (easily relocated) plant, or a portable plant.

3.6. For purposes of the SQCS General Permit, a stone quarrying, crushing, and screening facility is any stationary or portable non-metallic mineral processing facility which uses rock crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, storage piles, truck loading stations, or railcar loading stations to process rock, sand, gravel, or mineral aggregate or that mines rock, stone, sand and gravel for construction.

3.7. The term “Indian country” is defined in 18 U.S.C. § 1151 and 40 C.F.R. § 49.152(d) to mean, inter alia, “all land within the limits of any Indian reservation under the jurisdiction of the United States government.”

3.8. Paragraph 32 of the HMA General Permit requires the permittee to conduct an initial performance test to verify compliance with specified permit conditions “[w]ithin 60 days after achieving the maximum production rate at which the permitted source will operate the affected emission units), but not later than 180 days after the first date of operation after receiving coverage under the General Permit...”

3.9. Paragraph 25 of the HMA General Permit provides that emissions of Oxides of Nitrogen (“NO_x”) from a subject HMA plant shall not exceed 80 parts per million (“ppm”) at three percent oxygen.

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

3.11. Respondent is the owner of a facility located at 249-B Rodeo Trail Drive, Okanogan, Washington (“Facility”).

3.12. The Facility is located within the exterior boundaries of the Colville Indian Reservation, which is Indian Country as defined in 18 U.S.C. § 1151 and 40 C.F.R. § 49.152(d).

3.13. The Colville Indian Reservation is in attainment or unclassifiable for all pollutants.

3.14. The Facility includes an HMA plant and SQCS operations.

3.15. Respondent is the owner and operator of the HMA plant at the Facility and the owner of the SQCS operations at the Facility.

3.16. On June 29, 2012, Respondent submitted to EPA a request for a source-specific permit with synthetic minor emission and operational limits for the Facility under 40 C.F.R. § 49.158 of the Tribal Minor NSR Rule to avoid being considered a major source under 40 C.F.R. § 71.2 and the Title V operating permits program. Respondent did not receive a response from EPA.

3.17. In a letter dated May 12, 2015, EPA provided Request for Coverage Forms for the HMA and SQCS General Permits to Respondent. EPA also informed Respondent that applying for coverage under the HMA and SQCS General Permits would allow Respondent to obtain a synthetic minor permit under EPA’s newly created HMA and SQCS General Permits. The letter further stated that the HMA and SQCS General Permits allow EPA the use of general permits for both true minor sources and synthetic minor sources.

3.18. Based on the May 12, 2015 letter from EPA, on June 20, 2016, Respondent, under the name of Granite Construction Inc., submitted to EPA a Request for Coverage under the

HMA General Permit and the SQCS General Permit in order to limit the potential to emit of the Facility to avoid being considered a major source under 40 C.F.R. § 71.2 and the Title V operating permits program.

3.19. On September 22, 2016, EPA issued an approval of Respondent's Request for Coverage of the HMA plant at the Facility under the HMA General Permit and of the SQCS operations at the Facility under the SQCS General Permit.

3.20. Respondent conducted the initial performance test of the HMA plant required by Paragraph 32 of the HMA General Permit on September 18, 2017. Prior to performing the initial performance test Granite informed EPA that the drum dryer would exceed the NO_x concentration emissions limit and requested guidance. EPA advised Respondent that Paragraph 3.2 of the HMA General Permit required that the testing be conducted.

3.21. On November 1, 2017, Respondent submitted an Emission Source Test Report to EPA. Table 1-1 (Summary of Results) of the Respondent's Emission Source Test Report indicates that NO_x emissions from the HMA Plant averaged 122 ppm at three percent oxygen, approximately 52.5% above the applicable emissions limit.

3.22. Based on information and belief, including statements of Respondent based on representations from the manufacturer of the burner in the HMA plant, emissions from the HMA plant exceeded 80 ppm at three percent oxygen on each day the HMA plant operated after Respondent obtained coverage under the HMA General Permit.

3.23. Based on historical information of yearly asphalt production operations at the Facility provided by the Respondent in its annual Federal Air Rule for Indian Reservations, actual emissions of NO_x from the HMA Plant are expected to be less than three tons per year.

3.24. Respondent violated Paragraph 25 of the HMA General Permit and Section 113 of the CAA, 42 U.S.C. § 7413, on each day the HMA plant operated after receiving coverage under the HMA General Permit.

3.25. The HMA plant is currently not operating.

3.26. Respondent has stated its intent to resume operation of the HMA plant in the spring of 2018.

3.27. On February 5, 2018, Respondent advised EPA that the original source-specific synthetic minor permit application it had submitted to EPA under 40 C.F.R. § 49.158 of the Tribal Minor NSR Rule on June 29, 2012 remained current and complete. Respondent further requested that EPA issue a source-specific permit with synthetic minor limits under the Tribal Minor NSR rule in lieu of coverage under the HMA General Permit to limit the potential to emit of the Facility to avoid being considered a major source under 40 C.F.R. § 71.2 and the Title V operating permits program.

3.28. 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 \$46,192 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. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account 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, payment by Respondent of penalties

previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$9,347 (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 ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
young.teresa@epa.gov

Aaron Lambert
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
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:

4.8.1. 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.

4.8.2. 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 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 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:

FOR RESPONDENT:

March 26, 2018



GRANITE CONSTRUCTION COMPANY

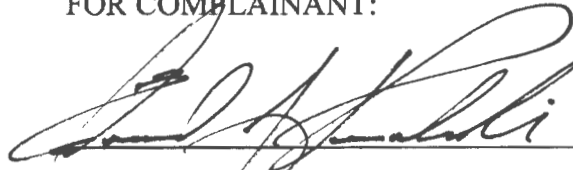
By: Philip DeCocco

Its: Senior Vice President

DATED:

FOR COMPLAINANT:

3/26/2018



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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|-------------------------------|---|-----------------------------|
| In the Matter of: |) | |
| |) | DOCKET NO. CAA-10-2018-0257 |
| |) | |
| Granite Construction Company, |) | FINAL ORDER |
| Okanogan, 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 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 28th day of ~~February~~^{March}, 2018.


RICHARD MEONICK
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: Granite Construction Company, Docket No.: CAA-10-2018-0257**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

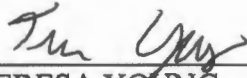
The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, 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:

Suzanna N. Patron
Corporate Counsel
Granite Construction Company
585 W Beach St
Watsonville, CA 95076-5123

DATED this 29 day of March, 2018.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10