



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 17 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Craig Smith
Plant Manager
Biewer-Wisconsin Sawmill, Inc.
400 Red Pine Court
Prentice, Wisconsin 54566

Dear Smith:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Biewer-Wisconsin Sawmill, Inc., Case Docket number. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on [**DEC 17 2009**].

Pursuant to paragraph 27 of the CAFO, Biewer-Wisconsin Sawmill, Inc., must pay the civil penalty within 30 days of [**JAN 18 2010**]. Your [check][electronic funds transfer] must display the case name Biewer-Wisconsin Sawmill, Inc., the docket number, **CAA-05-2010-0005**, and the billing document number, **2751003A006**.

Please direct any questions regarding this case to Ms. Padmavati Bending, Associate Regional Counsel, (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8917.

Bonnie Bush
Air Enforcement and Compliance Assurance Section WI/MI

Enclosure

cc: Padma Bending
Douglas Touma

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
DEC 17 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

| | | |
|--------------------------------|---|---------------------------------------|
| In the Matter of: |) | Docket No. |
| |) | CAA-05-2010-0005 |
| Biewer-Wisconsin Sawmill, Inc. |) | Proceeding to Assess a Civil Penalty |
| Prentice, Wisconsin |) | Under Section 113(d) of the Clean Air |
| |) | Act, 42 U.S.C. § 7413(d) |
| Respondent. |) | |
| _____ |) | |

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5.
3. Respondent is Biewer-Wisconsin Sawmill, Inc., (Biewer) a corporation, doing business in Prentice, Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Wisconsin Administrative Code NR Chapter 154.04 “Permit Requirements and Exemptions,” was incorporated into the federally enforceable Wisconsin State Implementation Plan (SIP) at 51 *Fed. Reg.* 23056 (June 25, 1986) on July 25, 1986. 40 C.F.R. §52.2570(c)(42). This rule has since been renumbered to NR 406.03.

10. Wisconsin Administrative Code NR 154.04(1) requires that no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source or operate the constructed, reconstructed, replaced or modified stationary source unless the person has a construction or modification and new operation permit for the source.

11. Wisconsin Administrative Code NR 407 “Operation Permits,” was incorporated into the federally enforceable Wisconsin SIP at 60 *Fed. Reg.* 3543 (January 17, 1995) on February 17, 1995. 40 C.F.R. §52.2570(c)(75).

12. Wisconsin Administrative Code NR 407.05(4) requires that the applications for operation permits contain all information required for the issuance of an operation permit, including description of the processes and magnitude of all air contaminants released from all emission units.

13. The Administrator may assess a civil penalty of \$25,000 (prior to January 31, 1997), \$27,500 (after January 31, 1997), \$32,500 (after March 15, 2004) and up to \$37,500 per day, per violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R.

Part 19.

14. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

15. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

16. Biewer owns and operates a facility located at 400 Red Pine Court, in Prentice, Wisconsin.

17. Biewer facility was constructed and began operation in April of 1990. The facility receives softwood logs, cuts, trims, and dries them prior to resale of the wood as finished lumber.

18. Processes at Biewer facility include four indirect steam heated kilns for drying of softwood lumber.

19. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
20. Respondent is an "owner and/or operator" as defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).
21. Respondent's kilns emit in excess of 19 pounds per hour and 83 tons per year of volatile organic compounds (VOC).
22. Respondent did not apply for or receive a construction permit prior to installation of the kilns in April of 1990, or subsequent operation in May of 1990.
23. Installation and operation of the kilns without a construction permit violated Wisconsin Administrative Code NR 154.04(1).
24. In May of 1995, Respondent submitted a renewable operating permit application to the Wisconsin Department of Natural Resources (WDNR) pursuant to Wisconsin Administrative Code NR 407 and 40 C.F.R. 70. However, Biewer failed to identify the drying kilns as significant source of air pollutant emissions. Consequently, the permit issued by WDNR did not include requirements to measure, monitor and control air pollutants emitted from the kilns, in violation of Wis. Admin. Code NR 407.05(4).
25. On May 27, 2009, WDNR issued a new Title V permit to Biewer (No. 851034800-P10). The new permit establishes emission limits, production capacity restrictions, and recordkeeping for the kilns.

Civil Penalty

26. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other relevant factors, Complainant agrees to mitigate the proposed penalty of \$28,369 to \$20,000.

27. Within 30 days after the effective date of this CAFO, Respondent must pay the \$20,000 civil penalty by one of the following options:

- a. Sending via U.S. Postal Service mail a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note the case name, docket number of this CAFO, and the billing document number.

- b. Sending via a carrier that will not deliver to P.O. Boxes (*e.g.* express carrier) a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note the case name, docket number of this CAFO, and the billing document number.

- c. Sending via electronic funds transfer payable to the "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO, and the billing document number.

28. A transmittal letter stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check or proof of EFT payment and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Padmavati G. Bending, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

31. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15

handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

33. The effect of the settlement described paragraph 32, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Respondent's letter dated September 14, 2009.

34. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

35. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

36. Respondent certifies that it is complying fully with its Title V Permit No. 851034800-P10.

37. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

38. The terms of this CAFO bind Respondent, its successors, and assigns.

39. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorneys' fees in this action.

41. This CAFO constitutes the entire agreement between the parties.

Biewer-Wisconsin Sawmill, Inc., Respondent

Date



Timothy Biewer, President
Biewer-Wisconsin Sawmill, Inc.

CONSENT AGREEMENT AND FINAL ORDER

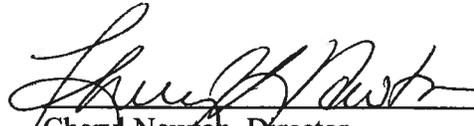
In the Matter of:

Biewer Wisconsin-Sawmill

Docket No.

United States Environmental Protection Agency, Complainant

Date



Cheryl Newton, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Biewer Wisconsin-Sawmill

Docket No. CAA-05-2010-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12/15/09
Date

Walter W. Karolyh
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
DEC 17 2009
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

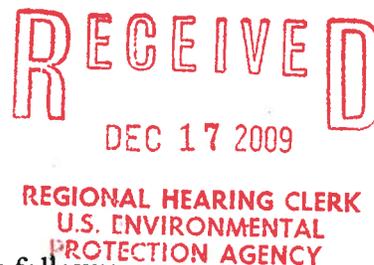
U.S. ENVIRONMENTAL
PROTECTION AGENCY
DEC 17 2009
OFFICE OF REGIONAL
COUNSEL

In the Matter of:
Biewer Wisconsin-Sawmill
Docket No. CAA-05-2010-0005

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. [], the second original to Respondent, addressed as follows:

Craig Smith
Plant Manager
Biewer-Wisconsin Sawmill, Inc.
400 Red Pine Court
Prentice, Wisconsin 54566



and that I delivered a correct copy by intra-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

and that I mailed a correct copy by first class, United States mail, addressed as follows:

Neal Baudhuin, Supervisor
Wisconsin Department of Natural Resources
Northern Region
107 Sutliff Avenue
Rhinelander, Wisconsin 54501

On this 17 day of December, 2009.


Tracy Jamison
Office Automation Clerk
AECAS,(MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7667 3525
Enclosure