

# Allen Matkins

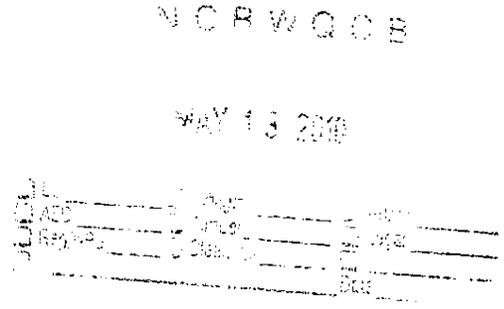
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## Via Messenger

May 13, 2010

Ms. Catherine Kuhlman  
Executive Officer  
California Regional Water Quality Control Board  
North Coast Region  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403



**Re: Freshwater Tissue Company LLC  
Draft Cease and Desist Order No. R1-2010-0039  
WDID 1B77005OHUM / NPDES No. CA0005894**

Dear Ms. Kuhlman:

On behalf of Freshwater Tissue Company LLC ("Freshwater"), owner of the Samoa Pulp Mill ("Mill"), I take this opportunity to comment on the Draft Cease and Desist Order No. R1-1020-0039 ("Draft CDO"), scheduled for consideration by the Water Board on June 10, 2010.

### Findings

Finding No. 3 states that the Facility will discharge approximately 14.0 million gallons per day of wastewater. As noted in Freshwater's comments on the Draft Waste Discharge Requirements Order No. R1-2010-0033/NPDES Permit ("Draft Permit"), the estimates of future discharge are based on past average discharge volumes by prior owners and operators of the Mill. As noted in the Draft Permit and in Finding 4 of the Draft CDO, the facility design flow is 20 million gallons per day.

Finding No. 6 states that the Mill fits within the Bleached Kraft subcategory (Subpart B of 40 CFR Part 430) when producing TCF bleached pulp and within the Unbleached Kraft subcategory (Subpart C) when producing kraft pulp without TCF bleaching. While Freshwater plans to construct a whole effluent wastewater treatment facility that will ensure that the Mill meets effluent limitations guidelines for five-day biochemical oxygen demand ("BOD<sub>5</sub>") regardless of the grade of pulp product it manufactures, Freshwater does not, for the record, agree that it is necessary or appropriate to re-categorize the Mill. Freshwater's position is that the Mill's historical categorization as a bleached kraft mill was appropriate and need not be modified.

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Finding No. 7 states that, based on an analysis of effluent monitoring data from 2005 through 2008, the discharge from the Facility cannot comply with the final effluent limitations set forth in the Draft Permit for BOD<sub>5</sub> during bleached pulp production, and for BOD<sub>5</sub> and total suspended solids ("TSS") during unbleached pulp production. The Finding should also reflect that the discharge from the Facility cannot comply with the proposed effluent limitations set forth in the Draft Permit for TSS during bleached pulp production, should the Final Permit provide, as proposed in the Draft Permit, that TSS in the discharge from the raw water treatment clarifiers be added to the TSS in the Mill's process wastewater for purposes of determining compliance with the proposed final effluent limits for TSS, set forth in Table 7 of the Draft Permit, during production of bleached pulp.

In its comments on the Draft Permit, dated April 30, 2010, Freshwater explained why it is incorrect and illogical to classify the raw water clarifier discharge as process wastewater. Freshwater hopes that the Water Board will accept this comment and revise the Draft Permit accordingly to provide in the Final Permit that this flow is not to be considered part of or combined with the process wastewater, and that discharge limits for TSS in raw water clarifier discharge are found solely in Table 9 of the Draft Permit. This correction will make the Final Permit consistent, with respect to this issue, with all prior NPDES wastewater discharge permits applicable to the Mill. Should the Water Board make this correction, it may disregard the foregoing comment regarding Finding No. 7 in the Draft CDO.

Finding No. 13 states that the final effluent limitations for BOD<sub>5</sub> in wastewater discharge during bleached pulp production, as proposed in the Draft Permit, are not "new," and that they are not more stringent than those required by the Facilities previous waste discharge requirements. This finding does not mention the final effluent limitations for TSS during bleached pulp production. While the effluent limitations for TSS during bleached pulp production are not new numbers, the TSS limitations proposed in the Draft Permit are significantly more stringent than they have ever been in the past, in light of the proposed inclusion of the raw water clarifier discharge with the Mill's process wastewater for purposes of measuring compliance with the effluent limitations for TSS during bleached pulp production. To our knowledge, no WDR or permit applicable to the Mill has ever combined raw water clarifier discharge with the Mill's process wastewater for purposes of measuring compliance with discharge limitations. Rather, as explained in Freshwater's April 30, 2010 comments on the Draft Permit, TSS in the raw water clarifier discharge has been subject to separate limits in the prior WDRs and permits.

As such, the TSS limitations during bleached pulp production, as proposed in the Draft Permit, constitute effluent limitations that would be new, more stringent or modified regulatory requirements that have 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 would be necessary in order to comply with the effluent limitation, and such new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

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If the Final Permit provides, as the Draft Permit proposes, for the inclusion of the raw water clarifier discharge as part of the Mill's process wastewater during bleached pulp production, then, under Water Code § 13385(j)(3), mandatory minimum penalties for violations of the effluent limitations for TSS during bleached pulp production would not apply. This should be reflected in Findings 13 and 15. Should the Water Board provide in the Final Permit that the raw water clarifier discharge is not to be considered part of the process wastewater and that effluent discharge limits for TSS in raw water clarifier discharge are found solely in Table 9 of the Draft Permit, then the Water Board may disregard this comment.

### **Requirements**

Paragraph 1 describes the compliance schedule for cessation of discharge of effluent with levels of BOD<sub>5</sub> and TSS greater than effluent limitations set forth in Effluent Limitation A.2 of the Final Order. Freshwater has two comments on this provision.

a. The proposed compliance schedule includes specific deadline dates calculated from the proposed milestone schedule referred to in Finding 14.c, based on the assumption that the Final Permit will be issued and effective on June 10, 2010. In the event that, for any reason, the Final Permit is not issued and effective on that date, the deadlines in the Compliance Schedule should be made adjustable on a day-for-day basis by the length of any such delay in issuance and effectiveness. This is important for the obvious logistical reasons, and it is particularly important also in light of the fact that debt and/or equity financing for the recommencement of operations and for all of the investments associated with it (including wastewater treatment) would probably be jeopardized and would almost certainly be delayed by any delay, beyond June 10, in the issuance and the effectiveness of the Final Permit.

b. The sensible approach to a treatment solution to the challenge of reducing TSS in the Mill's process wastewater, should that wastewater be deemed to include raw water clarifier discharge during bleached pulp production, is to coordinate, and perhaps combine, such a treatment solution with the design, permitting, construction and startup of the treatment plant that is the subject of the compliance schedule. Therefore, if the Final Order provides for the inclusion of the raw water clarifier discharge as part of the Mill's process wastewater during bleached pulp production (which it should not), then Paragraph 1 of the Requirements should be revised to state that the compliance schedule also applies to the cessation of discharge of effluent with levels of TSS greater than the limitations for TSS set forth in Effluent Limitation A.1 of the Final Order.

Should Freshwater determine that it would comply with a TSS limit that combines raw water clarifier discharge with the Mill's process wastewater during bleached pulp production in some way other than in conjunction with the proposed treatment plant, then it would notify the Water Board at the time it submits the preliminary project proposal for the treatment plant. At that time, the Water Board could, if necessary, modify the schedule for compliance with the proposed

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TSS limit during bleached pulp production – if it is retained in the Final Permit notwithstanding Freshwater's objections – in a manner appropriate to the proposed compliance approach.

Should the Water Board provide in the Final Permit that the raw water clarifier discharge is not to be considered part of the process wastewater and that effluent discharge limits for TSS in raw water clarifier discharge are found solely in Table 9 of the Draft Permit, then the Water Board may disregard the comments in this subparagraph b.

Paragraph 3 details the interim effluent limitations for BOD<sub>5</sub> and TSS during unbleached pulp production.

a. The date referred to in this paragraph (May 31, 2011) is incorrect and should be corrected to read "October 21, 2013" (subject to the comments above regarding potential adjustment of the schedule).

b. Should the Final Permit provide for the combination of the raw water clarifier discharge with the Mill's process wastewater during bleached pulp production, then Paragraph 3 of the Draft CDO should be revised to set forth interim monthly average and maximum daily limits for TSS during bleached pulp production. In this event there would need to be separate limits for the wet and dry seasons, as those seasons are defined in Table 9 of the Draft Permit, in order to address the seasonal fluctuations in TSS levels driven by weather and the flow rate of the Mad River.

Footnote 1, referenced in the unbleached pulp interim effluent limitations table that is part of Paragraph 3, should be revised to indicate that the monthly discharge of TSS during production of bleached pulp is obtained pursuant to the same formula shown, except that in this event, N is the number of days of production of bleached pulp in any calendar month.

Should the Water Board provide in the Final Permit that the raw water clarifier discharge is not to be considered part of the process wastewater and that effluent discharge limits for TSS in raw water clarifier discharge are found solely in Table 9 of the Draft Permit, then the Water Board may disregard the comments provided in this subparagraph b.

Paragraph 4 should be revised to add that Freshwater shall not incur mandatory minimum penalties for violations of effluent limitations for TSS during the production of bleached pulp so long as it complies, during the production of bleached pulp, with the interim limits for TSS and the compliance schedule for achieving those limits included in the CDO. Should the Water Board provide in the Final Permit that the raw water clarifier discharge is not to be considered part of the process wastewater and that effluent discharge limits for TSS in raw water clarifier discharge are found solely in Table 9 of the Draft Permit, then the Water Board may disregard this comment.

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

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On behalf of Freshwater, I appreciate the opportunity to comment on the Draft CDO. Please contact me or Freshwater's Bob Simpson at 707-621-2020, if you have any questions about the comments in this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "David D. Cooke". The signature is written in a cursive style with a large initial "D".

David D. Cooke

DDC

cc: Bob Simpson  
Jim Lund  
Charles Benbow  
Tony Jaegel