

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0041
)	
Billerud Americas Corporation, as successor-in-interest to Verso Corporation Wisconsin Rapids, Wisconsin,)	Proceeding Under Sections 113(a)(1) and (3) and 114(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(1) and (3) and 7414(a)(1)
)	
Respondent.)	
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Billerud Americas Corporation (Billerud), the successor-in-interest to Verso Corporation (Verso) and a corporation doing business in Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The CAA is designed to, among other things, protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

10. Each state must submit to the Administrator of EPA (the Administrator) a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.

11. On March 9, 1983, EPA approved Wisconsin Rules NR 431.05 and NR 431.04 as part of the federally enforceable Wisconsin State Implementation Plan (SIP). 48 Fed. Reg. 9860 (Mar. 9, 1983).

12. Wisconsin Rule NR 431.04 states that no owner or operator of a direct or portable source on which construction or modification was commenced on or before April 1, 1972, may

cause or allow emissions of density greater than 40% opacity.

13. Wisconsin Rule NR 431.05 states that no owner or operator of a direct or portable source on which construction or modification is commenced after April 1, 1972, may cause or allow emissions of density greater than 20% opacity.

14. On May 27, 1999, EPA approved Wisconsin Rule NR 405.08.3 as part of the federally enforceable SIP for Wisconsin. 64 Fed. Reg. 28745 (May 27, 1999).

15. Wisconsin Rule NR 405.08.3 states that a major modification shall apply best available control technology for each air contaminant for which it would be a significant net emissions increase at the source.

16. On January 18, 1995, EPA approved Wisconsin Rule NR 407.09 as part of the federally enforceable SIP for Wisconsin. 60 Fed. Reg. 3538 (Jan. 18, 1995).

17. Wisconsin Rule NR 407.09.2.d requires air permits to include provisions consistent with any condition from a previously issued air pollution control permit that is still applicable to that stationary source.

18. On April 27, 1995, EPA approved Wisconsin Rules NR 439.09 and NR 439.095 as part of the federally enforceable SIP for Wisconsin. 60 Fed. Reg. 20643 (Apr. 27, 1995).

19. Wisconsin Rule NR 439.09 lists the methods and procedures that an owner or operator shall use to install, calibrate, operate, and maintain a continuous emissions monitoring system, including one used for measuring opacity.

20. Wisconsin Rule NR 439.095 lists the types of stationary sources that shall install, calibrate, operate, and maintain equipment to continuously monitor emissions, and specifies the pollutants to be monitored by the equipment.

21. Wisconsin Rule NR 439.095.1.g requires direct stationary sources, required under an enforcement agreement or which have elected to use continuous emission monitoring to determine compliance with applicable rules, to monitor for the parameters and pollutants for which they have installed the monitoring device, including for opacity.

22. Wisconsin Rule NR 439.095.5.a.1 requires the owner or operator of any steam generating unit which has a total heat input capacity equal to or greater than 250 million Btu per hour to install, calibrate, maintain, and operate a continuous monitoring system for the measurement of opacity.

23. On April 27, 1995, EPA approved Wisconsin Rule NR 439.06.9.a.1 as part of the federally enforceable SIP for Wisconsin. 60 Fed. Reg. 20643 (Apr. 27, 1995).

24. Wisconsin Rule NR 439.06.9.a.1 lists Method 9 as a method which shall be used to determine compliance with a visible emission limitation.

25. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including “synthetic minor sources.” The purpose of Title V is to ensure that all applicable requirements are included in the Title V operating permit for the source.

26. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. § 70.7(b), state that after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate the source except in compliance with its Title V permit.

27. EPA approved Wisconsin’s Title V operating permit program on an interim basis on March 6, 1995, and fully approved the program on December 4, 2001. *See* 60 Fed. Reg. 12128, and

66 Fed. Reg. 62951. Wisconsin's Title V operating permit program regulations are codified at Wisconsin Rule NR 407, and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C § 7413(a)(3).

28. The Administrator may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19

29. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

30. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

31. The Respondent owns and operated a pulp and paper mill located at 950 4th Avenue North in Wisconsin Rapids, Wisconsin (the Verso Facility or the Pulp Mill).

32. On or about July 31, 2020, the Pulp Mill operations were discontinued and are still not in operation.

33. On or about March 31, 2022, Verso merged with West Acquisition Merger Sub, Inc. with the resulting corporation known as Billerud Americas Corporation.

34. Billerud is the successor-in-interest to Verso.

35. At the Pulp Mill, the Respondent owns and operated the #1 kraft chemical recovery unit (Recovery Furnace 1), #2 kraft chemical recovery unit (Recovery Furnace 2), #3 kraft chemical recovery unit (Recovery Furnace 3), boiler B20 (Power Boiler 1) and boiler B21 (Power Boiler 2).

36. The Wisconsin Department of Natural Resources (WDNR) issued Title V Operating Permit Renewal No. 772010030-P10 to the Respondent's Facility on September 13, 2016 (Title V Permit).

37. Condition I.G.2.a.1 of the Title V Permit requires that emissions from Recovery Furnaces 1 and 2 be limited to 20 percent opacity, pursuant to the Wisconsin SIP at Wisconsin Rule NR 431.05.

38. Condition I.G.2.b.2 of the Title V Permit requires proper operation and maintenance of the continuous opacity monitors (COM) on each of the stacks serving Recovery Furnaces 1 and 2 in order to demonstrate compliance with the 20 percent opacity limit for each emissions unit, pursuant to the Wisconsin SIP, at Wisconsin Rules NR 439.095 and 439.09.

39. Condition I.H.2.a.1 of the Title V Permit states that emissions from Recovery Furnace 3 are subject to a Best Available Control Technology opacity limit of 20 percent at any time that gas is being actively vented to the stack, pursuant to the Wisconsin SIP at Wisconsin Rules NR 405.08.3 and NR 407.09.2.d.

40. Recovery Furnaces 1 and 3 share a common stack and COM.

41. Condition I.A.2.a.1 of the Title V Permit requires that emissions from Power Boilers 1 and 2 be limited to 40 percent opacity, pursuant to the Wisconsin SIP at Wisconsin Rule NR 431.04(1).

42. Condition I.A.2.a.2 of the Title V Permit requires proper calibration, operation, and maintenance of all monitoring equipment needed to continuously monitor visible emissions from the stacks serving Power Boilers 1 and 2, pursuant to the Wisconsin SIP, at Wisconsin Rule NR 439.095.5.a.1.

43. Condition I.G.2.c.1 of the Title V Permit requires use of EPA Method 9 whenever visible emissions testing is required, at Recovery Furnace 1 and Recovery Furnace 2, pursuant to the Wisconsin SIP, at Wisconsin Rule NR 439.06.9.a.1.

44. Condition I.H.2.c.1 of the Title V Permit requires use of EPA Method 9 whenever visible emissions testing is required, at Recovery Furnace 3, pursuant to the Wisconsin SIP, at Wisconsin Rule NR 439.06.9.a.1.

45. On July 1, 2021, EPA issued to Verso a Notice and Finding of Violation.

46. EPA alleges the following violations:

- a. Exceeding 20 percent opacity as a six-minute average from the stack serving Recovery Furnace 1 and 3, 137 times from July 1, 2016 to December 31, 2019 in violation of the Wisconsin SIP at Rules NR 431.05, 405.08.3, and 407.09.2.d, and conditions I.G.2.a.1 and I.H.2.a.1 of its Title V permit;
- b. Exceeding 20 percent opacity as a six-minute average from the stack serving Recovery Furnace 2 108 times from July 1, 2016 to December 31, 2019 in violation of the Wisconsin SIP at Rule NR 431.05 and condition I.G.2.a.1 of its Title V permit;
- c. Exceeding 40 percent opacity from the Power Boiler 1 stack 28 times from July 1, 2016 to December 31, 2019 in violation of the Wisconsin SIP at Rule NR

431.04 and condition I.A.2.a.1 of its Title V permit;

- d. Exceeding 40 percent opacity as a six-minute from the Power Boiler 2 stack 33 times from July 1, 2016 to December 31, 2019 in violations of Wisconsin SIP, Rule NR 431.04 and condition I.A.2.a.1 of its Title V permit; and
- e. Failing to take opacity readings when they were required, 42 times, at Recovery Furnaces 1, 2 and 3, from January 16, 2018 to February 12, 2019, in violation of Wisconsin SIP, Rule NR 439.06.9.a.1, and its Title V permit.

47. On July 26, 2021, Verso provided to EPA technical information regarding the allegations in the July 1, 2021 Notice and Finding of Violation. As part of that filing, Verso provided information demonstrating that it was not required to take opacity readings on 2 of the 42 occasions described as violations in Paragraph 46 for failure to take opacity readings when they were required because the meter was operating properly. On July 29, 2021 representatives of Verso and EPA discussed the July 1, 2021 Notice and Finding of Violation.

48. The Respondent violated the Wisconsin SIP at Wisconsin Rules NR 431.04, 431.05, 405.08.3, 407.09.2.d, and 439.06.9.a.1, and conditions I.A.2.a.1, I.G.2.a.1, I.G.2.c.1, I.H.2.a.1, and I.H.2.c.1 of its Title V permit, specific to the violations described in Paragraph 46.

Civil Penalty

49. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and the Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$271,377.

50. Penalty Payment. Respondent agrees to:

- a. Pay the civil penalty of \$271,377 within 30 days after the effective date of

this CAFO.

b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
Wire transfers made through Fedwire	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field

Payment Method	Payment Instructions
<p>Cashier's or certified check payable to "Treasurer, United States of America."</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979078 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

51. Within 24 hours of the payment of the civil penalty, Respondent must send a notice of payment that states the Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Richard Clarizio
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
clarizio.richard@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

52. This civil penalty is not deductible for federal tax purposes.

53. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the

penalty with interest, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

54. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

55. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: clarizio.richard@epa.gov (for Complainant), and brayback@pierceatwood.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

56. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

57. The effect of the settlement described in this CAFO is conditioned upon the accuracy of Respondent's representations to EPA.

58. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

59. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in Paragraph 56 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

60. Respondent certifies that it is complying fully with the Wisconsin SIP and the Title V permit.

61. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e). The terms of this CAFO bind Respondent, its successors, and assigns.

62. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

63. Each party agrees to bear its own costs and attorney's fees in this action.

64. This CAFO constitutes the entire agreement between the parties.

Billerud Americas Corporation, Respondent

Date

Kevin Kuznicki, President
Billerud Americas Corporation

Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Billerud Americas Corporation
Docket No. CAA-05-2023-0041**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5