UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

FEB - 9 2016

OFFICE OF
COMPLIANCE AND ENFORCEMENT

CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY
SENT BY CERTIFIED MAIL RETURN RECEIPT REQUESTED

Reply To: OCE-101

Ms. Lavila Curtis
Registered Agent
Cougar Den Inc.
620 Signal Peak Road
White Swan, Washington 98952

Re: Notice of Violation of the Clean Air Act and Opportunity to Settle
Docket No. CAA-10-2016-0017

Dear Ms. Curtis:

The U.S. Environmental Protection Agency ("EPA") is providing you with notice, pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, of its findings that Cougar Den Inc. ("Cougar Den") has violated the CAA, 42 U.S.C. §§ 7401, *et seq.*, by failing to submit its annual registrations for 2010, 2011, 2012, and 2014 by February 15, 2011, February 15, 2012, February 15, 2013, and February 15, 2015, respectively, for the air pollution source located at 620 Signal Peak Road, White Swan, Washington.

EPA has adopted basic air quality regulations under the CAA that apply to air pollution sources located on Indian Reservations in Idaho, Oregon, and Washington. These rules, known as the Federal Air Rules for Reservations ("FARR"), became effective on June 7, 2005, and are codified at 40 C.F.R. Part 49, Subparts C and M. The FARR provisions that apply within the Yakama Reservation are incorporated by reference at 40 C.F.R. § 49.11110 and include rules that require annual re-registration with EPA for specified types of air pollution sources.

As detailed in the enclosed Notice of Violation, EPA has determined that Cougar Den is in violation of the annual registration requirement at 40 C.F.R. § 49.138(e)(2). Failing to comply with the annual registration requirement is a violation of the FARR and the CAA. For such violations, Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19 authorize EPA to assess administrative penalties or bring a civil action in federal district court seeking civil penalties.

EPA uses the factors spelled out in Section 113 of the CAA, 42 U.S.C. § 7413, along with the *EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington* ("Penalty Guidelines") to determine the amount of penalty it will seek in CAA enforcement actions. A copy of the Penalty Guidelines is included with the enclosures. In this case, EPA has determined that an appropriate penalty to settle the violations is $898. As explained in the enclosed penalty worksheet, EPA's penalty is based on your violations constituting four administrative violations that cumulatively lasted for eight months.

If you disagree with EPA's determinations, you may respond **within 30 days of your receipt of this Notice.** If you do not dispute EPA's determinations and wish to promptly resolve this matter, you may do so by registering your facility and accepting EPA's proposed terms of settlement. To accept EPA's proposed terms

of settlement, please sign and return the enclosed Consent Agreement and Final Order **within 30 days of your receipt of this offer**.

The Consent Agreement and the Final Order specify the terms of settlement that EPA is willing to accept to resolve the violation. Be advised that as part of the settlement agreement you must promptly register your facility pursuant to 40 C.F.R. § 49.138 before EPA will counter-sign this proposed Consent Agreement. Materials to assist you in completing the registration process are enclosed. EPA's Small Business Resources Information Sheet is enclosed and will provide information on small business resources, which may be helpful to you.

If you accept these proposed terms of settlement, please sign the Consent Agreement and send it to:

Grace Hwang, Attorney Advisor
Office of Regional Counsel
EPA Region 10
1200 Sixth Avenue, Suite 900
Mail Stop: ORC-113
Seattle, Washington 98101

On timely receipt of a signed Consent Agreement and correction of the violation, EPA will co-sign the Consent Agreement that assesses the agreed penalty and will issue the Final Order. Once the Consent Agreement and Final Order are filed, the Final Order will be effective and your penalty payment will be due within 30 days. Be aware that EPA generally issues a press release announcing the settlement.

If you have questions about EPA's allegations and settlement proposal, you may contact Grace Hwang, Attorney Advisor, at 206-553-8577 or hwang.grace@epa.gov. If you do not respond **within 30 days** or you choose to reject this settlement offer, EPA may file an administrative Complaint to resolve these allegations. EPA reserves the right to seek the maximum allowable penalty in litigation of this case.

Thank you for your prompt attention to this important matter.

Sincerely,

Edward J. Kowalski
Director

Enclosures
1. Notice of Violation
2. FARR Penalty Calculation Sheet for Cougar Den Inc.
3. FARR Registration Compliance Assistance Materials
4. Small Business Resources Information Sheet
5. Consent Agreement and Final Order
6. EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington. 40 C.F.R. Part 49

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

In the Matter of:	)	
	)	
Cougar Den Inc.	)	**NOTICE OF VIOLATION**
620 Signal Peak Road	)	
White Swan, WA 98952	)	
	)	
Respondent.	)	
	)	

Pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, the United States Environmental Protection Agency ("EPA"), through the Director of the Office of Compliance and Enforcement, and upon the basis of available information, hereby issues the following Notice of Violation to Cougar Den Inc. ("Respondent").

APPLICABLE STATUTES AND REGULATIONS

1. Pursuant to Sections 301(a) and 301(d)(4) of the CAA, 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.

2. The FARR provisions that apply on the Yakama Reservation are incorporated by reference at 40 C.F.R. § 49.11110.

3. 40 C.F.R. § 49.138, the rule for registration of air pollution sources and the reporting of emissions, incorporated by reference at 40 C.F.R. § 49.11110, requires a person who owns or operates an air pollution source subject to the requirement to register the air pollution

source annually with the EPA Regional Administrator by February 15 of each year in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

4. An air pollution source is subject to the requirements of 40 C.F.R. § 49.138(d) if it does not meet the exemptions listed in 40 C.F.R. § 49.138(c).

5. 40 C.F.R. § 49.138(d), which is incorporated by reference at 40 C.F.R. § 49.11110, requires any person who owns or operates an air pollution source subject to this section on the Yakama Reservation, except for Part 71 sources (major sources), to register the source annually with the Regional Administrator and submit reports by February 15 of each year in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

6. 40 C.F.R. § 49.123(a), incorporated by reference at 40 C.F.R. § 49.11110, defines "owner or operator" as any person who owns, leases, operates, controls, or supervises an air pollution source.

VIOLATIONS

7. Respondent is a corporation, registered in the State of Washington, and is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

8. Respondent owns a facility on the Yakama Reservation, located at 620 Signal Peak Road, White Swan, Washington, that is not a Part 71 source, as defined in 40 C.F.R. § 49.123.

9. Respondent emits more than two tons of an air pollutant per year, does not meet the exemptions listed in 40 C.F.R. § 49.138(c), and is therefore subject to the rule for the registration of air pollution sources and the reporting of emissions.

10. Respondent submitted its 2010 re-registration to the Regional Administrator on March 28, 2011, one month after the February 15, 2011 deadline.

11. Respondent submitted its 2011 re-registration to the Regional Administrator on March 23, 2012, one month after the February 15, 2012 deadline.

12. Respondent submitted its 2012 re-registration to the Regional Administrator on August 2, 2013, five months after the February 15, 2013 deadline.

13. Respondent submitted its 2014 re-registration to the Regional Administrator on March 19, 2015, one month after the February 15, 2015 deadline.

14. The failure to timely submit annual re-registration of air pollution sources by February 15 is a violation of 40 C.F.R. § 49.138(e)(2). Therefore, Respondent violated 40 C.F.R. § 49.138(e)(2), incorporated by reference at 40 C.F.R. § 49.11110.

ENFORCEMENT

15. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to impose penalties for past and continuing violations of the CAA, including issuance of an administrative penalty order assessing penalties of up to $37,500 per day of violation at any time after the expiration of 30 days following the date on which notice of violation is issued. This Notice of Violation does not waive or limit EPA's right to any remedy available to it under the CAA.

16. This Notice of Violation shall become effective immediately upon issuance.

Issued at Seattle, Washington, this 9th day of February 2016.

Edward J. Kowalski, Director
Office of Compliance and Enforcement

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2016-0017
Cougar Den Inc.,	)	**CONSENT AGREEMENT**
White Swan, 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 CAA Section 113(d), 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," C.F.R. Part 22, EPA issues, and Cougar Den Inc. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-113
Seattle, Washington 98101
(206) 553-1037

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. 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, 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 Yakama Reservation are incorporated by reference at 40 C.F.R. § 49.11110.

3.3. 40 C.F.R. § 49.138, the rule for registration of air pollution sources and the reporting of emissions, incorporated by reference at 40 C.F.R. § 49.11110, requires a person who owns or operates an air pollution source subject to the requirement to register the air pollution

source annually with the EPA Regional Administrator by February 15 of each year in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

3.4. An air pollution source is subject to the requirements of 40 C.F.R. § 49.138(d) if it does not meet the exemptions listed in 40 C.F.R. § 49.138(c).

3.5. 40 C.F.R. § 49.138(d), which is incorporated by reference at 40 C.F.R. § 49.11110, requires any person who owns or operates an air pollution source subject to this section on the Yakama Reservation, except for Part 71 sources (major sources), to register the source annually with the Regional Administrator and submit reports by February 15 of each year in accordance with the requirements set out in 40 C.F.R. § 49.138(e).

3.6. 40 C.F.R. § 49.123(a), incorporated by reference at 40 C.F.R. § 49.11110, defines "owner or operator" as any person who owns, leases, operates, controls, or supervises an air pollution source.

IV. VIOLATIONS

3.7. Respondent is a corporation, registered in the State of Washington, and is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.8. Respondent owns a facility on the Yakama Reservation, located at 620 Signal Peak Road, White Swan, Washington, that is not a Part 71 source, as defined in 40 C.F.R. § 49.123.

3.9. Respondent emits more than two tons of an air pollutant per year, and does not meet the exemptions listed in 40 C.F.R. § 49.138(c), and is therefore subject to the rule for the registration of air pollution sources and the reporting of emissions.

3.10. Respondent submitted the annual 2010 FARR re-registration on March 28, 2011, one month after the February 15, 2011 deadline.

3.11. Respondent submitted the annual 2011 FARR re-registration on March 23, 2012, one month after the February 15, 2012 deadline.

3.12. Respondent submitted the annual 2012 FARR re-registration on August 2, 2013, five months after the February 15, 2013 deadline.

3.13. Respondent submitted the annual 2014 FARR re-registration on March 19, 2015, one month after the February 15, 2015 deadline.

3.14. The failure to timely submit annual re-registration of air pollution sources by February 15 is a violation of 40 C.F.R. § 49.138(e)(2). Therefore, Respondent violated 40 C.F.R. § 49.138(e)(2), incorporated by reference at 40 C.F.R. § 49.11110.

3.15. 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 $37,500 per violation per day.

V. TERMS OF SETTLEMENT

4.1. For purposes of this proceeding, 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 violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, 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 $898.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. Payment 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
luna.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 penalty assessed by this Consent Agreement and the Final Order 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 penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order 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 penalty described in Paragraph 4.3, 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. 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, 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:

_____ _____

Name:_____

Position:_____
Cougar Den Inc.

DATED: 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:	)	DOCKET NO. CAA-10-2016-0017
Cougar Den Inc.,	)	**FINAL ORDER**
White Swan, 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. This 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 _____ day of _____, 2016.

_____
M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-113
Seattle, Washington 98101
(206) 553-1037

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Cougar Den Inc., Docket No.: CAA-10-2016-0017**, 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:

Grace Hwang, Attorney Advisor
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:

Lavila Curtis
Registered Agent
620 Signal Peak Road
White Swan, WA 98952

DATED this _____ day of _____, 2016.

_____
TERESA LUNA
Regional Hearing Clerk
EPA Region 10

FARR Penalty Calculation Sheet for Cougar Den, Inc.

Violations: Failure to annually register a pollution source. **Citation**: 40 C.F.R. § 49.138(e)(2)

This Federal Air Rules for Reservations (FARR) penalty amount was calculated in consideration of the following Clean Air Act and FARR penalty factors as described in: EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington.

EPA's total penalty demand consists of the following components:

1. **Seriousness of the violations:** For calendar year 2010, Respondent failed to submit its FARR registration by February 15, 2011. For 2011, Respondent failed to submit its FARR registration by February 15, 2012. For 2012, Respondent failed to submit its FARR registration by February 15, 2013. For 2014, Respondent failed to submit its FARR registration by February 15, 2015. These four violations were administrative in nature so $200 is included for this component.

2. **Duration of the violations:** The annual registration for 2010 was submitted on 3/28/2011, one month late. The annual registration for 2011 was submitted on 3/23/2012, one month late. The annual registration for 2012 was submitted on 8/2/2013, five months late. The annual registration for 2014 was submitted on 3/19/2015, one month late. The total duration of all violations combined is 8 months so $400 is included for this component.

3. **Size of the violator:** The violator is a minor source subject to the registration rule so $50 is included for this component.

4. **Compliance history:** The violator has one prior environmental violation so an adjustment of $130 is included for this component.

5. **Good faith efforts to comply:** The violator did correct each problem, but did so in a less timely fashion, so $0 is included for this component.

6. **Inflation**: the penalty subtotal is multiplied by a factor of **1.1518** to account for monetary inflation.

7. Total calculated penalty based on all the above factors is: **$898**

FARR Penalty Calculation Sheet for Cougar Den, Inc.

FARR Penalty Table	**Penalty Amount**
1. Seriousness of the violation	$200
2. Duration of the violation	$400
3. Size of the violator	$50
Gravity Sub-Total	**$650**
4. Compliance history	$130
5. Good faith efforts to comply	$0
Penalty Sub-Total	**$780**
6. Inflation: Account for inflation in accordance with the *Civil Monetary Penalty Inflation Adjustment Rule (effective December 6, 2013).*	1.1518
7. Total Penalty	**$898**