

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2022-0193
)	
POTLATCHDELTAIC LAND &)	CONSENT AGREEMENT
LUMBER, LLC)	
)	
St. Maries, 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 PotlatchDeltic Land & Lumber, LLC (“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 Enforcement and Compliance Assurance Division, 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. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

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

National Emissions Standards for Hazardous Air Pollutants

3.1. Section 112(c) and (d) of the CAA require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (“HAPs”), and to promulgate regulations establishing emission standards for “major sources” within those categories. 42 U.S.C. § 7412(c) and (d). These standards are known as the National Emissions Standards for Hazardous Air

Pollutants (“NESHAP”) for Source Categories (also referred to as “MACT” standards), and are codified at 40 C.F.R. Part 63.

3.2. Section 112 of the CAA defines “major source” as any stationary source, or group of stationary sources, located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

3.25. “Stationary source” under Section 112 has the same meaning as that term has under Section 111(a) of the CAA. 42 U.S.C. § 7412(a)(3).

3.7. HAPs are defined at 40 C.F.R. § 63.2 to mean pollutants listed in, or pursuant to, Section 112(b) of the CAA. 42 U.S.C. § 7412(b).

3.8. “New source” is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4); see also 40 C.F.R. § 63.2.

3.9. “Existing source” is defined as any stationary source other than a new source. 42 U.S.C. § 7412(a)(10); see also 40 C.F.R. § 63.2.

3.10. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4).

3.11. An “affected source” is defined as “the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c)

source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the [CAA].” 40 C.F.R. § 63.2.

3.12. Pursuant to Section 112(d) of the CAA, EPA promulgated the NESHAP for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters, 40 C.F.R. Part 63, Subpart DDDDD (“NESHAP 5D”), which establishes national emission limitations and work practice standards for HAP emitted from industrial, commercial, and institutional boilers and process heaters located at major sources of HAP, as well as requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

3.13. NESHAP Subpart 5D applies to the owner or operator of an industrial, commercial, or institutional boiler or process heater as defined in 40 C.F.R. § 63.7575 that is located at, or is part of, a major source of HAP, except as specified in 40 C.F.R. § 63.7491.

3.14. NESHAP 5D identifies 21 subcategories of boilers and process heaters in 40 C.F.R. § 63.7499, each as defined in 40 C.F.R. § 63.7575 and each of which is subject to emission limits and other requirements based on the specific subcategory.

3.15. One such subcategory is “fuel cells designed to burn biomass/bio-based solid.” See 40 C.F.R. § 63.7499(g).

3.16. “Fuel cell” is defined at 40 C.F.R. § 63.7575 as “a boiler type in which the fuel is dropped onto suspended fixed grates and is fired in a pile. The refractory-lined fuel cell uses combustion air preheating and positioning of secondary and tertiary air injection ports to improve boiler efficiency. Fluidized bed, dutch oven, pile burner, hybrid suspension grate, and suspension burners are not part of the fuel cell subcategory.”

3.17. Under NESHAP 5D, boilers in the “fuel cells designed to burn biomass/bio-based solids” subcategory are subject to an emission limit for carbon monoxide (“CO”) of 1,100 parts per million by volume on a dry basis (ppmdv) corrected to 3% oxygen, 3-run average, or the

alternative output-based limits of 2.4 pounds per million British thermal units (lbs/MMBtu) of steam output or 12 pounds per megawatt hour (lbs/MWh). 40 C.F.R. Part 63, Subpart DDDDD, Table 2, Line 12.

3.18. Under 40 C.F.R. § 63.7510 specifies the requirements for performance (stack) testing to demonstrate compliance with applicable emission limits.

3.19. Under 40 C.F.R. § 63.7515(c), if a performance test shows emissions exceeded the emission limit or 75 percent of the emission limit (as specified in Tables 1 and 2 or 11 through 13 of NESHAP 5D) for a pollutant, annual performance tests must be conducted for that pollutant until all performance tests over a consecutive 2-year period meet the required level (that is, at or below 75 percent of the emission limit, as specified in Tables 1 and 2 or 11 through 13 of NESHAP 5D).

General Findings

3.20. Respondent is incorporated in the State of Delaware and registered to do business in Idaho.

3.21. Respondent owns and operates a wood products facility on the Coeur d'Alene Indian Reservation in St. Maries, Idaho ("St. Maries Complex" or "SMC").

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

3.23. The SMC is a "major source" of "HAP," as those terms are defined in 42 U.S.C. § 7412(a)(1) and 40 C.F.R. § 63.2, because the SMC emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs.

3.25. The SMC has two boilers, each of which is subject to NESHAP 5D because each boiler is a “commercial/institutional boiler,” “commercial boiler,” or “process heater,” as those terms are defined in 40 C.F.R. § 63.7575, and is not exempt under 40 C.F.R. § 63.7491. 40 C.F.R. § 63.7485.

3.26. The CE Boiler at the SMC is in the “fuel cells designed to burn biomass/bio-based solid” subcategory under 40 C.F.R. § 63.7499(g).

3.27. PotlatchDeltic conducted its March 2019 stack testing of the CE Boiler under NESHAP 5D at representative operating load conditions (a high load and a low load), as provided in 40 C.F.R. § 63.7520(a), in accordance with a test plan submitted to EPA prior to testing, and based on a March 20, 2017, letter from EPA.

3.28. On May 20, 2019, PotlatchDeltic submitted a stack test report that included performance testing under NESHAP 5D for the CE Boiler to EPA’s Central Data Exchange, Compliance and Emissions Data Reporting Interface.

3.29. The stack test report for the March 2019 stack testing states the CE Boiler emitted CO at an average rate of 911 ppm_{dv} corrected to 3% oxygen, 3-run average, under low load conditions during the test.

3.30. Because the March 2019 stack testing of the CE Boiler under low load conditions showed that CO emissions were approximately 83% of the 1,100 ppm_{dv} emission limit, 40 C.F.R. § 63.7515(c) required Respondent to conduct annual testing of CO emissions from the CE Boiler under low load conditions in 2020 and 2021.

Violations

3.31. Respondent did not conduct performance testing of CO emissions from the CE Boiler under low load conditions until April 2022.

3.32. The stack test report from the April 2022 stack testing states the CE Boiler emitted CO at an average rate of 717 ppm_{dv} corrected to 3% oxygen, 3-run average, under low load conditions, which is 65% percent of the CO standard.

3.33. Respondent's failure to conduct annual stack testing of CO emissions from the CE Boiler under low load conditions in 2019 and 2020 violated Section 112(d) of the CAA, 42 U.S.C. § 7412(d), and 40 C.F.R. § 63.7515(c).

3.34. 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 \$51,796 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 and legal conclusions 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 \$84,547 (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 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Sara Conley
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Conley.sara@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 violations 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:

FOR RESPONDENT:

Michele Tyler, Vice President, General Counsel and
Corporate Secretary
PotlatchDeltic Land & Lumber, LLC

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2022-0193
)	
POTLATCHDELTAIC LAND & LUMBER, LLC)	FINAL ORDER
)	
St. Maries, 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 _____ day of _____, 2022.

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: PotlatchDeltic Land & Lumber, LLC, Docket No.: CAA-10-2022-0193** 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 by electronic mail to:

Julie Vergeront
U.S. Environmental Protection Agency
Region 10
Vergeront.julie@epa.gov

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:

Michele Tyler
Vice President, General Counsel & Corporate Secretary
PotlatchDeltic Corporation
601 W. 1st Avenue, Suite 1600
Spokane, Washington 99201

DATED this ____ day of _____ 2022.

Regional Hearing Clerk
EPA Region 10