

RECEIVED

12 APR 16 PM 4:11

HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

|                    |   |                             |
|--------------------|---|-----------------------------|
| In the Matter of:  | ) | Docket No. CAA-10-2012-0054 |
| EMPIRE LUMBER CO., | ) | COMPLAINT AND               |
| Respondent.        | ) | NOTICE OF OPPORTUNITY       |
|                    | ) | FOR HEARING                 |
|                    | ) |                             |
|                    | ) |                             |

**I. AUTHORITIES**

1.1 This Complaint and Notice of Opportunity for Hearing ("Complaint") 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), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits, 40 C.F.R. Part 22.

1.2 The Administrator has delegated the authority to issue complaints in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

1.3 The Administrator and the Attorney General for the United States Department of Justice have jointly determined through their delegates that this Complaint, which includes

the allegation of CAA violations that occurred more than 12 months ago, is an appropriate administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

1.4 Empire Lumber Company (“Empire Lumber” or “Respondent”) is hereby notified that Complainant alleges that Respondent violated the provisions identified herein and seeks the assessment of a civil penalty. This Complaint also provides notice of Respondent’s opportunity to request a hearing.

1.5 In accordance with 40 C.F.R. § 22.13(a), issuance of this Complaint commences this proceeding. This proceeding will conclude when a Final Order becomes effective in accordance with 40 C.F.R. § 22.31(b).

## **II. STATUTORY AND REGULATORY FRAMEWORK**

2.1 Pursuant to Section 301(a) and (d)(4) of the CAA, 42 U.S.C. § 7601(a) and 7601(d)(4), EPA has adopted a Federal Implementation Plan (“FIP”) including air quality regulations that apply to air pollution sources on Indian Reservations in Idaho, Oregon, and Washington, which are codified at 40 C.F.R. Part 49, Subparts C and M. These rules are known as the Federal Air Rules for Indian Reservations in Region 10 (FARR) and became effective on June 7, 2005.

2.2 The FIP for the Nez Perce Tribe of Idaho is identified at 40 C.F.R. §§ 49.10401 through 10430. The FARR provisions that apply on the 1863 Nez Perce Indian Reservation are incorporated by reference at 40 C.F.R. § 49.10410(a) through (p).

2.3 Section 113(a)(1)(B) of the CAA, 42 U.S.C. § 7413(a)(1)(B), authorizes the Administrator to issue an administrative order assessing a penalty for violations of an

applicable implementation plan in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

### III. ALLEGATIONS

3.1. Respondent, which does business as "Kamiah Mills," owns and operates a lumber mill at Highway 12 and Railroad Street in Kamiah, Idaho (the "Facility"). Respondent is a "person" as that term is defined in CAA § 302(e), 42 U.S.C. § 7602(e).

3.2. The Facility is located within the exterior boundaries of the 1863 Nez Perce Indian Reservation.

3.3. 40 C.F.R. § 49.10410(b) incorporates the provisions of 40 C.F.R. § 49.124, the Rule for Limiting Visible Emissions, into the Federal Implementation Plan for the 1863 Nez Perce Indian Reservation.

3.4. 40 C.F.R. § 49.124 applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter or other visible air pollutants to the atmosphere, unless the source category is listed as exempt in 40 C.F.R. § 49.124(c).

3.5. The Facility is an air pollution source that emits particulate matter and is not in a source category listed as exempt in 40 C.F.R. § 49.124(c).

3.6. 40 C.F.R. § 49.124(d) prohibits the operation of an air pollution source that emits, or could emit, particulate matter or other visible air pollutant to the atmosphere unless the air pollution source meets the opacity requirements of 40 C.F.R. § 49.124(d)(1).

3.7. 40 C.F.R. § 49.124(d)(1) provides that the visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive six-minute period, unless paragraph (d)(2) or (d)(3) of that section applies to the air pollution source.

3.8. 40 C.F.R. § 49.124(d)(2) provides that the visible emissions from an air pollution source may exceed the 20% opacity limit if the owner or operator of the air pollution source demonstrates to the Regional Administrator's satisfaction that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet the 20% opacity limit.

3.9. 40 C.F.R. § 49.124(d)(3) provides that the visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 consecutive minutes in any eight consecutive hours, but must not exceed 60% opacity at any time.

3.10. 40 C.F.R. § 49.124(d)(2) and (d)(3) do not apply to the Facility.

3.11. Empire Lumber operates two planers (Planer #1 and Planer #2) at the Facility.

3.12. Planer #1 and Planer #2 are each an "emission unit" as that term is defined at 40 C.F.R. § 49.123(a).

3.13. Planer #1 is equipped with three cyclones and Planer #2 is equipped with two cyclones. The cyclones are part of a pneumatic system that transfers planer by-products (lumber chips, shavings, and fines) to truck bins (for waste removal) or to the boiler (for use as fuel).

3.14. On December 16, 2010, Complainant notified Respondent and the Nez Perce Tribe that Respondent had been in violation of the FIP requirements identified in this Complaint.

#### **IV. VIOLATIONS**

##### **Violation #1– Particulate Matter Emissions in Excess of the Opacity Limit at Planer #1 in 2009**

4.1 From February 2, 2009, until October 23, 2009, a certified opacity reader employed by Respondent observed visible emissions from Planer #1 in accordance with EPA Method 9 (visible determination of the opacity of emissions from stationary sources). These observations identified emissions of particulate matter that exceeded the 20% opacity limit in 40 C.F.R. § 49.124(d)(1).

4.2 From February 2, 2009, until October 23, 2009, Respondent violated 40 C.F.R. § 49.124(d)(1) and 40 C.F.R. § 49.10410(b) at the Facility's Planer #1.

##### **Violation #2– Particulate Matter Emissions in Excess of the Opacity Limit at Planer #2 in 2009**

4.3 From May 15, 2009, until October 23, 2009, a certified opacity reader employed by Respondent observed visible emissions from the operation of Planer #2 in accordance with EPA Method 9 (visible determination of the opacity of emissions from stationary sources). These observations identified emissions of particulate matter that exceeded the 20% opacity limit in 40 C.F.R. § 49.124(d)(1).

4.4 From May 15, 2009, until October 23, 2009, Respondent violated 40 C.F.R. § 49.124(d)(1) and 40 C.F.R. § 49.10410(b) at the Facility's Planer #2.

##### **Violation #3 – Particulate Matter Emissions in Excess of the Opacity Limit at Planer #1 in 2010**

4.5 On September 25, 2010, a certified opacity reader employed by Respondent observed visible emissions from the operation of Planer #1 in accordance with EPA Method 9

(visible determination of the opacity of emissions from stationary sources). The observation identified emissions of particulate matter in excess of the 20% opacity limit in 40 C.F.R. § 49.124(d)(1).

4.6 On September 25, 2010, Respondent violated 40 C.F.R. § 49.124(d)(1) and 40 C.F.R. § 49.10410(b) at the Facility's Planer #1.

#### **V. PROPOSED PENALTY ORDER**

5.1 Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes a civil administrative penalty of up to \$25,000 per day for each violation of the CAA. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the statutory maximum penalty for each violation occurring after January 12, 2009, has been raised to \$37,500 per day per violation.

5.2 Complainant requests an assessment of penalties for violations of the requirements cited in Section IV of this Complaint, as provided by CAA Section 113(d), 42 U.S.C. § 7413(d), in an amount of \$90,200 (ninety thousand two-hundred dollars).

5.3 Complainant's proposed penalty amount was determined in accordance with the penalty assessment criteria identified in CAA Section 113(e), 42 U.S.C. § 7413(e).

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

6.1 Under Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.15, Respondent has a right to file an answer requesting a hearing on the issues raised in this Complaint including any material fact upon which the Complaint is based or the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. A request for a hearing must be incorporated in a written answer


filed with the Hearing Clerk within thirty (30) days of service of this Complaint. In its answer, Respondent may contest any material fact contained in the Complaint. The answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts that Respondent intends to place at issue; and (3) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint will constitute an admission of that allegation.

Respondent's answer must be sent to:

Regional Hearing Clerk  
EPA Region 10  
1200 Sixth Ave., Suite 900  
Mail Stop: ORC-158  
Seattle, WA 98101  
Tel: 206-553-0242

6.2 This Complaint satisfies the notice requirement of 40 C.F.R. § 22.34(b).

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement  
EPA Region 10

Dated: 4/12/2012

**PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:**

Shirin Venus, Assistant Regional Counsel  
EPA Region 10  
1200 Sixth Ave., Suite 900  
Mail Stop: ORC-158  
Seattle, WA 98101  
Tel: 206-553-4194



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING in **In the Matter of: Empire Lumber Co.**, Docket No.: CAA-10-2012-0054 was filed with the EPA Regional Hearing Clerk on April 16, 2012.

The undersigned certifies that a copy of the signed original of the complaint, together with copy of the Consolidated Rules of Practice (40 C.F.R. Part 22) was placed in the United States mail certified/return receipt on April 16, 2012, to:

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

and

Charles A. Brown, Esq.  
Registered Agent for Empire Lumber Co.  
324 Main St.  
Lewiston, ID 83501

DATED this 16 day of April, 2012.

  
Signature  
Print Name: Jennifer Eason  
EPA Region 10





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF  
REGIONAL COUNSEL

April 17, 2012

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

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

Re: *In the Matter of Empire Lumber, Co.*  
Docket No. CAA-10-2012-0054

Dear Mr. Klaue:

Enclosed is a copy of the Administrative Complaint that was filed with the Regional Hearing Clerk along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22. This Administrative Complaint concerns the Clean Air Act violations that occurred at the Empire Lumber Company facility in Kamiah, Idaho. Please note that you must file an Answer to the Administrative Complaint with the Regional Hearing Clerk within thirty (30) days after service of the complaint. See 40 C.F.R. § 22.15.

If you would like to make an offer of settlement in this matter, please contact me at (206) 553-4194. Instructions for filing an Answer are provided in the Complaint, and more detailed information is provided in the Part 22 rules which govern this proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Shirin Venus".

Shirin Venus  
Assistant Regional Counsel

cc: Charles A. Brown, Esq.  
Registered Agent for Empire Lumber Co.

