

California Regional Water Quality Control Board  
North Coast Region

ORDER NO. R1-2009- 0006

NOTICE OF INTENT TO TERMINATE  
WASTE DISCHARGE REQUIREMENTS

FOR

THE EVERGREEN PULP, INC., SAMOA PULP MILL  
ORDER NO. R1-2004-0047  
NPDES NO. CA0005894  
WDID NO. 1B77005OHUM

HUMBOLDT COUNTY

The California Regional Water Quality Control Board, North Coast Region, (hereafter Regional Water Board) finds that:

1. Waste Discharge Requirements (WDRs) Order No. R1-2004-0047 was issued to Stockton Pacific Enterprises, Inc. for the Samoa Pulp Mill (also referred to as the "Facility") on June 22, 2004, prescribing requirements for the discharge of waste from the operation of the Samoa Pulp Mill to the Pacific Ocean. WDR Order R1-2004-0047 reissued Order No. R1-2001-0063 under the new owner's name, and did not otherwise change the discharge prohibitions, effluent limitations, or receiving water limitations. On March 18, 2005, WDR Order No. R1-2004-0047 was administratively transferred to Evergreen Pulp, Inc., a subsidiary of Lee & Man Paper Manufacturing Limited.
2. Evergreen Pulp, Inc. (Discharger) was the owner of record and operated the Facility from January 21, 2005 to February 6, 2009. Over this period, the discharge of waste from the Facility by Evergreen Pulp, Inc. was governed by WDR Order No. R1-2004-0047, which also serves as a National Pollutant Discharge Elimination System (NPDES) Permit (Permit No. CA0005894) under the Clean Water Act. Evergreen Pulp, Inc. submitted a Report of Waste Discharge, dated April 28, 2005, and applied for an NPDES permit renewal to continue the discharge of approximately 13.6 millions gallons per day, on average, of untreated wastewater from the Facility. The application was deemed complete on November 5, 2007. A tentative Order was developed and made available for public comment on September 19, 2008. The tentative Order contained effluent limitations and requirements that were much more stringent than the previous permits. It is unclear whether or how the Facility, as it is currently designed and operated, would be able to meet the proposed effluent limitations.
3. On October 17, 2008, Evergreen Pulp, Inc. ceased operation of the Facility, stating that the shutdown was in response to unfavorable conditions in the pulp and paper market. In a letter dated October 21, 2008, Evergreen Pulp, Inc. indicated that it intended to resume production in three to six months depending on market conditions.

4. Ongoing operations at the Facility include the diversion of at least 3 million gallons per day of untreated surface water from the Mad River to the outfall pipe located at 40° 48' 28" latitude and 124° 12' 24" longitude. The Regional Water Board has determined that this diversion does not require a discharge permit.
5. On November 28, 2008, the Regional Water Board staff received information through the State Water Resources Control Board's Office of Chief Counsel of the impending sale of the Facility to ACE Mill, Inc. On December 18, 2008, Regional Water Board legal counsel contacted legal counsel for ACE Mill, Inc. in writing and explained that any new operator of the Facility would not be authorized to discharge under the existing NPDES permit and indicated the Regional Water Board's intent to reissue the permit with more stringent requirements than the existing permit. Legal counsel also requested that ACE Mill, Inc. submit a report of waste discharge within 30 days so that Regional Water Board staff could begin drafting a new permit for the mill, and stated that if the Regional Water Board did not receive a report of waste discharge, staff would likely recommend that the Regional Water Board rescind the current permit. No report of waste discharge was received, and the sale to ACE Mill, Inc. did not go through.
6. On January 7, 2009, the Regional Water Board issued a Notice of Intent to terminate Waste Discharge Requirements Order No. R1-2004-0047 in accordance with 40 CFR § 122.61(b) to prevent the automatic transfer of the existing NPDES permit from the Discharger to a new owner of the Facility.
7. On February 23, 2009, the Regional Water Board received written notice that the Samoa Acquisition Corporation had acquired the assets of the Samoa Pulp Mill from Evergreen Pulp on February 6, 2009. In the notice, Robert M. Simpson, on behalf of the Samoa Acquisition Corporation, requested that the Regional Water Board not terminate the existing NPDES permit for the Facility and instead transfer the current WDRs Order R1-2004-0047 to the Samoa Acquisition Corporation. The Samoa Acquisition Corporation has since been renamed Freshwater Pulp, Inc.
8. Paragraph 11(c) of WDRs Order No. R1-2004-0047 states that the permit is "not transferable except in compliance with 40 CFR § 122.61(b)." That section allows for automatic transfers of any NPDES permit to a new permittee if:
  - 1) the current permittee notifies the Regional Water Board at least 30 days in advance of the proposed transfer day;
  - 2) the notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  - 3) the Regional Water Board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

9. In addition to the Regional Water Board's ability to modify or revoke and reissue a permit when ownership of facility changes hands, both the Code of Federal Regulations (CFR) and the Water Code provide a means for the Regional Water Board to terminate permits for cause. Water Code section 13381 and section 122.64 of the CFR state that a permit can be terminated during its term or denied renewal for causes such as: 1) violation of any condition contained in the requirements or permits; 2) obtaining the requirements by misrepresentation, or failure to disclose fully all relevant facts; or 3) a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge. Here, there is a record of the Facility's inability to consistently meet the requirements of its WDRs, and there is a strong indication that future operation of the Facility will require substantial upgrades in order to meet the effluent limitations proposed in the tentative Order prepared for the Facility. Changes to the effluent limitations are required to be consistent with current regulatory requirements.
10. This action to rescind WDRs is not subject to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.), pursuant to Title 14, California Code of Regulations, Sections 15060(c)(2) and 15061(b)(3). Based on the foregoing findings and the facts underlying them, it can be seen with certainty that this action to terminate the WDRs has no possibility to have a significant effect on the environment. The termination will not result in either a direct or reasonably foreseeable indirect physical change in the environment.
11. On March 12, 2009, after due notice to Evergreen Pulp, Inc. and all other affected persons, the Regional Water Board conducted a public hearing at which time the Board received all evidence concerning termination of WDRs Order No. R1-2004-0047.

IT IS HEREBY ORDERED that, pursuant to section 122.61 and 122.64 of the Code of Federal Regulations and Water Code Section 13381, Order No. R1-2004-0047 is terminated upon the effective date of this Order, except for enforcement purposes.

I, Catherine Kuhlman, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on April 23, 2009.

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Catherine Kuhlman  
Executive Officer