U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 616-8916
Facsimile (202) 616-6583
Elizabeth.Loeb@usdoj.gov

August 13, 2012

Krista K. McIntyre,
Stoel Rives, LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702-7705

Re: United States' Clean Air Act Claims at the Clearwater Paper Corporation

Dear Ms. McIntyre:

It is my understanding that you represent Clearwater Paper Corporation ("Clearwater"). Region 10 of the United States Environmental Protection Agency ("EPA") has requested that the Department of Justice file a judicial action against Clearwater for alleged violations of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 to 7671q, and implementing regulations at its Lewiston, Idaho facility. These include claims for violation of (1) the National Emission Standards for Hazardous Air Pollutants ("NESHAP") Subpart S for the Pulp and Paper Industry, promulgated pursuant to Section 112 of the CAA at 40 C.F.R. Part 63.440, and (2) the New Source Performance Standards Subpart BB – Standards of Performance for Kraft Pulp Mills ("NSPS"), promulgated pursuant to Section 111 of the CAA and codified at 40 C.F.R. § 60.280.

As you probably know, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Department of Justice, on behalf of EPA,[1] to bring a civil action for injunctive relief or civil penalties whenever EPA finds that any person has violated, or is in violation of, any requirement or prohibition of the CAA, including any rule or permit promulgated, issued, or approved under the CAA. Section 113(b) gives the court having jurisdiction over the action the authority to restrain such violation, require compliance, assess a civil penalty, collect any fees owed to the United States, and award any other appropriate relief. Specifically, the CAA authorizes civil penalties for the aforementioned violations of not more than $37,500 per day per violation.[2]

We are willing to discuss the resolution of this matter with Clearwater. However, as a

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[1] Section 305 of the CAA, 42 U.S.C. § 7605, provides that the EPA Administrator shall request the Attorney General to appear and represent her in any civil action instituted under the CAA to which the EPA Administrator is a party (*see also*, 28 U.S.C. §§ 516 and 519).

[2] The maximum statutory penalty amount (i) for a violation that occurs between March 16, 2004 and January 12, 2009, is $32,500; and, (ii) for a violation that occurs after January 12, 2009, is $37,500. 40 C.F.R. Part 19.

precondition to any discussion, we require that Clearwater sign and return the enclosed agreement tolling any applicable statutory limitations periods until March 29, 2013. As you will see, the attached tolling agreement does not limit any defenses that Clearwater has but merely tolls the applicable statute of limitation until March 29, 2013. We hope that this will give us sufficient time to resolve this matter without litigation.

If your client wishes to discuss the potential resolution or settlement of this matter, please respond to this letter within twenty-one days by executing the enclosed tolling agreement and returning it to me as follows:

Via Private Overnight Mail or Federal Express only:
Elizabeth L. Loeb
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division
601 D. Street N.W.
Washington, D.C. 20004

Via U.S. Mail
Elizabeth L. Loeb
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044

If you no longer represent Clearwater Paper Company, please advise me immediately.

Please give this matter your immediate attention and consideration. If you have any questions regarding this letter, please do not hesitate to contact me at (202) 616-8916 or Elizabeth.Loeb@usdoj.gov

Thank you for your prompt attention to this matter.

Sincerely,

/s/ Elizabeth L. Loeb
Elizabeth L. Loeb
Trial Attorney

Attachments

cc: Deborah Hilsman (EPA Region 10 Assistant Regional Counsel).

TOLLING AGREEMENT

The United States, on behalf of the United States Environmental Protection Agency contends that it has causes of action pursuant to Section 113 of the Clean Air Act, 42 U.S.C § 7413, against Clearwater Paper Corporation (Clearwater) for, inter alia, violations of the Clean Air Act New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) at Clearwater's facility in Lewiston, Idaho (the "Tolled Claims").

The United States and Clearwater ("Parties") enter into this Tolling Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on September 14, 2012 and ending on March 29, 2013, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims.

2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.

3. Clearwater shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

4. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable.

5. This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.

6. It is understood that the United States may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to Clearwater. Where the United States elects to terminate negotiations under this Paragraph, the Tolling Period shall continue for the duration set forth in Paragraph 1. Nothing herein shall preclude the

commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against Clearwater or the date on which the United States may file such a complaint, except as expressly stated herein.

8. This Agreement is not intended to affect any claims by or against third parties.

9. Clearwater shall preserve and maintain, during the pendency of the Tolling Period, and for a minimum of 90 days after termination of the Tolling Period, at least one legible copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure and relating to the Tolled Claims, regardless of any corporate or document retention policy to the contrary.

10. This Tolling Agreement is effective upon execution by Clearwater and without the requirement of filing with the Court, and may be signed in counterparts.

11. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

12. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency, and upon Clearwater and its successors.

SIGNATURES

The United States, on behalf of the United States Environmental Protection Agency, consents to the terms and

conditions of this Tolling Agreement by its duly authorized representatives on this ___ day of _____, 2012.

_____
Michael J. McNulty
Acting Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

By: _____
Elizabeth L. Loeb
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Clearwater consents to the terms and conditions of this Tolling Agreement by its duly authorized representative on this ___ day of _____, 2012.

By: