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EXTERNAL AFFAIRS DIVISION

March 16, 2011

Regional Administrator Alfredo Armendariz
U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

RE: OVERFILE REQUEST— Georgia-Pacific Crossett Mill; Coffee Creek and Mossy Lake, Arkansas

Dear Administrator Armendariz:

Public Employees for Environmental Responsibility (PEER) and the Ouachita Riverkeeper formally request that the U.S. Environmental Protection Agency initiate immediate action against the Georgia-Pacific Crossett Operations Mill in connection with the imminent and substantial threat to the environment and public health presented by its discharges and repeated violations of its National Pollutant Discharge Elimination System (NPDES) permit issued by the State of Arkansas, Department of Environmental Quality (ADEQ) under its delegated authority the Clean Water Act.

ADEQ's enforcement response against Georgia-Pacific Crossett Mill has fallen far short of both EPA's and ADEQ's own standards and policies. Protection of the environment and public health requires that the EPA assume responsibility for oversight over this permit. We, therefore, formally request that EPA Region 6 take immediate and appropriate action against this violator under its concurrent authority to enforce the Clean Water Act (CWA) in Arkansas.

Specifically, PEER and the Ouachita Riverkeeper request that EPA pursuant to its response authority under the CWA, 33 U.S.C. § 1251 et seq, immediately assert primary jurisdiction over the NPDES Permit (number AR0001210) and, with full public participation, take action to comprehensively assess and mitigate the imminent and substantial threat to public health and environmental harm caused by the discharge and numerous permit violations, in connection with the Georgia-Pacific Crossett Mill's wastewater discharges. In addition, we request that EPA amend this NPDES permit to include mandatory limitations protective of an aquatic life and other use designations, as recommended by a December 2007 Use Attainability Analysis by your own agency.

A. General Overview of Facility's History

The Georgia-Pacific paper mill in Crossett, Arkansas has been in operation since the early 1900's. As part of this operation, Coffee Creek was re-routed and/or dammed up

for a waste pond for the mill and town sewage. This also modified downstream waters such as Mossy Lake, where the effluent travels through public waters to the Ouachita River just above the Louisiana state line. The discharge causes severe foaming near the discharge, slime growth, and discoloration of Coffee Creek and the Ouachita River through Louisiana (where it is a designated Natural and Scenic River) to its mouth.

B. Permitting of this Facility

The state re-issued an NPDES permit effective November 1, 2010 over objections raised by local conservation groups. This latest permit is much the same as the previous permit in that is written so as to accommodate the pollution and make it hard to violate. The permit allows 45 million gallons per day (MGD) of inadequately treated paper mill waste and sewage from the town of Crossett. This effluent contains BOD, COD, Absorbable Organic Halogens (AOX), solids, ammonia, nutrients, color, chloride, sulfate, and metals such as Zinc, Copper, and Mercury.

Nonetheless, even this impermissibly lax permit does impose some conditions that the Georgia-Pacific Crossett Mill is violating (see C, below)

ADEQ recently revised its standards per their triennial review, refusing requests to re-instate the uses and criteria for these waters. These standards provide:

> **"Designated Use Variations Supported by UAA**
> Coffee Creek and Mossy Lake - no fishable/swimmable or domestic water supply uses (GC-3, #8) – page A-48"

The recently issued permit states on page 2 of the Fact Sheet:

> **"Use Attainability Analyses (UAAs)**
> A UAA was performed in the 1980's. As a result of this UAA, the fishable/swimmable uses as well as the drinking water use were removed from Coffee Creek and Mossy Lake. Reg. 2.406 and Chapter 5 of Reg. 2 do not apply to Coffee Creek and Mossy Lake. This UAA was approved by EAP Region VI.
> EPA Region VI developed and proposed a UAA in 2007. It has not yet been through a public comment and notice period. That UAA is under review and has not been incorporated into Reg.2."

ADEQ claims that the current NPDES permit for Georgia-Pacific Crossett Mill is based upon a 1984 UAA that was a renewal of one done in the 1970's which first removed the uses. However, despite repeated requests, AFDEQ cannot produce the original UAA which provided the justification for removing designated uses under the Clean water Act. In fact, ADEQ can only locate half of the UAA from 1984 but the 24 pages recovered contain narrative but no conclusions.

EPA Region 6 in Dallas contracted with a consulting firm to do another UAA study that came out in 2007. That UAA found that:

"Aside from the fish and macroinvertebrate communities using Coffee Creek and Mossy Lake, other wildlife live in or frequently contact the GP [Georgia-Pacific] effluent. Muskrat, beaver, nutria, turtles and ducks are known to use Coffee Creek and Mossy Lake, sometimes in very large numbers. Other animals, including deer, turkeys, raccoons, and other large mammals are likely to come into contact with the GP effluent on a frequent basis."

The Region 6 UAA concluded that "The waters of Coffee Creek and Mossy Lake have the potential to support aquatic life indicative of streams in the ecoregion."

Thus, it appears that Arkansas has no legal or factual basis for removing designated uses from Coffee Creek and Mossy Lake.

To add insult to injury, ADEQ also removed almost all chemical and physical criteria for the receiving waters of Coffee Creek and Mossy Lake:

"Specific Standards Variations Supported by UAA
Coffee Creek and Mossy Lake - exempt from Reg. 2.406 and Chapter Five (GC-3, #8) – page A-49"

This appears to be an impermissible regulatory effort to legalize pollution. The net result is that Coffee Creek is treated as an open sewer by Georgia-Pacific Crossett Mill.

C. Pattern of Noncompliance

Nonetheless, even this impermissibly lax permit does impose some conditions that the Georgia-Pacific Crossett Mill is violating, in particular that:

"There shall be no discharge of distinctly visible solids, scum or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits or sludge banks."

As evidenced by the attached photographs, Coffee Creek is coated by foam and scum. See attached photographs which detail the unquestionably abysmal condition of the receiving waters. These conditions make a mockery of a federal Clean Water Act.
In addition, the removal of designated uses and chemical and physical criteria by ADEQ contravenes the Clean Water Act. The Clean Water Act in sections 101(a)(2) and 303(c)(2) requires that all waters are protected with appropriate water quality criteria for uses such as fish and wildlife and human recreation, and that those protected uses are reviewed and updated at least every three years. Regulations under the Act in 40 CFR 131 allow for the removal of protected uses through a process known as a Use Attainability Analysis (UAA), but only under limited circumstances.

The state of Arkansas claims to have removed most uses and water quality criteria from Coffee Creek and Mossy Lake; however that is not possible under the regulations for several reasons:

- The UAA provisions do not allow use removal in situations such as where uses could be attained by the imposition of adequate effluent limits [131.10(d)], and where human caused pollution can be remedied [131.10(g)(3)].

- The UAA regulations clearly prohibit use removal if they are existing uses as defined in 131.3 – that being:

"...those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards."
The fact that the EPA commissioned study of 2007 found fish and aquatic life in Coffee Creek and Mossy Lake makes removal of the state's "fishable/swimmable" use prohibited. The finding that the fish population was suffering from the impacts of pollution from this discharge does not alter this and allow more pollution. The regulations at 131.10(a) also explicitly prohibit designating waters for the purpose of "*...waste transport or waste assimilations*", which is what has been done here.

- Finally, the regulations at 131.20(a) require that the state re-examine any removed uses "*...every three years...*" Thus, even if uses had been legitimately removed in the 1970's or 1980's as claimed, such would long since have expired, and these waters would have reverted to full use protection.

Where a state fails to carry out these provisions, EPA has a mandatory duty to do so through its authority as stated in 40 CFR 131.5(b).

D. Environmental and Health Risks

The 2007 Region 6 UAA concluded with respect to Coffee Creek and Mossy Lake:

> "There were exceedances of several numeric GCER [Gulf Coast Ecoregion] standards in these water bodies, and signs of ecological impairment, including loss of habitat and toxicity to aquatic organisms from both the water column and sediment."

Water and sediment samples cited by the EPA UAA "exhibited toxicity."

Thus, it likely those toxins from the GP effluent are entering the local food chain, including game animals taken for human consumption.

In addition, the extreme environmental degradation of both Coffee Creek and Mossy Lake are undeniable. The pollution from this discharge is clearly adversely impacting fish and other aquatic life and wildlife in Coffee Creek and Mossy Lake, as can be seen from the 2007 EPA study and the obvious nasty conditions of the water. The state of Arkansas has dismissed claims that people have fished in these waters, but that does not justify their lack of regulatory protection.

Downstream of the mouth of Coffee Creek, the flow enters the Ouachita River just below the Felsenthal National Wildlife Refuge and about a mile upstream of the Louisiana state

line. The mill discharge causes the easily noticeable impacts of objectionable discoloration and nauseous odor in the Ouachita River. This problem extends upstream towards the Felsenthal Dam under back flow conditions, and downstream many miles through Louisiana.

In addition to the obnoxious color and odor conditions of the river, other pollutants are likely having inadequately evaluated impacts to water quality.

In Louisiana, the Ouachita River is designated as a Natural and Scenic River, flowing through several park and recreation areas such as the Upper Ouachita National Wildlife Refuge and the Finch Lake Recreation Area. The polluted condition of the river from the mill discharge adversely impacts citizens who live on and along the river, and who do or would like to fish and recreate in and on the water if it were clean. The river is also used as a drinking water source for the city of Monroe, Louisiana.

E. EPA Overfiling Is Necessary to Protect Public Health and the Environment

It is clear from the facility's history that the ADEQ has consistently failed or refused to consider egregious ongoing violations as well as the obvious environmental degradation and public health risks resulting therefrom.

The CWA, 33 U.S.C. § 1319(a)(3), bestows upon EPA the concurrent authority to overfile, or bring enforcement actions against violators when authorized state programs have failed to enforce these statutes properly. Regulations under this statute allow EPA to withdraw state program authorization altogether when a state's enforcement program fails to act on violations and to seek adequate enforcement penalties. 40 C.F.R. 271.22; 40 C.F.R. 123.63(3).

Significantly, EPA has repeatedly made strong public policy pronouncements regarding the agency's interest in consistency in enforcement, declaring that EPA will intervene in state enforcement cases when necessary to prevent a race to the bottom. EPA has also long had a policy of requiring that economic benefits from environmental violations be recovered. Such is the case now before you.

PEER and Ouachita Riverkeeper, therefore, formally request that EPA immediately take over the administration of this permit and –

1. Begin civil enforcement proceedings against Georgia-Pacific Crossett Mill as appropriate in connection with the environmental violations described above and any others that may be discovered; and

2. Revoke the improper ADEQ NPDES permit and condition any new NPDES permit on the reinstatement of all uses and criteria.

Petitioners have in our possession additional materials substantiating the violations committed by the Georgia-Pacific Crossett Mill. This additional documentation is available upon request.

Thank you very much for your attention to these matters. Please do not hesitate to contact us to discuss.

Sincerely,

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Enclosure

cc: Teresa Marks, Director, Arkansas, Department of Environmental Quality
Cynthia Giles, EPA Assistant Administrator for Enforcement & Compliance Assurance