

**FILED**

**September 14, 2023**

**8:50 A.M. PST**

**U.S. EPA REGION 10  
HEARING CLERK**

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2023-0124

CLEARWATER FOREST INDUSTRIES,  
LLC

**CONSENT AGREEMENT**

Kooskia, Idaho

Respondent.

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$25,847 per day for each day during which the violation continues, up to a maximum penalty of \$323,081. *See also* 88 Fed. Reg. 986 (January 6, 2023) (2023 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues,

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**U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 155, 11-C07  
Seattle, Washington 98101**

and Clearwater Forest Industries, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

### **Statutory and Regulatory Framework**

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.8. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharge from facilities classified under Standard Industrial Classification code 2421 (Sawmills and Planing Mills, General). 40 C.F.R. § 122.26(b)(14).

3.9. At all times relevant to this action, EPA was authorized pursuant to CWA Section 402(a), 33 U.S.C. § 1342(a), to administer the NPDES permitting program for stormwater discharges associated with industrial activity in the state of Idaho.

3.10. EPA issued the Multi-Sector General Permit for discharges of stormwater associated with industrial activity on June 4, 2015, and the permit became effective in the state of Idaho on August 12, 2015 (MSGP).

3.11. Section 1.1.1 of the MSGP states that facilities engaged in certain industrial activities, including activities covered under Standard Industrial Classification code 2421, are eligible to apply for permit coverage to discharge stormwater to surface waters.

## **General Allegations**

3.12. Respondent is a corporation licensed to do business in the state of Idaho, and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.13. At all times relevant to this action, Respondent owned and operated the Clearwater Forest Industries, LLC facility located at 4689 State Highway 13 South in Kooskia, Idaho (Facility).

3.14. The primary operations conducted by Respondent at the Facility include the operation of a planer primarily focused on added-value lumber, which are activities categorized under Standard Industrial Classification code 2421.

3.15. The Facility, which was under Respondent’s control at all times relevant to this action, discharges stormwater into the South Fork of the Clearwater River via five identified discharge points (Outfalls 001 – 005). The Facility’s stormwater discharges contain “pollutants” within the meaning of CWA Section 502(6) and (12), 33 U.S.C. § 1362(6) and (12).

3.16. Outfalls 001 – 005 are each a “point source” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.17. The South Fork of the Clearwater River is a relatively permanent tributary to the Snake River. The Snake River is a traditional navigable water. Therefore, the South Fork of the Clearwater River is a “navigable water” as defined under CWA Section 502(7), 33 U.S.C. § 1362(7).

3.18. At all times relevant to this Order, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by MSGP permit number IDR05I305.

3.19. On December 7, 2020, the Idaho Department of Environmental Quality conducted a compliance evaluation inspection at the Facility on behalf of EPA to determine Respondent’s compliance with the MSGP and CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342.

3.20. Respondent has discharged pollutants from a point source into waters of the United States at the Site, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

### **Violations**

3.21. As described below, from August 2018 to February 2021, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of the MSGP. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### Violation 1 – Failure to Maintain Control Measures

3.22. Section 2.1.2.3 of the MSGP requires Respondent to maintain all control measures in order to minimize pollutant discharges.

3.23. EPA alleges that Respondent violated Section 2.1.2.3 of the MSGP, by failing to maintain the drainage area and stormwater channels associated with the planer, causing the accumulation of significant sediment, vegetation, and wood shavings within a control measure.

#### Violation 2 – Failure to Document Facility Inspection Findings

3.24. Section 3.1.2 of the MSGP requires Respondent to document all routine inspection findings, including but not limited to all observations related to the implementation of control measures, and maintain those findings with the Facility's Stormwater Pollution Prevention Plan (SWPPP).

3.25. EPA alleges that Respondent violated Section 3.1.2 of the MSGP, by failing to document findings related to the Facility's implementation of control measures in 11 inspection reports between September 2018 and November 2020.

#### Violation 3 – Failure to Maintain Accurate SWPPP

3.26. Section 5.2.2 of the MSGP requires Respondent to maintain an accurate and complete SWPPP, including, *inter alia*, a site map illustrating directions of stormwater flow,

locations of all stormwater control measures, locations of all stormwater conveyances including ditches, pipes, and swales, and locations of all stormwater monitoring points.

3.27. EPA alleges that Respondent violated Section 5.2.2 of the MSGP, by failing to include in the Facility's SWPPP a site map illustrating directions of stormwater flow, locations of all stormwater control measures, locations of all stormwater conveyances including ditches, pipes, and swales, and locations of all stormwater monitoring points.

Violation 4 – Failure to Timely Submit Discharge Monitoring Reports

3.28. Section 7.4 of the MSGP requires Respondent to submit all monitoring data to EPA no later than 30 days after Respondent has received complete laboratory results for all monitoring outfalls for the reporting period.

3.29. EPA alleges that Respondent violated Section 7.4 of the MSGP, by failing to timely submit 11 discharge monitoring reports for the Facility between August 2018 and February 2021.

Violation 5 – Failure to Timely Submit Annual Report

3.30. Section 7.5 of the MSGP requires Respondent to submit an annual report to EPA by January 30th for each year of permit coverage containing information generated from the past calendar year.

3.31. EPA alleges that Respondent violated Section 7.5 of the MSGP, by failing to submit a timely annual report for the Facility for 2019.

**IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$23,950.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www.epa.gov/financial/makepayment>. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

*Address format for standard delivery (no delivery confirmation requested):*

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

*Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):*

U.S. Environmental Protection Agency  
Government Lockbox 979078  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
[R10\\_RHC@epa.gov](mailto:R10_RHC@epa.gov)

Raymond Andrews  
U.S. Environmental Protection Agency  
Region 10  
[andrews.raymond@epa.gov](mailto:andrews.raymond@epa.gov)

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional expenses incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

08-11-2023

FOR RESPONDENT:



RODNEY KROGH  
President  
Clearwater Forest Industries, LLC

FOR COMPLAINANT:

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EDWARD J. KOWALSKI

Director

Enforcement and Compliance Assurance Division

EPA Region 10

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

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Kooskia, Idaho

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DOCKET NO. CWA-10-2023-0124

**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.
4. This Final Order shall become effective upon filing.

IT IS SO ORDERED.

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10