

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2024-0110
)	
CLEARWATER PAPER CORPORATION,)	CONSENT AGREEMENT
)	
)	
Lewiston, Idaho,)	
)	
_____ Respondent.		

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9609.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Clearwater Paper Corporation (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”), has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA and CERCLA are proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of EPCRA and CERCLA together with the specific provisions of EPCRA and CERCLA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6 require the person in charge of a facility to immediately notify the National Response Center (“NRC”) as soon as she has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity over any 24-hour period, as listed in 40 C.F.R. § 302.4.

3.2 Under Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, if a release of an extremely hazardous substance in an amount equal to or greater than the reportable quantity occurs from a facility at which a hazardous chemical is produced, used, or stored, and the release requires, or occurred in a manner that would require, notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility shall immediately notify the State Emergency Response Commission (“SERC”) of any state likely to be affected by the release and the Local Emergency Planning Committee (“LEPC”) for any area likely to be affected by the release.

3.3 Under Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, the owner or operator of the facility must provide a written follow-up emergency notice (or notices, as more information becomes available) to the SERC and LEPC as soon as practicable after a release which required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

3.4 Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, equipment, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

3.5 Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

3.6 Subject to certain exclusions not relevant here, Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines “release” as any spilling, leaking, pumping, pouring, emitting,

emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.7 Under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), the term “release” includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

3.8 The term “owner or operator” is defined in relevant part under Section 101(20)(A)(ii) of CERCLA, 42 U.S.C. § 9601(20)(A)(ii), to mean, “in the case of an onshore facility or an offshore facility, any person owning or operating such facility.”

3.9 The term “person” is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), to mean, among other things, any corporation.

Factual Allegations

3.10 Respondent is a corporation operating under the laws of the State of Delaware and authorized to do business in the State of Idaho.

3.11 Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.12 At all times relevant to this Consent Agreement, Respondent was the owner or operator of a pulp and paperboard manufacturing facility located at 803 Mill Road, Lewiston, Idaho (“the Facility”).

3.13 The Facility is a “facility” as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3.14 At all times relevant to this Consent Agreement, Respondent was in charge of the Facility.

3.15 At all times relevant to this Consent Agreement, Respondent produced, used, or stored chlorine at the Facility.

3.16 Chlorine is a “hazardous substance” listed in 40 C.F.R. Part 302, Table 302.4, and an “extremely hazardous substance” listed in 40 C.F.R. Part 355, Appendices A and B, with a reportable quantity of 10 pounds over any continuous 24-hour period.

3.17 At all times relevant to this Consent Agreement, and for the purposes of providing notice under Section 304(a) and (c) of EPCRA, 42 U.S.C. § 11004(a) and (c), the Idaho Office of Emergency Management was the SERC for Idaho, and the Nez Perce County Office of Emergency Management was the LEPC for Nez Perce County.

3.18 For the purposes of providing notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), in the State of Idaho, both the SERC and LEPC may be notified by contacting the Idaho State Communications Center.

RELEASE 1: COUNTS 1-4

3.19 Paragraphs 3.1 through 3.18 are incorporated herein by reference as if they were set forth in their entirety.

3.20 On September 16, 2019, a release (or releases) occurred from the Facility that resulted in approximately 53 to 171 pounds of chlorine emitted to the air over a 24-hour period (“Release 1”).

3.21 Release 1 was a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

3.22 Release 1 surpassed the reportable quantity for chlorine.

3.23 Respondent had knowledge that Release 1 surpassed the reportable quantity for chlorine no later than July 17, 2020, where Respondent knew or should have known that over 10 pounds of chlorine was released over a 24-hour period.

3.24 Release 1 required immediate notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), thus requiring immediate notification under Section 304(a) of EPCRA, 42 U.S.C. 11004(a).

3.25 Respondent reported the release to the NRC, SERC, and LEPC on July 31, 2020.

3.26 By failing to immediately notify the NRC as soon as Respondent knew or should have known that Release 1 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

3.27 By failing to immediately notify the SERC and the LEPC as soon as Respondent knew or should have known that Release 1 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and 40 C.F.R. §§ 355.42(a) and 355.43(a).

3.28 Respondent submitted a follow-up notification regarding Release 1 to the SERC and LEPC on August 3, 2020.

3.29 Therefore, Respondent failed to submit a written follow-up notification as soon as practicable to the SERC and to the LEPC, each of which constituted an independent violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. §§ 355.42(a) and 355.43(b).

RELEASE 2: COUNTS 5-8

3.30 Paragraphs 3.1 through 3.18 are incorporated herein by reference as if they were

set forth in their entirety.

3.31 On September 20, 2019, a release (or releases) occurred from the Facility that resulted in approximately 122 pounds of chlorine emitted to the air over a 24-hour period (“Release 2”).

3.32 Release 2 was a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

3.33 Release 2 surpassed the reportable quantity for chlorine.

3.34 Respondent had knowledge that Release 2 surpassed the reportable quantity for chlorine no later than July 17, 2020, where Respondent knew or should have known that over 10 pounds of chlorine was released over a 24-hour period.

3.35 Release 2 required immediate notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), thus requiring immediate notification under Section 304(a) of EPCRA, 42 U.S.C. 11004(a).

3.36 Respondent reported the release to the NRC, SERC, and LEPC on July 31, 2020.

3.37 By failing to immediately notify the NRC as soon as Respondent knew or should have known that Release 2 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

3.38 By failing to immediately notify the SERC and the LEPC as soon as Respondent knew or should have known that Release 2 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and 40 C.F.R. §§ 355.42(a) and 355.43(a).

3.39 Respondent submitted a follow-up notification regarding Release 2 to the SERC and LEPC on August 3, 2020.

3.40 Therefore, Respondent failed to submit a written follow-up notification as soon as practicable to the SERC and to the LEPC, each of which constituted an independent violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. §§ 355.42(a) and 355.43(b).

RELEASE 3: COUNTS 9-12

3.41 Paragraphs 3.1 through 3.18 are incorporated herein by reference as if they were set forth in their entirety.

3.42 On January 5 and January 6, 2020, a release (or releases) occurred from the Facility that resulted in approximately 24 to 55 pounds of chlorine emitted to the air over a 24-hour period (“Release 3”).

3.43 Release 3 was a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

3.44 Release 3 surpassed the reportable quantity for chlorine.

3.45 Respondent had knowledge that Release 3 surpassed the reportable quantity for chlorine no later than July 17, 2020, where Respondent knew or should have known that over 10 pounds of chlorine was released over a 24-hour period.

3.46 Release 3 required immediate notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), thus requiring immediate notification under Section 304(a) of EPCRA, 42 U.S.C. 11004(a).

3.47 Respondent reported the release to the NRC, SERC, and LEPC on July 31, 2020.

3.48 By failing to immediately notify the NRC as soon as Respondent knew or should have known that Release 3 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

3.49 By failing to immediately notify the SERC and the LEPC as soon as Respondent knew or should have known that Release 3 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and 40 C.F.R. §§ 355.42(a) and 355.43(a).

3.50 Respondent submitted a follow-up notification regarding Release 3 to the SERC and LEPC on August 3, 2020.

3.51 Therefore, Respondent failed to submit a written follow-up notification as soon as practicable to the SERC and to the LEPC, each of which constituted an independent violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. §§ 355.42(a) and 355.43(b).

RELEASE 4: COUNTS 13-14

3.52 Paragraphs 3.1 through 3.18 are incorporated herein by reference as if they were set forth in their entirety.

3.53 On January 20 and 21, 2021, a release (or releases) occurred from the Facility that resulted in approximately 12 pounds of chlorine emitted to the air over a 24-hour period (“Release 4”).

3.54 Release 4 was a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

3.55 Release 4 surpassed the reportable quantity for chlorine.

3.56 Respondent had knowledge that Release 4 surpassed the reportable quantity for chlorine on January 21, 2021, no later than 00:15.

3.57 Release 4 required immediate notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), thus requiring immediate notification under Section 304(a) of EPCRA, 42 U.S.C. 11004(a).

3.58 Respondent reported Release 4 to the NRC on January 21, 2021, at 09:17.

3.59 Respondent reported Release 4 to the SERC and LEPC on January 21, 2021, at 09:23.

3.60 By failing to immediately notify the NRC as soon as Respondent knew or should have known that Release 4 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

3.61 By failing to immediately notify the SERC and the LEPC as soon as Respondent knew or should have known that Release 4 was of an amount equal to or greater than the reportable quantity, Respondent violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and 40 C.F.R. §§ 355.42(a) and 355.43(a).

3.62 Under Section 325 of EPCRA, 42 U.S.C. § 11045, Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$69,733 for each day per violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3). After considering these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is \$322,088 (the “Assessed Penalty”). \$84,769 of the Assessed Penalty reflects violations of CERCLA, and \$237,319 of the penalty reflects violations of EPCRA.

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

*Address format for standard delivery
(no delivery confirmation requested):*

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

*Address format for signed receipt confirmation
(FedEx, DHL, UPS, USPS certified, registered,
etc):*

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

Respondent must note on the check the title and docket number of this action. Respondent must also include a note with the payment indicating that \$84,769 is for the CERCLA penalty and \$237,319 is for the EPCRA penalty.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Erin Williams
U.S. Environmental Protection Agency
Region 10
williams.erin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), and/or Section 109 of CERCLA, 42 U.S.C. § 9609, to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at Henderson.Jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent’s signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys’ fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

May 31, 2024

FOR RESPONDENT:



MICHAEL GADD, Senior Vice President, General Counsel, and Corporate Secretary
Clearwater Paper Corporation

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2024-0110
)	
CLEARWATER PAPER)	FINAL ORDER
CORPORATION,)	
)	
)	
Lewiston, Idaho,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under EPCRA and CERCLA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of EPCRA and CERCLA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Clearwater Paper Corporation, Docket No.: EPCRA-10-2024-0110** was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Emma Yip
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Yip.emma@epa.gov

Michael Gadd, Senior Vice President, General Counsel, and Corporate Secretary
Clearwater Paper Corporation
601 West Riverside, Suite 1100
Spokane, Washington 99201

Michael.gadd@clearwaterpaper.com

Wade Foster
Stoel Rives LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702

Wade.foster@stoel.com

Regional Hearing Clerk
EPA Region 10