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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2014-0082
LARRY BOYER D/B/A LARRY BOYER)	
LAND AND CATTLE,)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Culdesac, Idaho)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) 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. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 113(d) of 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 Larry Boyer d/b/a Larry Boyer Land and Cattle (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO 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 CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of CAA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of CAA together with the specific provisions of CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Pursuant to Section 301(a) and 301(d)(4) of the CAA, 42 U.S.C. § 7601(a) and 7601(d)(4), 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 1863 Nez Perce Indian Reservation are incorporated by reference at 40 C.F.R. § 49.10406(a)-(p).

3.3. 40 C.F.R. § 49.131, general rule for open burning, incorporated by reference at 40 C.F.R. § 49.10410(i), applies to any person who conducts open burning and to the owner of the property upon which open burning is conducted.

3.4. 40 C.F.R. § 49.123(a), incorporated by reference at 40 C.F.R. § 49.10410(a), defines “open burning” as the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack.

3.5. 40 C.F.R. § 49.131(d)(1), incorporated by reference 40 C.F.R. § 49.10410(i), prohibits the open burning of, *inter alia*, lumber or timbers treated with preservatives.

3.6. Respondent is a business, registered in the State of Idaho, and a “person” as defined in CAA § 302(e), 42 U.S.C. § 7602(e).

3.7. On July 30, 2013, Respondent burned telephone poles, made of lumber or timber treated with preservatives, on property owned by Respondent.

3.8. Respondent violated 40 C.F.R. § 49.131(d)(1), incorporated by reference at 40 C.F.R. § 49.10410(i), by conducting open burning of prohibited materials on July 30, 2013.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. Respondent agrees that this settlement will be considered prior history of noncompliance for purposes of assessing penalties in any future enforcement actions brought by EPA against Respondent.

4.4. As required by Section 113(e)(1) of 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, and the seriousness of the violation, as well as other relevant factors.

4.5. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$349.

4.6. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.5 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.7. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www.epa.gov/ocfo/finservices/payment_instructions.htm. 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.

4.8. Respondent must serve photocopies of the check described in Paragraph 4.7 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-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Rindy Ramos
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.9. If Respondent fails to pay the penalty assessed by this CAFO 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 such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.10. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.10.1. 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.

4.10.2. 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.

4.11. The penalty described in Paragraph 4.5, including any additional costs incurred under Paragraph 4.10, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.13. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.14. Except as described in 4.10.2, each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.15. Respondent agrees that this settlement will be considered prior history of noncompliance for purposes of assessing penalties in any future enforcement actions brought by EPA against Respondent.

4.16. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO. Respondent expressly waives the notice requirement and its opportunity to request a hearing on the order pursuant to Section 113(d)(2)(A), 42 U.S.C. § 7413(d)(2)(A).

4.17. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.18. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/29/14

FOR RESPONDENT:



Larry Boyer
d/b/a Larry Boyer Land and Cattle

DATED:

4/17/2014

FOR COMPLAINANT:



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

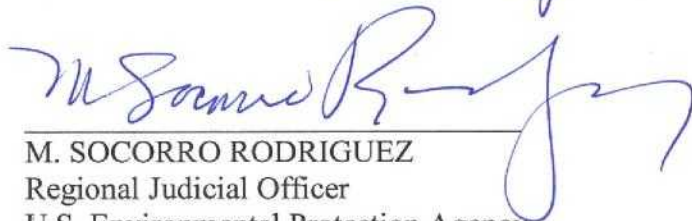
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of CAA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 21st day of April, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Larry Boyer d/b/a Larry Boyer Land and Cattle, Docket No.: CAA-10-2014-0082**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

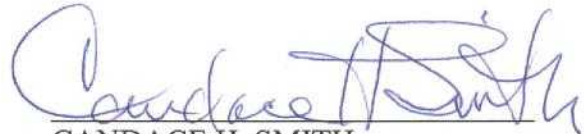
The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esquire
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
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:

Larry Boyer
d/b/a Larry Boyer Land and Cattle
24676 Garden Gulch Road
Culdesac, Idaho 83524

DATED this 23rd day of April, 2014.


CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10

