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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
SAN FRANCISCO, CALIFORNIA

2007 SEP 28 AM 8:02

U.S. EPA REGION IX  
REGIONAL HEARING CLERK

	)	Docket No. CAA- <sup>09</sup> <del>0</del> -2007- 0033
	)	
	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT
	)	PURSUANT TO 40 C.F.R.
	)	§§ 22.13 AND 22.18
	)	

CONSENT AGREEMENT

I. JURISDICTION AND AUTHORITY

1. Pursuant to Sections 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7401 et seq. ("CAA" or "Act"), and 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, the Director of the Air Division, U.S. Environmental Protection Agency Region IX ("Complainant") is simultaneously commencing and concluding this proceeding against Potlatch Forest Products Corporation ("PFPC" or "Respondent"), the Parties herein, through the filing of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO").
2. The Administrator of the U.S. Environmental Protection Agency ("EPA") has delegated the authority to file this action under the CAA to the Regional Administrator of EPA Region 9, and the Regional Administrator has re-delegated that authority to Complainant.
3. Section 113(d)(1) of the Act limits EPA's authority to issue administrative complaints to matters where the total penalty

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1 sought does not exceed \$270,000,<sup>1</sup> and the first alleged date  
2 of violation occurred no more than 12 months prior to the  
3 initiation of the action, unless EPA and the Attorney  
4 General for the U.S. Department of Justice ("DoJ") jointly  
5 determine that a matter involving a larger penalty or longer  
6 period of violation is appropriate for administrative  
7 action. Since this CAFO contains alleged violations that  
8 occurred more than 12 months ago, Complainant has obtained  
9 the required joint determination from EPA Headquarters and  
10 DoJ.

- 11 4. This CAFO notifies PFPC of Complainant's determination that  
12 PFPC has violated Section 111 of the CAA, 42 U.S.C. §§ 7411,  
13 Part 60, Subpart A, §§ 60.1 - 60.19 ("NSPS General  
14 Provisions"), and Part 60, Subpart Dc, Standards of  
15 Performance for Small Industrial-Commercial-Institutional  
16 Steam Generating Units, 40 C.F.R. §§ 60.40c - 60.48c ("NSPS  
17 for Small Steam Generating Units" or "Standard").

18 **II. STATUTORY AND REGULATORY FRAMEWORK**

- 19 5. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA  
20 promulgated the NSPS for Small Steam Generating Units, which  
21 applies to each steam generating unit for which  
22 construction, modification, or reconstruction commenced  
23 after June 9, 1989 and that has a maximum design heat input  
24 capacity of 100 million Btu per hour ("Btu/hr") or less, but  
25 greater than or equal to 10 million Btu/hr. 40 C.F.R.

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26  
27 <sup>1</sup> As adjusted for inflation under the Debt Collection  
28 Improvement Act and implementing regulations at 40 C.F.R. Part  
19.

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1 § 60.40c(a); 44 *Fed. Reg.* 37674 (Sept. 12, 1990).

2 6. Within thirty (30) days of construction or reconstruction of  
3 a subject steam generating unit, the unit's owner or  
4 operator must submit written notification to EPA of the  
5 unit's date of construction or reconstruction, design heat  
6 input and fuel to be combusted. See 40 C.F.R. §§ 60.7(a)(1)  
7 and 60.48c(a).

8 7. Within fifteen (15) days of actual startup of a subject  
9 steam generating unit, the unit's owner or operator must  
10 submit written notification to EPA of the unit's actual  
11 startup date. *Id.*

12 8. Sections 113(a)(3)(A) and 113(d) of the CAA, 42 U.S.C.  
13 §§ 7413(a)(3)(A) and (d), authorize EPA to issue an  
14 administrative penalty order to enforce requirements or  
15 prohibitions of Section 111 of the CAA, 42 U.S.C.  
16 § 7411, and any rule promulgated thereunder.

17 9. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), in  
18 conjunction with the Debt Collection Improvement Act and its  
19 implementing regulations at 40 C.F.R. Part 19, authorize EPA  
20 to assess a civil penalty of up to \$27,500 per day for each  
21 violation of the CAA and any regulations promulgated  
22 thereunder, occurring before March 16, 2004.

23 10. The purpose of EPA's "Incentives for Self-Policing:  
24 Discovery, Disclosure, Correction and Prevention of  
25 Violations," 65 *Fed. Reg.* 19618 (Apr. 11, 2000) ("Audit  
26 Policy") is to enhance protection of human health and the  
27 environment by encouraging regulated entities to voluntarily  
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1 discover, disclose, correct and prevent violations of  
2 environmental laws administered by EPA. To that end,  
3 regulated entities establishing that they satisfy the Audit  
4 Policy's nine (9) conditions are eligible for full  
5 mitigation of any gravity-based penalties that otherwise  
6 could be assessed.

7 **III. ALLEGATIONS AND FINDINGS**

8 11. At all times relevant to this CAFO, Respondent and Potlatch  
9 Corporation were corporations incorporated under the laws of  
10 the State of Delaware.

11 12. At all times relevant to this CAFO, Respondent and Potlatch  
12 Corporation were each a "person," as defined at Section  
13 302(e), 42 U.S.C. § 7602(e).

14 13. At all times relevant to this CAFO, Potlatch Corporation  
15 owned and operated a paper tissue converting facility  
16 located at 3901 North Donna Street, N. Las Vegas, Nevada  
17 89030 ("Facility").

18 14. At all times relevant to this CAFO, Potlatch Corporation  
19 owned and operated a "steam generating unit" ("Steam Unit")  
20 as defined at 40 C.F.R. § 60.41c, at the Facility.

21 15. The construction commencement date of the Steam Unit was  
22 October 2, 2002 and its design heat input was 43 million  
23 Btu/hr.

24 16. At all times relevant to this CAFO, the Steam Unit was  
25 subject to the NSPS for Small Steam Generating Units.

26 17. At all times relevant to this CAFO, the Facility was a  
27 "stationary source," as defined at 40 C.F.R. § 60.2.

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- 1 18. At all times relevant to this CAFO, Potlatch Corporation, as  
2 the owner and operator of a "stationary source" containing a  
3 "steam generating unit" subject to the Standard, was subject  
4 to the NSPS General Provisions. See 40 C.F.R. § 60.1.
- 5 19. By letter to EPA dated July 31, 2003, Potlatch Corporation  
6 self-disclosed that it failed to timely notify EPA of the  
7 Steam Unit's construction commencement date and associated  
8 information, as well as the Steam Unit's date of actual  
9 startup.
- 10 20. Potlatch Corporations's failure to timely notify EPA of the  
11 Steam Unit's construction commencement date and associated  
12 information, as well as the Steam Unit's date of actual  
13 startup, constitutes two (2) violations of Section 111 of  
14 the CAA, and 40 C.F.R. §§ 60.7(a) and 60.48c(a).
- 15 21. On December 30, 2005, PFPC acquired ownership of the  
16 Facility from Potlatch Corporation and assumed all civil  
17 environmental liability at the Facility.
- 18 22. With respect to the two (2) violations described in this  
19 CAFO, Complainant finds that PFPC has satisfied all nine (9)  
20 conditions of the Audit Policy for systematic discovery,  
21 voluntary discovery, prompt disclosure, discovery and  
22 disclosure independent of government or third-party  
23 plaintiff, correction and remediation, prevent recurrence,  
24 no repeat violations, other violations excluded, and  
25 cooperation. Therefore, Complainant finds that Respondent  
26 qualifies for full mitigation of the gravity component of  
27 any civil penalties that otherwise may be assessed.

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1 23. Complainant finds that PFPC gained an insignificant amount  
2 of economic benefit as a result of the violation set forth  
3 in this CAFO.

4 **IV. TERMS OF SETTLEMENT**

5 24. Accordingly, the civil penalty in settlement of the  
6 violations and facts set forth in this CAFO is zero dollars  
7 (\$0).

8 25. Complainant's finding in this CAFO that PFPC has satisfied  
9 all nine (9) conditions of the Audit Policy is conditioned  
10 upon PFPC actually satisfying these conditions. The Parties  
11 agree that, should any material fact prove to be other than  
12 as represented by PFPC or Potlatch Corporation, this CAFO  
13 may be voided in whole or in part.

14 **V. RESPONDENT'S ADMISSIONS**

15 26. Without trial or litigation of the issues or any  
16 adjudication of the facts set forth in this CAFO, Respondent  
17 (i) admits that EPA has jurisdiction over the subject matter  
18 of this CAFO and over Respondent; (ii) admits the  
19 allegations contained in paragraphs 11 through 21 of this  
20 CAFO; (iii) consents to the terms of this CAFO; (iv) waives  
21 any right to contest the allegations in this CAFO; and (v)  
22 waives the right to appeal the proposed final order  
23 contained in this CAFO.

24 **VI. RETENTION OF RIGHTS**

25 27. In accordance with 40 C.F.R. §§ 22.18(c) and 22.31(a), this  
26 CAFO only resolves Respondent's liability for federal civil  
27 penalties for the violation and facts set forth in this CAFO.  
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1 Nothing in this CAFO is intended to or shall be construed to  
2 resolve (i) any civil liability for violations of any  
3 provision of any federal, state, or local law, statute,  
4 regulation, rule, ordinance, or permit not specifically  
5 alleged in Section III of this CAFO; or (ii) any criminal  
6 liability. In addition to any other authority, right, or  
7 remedy available to EPA, EPA specifically reserves any and  
8 all authorities, rights, and remedies available to it  
9 (including, but not limited to, injunctive or other equitable  
10 relief or criminal sanctions) to address any violation of  
11 this CAFO or any violation not specifically alleged in this  
12 CAFO.

13 28. This CAFO does not exempt, relieve, modify, or affect in any  
14 way Respondent's duty to comply with all applicable federal,  
15 state, and local laws, regulations, rules, ordinance, and  
16 permits.

17 **VII. COMPLIANCE CERTIFICATION**

18 29. By executing this Consent Agreement, PFPC certifies that it  
19 is in compliance with the requirements of the NSPS for Small  
20 Generating Units and the NSPS General Provisions.

21 **VIII. ATTORNEYS' FEES AND COSTS**

22 30. Each party shall bear its own attorney's fees, costs, and  
23 disbursements incurred in this proceeding.

24 **IX. EFFECTIVE DATE**

25 31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),  
26 this CAFO shall be effective on the date that the Final Order  
27 contained in this CAFO, having been approved and issued by  
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2 either the Regional Judicial Officer or Regional  
3 Administrator, is filed.

4 **X. BINDING EFFECT**

5 32. The undersigned representative of Complainant and the  
6 undersigned representative of Respondent each certifies that  
7 he or she is fully authorized to enter into the terms and  
8 conditions of this CAFO and to bind the party he or she  
9 represents to this CAFO.

10 33. The provisions of this CAFO shall apply to and be binding  
11 upon Respondent and its officers, directors, employees,  
12 agents, trustees, servants, authorized representatives,  
13 successors, and assigns.

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15  
16 Date: 9/27/2007

FOR THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 9:

Deborah Jordan  
DEBORAH JORDAN  
Director, Air Division  
U.S. Environmental Protection Agency,  
Region 9  
75 Hawthorne Street  
San Francisco, California 94105

17  
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21  
22 Date: 9/25/2007

FOR POTLATCH FOREST PRODUCTS CORPORATION

Robert P. DeVerning  
Name: "Bob" DeVerning  
Title: VP, Consumer Products,  
POTLATCH FOREST PRODUCTS

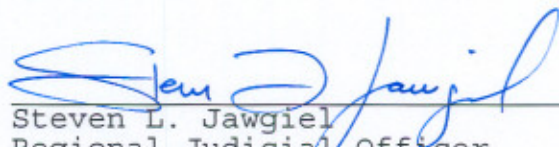


FINAL ORDER

1 EPA Region 9 and Potlatch Forest Products Corporation, having  
2 entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this Consent Agreement and Final  
4 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. ~~AIR-9-~~<sup>CAA-09-</sup>  
5 2007-0033) be entered in accordance with the terms set forth in the  
6 Consent Agreement.

7  
8 Date: 09 / 27 / 2007

  
9 Steven L. Jawgiel  
10 Regional Judicial Officer  
11 U.S. Environmental Protection Agency,  
12 Region 9  
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CERTIFICATE OF SERVICE

1 I certify that a copy of the original of the foregoing  
2 Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13  
3 and 22.18, Docket No. CAA~~09~~-2007-0033 was placed in the United  
4 States Mail, certified mail, return receipt requested, addressed  
5 to the following person authorized to receive service of process  
6 on behalf of Potlatch Forest Products Corporation:

7 Ms. Krista K. McIntyre, Esq.  
8 Stoel Rives LLP  
9 101 S. Capitol Boulevard, Suite 1900  
Boise, ID 83702

10 Certified Return Receipt No. 7003 3110 0006 1997 2593

11  
12  
13 Date: 09/28/2007

By: Danielle E Carr  
14 DANIELLE CARR  
15 Regional Hearing Clerk  
16 United States Environmental  
17 Protection Agency, Region IX  
18 75 Hawthorne Avenue  
19 San Francisco, California 94105-3143  
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