

RECEIVED

12 MAY 17 PM 2:20

HEARINGS CLERK  
EPA--REGION 10

COPY

1  
2  
3  
4  
5  
6  
7 BEFORE  
8 THE REGIONAL ADMINISTRATOR  
9 REGION 10  
10 U.S. ENVIRONMENTAL PROTECTION AGENCY

11 In the Matter of:

12 EMPIRE LUMBER CO.,

13 Respondent.

Docket No. CAA-10-2012-0054

RESPONDENT EMPIRE LUMBER  
COMPANY'S ANSWER AND  
REQUEST FOR HEARING

14 Respondent Empire Lumber Company ("Respondent"), by and through its  
15 counsel, Richard Du Bey and Jennifer Sanscrainte and Short Cressman & Burgess  
16 PLLC, answer the Administrative Complaint as follows:

17 **I. AUTHORITIES**

18 1.1 Respondent does not contest paragraph 1.1 of the Complaint.

19 1.2 Respondent does not contest paragraph 1.2 of the Complaint.

20 1.3 Respondent contests paragraph 1.3 of the Complaint, denies same and  
21 further answers that Complainant document such joint inter-agency determination in  
22 this specific instance.

23 1.4 Respondent does not contest paragraph 1.4 of the Complaint.

24 1.5 Respondent does not contest paragraph 1.5 of the Complaint.

RESPONDENT EMPIRE LUMBER  
COMPANY'S ANSWER AND REQUEST  
FOR HEARING - 1

**SHORT CRESSMAN  
& BURGESS PLLC**

999 Third Avenue, Suite 3000, Seattle, WA 98104-4088  
206.682.3333 phone | 206.340.8856 fax | www.scbllaw.com

1                                   **II. STATUTORY AND REGULATORY FRAMEWORK**

2                   2.1 Respondent contests paragraph 2.1 of the Complaint and denies same as  
3 it has no knowledge of these allegations.

4                   2.2 Respondent contests paragraph 2.2 of the Complaint and denies same as  
5 it has no knowledge of these allegations.

6                   2.3 Respondent does not contest paragraph 2.3 of the Complaint.  
7 Respondent further answers that Complainant must act in compliance with the Clean  
8 Air Act Section 113(e), 42 U.S.C. § 7413 (e).

9                                   **III. ALLEGATIONS**

10                  3.1 Respondent does not contest paragraph 3.1 of the Complaint.

11                  3.2 Respondent contests paragraph 3.2 of the Complaint and denies same as  
12 it has no knowledge of these allegations.

13                  3.3 Respondent contests paragraph 3.3 of the Complaint and denies same as  
14 it has no knowledge of these allegations.

15                  3.4 Respondent contests paragraph 3.4 of the Complaint and denies same as  
16 it has no knowledge of these allegations.

17                  3.5 Respondent contests paragraph 3.5 of the Complaint and denies same as  
18 it has no knowledge of these allegations.

19                  3.6 Respondent contests paragraph 3.6 of the Complaint and denies same as  
20 it has no knowledge of these allegations.

21                  3.7 Respondent contests paragraph 3.7 of the Complaint and denies same as  
22 it has no knowledge of these allegations.

23                  3.8 Respondent contests paragraph 3.8 of the Complaint and denies same as  
24 it has no knowledge of these allegations.

                  3.9 Respondent contests paragraph 3.9 of the Complaint and denies same as  
it has no knowledge of these allegations.





1 **V. PROPOSED PENALTY ORDER**

2 5.1 Respondent contests paragraph 5.1 of the Complaint and denies same as  
3 it has no knowledge of these allegations.

4 5.2 Respondent contests paragraph 5.2 of the Complaint and denies same as  
5 it has no knowledge of these allegations and Respondent further answers that  
6 Complainant is not entitled to any such relief as Complainant has not properly  
7 applied the penalty assessment criteria to this matter as required by Section 113(e) of  
8 the Clean Air Act, 42 U.S.C. § 7413(e).

9 5.3 Respondent contests paragraph 5.3 of the Complaint and denies same as  
10 it has no knowledge of these allegations and Respondent further answers that, if  
11 applicable, Complainant has not properly applied 42 U.S.C. § 7413(e) to this matter.

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

13 6.1 Paragraphs 1.1 through 5.3 above, are by this reference, incorporated  
14 into this paragraph 6.1.

15 6.1.1 Respondent has answered the Complaint in accordance with 40  
16 C.F.R. Part 22 and Respondent has requested a hearing on the issues raised in the  
17 Complaint, including all material facts upon which the Complaint is based and on the  
18 appropriateness of any proposed penalty.

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

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

RESPONDENT EMPIRE LUMBER  
COMPANY'S ANSWER AND REQUEST  
FOR HEARING - 4

**SHORT CRESSMAN  
& BURGESS PLLC**

999 Third Avenue, Suite 3000, Seattle, WA 98104-4088  
206.682.3333 phone | 206.340.8856 fax | www.scblaw.com

1 **VII. REQUEST FOR HEARING**

2 7.1 As noted in paragraph 6.1 above, Respondent respectfully requests a  
3 hearing on all issues of law and fact asserted by Complainant in this matter.

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

5 8.1 The Complaint fails to document the joint inter-agency determination as  
6 required by 42 U.S.C. §7413(d)(1).

7 8.2 The Complaint fails to consider equitable factors, including, but not  
8 limited to matters of Environmental Justice.

9 8.3 The Complaint is barred by the doctrine of estoppel.

10 8.4 The Complaint is barred by 42 U.S.C. § 7413(d)(1)(C).

11 8.5 The Complaint is barred by the doctrines of laches.

12 8.6 The Complaint is barred by the doctrine of waiver.

13 8.7 The Complainant has failed to satisfy all required administrative  
14 procedural steps and substantive due process conditions prior to bringing this matter  
15 before the Presiding Officer.

16 8.8 The Complainant has failed to mitigate or reduce civil penalty against  
17 Respondent, based on consideration of the factors set out in the Clean Air Act at  
18 Section 113(e), 42 U.S.C. § 7413(e) and applicable EPA Policy.

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

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

22 **X. ADDITIONAL RELIEF REQUESTED**

23 Having answered the Complaint, Respondent requests the following 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;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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 For an order finding that EPA has violated the Freedom of Information Act, 5 U.S.C. § 552 by not providing Respondent with a timely response to its April 30, 2012 FOIA request (attached as Exhibit A) and directing EPA to respond to Respondent's outstanding FOIA request so that Respondent may defend itself in this matter and awarding attorney fees.

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

DATED this 17<sup>th</sup> day of May, 2012.

SHORT CRESSMAN & BURGESS PLLC

By   
Richard Du Bey, WSBA No. 8109  
Email: rdubey@scblaw.com  
Jennifer Sanscrainte, WSBA No. 33166  
Email: jsainscrainte@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 May 17, 2012, I 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 Regional Administrator  
8 EPA Region 10  
1200 Sixth Ave., Suite 900  
9 Mail Stop: RA-140  
Seattle, WA 98101

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

- 10  
11  Via Facsimile  
12  Via U.S. Mail  
13  Via Legal Messenger  
 Via Federal Express  
 Via E-Mail

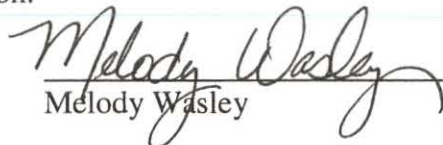
- Via Facsimile  
 Via U.S. Mail  
 Via Legal Messenger  
 Via Federal Express  
 Via E-Mail

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

- 17  
18  Via Facsimile  
19  Via U.S. Mail  
20  Via Legal Messenger  
 Via Federal Express  
 Via E-Mail

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

23 SIGNED on at Seattle, Washington.

24   
Melody Wasley

RESPONDENT EMPIRE LUMBER  
COMPANY'S ANSWER AND REQUEST  
FOR HEARING - 7

**SHORT CRESSMAN  
& BURGESS PLLC**

999 Third Avenue, Suite 3000, Seattle, WA 98104-4088  
206.682.3333 phone | 206.340.8856 fax | www.scbllaw.com

Exhibit A



April 30, 2012

**VIA E-MAIL ([r10.foia@epa.gov](mailto:r10.foia@epa.gov)) &  
VIA U.S. MAIL**

Regional Freedom of Information Officer  
U.S. Environmental Protection Agency, Region 10  
Office of External Affairs  
1200 Sixth Avenue (CEC-142)  
Seattle, WA 98101

**Re: Freedom of Information Act Request**

Dear Regional Freedom of Information Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and implementing regulations adopted by the U.S. Environmental Protection Agency ("EPA") at 40 CFR Chapter 1 Part 2, we request copies of all documents and records, including all electronic documents and communications, (collectively, "records") in EPA Region 10's possession, custody, or control related to the lumber mill owned by Empire Lumber Company, d.b.a. Kamiah Mills, located at Highway 12 and Railroad Street in Kamiah, Idaho ("Kamiah Mills") as follows:

- (1) Any and all records related to any enforcement actions by EPA against Kamiah Mills for alleged violations of the Clean Air Act ("CAA").
- (2) Any and all records upon which EPA made the determination to issue the Complaint and Notice of Opportunity for Hearing (Docket No. CAA-10-2012-0054) ("EPA's Complaint"). Included with this request are all records prepared by EPA or by others for the benefit of EPA that are in any way related to the alleged violations in EPA's Complaint.
- (3) Any and all records EPA relied upon in determining the amount of the Penalty assessed against Empire Lumber Company under EPA's Complaint.

As provided in FOIA, we would appreciate your response to this request within ten (10) business days. If any part of this request is denied, please list the specific exemptions which are claimed for withholding information along with an identification of the records being withheld.

692628.2/027709.00002

Regional Freedom of Information Officer  
April 30, 2012  
Page 2

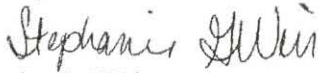
If some but not all records are being withheld as exempt, please provide all nonexempt portions which are reasonably severable. If we do not receive a response within this time, we will treat this request as having been denied.

It is not our intent to impose an unnecessary administrative burden upon you or your staff. We would be pleased to work with you to explain or reformulate this request as necessary to comply with its terms. We are willing to accept copies of the requested documents in either electronic or hard copy form, whichever is more efficient and less burdensome for the Agency. We are willing to pay EPA's reasonable search fees and copying costs up to a total of \$100.00 for processing this request and providing the requested copies. If the total charges for processing this request would exceed \$100.00, please contact me before proceeding. Otherwise, please bill our firm and forward the documents to the address listed on this letterhead.

Thank you for your assistance.

Very truly yours,

SHORT CRESSMAN & BURGESS PLLC

  
Stephanie Weir

SGW