

**UNITED STATES COURT FOR THE
DISTRICT OF IDAHO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Clearwater Paper Corporation

Defendant.

Civ. No. _____

CONSENT DECREE

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Whereas Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint pursuant to Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b) concurrently with this Consent Decree, alleging that Defendant, Clearwater Paper Corporation (“Clearwater” or “Defendant”), violated Sections 111, 112 and 502 of the CAA, 42 U.S.C. §§ 7411, 7412, and 7661;

Whereas the Complaint filed against Defendant alleges that the Kraft Pulp Mill owned and operated by Defendant in Lewistown, Idaho has been and/or 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 (“NSPS”) promulgated thereunder at 40 C.F.R. § 60, Subpart BB; (2) Section 112 of the CAA, 42 U.S.C. § 7412, and the Maximum Achievable Control Technology (“MACT”) standards contained in Subpart S of the federal National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Part 63 Subpart S (“Subpart S”), and (3) Section 502 of the CAA, 42 U.S.C. § 7661, and Clearwater’s Title V Permit issued thereunder by the Idaho Department of Environmental Quality (“IDEQ”);

Whereas Defendant does not admit any liability to the United States arising out of the allegations presented in the Complaint;

Whereas the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

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

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

3. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and (c), and 1395(a); and Section 113(b) of the CAA, 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 judicial district.

4. For purposes of this Consent Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

5. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

II. APPLICABILITY

6. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

7. Until termination of the Consent Decree pursuant to Section XVII, no transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee. Within thirty (30) Days of the transfer,

Defendant shall, in accordance with Section XIII (Notices), provide written notice of the transfer to EPA Region 10, the United States Attorney for the District of Idaho, and the United States Department of Justice, together with an agreement executed by the Defendant and transferee confirming the latter's intention to comply with the Consent Decree. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

8. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

9. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

10. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated thereunder shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Clearwater Title V Permit" shall mean Tier I Operating Permit No. TI-2010.0030 issued by IDEQ for the Facility with a "date issued" of January 1, 2010 and "date revised" of July 20, 2012, including all revisions and modifications thereto made thereafter;

b. "Complaint" shall mean the complaint filed by the United States in this action;

c. “Consent Decree” or “Decree” shall mean this Consent Decree;

d. “Date of Lodging” shall mean the Day that this Consent Decree is first lodged with the Court for the public comment period required by Section XVIII of this Consent Decree;

e. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

f. “Defendant” shall mean Clearwater Paper Corporation;

g. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

h. “Effective Date” shall have the definition provided in Section XIV;

i. “Facility” shall mean the Kraft Pulp Mill located in Lewiston, Idaho that is owned and operated by Defendant as of the Date of Lodging of this Consent Decree;

j. “IDEQ” shall mean the State of Idaho Department of Environmental Quality and any successor agencies thereto;

k. “Interest” shall mean the interest at the rate provided in 28 U.S.C. § 1961;

l. “Kone Bin” shall mean the sawdust bin that feeds sawdust to each M&D Digester at the Facility. Both Kone Bins shall be referred to collectively as “the Kone Bins;”

m. “LVHC Collection System” shall have the meaning described in 40 C.F.R. § 63.441;

n. “M&D Digester” shall mean either the No. 1 or No. 2 Messing and Durkee sawdust digester at the Facility, including the rotary Bauer valve on such digester. Both digesters shall be referred to collectively as “the M&D Digesters;”

o. “PR Washer” shall mean either the 1PR or 2PR brown stock washer at the Facility. Both washers shall be referred to collectively as “the PR Washers”;

p. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

q. “Parties” shall mean the United States and Defendant;

r. “Section” shall mean a portion of this Decree identified by a roman numeral;

s. “State” shall mean the State of Idaho;

t. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

11. Within thirty (30) Days after the Effective Date, Defendant shall pay the sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000) as a civil penalty, together with Interest accruing from March 24, 2015 at the Interest rate in effect on March 24, 2015.

12. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Idaho after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Michael Gadd
Clearwater Paper Corporation
Senior Vice President and General Counsel
601 W. Riverside, Suite 1100
Spokane, WA 99201

Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

13. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XIII (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Clearwater Paper Corporation* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-10620.

14. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal or State or local income tax.

V. COMPLIANCE REQUIREMENTS

15. Defendant shall comply with the following CAA requirements:

- a. The New Source Performance Standards (“NSPS”) codified at 40 C.F.R. § 60, Subpart BB, promulgated under Section 111 of the CAA, 42 U.S.C. § 7411,
- b. The Maximum Achievable Control Technology (“MACT”) standards contained in Subpart S of the federal National Emission Standards for Hazardous Air Pollutants (“NESHAP”) codified at 40 C.F.R. Part 63 Subpart S (“Subpart S”), promulgated under Section 112 of the CAA, 42 U.S.C. § 7412; and

c. The Clearwater Title V Permit implementing the requirements specified in Paragraphs 15.a. and 15.b. above.

16. PR Washers. Defendant shall submit to EPA as part of the semi-annual report required by Paragraph 19.a, the records required by 40 C.F.R. § 63.454(a) and (b) to be maintained for the PR Washers.

17. M&D Digesters. Defendant shall divert each existing exhaust collection chamber vent on each M&D Digester from its current terminus at the base of its respective Kone Bin such that all digester gases which are currently routed through the exhaust chambers to the Kone Bin are instead continuously routed to the Facility's LVHC Collection System and sent to a control device meeting the requirements of 40 C.F.R. § 63.443(d)(2), (3), or (4) (the "Project") on the following schedule:

a. No later than September 30, 2015, Defendant shall complete the Project; and

b. No later than thirty (30) Days after completion of the Project, Defendant shall submit to EPA a report stating that the Project is complete, providing the actual final project cost, and providing the final as-built drawings for the Project.

18. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, State, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and

complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

19. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XVII (Termination), Defendant shall submit pursuant to Section XIII (Notices) a semi-annual report for the preceding six months that shall include:

- a. the records required by 40 C.F.R. § 63.454(a) and (b) to be maintained for the PR Washers during such period as provided in Paragraph 16 above;
- b. work performed and progress made toward implementing the requirements of Paragraph 17 above, including problems encountered or anticipated, together with implemented or proposed solutions; and
- c. a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

20. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten (10) business Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this

Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII (Force Majeure).

21. In addition to any other applicable reporting requirement, whenever any violation of this Consent Decree or of any applicable permits, or any other event affecting Defendant's performance under this Decree, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

22. All reports shall be submitted to the persons designated in Section XIII (Notices).

23. Each report submitted by Defendant under this Consent Decree shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

24. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

25. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

26. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

27. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

28. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$2,500 per Day for each Day that the payment is late.

29. The following stipulated penalties shall accrue per violation per Day for each violation of a requirement of Paragraph 15:

\$1,500	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

30. Failure to Meet Compliance Milestones. The following stipulated penalties shall accrue per violation for each Day Defendant does not meet a compliance milestone set forth for the Project as specified in Paragraphs 17.a and 17.b:

a. Completion of the M&D Digester Project as required by Paragraph 17.a by September 30, 2015:

\$1,000	1st through 14th Day late or not completed
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\$2,000 15th through 30th Day late or not completed
\$5,000 31st Day and beyond late or not completed

b. Submission of the Report on the Project required by Paragraph 17.b:

\$500 1st through 14th Day late or not provided
\$1,000 15th through 30th Day late or not provided
\$2,000 31st Day and beyond late or not provided

c. Continuous routing of digester gases through the LVHC Collection System

to a control device as required by Paragraph 17:

\$1,000 1st through 14th Day of violation
\$2,000 15th through 30th Day of violation
\$3,000 31st Day and beyond of violation

Provided, however, that stipulated penalties shall not be assessed for any excess emissions reported under 40 C.F.R. § 63.455 provided that they meet requirements set forth in 40 C.F.R. § 63.443(e). This provision applies only to the calculation of stipulated penalties, and shall not be included in any permit.

31. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI (Reporting Requirements):

\$500 1st through 14th Day late or not provided
\$1,000 15th through 30th Day late or not provided
\$2,000 31st Day and beyond late or not provided

32. The following stipulated penalties shall accrue per violation per Day for any other violation of this Consent Decree not specified in Paragraphs 28-31 above:

\$200	1st through 14th Day of violation
\$500	15th through 30th Day of violation
\$1,000	31st Day of violation and beyond

33. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

34. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving a written demand by the United States.

35. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

36. Stipulated penalties shall continue to accrue as provided in Paragraph 33, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

37. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 12, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

38. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for Interest on such penalties accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

39. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States (including, but not limited to, statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt) for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

40. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that

Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (a) as it is occurring and (b) following the potential Force Majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

41. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant’s contractors knew or should have known.

42. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

43. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Defendant in writing of its decision.

44. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 40 through 43. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to invoke the procedures of this Section concerning an issue of which it had notice and an opportunity to dispute under this

Section prior to an action by the United States to enforce any obligation of Defendant arising under this Decree precludes Defendant from raising any such issue as a defense to any such enforcement action.

46. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

47. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

48. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

49. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

50. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

51. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 49 of this Consent Decree pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 49 of this Consent Decree, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and the CAA.

52. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 36. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

53. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

54. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

55. Until five years after the termination of this Consent Decree, Defendant shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

56. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

57. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

58. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

59. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

60. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 59. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 59. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant’s Facility, whether related to the violations addressed in this Consent Decree or otherwise.

61. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant’s violations, Defendant shall not assert, and may not maintain, any defense or claim

based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 59.

62. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA or with any other provisions of federal, State, or local laws, regulations, or permits.

63. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

64. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

65. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. NOTICES

66. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent to the following persons by all means indicated below. Where a notification, submission or communication is required to be given to the “United States” it shall be addressed to both the United States and EPA as set forth below. Where a notification, submission or communication is required to be given to “EPA” it need only be addressed to “EPA” as set forth below.

As to the United States by email:
eesdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-10620

As to the United States by mail:
EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # DJ # 90-5-2-1-10620

As to EPA:
Director, Office of Compliance and Enforcement
EPA Region 10, MS-OCE-164
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

As to Defendant:

Michael Gadd
Clearwater Paper Corporation
Senior Vice President and General Counsel
601 W. Riverside, Suite 1100
Spokane, WA 99201

67. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

68. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

69. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

70. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

71. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Written agreements by the Parties to extend the schedule for the Project as set forth in Paragraph 17 by less than sixty Days are not material.

72. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

73. After Defendant has completed the requirements of Section V (Compliance Requirements), and has thereafter maintained continuous satisfactory compliance with this Consent Decree for a period of two years, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation. In seeking such consent, Defendant shall demonstrate that:

- a. Defendant has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
- b. Defendant has substantially complied with all requirements of Section V (Compliance Requirements);
- c. As of the date Defendant provides any notice or request to terminate this Decree, EPA has not provided Defendant with any Notice of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section IX (Dispute Resolution); and
- d. No enforcement action under this Decree is pending.

74. The United States shall notify Defendant in writing within thirty (30) Days of receiving any request to terminate by Defendant whether the United States does or does not object to the request. If the United States agrees, then the Parties shall jointly file a motion to terminate with the Court. If the United States objects to such request, the Parties will work together for a period of at least thirty (30) Days in an effort to informally resolve any disputes. If the United States does not respond to Defendant's request to terminate, or a dispute over whether the Decree can be terminated cannot be informally resolved, Defendant may invoke the

provisions of Section IX (Dispute Resolution) concerning its request to terminate. The Decree shall remain in effect pending resolution of the dispute by the Parties, or, ultimately, the Court.

XVIII. PUBLIC PARTICIPATION

75. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree or unless the United States modifies the Consent Decree in response to any public comments.

XIX. SIGNATORIES/SERVICE

76. Each undersigned representative of Defendant and the Deputy Section Chief for the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

77. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

78. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

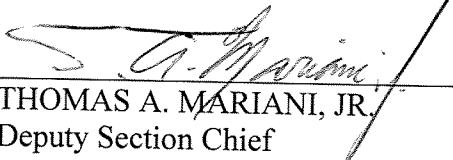
XXI. FINAL JUDGMENT

79. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

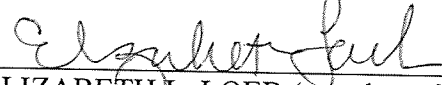
Dated and entered this day of _____, 2015

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:


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

Date: 05-28-2015


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

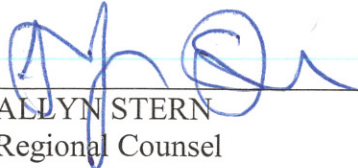
Date: 6/8/15

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

Apple Chapman Date: 6/2/15
For PHILLIP A. BROOKS
Director, Air Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency

Robert G. Klepp Date: 5/26/15
ROBERT G. KLEPP
Attorney, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency



Date: 6/1/15


ALLYN STERN
Regional Counsel
U.S. Environmental Protection Agency, Region 10



Date: 5/27/15

JULIE VERGERONT
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
Office of Regional Counsel
1200 Sixth Avenue, Suite 900
Seattle, WA 98109
206-553-1497

FOR CLEARWATER PAPER CORPORATION:



Date: 5/11/15

MICHAEL S. GADD

Senior Vice President, General Counsel and Corporate Secretary

Clearwater Paper Corporation

601 West Riverside Avenue, Suite 1100

Spokane, WA 99201

509-344-5920