

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK  
EPA--REGION 10

In the Matter of: )  
)  
)  
Joe McDonald )  
46274 Tutuilla Church Road )  
Pendleton, Oregon 97801, )  
)  
)  
Respondent. )

DOCKET NO. CAA-10-2012-0100

**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 Joe McDonald (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 (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 Umatilla Indian Reservation are incorporated by reference at 40 C.F.R. § 49.11020(a) through (n), and specifically include 40 C.F.R. §§ 49.123, 49.131, and 49.133.

3.3. 40 C.F.R. § 49.131, General Rule for Open Burning, which is incorporated by reference at 40 C.F.R. § 49.11020(g), applies to any person who conducts open burning and to the owner of the property upon which open burning is conducted.

3.4. 40 C.F.R. § 49.131(d)(2), which is incorporated by reference at 40 C.F.R. § 49.11020(g), states that, except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality.

3.5. On August 21, 2006, EPA delegated 40 C.F.R. § 49.133, Rule for Agricultural Burning Permits, which is incorporated by reference at 40 C.F.R. § 49.11020(i), to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) for implementation.

3.6. 40 C.F.R. § 49.133(b) of the Rule for Agricultural Burning Permits, which is incorporated by reference at 40 C.F.R. § 49.11020(i), applies to any person who conducts agricultural burning.

3.7. 40 C.F.R. § 49.123(a), which is incorporated by reference at 40 C.F.R. § 49.11020(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.

3.8. 40 C.F.R. § 49.133(c)(1), which is incorporated by reference at 40 C.F.R. § 49.11020(i), 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 on-site during the burn, and conduct the burn in accordance with the terms and conditions of the permit.

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

3.10. Respondent is the owner of property located at Township 2N, Range 33E, Section 28, SE ¼ of NW ¼, Lot #00100, Fee Land, Umatilla County, Oregon (the “Property”).

3.11. On October 7, 2011, CTUIR issued a burn permit to Respondent for the Property.

3.12. The burn permit issued to Respondent specified that no burning was allowed on October 13, 2011 (a “no-burn day”).

3.13. The CTUIR Fire Department issued a “burn ban” from July 11, 2011, at 8:00 a.m., to October 14, 2011, at 12:00 p.m.

3.13. On October 13, 2011, air quality staff with the CTUIR’s Department of Science and Engineering observed the agricultural burning of six acres of wheat stubble on the Property.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations contained in Part II 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. After considering these factors in accordance with "Region 10's Civil Penalty Guidelines for the Federal Implementation Plan under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington," EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is one thousand, three hundred dollars (\$1,300).

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 the following address:

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

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. If Respondent fails 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 to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), together with interest, fees, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order set forth in Part IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) 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 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of 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.

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:

4-2-2012

FOR RESPONDENT:

Joe R. McDonald  
Signature

Print Name: Joe R. McDonald

Title: Land Owner / Respondent

DATED:

4-10-2012

FOR COMPLAINANT:

Edward J. Kowalski  
Signature

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.

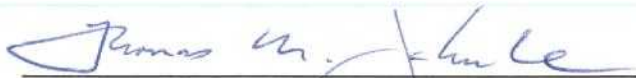
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 one thousand, three hundred dollars (\$1,300), as provided in Part IV above.

5.4. In accordance with 40 C.F.R. § 22.34(b), issuance of this CAFO pursuant to 40 C.F.R. § 22.13 satisfies the notice requirement of that section and Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

5.5. This Final Order is effective upon filing.

SO ORDERED this 16<sup>th</sup> day of April, 2012.



THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Joe McDonald, DOCKET NO.: CAA-10-2012-0100** was filed with the Regional Hearing Clerk on April 16, 2012.

On April 16, 2012 the undersigned certifies that a true and correct copy of the document was delivered to:

Jillian Bunyan  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 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 on April 16, to:

Joe McDonald  
46274 Tutuilla Church Road  
Pendleton, Oregon 97801

DATED this 16 day of April 2012.



Candace Smith  
Regional Hearing Clerk  
EPA Region 10