California Regional Water Quality Control Board
North Coast Region

CEASE AND DESIST ORDER NO. R1-2010-0039

NPDES PERMIT NO. CA0005894
ID NO. 1B77005OHUM

REQUIRING FRESHWATER TISSUE COMPANY TO CEASE AND DESIST FROM DISCHARGING OR THREATENING TO DISCHARGE EFFLUENT IN VIOLATION OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R1-2010-0033

Humboldt County

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

1. Freshwater Tissue Company (hereinafter Discharger) is the owner and operator of the Samoa Pulp Mill (hereinafter Facility).

2. On January 27, 2010, the Discharger filed a report of waste discharge and submitted an application for Waste Discharge Requirements (WDRs) and a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of process wastewater associated with the production of chlorine-free bleached and unbleached kraft pulp. The application was deemed complete on March 26, 2010.

3. The Facility will discharge approximately 14.0 million gallons per day of wastewater created during the pulp production process, the energy and chemical recovery processes, and the raw water treatment process. The discharge will occur to the Pacific Ocean, a water of the United States, through an outfall that is approximately 8,200 feet long and provides an initial dilution rate of 115:1.

4. Wastewaters generated from the facility include countercurrent pulp wash-water, black-liquor evaporator condensates, blow-down from the recovery boiler, spent bleaching solutions, and sludge from the raw water treatment plant clarifiers. Wastewaters also include wastewater from maintenance activities during pulp production, scheduled maintenance shutdowns, and unscheduled shutdown periods. Other authorized discharges include fresh water discharged through the outfall to maintain flow in the outfall and storm water from the pulp mill site, which is authorized and conditioned under general waste discharge requirements for industrial storm water. The effluent pump station and discharge outfall system are designed to convey up to 20 million gallons per day, on average.

5. The discharge was previously regulated by WDR Order R1-2004-0047 for Evergreen Pulp, Inc., which was terminated on March 12, 2009. A new WDR and NPDES permit for Freshwater Tissue Company, WDR Order No. R1-2010-0033 (NPDES Permit No. CA0005894), becomes effective on June 10, 2010.

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6. Section 301(b) of the Clean Water Act (CWA) and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations (CFR) require that NPDES permits include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. WDR Order No. R1-2010-0033 includes minimum federal technology-based requirements based on Effluent Limitations Guidelines (ELGs) and Standards for the Pulp, Paper, and Paperboard Point Source Category contained in 40 CFR 430. When producing a kraft pulp using Totally Chlorine Free (TCF) bleaching, the Facility fits into the Bleached Kraft subcategory (40 CFR 430 Subpart B); the Facility fits into the Unbleached Kraft subcategory (40 CFR 430 Subpart C), when a kraft pulp is produced without TCF bleaching. The previous permit only contained the ELGs for bleached pulp production, regardless of whether bleached or unbleached pulp was produced.

7. Based on an analysis of effluent monitoring data from 2005 through 2008, the discharge from the Facility during production of bleached pulp cannot comply with final effluent limitations in WDR Order No. R1-2010-0033 for five-day biochemical oxygen demand (BOD_5) in section A.1 and effluent limitations for BOD_5 and total suspended solids (TSS) in section A.2 of the Permit during production of unbleached pulp.

8. Requirements in Order No. R1-2010-0033 that are threatened to be violated are:

A. Effluent Limitations – Discharge Point 001

1. Final Effluent Limitations during Bleached Pulp Production – Discharge Point 001

During manufacture of bleached pulp, the Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the attached MRP:

Table 7. Effluent Limitations – Bleached Pulp

Parameter	Units	Effluent Limitations					
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum	Six-Month Median
TSS	lbs/day	22,960		42,560			
BOD_5	lbs/day	11,270		21,630			

2. Final Effluent Limitations during Unbleached Pulp Production – Discharge Point 001

During manufacture of unbleached pulp, the Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001

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with compliance measured at Monitoring Location EFF-001 as described in the attached MRP.

Table 8. Effluent Limitations – Unbleached Pulp

Parameter	Units	Effluent Limitations					
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum	Six-Month Median
TSS	lbs/day	8,400		16,800			
BOD_5	lbs/day	3,920		7,840			

9. Section 13301 of the California Water Code states "When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventative action."

10. On March 22, 2010, the Discharger submitted a request for a forty-month compliance schedule to give the Discharger time to obtain required local development permits, and design and construct a conventional activated sludge wastewater treatment plant to reduce effluent BOD_5 loading. Preliminary details of the proposed wastewater treatment facilities, as well as an environmental assessment of this project and other alternatives, are contained in the document titled, "Analysis of Alternatives for Reducing Effluent Biochemical Oxygen Demand," prepared by CH2MHILL for Evergreen Pulp, Inc. and submitted to the Regional Water Board on May 29, 2007. Design of the system will include two new effluent pump stations, effluent cooling towers, a 7 million gallon activated sludge reactor, two 130-foot diameter secondary clarifiers, and sludge dewatering equipment. According to the alternatives analysis, wastewater treatment facilities will reduce effluent BOD_5 loading to approximately 1,950 lbs/day as a monthly average under anticipated pulp production rates.

11. Under California Water Code (Water Code) section 13385(j)(3), Mandatory Minimum Penalties (MMPs) for violations of effluent limitations for BOD_5 and TSS will not apply if the Regional Water Board finds that:
    a. The Cease and Desist Order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations;
    b. The regional board finds that the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge because the effluent limitation is a new or more stringent regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order

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to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days;

c. The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation; and
d. The discharger has prepared and is implementing in a timely and proper manner, a pollution control and prevention plan.

13. Effluent Limitations for BOD_5 During the Production of TCF Bleached Pulp

Although monitoring data from 2008 indicates that the Discharger is not likely to consistently comply with all final effluent limitations for BOD_5 during the production of TCF bleached pulp, the Discharger does not meet the requirements of Water Code section 13385(j)(3) and cannot obtain protection from MMPs for violations of the effluent limitations for BOD_5 during the production of bleached pulp. The final effluent limitations for BOD_5 during the production of bleached pulp in WDR Order No. R1-2010-0039 are not "new," nor are they more stringent than those required by the Facility's previous Waste Discharge Requirements, Order No. R1-2004-0047 (NPDES Permit No. CA0005894), adopted on June 22, 2004. They are the same limits that were required of the Facility in its last permit.

14. Effluent Limitation for BOD_5 and TSS During the Production of Unbleached Pulp

During the production of unbleached pulp, the Discharger meets the requirements of Water Code section 13385(j)(3), and therefore, MMPs for violations of the effluent limitations for BOD_5 and TSS will not apply because:

a. This CDO is issued after July 1, 2000, and specifies the actions the Discharger is required to take to correct the violations;
b. The final effluent limitations for BOD_5 and TSS during the production of unbleached pulp are newly established in waste discharge requirements for this Facility and are more stringent than the effluent limitations for BOD_5 and TSS during bleached pulp production, which were in effect in previous permits for this Facility, irrespective of whether the final product was bleached or unbleached pulp. The Discharger has demonstrated that it will not be able to consistently comply with final effluent limitations for BOD_5 and TSS during the production of unbleached pulp. To ensure consistent compliance, the Discharger will need to implement control measures, specifically the Discharger will need to design and construct a conventional activated sludge wastewater treatment plant to reduce effluent BOD_5 loading. It will take the Discharger in excess of 30 calendar days to design and install the treatment plant;
c. This Order establishes a time schedule for bringing the Facility into compliance with the effluent limitations for BOD_5 and TSS during the production of unbleached pulp that is as short as possible. The Discharger submitted a

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proposed project milestone schedule via email on March 11, 2010 that provided a time schedule for the Discharger to obtain required local development permits, and design and construct a conventional activated sludge wastewater treatment plant to reduce effluent BOD_5 loading. The Discharger submitted a letter dated April 21, 2010 that demonstrated to the satisfaction of the Regional Water Board Executive Officer that the time schedule is as short as practicable based on sound engineering judgment and experience with similar projects; and

d. The Discharger will prepare and implement a best management practices plan (BMPP) to identify and control pollution. The BMPP will also serve as a pollution prevention plan.

15. Accordingly, violations of effluent limitations for BOD_5 and TSS in section A.2 of WDR Order No. R1-2010-0033 when producing unbleached kraft pulp are not subject to MMPs if the Discharger is in compliance with this Cease and Desist Order, including the interim limitations and schedules set forth in this Order.

16. Interim effluent limitations in this Order are performance-based and were developed using effluent monitoring data from the Facility from 2005 through 2007, a period of time during which the Facility produced only unbleached pulp. The procedure for calculating the daily maximum and monthly average limitation is described in section 5.1.4 of the U.S. EPA NPDES Permit Writers' Manual (EPA-833-B-96-003). The one-sided, upper 95 percent confidence bound for the 95th and 99th percentiles of the effluent distribution for BOD_5 and TSS used in the calculation were obtained from the statistical program RPcalc Version 2.0.

17. The issuance of a cease and desist order subsequent to the issuance of waste discharge requirements is exempt from the California Environmental Quality Act (CEQA). (*Pacific Water Conditioning Ass'n , Inc. v. City Council of City of Riverside* (1977) 140 Cal.Rptr. 812, 73 Cal.App.3d 546, 555-556 (holding that the statutory exemption from CEQA for the promulgation of waste discharge requirements contained in Water Code 13389 applies to the issuance of a subsequent cease and desist order to enforce the original waste discharge requirements). In addition, the issuance of the CDO is exempt from the requirements of CEQA pursuant to section 15321 of title 14 of the California Code of Regulations. That section exempts the adoption of an administrative decision or order enforcing or revoking a permit or enforcing an objective, such as a cease and desist order. Similarly, section 15307 exempts from the requirements of CEQA actions taken by a regulatory agency to assure the "maintenance, restoration, or enhancement of a natural resources where the regulatory process involves procedures for protection of the environment," which a cease and desist order is meant to do. (*See also* Pacific Water Conditioning, 73 Cal.App.3d at 557.)

18. On June 10, 2010, after due notice to the Discharger and all other affected persons, the Regional Water Board conducted a public hearing and evidence was received regarding this Cease and Desist Order.

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THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code Section 13301, that the Discharger shall cease discharging waste in violation of Waste Discharge Requirements Order No. R1-2010-0033 forthwith in accordance with the following time schedules:

1. Schedule to Cease Discharging Effluent with Levels of BOD_5 and TSS Greater Than Effluent Limitations Required by Effluent Limitation A.2 of Waste Discharge Requirements, Order No. R1-2010-0033.

Task	Compliance Date
Submit a revised best management practices plan (BMPP) to identify measures that the Discharger will take to minimize discharges of BOD_5 and TSS until the wastewater treatment plant is completed. The revised BMPP shall include a schedule for implementation of BMPs and a procedure for assessing the effectiveness of BMPs and implementing additional BMPs based on the assessment.	October 8, 2010
Provide financial assurances for funding design and construction of the wastewater treatment plant at the Facility in a form acceptable to the Regional Water Board Executive Officer.	August 8, 2010
Submit preliminary project proposal, including a description of the treatment technology selection process and details of the selected final project. Details of the selected project should include, at a minimum: final location of the treatment plant, design criteria, descriptions of unit processes, and process flow diagrams, and preliminary design drawings.	August 8, 2010
Submit complete application to the County of Humboldt to secure required development permits for the wastewater treatment plant.	September 7, 2010
Submit complete application to the North Coast Unified Air Quality Management District for an Authority to Construct Permit for the wastewater treatment plant.	September 7, 2010
Award engineering and design contract for the wastewater treatment plant.	November 11, 2010
Complete 60% level specifications and design drawings.	May 5, 2011

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Task	Compliance Date
Submit final specifications and design drawings to the Regional Water Board Executive Officer.	October 2, 2011
Issue bid packages for construction contract.	December 1, 2011
Award construction contract for the wastewater treatment plant.	January 30, 2012
Commence construction of the wastewater treatment plant.	February 29, 2012
Complete construction of the wastewater treatment plant.	June 23, 2013
Full operation of the wastewater treatment plant in compliance with applicable NPDES permit effluent limits following start-up and initial performance tests.	September 21, 2013
Submit final as-built drawings and results of performance tests to the Regional Water Board.	October 21, 2013

2. Quarterly Progress Reports

The Discharger shall submit quarterly written progress reports on compliance efforts to the Executive Officer. Regional Water Board staff may periodically present an informational update to the Regional Water Board based on the progress reports. The Discharger is required to continue operating pollution control systems and maintaining and implementing its BMPP to the best of its ability until the wastewater treatment plant is completed. The Discharger shall include a discussion of the operations, including current interim control measures in use and additional control measures implemented in accordance with the BMPP to minimize the discharge of BOD_5 and TSS. The progress reports shall describe what steps have been implemented towards achieving compliance with WDR Order No. R1-2010-0033 and this Order, including construction progress, evaluation of the effectiveness of the implemented measures and assessment of whether additional measures are necessary to meet the time schedule set forth above.

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3. Interim limits in effect until October 21, 2013:

   Section 13385(j)((3)(C) requires that if the time schedule exceeds one year from the effective date of the Order, the Regional Water Board must not only include interim requirements and dates for their achievement, but also interim effluent limitations for the pollutants of concern. From adoption of this Order until May 31, 2011, while manufacturing unbleached pulp, the Discharger shall maintain compliance with the following interim effluent limitations at Discharge Point 001 with compliance measured at Monitoring Location EFF-001 as described in the Monitoring and Reporting Program.

Parameter	Units	Effluent Limitations - Unbleached Pulp					
		Average Monthly[1]	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum	Six-Month Median
TSS	lbs/day[2]	17,025		30,488			
BOD_5	lbs/day[2]	16,074		19,788			

4. The Discharger shall not incur MMPs for violations of effluent limitations for BOD_5 and TSS during the production of unbleached pulp so long as it complies with the interim limitations and compliance schedules included in this Order.

IT IS FURTHER ORDERED that if, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability or bring back before this Regional Water Board an order to revoke WDR Order No. R1-2010-0033.

Certification

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Cease and Desist Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 10, 2010.

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[1] The monthly discharge (lbs/day) of BOD_5 and TSS during production of unbleached pulp is obtained from the following calculation on any calendar month:

$$\text{Monthly Discharge (lbs/day)} = \frac{8.34}{N} \sum_{i}^{N} Q_i C_i$$

in which N is the number of days of production of unbleached pulp in any calendar month. Q_i and C_i are the flow rate (mgd) and the constituent concentration, respectively, which are associated with each of the N days in any calendar month.

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Catherine Kuhlman
Executive Officer

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