

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

2008 AUG 29 AM 9:35

BEFORE THE ADMINISTRATOR

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
THE THREE AFFILIATED TRIBES) Docket No. RCRA-08-2008-0001
and SHARON JACOBS, individually,)
HIGHWAY 8 CONVENIENCE STORE,)
)
THE THREE AFFILIATED TRIBES) Docket No. RCRA-08-2008-0002
and YOLANDA BEARS TAIL, individually,)
WHITE SHIELD REE STORE,)
)
THE THREE AFFILIATED TRIBES) Docket No. RCRA-08-2008-0003
and DAVE WILLIAMS, individually,)
WEST DAKOTA SERVICE,)
)
)
Respondents)

**ORDER ON RESPONDENTS' MOTION FOR EXTENSION OF TIME
FOR COMPLIANCE**

These consolidated matters brought pursuant to the Resource Conservation and Recovery Act (RCRA) were pending before the undersigned until a Consent Agreement and Final Order (CAFO) was filed on or about July 7, 2008, memorializing the settlement among the parties.

On August 26, 2008, Respondents' attorney submitted and served on the undersigned a Motion for Extension of Time for Compliance, requesting an additional 30 days to comply with the terms of the CAFO. The Motion indicates that the CAFO contains a Corrective Action Order requiring a Tier 2 evaluation to be completed within 45 days of the date of the CAFO. The Motion states that Complainant agrees that an extension of time is proper under the circumstances.

The Consolidated Rules of Practice, which govern administrative penalty assessment proceedings under RCRA, limit the scope of the Administrative Law Judge's jurisdiction over motions as follows: "an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed." 40

C.F.R. § 22.16(c). Where a proceeding before an Administrative Law Judge is resolved by settlement, the executed consent order is ratified by a final order from the Regional Judicial Officer, or Regional Administrator, who finalizes the CAFO. 40 C.F.R. § 22.18(b)(3). An Administrative Law Judge no longer has jurisdiction over a matter in which a final order or a CAFO has been filed.

Therefore, the undersigned has no jurisdiction to rule on the Respondents' Motion.



Susan L. Biro
Chief Administrative Law Judge

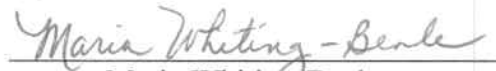
Dated: August 26, 2008
Washington, D.C.

In the Matter of The Three Affiliated Tribes and Sharon Jacobs, an individually; The Three Affiliated Tribes and Yolanda Bears Tail, an individually and The Three Affiliated Tribes and Dave Williams, individually, Respondents

Docket Nos. RCRA-08-2008-0001; RCRA-08-2008-0002 & RCRA-08-2008-0003

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Respondent's Motion For Extension Of Time For Compliance**, dated August 26, 2008, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: August 26, 2008

Original and Copy By Pouch Mail To:

Tina Artemis
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Copy By Pouch Mail To:

Amy Swanson, Esquire
Enforcement Attorney (8ENF-L)
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