

IN THE CIRCUIT COURT FOR ALLEGANY COUNTY

MARYLAND DEPARTMENT
OF THE ENVIRONMENT
1800 Washington Blvd.
Baltimore, Maryland, 21230

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Plaintiff,

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Civil Action No.

v.

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VERSO LUKE LLC
300 Pratt Street
Luke, Maryland 21540

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Serve on: Cogency Global Inc.
1519 York Rd.
Lutherville, Maryland 21093

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VERSO CORPORATION
300 Pratt Street
Luke, Maryland 21540

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Serve on: National Corporate Research Ltd.
850 New Burton Rd., Suite 201
Dover, Delaware 19904

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Defendants.

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**COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL PENALTIES**

The Maryland Department of the Environment (“MDE” or “Department”),
through counsel, files this complaint seeking injunctive relief and civil penalties

against Verso Luke LLC and Verso Corporation (“Defendants”) for the following reasons:

INTRODUCTION

1. The Department brings this action to address the Defendants’ past and present discharge of pollution into the North Branch Potomac River in violation of the laws of this State.

2. The Department is asking the Court to enjoin the Defendants from further unauthorized discharge into the waters of the State of Maryland and to order Defendants to remediate environmental harm caused by unlawful discharges.

3. The Department is also asking the Court to enter a judgment assessing civil penalties for the conduct alleged in this complaint.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this matter under §§ 1-501 and 4-401 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

5. The Court has personal jurisdiction over the Defendants pursuant to §§ 6-102 and 6-103 of the Courts and Judicial Proceedings Article because the Defendants have an interest in property in Maryland and conducted business in Maryland at all times relevant to the complaint.

6. Venue is proper in this Court pursuant to §§ 6-201 and 6-202 of the Courts and Judicial Proceedings Article because the Defendants engaged in business activities relevant to this complaint in Allegany County and discharged pollution into the waters of the State of Maryland that are located in Allegany County.

PARTIES

7. Plaintiff is a State agency within the Executive Branch of the State of Maryland. The Secretary of the Environment is responsible for enforcing the provisions of the Environment Article of the Annotated Code of Maryland and the rules and regulations adopted under the Environment Article.

8. Defendant Verso Luke LLC is a limited liability company organized in Delaware.

9. Defendant Verso Luke LLC owns the Luke Paper Mill, which includes facilities located in Allegany County, Maryland.

10. Defendant Verso Corporation is incorporated in the State of Delaware and is the parent company of Verso Luke LLC.

11. Defendant Verso Corporation at all times relevant to this Complaint has been involved in managing operations at the Luke Paper Mill.

STATUTORY AND REGULATORY AUTHORITY

12. The Department, pursuant to § 1-301 and §§ 9-334 through 9-344 of the Environment Article and the Code of Maryland Regulations (COMAR) at

26.08.01, is charged with the responsibility of enforcing Title 9, Subtitle 3 of the Environment Article, which governs water pollution.

13. Section 9-322 of the Environment Article prohibits the discharge of any pollutant to waters of the State unless authorized by § 9-323 of the Environment Article.

14. Environment § 9-101(b) defines the term “discharge” to mean: “(1) the addition, introduction, leaking, spilling, or emitting of any pollutant to waters of the State; or (2) the placing of a pollutant in a location where the pollutant is likely to pollute.”

15. Environment § 9-101(g) defines the term “pollutant” to mean: “(1) any waste or wastewater that is discharged from: (i) any publicly owned treatment works; or (ii) an industrial source, or (2) any other liquid, gaseous, solid, or other substances which will pollute any waters of the State.”

16. Environment § 9-101(h) defines the term “pollution” to mean “any contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, liquid, gaseous, solid, radioactive, or other substance into any waters of the State as will render the waters harmful, or detrimental to: (1) public health, safety, or welfare; (2) domestic, commercial, industrial, agricultural, recreational,

other legitimate beneficial uses; (3) livestock, wild animals, birds; or (4) fish other aquatic life.”

17. Environment § 9-101(l) defines the term “Waters of the State” to include: “(1) both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and (2) the flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.”

18. Maryland’s state boundary extends to the low water mark on the southern shore of the North Branch Potomac River.

19. Pursuant to Environment § 9-339, a court shall grant injunctive relief, without the necessity of showing a lack of adequate remedy at law, upon a showing that a person is violating a provision of Title 9, Subtitle 3.

20. Pursuant to Environment § 9-342(a), a person who violates any provision of Title 9, Subtitle 3, or any rule, regulation, order, or permit adopted or issued under Title 9, Subtitle 3, is liable for a civil penalty not exceeding \$10,000, to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation under Title 9, Subtitle 3.

FACTUAL ALLEGATIONS

Luke Paper Mill

21. The Luke Paper Mill is owned by Defendant Verso Luke LLC.
22. The Luke Paper Mill is located in Luke, Maryland, and Beryl, West Virginia, with facilities spanning the North Branch Potomac River.
23. Paper products were manufactured at the Luke Paper Mill until the Mill closed on June 30, 2019.

North Branch Potomac River

24. The North Branch Potomac River has a Designated Use Class of I-P, meaning that certain water quality standards apply to protect the stream for water contact recreation, aquatic life, and use as a public water supply. COMAR 26.08.02.08R.
25. For Class I-P waters, the dissolved oxygen concentration may not be less than 5 milligrams per liter (“mg/L”) at any time. COMAR 26.08.02.03-3A(2), B(1).
26. For Class I-P waters, the pH may not be less than 6.5 or greater than 8.5 standard units (“s.u.”). COMAR 26.08.02.03-3A(4), B(1).
27. For Class I-P waters, color may not exceed 75 units as a monthly average, measured in Platinum Cobalt Units (“pt-co units”). COMAR 26.08.02.03-3A(6), B(1).

Black Discharge from the Luke Paper Mill to the Potomac River

28. On April 6, 2019, a fisherman observed and reported to the State of Maryland that “pure black waste” was entering the North Branch Potomac River near Luke Paper Mill.

29. In response to the fisherman’s complaint, a representative of the Department inspected the site on April 9 and April 25, 2019, and found black liquid seeping from the southern riverbank into the river.

30. A sample taken from a pool of seepage during the April 9, 2019 inspection had a pH of 11.8 s.u. and a dissolved oxygen concentration of 1.65 mg/L.

31. A sample taken from a pool of seepage during the April 25, 2019 inspection had a pH of 10.76 s.u. and a dissolved oxygen concentration of 0.67 mg/L.

32. Samples also had high sulfur and sodium content.

33. The black substance was and is seeping out of approximately 500 feet of riverbank.

34. Some or all of these seeps are below the low water mark on the southern shore of the North Branch Potomac River, within the boundary of the State of Maryland.

35. On April 25, 2019, the Department directed Defendants to determine the source of the unauthorized discharge, to sample and test the waters, to take steps

to contain and remove the discharge, and to submit a follow up report with investigation findings.

36. In an effort to contain the discharge, Defendants installed sump pumps and collected some of the black liquid as it seeped from the riverbank.

37. The sump pump system recovers some, but not all, of the discharge.

38. In addition, the sump pumps can only operate when the river is below a certain elevation.

39. The Department received additional complaints of black discharge into the river during the summer and fall of 2019.

40. A Department inspector visited the site on July 2, 2019, but was unable to see the discharge location because the river was at a high elevation and the discharge area was covered with water.

41. A representative of the Department also inspected the site on September 9, 2019, and observed a black discharge pooling along the riverbed and in the river.

42. On September 12 and October 24, 2019, a Department inspector returned to the site and again observed black discharge along the riverbed and in the river.

43. During the October 24, 2019 inspection, the MDE inspector took samples.

44. One of the samples had a pH of 12.5 s.u. and a dissolved oxygen concentration of 0.5 mg/L.

45. On November 5, 2019, a Department official inspected the site and observed black discharge along the riverbank and within the river.

46. Department representatives noted the smell of sulfur near the discharge location during the November 5, 2019 visit.

47. An MDE inspector visited the site on November 22, 2019, and observed black discharge along the riverbank and in the river.

The Discharge Appears to be Pulping Liquor

48. The black discharge appears to be “White,” “Green,” or “Black” liquor, or some combination of these substances.

49. White liquor, Green liquor, and Black liquor are “pulping liquors” that are created during the paper-making process and also sometimes re-used during the paper-making process.

50. White liquor has a high pH and is considered a caustic and corrosive material.

51. The Material Safety Data Sheet for White liquor states that it has a pH of 13-14, and causes severe skin and eye burns, as well as severe respiratory tract irritation.

52. The Material Safety Data Sheet for White liquor states that this substance would meet the characteristics of a corrosive waste under the Resource Conservation and Recovery Act ("RCRA") if discarded directly.

53. Green liquor has a high pH and is considered a caustic and corrosive material.

54. The Material Safety Data Sheet for Green liquor states that it has a pH of 11-13, causes severe skin and eye burns, and that inhalation of mist causes severe respiratory tract irritation.

55. The Material Safety Data Sheet for Green liquor states that this substance may meet the characteristics of a corrosive waste under RCRA if discarded directly.

56. Black liquor has a high pH and is considered a caustic and corrosive material.

57. The Material Safety Data Sheet for Black liquor states that it has a pH of 11-13, causes severe skin and eye burns, and that inhalation of mist causes severe respiratory tract irritation.

58. The Material Safety Data Sheet for Black liquor states that it may meet the characteristics of a corrosive waste under RCRA if discarded directly.

59. White liquor, Green liquor, and Black liquor were stored in above-ground storage tanks located in West Virginia near the discharge location.

West Virginia Department of Environmental Protection

60. On November 4, 2019, the West Virginia Department of Environmental Protection issued an order to the Defendants noting violations of West Virginia's storage tank laws.

61. The West Virginia Department of Environmental Protection ordered Defendants to empty the above-ground storage tanks on the West Virginia side of the Luke Paper Mill.

62. In response to this order, the Defendants piped material from above-ground storage tanks in West Virginia to tanks in Maryland.

Heath Risks & Signage

63. On November 5, 2019, representatives from MDE and the Maryland Department of Heath visited the site of the discharge.

64. Due to the high pH of the discharge material, physical contact with the discharge could result in chemical burns.

65. In light of this potential health risk, on November 7, 2019, MDE, through counsel, directed the Defendants to put up signs in the vicinity of the seepage stating: "Keep Out, No Trespassing, Hazardous Materials Present, Do Not Drink or Have Contact with the Water in the Immediate Area."

66. On November 14, 2019, the Defendants' counsel advised that Defendants had put up signs stating, "Restricted Area, Do Not Enter," in the vicinity of the discharge, but would not put up signs with the language directed by MDE.

Defendants' Investigation

67. On August 15, 2019, the Defendants submitted to MDE an investigation plan aimed at determining the source of the discharge.

68. On October 17, 2019, the Defendants notified the Department that its contractor, TRC, had completed the field work contemplated by the investigation plan, and that TRC was working to prepare a report of investigation results.

69. On November 26, 2019, the Defendants provided MDE with TRC's report of investigation results.

70. Although the report does not identify the specific source of the discharge, it notes that "Pulping liquor has been identified in the subsurface" near the location of the black liquid discharge.

71. The report notes that seven seeps were observed to be discharging into the North Branch Potomac River.

72. The report notes that samples of the seven seeps identified in the TRC investigation showed elevated pH, with samples ranging from 10.05 to 12.26 s.u.

73. The report notes that samples of the seven seeps identified in the TRC investigation showed discoloration, with samples ranging from 2,150 to 9,690 pt-co units.

74. The report recommends additional investigation of the site but did not identify remedial steps that would stop the discharge.

75. As of the filing of this complaint, black discharge continues to seep from the riverbank into the North Branch Potomac River.

COUNT I
(Discharge of Pollution into Waters of the State)

76. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

77. The black liquid, believed to be pulping liquor, that has been, and is being, discharged into the North Branch Potomac River is a pollutant, as that term is defined by § 9-101(g) of the Environment Article.

78. The North Branch Potomac River is a water of the State of Maryland, as that term is defined by Environment § 9-101(l).

79. Pollutants are discharging from seeps on Defendants' property located within the State of Maryland.

80. Pollutants are discharging directly from Defendants' property into the North Branch Potomac River.

81. The Defendants do not have any permit, including a permit under § 9-323 of the Environment Article, to discharge this pollutant into the North Branch Potomac River.

82. The Defendants violated, and are presently violating, § 9-322 of the Environment Article, by discharging pollutants into the North Branch Potomac River without a permit.

83. Injunctive relief is warranted under § 9-339 of the Environment Article to require Defendants to stop the ongoing discharge of pollutants and remediate the environmental harm caused by Defendants' unlawful discharges.

84. Civil penalties in the amount of up to \$10,000 are warranted under § 9-342(a) of the Environment Article for each day pollutants have been discharged into the river without a permit.

85. Defendants have discharged pollutants into the North Branch Potomac River, in violation of Title 9, Subtitle 3, daily from at least April 6, 2019, to the present.

REQUEST FOR RELIEF

WHEREFORE, the Department respectfully requests that this Court:

(a) Order injunctive relief requiring the Defendants to stop discharging pollutants into the waters of the State of Maryland and remediate the environmental harm caused by its unlawful discharges;

(b) To the extent the Defendants cannot immediately stop the discharge, order Defendants to undertake measures to reduce as much as possible the amount of pollutant discharged into waters of the State of Maryland until Defendants are able to fully stop the discharge;

(c) To the extent the Defendants cannot immediately stop the discharge, order the Defendant to post signs warning of the risks of exposure to the discharge, such as signs stating as follows: "Keep Out, No Trespassing, Hazardous Materials Present, Do Not Drink or Have Contact with the Water in the Immediate Area";

(d) Enter judgment against the Defendants for civil penalties under § 9-342 of the Environment Article; and

(e) Grant such other relief as this Court deems just and equitable.

Respectfully submitted,

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