

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

POTOMAC RIVERKEEPER INC. d/b/a *
POTOMAC RIVERKEEPER NETWORK, *

Plaintiff, *

MARYLAND DEPARTMENT *
OF THE ENVIRONMENT *
1800 Washington Blvd. *
Baltimore, Maryland, 21230, *

Plaintiff-Intervenor, *

Civil Action No. 1:20-cv-778

v. *

VERSO LUKE LLC *
300 Pratt Street *
Luke, Maryland 21540 *

Serve on: Cogency Global Inc. *
1519 York Rd. *
Lutherville, Maryland 21093 *

VERSO CORPORATION *
300 Pratt Street *
Luke, Maryland 21540 *

Serve on: Cogency Global Inc. *
850 New Burton Rd., Suite 201 *
Dover, Delaware 19904, *

Defendants. *

* * * * *

**[PROPOSED] COMPLAINT IN INTERVENTION FOR
INJUNCTIVE RELIEF AND CIVIL PENALTIES**

The Maryland Department of the Environment (“MDE” or “Department”), through counsel, files this complaint seeking injunctive relief and civil penalties against Verso Luke LLC and Verso Corporation (“Defendants”) for the following reasons:

INTRODUCTION

1. The Department brings this action pursuant to the federal Resource Conservation and Recovery Act (“RCRA”) to address the ongoing discharge or release of waste into the North Branch Potomac River (“River”). The River is a natural resource of the State of Maryland, and the ongoing discharge or release of waste into the River presents an imminent and substantial endangerment to health and the environment in the State of Maryland.

2. Defendants’ handling, storage, treatment, transportation, and/or disposal of waste at the Luke Paper Mill (“Mill”) contributed to this imminent and substantial endangerment.

3. In addition to seeking relief under RCRA, the Department also brings claims arising under State law relating to the discharge or release of waste into the River at the Mill.

4. The Department asks the Court to enjoin the Defendants from discharging or releasing waste into the waters of the State of Maryland and to order Defendants to remediate the environmental harm already resulting from the unauthorized discharge or release of waste into the River.

5. The Department also asks the Court to compel Defendants to reimburse the State of Maryland for the costs it has incurred, and will incur, in connection with the

removal, restoration, or remedial actions that the State has taken, and will take, in response to the release or threatened release of hazardous substances from the Mill into the River, and also to award attorneys' fees and costs associated with this litigation.

6. The Department is also asking the Court to enter a judgment assessing civil penalties under RCRA and Maryland law for the conduct alleged in this complaint.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 to hear the Department's RCRA claim, which is brought pursuant to 42 U.S.C. § 6972.

8. The Court has jurisdiction to hear the Department's state law claims pursuant to 28 U.S.C. § 1367.

9. The Court has personal jurisdiction over the Defendants because the Defendants have an interest in property in Maryland and conducted business in Maryland at all times relevant to the complaint. Both Defendants have purposely availed themselves of Maryland laws by operating the Mill, which is located in part in this district, and by seeking permits for the operation of, and discharges from, the Mill. Defendants have also contributed to the handling, storage, and/or disposal of solid and/or hazardous wastes that present an imminent and substantial endangerment to health or the environment in this district.

10. The Department complied with RCRA's notice provision on February 19, 2020, by providing notice to the Defendants and to the Environmental Protection Agency that the Department intended to bring suit against the Defendants under 42 U.S.C. § 6972

alleging that the releases and threatened releases of solid and/or hazardous wastes at the Mill may present an imminent and substantial endangerment to health and the environment.

11. Venue is proper in this Court under 28 U.S.C. § 1391 because the Defendants' acts and omissions leading to contamination of Maryland's resources took place in this judicial district and caused contamination in this judicial district.

12. Venue is proper under 42 U.S.C. § 6972(a) because the endangerment caused by Defendants occurs in this judicial district.

PARTIES

13. Proposed Intervenor Plaintiff Maryland Department of the Environment is a state agency within the Executive Branch of the State of Maryland. The Secretary of the Environment is responsible for the environmental interests of the people of the State of Maryland and supervises the administration of the environmental laws of the State, including the enforcement of the provisions of the Environment Article of the Annotated Code of Maryland and the rules and regulations adopted under the Environment Article. Md. Code Ann., Envir. §§ 1-301(a), 1-402(b)(4).

14. Plaintiff Potomac Riverkeeper Network (PRKN) is a 501(c)(3) non-profit organization that filed suit against Defendants on March 24, 2020.

15. Defendant Verso Luke LLC is a limited liability company organized in Delaware. Defendant Verso Luke LLC owns the Luke Paper Mill, which includes facilities located in Allegany County, Maryland, and Beryl, West Virginia.

16. Defendant Verso Corporation is incorporated in the State of Delaware and is the parent company of Verso Luke LLC. Defendant Verso Corporation at all times relevant to this complaint has been involved in managing operations at the Mill.

STATUTORY AND REGULATORY AUTHORITY

Resource Conservation and Recovery Act

17. RCRA provides that “any person may commence a civil action” on his or her own behalf “against any person . . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.” 42 U.S.C. § 6972(a)(1)(B).

18. The term “hazardous waste” means “a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.” 42 U.S.C. § 6903(5).

19. The term “solid waste” means “any garbage, refuse, sludge from a waste treatment plant, water supply treatment plan, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage,

or solids or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).” 42 U.S.C. § 6903(27).

20. The term “person” means “an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.” 42 U.S.C. § 6903(15).

21. The court has jurisdiction “to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste” referred to in 42 U.S.C. § 6972(a)(1)(B) and to “order such person to take such other action as may be necessary, or both.” 42 U.S.C. § 6972(a).

22. The court also has authority to “apply any appropriate civil penalties.” 42 U.S.C. § 6972(a).

Maryland’s Water Pollution Authorities

23. The Department, pursuant to § 1-301 and §§ 9-334 through 9-344 of the Environment Article and the Code of Maryland Regulations (COMAR) at 26.08.01, is charged with the responsibility of enforcing Title 9, Subtitle 3 of the Environment Article, which governs water pollution.

24. Section 9-322 of the Environment Article prohibits the discharge of any pollutant to waters of the State unless authorized by § 9-323 of the Environment Article.

25. Environment § 9-101(b) defines the term “discharge” to mean: “(1) the addition, introduction, leaking, spilling, or emitting of any pollutant to waters of the State; or (2) the placing of a pollutant in a location where the pollutant is likely to pollute.”

26. Environment § 9-101(g) defines the term “pollutant” to mean: “(1) any waste or wastewater that is discharged from: (i) any publicly owned treatment works; or (ii) an industrial source, or (2) any other liquid, gaseous, solid, or other substances which will pollute any waters of the State.”

27. Environment § 9-101(h) defines the term “pollution” to mean “any contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, liquid, gaseous, solid, radioactive, or other substance into any waters of the State as will render the waters harmful, or detrimental to: (1) public health, safety, or welfare; (2) domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses; (3) livestock, wild animals, birds; or (4) fish other aquatic life.”

28. Environment § 9-101(l) defines the term “Waters of the State” to include: “(1) both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and (2) the flood plain of free-

flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.”

29. Maryland’s state boundary extends to the low water mark on the southern shore of the North Branch Potomac River.

30. Pursuant to Environment § 9-339, a court shall grant injunctive relief, without the necessity of showing a lack of adequate remedy at law, upon a showing that a person is violating a provision of Title 9, Subtitle 3.

31. Pursuant to Environment § 9-342(a), a person who violates any provision of Title 9, Subtitle 3, or any rule, regulation, order, or permit adopted or issued under Title 9, Subtitle 3, is liable for a civil penalty not exceeding \$10,000, to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation under Title 9, Subtitle 3.

32. Pursuant to Environment § 9-342.2, a “person who discharges a pollutant into the waters of the State in violation of § 9-322 or § 9-323” of Title 9, Subtitle 3, of the Environment Article “shall reimburse the Department for the reasonable costs incurred by the Department in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect on public health and the environment of the person’s discharge.”

Maryland’s Controlled Hazardous Substances Act

33. The Department, pursuant to § 1-301 and §§ 7-256 through 7-266 of the Environment Article, Annotated Code of Maryland, and COMAR 26.13.02 through

26.14.02, is charged with the responsibility of enforcing Title 7, Subtitle 2, of the Environment Article, which governs the control, handling, storage, disposal, and remediation of controlled hazardous substances.

34. A person may not discharge or dispose of a controlled hazardous substance in the State of Maryland except in a controlled hazardous substance facility and in accordance with Title 7, Subtitle 2. Envir. § 7-224.

35. Environment § 7-201(b) defines a “controlled hazardous substance” to mean “(1) a hazardous substance the Department identifies as a controlled hazardous substance under Title 7, Subtitle 2 or (2) low-level nuclear waste.”

36. Environment § 7-201(c)(1) defines a “controlled hazardous substance facility” to mean “a disposal structure, system, or geographic area, designated by the Department for treatment, storage related to treatment or disposal, or disposal of controlled hazardous substances.”

37. Environment § 7-201(l) defines a “hazardous substance” to mean “any substance: (1) Defined as a hazardous substance under § 101(14) of the federal act; or (2) Identified as a controlled hazardous substance by the Department in the Code of Maryland Regulations.”

38. Environment § 7-201(j) defines “Federal act” to mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended through January 1, 2003.

39. Under Maryland’s regulations, controlled hazardous substances include materials exhibiting corrosivity due to high pH. COMAR 26.13.02.10, 12.

40. Environment § 7-201(h) defines a “discharge” to mean “(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute.”

41. Environment § 7-201(s) defines a “release” to mean “the addition, introduction, leaking, spilling, emitting, discharging, escaping, or leaching of any hazardous substance into the environment.”

42. Under Maryland regulations, a “Remedy” or “remedial action” means “those actions consistent with a permanent remedy taken instead of, or in addition to, a removal action in the event of a release or threatened release of a hazardous substance or oil into the environment, to prevent or minimize the release of hazardous substances so that the substances do not migrate to cause substantial danger to present or future public health, welfare, or the environment. This term includes, but is not limited to, the remedies described in the federal act.” COMAR 26.14.01.02B(10).

43. Environment § 7-201(t) defines “Responsible person” to mean “any person who: (i) Is the owner or operator of a vehicle or a site containing a hazardous substance; (ii) At the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed; (iii) By contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such person, by any other party or entity, at any site owned or operated by another party or entity and containing such hazardous substances; or (iv) Accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.”

44. Under Maryland regulations, “Site” means “(a) a building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or (b) an area where hazardous substance or oil has been deposited, stored, disposed of, or placed, or has otherwise come to be located.” COMAR 26.14.01.02B(15).

45. The Department’s authority to respond to releases of hazardous substances derives from §§ 7-222 and 7-223 of the Environment Article. Section 7-223 creates the State Hazardous Substance Response Plan.

46. Under Environment § 7-222(a), “If any hazardous substance is released or there is a substantial threat of a release into the environment, unless the Secretary determines that a removal and remedial action will be done properly and in a timely manner by the owner or operator of the facility from which the release or threat of release emanates, or by any other responsible party, the Secretary may:

- (1) Enter any site or facility to carry out the provisions of this section; and
- (2)(i) Act consistent with the State Hazardous Substance Response Plan to remove or arrange for the removal of and provide for remedial action relating to the hazardous substance at any time, including its removal from any contaminated natural resources;
- (ii) When the Secretary determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment, take any other response measure consistent with the State Hazardous Substance Response Plan necessary to protect the public health or welfare or the environment; or
- (iii) In addition to any other action authorized under this subtitle, when the Secretary determines that there may be an imminent and substantial

endangerment to the public health or welfare or to the environment, issue orders to or seek injunctive relief against responsible persons as may be necessary to protect the public health and welfare or the environment.”

47. Additionally, pursuant to COMAR 26.14.02.06C(1), the Department may require a responsible person to conduct and directly fund a remediation pursuant to an order issued by the Department.

48. Pursuant to § 7-263 of the Environment Article, a court shall grant injunctive relief, without the necessity of showing a lack of adequate remedy at law, upon a showing that a person is violating a provision of Title 7, Subtitle 2.

49. In accordance with § 7-266(a) of the Environment Article, a person who violates any provision of Title 7, Subtitle 2, or any rule, regulation, order, certificate, or permit adopted or issued under Title 7, Subtitle 2, is liable to pay a civil penalty not exceeding \$25,000, to be collected in a civil action. Each day a violation occurs is a separate violation.

50. The remedies to prevent, abate, and control pollution of the waters of the State of Maryland in Title 7, Subtitle 2, are in addition to and cumulative of the remedies provided in Title 9, Subtitle 3. Envir. § 7-203.

FACTUAL ALLEGATIONS

Luke Paper Mill

51. The Luke Paper Mill is owned by Defendant Verso Luke LLC.

52. The Mill is located in Luke, Maryland, and Beryl, West Virginia, with facilities spanning the North Branch Potomac River.

53. Paper products were manufactured at the Luke Paper Mill until the Mill closed on June 30, 2019.

North Branch Potomac River

54. The North Branch Potomac River is a natural resource of the State of Maryland.

55. The Department, through regulations, has designated the River as a Use Class I-P waterway, meaning that certain water quality standards apply to protect the stream for water contact recreation, aquatic life, and use as a public water supply. COMAR 26.08.02.03, .08R.

56. For Class I-P waters, the dissolved oxygen concentration may not be less than 5 milligrams per liter (“mg/L”) at any time. COMAR 26.08.02.03-3A(2), B(1).

57. For Class I-P waters, the pH may not be less than 6.5 or greater than 8.5. COMAR 26.08.02.03-3A(4), B(1).

58. For Class I-P waters, color may not exceed 75 units as a monthly average, measured in Platinum Cobalt Units (“pt-co units”). COMAR 26.08.02.03-3A(6), B(1).

59. For Class I-P waters, arsenic may not exceed 0.010 mg/L. COMAR 26.08.02.03-2G(1).

60. For Class I-P waters, antimony may not exceed 0.006 mg/L. COMAR 26.08.02.03-2G(1).

61. For Class I-P waters, lead may not exceed 0.015 mg/L. COMAR 26.08.02.03-2G(1).

62. For Class I-P waters, mercury may not exceed 0.002 mg/L. COMAR 26.08.02.03-2G(1).

Black Discharge from the Luke Paper Mill to the Potomac River

63. On April 6, 2019, a fisherman observed and reported to the State of Maryland that “pure black waste” was entering the North Branch Potomac River near the Luke Paper Mill.

64. In response to the fisherman’s complaint, a representative of the Department inspected the Mill on April 9 and April 25, 2019, and found black liquid seeping from the southern riverbank into the river.

65. A sample from a pool of seepage taken by a Department representative during the April 9, 2019 inspection had a pH of 11.8 s.u. and a dissolved oxygen concentration of 1.65 mg/L.

66. A sample from a pool of seepage taken by a Department representative during the April 25, 2019 inspection had a pH of 10.76 s.u. and a dissolved oxygen concentration of 0.67 mg/L.

67. Samples collected by Verso on April 19, 2019, had high sulfur and sodium content.

68. Samples of the black liquid taken by Department officials, as well as by Verso’s contractors, contained mercury, lead, antimony, and arsenic at levels exceeding allowable limits.

69. Exposure to mercury, lead, antimony, and arsenic is associated with adverse health effects for humans and aquatic life.

70. The black liquid was and is seeping out of approximately 500 feet of riverbank.

71. Some or all of these seeps are below the low water mark on the southern shore of the North Branch Potomac River, within the boundary of the State of Maryland.

72. On April 25, 2019, the Department directed Defendants to determine the source of the unauthorized discharge, to sample and test the waters, to take steps to contain and remove the discharge, and to submit a follow up report with investigation findings.

73. In an effort to contain the discharge, Defendants installed sump pumps to collect some of the black liquid as it seeps from the riverbank.

74. The sump pump system recovers some, but not all, of the discharge.

75. In addition, the sump pumps can only operate when the river is below a certain elevation.

76. The Department received additional complaints of black discharge into the river during the summer and fall of 2019.

77. A Department inspector visited the Mill on July 2, 2019, but was unable to see the discharge location because the river was at a high elevation and the discharge area was covered with water.

78. A representative of the Department also inspected the Mill on September 9, 2019, and observed a black discharge pooling along the riverbed and in the river.

79. On September 12 and October 24, 2019, a Department inspector returned to the Mill and again observed black discharge along the riverbed and in the river.

80. During the October 24, 2019 inspection, the MDE inspector took samples.

81. One of the samples had a pH of 12.5 s.u. and a dissolved oxygen concentration of 0.5 mg/L.

82. On November 5, 2019, a Department official inspected the Mill and observed black discharge along the riverbank and within the river.

83. Department representatives noted the smell of sulfur near the discharge location during the November 5, 2019 visit.

84. An MDE inspector visited the Mill on November 22, 2019, and observed black discharge along the riverbank and in the river.

85. During the November 22, 2019 inspection, the MDE inspector took a sample of the seep pool.

86. One of the samples had a pH of 12.55 s.u. and a dissolved oxygen concentration of 0.23 mg/L.

The Discharge Appears to Include Pulping Liquor

87. The black discharge appears to include “White,” “Green,” or “Black” liquor, or some combination of these substances.

88. White liquor, Green liquor, and Black liquor are “pulping liquors” that are created during the paper-making process and sometimes re-used during the paper-making process.

89. White liquor has a high pH and is considered a caustic and corrosive material.

90. The Material Safety Data Sheet for White liquor states that it has a pH of 13-14, and causes severe skin and eye burns, as well as severe respiratory tract irritation.

91. The Material Safety Data Sheet for White liquor states that this substance would meet the characteristics of a corrosive waste under RCRA if discarded directly.

92. Green liquor has a high pH and is considered a caustic and corrosive material.

93. The Material Safety Data Sheet for Green liquor states that it has a pH of 11-13, causes severe skin and eye burns, and that inhalation of mist causes severe respiratory tract irritation.

94. The Material Safety Data Sheet for Green liquor states that this substance may meet the characteristics of a corrosive waste under RCRA if discarded directly.

95. Black liquor has a high pH and is considered a caustic and corrosive material.

96. The Material Safety Data Sheet for Black liquor states that it has a pH of 11-13, causes severe skin and eye burns, and that inhalation of mist causes severe respiratory tract irritation.

97. The Material Safety Data Sheet for Black liquor states that it may meet the characteristics of a corrosive waste under RCRA if discarded directly.

98. White liquor, Green liquor, and Black liquor were stored in above-ground storage tanks located in West Virginia near the discharge location.

99. The release of black liquid may have occurred through the leaking, spilling, or emitting this material onto the ground, where it then migrated, and continues to migrate, through soil and water into the North Branch Potomac River.

100. The Department alleges, upon information and belief, that White liquor, Green liquor, or Black liquor or some combination of these substances was released or threatened to be released and has migrated into the soil, groundwater, and water, and

continues to be released and migrate through the environment and into the North Branch Potomac River.

101. Based on the releases and threatened release of hazardous substances into the River, the Department has determined, pursuant to § 7-222(a)(iii) of the Environment Article and 42 U.S.C. § 6972(a)(1)(B), that there may be an imminent and substantial endangerment to the public health or welfare or to the environment because of these releases and threatened releases and further has determined that a removal or remedial action is necessary to protect the public health and the environment.

102. The Department has incurred, and continues to incur, costs in fiscal years 2019 and 2020 for the investigation and oversight of the release or threatened release of hazardous substances.

103. Verso Luke LLC is a responsible person as the owner and operator of Luke Paper Mill.

104. Verso Corporation is a responsible person as the parent company of Verso Luke LLC, the owner and operator of Luke Paper Mill.

The Discharge May Also Include Metals From Coal Waste

105. Analysis of the seepage revealed the presence of mercury, boron, and other metals not generally associated with pulping liquors.

106. These metals are associated with coal waste, including coal ash.

107. Until June 2019, the Mill operated a coal ash lagoon.

108. This coal ash lagoon is located near seeps that are discharging into the River.

West Virginia Department of Environmental Protection

109. On November 4, 2019, the West Virginia Department of Environmental Protection issued an order to the Defendants noting violations of West Virginia's storage tank laws.

110. To mitigate the ongoing release to the River, the West Virginia Department of Environmental Protection ordered Defendants to empty the above-ground storage tanks on the West Virginia side of the Luke Paper Mill.

111. In response to this order, the Defendants piped material from above-ground storage tanks in West Virginia to tanks in Maryland.

Analysis of Material Transferred to Maryland

112. On December 18, 2019, MDE's environmental consultant, Chesapeake Geosciences, Inc., took samples from the tank in Maryland containing the material Defendants piped from the above-ground storage tanks in West Virginia.

113. The sample had a pH of 13.5 s.u.

Health Risks & Signage

114. On November 5, 2019, representatives from MDE and the Maryland Department of Health visited the Mill and observed the discharge.

115. Due to the high pH of the discharge material, physical contact with the discharge could result in chemical burns.

116. In light of this potential health risk, on November 7, 2019, MDE, through counsel, directed the Defendants to put up signs in the vicinity of the seepage stating: "Keep

Out, No Trespassing, Hazardous Materials Present, Do Not Drink or Have Contact with the Water in the Immediate Area.”

117. On November 14, 2019, the Defendants’ counsel advised MDE’s counsel that Defendants had put up signs stating, “Restricted Area, Do Not Enter,” in the vicinity of the discharge, but would not put up signs with the language directed by MDE.

Toxicity Analysis

118. To assist the Department in further assessing the toxicity of the black discharge material on aquatic life, the Department contracted with the University of Maryland to conduct a bioassay evaluation.

119. The bioassay evaluation assessed whether the black discharge was lethal to the test species *Pimephales promelas* (fathead minnow) and *Ceriodaphnia dubia* (cladoceran or “water flea”).

120. The bioassay evaluation also evaluated whether the black discharge inhibited fathead minnow growth and cladoceran reproduction.

121. During the evaluation, fathead minnows and cladocerans were exposed to black discharge mixed with water in the following concentrations: 1%, 5%, 10%, 18%, 36%, 56%, and 100%. These were compared to a control in which the aquatic test species were exposed to 100% water.

122. The bioassay results demonstrate that the black discharge is lethal to both cladocerans and fathead minnows.

123. The data from the bioassay show that it would take only a 2.2% solution of the black discharge mixed with water to cause death in 50% of the cladocerans in a 48-hour period.

124. The data from the bioassay show that it would take only a 2.3% solution of the black discharge mixed with water to cause death in 50% of the fathead minnows in a 48-hour period.

125. The bioassay results also demonstrate that the black discharge inhibits the fathead minnow growth and cladoceran reproduction.

126. The data from the bioassay show that it would take only a solution of 0.48% black discharge mixed with water to cause a 25% reduction in cladoceran reproduction over a 7-day period.

127. The data from the bioassay show that it would take only a solution of 1.88% black discharge mixed with water to cause a 25% reduction in fathead minnow growth over a 7-day period.

128. The bioassay results indicate that the black discharge material is highly toxic to aquatic life.

Defendants' Investigation

129. On August 15, 2019, the Defendants submitted to MDE an investigation plan aimed at determining the source of the discharge.

130. On October 17, 2019, the Defendants notified the Department that its contractor, TRC, had completed the field work contemplated by the investigation plan, and that TRC was working to prepare a report of investigation results.

131. On November 26, 2019, the Defendants provided MDE with TRC's report of investigation results.

132. Although the report does not identify the specific source of the discharge, it notes that "Pulping liquor has been identified in the subsurface" near the location of the black liquid discharge.

133. The report notes that seven seeps were observed to be discharging into River over the length of 500 feet of river bank.

134. The report notes that samples of the seven seeps identified in the TRC investigation showed elevated pH, with samples ranging from 10.05 to 12.26 s.u.

135. The report notes that samples of the seven seeps identified in the TRC investigation showed discoloration, with samples ranging from 2,150 to 9,690 pt-co units.

136. The report recommends additional investigation of the Mill but did not identify remedial steps that would stop the discharge.

137. On February 6, 2020, Verso submitted to the Department a Remedial Investigation and Corrective Action Plan.

138. On March 13, 2020, Verso submitted to the Department a Revised Remedial Investigation and Corrective Action Plan that addressed concerns raised by the West Virginia Department of the Environment.

139. This Revised Remedial Investigation and Corrective Action Plan identifies additional steps to be taken by Verso's contractor, TRC, to investigate the source and extent of contamination.

140. The revised plan also identifies some initial corrective actions to capture some of the discharge.

141. The revised plan does not identify steps that would fully and permanently stop the discharge and remediate the contaminated area.

142. As of the filing of this Complaint In Intervention, black discharge continues to seep from the riverbank into the River.

COUNT I
(Imminent and Substantial Endangerment under RCRA)

143. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

144. The black liquid that was and is being discharged into the River is a solid waste and hazardous waste within the meaning of RCRA. 42 U.S.C. § 6903(5), (27).

145. Defendants and MDE are “persons” within the meaning of RCRA. 42 U.S.C. § 6903(15).

146. Defendants have contributed and are contributing to the past and present handling, storage, treatment, transportation, and disposal of solid and hazardous waste at the Mill.

147. Defendants’ handling, storage, treatment, transportation, and disposal of solid and hazardous waste presents an imminent and substantial endangerment to health and the environment.

148. Injunctive relief is warranted under 42 U.S.C. § 6972(a) to require Defendants to stop the ongoing release or discharge of solid and/or hazardous waste and to remediate the environmental harm that resulted.

149. Civil penalties are warranted under 42 U.S.C. § 6972(a) as a result of this ongoing imminent and substantial endangerment to the State of Maryland.

150. Defendants have endangered the State of Maryland from at least April 6, 2019, to the present.

COUNT II
(Discharge of Pollution into Waters of the State)

151. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

152. The black liquid, believed to include pulping liquor and toxic metals, that has been, and is being, discharged into the River is a pollutant, as that term is defined by § 9-101(g) of the Environment Article.

153. The North Branch Potomac River is a water of the State of Maryland, as that term is defined by Environment § 9-101(l).

154. Pollutants are discharging from seeps on Defendants' property located within the State of Maryland.

155. Pollutants are discharging directly from Defendants' property into the River.

156. The Defendants do not have any permits, including a permit under § 9-323 of the Environment Article, to discharge these pollutants into the River.

157. The Defendants have violated, and are presently violating, § 9-322 of the Environment Article, by discharging pollutants into the River without a permit.

158. Injunctive relief is warranted under § 9-339 of the Environment Article to require Defendants to stop the ongoing discharge of pollutants and remediate the environmental harm caused by Defendants' unlawful discharges.

159. Civil penalties in the amount of up to \$10,000 are warranted under § 9-342(a) of the Environment Article for each day pollutants have been discharged into the River without a permit.

160. Defendants have discharged pollutants into the River, in violation of Title 9, Subtitle 3, daily from at least April 6, 2019, to the present.

COUNT III
(Release of a Controlled Hazardous Substance)

161. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

162. The black liquid that was and is being discharged and released into the River exhibits corrosivity due to high pH.

163. The black liquid is a controlled hazardous substance.

164. The Defendants do not have a permit or other authorization allowing it to discharge or release a controlled hazardous substance into the River.

165. Defendants, as owners and operators of the Site are responsible persons under § 7-201(t)(1) of the Environment Article.

166. Defendants have violated, and are presently violating, § 7-224 of the Environment Article by discharging a controlled hazardous substance into the River without a permit.

167. This ongoing release constitutes an imminent and substantial endangerment to public health and the environment.

168. Injunctive relief is warranted under § 7-263 of the Environmental Article to require Defendant to stop and remediate the ongoing release of controlled hazardous substances at the Mill.

169. An order requiring the Defendants to investigate and remediate the release and threatened release of controlled hazardous substances at the Mill is warranted under § 7-222 of the Environmental Article.

170. Civil penalties in the amount of up to \$25,000 are warranted under § 7-266 of the Environment Article for each day that controlled hazardous substances from the Mill have been released into the River.

171. Defendants have released black liquid into the River from at least April 6, 2019, to the present, with this black liquid exhibiting hazardous characteristics on some or all of these days.

COUNT IV
(Reimbursement of Past Response Costs)

172. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

173. The black discharge is a controlled hazardous substance under § 7-201(b) of the Environment Article.

174. All expenditures from the State Hazardous Substance Control Fund made by the Department under § 7-220(b) in response to a release or a threatened release of a hazardous substance at a particular site must, under § 7-221(a) of the Environment Article, be reimbursed to the Department by the person responsible for the release or threatened release.

175. Section 7-221(b) provides that, in addition to any other legal action authorized by Title 7, Subtitle 2, the Attorney General may bring an action to recover costs and interest from any person who fails to make a reimbursement as required under § 7-221(a).

176. The Department may recover all costs associated with its response to the release or threatened release of a hazardous substance including (1) costs of removal, restoration, or remedial action, including the restoration of natural resources where feasible, and site maintenance and monitoring in response to a release or threatened release of any hazardous substance; (2) all costs incurred by the Department in monitoring and assessing the effect on public health and natural resources of any site at which a hazardous substance is or may be present, including the costs of any subsurface borings and any analysis of samples taken, the costs of investigations conducted for the purpose of defining remedial action, and the costs of litigation expenses incurred in obtaining reimbursement for expenditures; (3) the State share mandated under § 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (4) all costs

incurred in providing public information concerning a site that does or may contain a hazardous substance; and (5) costs resulting from releases or threatened releases of hazardous substances. Envir. § 7-220(b).

177. As a result of Defendants' releases or threatened releases of hazardous substances into the environment, the Department has incurred response costs as defined in § 7-220(b) of the Environment Article.

178. Defendants are jointly and severally liable to the Department for all of the past response costs incurred by the Department, including without limitation, investigation and remediation expenses, oversight costs and interest, and the costs of litigation expenses incurred in obtaining reimbursement. Envir. §§ 7-201(t)(1), 7-208(f)(3), 7-220, and 7-221; Md. Code Ann., Cts. & Jud. Proc. § 3-1401(c) (joint tortfeasors).

COUNT VI
(Declaratory Relief for Future Response Costs)

179. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

180. The Department continues to incur necessary response costs as a result of the release or threatened release of a hazardous substance including (1) costs of removal, restoration, or remedial action, including the restoration of natural resources where feasible, and site maintenance and monitoring in response to a release or threatened release of any hazardous substance; (2) all costs incurred by the Department in monitoring and assessing the effect on public health and natural resources of any site at which a hazardous substance is or may be present, including the costs of any subsurface borings and any

analysis of samples taken, the costs of investigations conducted for the purpose of defining remedial action, and the costs of litigation expenses incurred in obtaining reimbursement for expenditures; (3) the State share mandated under § 104(c)(3) of CERCLA; (4) all costs incurred in providing public information concerning a site that does or may contain a hazardous substance; and (5) costs resulting from releases or threatened releases of hazardous substances. Envir. § 7-220(b).

181. All costs incurred, and to be incurred, by the Department are necessary response costs to the Defendants' release or threat of a release of controlled hazardous substances consistent with the provisions of the Maryland Controlled Hazardous Substances Law. Envir. §§ 7-220 and 7-221.

182. The Department is entitled to reimbursement from the Defendants for all of the past, present, and future necessary response costs, including without limitation, investigation and remediation expenses, oversight costs and interest, and the costs of litigation expenses incurred in obtaining reimbursement. Envir. §§ 7-201(t)(1), 7-208(f)(3), 7-220, and 7-221; Cts. & Jud. Proc. § 3-1401(c) (joint tortfeasors).

183. The Department is entitled to a declaratory judgment that Defendants are jointly and severally liable for all additional costs the Department incurs in response to releases or threatened releases of hazardous substances from the Mill into the environment. Enviro. Art. § 7-221.

REQUEST FOR RELIEF

WHEREFORE, the Department respectfully requests that this Court:

(a) Order injunctive relief requiring the Defendants to stop discharging pollutants into the waters of the State of Maryland, abate the imminent and substantial endangerment at the Mill, complete an investigation of the release of pulping liquor, and remediate the environmental harm caused by the unlawful discharges from the Mill;

(b) To the extent the Defendants cannot immediately stop the discharge, order Defendants to undertake measures to reduce as much as possible the amount of pollutants discharged into waters of the State of Maryland until Defendants are able to fully stop the discharge;

(c) To the extent the Defendants cannot immediately stop the discharge, order the Defendant to post signs warning of the risks of exposure to the discharge, such as signs stating as follows: “Keep Out, No Trespassing, Hazardous Materials Present, Do Not Drink or Have Contact with the Water in the Immediate Area”;

(d) Enter judgment against the Defendants, jointly and severally without regard to fault, for response costs incurred by the Department as a result of the releases, or threatened releases, of hazardous substances in an amount equal to all response costs and all other costs incurred in investigating, removing, and remediating the alleged hazardous substance contamination;

(e) Enter a declaration that Defendants are liable, jointly and severally without regard to fault, for all future response costs incurred by the Department in response to releases or threatened releases of hazardous substances;

(f) Enter a declaration that Defendants shall reimburse the Department for the reasonable costs incurred by the Department in conducting environmental health

/s/

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