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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2012-0054
)	
EMPIRE LUMBER CO.)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) 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” or “Act”), 42 U.S.C. § 7413(d).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. 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 hereby issues, and subject to its representations set out in Section III below, Empire Lumber Company (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. On April 16, 2012, EPA initiated this proceeding against Respondent pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), by issuing an Administrative Complaint. On November 29, 2012, EPA filed a motion seeking to amend the Complaint to Revise the Penalty

Amount Sought. EPA's Motion was granted by M. Lisa Buschmann, Administrative Law Judge, and the Amended Complaint deemed filed and served on the date of Judge Buschmann's Order on January 23, 2013.

2.2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Amended Complaint and is incorporated herein by reference.

2.3. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

III. CONSENT AGREEMENT

3.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

3.2. Respondent neither admits nor denies the specific factual allegations set forth in the Amended Complaint and in Part III of this CAFO. Respondent and Complainant agree that this CAFO does not address the allegations set forth in the 2006 CAA Notice of Violation issued to Respondent.

3.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into consideration the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is seventy-thousand dollars (\$70,000).

3.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 3.3 within thirty (30) days of the effective date of the Final Order.

3.5. Payment under this CAFO must be made by cashier's check or certified check 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, MO 63197-9000

Respondent must note on the check Respondent's name and address, the case name, and the docket number of the case.

3.6. Respondent must deliver photocopies of the check described in Paragraph 3.5 via United States mail to 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-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Donald Dossett
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

3.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5).

In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3.7.1. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order set forth in Part IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

3.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) 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 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

3.8. The penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. The undersigned representative of Respondent and Complainant each certify that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent and Complainant to this document.

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

3.11. Respondent and Complainant each expressly waive any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part IV.

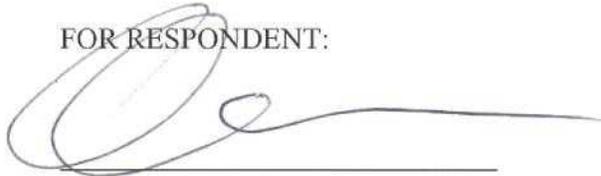
3.12. The provisions of this CAFO shall bind Respondent and Complainant and their respective officers, directors, agents, servants, employees, successors, and assigns.

3.13. The above provisions are STIPULATED TO AND AGREED upon by Respondent and EPA Region 10.

DATED:

June 5, 2013

FOR RESPONDENT:



Signature

DAVID A. KLAUE
President, Empire Lumber Company

DATED:

6/13/2013

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

IV. FINAL ORDER

4.1. The terms of the foregoing Parts I-III are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in the Amended Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO 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.

4.3. Respondent shall pay a civil penalty in the amount seventy-thousand dollars (\$70,000) as provided in Part III above.

4.4. In accordance with 40 C.F.R. § 22.34(b), issuance of this CAFO pursuant to 40 C.F.R. § 22.13 satisfies the notice requirement of that section and Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

4.5. This Final Order is effective upon filing.

SO ORDERED this 19th day of June, 2013.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of Empire Lumber Co., Docket No. CAA-10-2012-0054**, was filed, and served as follows, on the signature date below.

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

Shirin Venus, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

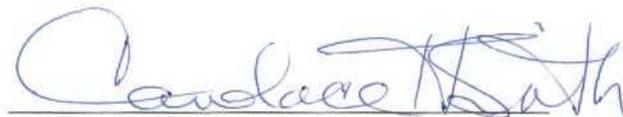
Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

David A. Klaue, President
Empire Lumber Company
14 E. Main Ave.
Spokane, WA 99202

Richard A. DuBey, Esq.
Jennifer L. Sanscrainte, Esq.
Short Cressman & Burgess, PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

Dated

19th of June 2013



Candace H. Smith
Regional Hearing Clerk
EPA Region 10