

RECEIVED

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

2015 JUL 21 PM 4:11  
REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

IN THE MATTER OF:	)	
	)	
Weyerhaeuser NR Company,	)	
	)	
Respondent	)	Docket Number
	)	CAA-03-2015-0130
Sutton OSB Mill	)	
3601 Gauley Turnpike,	)	Proceeding Pursuant to
Heaters, WV 26627	)	Sections 113(a) and (d)
	)	of the Clean Air Act, as
Facility	)	amended, 42 U.S.C.
	)	§ 7413(a) and (d)
	)	
	)	

**CONSENT AGREEMENT**

**I. Preliminary Statement**

This administrative Consent Agreement (the "Consent Agreement") is entered into by and between the Complainant, the Director of the Air Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), and the Weyerhaeuser NR Company (the "Respondent" or "Weyerhaeuser"), pursuant to Section 113(a) and (d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(a) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"). The Consolidated Rules of Practice at 40 C.F.R. § 22.13 provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be commenced and concluded simultaneously by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") address alleged violations by Weyerhaeuser of requirements found in its CAA Title V Operating Permit, Sections 4.4.1 and 4.4.13, concerning recordkeeping requirements related to the calibration records for the pressure gauge and reader used at the Dry Waste System Baghouse at Respondent's Heaters, West Virginia facility, as described below.

## **II. General Provisions**

1. Sections 113(a) and (d) of the Act, 42 U.S.C. § 7413(a) and (d), authorize the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.
2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this Consent Agreement and the accompanying Final Order.
3. Except as provided in paragraph 2 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this Consent Agreement and the accompanying Final Order.
4. Respondent consents to the issuance of this Consent Agreement and the accompanying Final Order, agrees to comply with the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
5. Respondent agrees to pay its own costs and attorney fees.
6. Respondent agrees that this Consent Agreement and the accompanying Final Order shall apply to, and be binding upon, Respondent, its officers, directors, servants, employees, agents, successors and assigns.

## **III. Findings Of Fact And Conclusions Of Law**

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:

7. Weyerhaeuser is a public corporation organized under the laws of the State of Washington and owns and operates a oriented strand board ("OSB") manufacturing facility at 3601 Gauley Turnpike, Heaters, West Virginia 26627 (the "Facility"). OSB is more commonly known as flake board and is regularly used in the construction of homes.
8. Weyerhaeuser is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), because it is a corporation. At all times relevant to this Consent Agreement, Respondent has been the owner and operator of the Facility.

9. Title V of the CAA, 42 U.S.C. § 7661, established an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661(d), provides that each state must submit to the Administrator a permit program meeting the requirements of Title V.
10. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs at 40 C.F.R. Part 70.
11. Section 502(a) of the CAA, 42 U.S.C. § 7661(a), and 40 C.F.R. § 70.7(b) provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
12. EPA granted final full approval to the West Virginia Title V operating permit program on October 3, 2001 (66 FR 50325), and the program became effective on November 19, 2001. *See also* 40 C.F.R. Part 70, Appendix A.
13. The West Virginia Department of Environmental Protection (“WVDEP”) is a permitting authority for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4).
14. The state regulatory requirements concerning West Virginia’s Title V CAA permitting program are primarily found at 45CSR§30.
15. The Facility is a “Title V source” as defined at 45CSR§§30-2.26 and 2.45, and was issued a Title V permit by WVDEP, Permit No. R30-00700016-2007 on October 24, 2007, which was to expire on October 24, 2012. As Weyerhaeuser filed a timely and complete permit renewal application, the permit continued in effect until a new title V permit was issued. On April 22, 2013, WVDEP reissued the Facility’s title V permit, Permit No. R30-00700016-2013. This permit was effective May 6, 2013 and expires on April 22, 2018. As the permit conditions relevant to this CAFO are the same in both permits, the two permits will be referred to jointly herein as the “Title V permit.” Weyerhaeuser is the permittee under the Title V permit.
16. The Facility is subject to the provisions of 40 CFR Part 63, Subpart DDDD – National Emission Standards for Hazardous Air Pollutants (“NESHAP”): Plywood and Composite Wood Products and 40 CFR Part 63, Subpart ZZZZ – NESHAP for Stationary Reciprocating Internal Combustion Engines. The requirements of these NESHAPS have been incorporated into the Title V permit.
17. Pursuant to Section 2.13 of the Title V permit, “[t]he permittee must comply with all conditions of this permit.” The Section also specifies that permit noncompliance constitutes a violation of the West Virginia Code and the Clean Air Act and is enforceable by either WVDEP or EPA.

18. Section 4.2.9 of the Title V permit requires that Weyerhaeuser, as the permittee, monitor the pressure drop across the Dry Waste System Baghouse on a daily basis. The Section also requires that the pressure gauge and the reader used for such monitoring be calibrated at least annually.
19. Section 4.4.1 of the Title V permit requires, among other things, that the permittee “maintain accurate records of all required pollution control equipment inspection and/or preventative maintenance procedures.”
20. Section 4.4.13 of the Title V permit also requires that “[m]aintenance and malfunction records for the Dry Waste System Baghouse shall be maintained in accordance with 4.4.1 and 4.4.2.”
21. On October 8, 2014, EPA representatives inspected the Facility. During a records review at the time of the inspection, EPA could not locate any records documenting the calibration of the pressure gauge and reader used to measure the pressure drop across the Dry Waste System Baghouse for the years 2012 and 2013.
22. In a follow-up email, Weyerhaeuser confirmed that it could not produce the 2012 and 2013 annual calibration records for the pressure gauge and reader at the Dry Waste System Baghouse.
23. Weyerhaeuser’s failure to maintain calibration records for such pollution control equipment for the years 2012 and 2013 is a violation of Section 4.4.1 of Weyerhaeuser’s Title V permit and is, therefore, a violation of the Title V permit and Section 502(a) of the CAA.
24. Section 113(d)(1) of the CAA limits the Administrator’s authority to matters where the first alleged violation occurred no more than 12 months prior to initiation of an 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.
25. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **IV. Settlement Recitation, Settlement Conditions, and Civil Penalty**

26. Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle and resolve the violations specifically set forth in Section III of this Consent Agreement.

27. In settlement of the alleged violations enumerated above in Section III of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of \$22,306 within the time and manner specified herein.
28. The settlement amount of \$22,306 is based upon Complainant's consideration of and application of the statutory penalty factors set forth in Section 113(e), of the Act, 42 U.S.C. § 7413(e), which include the size of the business, economic impact of the penalty, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require, and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondent's payment of this civil penalty shall resolve the violations set forth in Section III of this Consent Agreement.
29. Respondent shall pay the civil penalty of \$22,306 no later than thirty (30) days after the effective date of this Consent Agreement and accompanying Final Order in order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and accompanying Final Order.
30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
31. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this executed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
32. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

33. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
34. Thus, in accordance with the above provisions, to avoid the assessment of interest, late payment penalties, and handling charges on the penalty set forth herein, Respondent must pay the full amount of the civil penalty, in the manner directed, within thirty (30) days of the effective date of this Consent Agreement and accompanying Final Order.
35. Payment of the penalty in Paragraph 27 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments are payable to Treasurer, United States of America and shall reference the above case caption and docket number (CAA-03-2015-0130).
36. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:  
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>  
<http://www2.epa.gov/financial/makepayment>
37. Any payment made by any method must reference the above case caption and docket number (CAA-03-2015-0130). Within 24 hours of payment of any penalty amount, Respondent shall send copies of any corresponding check, or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment, to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Robert Stoltzfus, Esq., Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Paul Arnold (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
38. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in, and any civil penalty amount paid pursuant to, this Consent Agreement and accompanying Final Order.
39. Payment of the penalty specified in Paragraph 27 in the manner set forth in this Consent Agreement and payment of any applicable interest, handling costs and/or late payment charges as set forth above shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement. Compliance with this Consent Agreement and accompanying Final Order shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.

40. Respondent's failure to make timely payment of the civil penalty or any portion of the civil penalty provided herein may result in referral of this matter to the United States Attorney for enforcement of this Consent Agreement and the accompanying Final Order in the appropriate United States District Court, in accordance with Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5)

**V. Reservation of Rights**

41. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in Section III of this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States' authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

**VI. Effective Date**

42. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Consent Agreement and Final Order is filed with the Regional Hearing Clerk of EPA Region III.

**VII. Waiver of Hearing**

43. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

**VIII. Entire Agreement**

44. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the accompanying Final Order. Nothing in this Consent Agreement or the accompanying Final Order shall be construed to affect or limit in any way the obligation of Respondent to comply with all

federal, state and local laws and regulations governing any activity required by this Consent Agreement and the accompanying Final Order.

**IX. Execution**

45. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For the Respondent:

9/29/15  
Date

Charles W. Southwick  
Name  
Title Assistant Gen. Counsel  
Weyerhaeuser NR Company

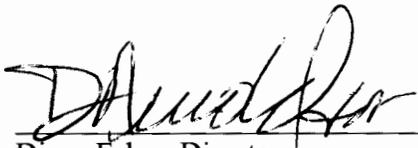
For the Complainant:

7/14/15  
Date

J. Robert Stoltzfus  
J. Robert Stoltzfus  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is \$22,306.

7/15/15  
Date

  
\_\_\_\_\_  
Diana Esher, Director  
Air Protection Division  
U.S. Environmental Protection Agency, Region III

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

**Weyerhaeuser NR Company  
3601 Gauley Turnpike  
Heaters, West Virginia 26627,**

**Respondent.**

**EPA Docket No. CAA-03-2015-0130**

**FINAL ORDER**

**Proceeding under Sections 113(a) and  
(d) of the Clean Air Act, as amended, 42  
U.S.C. Sections 7413(a) and (d)**

**FINAL ORDER**

Complainant, the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, Weyerhaeuser NR Company, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991) and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

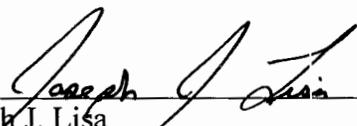
**NOW, THEREFORE, PURSUANT TO** Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of ***TWENTY-TWO THOUSAND THREE HUNDRED SIX DOLLARS***

**(\$22,306.00)**, plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of U.S EPA Region III or the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

July 21, 2015  
Date

.  
.

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III