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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

WHEELER ROCK PRODUCTS

&

TRINA WHEELER

Wapato, Washington,

Respondents.

DOCKET NO. CAA-10-2018-0260

CONSENT AGREEMENT

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 Wheeler Rock Products and Trina Wheeler ("Respondents") agree to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

In the Matter of: Wheeler Rock Products &
Trina Wheeler
Docket Number: CAA-10-2018-0260
Consent Agreement
Page 1 of 6

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, ORC-113
Seattle, Washington 98101
(206) 553-1037

II. PRELIMINARY STATEMENT

2.1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), by issuing a Complaint against Respondents on February 26, 2018.

2.2. In the Complaint, EPA alleged that Respondents violated the CAA by (1) failing to timely provide a notification of initial startup of Respondents' nonmetallic mineral processing plant as required by 40 C.F.R. § 60.7, (2) failing to timely perform an initial performance test on Respondents' nonmetallic mineral processing plant as required by 40 C.F.R. §§ 60.672 and 60.11, (3) failing to timely obtain a Tribal Minor New Source Review Permit for Respondents' nonmetallic mineral processing plant and concrete batch plant as required by 40 C.F.R. § 49.151(c)(iii)(B), and (4) failing to timely submit an application for a Title V operating permit as required by Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.5.

2.3. On March 29, 2018, EPA issued the First Amended Complaint against Respondents. In addition to the violations alleged in the Complaint, EPA alleged in the First Amended Complaint that Respondents violated the CAA by failing to timely re-register an air pollution source with the EPA Regional Administrator as required by 40 C.F.R. § 49.138 and 40 C.F.R. § 49.11110(j).

2.4. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the First Amended Complaint and is incorporated herein by reference.

2.5. 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.

2.6. 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.

III. TERMS OF SETTLEMENT

3.1. For the purposes of this proceeding, Respondents admit the jurisdictional allegations of the First Amended Complaint.

3.2. Respondents neither admit nor deny the specific factual allegations contained in the Complaint or First Amended Complaint.

3.3. 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 Respondents agree that an appropriate penalty to settle this action is \$40,000 (the "Assessed Penalty").

3.4. Respondents agree to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

3.5. 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

Respondents must note on the check the title and docket number of this action.

3.6. Concurrently with payment, Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 3.5 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 155
Seattle, Washington 98101
young.teresa@epa.gov

Aaron Lambert
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-201
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
lambert.aaron@epa.gov

3.7. If Respondents fail 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, Respondents 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.

3.8. If Respondents fail to pay any portion of the Assessed Penalty in full by its due date, Respondents 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 Respondents fail to pay the Assessed Penalty and interest on a timely basis, Respondents 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 Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

3.9. The Assessed Penalty, including any additional costs incurred under Paragraph 3.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.10. The undersigned representative of Respondents certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

3.11. Except as described in Paragraph 3.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

3.12. For the purposes of this proceeding, Respondents expressly waive any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

3.13. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

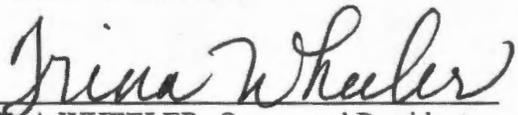
3.14. Respondents consent to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

10/26/18

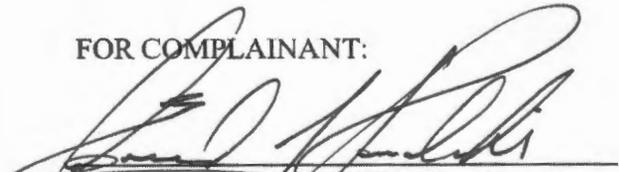
FOR RESPONDENTS:


TRINA WHEELER, Owner and President
Wheeler Rock Products

DATED:

11/1/2018

FOR COMPLAINANT:


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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

WHEELER ROCK PRODUCTS

&

TRINA WHEELER

Wapato, Washington,

Respondents.

DOCKET NO. CAA-10-2018-0260

FINAL ORDER

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegate 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. Respondents are 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 the First Amended Complaint. 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 Respondents' 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 6th day of November, 2018.



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: Wheeler Rock Products and Trina Wheeler, Docket No.: CAA-10-2018-0260**, 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:

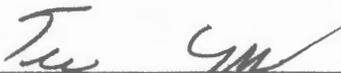
Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

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. 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

DATED this 7 day of November 2018.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10