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17 CALIFORNIANS FOR ALTERNATIVES TO TOXICS
18 and ENVIRONMENTAL PROTECTION INFORMATION
CENTER

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA

21 CALIFORNIANS FOR ALTERNATIVES TO) Case No.
22 TOXICS, a California non-profit corporation; and)
23 THE ENVIRONMENTAL PROTECTION) COMPLAINT
INFORMATION CENTER, a California non-profit) [Clean Air Act Citizen Suit]
corporation;) DEMAND FOR JURY TRIAL
24 Plaintiffs,)
25 v.)
26 EVERGREEN PULP, INC.,)

COMPLAINT

1)
2 Defendant.)

3 INTRODUCTION

4 1. This is a citizen suit brought pursuant to section 304(a)(1) of the Clean Air Act (“Clean
5 Air Act” or “Act”), 42 U.S.C. § 7604(a)(1), by Californians for Alternatives to Toxics, The
6 Environmental Protection Information Center for violations of the Act.

7 2. This complaint seeks relief for Evergreen’s ongoing failure to comply with the Act’s
8 requirements limiting emissions of particulate matter and sulfur compounds at a pulp mill in Samoa,
9 California, owned and operated by Evergreen, where chemical processes are used to produce pulp from
10 wood chips. Particulate matter emissions are associated with illness and death and sulfur compounds
11 are highly odorous and can be toxic.

12 3. The pulp mill had a history of breakdowns and equipment failures, leading to excess
13 emissions, as well as other environmental problems, even before Evergreen began operating the mill in
14 January 2005. Evergreen did not address the underlying causes of excess emissions from at least two
15 sources – a smelt dissolver and a lime kiln – before beginning to operate the mill in January 2005. Since
16 Evergreen began to operate the mill, it has been exceeding air emission limits applicable to the smelt
17 dissolver and the lime kiln.

18 JURISDICTION AND PREREQUISITES FOR FILING

19 4. This Court has jurisdiction over the subject matter of this action pursuant to section 304
20 of the Act, 42 U.S.C. § 7604, and 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and
21 2202 (injunctive relief).

22 5. Section 304 of the Act authorizes citizen suits against any person who has violated or is
23 in violation of an “emission standard or limitation.” Section 304(a)(1) of the Act, 42 U.S.C.
24 § 7604(a)(1). The term “emission standard or limitation” is broadly defined in the Act to include an
25 emission limitation; emission standard; “any condition or requirement under an applicable
26 implementation plan relating to . . . air quality maintenance plans;” and any other standard or limitation

1 “established under any permit issued pursuant to subchapter V of this chapter or under any applicable
2 State Implementation Plan.” Section 304(f)(1), (3), (4) of the Act, 42 U.S.C. § 7604(f)(1), (3), (4).

3 6. On November 1, 2005, Plaintiffs gave notice to Evergreen, the United States
4 Environmental Protection Agency (“EPA”) and the State of California of its intent to file suit against
5 Evergreen, as required by the Act. *See* section 304(b) of the Act, 42 U.S.C. § 7604(b). A copy of the
6 notice is attached hereto as Exhibit A (“November Notice”). More than sixty days have passed since
7 Plaintiffs provided the notice of intent to sue.

8 VENUE

9 7. Venue is proper in the Northern District of California pursuant to Section 304 of the
10 Clean Air Act, 42 U.S.C. § 7604, and 28 U.S.C. § 1391(b) because the pulp mill is located within this
11 judicial district and Evergreen resides in this judicial district.

12 INTRADISTRICT ASSIGNMENT

13 8. Assignment of this action to the San Francisco or Oakland Division is proper pursuant
14 to Local Rule 3-2(c) because this is a civil action arising in Humboldt County.

15 PARTIES

16 9. Plaintiff Californians for Alternatives to Toxics (“CATs”) is a non-profit, Northern
17 California based organization located in Eureka, California. CATs has approximately 1,300 members,
18 the vast majority of which live in Humboldt County, California. CATs was founded in 1982 by
19 community groups from throughout northern California who wanted a regional resource center for
20 information and action on the use of harmful chemicals and promotion of non-toxic alternative practices.
21 The mission of CATs is to enable members and the general public to gain control over toxic chemicals
22 within California. Members of CATs live and breathe immediately downwind of the pulp mill. On
23 almost a daily basis, these CATs members breathe emissions from the pulp mill equipment at issue in
24 this litigation.

25 10. Plaintiff The Environmental Protection Information Center (“EPIC”) is a non-profit,
26 community based organization located in Garberville, California. EPIC has approximately 1,800

1 members, the vast majority of which live in Humboldt County, California. EPIC actively works to
2 protect and restore the natural environment in northwest California. EPIC was founded in 1977 when
3 local residents successfully joined together to end aerial applications of herbicides by industrial logging
4 companies in Humboldt County. EPIC uses integrated, science-based citizen advocacy, and strategic
5 litigation to produce needed reforms. Members of EPIC live and breathe immediately downwind of the
6 pulp mill. On almost a daily basis, these EPIC members breathe emissions from the pulp mill
7 equipment at issue in this litigation.

8 11. Plaintiffs' members have an interest in their health, wellbeing and enjoyment, as well
9 as conservational, environmental, aesthetic and economic interests in the Humboldt County
10 environment, and those interests have been, and continue to be, threatened by Evergreen's past and
11 continued operation of the mill in violation of the Clean Air Act.

12 12. Plaintiffs bring the Clean Air Act claims in this action on behalf of their members who
13 would have standing to sue in their own right. Their individual participation, however, is not necessary
14 for a just resolution of this case. In addition, the interests Plaintiffs seek to further in this action,
15 namely, the protection of and improvement in air quality, are within the purposes and goals of each
16 organization.

17 13. The Court's grant of any of the relief requested by Plaintiffs here will redress the harm
18 to Plaintiffs' interests by requiring Evergreen to emit less pollution than it does now, deterring
19 Evergreen and others in the area from future violations of the Act, and providing up to \$100,000 of civil
20 penalties for mitigation projects to benefit the community.

21 14. Defendant Evergreen, a Colorado corporation, owns and operates the pulp mill in an
22 unincorporated area of Samoa, in Humboldt County, California, which is within the jurisdiction of the
23 North Coast Unified Air Quality Management District. Evergreen acquired the mill on or about January
24 21, 2005 in a foreclosure proceeding involving Stockton Pacific Enterprises, Inc., the former operator of
25 the mill and Evergreen's debtor.

1
2 GENERAL ALLEGATIONS

3 15. Evergreen’s mill is a kraft pulp mill, which uses chemical methods to produce pulp
4 from wood, which then is sent elsewhere to be made into a finished paper product.

5 16. Kraft mills have the greatest potential among all pulping processes to produce air
6 pollution because of the extensive chemical recovery processes involved.

7 17. The kraft pulping process first involves wood chip digestion, where cellulose is
8 extracted from wood by dissolving the lignin that binds the cellulose fibers together. In this process,
9 wood chips are placed in “white liquor,” a solution of sodium hydroxide and sodium sulfide, and cooked
10 at a high temperature and under high pressure in large vessels called “digesters.”

11 18. An integral part of kraft milling is the recovery of spent cooking chemicals. There are
12 two targets of chemical recovery – spent white liquor and regeneration of lime.

13 19. In the recovery process for spent white liquor (“weak black liquor”), which contains
14 water, sulfur, and sodium compounds, the water content is reduced through evaporation, and the
15 concentrated liquor is then combusted in a “recovery furnace.”

16 20. The recovery furnace produces energy by burning the liquor, which results in pollutants
17 associated with combustion, and “molten smelt.” Molten smelt contains sulfur and sodium, such as
18 sulfides, sulfates, and carbonates.

19 21. The smelt is drained into a dissolving tank and mixed with calcium hydroxide and
20 processed to clarify the mixture to obtain white liquor. The process involves the use of steam shatter
21 jets to break up the smelt. Steam, gases, including reduced sulfur, ammonia, and formaldehyde, and
22 entrained particles are vented through a stack.

23 22. The smelt dissolver also produces precipitates of calcium carbonate and water called
24 “lime mud.” The lime mud is processed in a lime kiln to recover calcium hydroxide.
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26

1 New Source Performance Standards

2 29. Section 111 of the Act, 42 U.S.C. §7411, requires EPA to publish a list of categories
3 of sources that, in EPA’s judgment, cause or contribute significantly to air pollution which may
4 reasonably be anticipated to endanger the public health or welfare and to promulgate standards of
5 performance for new stationary sources within those categories. These standards are known as the New
6 Source Performance Standards (“NSPS”).

7 30. The NSPS apply to owners or operators of any stationary source which contains an
8 “affected facility,” which is constructed or modified after a certain date specified in the applicable
9 NSPS. 40 C.F.R. § 60.1(a). An “affected facility” means “any apparatus to which a standard is
10 applicable.” 40 C.F.R. § 60.2.

11 Title V Permit Program

12 31. Title V of the Clean Air Act establishes a comprehensive operating permitting program
13 for major sources of pollution, among others, to be administered by local air pollution control districts,
14 42 U.S.C. §§ 7661-7661f, including the North Coast Unified Air Quality Management District (“Air
15 District”). The operating permit, commonly known as a Title V permit, is required to contain all
16 applicable and enforceable air quality requirements, including SIP and NSPS requirements. *Id.*
17 § 7661c(a).

18 32. EPA granted the Air District interim approval in 1995 and final approval effective
19 November 30, 2001, to administer the Title V permit program. 60 Fed. Reg. 21,720-01 (May 3, 1995);
20 66 Fed. Reg. 63,503-01 (Dec. 7, 2001).

21 33. Pursuant to the federally approved program, the Air District issued the pulp mill a Title
22 V permit, which is applicable to Evergreen.

23 **FIRST CLAIM**

24 [Smelt Dissolver – Violations of NSPS, Particulate Matter]

25 34. Plaintiffs reallege and incorporate by reference paragraphs 1 to 33, as though fully
26 alleged herein.

1 “emission standard or limitation” within the meaning of the citizen suit provision of the Act. 42 U.S.C.
2 § 7604(f)(1), (3).

3 60. Since January 2005, Evergreen has on numerous occasions violated and continues to
4 violate the Act by exceeding the limits set forth in Condition III.A.1 of Permit No. NP-073 of the Title
5 V permit, including on the dates specified in the November Notice.

6 61. Unless ordered by this Court, Evergreen will continue to violate Condition III.A.1 of
7 Permit No. NP-074 of the Title V permit.

8 **FIFTH CLAIM**

9 [Lime Kiln – Violations of Title V Permit, Total Reduced Sulfur]

10 62. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 61, as though
11 fully alleged herein.

12 63. Evergreen’s Title V permit, in Permit No. NP-073, Condition III.B, provides that
13 Evergreen not discharge into the atmosphere TRS in excess of 20 ppmv or 0.10 pounds of TRS per
14 pound of kraft pulp production calculated as a daily arithmetic average, whichever is the more restrictive
15 condition. The permit also provides that the limit expressed as 0.10 pounds of TRS per ton of pulp is
16 only applicable when “pulp production, TCF > 550 adtpd, UBK >600 adtpd, and mud flow to precoat >
17 210 gpm.” The permit notes that the limit is based on, among other things, the Air District’s SIP Rule
18 57, which EPA approved in 1972, 43 Fed. Reg. 3,275(Sept. 22, 1972).

19 64. Condition III.B of Permit No. NP-073 is a standard or limitation established under a
20 Title V permit and the Air District’s SIP, and therefore constitutes an “emission standard or limitation”
21 within the meaning of the citizen suit provision of the Act. 42 U.S.C. § 7604(f)(4).

22 65. In addition, SIP Rule 57 expresses an emission limitation or standard, and therefore
23 constitutes an “emission standard or limitation” within the meaning of the citizen suit provision of the
24 Act. 42 U.S.C. § 7604(f)(1).

25 66. Evergreen exceeded the limits set forth in Condition III.B of Permit No. NP-073 of the
26 Title V permit at least on one occasion, on February 25, 2005, thereby violating the Act.

1 PRAYER FOR RELIEF

2 Plaintiffs request that this Court:

3 1. Order Evergreen to cease its violations of the Clean Air Act;

4 2. Pursuant to section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a), order Evergreen
5 to pay civil penalties in an amount sufficient to deter future violations of the Act, up to \$32,500 per day
6 for each violation of the Clean Air Act, and order that up to \$100,000 of such penalties be used in
7 beneficial mitigation projects consistent with section 304(g) of the Clean Air Act, 42 U.S.C. § 7604(g);

8 3. Pursuant to section 304(d) of the Act, 42 U.S.C. § 7604(d), order Evergreen to pay
9 Plaintiff's costs of litigation, including reasonable attorney and expert witness fees.

10 4. Award such other and further relief as this Court deems just and proper.

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12 Dated: January 3, 2006 KLAMATH ENVIRONMENTAL LAW CENTER

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15 WILLIAM VERICK
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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiffs Californians for Alternatives to Toxics,
Environmental Protection Information Center and Citizens Pulp Mill Committee demand a trial by jury.

Dated: January 3, 2006

KLAMATH ENVIRONMENTAL LAW CENTER

WILLIAM VERICK