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**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:

Three Rivers Timber, Inc.,
Title V Permit No. R10-T5-ID-00-03,
Nez Perce Indian Reservation,
Kamiah, Idaho.
Respondent.

DOCKET NO. CAA-10-2007-0203

**CONSENT AGREEMENT AND
FINAL ORDER**

I. AUTHORITY

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of U.S. Environmental Protection Agency (EPA) by Section 113(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(d). The Administrator has delegated the authority to issue the Final Order contained in Section VI of this CAFO to the Regional Administrator of EPA, Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

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" (Part 22 Rules), EPA hereby issues, and Three Rivers Timber, Inc. (hereinafter Respondent or Three Rivers Timber) hereby agrees to issuance of, the Final Order contained in Section VI of this CAFO.

1 **II. PRELIMINARY STATEMENT**

2 3. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences
3 this proceeding, which will conclude when the Final Order contained in Section VI of this
4 CAFO becomes effective.

5 4. Section III of this CAFO contains a concise statement of the statutory and
6 factual basis for the alleged violations of the CAA. Section IV of this CAFO contains the
7 specific provisions of the CAA that Respondent is alleged to have violated.

8 **III. ALLEGATIONS**

9 5. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the
10 effective date of any permit program approved or promulgated under Title V of the CAA,
11 42 U.S.C. §§ 7661 to 7661f (Title V), it shall be unlawful for any person to operate a major
12 source except in compliance with a permit issued by a permitting authority under Title V of
13 the CAA.

14 6. EPA has adopted regulations at 40 C.F.R. Part 71 setting forth the procedures and
15 terms under which EPA will administer the Title V program in State, local, and Tribal areas that
16 do not have an EPA-approved Title V program. The regulations authorize EPA to issue Title V
17 permits when a State, local, or Tribal agency has not developed and received approval of a Title
18 V program, has not adequately administered or enforced its approved Title V program, or has not
19 issued permits that comply with the applicable requirements of the CAA. These regulations
20 became effective for sources in Indian Country on March 22, 1999.

21 7. Three Rivers Timber is a corporation incorporated in the State of Idaho.

1 8. Three Rivers Timber is the owner and operator of a lumber manufacturing facility,
2 which consists of a 32 acre site with a main facility located on Woodland Road in Kamiah, Idaho
3 (Three Rivers Timber Kamiah Facility).

4 9. The Three Rivers Timber Kamiah Facility is located within the exterior
5 boundaries of the 1893 Nez Perce Reservation and thus is located in "Indian Country," as
6 defined in 18 U.S.C. § 1511.

7 10. Three Rivers Timber is a "person" as defined in Section 302(e) of the CAA,
8 42 U.S.C. § 7602(e).

9 11. The Three Rivers Timber Kamiah Facility directly emits or has the "potential to
10 emit," as defined in 40 C.F.R. § 70.2, 100 tons per year or more of any "air pollutant," as defined
11 in 40 C.F.R. § 71.2.

12 12. The Three Rivers Timber Kamiah Facility is therefore a "major source" as defined
13 in Section 501(2) of the CAA, 42 U.S.C. § 7661(2), and 40 C.F.R. § 71.2.

14 13. The Nez Perce Tribe of Idaho does not have an EPA-approved Title V operating
15 permit program under the Clean Air Act.

16 14. EPA is therefore the Clean Air Act Title V permitting authority on the Nez Perce
17 Reservation.

18 15. EPA issued Three Rivers Timber a Title V operating permit for the Three Rivers
19 Timber Kamiah Facility, permit number R10T5-ID-00-03, which became effective on October 7,
20 2002 and remains in effect (Three Rivers Timber Title V Permit).

21 16. Section 113(d) of the CAA authorizes EPA to commence an administrative action

1 for the assessment of civil penalties of up to \$25,000 per day for each violation whenever any
2 person has violated or is violating any requirement of the CAA.

3 17. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990,
4 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, this
5 amount increased to \$27,500 per day for each violation occurring on and after January 31, 1997,
6 and further increased to \$32,500 per day for each violation occurring on or after March 15, 2004.

7 8 **IV. ALLEGED VIOLATIONS**

9 18. Paragraph VI.B(a) of the Three Rivers Timber Title V Permit provides:

10 The permittee shall submit to EPA a certification of compliance with the permit terms
11 and conditions, including the emission limitations, standards, or work practices,
12 postmarked by January 30 of each year and covering the previous calendar year, except
13 that the first certification shall cover the period from the effective date of this permit
14 through December 31. The compliance certification shall be certified as to truth,
15 accuracy, and completeness by a responsible official consistent with paragraph V.D of
16 this permit.

17 19. Three Rivers Timber did not submit to EPA a compliance certification for the
18 reporting period from January 1, 2006, though December 31, 2006, until August 6, 2007, in
19 violation of Section 502(a) of the CAA, 42 U.S.C. § 7661b(c), and Paragraph VI.B(a) of the
20 Three Rivers Timber Title V Permit.

21 **V. CONSENT AGREEMENT**

EPA and Respondent, by their undersigned representatives, hereby stipulate and
agree as follows:

20. Respondent stipulates that EPA has jurisdiction over this matter.

1 21. Respondent neither admits nor denies the specific factual allegations set
2 forth in Sections III and IV of this CAFO.

3 22. Upon consideration of the factors in Section 113(e) of the CAA, 42 U.S.C.
4 § 7413(e), and in accordance with the Clean Air Act Stationary Source Civil Penalty Policy,
5 EPA has determined and Respondent agrees that an appropriate penalty to settle this action
6 is SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00).

7 23. Respondent consents to the issuance of the Final Order set forth herein, and
8 to payment of a civil penalty of SIX THOUSAND FIVE HUNDRED DOLLARS
9 (\$6,500.00) within 30 days of the effective date of the Final Order.

10 24. Payment under the CAFO shall be made by cashier's or certified check or
11 money order, made payable to the order of "Treasurer of the United States" and delivered to
12 the following address:

13 Mellon Client Services Center
14 EPA Region 10
15 500 Ross Street
 P.O. Box 360903
 Pittsburgh, PA 15251-6903

16 Respondent shall note on the check Respondent's name and address, the case name, and the
17 docket number of the case and shall submit a photocopy of the check to:

18 Region 10 Hearing Clerk
19 U.S. EPA Region 10
 1200 Sixth Avenue, Suite 900, OCE-158
 Seattle, Washington 98101

20 Office of Compliance and Enforcement
21 U.S. EPA Region 10
 1200 Sixth Avenue, Suite 900, OCE-127
 Seattle, Washington 98101
 Attn: Steven Potokar

1 25. Should Respondent fail to pay the penalty assessed by this CAFO against
2 Respondent in full by its due date, the entire unpaid balance of the penalty and accrued
3 interest assessed against Respondent by this CAFO shall become immediately due and
4 owing. Should such a failure to pay occur, Respondent may be subject to a civil action
5 pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed
6 penalty under the CAA. In any such collection action, the validity, amount, and
7 appropriateness of the penalty shall not be subject to review.

8 26. Should Respondent fail to pay the penalties assessed by this CAFO in full by
9 their due date, Respondent shall also be responsible for payment of the following amounts:

10 a. Interest. Any unpaid portion of the of the assessed penalty shall bear interest at the
11 rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final
12 Order, provided, however, that no interest shall be payable on any portion of the assessed
13 penalty that is paid within 30 days of the effective date of the Final Order.

14 b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to
15 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the penalty
16 and interest assessed against Respondent, Respondent shall also be required to pay
17 the United States' enforcement expenses, including but not limited to attorney fees
18 and costs incurred by the United States for collection proceedings, and a quarterly
19 nonpayment penalty for each quarter during which such failure to pay persists. Such
20 nonpayment penalty shall be ten percent of the aggregate amount of Respondent's
21 outstanding penalties and nonpayment penalties accrued from the beginning of such

1 quarter.

2 27. Respondent agrees not to claim or attempt to claim a federal or state income
3 tax deduction or credit covering all or any part of the penalty paid to the United States
4 Treasurer under this CAFO.

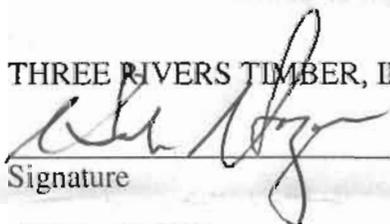
5 28. Respondent represents that it is duly authorized to execute this CAFO and
6 that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the
7 terms of this CAFO.

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

10 30. Respondent explicitly waives its right to contest the allegations contained in
11 this CAFO and to appeal the Final Order contained herein.

12 31. Except as described in paragraph 26, each party to this action shall bear its
13 own costs in bringing or defending this action.

14 THREE RIVERS TIMBER, INC.

15 
Signature

15 9-17-07
Date

16 HERB HAZEN
Name (Print)

17 PRESIDENT
18 Title

19 U.S. ENVIRONMENTAL PROTECTION AGENCY
20 REGION 10

21 
Julie A. Vergeront
Assistant Regional Counsel

21 9/25/07
Date

1 **VI. FINAL ORDER**

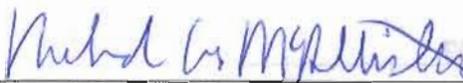
2 32. The terms of the foregoing Consent Agreement are hereby ratified and
3 incorporated by reference into this Final Order. Respondent is hereby ordered to comply
4 with the foregoing terms of settlement.

5 33. This CAFO constitutes a release and settlement by EPA of all claims for
6 civil penalties pursuant to the CAA for the particular violations alleged in Section IV of this
7 CAFO. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the
8 right of EPA or the United States to pursue appropriate injunctive or other equitable relief
9 or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or
10 otherwise affect Respondent's obligations to comply with all applicable provisions of the
11 CAA and regulations and permits issued thereunder.

12 34. Respondent shall pay a civil penalty in the amount of SIX THOUSAND
13 FIVE HUNDRED DOLLARS (\$6,500.00) as provided in paragraph 23 above.

14 35. This Final Order shall become effective upon filing.

15
16 SO ORDERED this 25th day of September, 2007.

17
18 
19 Richard G. McAllister
20 Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Three Rivers Timber, Inc., DOCKET NO.: CAA-10-2007-0203**, was filed with the Regional Hearing Clerk on September 25, 2007.

On September 25, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
US Environmental Protection Agency
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 September 25, 2007, to:

Mr. Herb Hazen
Vice President
Three Rivers Timber, Inc.
P.O. Box 757
Kamiah, Idaho 83536-4266

DATED this 25th day of September 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10