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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2011-0093
Stimson Lumber Company,)	
)	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"), 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 re-delegated 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 Stimson Lumber Company ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, 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 a penalty is proposed to be assessed.

2.3. Part III of this CAFO 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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 502(a) of the CAA, 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, 42 U.S.C. §§ 7661 to 7661f (“Title V”), it shall be unlawful for any person to operate a major source, as defined in Section 501, except in compliance with a permit issued by a permitting authority under Title V of the CAA.

3.2. Pursuant to the authority of Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA has adopted regulations at 40 C.F.R. Part 71 setting forth the procedures and terms under which EPA will administer the Title V program in State, local, and Tribal areas that do not have an EPA-approved Title V program. These regulations authorize EPA to issue Title V permits when a State, local, or Tribal agency has not developed and received approval of a Title V program, has not adequately administered or enforced its approved Title V program, or has not issued permits that comply with the applicable requirements of the CAA. These regulations became effective for sources in Indian country on March 22, 1999.

3.3. The Coeur d’Alene Tribe does not have an EPA-approved Title V operating permit program under the CAA.

3.4. EPA is therefore the CAA Title V permitting authority on the Coeur d’Alene Indian Reservation.

3.5. Respondent is the owner of a wood products facility, a major source, located at 732 10th Street, Plummer, Idaho ("Plummer Facility"), which is located within the exterior boundaries of the Coeur d'Alene Indian Reservation.

3.6. EPA issued Respondent a Title V operating permit for its Plummer Facility, permit number R10T5020001 ("Title V Permit"), which became effective on November 9, 2006, and which expired on June 16, 2011.

3.7. Pursuant to 40 U.S.C. §§ 71.5(a)(1)(iii), 71.7.b, and 71.7c.1.ii, and Title V Permit condition 2.17, "Expiration of this permit terminates the permittee's right to operate unless a timely and complete permit renewal application has been submitted at least six months, but not more than 18 months, prior to the date of expiration of this permit."

3.8. 3.7. Respondent's Title V Permit renewal application was due by December 16, 2010. The permit renewal application was received by EPA on January 14, 2011.

3.9. Respondent's Title V Permit renewal application became complete by operation of law on March 15, 2011 as provided in 40 C.F.R. § 71.5(a)(2) and 71.7(a)(4).

3.10. Because Respondent failed to submit to EPA a timely and complete permit renewal application at least six months prior to the date of expiration of the Title V Permit for its Plummer Facility, Respondent's Title V Permit expired on June 16, 2011, prior to EPA's issuance of a new permit.

3.11. The operation of the Plummer Facility without a Title V Permit issued by EPA is a violation of Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part I of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations set forth in Parts II and III of this CAFO.

4.3. 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, 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 fourteen thousand dollars (\$14,000.00).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. 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.

4.6. Respondent must deliver photocopies of the check described in Paragraph 4.5 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

Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, 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), together with interest, fees, costs, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

4.7.1. 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.

4.7.2. 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.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

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

DATED:

FOR RESPONDENT:

6/15/11



Signature


Print Name: Jeff Webber

Title: Vice President - Manufacturing

DATED:

FOR COMPLAINANT:

6/17/2011



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

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

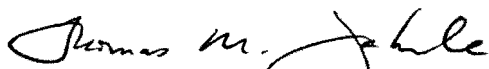
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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.

5.3. Respondent shall pay a civil penalty in the amount of fourteen thousand dollars (\$14,000.00), as provided in Part IV above.

5.4. 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).

5.5. This Final Order is effective upon filing.

SO ORDERED this 21st day of June, 2011.



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: Stimson Lumber Company, DOCKET NO.: CAA-10-2011-0093** was filed with the Regional Hearing Clerk on June 21, 2011.

On June 21, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront, Esquire
US Environmental Protection Agency
Suite 900
1200 Sixth Avenue, ORC-158
Seattle, WA 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 on June 21, 2011, to:

Jeanette Schuster
Tonkin and Torp
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

DATED this 21st day of June 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10