

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. \_\_\_\_:\_\_\_\_-CV-\_\_\_\_ (\_\_\_\_)

UNITED STATES OF AMERICA

Plaintiff,

v.

DOMTAR PAPER COMPANY  
LLC,

Defendant.

COMPLAINT  
Fed R. Civ. P. 3

COMPLAINT

The United States of America, by 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 (hereafter "EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and recovery of costs under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. The United States seeks injunctive relief in order to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at or near Welch Creek ("Operable Unit 4") at the Domtar Paper Company LLC (formerly Weyerhaeuser Company) Plymouth Wood Treating Plant Superfund Site in Martin County, North Carolina (hereinafter referred to as the "Site"). The United States also

seeks recovery of certain unreimbursed costs that have been incurred for response activities undertaken at the Site and a declaratory judgment of liability for costs that will be incurred for response activities at Operable Unit 4 at the Site.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the Defendant, pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

#### DEFENDANT

4. Defendant Domtar Paper Company LLC (“Domtar”) is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Domtar is the “owner” and “operator” of the Site within the meaning of Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1).

#### GENERAL ALLEGATIONS

6. The Site contains an active wood and paper products manufacturing facility owned and operated by Domtar.

7. The Site encompasses approximately 2,400 acres in Martin County, North Carolina, approximately 1.5 miles west of the town of Plymouth and seven miles upstream from Albemarle Sound, in a low-lying area near the Roanoke River, which flows into Albemarle Sound.

8. The Site consists of four operable units (OUs): (1) a former landfill located on the northwest portion of the Site adjacent to Highland Prong, and the soils, groundwater and surface

water impacted by this landfill (OU 1); (2) the lower Roanoke River (OU 2); (3) a former mercury cell chlorine plant and soils, sediments, and groundwater impacted by the plant (OU 3); and (4) the sediments and surface waters in Welch Creek and the wetlands associated with Welch Creek (OU 4).

9. Pursuant to a March 24, 1998 Administrative Order on Consent (AOC), the Site's former owner, Weyerhaeuser Company ("Weyerhaeuser"), conducted a Remedial Investigation (RI) and Feasibility Study (FS) for OU 1, OU 3 and OU 4.

10. The RI/FS report for Operable Unit 4 was completed on July 31, 2007.

11. Operable Unit 4 consists of the sediments and surface waters in Welch Creek and the wetlands associated with Welch Creek.

12. Welch Creek is located on the Site property. Wastewater solids, which contain varying levels of dioxin, are present along the stream bed in certain stretches of Welch Creek.

13. Dioxin is a "hazardous substance," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. The decision by EPA on the remedial action to be implemented for Operable Unit 4 is embodied in a final Record of Decision ("ROD"), executed on September 26, 2007.

15. The ROD provides for placement of a thin layer of clean sediments capping a portion of the Site, monitoring sediment mobility in another portion of the Site, and institutional controls to prevent inappropriate use of the area by others.

16. The ROD is consistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

17. There have been "releases," or a threatened "release," of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), into the environment at and

from the Site, including from Operable Unit 4.

18. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Operable Unit 4 is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. Since March 5, 2007, EPA has incurred costs of removal and remedial actions, within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), not inconsistent with the National Contingency Plan, to respond to the release or threatened release of hazardous substances at and from Operable Unit 4.

21. EPA will continue to incur costs of removal and remedial actions, within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), to respond to the release or threatened release of hazardous substances at and from Operable Unit 4.

#### FIRST CLAIM FOR RELIEF

22. Paragraphs 1 - 21 are realleged and incorporated herein by reference.

23. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

24. By Executive Order 12580 of January 23, 1987, the President’s functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

25. EPA has determined that there is or may be an imminent and substantial endangerment to

the public health or welfare or the environment because of actual or threatened releases of hazardous substances from Operable Unit 4.

26. Domtar is liable for the injunctive relief at Operable Unit 4 to which the United States is entitled under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

#### SECOND CLAIM FOR RELIEF

27. Paragraphs 1-26 are realleged and incorporated herein by reference.

28. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) provides, in pertinent part: “(1) the owner and operator of a vessel or a facility . . . shall be liable for -- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan.”

29. Defendant is jointly and severally liable to the United States for all costs of removal and remedial actions not inconsistent with the National Contingency Plan, incurred after March 5, 2007 by the United States to respond to the release or threatened release of hazardous substances at and from Operable Unit 4, plus accrued interest on the costs.

30. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in pertinent part that in any action for recovery of costs: “the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

31. Defendant is jointly and severally liable to the United States for all costs of removal and remedial actions not inconsistent with the National Contingency Plan to be incurred by the United States in the future to respond to the release or threatened release of hazardous substances at and from Operable Unit 4, plus accrued interest on the costs.



Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 616-8754

N.C. State Bar No. 20511  
E-mail: amy.gillespie(a)usdoj.gov

GEORGE E.B. HOLDING  
United States Attorney  
Eastern District of North Carolina

Date 10/20/08

R.A. RENFER, JR. / /  
Chief, Civil Division  
U.S. Attorney's Office  
Terry Sanford Federal Building and U.S.  
Courthouse  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601-1461  
N.C. State Bar No. 11201

OF COUNSEL:  
Kevin Beswick  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-3104