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BEFORE
THE REGIONAL ADMINISTRATOR
REGION 10
U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

EMPIRE LUMBER CO.,

Respondent.

Docket No. CAA-10-2012-0054

RESPONDENT EMPIRE LUMBER
COMPANY'S ANSWER TO EPA'S
AMENDED COMPLAINT

Respondent Empire Lumber Company ("Respondent"), by and through its counsel, Richard Du Bey and Jennifer Sanscrainte and Short Cressman & Burgess PLLC, answer the Amended Complaint, dated on or about November 29, 2012, as follows:

I. AUTHORITIES

1.1 Respondent does not contest paragraph 1.1 of the Amended Complaint.

1.2 Respondent does not contest paragraph 1.2 of the Amended Complaint.

1.3 Respondent contests paragraph 1.3 of the Amended Complaint, denies same and further answers that Complainant document such joint inter-agency determination in this specific instance.

1.4 Respondent does not contest paragraph 1.4 of the Amended Complaint.

To the extent necessary, Respondent renews its request for hearing.

RESPONDENT EMPIRE LUMBER
COMPANY'S ANSWER TO EPA'S
AMENDED COMPLAINT - 1

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& BURGESS PLLC**

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1 1.5 Respondent does not contest paragraph 1.5 of the Amended Complaint.

2 **II. STATUTORY AND REGULATORY FRAMEWORK**

3 2.1 Paragraph 2.1 characterizes a federal statute which speaks for itself and
4 so no response is required.

5 2.2 Paragraph 2.2 characterizes a federal statute/regulation which speaks
6 for itself and so no response is required.

7 2.3 Respondent does not contest paragraph 2.3 of the Amended Complaint.
8 Respondent further answers that Complainant must act in compliance with the Clean
9 Air Act Section 113(e), 42 U.S.C. § 7413 (e).

10 **III. ALLEGATIONS**

11 3.1 Respondent admits that it owns and operates a lumber mill at Highway
12 12 and Railroad Street in Kamiah, Idaho. As to the remaining allegations in
13 Paragraph 3.1, they characterize a federal statute/regulation which speaks for itself
14 and response would require a legal conclusion; so no response is required.

15 3.2 Paragraph 3.2 of the Amended Complaint is admitted.

16 3.3 Paragraph 3.3 characterizes a federal statute/regulation which speaks
17 for itself, and response to which would require a legal conclusion, and so no response
18 is required.

19 3.4 Paragraph 3.4 characterizes a federal statute/regulation which speaks
20 for itself, and response to which would require a legal conclusion, and so no
21 response is required.

22 3.5 Respondent contests paragraph 3.5 of the Amended Complaint and
23 denies same as it calls for a legal conclusion, and Respondent has no knowledge of
24 these allegations.

1 3.6 Paragraph 3.6 characterizes a federal statute/regulation which speaks
2 for itself, and response to which would require a legal conclusion, and so no
3 response is required.

4 3.7 Paragraph 3.7 characterizes a federal statute/regulation which speaks
5 for itself, and response to which would require a legal conclusion, and so no
6 response is required.

7 3.8 Paragraph 3.8 characterizes a federal statute/regulation which speaks
8 for itself, and response to which would require a legal conclusion, and so no
9 response is required.

10 3.9 Paragraph 3.9 characterizes a federal statute/regulation which speaks
11 for itself, and response to which would require a legal conclusion, and so no
12 response is required.

13 3.10 Respondent contests paragraph 3.10 of the Amended Complaint and
14 denies same as it calls for a legal conclusion, and Respondent has no knowledge of
15 these allegations.

16 3.11 Respondent admits paragraph 3.11 of the Amended Complaint.

17 3.12 Respondent contests paragraph 3.12 of the Amended Complaint and
18 denies same as it calls for a legal conclusion, and Respondent has no knowledge of
19 these allegations.

20 3.13 Respondent admits paragraph 3.13 of the Amended Complaint.

21 3.14 Respondent admits paragraph 3.14 of the Amended Complaint so far as
22 it states that Respondent received notice of the alleged violation. However,
23 Respondent does contest the remaining allegations contained in paragraph 3.14 and
24 denies same as Respondent has no knowledge of these allegations.

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IV. VIOLATIONS

21 4.1 Respondent contests paragraph 4.1 of the Amended Complaint and
22 denies same as it calls for a legal conclusion, and Respondent has no knowledge of
23 these allegations.

24 4.2 Respondent contests paragraph 4.2 of the Amended Complaint and
denies same as it calls for a legal conclusion, and Respondent has no knowledge of
these allegations.

4.3 Respondent contests paragraph 4.3 of the Amended Complaint and
denies same as it calls for a legal conclusion, and Respondent has no knowledge of
these allegations.

4.4 Respondent contests paragraph 4.4 of the Amended Complaint and
denies same as it calls for a legal conclusion, and Respondent has no knowledge of
these allegations.

4.5 Respondent contests paragraph 4.5 of the Amended Complaint and
denies same as it calls for a legal conclusion, and Respondent has no knowledge of
these allegations.

4.6 Respondent contests paragraph 4.6 of the Amended Complaint and
denies same as it calls for a legal conclusion, and Respondent has no knowledge of
these allegations.

V. PROPOSED PENALTY ORDER

5.1 Respondent contests paragraph 5.1 of the Amended Complaint and
denies same as it has no knowledge of these allegations.

5.2 Respondent contests paragraph 5.2 of the Amended Complaint and
denies same as it calls for a legal conclusion, and Respondent has no knowledge of
these allegations. Respondent further answers that Complainant is not entitled to any

1 such relief as Complainant has not properly applied the penalty assessment criteria to
2 this matter as required by Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

3 5.3 Respondent contests paragraph 5.3 of the Amended Complaint and
4 denies same as it calls for a legal conclusion, and Respondent has no knowledge of
5 these allegations. Respondent further answers that, if applicable, Complainant has
6 not properly applied 42 U.S.C. § 7413(e) to this matter.

7 **VI. OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER**

8 6.1 Paragraphs 1.1 through 5.3 above, are by this reference, incorporated
9 into this paragraph 6.1.

10 6.1.1 Respondent has answered the Amended Complaint in
11 accordance with 40 C.F.R. Part 22 and Respondent has requested a hearing on the
12 issues raised in the Amended Complaint, including all material facts upon which the
13 Amended Complaint is based and on the appropriateness of any proposed penalty.

14 6.1.2 Respondent further answers that Complainant's assertions in the
15 Amended Complaint are not in accordance with applicable law, regulations or policy
16 and seek to impose unfair and unreasonable burdens on Respondent, its employees and
17 the Indian tribal community within which it operates. Such concerns may cause
18 Respondent to present evidence to the Presiding Officer regarding equitable
19 considerations including, but not limited to, matters of Environmental Justice.

20 6.2 Respondent contests paragraph 6.2 of the Amended Complaint and
21 denies same as it has no knowledge of this matter.

22 **VII. REQUEST FOR HEARING**

23 7.1 As noted in paragraph 6.1 above, Respondent respectfully requests a
24 hearing on all issues of law and fact asserted by Complainant in this matter.

1 **VIII. RESPONDENT'S AFFIRMATIVE DEFENSES**

2 8.1 The Amended Complaint fails to document the joint inter-agency
3 determination as required by 42 U.S.C. §7413(d)(1).

4 8.2 The Amended Complaint fails to consider equitable factors, including,
5 but not limited to matters of Environmental Justice.

6 8.3 The Amended Complaint is barred by the doctrine of estoppel.

7 8.4 The Amended Complaint is barred by 42.U.S.C. § 7413(d)(1)(C).

8 8.5 The Amended Complaint is barred by the doctrines of laches.

9 8.6 The Amended Complaint is barred by the doctrine of waiver.

10 8.7 The Complainant has failed to satisfy all required administrative
11 procedural steps and substantive due process conditions prior to bringing this matter
12 before the Presiding Officer.

13 8.8 The Complainant has failed to mitigate or reduce civil penalty against
14 Respondent, based on consideration of the factors set out in the Clean Air Act at
15 Section 113(e), 42 U.S.C. § 7413(e) and applicable EPA Policy.

16 8.9 The Complainant failed to timely amend its Complaint, and its undue
17 delay caused prejudice to Respondent.

18 **IX. RESPONDENT'S RESERVATION OF RIGHT**

19 9.1 Respondent reserves its right to supplement its affirmative defenses after
20 conducting discovery in this matter.

21 **X. ADDITIONAL RELIEF REQUESTED**

22 Having answered the Amended Complaint, Respondent requests the following
23 relief:

24 10.1 For an order dismissing all claims that the Complainant has asserted
against Respondent with prejudice;

10.2 For a judgment that no penalties shall be imposed upon Respondent;

RESPONDENT EMPIRE LUMBER
COMPANY'S ANSWER TO EPA'S
AMENDED COMPLAINT - 6

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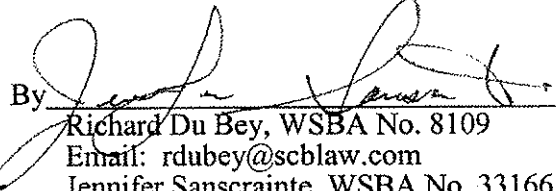
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10.3 For an award of reasonable costs and attorneys' fees incurred by Respondent in defense of this action, as provided by applicable law; and

10.4 Such other and further relief as the Presiding Officer may deem just and equitable.

DATED this 26th day of December, 2012.

SHORT CRESSMAN & BURGESS PLLC

By 

Richard Du Bey, WSBA No. 8109
Email: rdubey@scblaw.com
Jennifer Sanscrainte, WSBA No. 33166
Email: jsanscrainte@scblaw.com
Attorneys for Respondent Empire Lumber Company

1 **CERTIFICATE OF SERVICE**

2 I, Melody Wasley, certify and declare:

3 I am over the age of 18 years, make this Declaration based upon personal
4 knowledge, and am competent to testify regarding the facts contained herein.

5 On December 26, 2012 served true and correct copies of RESPONDENT
6 EMPIRE LUMBER COMPANY'S ANSWER AND REQUEST FOR HEARING on
the parties and in the manner listed below:

7 M. Lisa Buschmann, Administrative Law
8 Judge
9 U.S. EPA, Office of ALJs
10 1200 Pennsylvania Ave. NW
Mail Code 19001
Washington, DC 20460-2001

Candace Smith, Regional Hearing Clerk
U.S. EPA, Region 10
Mail Stop: ORC-158
1200 Sixth Ave., Suite 900
Seattle, WA 98101

11 Via Facsimile
12 Via U.S. Mail
13 Via Legal Messenger
 Via Federal Express
 Via E-Mail: oaljfilng@epa.gov

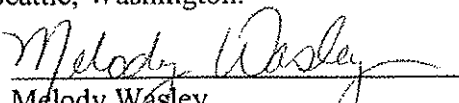
Via Facsimile
 Via U.S. Mail
 Via Legal Messenger
 Via Federal Express
 Via E-Mail:
Smith.Candace@epamail.epa.gov

14 Shirin Venus, Asst. Regional Counsel
15 U.S. EPA, Region 10
16 Mail Stop: ORC-158
1200 Sixth Ave., Suite 900
Seattle, WA 98101

17 Via Facsimile
18 Via U.S. Mail
19 Via Legal Messenger
 Via Federal Express
 Via E-Mail:
venus.shirin@epamail.epa.gov

20
21 I certify under penalty of perjury pursuant to the laws of the State of
Washington that the foregoing is true and correct.

22 SIGNED on December 26, 2012 at Seattle, Washington.

23 
24 Melody Wasley

RESPONDENT EMPIRE LUMBER
COMPANY'S ANSWER TO EPA'S
AMENDED COMPLAINT - 8

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