



STATE OF WASHINGTON
DEPARTMENT OF LICENSING

PO Box 9020 • Olympia, Washington 98507-9020

March 16, 2011

The Honorable Harry Smiskin
Chairman, Yakama Nation Tribal Council
PO Box 151
Toppenish, WA 98498

Dear Chairman Smiskin:

The Department of Licensing (DOL) is notifying the Yakama Nation that DOL is invoking the dispute resolution process per section 4.7 of the Consent Decree between the Yakama Nation and State of Washington, Department of Licensing dated August 21, 2006 (Settlement Agreement, Agreed Changes to Consent Decree, and Order; United District Court Eastern District of Washington). Per the Consent Decree, Section 4.7.b., DOL requests dates and times the Yakama Nation's representatives are available to meet face-to-face within 30 days of receipt of this letter. The contact person for DOL to establish the meeting date and time will be Josh Johnston, Tribal Liaison. He may be reached at 360-902-3720 or by email at JJohnston@dol.wa.gov.

The following are DOL's issues in dispute and DOL's position on each issue:

ISSUE: Audits required by the Consent Decree for Periods 2007, 2008 & 2009 have not been completed or submitted to DOL.

DOL's POSITION:

DOL has acted in good faith with the Yakama Nation to attempt to informally resolve the issue of outstanding audits for 2007, 2008 and 2009. As of March 15, 2011, Yakama Nation has been unresponsive to DOL's attempts to resolve these audits. The following is a brief summary of those efforts:

- In May 2008, DOL sent notification to the Yakama Nation to initiate the annual audit of fuel purchases and sales for 2007. The Yakama Nation did not respond to the letter throughout 2008. DOL staff made multiple attempts to follow-up by phone and obtain a response, without success.
- In February 2009, DOL was able to contact Yakama Nation Chairman Ralph Sampson. A joint meeting via conference call was scheduled for April 16, 2009 to discuss the audit process for 2007.



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- On April 8, 2009, Director Liz Luce sent a letter to Chairman Sampson initiating the audit process for 2008. Given the 2007 audit process had not started, it was recommended the 2007 and 2008 audits be combined into one audit process to be completed by July 1, 2009.
- During a conference call on April 26, 2009 (rescheduled April 16th conference call), DOL and the Yakama Nation agreed to combine the audits for 2007 and 2008 into one audit process. The audit periods agreed upon were January 2007 through December 2007 and January 2008 through December 2008. DOL and the Yakama Nation also agreed to the records to be reviewed, the process for selecting a CPA firm by July 1, 2009, points of contact for each party throughout the audit process, and a revised audit completion date of September 30, 2009 to allow time for the Yakama Nation to complete an RFP process for an audit firm.
- On May 7, 2009, Director Liz Luce verified in writing the agreed upon audit process and confirmed the revised audit completion date of September 30, 2009.
- May through August 2009, the RFP process was completed and an audit firm was selected.
- In September 2009, DOL agreed to a second extension of the final audit due date to October 30, 2009.
- In October 2009, the Yakama Nation requested a third extension of the final audit due date and requested the determination of the due date occur after tribal council member elections, which were to be held that month. DOL agreed to participate in a conference call on November 16 to determine a final audit date.
- On November 16, 2009, the Yakama Nation was unable to provide an audit completion date and requested another extension. DOL and the Yakama Nation agreed to again discuss a final audit date at the next conference call (set for December 16, but later postponed to December 22) as both parties needed to discuss the current audit status with their respective administrations and leadership.
- On December 22, 2009, the Yakama Nation shared via conference call that they had not completed the election process for Tribal Council members which impacted the Nations' ability to provide a revised audit completion date. In addition, the audit firm shared that they were unable to obtain the necessary fuel tax records to complete the audit and could not provide audit findings to the Tribe and DOL based on current records. DOL shared it was no longer willing to extend the timeframes for audit completion, and that by January 15, 2010, the audit must be completed and presented to DOL. DOL requested prompt response from the Yakama Nation with potential dates for a face-to-face audit debrief meeting prior to the January 15, 2010 deadline.

- In early February 2010, DOL was notified of the new Chairman, Vice-Chairman, Secretary and Tribal Council members for the Yakama Nation. DOL initiated contact with the new Chairman to make introductions, ensure he was informed of the outstanding audits and to request an in-person meeting to discuss the audits. An in-person meeting with the Chairman and Council members was eventually scheduled for August 3, 2010.
- On June 21, 2010, DOL sent a letter to the Yakama Nation initiating the audit process for 2009. The letter asked the Yakama Nation to meet with DOL to select the CPA firm to complete the audit and submit a final written report the Director.
- On August 3, 2010, Director Luce met in-person with the Tribal Council to discuss the consent decree and audits. At the meeting, the Tribal Council agreed to an August 20 conference call with DOL to re-establish government-to-government discussions on completing the audits.
- On August 20, 2010, Yakama Nation requested that DOL offer a letter memorializing the goodwill discussions that both sides were embarking upon, and that DOL commit to not invoking the dispute resolution clause in the consent decree during these discussions.
- On September 13, 2010, DOL sent a letter to Yakama Nation Chairman memorializing the discussions and included the expectation that the discussions be completed and result in a resolution to the audits by January 15, 2011.
- Upon receipt of the letter from DOL, the Yakama Nation's attorney Julio Carranza asked that the completion date be removed because the Nation was working through the death of a tribal member. DOL offered to extend the completion date to March 15, 2011 and asked for suggestions on how to reach resolution.
- In mid-October 2010, after numerous emails and phone messages by DOL attempting to make contact with the Yakama Nation's attorney, Mr. Carranza responded with an email saying the DOL could expect correspondence later in the month or early November regarding the audits. No correspondence was received from the Yakama Nation during these time frames.
- In November and December 2010, after numerous phone messages and emails by DOL attempting contact with the Yakama Nation's attorney, Mr. Carranza said that he will try to get a response for DOL.
- As of December 31, 2010, DOL has not been contacted by the Yakama Nation regarding the 2009 audit and has not received a written audit report.
- As of January 15, 2011, there has been no further response from the Yakama Nation to DOL regarding the 2007, 2008 or 2009 audits.

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As of March 15, 2011, DOL has not received audit reports from the Yakama Nation for audit periods 2007, 2008 and 2009.

ISSUE: Inadequate records to complete audits for 2007 & 2008 and failure by the Yakama Nation to initiate the audit process for 2009.

DOL'S POSITION:

On December 22, 2009, the CPA representative contracted to conduct audits for 2007 and 2008, and the Chief Financial Officer for the Yakama Nation informed DOL that the Yakama Nation's licensed filling stations presented for the auditor's review only partially completed or no fuel tax records for audit periods 2007 and 2008. According to the audit firm's representative, the records do not meet the record keeping requirements in the Consent Decree, section 4.17. Due to incomplete records or a lack of records available, the audit firm was unable to complete the required audits. As of March 15, 2011, the Yakama Nation has not provided audit reports to DOL for 2007, 2008, or 2009.

ISSUE: Yakama Nation is required to revoke licensing for filling stations not conducting business consistent with all terms of the Consent Decree.

DOL'S POSITION:

The Yakama Nation had eight fueling stations with licenses during 2007 and 2008 and seven fueling stations in 2009. Per section 4.16 of the Consent Decree, the Yakama Nation is required to (shall) revoke the licenses of filling station(s) on the Reservation not conducting business consistent with all terms of the Consent Decree. As of December 2009, the Yakama Nation was aware of the fueling stations' failure to comply with the record keeping requirements of the Consent Decree and is required to revoke those licenses. The Yakama Nation has renewed these licenses for the years 2010 and 2011.

ISSUE: Percentage Estimates for Fuel Delivered Tax-Free to Yakama Nation require modification due to the Yakama Nations' inability to substantiate fuel purchases of tribal vs. non-tribal members.

DOL'S POSITION:

Per the Consent Decree, sections 4.9 and 4.11, the percentage estimates of the Consent Decree are reviewed by March 31 of each year to determine actual number of gallons of fuel sold during the prior year. The percentage calculation for each upcoming year is to be based upon audit findings.

Given that DOL has not received audits for 2007, 2008, and 2009, the percentages of tax-free fuel for 2010 and 2011 will be adjusted based on records of suppliers and distributors to which DOL has access.

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Based on those records, the percentage of tax-free fuel that will be delivered to stations on the Yakama reservation will be reduced below the current 75 percent, as the current 75 percent was set based on the estimated percentage of fuel sold to enrolled Tribal members in 2006.

ISSUE: Taxes are due to the State of Washington by the Yakama Nation.

DOL'S POSITION:

Per the Consent Decree, Section 4.11, liability for state fuel taxes is to be reconciled by both parties and either the State or the Tribe must make payment by April 30. The audit findings will be instructive to the parties in determining the amount owed. Per Section 4.10.1, all gallons of fuel sold or distributed to the Tribe and not used in the manner described in Section 4.9 shall be considered subject to the State's taxes under the Consent Decree.

DOL is unable to verify, due to lack of audit reports for 2007, 2008 and 2009 by the Yakama Nation, that the Yakama Nation has used any gallons of fuel sold or distributed to the Tribe in the manner described in Section 4.9. The Yakama Nation is then subject to the State's taxes on all fuel delivered to the reservation under the Consent Decree. The estimated tax owed for 2007, 2008, and 2009 is \$11,009,069.

Please respond to Mr. Johnston to schedule a mutually acceptable meeting time as soon as possible. He can be reached via email at jjohnston@dol.wa.gov or at (360) 270-1311.

Sincerely,



Liz Luce
Director

