

**UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO**

ELIZABETH LOEB  
Senior Counsel  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7166  
Washington, D.C. 20044  
(202) 616-8916  
Elizabeth.Loeb@usdoj.gov  
Attorney for Plaintiff United States

	)	
UNITED STATES OF AMERICA	)	
	)	
	)	
Plaintiff.	)	
	)	
v.	)	
	)	
CLEARWATER PAPER CORPORATION,	)	
	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

**I. NATURE OF ACTION**

1. This is a civil action that seeks injunctive relief and civil penalties against Clearwater Paper Corporation (“Clearwater” or “Defendant”) for violations of the Clean Air Act

(“CAA”), 42 U.S.C. § 7401 *et seq.*, and associated regulations and permits at its paper and pulp mill in Lewiston, Idaho (“Clearwater Mill”).

2. As alleged herein, the Clearwater Mill has been and is in violation of the following CAA provisions and regulatory schemes: (1) Section 111 of the CAA, 42 U.S.C. § 7411, and the New Source Performance Standards promulgated thereunder at 40 C.F.R. § 60, Subpart BB; (2) Section 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standards for Hazardous Air Pollutants for source categories (also known as Maximum Achievable Control Technology standards) promulgated thereunder at 40 C.F.R. Part 63, Subpart S, and (3) Section 502 of the CAA, 42 U.S.C. § 7661a, and Clearwater’s Air Quality Tier I Operating Permit for its Pulp and Paperboard Division issued pursuant to Section 502 of the CAA, 42 U.S.C. § 7661a, by the Idaho Department of Environmental Quality (“IDEQ”).

## **II. JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367 and CAA Sections 113(b) and 304(a), 42 U.S.C. §§ 7413(b) and 7604(a).

4. This Court has personal jurisdiction over the Defendant, which does business in the State of Idaho, pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a); and CAA Section 113(b), 42 U.S.C. § 7413(b). The Defendant is found in and transacts business in the District of Idaho, and certain acts or omissions which form the basis for claims asserted in this Complaint occurred within this district.

6. The United States has provided notice of the commencement of this action to the State of Idaho in accordance with CAA Sections 113(b), 42 U.S.C. § 7413(b).

### **III. DEFENDANT**

7. Defendant, Clearwater Paper Corporation, is a publicly-held corporation incorporated in the State of Delaware with headquarters in Spokane, Washington. The Defendant is a “person” as defined in CAA Section 302(e), 42 U.S.C. § 7602(e).

8. The Defendant owns and operates the Clearwater Mill, which is a paper and pulp mill located on Mill Road in Lewiston, Idaho, approximately 100 miles south of Spokane, Washington.

9. Prior to December 16, 2008, Defendant Clearwater was known as Potlatch Forest Products Corporation and the name was changed on December 16, 2008 to Clearwater Paper Corporation.

### **IV. CLEAN AIR ACT AND ASSOCIATED REGULATIONS**

10. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

#### **A. New Source Performance Standards (“NSPS”)**

11. Section 111(a) and (b) of the CAA, 42 U.S.C. § 7411(a) and (b), require the Administrator of EPA to promulgate regulations establishing new source performance standards (“NSPS”) for categories of “new” “stationary sources” that are determined to cause or significantly contribute to air pollution which may endanger public health or welfare. A “new source” is defined as a stationary source, the construction or modification of which is commenced after the publication

of NSPS regulations or proposed regulations that are applicable to such source. 42 U.S.C.

§ 7411(a)(2). A “stationary source” is defined as including buildings, structures, facilities or installations that emit or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).

12. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated NSPS for specified categories of stationary sources of air pollutants. These regulations apply to the owner or operator of any stationary source which contains an “affected facility,” the construction or modification of which is commenced after the date of publication of an NSPS standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.1.

13. “Modification” is defined as “any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.” 40 C.F.R. § 60.2. “Affected facility” is defined, with reference to a stationary source, as any apparatus to which an NSPS is applicable. 40 C.F.R. § 60.2.

14. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any “new source” of air pollutants in violation of an NSPS applicable to such source. Thus, a violation of an NSPS requirement is a violation of CAA Section 111(e).

15. EPA has promulgated general provisions for the NSPS at 40 C.F.R. Part 60, Subpart A (NSPS General Provisions), which contain general provisions that apply to the owner or operator of any stationary source that contains an affected facility, the construction or modification of which is commenced after the date of publication of any NSPS standard (or, if earlier, the date of

publication of any proposed standard) applicable to the facility, except as otherwise provided.  
40 C.F.R. § 60.1(a).

16. The NSPS General Provisions require that, at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source. 40 C.F.R. § 60.11(d).

17. EPA promulgated NSPS Subpart BB – Standards of Performance for Kraft Pulp Mills, on February 23, 1978 (“NSPS BB”). NSPS Subpart BB applies to various affected facilities at “kraft pulp mills,” including “brown stock washer systems,” that commenced construction or modification after September 24, 1976. 40 C.F.R. § 60.280. NSPS Subpart BB defines “kraft pulp mill” as “any stationary source which produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at high temperature and pressure,” including “[r]egeneration of the cooking chemicals through a recovery process.” 40 C.F.R. § 60.281(a). NSPS Subpart BB defines “brown stock washer systems” as “brown stock washers and associated knotters, vacuum pumps and filtrate tanks used to wash the pulp following the digester system,” but specifically excludes diffusion washers. 40 C.F.R. § 60.281(e).

18. NSPS Subpart BB prohibits the owner and operator of a kraft pulp mill from discharging into the atmosphere from a subject brown stock washer system any gases which contain

total reduced sulfur (“TRS”) in excess of 5 parts per million (“ppm”) by volume on a dry basis, corrected to 10 percent oxygen, unless one of the exceptions in 40 C.F.R. §§ 60.283(a)(1)(i) through (vi) applies. 40 C.F.R. § 60.283(a).

**B. National Emissions Standards for Hazardous Air Pollutants**

19. Section 112(c) and (d) of the CAA require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (“HAPs”), and to promulgate regulations establishing emission standards for “major sources” within those categories. 42 U.S.C. § 7412(c) and (d). These standards are known as the National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories (also referred to as “MACT” standards), and are codified at 40 C.F.R. Part 63.

20. “Stationary source” under Section 112 has the same meaning as the term has under Section 111(a) of the CAA. 42 U.S.C. § 7412(a)(3). Section 112 of the CAA defines “major source” as any stationary source, or group of stationary sources, located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

21. EPA has promulgated general provisions for the Part 63 NESHAP at 40 C.F.R. Part 63, Subpart A (NESHAP General Provisions), which contain general provisions that apply as specified in the relevant NESHAP. 40 C.F.R. § 63.1(a)(4)(i).

22. HAPs are defined at 40 C.F.R. § 63.2 to mean pollutants listed in, or pursuant to, Section 112(b) of the CAA. Methanol is a HAP. 42 U.S.C. § 7412(b).

23. “New source” is defined as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4); see also 40 C.F.R. § 63.2.

24. “Existing source” is defined as any stationary source other than a new source. 42 U.S.C. § 7412(a)(10); see also 40 C.F.R. § 63.2.

25. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4). An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the [CAA].” 40 C.F.R. § 63.2.

26. Pursuant to Section 112(d) of the CAA, on April 15, 1998, EPA promulgated the NESHAP for the Pulp and Paper Industry, codified as Subpart S of the MACT standards (40 C.F.R. §§ 63.440-459) (“NESHAP Subpart S”). NESHAP Subpart S applies to the owner and operator of processes that produce pulp, paper, or paperboard; that are located at a plant site that is a “major source”; and that use the following processes and materials: (1) Kraft, soda, sulfite, or semi-chemical pulping processes using wood; or (2) mechanical pulping processes using wood; or (3) any process using secondary or non-wood fibers. 40 C.F.R. §§ 63.440 and 63.441.

27. The NESHAP General Provisions that apply to Subpart S are specified in 40 C.F.R. Part 63, Subpart S, Table 1, and include the definitions in 40 C.F.R. § 63.2 and the prohibition in 40 C.F.R. § 63.4(a).

28. NESHAP Subpart S defines “pulp washing systems” as “all equipment used to wash pulp and separate spent cooking chemicals following the digester system and prior to the bleaching system, oxygen delignification system, or paper machine system (at unbleached mills).” 40 C.F.R. § 63.441.

29. NESHAP Subpart S requires, *inter alia*, each “pulp washing system” that is an “existing affected source” to “be enclosed and vented into a closed-vent system and routed to a control device.” 40 C.F.R. § 63.443(a)(1)(iii), (c) and (d).

30. NESHAP Subpart S, 40 C.F.R. § 63.443(c), requires, *inter alia*, that the enclosures and closed-vent system specified in 40 C.F.R. § 63.443(c) for capturing and transporting HAPs shall meet the requirements specified in 40 C.F.R. § 63.450(b) through (d). 40 C.F.R. § 63.450(a). NESHAP Subpart S, 40 C.F.R. § 63.450(b), in turn, requires that each “enclosure” shall maintain negative pressure at each enclosure or each hood opening.

31. NESHAP Subpart S imposes various inspection and repair requirements for enclosures of pulp washing systems, including:

a. For each enclosure opening, a visual inspection of the closure mechanism specified in 40 C.F.R. § 63.450(b) shall be performed at least once every 30 days to ensure the opening is maintained in the closed position and sealed. 40 C.F.R. § 63.453(k)(1).

b. Each closed-vent system required by 40 C.F.R. § 63.450(a) shall be visually inspected every 30 days and at other times as requested by the Administrator. The visual



inspection shall include inspection of ductwork, piping, enclosures, and connections to covers for visible evidence of defects. 40 C.F.R. § 63.453(k)(2).

c. Each enclosure opening shall be tested initially and annually to ensure it is maintained at negative pressure using the procedures specified at 40 C.F.R. § 63.457(e).

40 C.F.R. § 63.453(k)(4).

d. Corrective action shall be taken as soon as practicable if an inspection “identifies visible defects in ductwork, piping, enclosures or connections to covers required by 40 C.F.R. § 63.450, or if an instrument reading of 500 parts per million by volume or greater above background is measured, or if enclosure openings are not maintained at negative pressure.” 40 C.F.R. § 63.453(k)(6).

32. NESHAP Subpart S provides an alternative to the requirements specified in 40 C.F.R. § 63.443(a)(1)(ii) through (a)(1)(v) for the control of HAP emissions from pulping systems using the kraft process provided that the owner or operator demonstrates to the satisfaction of the Administrator by meeting all requirements in 40 C.F.R. § 63.447, that the total HAP emission reductions achieved by this clean condensate alternative (“CCA”) technology are equal to or greater than the total HAP emission reductions that would have been achieved by compliance with 40 C.F.R. § 63.443(a)(1)(ii) through (a)(1)(v). 40 C.F.R. § 63.447.

33. NESHAP Subpart S also applies to Low Volume High Concentration (“LVHC”) systems. 40 C.F.R. § 63.443(a)(1)(i). The term “LVHC system” is defined at 40 C.F.R. § 63.441 as “the collection of equipment including the digester, turpentine recovery, evaporator, steam stripper systems, and any other equipment serving the same function as those previously listed.” The term “digester system” is defined at 40 C.F.R. § 63.441 as each continuous or batch digester

used for the chemical treatment of wood or non-wood fibers. The “digester system” includes specified associated equipment, including chip steamers not using fresh steam.

34. NESHAP Subpart S requires, *inter alia*, that each LVHC system that is at an existing affected source to “be enclosed and vented into a closed vent system and routed to a control device” that meets the requirements specified in 40 C.F.R. § 63.443(d). 40 C.F.R. § 63.443 (a)(1)(i) and (c). The control device used to reduce total HAP emissions from the LVHC system must reduce total HAP emissions by 98 percent or more by weight, or meet other specified requirements. 40 C.F.R. § 63.443(d).

### **C. Title V**

35. Title V of CAA, 42 U.S.C. §§ 7661-7661f, establishes a state-administered operating permit program for various sources of air pollution, including major sources and any other sources subject to regulations promulgated under Sections 111 and 112 of the CAA. 42 U.S.C. § 7661a. The purpose of Title V is to ensure that all “applicable requirements” for compliance with the CAA, including NSPS and NESHAP requirements, are collected in one place.

36. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a subject source except in compliance with a permit issued by a permitting authority under Title V.

37. CAA Section 504(a), 42 U.S.C. § 7661c(a), requires that each Title V permit contain enforceable emission limitations and standards and such other conditions as are necessary to assure compliance with requirements of the CAA.

38. EPA granted interim approval of Idaho's Title V permit program on January 6, 1997 and the program became effective on that date. 61 Fed. Reg. 64622 (Dec. 6, 1996). EPA granted full approval of Idaho's Title V permit program on November 5, 2001. 66 Fed. Reg. 50574 (Oct. 4, 2001).

39. Violations of Title V program requirements and permits are subject to federal enforcement under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

**D. CAA Enforcement Provisions**

40. CAA Section 113(b), 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty, whenever any person has violated: (i) any requirement or prohibition of any applicable State Implementation Plan or permit; or (ii) any other requirement or prohibition under a pertinent provision of the CAA, including, but not limited to, any NSPS or NESHAP requirement.

41. Under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the United States may seek civil penalties up to \$32,500 per day for violations occurring after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for violations occurring thereafter. 40 C.F.R. Part 19; 78 Fed. Reg. 66643 (Nov. 6, 2013).

**V. GENERAL ALLEGATIONS**

42. The Clearwater Mill produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide at high temperature and pressure. The digestion process creates pulp along with gaseous byproducts that include volatile organic HAPs (e.g., methanol, acrolein, acetaldehyde, toluene, hexane, and formaldehyde) and TRS.

43. The Clearwater Mill includes processes that produce pulp, paper, or paperboard, and is a “major source” as defined in Section 112 of the CAA, 42 U.S.C. § 7412(a) and 40 C.F.R. § 63.2, because it emits or has the potential to emit considering controls, in the aggregate, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs.

44. IDEQ issued Clearwater an initial operating permit for the Clearwater Mill pursuant to Title V, Section 502 of the CAA, 42 U.S.C. § 7661a, on December 17, 2002; a first renewal Title V operating permit on February 21, 2007, which was amended on August 27, 2007 (“2007 Title V Permit”); and a second renewal Title V operating permit on January 1, 2010, which was amended on April 1, 2010, February 22, 2012, and July 20, 2012 (“2010 Title V Permit”). The 2007 Title V Permit and the 2010 Title V Permit are referred to collectively as, the “Title V Permits.”

45. The Clearwater Mill is a stationary source that produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at high temperature and pressure, and is thus a “kraft pulp mill” as defined in 40 C.F.R. § 60.281(a).

46. The Clearwater Mill produces pulp, paper, or paperboard using Kraft, soda, sulfite, or semi-chemical pulping processes using wood within the meaning of 40 C.F.R. § 63.440(a).

47. The Clearwater Mill has two brownstock pulp washers known as 1PR and 2PR, which are identified in the Title V Permits as No. 1 Pre Oxygen Washer and No. 2 Pre Oxygen Washer, respectively (collectively, “Brownstock Pulp Washers”). These Brownstock Pulp Washers were placed into service in 1992 and are used to wash pulp and separate spent cooking chemicals following the digester system and prior to the bleaching system.

48. The Brownstock Pulp Washers at the Clearwater Mill are each an “affected facility” within the meaning of NSPS Subpart BB (40 C.F.R. § 60.280) and part of an existing “affected source” within the meaning of NESHAP Subpart S (40 C.F.R. § 63.440). In addition, they are each a “brown stock washer system” as defined in 40 C.F.R. § 60.281 and a “pulp washing system” as defined in 40 C.F.R. § 63.441. Consequently, NSPS Subpart BB and NESHAP Subpart S apply to the Brownstock Pulp Washers at the Clearwater Mill.

49. The Brownstock Pulp Washers are “enclosures” within the meaning of NESHAP Subpart S, 40 C.F.R. §§ 63.443(c), 63.450(a) and (b), and 63.453(k), and each Brownstock Pulp Washer has 11 “enclosure openings” within the meaning of NESHAP Subpart S, 40 C.F.R. §§ 63.450(b), and 63.453(k).

50. The Clearwater Mill operates two sawdust digesters known as the No. 1 and No. 2 Messing and Durkee continuous sawdust digesters (“M&D Sawdust Digesters”) which were constructed prior to September 24, 1976 and are referred to in the Title V Permits as “digesters.” The M&D Sawdust Digesters are each a continuous digester used for the chemical treatment of wood or non-wood fibers, and therefore each a “digester system” as defined in 40 C.F.R. § 63.441. In addition, the M&D Sawdust Digesters are part of a “Low Volume, High Concentration” or LVHC System as defined in 40 C.F.R. § 63.441. Consequently, NESHAP Subpart S applies to the M&D Sawdust Digesters at the Clearwater Mill.

51. The 2007 Title V Permit and the 2010 Title V Permit incorporate applicable requirements of NSPS Subpart BB and NESHAP Subpart S as set forth in Paragraphs 17-34 above. In the case of the 2010 Title V Permit, the NESHAP Subpart S requirements applicable to the Brownstock Pulp Washers are incorporated into the Title V Permit through a CCA Plan, which, for

the Brownstock Pulp Washers, in turn requires compliance with the enclosure and control requirements of NESHAP Subpart S without change.

52. Since at least September 14, 2007, and continuing to the present, Clearwater has been the “owner” and “operator” of the Brownstock Pulp Washers and M&D Sawdust Digesters within the meaning of the CAA, NSPS Subpart BB and NESHAP Subpart S. *See* 40 C.F.R. §§ 60.2 and 63.2.

53. In July of 2009, EPA’s National Enforcement Investigations Center (NEIC) inspected the Clearwater Mill.

54. In February 2011, EPA Region 10, issued an information request to Clearwater pursuant to Section 114 of the CAA, 42 U.S.C. § 7414. The information request included follow-up questions regarding concerns raised by the NEIC inspection and general questions regarding NSPS Subpart BB and NESHAP Subpart S compliance at the Clearwater Mill. Since this time, Clearwater and EPA have exchanged various documents and information.

55. During the 2009 inspection, the inspectors observed visible emissions from doors (enclosure openings) on the Brownstock Pulp Washers and black stains around the doors, indicating emissions had been escaping from the washers prior to the inspection and did not contain only steam. Previous emissions testing results provided to EPA by Clearwater indicated that TRS emissions escaping from the doors on the Brownstock Pulp Washers exceeded 5 ppm by volume on a dry basis, corrected to 10 percent oxygen.

56. The inspection and other information obtained by EPA from Clearwater indicated that the Brownstock Pulp Washers were not “enclosed and vented into a closed-vent system and

routed to a control device” that met the requirements of 40 C.F.R. § 63.450. Specifically, the Brownstock Pulp Washers were not maintained with negative pressure at each enclosure opening.

57. The inspection and other information obtained by EPA from Clearwater indicated that Clearwater did not perform a visual inspection of the enclosure mechanism specified in 40 C.F.R. § 63.450(b) on each door of the Brownstock Pulp Washers at least every thirty days to ensure the opening is maintained in the closed position and sealed.

58. The inspection and other information obtained by EPA from Clearwater indicated that Clearwater did not conduct a visual inspection of the Brownstock Pulp Washers every thirty days that included an inspection of the ductwork, piping, enclosures, and connections to covers for visible evidence of defects.

59. The inspection and other information obtained by EPA from Clearwater indicated that Clearwater did not test each enclosure opening of the Brownstock Pulp Washers initially and annually to ensure each was maintained at negative pressure using the procedures specified at 40 C.F.R. § 63.457(e).

60. The inspection and other information obtained by EPA from Clearwater indicated that there were “visible defects in ductwork, piping, enclosures or connections to covers” on the Brownstock Pulp Washer and that the washer enclosure openings were “not maintained at negative pressure,” and that Clearwater did not undertake corrective actions to correct or repair these deficiencies as soon as practicable.

61. During the 2009 inspection, the inspectors observed that not all emissions from the M&D Sawdust Digesters were routed to a control device meeting the requirements of 40 C.F.R. § 63.433(d). Subsequent testing conducted by Clearwater confirmed that HAPs from the M&D

Sawdust Digesters were being routed to the bottom of the Kone bins associated with the digesters and being released to the atmosphere from the top of the Kone bins.

**FIRST CLAIM FOR RELIEF**

**Emissions of TRS from the Brownstock Pulp Washers in Violation of NSPS Subparts A and BB (40 C.F.R. §§ 60.11(d) and 60.283(a)) and the Title V Permits**

62. Paragraphs 1 through 61 are re-alleged and incorporated by reference as if fully set forth herein.

63. From 2007 to March 4, 2013, Clearwater did not, to the extent practicable, maintain and operate the Brownstock Pulp Washers in a manner consistent with good air pollution control practice for minimizing emissions in violation of NSPS Subpart A, 40 C.F.R. § 60.11(d), and in violation of Conditions 12.13 of the 2007 Title V Permit or Conditions 1.19 and Table 1.3 of the 2010 Title V Permit.

64. From 2007 to March 4, 2013, the Brownstock Pulp Washers at the Clearwater Mill emitted TRS in excess of 5 ppm by volume on a dry basis, corrected to 10 percent oxygen, in violation of NSPS Subpart BB, 40 C.F.R. § 60.11(d) and § 60.283(a) and in violation of Conditions 12.13 and 12.14 of the 2007 Title V Permit or Conditions 1.19 and Table 1.3 and Condition 13.2(a)(1) of the 2010 Title V Permit.

65. Clearwater's violations of the CAA, NSPS Subparts A and BB, and its Title V Permits, as set forth in this Claim for Relief, subject Clearwater to civil penalties of up to: (i) \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and (ii) \$37,500 per day for each violation occurring thereafter. 40 C.F.R. Part 19; 78 Fed. Reg. 66643 (Nov. 6, 2013).



## **SECOND CLAIM FOR RELIEF**

### **Failure to Enclose the Brownstock Pulp Washers in Violation of NESHAP Subpart S (40 C.F.R. §§ 63.443, 63.447, and 63.450) and the Title V Permits**

66. Paragraphs 1 through 61 are re-alleged and incorporated by reference as if fully set forth herein.

67. From 2007 to March 4, 2013, the Brownstock Pulp Washers at the Clearwater Mill were not “enclosed and vented into a closed-vent system” meeting the requirements of 40 C.F.R. § 63.450 in violation of NESHAP Subpart S, 40 C.F.R. §§ 63.443 (a)(1)(iii) and (c), 63.447, and 63.450(a) and (b), and in violation of Condition 17 and App. A, Conditions 11.b, 11.c, 37.a and 37.b, of the 2007 Title V Permit Conditions 17.5, 17.6.1, 17.17, and Table 17.5 (top box) of the 2010 Title V Permit. Specifically, Clearwater did not maintain negative pressure at each enclosure or each hood opening as required by 40 C.F.R. § 63.450(a) and (b) and in violation of Condition 17 and App. A, Conditions 37.a and 37.b, of the 2007 Title V Permit Condition 17.17 of the 2010 Title V Permit.

68. Clearwater’s violations of the CAA, NESHAP Subpart S, and its Title V Permits, as set forth in this Claim for Relief, subject Clearwater to civil penalties of up to: (i) \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and (ii) \$37,500 per day for each violation occurring thereafter. 40 C.F.R. Part 19; 78 Fed. Reg. 66643 (Nov. 6, 2013).

## **THIRD CLAIM FOR RELIEF**

### **Failure to Inspect, Test, and Repair the Brownstock Pulp Washers in Violation of NESHAP Subpart S (40 C.F.R. §§ 63.447 and 63.453(k)) and the Title V Permits**

69. Paragraphs 1 through 61 are re-alleged and incorporated by reference as if fully set forth herein.

70. From 2007 to March 4, 2013, Clearwater did not undertake the following actions:
- a. perform at least once every thirty days a visual inspection of the enclosure mechanism specified in 40 C.F.R. § 63.450(b) to ensure each enclosure opening on the Brownstock Pulp Washers is maintained in the closed position and sealed;
  - b. visually inspect the Brownstock Pulp Washers every thirty days, including an inspection of the ductwork, piping, enclosures, and connections to covers for visible evidence of defects;
  - c. test each enclosure opening of the Brownstock Pulp Washers initially and annually to ensure it is maintained at negative pressure using the procedures specified at 40 C.F.R. § 63.457(e); and
  - d. implement corrective actions as soon as practicable to address “visible defects in ductwork, piping, enclosures or connections to covers” and washer enclosure openings “not maintained at negative pressure.”

71. Each of the failures set forth in the preceding paragraph was a violation of 40 C.F.R. §§ 63.447 and 63.453(k) and a violation of Condition 17 and App. A, Conditions 39, 40.b, and 40.c, of the 2007 Title V Permit Conditions 17.5, 17.6.1, 17.23, and Table 17.5 (top box) of the 2010 Title V Permit.

72. Clearwater’s violations of the CAA, NESHAP Subpart S, and its Title V Permits, as set forth in this Claim for Relief, subject Clearwater to civil penalties of up to: (i) \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and (ii) \$37,500 per day for each violation occurring thereafter. 40 C.F.R. Part 19; 78 Fed. Reg. 66643 (Nov. 6, 2013).

**FOURTH CLAIM FOR RELIEF**

**Failure to Enclose and Route the M&D Sawdust Digesters to a Control Device  
in Violation of NESHAP Subpart S (40 C.F.R. § 63.443) and the Title V Permits**

73. Paragraphs 1 through 61 are re-alleged and incorporated by reference as if fully set forth herein.

74. From 2007 to the present, the M&D Sawdust Digesters at the Clearwater Mill were not “enclosed and vented into a closed-vent system and routed to a control device” meeting the requirements specified in 40 C.F.R. § 63.443(d) in violation of NESHAP Subpart S, 40 C.F.R. § 63.443 (a)(1)(i), (c) and (d) and also in violation of Condition 17 and Appendix A, Conditions 11.a, 11.c, and 11.d, of the 2007 Title V Permit Conditions 17.1, 17.2, and 17.3 and Table 17.1 of the 2010 Title V Permit. Specifically, the control devices used to reduce total HAP emissions from the M&D Sawdust Digesters do not reduce total HAP emissions by 98 percent or more by weight or meet any of the other control options provided in 40 C.F.R. § 63.443(d)(2), (3), or (4), or Condition 17 and Appendix A, Conditions 11.d.ii, 11.d.iii, and 11.d.iv of the 2007 Title V Permit Conditions 17.3(2), (3), and (4) of the 2010 Title V Permit.

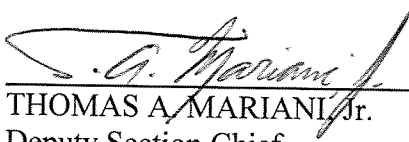
75. Clearwater’s violations of the CAA, NESHAP Subpart S, and its Title V Permits, as set forth in this Claim for Relief, subject Clearwater to injunctive relief and civil penalties of up to: (i) \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and (ii) \$37,500 per day for each violation occurring thereafter. 40 C.F.R. Part 19; 78 Fed. Reg. 66643 (Nov. 6, 2013).

**PRAYER FOR RELIEF**

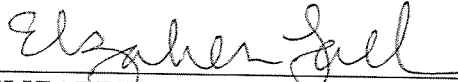
WHEREFORE, Plaintiffs, the United States respectfully requests that this Court:

- (1) Order Clearwater to immediately comply with the statutory and regulatory requirements cited in this Complaint;
- (2) Assess civil penalties against Defendant for up to the amounts provided in the applicable statutory provisions; and
- (3) Grant the United States such other relief as this Court deems just and proper.

**FOR THE UNITED STATES OF AMERICA**



THOMAS A. MARIANI Jr.  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division



ELIZABETH L. LOEB (member of the NY Bar)  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 616-8916  
[Elizabeth.Loeb@usdoj.gov](mailto:Elizabeth.Loeb@usdoj.gov)

WENDY J. OLSON, IDAHO STATE BAR NO. 7634  
United States Attorney

/s/ Joshua D. Hurwit

JOSHUA D. HURWIT, IDAHO STATE BAR NO. 9527  
Assistant United States Attorney  
District Of Idaho  
Washington Group Plaza Iv  
800 East Park Boulevard, Suite 600  
Boise, Id 83712-7788  
Telephone: (208) 334-1211  
Facsimile: (208) 334-1414  
Email: [Joshua.Hurwit@usdoj.gov](mailto:Joshua.Hurwit@usdoj.gov)

Of Counsel:

Julie Vergeront  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, ORC-158  
1200 6<sup>th</sup> Avenue, Suite 900  
Seattle, WA 98101

(206) 553-1497

Vergeront.julie@epa.gov

Robert Klepp

Attorney, Air Enforcement Division

Office of Civil Enforcement

Office of Enforcement and Compliance Assurance

U. S. Environmental Protection Agency

Headquarters, MC 2242A

1200 Pennsylvania Ave, NW

Washington, DC 20460

(202) 564-5805

Klepp.robert@epa.gov

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Elizabeth L. Loeb  
U.S. Department of Justice  
P.O. Box 7611, Washington D.C. 20044

**DEFENDANTS**

Clearwater Paper Corporation

County of Residence of First Listed Defendant Nez Perce

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Krista McIntyre  
Stoel Rives  
101 S. Capitol Blvd, Boise Idaho 83702

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. 7413 et seq.

Brief description of cause:  
Claims under the Clean Air Act

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
 06/09/2015

SIGNATURE OF ATTORNEY OF RECORD

*Elizabeth L. Loeb*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_