

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WEYERHAEUSER COMPANY,

Respondent.

DOCKET NO. PG-040984

SETTLEMENT AGREEMENT

I. NATURE OF THE AGREEMENT

1 This Settlement Agreement (“Agreement”) is entered into between the Staff of the Washington Utilities and Transportation Commission (“Staff”) and Weyerhaeuser Company (“Weyerhaeuser”), for the purpose of resolving all issues raised in the Complaint currently pending in this Docket before the Washington Utilities and Transportation Commission (“WUTC” or “Commission”).

II. PARTIES

2 The parties to this Agreement are Staff and Weyerhaeuser (collectively, the “Parties”). In formal proceedings, such as this, Commission

Staff is an independent party. The three member panel of Commissioners is not a party to this Agreement. The Commissioners must review, consider and decide whether this Agreement should be adopted by the Commission.

III. EFFECTIVE DATE

3 This Agreement is subject to approval by the Commission, and it shall have no effect until it is approved by the Commission. The effective date of the Agreement is the date of the Commission's order approving the Agreement.

IV. BACKGROUND

4 Weyerhaeuser is subject to the Commission's regulation pursuant to RCW 80.28.210 and 480-93 WAC. As pertinent to this Agreement, Weyerhaeuser owns the Ostrander Pipeline, a 10-mile natural gas pipeline that serves Weyerhaeuser's Longview, Washington mill. On November 14, 2004, Staff conducted an inspection of Weyerhaeuser's Operator Qualification Program ("OQ Program") at the Longview mill. As a result of this inspection, Staff issued an Inspection Report (Appendix A) listing allegations that Weyerhaeuser had committed 9 violations of 49 CFR Part 192 (subpart N-Qualification of Pipeline Personnel) as adopted by 480-93 WAC.

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On May 2, 2005, the Commission, based on the Inspection Report, issued its Complaint in Docket No. PG-040984. The Complaint summarized alleged violations in the following areas:

- a. Weyerhaeuser's OQ Program did not identify all applicable covered tasks.
- b. Weyerhaeuser's OQ Program did not include methods for evaluating individuals performing covered tasks.
- c. Weyerhaeuser's OQ Program did not contain provisions allowing non-qualified individuals to perform covered tasks while being directed and observed by a qualified individual.
- d. Weyerhaeuser's OQ Program did not address the evaluation method to be used if the operator had reason to believe that an individual's performance of a covered task contributed to an incident.
- e. Weyerhaeuser's OQ Program did not address the evaluation method to be used if the operator had reason to believe that an individual no longer was qualified to perform a covered task.
- f. Weyerhaeuser's OQ Program did not address communication of changes that affect covered tasks.
- g. Weyerhaeuser's OQ Program did not identify covered tasks and the intervals of reevaluation of an individual's qualifications.
- h. Weyerhaeuser did not have records documenting evaluations or qualifications related to covered tasks.
- i. Weyerhaeuser did not complete the qualification of individuals performing covered tasks by October 28, 2002.

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A prehearing conference was held on June 17, 2005. The only two parties in this Docket are Weyerhaeuser and Staff.

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The Parties met on September 8, 2005, to discuss settlement of the issues raised in the Complaint. Administrative Law Judge Ann Rendahl served as mediator for the settlement discussions. As a result of the

settlement discussions, the Parties have reached this Agreement, which is described in detail below. The Parties request that the Commission approve the Agreement as presented. If the Agreement is approved, this would constitute a full settlement of all issues raised in this Docket.

V. AGREEMENT

8 This section outlines the elements of agreement and identifies the sections of the Inspection Report addressed by each aspect of the Agreement.

Resolution of the Alleged Violations

9 The Parties agree that Weyerhaeuser has cured or will cure as detailed in this Settlement Agreement the specific violations alleged in the Complaint and Inspection Report, as further specified below.

Weyerhaeuser's Current OQ Plan Complies with Regulations

10 Weyerhaeuser has adopted an OQ Program for the Longview facility that meets the Commission's legal requirements. Subsequent to Weyerhaeuser's May 27, 2005, meeting with Staff, Weyerhaeuser hired Regulatory Compliance Partners ("RCP") to audit the Longview facility's OQ Program. RCP reviewed the Inspection Report and Weyerhaeuser's then-current OQ Program and provided Weyerhaeuser with a report on June 23, 2005. In its report, RCP recommended updates to Weyerhaeuser's OQ Program to ensure that the findings in Staff's Inspection Report were

adequately addressed. Weyerhaeuser has incorporated the recommendations in RCP's audit report.

11 In addition, on September 22, 2005, Weyerhaeuser met with Staff to review Weyerhaeuser's OQ Program. This meeting resulted in further revisions to the Program, and Weyerhaeuser presented Staff with its revised OQ Program on October 6 2005. Over the next two weeks, Weyerhaeuser worked closely with Staff to refine the OQ Program to ensure compliance with 49 CFR § 192.807(b). Weyerhaeuser's final OQ Program is included in Appendix B to this Agreement.

1. Identification of Covered Tasks

12 Weyerhaeuser's current OQ Program has expanded the list of covered tasks to include the tasks identified in the Inspection Report. The current OQ Program specifies that the four-part test from 49 CFR § 192.801(b) and WAC 480-93-013 was applied when developing the list of covered tasks.

13 This addresses Item 1 in the Inspection Report.

2. Evaluation Methods

14 Weyerhaeuser's current OQ Program states the methods that may be used to evaluate an individual's competencies and skills for original qualification and requalification to perform covered tasks. A written, oral,

and/or hands-on evaluation is required for each competency or skill. Written documentation corresponding to each competency or skill is also required.

15 This addresses Item 2 in the Inspection Report.

3. Provisions for Non-qualified Individuals to Perform Covered Tasks

16 Weyerhaeuser’s current OQ Program contains provisions that allow non-qualified individuals to perform covered tasks under the direct observation of a qualified person. “Direct observation” is defined as requiring the observer to be in close enough proximity in the immediate area to be able to recognize and react to an action that may create an abnormal operating condition or an action that does not follow proper practices. The observer must be able to take immediate action to prevent the abnormal operating condition from occurring or to stop an action that does not follow proper practices. In addition, direct observation of an unqualified person must be documented.

17 This addresses Item 3 in the Inspection Report.

4. Requalification for Cause

18 Weyerhaeuser’s current OQ Program specifies the evaluation methods to be used if Weyerhaeuser’s plan administrator has reason to believe that: 1) an individual’s performance of a covered task contributed to an incident; or 2) an individual is no longer qualified to perform a covered task.

Requalification for any task must be accomplished through evaluation using the same method required for original qualification for that task.

19 This addresses Items 4 and 5 in the Inspection Report.

5. Communication of Changes That Affect Covered Tasks

20 Weyerhaeuser's current OQ Program addresses the method of communicating and documenting changes that affect covered tasks.

Weyerhaeuser's plan administrator is required to notify all affected employees and contractors of any changes affecting the OQ Plan as soon after such changes are made as practical. Notification must be documented using a designated "Notice of Change" form and "Feedback" form to communicate requested changes from field personnel to management.

21 This addresses Item 6 in the Inspection Report.

6. Identification of Covered Tasks and Reevaluation Intervals

22 Weyerhaeuser's current OQ Program identifies covered tasks and the intervals at which an individual's qualifications must be reevaluated.

Reevaluation intervals vary depending on the frequency with which a task is performed, the extent that abnormal operating conditions ("AOCs") may be involved, and the difficulties in performing the task.

23 This addresses Item 7 in the Inspection Report.

7. Recordkeeping and Completed Qualifications

24 Weyerhaeuser's current OQ Program contains provisions requiring maintenance of qualification records. An Individual Qualification Summary must be retained for each qualified individual, identifying the covered tasks that the individual is qualified to perform, the dates of current qualification for each task, and the qualification methods. These records must be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

25 Weyerhaeuser completed qualification of all individuals currently performing covered tasks and provided Staff with the records on September 15, 2005. Staff has asked Weyerhaeuser to revise its recordkeeping, and Weyerhaeuser is working with Staff to ensure that Weyerhaeuser's records comply with 49 CFR § 192.807. Weyerhaeuser's revised records of current operator qualifications will be completed no later than December 31, 2005.

26 This addresses Items 8 and 9 in the Inspection Report.

Follow-up Audit

27 During the fourth quarter of 2006, a third-party expert will perform a follow-up audit of Weyerhaeuser's OQ Program for the Longview facility. Weyerhaeuser will submit the follow-up audit report to Staff, accompanied

by Weyerhaeuser's comments and a report on the status of any recommendations.

28 The follow-up audit does not affect Staff's ability to inspect the Ostrander Pipeline or the OQ Program for the Longview facility at any time.

Sanctions and Admissions of Violations

29 Weyerhaeuser has reviewed in detail, and it has filed an Answer to, the allegations in the Complaint. Weyerhaeuser generally concurs with Staff's conclusion that certain aspects of its OQ Program did not meet the requirements for an OQ Program contained in 49 CFR § 192 subpart N- Qualification of Pipeline Personnel prior to Staff's investigation. Weyerhaeuser is correcting all of the alleged violations as detailed in this Agreement.

30 Weyerhaeuser and Staff have agreed to a total penalty of \$75,000 payable in cash. The \$75,000 amount is due and payable by Weyerhaeuser within 15 business days after the effective date of this Agreement.

VI. GENERAL PROVISIONS

Nature of the Agreement

33 The Parties agree that this Agreement is an appropriate resolution of all contested issues between them in this proceeding. The Parties agree that this resolution of the Complaint in this Docket is in the public interest.

34 Nothing in this Agreement is intended to limit or bar any other entity from pursuing legal claims, or to limit or bar Weyerhaeuser's ability to assert defenses to such claims.

35 In part, the Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties agree that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission Order fully adopting those terms. This Agreement shall not be construed against any Party because it was a drafter of this Agreement.

Integrated Terms of Settlement

36 This Agreement is intended to be a full and final resolution of these issues and sets forth the entire agreement between the parties. The Parties have negotiated this Agreement as an integrated document to be filed with the Commission only upon execution. Once the Agreement is executed, the Parties agree to support the Agreement in its entirety. The Agreement supercedes any prior oral and/or written agreements with respect to the issues addressed herein, if any.

Procedure

37 Once this Agreement is executed, the Parties agree to cooperate in promptly filing this Agreement with the Commission for approval. The Parties further agree to cooperate, in good faith, in the development of such other information as may be necessary to support and explain the basis of this Agreement and to supplement the record accordingly. Any Party may elect to file with the Commission a memorandum explaining this Agreement.

38 At any hearing on the Agreement, each Party is willing to make available a witness or witnesses to answer questions and to support the Agreement.

39 If the Commission rejects all or any portion of this Agreement, or adds additional material terms or conditions thereto, each Party shall have the unilateral right to withdraw from this Agreement by written notice to the other Party and the Commission. Written notice must be served within 10 business days following the Commission's failure to approve or the Commission's imposition of a material change or condition to the Agreement. If any Party exercises its right of withdrawal, the Agreement shall be void and of no effect, and no Party will be bound or prejudiced by the terms of the Agreement.

Publicity

40 The Parties have the right to review, in advance of publication, the text of any and all announcements or press releases that any other signing party intends to make about the Agreement.

No Precedent

41 No Party shall be deemed to have agreed that this Agreement is precedent for resolving any issues in any other proceeding, other than a proceeding for enforcement of this Agreement.

Execution

42 This Agreement may be executed by the Parties in several counterparts and as executed shall constitute one agreement.

For Commission Staff:
Christopher Swanson
Assistant Attorney General

For Weyerhaeuser Company:
Charles K. Douthwaite
Assistant General Counsel

Date Signed

Date Signed