



*SENT VIA US CERTIFIED MAIL, RETURN RECEIPT REQUESTED*

July 22, 2010

Hon. Lisa P. Jackson, Administrator  
Ariel Rios Building  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: 60-Day Notice of Intent to File Suit Under the Clean Air Act for Failure to Revise the New Source Performance Standards and Emissions Guidelines for Kraft Pulp Mills**

This letter serves as 60-day notice of intent to sue the Environmental Protection Agency (“EPA”) on behalf of Californians for Alternatives to Toxics (“CATs”) and the Center for Biological Diversity (“CBD”) for violations of section 111 of the Clean Air Act (“CAA” or “the Act”). The Administrator has failed to review the standards of performance for new and modified kraft pulp mills within the statutory deadline under section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B). This 60-day notice is provided pursuant to section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2), which requires that citizens provide 60 days’ notice before bringing suit against the Administrator for failing to perform a nondiscretionary duty. In addition, the Administrator has failed to revise the guidelines prescribed by section 111(d), 42 U.S.C. § 7411(d), for existing kraft pulp mills. These guidelines must also be revised to reflect the emissions reductions achievable with today’s technology. CATs and CBD provide further notice of intent to sue the Administrator for failing to revise the section 111(d) guidelines for kraft pulp mills.<sup>1</sup>

**I. Overview**

The Clean Air Act was enacted to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). The designation of standards of performance for stationary sources under the CAA is one of our nation’s most successful programs for curbing air pollution. The CAA requires that the Administrator define a category for any stationary source that “causes, or contributes significantly to, air pollution which may

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<sup>1</sup> To the extent 180 days notice is required prior to bringing suit for this violation, this letter commences such notice period.

reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b)(1)(A). A “stationary source” is defined as “any building, structure, facility, or installation which emits or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3). New and “modified” stationary sources are regulated under CAA section 111(b), 42 U.S.C. § 7411(b), whereas existing sources are regulated under CAA section 111(d), 42 U.S.C. § 7411(d). The standard of performance must reflect the “degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated” [hereinafter “best demonstrated technology”]. 42 U.S.C. § 7411(a)(1).

There are currently over 75 defined stationary source categories. One category of stationary sources is kraft pulp mills. *See* 40 C.F.R. §§ 60.280-60.285. Pulp produced through the chemical kraft process is used to produce paper products, of which the US is the largest consumer. The pulp and paper sector is a significant source of air pollution. According to the toxics release inventory (“TRI”), the pulp and paper sector releases approximately 66% of its toxic emissions to the air, in contrast to the average of 27% across all industries that report toxic releases.<sup>2</sup> Air emissions from kraft pulp mills include not only a variety of hazardous air pollutants,<sup>3</sup> but also particulate matter, sulfur compounds, nitrogen and sulfur oxides, and volatile organic compounds (“VOCs”).<sup>4</sup> Within the latter category, only total reduced sulfur (“TRS”) and particulate matter (“PM”) are currently subject to NSPS. *See* 40 C.F.R. Part 60 Subpart BB.

The pulp and paper industry is also a significant source of greenhouse gases, emitting 57.7 MMT CO<sub>2</sub>eq (million metric tons carbon dioxide equivalent) in 2004.<sup>5</sup> The kraft pulping process releases a variety of greenhouse gases: carbon dioxide, methane, and nitrous oxide.<sup>6</sup> EPA recently issued an endangerment finding that six major greenhouse gases “in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.” 74 Fed. Reg. 66,496, 66,497 (Dec.15, 2009) (the “Endangerment Finding”). Furthermore, the Administrator defined “air pollution” to include “the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).” *Id.* Greenhouse gas pollution from kraft pulp mills is not currently subject to performance standards under CAA section 111(b), although greenhouse gases are undoubtedly air pollutants within the meaning of section 111(b)(1)(A), 42 U.S.C. § 7411(b)(1)(A).

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<sup>2</sup> U.S. EPA Office of Compliance, PROFILE OF THE PULP AND PAPER INDUSTRY, SECOND ED. 49 (November 2002).

<sup>3</sup> These pollutants are subject to regulation under CAA section 112, 42 U.S.C. § 7412.

<sup>4</sup> World Bank Group, POLLUTION PREVENTION AND ABATEMENT HANDBOOK 396 (1998), *available at* [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui\\_pulp\\_WB/\\$FILE/pulp\\_PPAH.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_pulp_WB/$FILE/pulp_PPAH.pdf)

<sup>5</sup> U.S. EPA, TECHNICAL SUPPORT DOCUMENT FOR THE PULP AND PAPER SECTOR 4 (2009). This estimate excludes biomass-derived sources of CO<sub>2</sub>.

<sup>6</sup> *Id.* at Table 3-1.

The Administrator is required to review, and if appropriate revise, new source performance standards at least every eight years. 42 U.S.C. § 7411(b)(1)(B). Yet, the last review was conducted 24 years ago. By violating the mandatory deadline for review of new source performance standards for kraft pulp mills, the Administrator is harming national health and welfare.

In addition to requiring performance standards for new stationary sources, the CAA also provides for control of pollution from existing stationary sources. Under section 111(d), 42 U.S.C. § 7411(d), the Administrator must publish emissions guidelines for designated pollutants, which provide essential information to states regarding pollution control. The emissions guidelines for kraft pulp mills have not been revised since they were first published over 30 years ago. The Administrator's failure to revise the emissions guidelines for existing kraft pulp mills has resulted in a greater accumulation of air pollutants in the atmosphere than would have occurred had the guidelines been revised in a timely manner to reflect improvements in air pollution control technology.

## **II. EPA Has Violated Its Nondiscretionary Duty to Revise the Kraft Pulp Mill New Source Performance Standards Under CAA Section 111(b)**

Continual revision that updates the standards to reflect the current, best technology for limiting pollution from a given source is essential to ensure the maximal effectiveness of the new source performance standards ("NSPS") program. Realizing the importance of up-to-date technology, Congress mandated that NSPS be reviewed at least every eight years:

The Administrator shall, at least every **8 years**, review and, if appropriate, revise such standards following the procedure . . . for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B) (emphasis added).

The NSPS for kraft pulp mills, found in Subpart BB of 40 C.F.R. Part 60, were originally promulgated in 1978. 43 Fed. Reg. 7568 (Feb. 23, 1978). The last time EPA reviewed those standards, as required by the CAA, was in 1986. *See* 51 Fed. Reg. 18,538 (May 20, 1986). The Administrator was therefore required to review the standards by 1994, at the latest, or determine that the review required by section 111(b)(1)(B) is not appropriate in light of readily available information on the efficacy of such standard. 42 U.S.C. § 7411(b)(1)(B). The Administrator has done neither over the last 24 years. The Administrator therefore has not complied with the mandatory duty set forth in section 111(b)(1)(B) by failing to perform the required review by 1994 or any time thereafter.

The performance standards for kraft pulp mills presently limit only particulate matter (“PM”) and total reduced sulfur (“TRS”), although kraft pulp mills emit a number of additional air pollutants – including greenhouse gases – that endanger public health and welfare. The Administrator must provide standards for all air pollutants that endanger public health and welfare when reviewing and revising the NSPS for kraft pulp mills.

A number of ways in which EPA can further regulate emissions from kraft pulp mills currently exist. For example, states have taken the initiative to regulate air pollutants other than PM and TRS from kraft pulp mills despite the fact that the pollutants are not currently subject to NSPS. *See, e.g.*, Md. Code Regs. 26.11.14.06 (controlling VOCs from kraft pulp mills). There are also a variety of options for reducing nitrogen oxides from kraft pulp mills,<sup>7</sup> despite the fact that EPA declined to regulate nitrogen oxides when the NSPS for kraft pulp mills were revised. *See* 49 Fed. Reg. 2448 (Jan. 19, 1984). The demonstrated feasibility of regulating additional pollutants necessitates the review of the NSPS for kraft pulp mills.

Furthermore, EPA should review the kraft pulp mills NSPS to regulate greenhouse gases. Since these standards were last revised, new information has come to light regarding the significant dangers of accumulated greenhouse gases in the atmosphere. EPA acknowledged the potentially catastrophic consequences of continued greenhouse gas emissions in its Endangerment Finding. 74 Fed. Reg. 66,496 (Dec. 15, 2009). As discussed above, the pulp and paper industry constitutes a significant source of greenhouse gases in the US. Consequently, the Administrator is violating CAA section 111(b)(1), 42 U.S.C. § 7411(b)(1), by failing to conduct a review of the NSPS to add greenhouse gas emissions limitations for kraft pulp mills.

In addition to performing the mandatory eight-year review of the NSPS for kraft pulp mills, the Administrator must also revise them to ensure that they reflect the current, best demonstrated technology. Section 111(b)(1)(B) mandates that the Administrator consider additional reductions that have been achieved in practice when revising performance standards:

When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

42 U.S.C. § 7411(b)(1)(B). TRS emissions have continued to decline since the NSPS for kraft pulp mills was last promulgated.<sup>8</sup> In addition, EPA recently approved stricter

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<sup>7</sup> National Assoc. of Clean Air Agencies (NACAA), CONTROLLING NITROGEN OXIDES UNDER THE CLEAN AIR ACT: A MENU OF OPTIONS 68-71 (July 1994).

<sup>8</sup> T.K. Das & A.K. Jain, *Pollution Prevention Advances in Pulp and Paper Processing*, 20 ENVIRONMENTAL PROGRESS 87, Figure 1 (2001).

standards for PM emissions from kraft recovery furnaces in the state of California. *See* 74 Fed. Reg. 20877 (May 6, 2009).

In summary, the Administrator has violated her nondiscretionary duty to review the NSPS for kraft pulp mills, even though she has made no determination that such review is not appropriate in light of readily available information on their efficacy. The review should be undertaken immediately because the performance standards currently limit emissions only of PM and TRS, but fail to regulate emissions of other dangerous air pollutants, including greenhouse gases. Moreover, the kraft pulp mill performance standards do not reflect the greatest reductions possible in practice even for PM and TRS.

### **III. EPA Must Promulgate New Emissions Guidelines for Designated Pollutants Emitted by Existing Kraft Pulp Mills Under CAA Section 111(d)**

Section 111(d) of the CAA provides a mechanism for addressing air pollution emitted from existing sources for which a NSPS has been established. 42 U.S.C. § 7411(d)(1)(A). Air pollutants for which there is a NSPS, but that are not criteria air pollutants, are called “designated pollutants.” 40 C.F.R. § 60.21(a). The Administrator must publish “emissions guidelines” providing information, such as health and welfare impacts, reduction potential, and best demonstrated technology, for the control of designated pollutants. 40 C.F.R. § 60.22(b). These guidelines are implemented by state agencies who formulate plans to curb emissions of designated pollutants from existing sources. *Id.*; 42 U.S.C. § 7411(d)(1).

Emissions guidelines for TRS emitted by kraft pulp mills were published in 1979 but have never been revised. 44 Fed. Reg. 29,828 (May 22, 1979); *see also* 45 Fed. Reg. 67,146 (Oct. 9, 1980) (corrections to the original guidelines). It has been over 30 years since these guidelines were published. Technology for pollution reduction has advanced by leaps and bounds; thus, these emissions guidelines must be revised to reflect the pollution reductions that are achievable with today’s technology.

In addition, when promulgating new performance standards for greenhouse gases, the Administrator must also publish new emissions guidelines for greenhouse gases for existing sources. .

Without updated emissions guidelines and support documents, states have been, and will continue to be, unable to optimally control air pollution from existing kraft pulp mills. The current absence of updated information violates the purpose of the CAA and endangers the health and welfare of US citizens.

### **IV. Conclusion**

The Administrator has violated her nondiscretionary duty under CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), to review the new source performance standards for kraft pulp mills within eight years. In addition, she has violated her duty under CAA section 111(d), 42 U.S.C. § 7411(d), to publish emissions guidelines that

reflect the current knowledge regarding, among other things, health and welfare impacts, best demonstrated technology, and greatest reduction potential for designated pollutants from kraft pulp mills.

**V. Contact Information**

Pursuant to 40 C.F.R. § 54.3, we provide our names and addresses:

Californians for Alternatives to Toxics  
315 "P" Street  
Eureka, CA 95501

Center for Biological Diversity  
351 California St., Ste. 600  
San Francisco, CA 94104

**VI. Counsel**

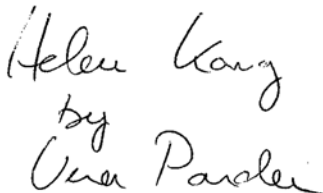
We have retained legal counsel to represent us. CATs is represented by the Environmental Law and Justice Clinic at Golden Gate University School of Law. Counsel's contact information is:

Helen Kang  
Environmental Law and Justice Clinic  
Golden Gate University School of Law  
536 Mission Street  
San Francisco, CA 94105  
Tel.: (415) 442-6693  
Email: [hkang@ggu.edu](mailto:hkang@ggu.edu)  
Counsel for Californians for Alternatives to  
Toxics

Vera Pardee  
Center for Biological Diversity  
351 California St., Ste. 600  
San Francisco, CA 94104  
Tel.: (415) 436-9682  
Email: [ypardee@biologicaldiversity.org](mailto:ypardee@biologicaldiversity.org)  
Counsel for Center for Biological Diversity

If the Administrator does not act within 60 days to correct this violation of the CAA, CATs and CBD will pursue litigation in federal court against EPA and will seek appropriate relief regarding these violations, including injunctive and declaratory relief. If you have any questions, wish to discuss this matter, or believe this notice is in error, do not hesitate to contact us.

Sincerely,



Handwritten signature of Helen Kang, with "by Vera Pardee" written below it.



Handwritten signature of Vera Pardee.

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Helen Kang  
Environmental Law and Justice Clinic

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Vera Pardee  
Center for Biological Diversity