Maryland
Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 19, 2020

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Adam St. John
Chief Executive Officer and Director
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Cogency Global
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Mr. Ronald Paugh
Environmental Manager
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Cogency Global Inc.
1519 York Rd.
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Re: Verso/Luke Paper – Notice of Intent to Sue under RCRA, 42 U.S.C. § 6972(a)(1)(B)

Dear Sirs:

The State of Maryland, through its agency the Maryland Department of the Environment ("Department" or "MDE"), hereby gives notice that it intends to bring suit under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B) against Verso Luke LLC and Verso Corporation (hereinafter referred to collectively as "Verso") in federal district court in Maryland alleging that releases and threatened releases of solid and/or hazardous waste at the Luke Paper Mill site (the "Mill") may present an imminent and substantial endangerment to health and the environment. Accordingly, the Department intends to file suit to seek injunctive relief, as well as an award of costs and such other relief, as the Court deems just and equitable under RCRA.

Luke Paper Mill

The Mill is located in Luke, Maryland, and Beryl, West Virginia, with facilities spanning the North Branch Potomac River. A paper mill has been operating at this location since 1888. Verso owns and

operated the Mill, producing various grades of paper from wood fiber and other raw materials using the kraft process. Paper products were manufactured at the Mill until it closed on June 30, 2019.

Black Discharge from the Mill into the North Branch Potomac River

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

A sample taken from a pool of seepage during the April 9, 2019 inspection had a pH of 11.8 s.u. and a dissolved oxygen concentration of 1.65 mg/L. A sample taken from a pool of seepage during the April 25, 2019 inspection had a pH of 10.76 s.u. and a dissolved oxygen concentration of 0.67 mg/L. Samples also had high sulfur and sodium content. Mercury, boron, and other metals were detected in samples of the seepage. The black substance was and is seeping out of approximately 500 feet of riverbank.

On April 25, 2019, the Department directed Verso 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. In an effort to contain the discharge, Verso installed sump pumps and collected some of the black liquid as it seeped from the riverbank. The sump pump system recovers some, but not all, of the discharge. In addition, the sump pumps can only operate when the water level in the river is below a certain elevation.

The Department received additional complaints of black discharge into the river during the summer and fall of 2019. A Department inspector visited the site 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. A representative of the Department also inspected the site on September 9, 2019, and observed a black discharge pooling along the riverbed and in the river.

On September 12 and October 24, 2019, a Department inspector returned to the site and again observed black discharge along the riverbed and in the river. During the October 24, 2019 inspection, the MDE inspector took samples. One of the samples had a pH of 12.5 s.u. and a dissolved oxygen concentration of 0.5 mg/L. On November 5, 2019, a Department official inspected the site and observed black discharge along the riverbank and within the river. Department representatives noted the smell of sulfur near the discharge location during the November 5, 2019 visit. An MDE inspector visited the site on November 22, 2019, and observed black discharge along the riverbank and in the river.

The Discharge Appears to Include Pulping Liquor

The black discharge appears to include "White," "Green," or "Black" liquor, or some combination of these substances. White liquor, Green liquor, and Black liquor are "pulping liquors" that are created during the paper-making process and also sometimes re-used during the paper-making process.

White liquor has a high pH and is considered a caustic and corrosive material. 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. The Material Safety Data Sheet for White liquor also states that this substance would meet the characteristics of a corrosive waste under RCRA if discarded directly.

Green liquor has a high pH and is considered a caustic and corrosive material. 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. The Material Safety Data Sheet for Green liquor also states that this substance may meet the characteristics of a corrosive waste under RCRA if discarded directly.

Black liquor has a high pH and is considered a caustic and corrosive material. 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. The Material Safety Data Sheet for Black liquor also states that it may meet the characteristics of a corrosive waste under RCRA if discarded directly.

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

West Virginia Department of Environmental Protection

On November 4, 2019, the West Virginia Department of Environmental Protection issued an order to Verso noting violations of West Virginia's storage tank laws. The West Virginia Department of Environmental Protection ordered Verso to empty the above-ground storage tanks on the West Virginia side of the Mill. In response to this order, Verso piped material from above-ground storage tanks in West Virginia to tanks in Maryland.

Analysis of Material Transferred to Maryland

On December 18, 2019, MDE's environmental consultant, Chesapeake Geosciences, Inc., took samples from the tank in Maryland containing the material Verso piped from the above-ground storage tanks in West Virginia. The sample had a pH of 13.5 s.u. The sample also had a flash point of 106 degrees Fahrenheit, which thereby exhibits the characteristic of ignitability.

The Discharge May Also Include Metals from Coal Waste or Contaminants from Other Sources

Analysis of the seepage revealed the presence of mercury, boron, and other metals not generally associated with pulping liquors. These metals are associated with coal waste, including coal ash. There is a coal ash lagoon located near seeps that are discharging into the North Branch Potomac River. In addition, petroleum odor and free liquid were observed during the recent removal of a million-gallon above-ground storage tank near the seeps, indicating the need to evaluate and consider wastes from sources other than pulping liquor.

Heath Risks and Signage

On November 5, 2019, representatives from MDE and the Maryland Department of Heath visited the site of the discharge. Due to the high pH of the discharge material, physical contact with the discharge could result in chemical burns. In light of this potential health risk, on November 7, 2019, MDE, through counsel, directed Verso 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." On November 14, 2019, the Verso's counsel advised that Verso 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.

Verso's Investigation

On August 15, 2019, Verso submitted to MDE an investigation plan aimed at determining the source of the discharge. On October 17, 2019, Verso 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. On November 26, 2019, Verso provided MDE with TRC's report of investigation results, entitled "Luke Paper Mill Hydrogeological Investigation." The report does not identify the specific source of the discharge, but notes that "Pulping liquor has been identified in the subsurface" near the location of the black liquid discharge. The report further notes that seven seeps were observed to be discharging into the North Branch Potomac River, and that samples of the seeps showed elevated pH, with samples ranging from 10.05 to 12.26 s.u. The report states that samples of the seeps showed discoloration, with samples ranging from 2,150 to 9,690 pt-co units.

By letter dated January 22, 2020, MDE provided comments to Verso regarding the "Luke Paper Mill Hydrogeological Investigation" report. MDE noted, among other things, that the report fails to identify the source(s) of the discharge or propose any method for stopping it and remediating the site.

On February 7, 2020, Verso submitted to MDE a "Remedial Investigation & Corrective Action Plan" describing Verso's next investigative steps. In addition, Verso submitted a Technical Memorandum describing analysis of the seepage collected on January 8-10, 2020. The Technical Memorandum noted elevated levels of antimony, arsenic, lead, and mercury in the seeps. In addition, analysis demonstrated elevated pH and sulfate levels in the seeps as well.

Conclusions

As of the date of this letter, black discharge continues to seep from the riverbank into the North Branch Potomac River. This discharge – which may include contaminants from pulping liquor, coal ash, or potentially undiscovered sources – constitutes a solid and/or hazardous waste under RCRA. This discharge may present an imminent and substantial endangerment to health or the environment. Accordingly, the Department finds it necessary to file suit against Verso under RCRA to protect the State of Maryland from releases and threatened releases of solid and/or hazardous waste into the North Branch Potomac River.

Sincerely,

Ben Grumbles
Secretary

cc: Andrew Wheeler, Administrator, U.S. Environmental Protection Agency
Cosmo Servidio, Regional Administrator, Region III, U.S. Environmental Protection Agency

Larry Hogan, Governor of Maryland – *via email*
Mike Pedone, Assistant Secretary, MDE – *via email*
Lee Currey, Director, Water & Science Administration, MDE – *via email*
Kaley Laleker, Director, Land Management Administration, MDE – *via email*
Andrea Baker, Principal Counsel, Office of the Attorney General, MDE – *via email*
Roberta James, Deputy Counsel, Office of the Attorney General, MDE – *via email*
Lynn R. Angotti, Deputy Counsel, Office of the Attorney General, MDE – *via email*

Marc Bryson, Steptoe & Johnson PLCC – *via email*
Jeffrey Maule, Environmental Director, Verso Corporation – *via email*
Glen Gilbert, Operations Manager, Verso Corporation – *via email*

Joe Sizemore, Assistant Chief Inspector, West Virginia Department of the Environmental Protection (DEP) – *via email*
Jason Wandling, West Virginia General Counsel & Chief of Legal Services – *via email*
Chance Chapman, Attorney, West Virginia DEP – *via email*