

RECEIVED
19 MAR -7 AM 10:30
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”).

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

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.

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

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.

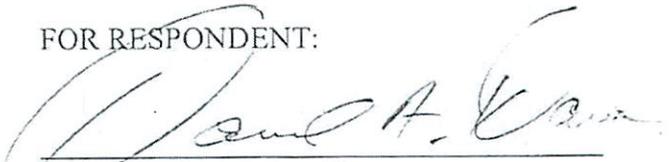
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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.

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:

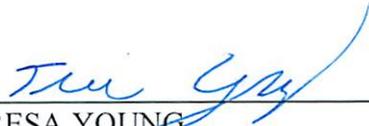
The undersigned certifies that a true and correct copy of the document was delivered to:

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