

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.) Civil Action No. 15-395
)
 WASHAKIE RENEWABLE ENERGY LLC,)
)
 Defendant.)
)

STIPULATION OF SETTLEMENT AND ORDER

WHEREAS Plaintiff United States of America, by authority of the Attorney General of the United States and acting at the request of the United States Environmental Protection Agency, filed a Complaint against Defendant Washakie Renewable Energy LLC (WRE) pursuant to Section 211(o) of the Clean Air Act, 42 U.S.C. § 7545(o), and the regulations issued under that section at 40 C.F.R. Part 80, Subparts K and M, to recover penalties relating to Defendant's generation of invalid Renewable Identification Numbers (RINs) from January 2010 through October 2010 at its Plymouth, Utah facility.

WHEREAS Defendant has not answered the Complaint but has "retired" more than 7.2 million 2013 D4 RINs to mitigate the harm caused by the Defendant's generation of the invalid RINs identified in the Complaint;

WHEREAS, Plaintiff and Defendant have agreed that settlement of this matter is in the public interest and that entry of this Order without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, the Court has been duly advised of the circumstances of this Stipulation;

NOW THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law, and upon consent and agreement of the parties to this Stipulation, it is hereby AGREED, ORDERED, AND ADJUDGED:

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and 42 U.S.C. §§ 7524 and 7545.
2. The obligations of this Stipulation apply to and are binding upon the United States and upon the Defendant and its successors. Any change in the Defendant's ownership or corporate status shall not alter their obligations hereunder.

3. Defendant WRE shall pay to the United States of America a total penalty of \$3,000,000.00, and shall have no more than 12 months from the entry of this Stipulation to pay the United States of America the total penalty of \$3,000,000.00. Within thirty calendar days after entry of this Stipulation as an Order of the Court, Defendant WRE shall pay to the United States of America \$1,500,000.00. Within sixty days after entry of this Stipulation as an Order of the Court, and on the first day of the month for 10 consecutive months following, WRE shall pay to the United States of America at least \$136,363.64 plus accrued interest. Interest shall accrue from the thirtieth day after entry of this Stipulation. Payment of this amount shall be made to the United States by electronic funds transfer ("EFT") to the U. S. Department of Justice lockbox bank, referencing the DOJ file number 90-5-2-1-10414. Payment shall be made in accordance with the instructions provided by the United States to WRE upon execution of this Stipulation. Payments by EFT must be received by the U. S. Department of Justice lockbox bank by 11 a.m. to be credited on that day. A copy of the EFT transmittal notice shall be delivered to:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.

Mail Code: 2242A
Washington, D.C. 20460

and

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ 90-5-2-1-10414

4. Within ten (10) business days of receipt of WRE's payment referred to above, the United States shall file a notice with the Court, indicating that payment has been received, and that the United States of America's claims against WRE alleged in the Complaint are dismissed with prejudice, with each party bearing its own costs and attorney fees.
5. In the event that the Defendant does not comply with the payment obligations of Paragraph 3 above, it shall be in violation of this Stipulation and shall pay a stipulated penalty to the United States in the amount of three thousand dollars (\$3000) per day for each day that the civil penalty remains unpaid. Stipulated penalties shall accrue regardless of whether Defendant has been notified of a violation or demand for payment by the United States. Stipulated penalties shall be paid in the same manner as that provided for in Paragraph 3 above for payment

of the civil penalty. Further, interest shall continue to accrue on the unpaid balance of civil and/or stipulated penalties in accordance with 28 U.S.C. § 1961 commencing on the date that such penalties are due and continuing until paid. If payment specified in Paragraph 3 is not made when due, then, in addition to other remedies herein, the United States reserves the right to move this Court to vacate this Stipulation and reinstate this action.

6. If the payment provided for in this Stipulation is not timely paid, this Stipulation shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid amounts in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. WRE shall be liable for reasonable attorney fees and costs incurred by the United States to collect any amounts past due under this Stipulation.

7. This Court shall retain jurisdiction for the purpose of interpreting and enforcing this Stipulation.

8. WRE's payment of the civil penalty identified in Paragraph 3 above and any stipulated penalties and interest required by Paragraph 5 above shall resolve WRE's civil liability to the United States for violations identified in the Complaint.

9. WRE waives any counterclaims against the United States that might have been filed in this action.

10. In any subsequent proceeding, WRE shall not assert any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

11. Nothing in this Stipulation is intended to operate in any way to resolve any other civil claims or any criminal liability of Settling Defendant WRE or its agents, successors, assigns, or other entities or persons otherwise bound by law.

12. This Stipulation may not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, or under other federal or state laws, regulations, or permit conditions, except for the allegations contained in the Complaint or in the provisions of this Stipulation.

13. Civil penalties and any stipulated penalties paid pursuant to this Stipulation are not deductible by the Defendants or any other person for federal tax purposes.

14. Nothing in this Stipulation creates, nor shall it be construed as creating, any rights or claims in favor of any person not a Party to this Stipulation.

15. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations, and permits. Defendant's compliance with this Stipulation is not a defense to any action commenced pursuant to said laws, regulations, or permits.

16. There are no separate agreements or understandings with respect to this matter that have not been set forth in this Stipulation.

17. This Stipulation may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

18. Settling Defendant consents to the entry of this Stipulation without further notice.

19. If for any reason this Court should decline to approve this Stipulation in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

20. The parties hereby agree that, upon the Court's approval of this Stipulation, it shall be entered as a final order of the Court.

Respectfully submitted,

For the United States:



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Tahani Ann Rivers

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Denver, Colorado 80202

For Washakie Renewable Energy LLC:

A handwritten signature in black ink, appearing to read "Jacob Kingston", written over a horizontal line.

CEO Jacob Kingston

SO ORDERED THIS ____ DAY OF _____, 2015.

United States District Judge