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HEARINGS CLERK
EPA - REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2019-0039
)	
EMPIRE LUMBER COMPANY,)	CONSENT AGREEMENT
)	
Kamiah, Idaho,)	
)	
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 Section 113(d) of the 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 Empire Lumber Company (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

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. On October 12, 2018, EPA notified Respondent and the Nez Perce Tribe that EPA had found that Respondent committed the alleged violations described in Part III of this Consent Agreement.

2.4. 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

Title V of the Clean Air Act

3.1. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources” as defined in 42 U.S.C. § 7661(2).

3.2. EPA has adopted regulations at 40 C.F.R. Part 71 setting forth the procedures and terms under which EPA will administer the Title V program in State, local, and Tribal areas that do not have an EPA-approved Title V program. The regulations at 40 C.F.R. Part 71 became effective for sources in Indian Country on March 22, 1999.

3.3. CAA Section 502(a), 42 U.S.C. § 7661a(a), provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a major source and certain other sources, except in compliance with a permit issued by a permitting authority under Title V.

3.4. CAA Section 504(a), 42 U.S.C. § 7661c(a), and 40 C.F.R. § 71.6(a) require that each Title V permit contain enforceable emission limitations and standards and such other conditions as are necessary to assure compliance with all requirements of the CAA, including requirements of the applicable implementation plans.

Federal Air Rules for Reservations

3.5. Pursuant to CAA Sections 301(a) and 301(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.

3.6. The FARR provisions that apply on the 1863 Nez Perce Reservation are incorporated by reference at 40 C.F.R. § 49.10406(a) through (p). For purposes of this Consent Agreement, all citations to the General Federal Implementation Plan Provisions of 40 C.F.R. §§ 49.123 to 49.139 shall be deemed to refer to 40 C.F.R. § 49.10406(a) through (p), where the General Federal Implementation Plan Provisions are incorporated by reference for the 1863 Nez Perce Reservation.

3.7. The FARR includes, among other things, a rule limiting particulate matter emissions (40 C.F.R. § 49.125) from certain air pollution sources. Specifically, 40 C.F.R. § 49.125(d)(2) (incorporated by reference at 40 C.F.R. § 49.10406(c)) provides that particulate matter emissions from a wood-fired boiler stack must not exceed an average of 0.46 grains per dry standard cubic meter (0.2 grains per dry standard cubic foot (“gr/dscf”)), corrected to seven

percent oxygen, during any three-hour period. As provided in 40 C.F.R. § 49.125(e), compliance with this emission limit is determined using EPA Reference Method 5 in 40 C.F.R. Part 60, Appendix A.

General Allegations

3.8. Respondent is a corporation organized under the laws of the State of Washington and does business in Idaho.

3.9. Respondent owns and operates a lumber planer mill at Highway 12 and Railroad Street in Kamiah, Idaho (“Facility”).

3.10. The Facility is located within the exterior boundary of the 1863 Nez Perce Reservation and in Indian Country.

3.11. The Facility was constructed in 1965 and is a major air pollution source subject to Title V of the CAA and 40 C.F.R. Part 71.

3.12. The Nez Perce Tribe does not have an EPA-approved Title V operating permit program under the CAA. EPA is therefore the CAA Title V permitting authority on the 1863 Nez Perce Reservation.

3.13. Respondent is a person as that term is defined in CAA Section 302(e), 42 U.S.C. § 7602(e).

3.14. The Facility is operating under Title V Air Quality Operating Permit, Renewal No. 1, Modification No. 1, Permit No. R10T507010, issued by EPA under the CAA to Respondent on March 1, 2016 (“Empire Title V Permit”).

3.15. The Facility includes a Converta Kiln, Inc. biomass gasifier and Superior Boiler Works, Inc. Mohawk Scotch Marine fire-tube boiler, referred to in the Empire Title V Permit as “BLR1.”

3.16. BLR1 is an “air pollution source,” as defined at 40 C.F.R. § 49.123, because it is “any building structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant.”

3.17. BLR1 is a “wood-fired boiler” within the meaning of 40 C.F.R. § 49.125(d)(2).

3.18. Condition 5.1 of the Empire Title V Permit, which applies to BLR1, incorporates the FARR particulate matter limit in 40 C.F.R. § 49.125(d)(2), and Condition 5.1.1 of the permit incorporates the required reference test method in 40 C.F.R. § 49.126(e) for determining compliance with that particulate matter limit.

3.19. Conditions 5.7 and 5.8 of the Empire Title V Permit require initial and periodic testing of BLR1 to measure particulate matter emissions from the boiler stack using the reference test method in Condition 5.1.1 of the Empire Title V Permit and 40 C.F.R. § 49.125(e).

3.20. During source testing conducted on BRL1 on March 14, 2018, particulate matter emissions from BRL1 using the reference test method specified in Conditions 5.1.1 and 5.7 of the Empire Title V Permit and 40 C.F.R. § 49.125(e) were measured at 0.562 gr/dscf at seven percent oxygen.

3.21. Following the March 14, 2018 source test, Respondent performed tune-ups of BLR1, replaced a malfunctioning oxygen sensor, and undertook other measures to improve the stability and efficiency of BLR1.

3.22. During source testing conducted on BRL1 on May 1, 2018, particulate matter emissions from BRL1 using the reference test method specified in Conditions 5.1.1 and 5.7 of the Empire Title V Permit and 40 C.F.R. § 49.125(e) were measured at 0.052 gr/dscf at seven percent oxygen.

Violations

3.23. Respondent violated Condition 5.1 of the Empire Title V Permit and 40 C.F.R. § 49.125(d)(2) on one or more days from March 14, 2018 through April 30, 2018.

3.24. 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 \$47,357 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. 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. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$29,100 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments 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 155
Seattle, Washington 98101
young.teresa@epa.gov

John Keenan
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Keenan.john@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty 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 Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

- a. 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.

b. 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 Assessed Penalty, 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

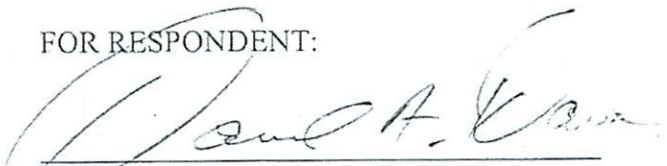
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/5/2019

FOR RESPONDENT:




DAVID KLAUE, President
Empire Lumber Company

DATED:

3/6/2019

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- CAA-10-2019-0039
)	
EMPIRE LUMBER COMPANY,)	FINAL ORDER
)	
KAMIAH, Idaho,)	
)	
Respondent.)	
)	

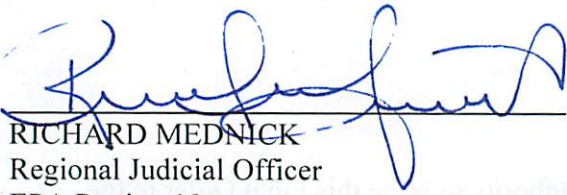
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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. The 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 7th day of March, 2019.


RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Empire Lumber Company, Docket No.: CAA-10-2019-0039**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

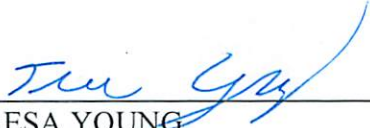
The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
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:

Jennifer Sanscrainte
Attorney
Ogden Murphy Wallace, P.L.L.C
901 Fifth Avenue, Suite 3500
Seattle, WA 98164

DATED this 7 day of March 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10