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17 GREENPEACE, INC. and  
18 PORT TOWNSEND AIRWATCHERS

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA

21 CENTER FOR BIOLOGICAL DIVERSITY,  
22 GREENPEACE, INC., and PORT  
23 TOWNSEND AIRWATCHERS,

24 Plaintiffs,

25 v.

26 UNITED STATES ENVIRONMENTAL  
27 PROTECTION AGENCY and LISA P.  
28 JACKSON, Administrator, United States  
Environmental Protection Agency,

Defendants.

Civil Action No. **11**

**6059**

**COMPLAINT**

[Clean Air Act Citizen Suit  
Under 42 U.S.C. § 7604; Administrative  
Procedure Act, 5 U.S.C. §§ 701 et seq.]

**FILED**  
DEC - 6 2011

RICHARD W. WIEKLING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**E-filing**

**EDL**

1 Plaintiffs Center for Biological Diversity, Greenpeace, Inc. and Port Townsend  
2 Airwatchers allege as follows:

### 3 INTRODUCTION

4 1. The United States is the world's largest producer of paper products. This pulp  
5 and paper manufacturing sector is an energy-intensive industry. In 2006, the last year for  
6 which the United States Energy Information Administration data are available, the forest  
7 products industry was the third largest consumer of energy within the manufacturing sector,  
8 following petroleum and chemical industries.

9 2. Kraft pulp mills, which belong in the pulp and paper manufacturing sector, emit a  
10 host of pollutants into the air, including particulate matter; pollutants called total reduced sulfur  
11 that produce highly malodorous emissions, including hydrogen sulfide, methyl mercaptan, and  
12 dimethyl sulfide; volatile organic compounds; sulfur dioxide; nitrogen oxides; carbon  
13 monoxide; and others, including methanol, acetone, methyl ethyl ketone, and acetaldehyde.

14 3. Kraft pulp mills also consume energy generated off-site and on-site from fossil  
15 fuels, as well as energy generated on-site from biomass, including wood waste. Energy  
16 generation both on- and off-site produces significant amounts of greenhouse gas emissions,  
17 predominantly carbon dioxide.

18 4. Plaintiffs bring this citizen suit under section 304(a)(2) of the Clean Air Act  
19 ("Act"), 42 U.S.C. § 7604(a)(2), against the United States Environmental Protection Agency  
20 ("EPA") and Lisa P. Jackson ("Administrator"), in her official capacity as the Administrator of  
21 EPA. This action is also brought under the Administrative Procedure Act, 5 U.S.C. §§ 701-06.  
22 This complaint seeks to compel the Administrator to fulfill her mandatory duty to review the  
23 new source performance standards ("NSPS") for new and modified kraft pulp mills. Section  
24 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B). EPA has not reviewed these rules,  
25 designed to reduce harmful emissions from kraft pulp mills, for more than 25 years, even  
26 though the Act requires the agency to conduct a review at least every eight years. Because of  
27 its failure to review the NSPS, EPA has also failed to determine whether EPA should revise the  
28 rules to protect public health and welfare by minimizing pollution with up-to-date technology.

1 Such technology has been developed and adequately demonstrated during the intervening 25  
2 years.

3 5. Because EPA has failed to meet its statutory duties, EPA's current NSPS for  
4 kraft pulp mills regulate only two of the many pollutants they emit – particulate matter and  
5 total reduced sulfur. Among the unregulated pollutants that kraft pulp mills emit are  
6 greenhouse gases, which EPA has determined endanger the public health and welfare of current  
7 and future generations.

#### 8 **JURISDICTION AND NOTICE**

9 6. This Court has jurisdiction over the subject matter of this action pursuant to  
10 section 304(a)(2) of the Act, 42 U.S.C. § 7604(a)(2); 5 U.S.C. § 706 (Administrative Procedure  
11 Act); 28 U.S.C. §§ 1331 (actions arising under the laws of the United States), 2201  
12 (declaratory relief), and 2202 (injunctive relief).

13 7. On September 26, 2011, Plaintiffs gave notice to the Administrator of their intent  
14 to file suit, as section 304(b)(2) of the Act, 42 U.S.C. § 7604(b)(2), requires. A copy of the  
15 notice is attached as Exhibit A and incorporated by reference. More than sixty days have  
16 passed since Plaintiffs provided this notice, and EPA has not carried out its duty to review the  
17 NSPS for new and modified kraft pulp mills and to determine whether revisions are necessary  
18 to those rules.

#### 19 **VENUE**

20 8. Venue is proper in this judicial district pursuant to section 304(a) of the Act, 42  
21 U.S.C. § 7604(a), and 28 U.S.C. § 1391(e)(3). Defendants are EPA, an agency of the United  
22 States, and EPA's Administrator, who is an officer or employee of the United States sued in  
23 her official capacity. Plaintiff Greenpeace, Inc. ("Greenpeace") resides in this district.

#### 24 **INTRADISTRICT ASSIGNMENT**

25 9. This case should be assigned to either the San Francisco Division or the  
26 Oakland Division because Defendant EPA has an office in the City and County of San  
27 Francisco.

1 **PARTIES**

2 10. Plaintiff Center for Biological Diversity (“the Center”) is a non-profit, public  
3 interest organization with approximately 37,000 members. The Center’s mission is to ensure  
4 the preservation, protection, and restoration of biodiversity, native species, ecosystems, public  
5 lands and waters, and public health through science, policy, and environmental law. Based on  
6 the understanding that the health and vigor of human societies and the integrity and wildness of  
7 the natural environment are closely linked, the Center is working to secure a future for animals  
8 and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for  
9 a healthy, livable future for all of us.

10 11. The Center has developed several different practice areas and programs. One  
11 such area is climate change science, law, and policy, which is coordinated by the Center’s  
12 Climate Law Institute. The overarching goal of the Climate Law Institute is to reduce U.S.  
13 greenhouse gas emissions and other air pollution to protect biological diversity, the  
14 environment, and public health. Specific objectives include securing protection for species  
15 threatened by the impacts of global warming, ensuring compliance with applicable law to  
16 reduce greenhouse gas emissions and other air pollution, and educating and mobilizing the  
17 public on global warming and air quality issues. The Center has advocated in numerous local,  
18 state, and federal forums for the availability of improved climate-related information, better  
19 informed decision-making on matters related to climate, the reduction of global warming  
20 pollutants, and other aspects of solutions to the climate crisis. The Center petitioned to have  
21 some of the first species to be threatened by global warming listed under the U.S. Endangered  
22 Species Act, including the polar bear, staghorn and elkhorn corals in the Caribbean, the Pacific  
23 walrus, spotted, bearded, ringed, and ribbon seals, the American pika, and the Kittlitz’s  
24 murrelet, a small seabird that feeds at the base of tidewater glaciers in Alaska. These and  
25 many other species will not survive unless the United States substantially reduces its  
26 greenhouse gas emissions. Among the Center’s many successes is its participation as a party  
27 in *Massachusetts v. EPA*, 549 U.S. 497 (2007), in which the Supreme Court recognized harms  
28

1 associated with climate change as serious and held that EPA had authority to regulate  
2 greenhouse gases as an air pollutant under the Clean Air Act.

3 12. Plaintiff Greenpeace is a California non-profit, public interest organization,  
4 associated with Greenpeace entities throughout the world that together make up the largest  
5 independent direct-action environmental group in the world. Its purpose is to promote and  
6 advocate for the protection and preservation of the environment. For over 40 years,  
7 Greenpeace has worked to promote the use of sustainable consumer goods, reduce air and  
8 water pollution, reduce the use of toxic chemicals, and to preserve our planet's natural habitat,  
9 flora, and fauna. Greenpeace does not accept funding from governments, corporations or  
10 political parties. It relies on about 250,000 individual members in the U.S. (and more than 2.8  
11 million globally), as well as foundation grants. It is committed to stopping global warming and  
12 pollution caused by a multitude of sources, including kraft pulp mills.

13 13. Greenpeace has advocated in numerous local, state, and federal forums for the  
14 availability of improved climate-related information, better informed decision-making on  
15 matters related to impacts to public health and climate, the reduction of global warming  
16 pollutants, toxic chemicals, and other aspects of solutions to the climate crisis. Greenpeace, for  
17 example, along with the Center, was a party to the precedent-setting *Massachusetts v. EPA*  
18 litigation.

19 14. Plaintiff Port Townsend Airwatchers ("PTAW") is a group of over 100 people  
20 who live, visit, recreate, or work in Port Townsend, Washington. Because they breathe the air  
21 in and around Port Townsend, they are affected by emissions from the kraft pulp mill located  
22 in their neighborhood, Port Townsend Paper. PTAW's mission is to improve the air quality in  
23 and around Port Townsend through true grassroots work. The organization's work includes  
24 developing citizen-based science and research, community education, networking, learning,  
25 and taking action in Port Townsend for the improvement of its community and environment.  
26 PTAW works to educate people about the harmful effects of pulp mill emissions to its  
27 community and to health, forests, air, water, and soil.

28

1           15.       PTAW has advocated in numerous local and national forums for the availability  
2 of improved climate-related information, better informed decision-making on matters related to  
3 climate and toxic chemical emissions such as mercury, lead, and dioxin, the reduction of global  
4 warming pollutants, and other aspects of solutions to the global pollution and emission crisis.

5           16.       The interests of the members of each Plaintiff organization have been harmed in  
6 many ways by Defendants' failure to review the NSPS for kraft pulp mills, to determine  
7 whether the NSPS must be revised to reflect the degree of emission limitations achievable  
8 through the application of the best system of emission reduction that has been adequately  
9 demonstrated, and to set NSPS for greenhouse gases and other pollutants that kraft pulp mills  
10 emit but that are not currently regulated.

11          17.       Members of each Plaintiff organization live and work in Port Townsend,  
12 Washington, in direct proximity to Port Townsend Paper, a kraft pulp mill. Some of these  
13 members suffer from asthma and other respiratory illnesses as well as heart and lung diseases,  
14 and are directly affected by the harmful effects that breathing pollution from kraft pulp mills  
15 such as Port Townsend Paper have on the state of their health. The Port Townsend mill, like  
16 other kraft pulp mills, emits particulate matter and smog-precursors, which are associated with  
17 respiratory illnesses, including asthma, lung and heart diseases. In addition, the mill, like other  
18 such mills, emits reduced sulfur compounds, which the NSPS are designed to regulate because  
19 of their impacts on public welfare. Members of each Plaintiff organization also suffer from  
20 offensive odors from the mill that these reduced sulfur compounds cause.

21          18.       The Center, Greenpeace, PTAW, and their respective members are also harmed  
22 by global warming and climate disruption caused by global warming pollution. Members of  
23 each Plaintiff organization have professional, scientific, educational, moral, spiritual, aesthetic,  
24 and other interests in the continuing existence of species and their habitats that global warming  
25 threatens, or have interests in protecting their communities from climate-change related effects  
26 such as rising sea waters or higher frequency of extreme weather events. These members  
27 include, among others, teachers, wildlife photographers, biologists, and other scientists whose  
28 professional activities will be directly affected by the extirpation of species and the degradation

1 of their environment by global warming. For example, Center members have traveled  
2 extensively to observe polar bears and other species that global warming threatens and to study  
3 their habitat, and these members have concrete plans to continue such pursuits. Continued  
4 unabated, greenhouse gas emissions will result in extinction of the polar bear and many other  
5 species, ending these members' ability to enjoy, learn from, and benefit from them. Even short  
6 of full extinction, the Center's members suffer harm when they are unable to view polar bears  
7 and other species, when they encounter starving and otherwise unhealthy bears, and when they  
8 experience the devastating impacts of a world rapidly changing due to global warming. The  
9 members of each Plaintiff organization are also harmed because global warming and increased  
10 drought increase the frequency of wildfires. Moreover, sea level rise threatens coastal  
11 ecosystems, species, and property.

12 19. The Center, Greenpeace, PTAW, and their members are harmed in many  
13 additional ways by global warming and climate disruption. For example, members of each  
14 Plaintiff organization are harmed because global warming intensifies other forms of air  
15 pollution, such as smog and particulate matter pollution, which has severe impacts on human  
16 health, species, and ecosystems, including impacts on the members' own health.

17 20. In some instances the harm from global warming pollution is also strongly local  
18 and regional. For example, the Pacific Northwest has been particularly vulnerable to water  
19 shortages. In the region, including where members of each Plaintiff organization live,  
20 hydrological changes from the impacts of climate change have already resulted in a trend  
21 toward more winter precipitation falling as rain instead of snow, earlier snow melt, and a  
22 resulting increase in spring river flow.

23 21. In sum, the deleterious effects of smog, particulate matter pollution, reduced  
24 sulfur compounds, and greenhouse gases, vitally concern and harm the members of the Center,  
25 Greenpeace, PTAW and their members. Many of these members encourage and rely upon  
26 each Plaintiff organization to take all possible actions to protect the environment from the  
27 impacts of pollution and global warming and suffer great personal distress as the result of the  
28 ongoing harm caused by pollution, global warming, and climate disruption. Defendants'

1 failure to review the NSPS for kraft pulp mills and to determine whether to revise such NSPS,  
2 and to set NSPS for currently unregulated pollutants, including greenhouse gases, to reflect  
3 adequately demonstrated emission reduction systems, injures members of each Plaintiff  
4 organization.

5 22. The Court's grant of any relief that Plaintiffs seek will redress the harms to the  
6 interests of the members of each Plaintiff organization. The mandatory review of the kraft  
7 pulp mill NSPS will require Defendants to assess whether the standards reflect the degree of  
8 emission limitation of air pollutants, including greenhouse gases, that is achievable through  
9 application of the best systems of emission reductions that have been adequately demonstrated.  
10 Since the current NSPS do not reflect those emission reduction systems, revised NSPS for  
11 these pollutants will lead to substantial reductions of emissions that currently harm the interests  
12 of the members of each Plaintiff organization in their own and public health, species and  
13 ecosystem preservation, and the reduction of harm from global climate change.

14 23. Each Plaintiff organization and its members also suffer procedural and  
15 informational injuries because of Defendants' failure to review the NSPS for kraft mills. The  
16 mandatory review and the associated assessment of currently available control technology  
17 provide each Plaintiff and its members the right to participate in the process, to contribute to  
18 and gain information from it, and to carry out their mission to advocate in favor of controlling  
19 pollution. Defendants' failure to carry out this mandatory review process deprives Plaintiffs  
20 and their members of these procedural and informational rights.

21 24. Each Plaintiff brings this action on behalf of its members who would have  
22 standing to sue in their own right. Their individual participation, however, is not necessary for  
23 a just resolution of this case. In addition, the interests that Plaintiffs seek to further in this  
24 action are germane to the purposes and goals of each organization.

25 25. Defendant EPA is the federal agency charged by the Clean Air Act with  
26 protecting and enhancing the quality of the Nation's air resources so as to promote the public  
27 health and welfare and the productive capacity of its population. Section 101(b) of the Act, 42  
28 U.S.C. § 7401(b). Specifically, Defendant EPA is charged with complying with the review

1 and revision process for kraft pulp mills set forth in section 111(b) of the Act, 42 U.S.C. §  
2 7411(b).

3 26. Defendant Lisa P. Jackson is the Administrator of EPA and is sued in her official  
4 capacity. EPA is charged with the duty to review NSPS for kraft pulp mills, and Administrator  
5 Jackson is ultimately responsible for ensuring that EPA complies with and fully implements  
6 the Act as mandated by Congress.

### 7 **THE KRAFT PULP PROCESS**

8 27. Kraft pulp mills “cook” wood chips down into a reduced form that can be used to  
9 make paper. The first step in paper manufacturing is “pulping.” Kraft pulping is the most  
10 common pulping process used in the United States and is responsible for more than 80% of the  
11 total pulp production from virgin fiber. The kraft pulping process converts wood chips to plant  
12 fibers, which are the raw material from which paper products are made, by chemically  
13 dissolving lignin, a glue-like material in wood that binds the fibers together. Kraft mills have  
14 the greatest potential among all pulping processes to produce air pollution because these mills  
15 extensively recover for reuse the chemicals used in the process, which itself consumes energy  
16 and produces significant air pollution.

17 28. Kraft pulp mills thus have long been recognized as a significant source of air  
18 pollution, including but not limited to sulfur, mercury, nitrogen oxides, turpentine, lead, and  
19 dioxin. According to data based on 2002 production, which is the latest reliable information  
20 available, every ton of air-dried pulp produced at kraft pulp mills generates about 0.3 – 3 kg  
21 (0.7 – 6.6 lbs) of reduced sulfur compounds; 75 – 150 kg of particulate matter (165 – 330 lbs);  
22 0.5 – 30 kg (1.1 – 66 lbs) of sulfur oxides from black liquor oxidation; 1 – 3 kg (2.2 – 6.7 lbs)  
23 of nitrogen oxides; 15 kg (33 lbs) of volatile organic compounds from black liquor oxidation;  
24 and 6 kg (13.2 lbs) of turpentine.

25 29. The kraft pulping is an energy-intensive process, which produces considerable  
26 amounts of greenhouse gas emissions. The pulp and paper industry as a whole emitted 57.7  
27 MMT CO<sub>2</sub>eq (million metric tons carbon dioxide equivalent) from fossil fuel sources in 2004,  
28 the most recent year for which reliable data is available. Kraft pulp mills emit greenhouse

1 gases from, for instance, chemical recovery units and lime kilns, which are subject to NSPS.  
2 Their operations are fueled by either fossil-fuel sources or biomass. At some pulp and paper  
3 mills, over half of the energy used is biomass-derived; because inventory methods currently  
4 fail to account for greenhouse gases derived from biogenic origins, no current, official  
5 estimates of the total quantity of greenhouse gas emissions exist. Opportunities for reducing  
6 greenhouse gas emissions from these facilities exist.

#### 7 **STATUTORY AND REGULATORY BACKGROUND**

8 30. The Administrative Procedure Act provides that federal courts may “compel  
9 agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

10 31. The Clean Air Act establishes a comprehensive program to “protect and enhance  
11 the quality of the Nation’s air resources so as to promote the public health and welfare and the  
12 productive capacity of its population.” Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

13 32. Section 111 of the Act, 42 U.S.C. § 7411, requires EPA to publish a list of  
14 categories of sources that, in EPA's judgment, cause or contribute significantly to air pollution  
15 which may reasonably be anticipated to endanger the public health or welfare. Section 111 of  
16 the Act requires EPA to promulgate standards of performance for new stationary sources for  
17 these categories of sources, known as the NSPS. *Id.*

18 33. The NSPS are required to reflect “the degree of emission limitation achievable  
19 through the application of the best system of emission reduction which (taking into account the  
20 cost of achieving such reduction and any non-air quality health and environmental impact and  
21 energy requirements) the Administrator determines has been adequately demonstrated.”  
22 Section 111(a)(1) of the Act, 42 U.S.C. § 7411(a)(1).

23 34. The NSPS apply to owners or operators of any stationary source, “the  
24 construction or modification of which is commenced after the publication of regulations  
25 prescribing a standard of performance.” 42 U.S.C. § 7411(a)(2).

26 35. EPA has promulgated over 70 NSPS, including for kraft pulp mills, 40 C.F.R.  
27 Part 60, Subpart BB. EPA promulgated NSPS for kraft pulp mills in 1978 “based on the  
28

1 Administrator's determination that emissions from kraft pulp mills contribute significantly to  
2 air pollution." 43 Fed. Reg. 7,568 (Feb. 23, 1978).

3 36. Once the NSPS are promulgated, EPA "shall, at least every 8 years, review and,  
4 if appropriate, revise, such standards." Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B). EPA  
5 must consider the emissions limitations and percent reductions in pollution achieved in  
6 practice. *Id.* This requirement ensures that the NSPS continue to reflect the best system of  
7 emission reduction adequately demonstrated.

8 37. The last time the Administrator reviewed the NSPS for kraft pulp mills was in  
9 1986. 51 Fed. Reg. 18,538 (May 20, 1986).

10 38. Twenty-five years have passed without any review or revisions in the NSPS for  
11 kraft pulp mills. Since the last review, technology has continued to improve, as has EPA's  
12 understanding of the public health and welfare impacts of air pollutants and greenhouse gases.

13 39. The NSPS for kraft pulp mills promulgated in 1986 limit only particulate matter  
14 ("PM") and total reduced sulfur ("TRS"), although kraft pulp mills emit a number of other air  
15 pollutants that endanger public health and welfare. Such pollutants that the current NSPS fail  
16 to regulate include volatile organic compounds; nitrogen oxides (which form smog in the  
17 presence of sunlight); carbon monoxide; greenhouse gases; and others, including methanol,  
18 acetone, methyl ethyl ketone, and acetaldehyde.

19 40. There are technologies to reduce emissions of PM and TRS from kraft pulp mills  
20 that have been adequately demonstrated but are not reflected in the current NSPS.

21 41. There are technologies to reduce emissions of other pollutants emitted from kraft  
22 pulp mills that have been adequately demonstrated, but the current NSPS do not regulate these  
23 pollutants.

24 42. For example, as EPA has recognized in publishing a document entitled,  
25 "Available and Emerging Technologies for Reducing Greenhouse Gas Emissions for the Pulp  
26 and Paper Manufacturing Industry" in October 2010, available at  
27 [www.epa.gov/nsr/ghgdocs/pulpandpaper.pdf](http://www.epa.gov/nsr/ghgdocs/pulpandpaper.pdf), there are numerous existing technologies for  
28 increasing energy efficiency at kraft pulp mills that have been adequately demonstrated and

1 that would reduce their greenhouse gas emissions. However, the current kraft pulp mill NSPS  
2 do not regulate greenhouse gas emissions.

3 43. The NSPS review and its revision are important also because they trigger EPA's  
4 obligation to publish guidelines for designated pollutants from existing sources. Section  
5 111(d) of the Act, 74 U.S.C. § 7411(d); 40 C.F.R. § 60.22(a). The guidelines for designated  
6 pollutants must be used by the States to develop plans for limiting emissions from existing  
7 sources. These guidelines must be promulgated "concurrently or after" proposal of new source  
8 performance standards. 40 C.F.R. § 60.22(a). Among other things, these guidelines must  
9 include information on the best demonstrated control technology for designated pollutants. 40  
10 C.F.R. § 60.22(b)(5), 60.22(e). Section 111(d) pollution reduction guidelines constitute one of  
11 the few ways in which the Clean Air Act regulates existing, as opposed to new or modified,  
12 industrial pollution sources, and their promulgation is crucial to protect human health and  
13 welfare and the environment. The guidelines have not been issued since 1979. 44 Fed. Reg.  
14 29,828 (May 22, 1979).

15 44. On July 22, 2010, the Center gave EPA and its Administrator notice of its intent  
16 to file suit for EPA's failure to review the NSPS for kraft pulp mills. Some time before  
17 September 2011, EPA announced through its website that it would review the NSPS for kraft  
18 pulp mills. EPA later withdrew that announcement from its website. On September 26, 2011,  
19 the Center once more gave Defendants notice of its intent to sue. At that time, Greenpeace and  
20 PTAW also gave notice of their intent to sue EPA.

### 21 **FIRST CLAIM**

#### 22 **[Failure to Review the Kraft Pulp Mill NSPS]**

23 45. Plaintiffs re-allege, as if fully set forth herein, each allegation contained in  
24 paragraphs 1 through 44 of this Complaint.

25 46. Defendants have a mandatory duty to review the NSPS for kraft pulp mills for  
26 new and modified sources at least every 8 years. Section 111(b)(1)(B) of the Act, 42 U.S.C.  
27 § 7411(b)(1)(B).  
28





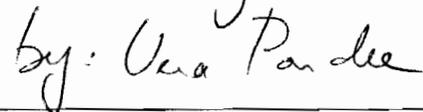
1           4. Pursuant to section 304(a) of the Act, 42 U.S.C. § 7604(a), and 5 U.S.C. § 702,  
2 order Defendants to comply with section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B),  
3 by making a determination of whether to revise the NSPS for new and modified kraft pulp  
4 mills, including whether to include regulation of pollutants that are not covered by the current  
5 NSPS, including greenhouse gases;

6           5. Pursuant to section 304(d) of the Act, 42 U.S.C. § 7604(d), order defendants to  
7 pay to Plaintiffs' costs of litigation, including reasonable attorney and expert witness fees;

8           6. Retain jurisdiction over this action to ensure compliance with this Court's order;  
9 and

10          7. Award such other and further relief as this Court deems just and proper.

11  
12  
13 Dated: December 6, 2011

14  
15 By:   


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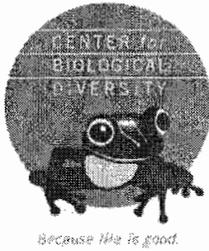
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EXHIBIT A



*PT AirWatchers*  
Breathe Clean  Breathe Healthy  
Port Townsend WA

**GREENPEACE**

***SENT VIA U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED***

September 26, 2011

Hon. Lisa P. Jackson, Administrator  
Ariel Rios Building  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: 60-Day Notice of Intent to File Suit Under the Clean Air Act for Failure to Revise the New Source Performance Standards and Emissions Guidelines for Kraft Pulp Mills**

This letter serves as 60-day notice of intent to sue the Environmental Protection Agency (“EPA”) on behalf of the Center for Biological Diversity (“Center”), Greenpeace, Inc. (“Greenpeace”) and Port Townsend Airwatchers (“PTAW”) for violations of section 111 of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7411. The Administrator has failed to review the standards of performance for new and modified kraft pulp mills within the statutory deadline under section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B). This 60-day notice is provided pursuant to section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2), which requires that citizens provide 60 days’ notice before bringing suit against the Administrator for failing to perform a nondiscretionary duty. In addition, the Administrator has failed to revise the guidelines prescribed by section 111(d), 42 U.S.C. § 7411(d), for existing kraft pulp mills. These guidelines must also be revised to reflect the emissions reductions achievable with today’s technology. The Center and PTAW hereby provide further notice of intent to sue the Administrator for failing to revise the section 111(d) emission guidelines for kraft pulp mills.

## **I. OVERVIEW**

The Clean Air Act was enacted to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). The designation of standards of performance for stationary sources under the CAA is one of our nation’s most successful programs for curbing air pollution. The CAA requires that the Administrator define a category for any stationary source that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b)(1)(A). A “stationary source” is defined as “any building, structure, facility, or installation which emits or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3). New and

“modified” stationary sources are regulated under CAA section 111(b), 42 U.S.C. § 7411(b), whereas existing sources are regulated under CAA section 111(d), 42 U.S.C. § 7411(d). The standard of performance must reflect the “degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated” [hereinafter “best demonstrated technology”]. 42 U.S.C. § 7411(a)(1).

There are currently over 75 defined stationary source categories. One category of stationary sources is kraft pulp mills. *See* 40 C.F.R. §§ 60.280-60.285. Pulp produced through the chemical kraft process is used to produce paper products, of which the United States is the largest consumer. The pulp and paper sector is a significant source of air pollution. According to the toxics release inventory, the pulp and paper sector releases approximately 66 percent of its toxic emissions to the air, in contrast to the average of 27 percent across all industries that report toxic releases.<sup>1</sup> Air emissions from kraft pulp mills include not only a variety of hazardous air pollutants,<sup>2</sup> but also particulate matter, sulfur compounds, nitrogen and sulfur oxides, and volatile organic compounds (“VOCs”).<sup>3</sup> Within the latter category, only total reduced sulfur (“TRS”) and particulate matter (“PM”) are currently subject to NSPS. *See* 40 C.F.R. Part 60 Subpart BB.

The pulp and paper industry is also a significant source of greenhouse gases, emitting 57.7 MMT CO<sub>2</sub>eq (million metric tons carbon dioxide equivalent) in 2004.<sup>4</sup> The kraft pulping process releases a variety of greenhouse gases: carbon dioxide, methane, and nitrous oxide.<sup>5</sup> EPA has issued an endangerment finding that six major greenhouse gases “in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.” 74 Fed. Reg. 66,496, 66,497 (Dec.15, 2009) (the “Endangerment Finding”). Furthermore, the Administrator defined “air pollution” to include “the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).” *Id.* Greenhouse gas pollution from kraft pulp mills is not currently subject to performance standards under CAA section 111(b), although greenhouse gases are undoubtedly air pollutants within the meaning of section 111(b)(1)(A), 42 U.S.C. § 7411(b)(1)(A).

The Administrator is required to review, and if appropriate revise, new source performance standards at least every eight years. 42 U.S.C. § 7411(b)(1)(B). Yet, the last review was conducted 25 years ago. The Administrator’s violation of the mandatory deadline for review of new source performance standards for kraft pulp mills is harming national health and welfare.

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<sup>1</sup> U.S. EPA Office of Compliance, PROFILE OF THE PULP AND PAPER INDUSTRY, SECOND ED. 49 (Nov. 2002).

<sup>2</sup> These pollutants are subject to regulation under CAA section 112, 42 U.S.C. § 7412.

<sup>3</sup> World Bank Group, POLLUTION PREVENTION AND ABATEMENT HANDBOOK 396 (1998), *available at* [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui\\_pulp\\_WB/\\$FILE/pulp\\_PPAH.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_pulp_WB/$FILE/pulp_PPAH.pdf)

<sup>4</sup> U.S. EPA, TECHNICAL SUPPORT DOCUMENT FOR THE PULP AND PAPER SECTOR 4 (2009). This estimate excludes biomass-derived sources of CO<sub>2</sub>.

<sup>5</sup> *Id.* at Table 3-1.

In addition to requiring performance standards for new stationary sources, the CAA also provides for control of pollution from existing stationary sources. Under section 111(d), 42 U.S.C. § 7411(d), the Administrator must publish emission guidelines for designated pollutants, which provide essential information to states regarding pollution control. The emission guidelines for kraft pulp mills have not been revised since they were first published over 30 years ago. The Administrator's failure to revise the emission guidelines for existing kraft pulp mills has resulted in a greater accumulation of air pollutants in the atmosphere than would have occurred had the guidelines been revised in a timely manner to reflect improvements in air pollution control technology.

Finally, the Administrator has failed to establish emission limitations for greenhouse gas pollution from new and existing kraft pulp mills, even though they emit greenhouse gases in substantial quantities. Greenhouse gases are an air pollutant, and the Administrator has already determined that they endanger public health and welfare.

## **II. EPA HAS VIOLATED ITS NONDISCRETIONARY DUTY TO REVISE THE KRAFT PULP MILL NEW SOURCE PERFORMANCE STANDARDS UNDER CAA SECTION 111(b)**

Continual revision that updates the standards to reflect the current, best technology for limiting pollution from a given source is essential to ensure the maximal effectiveness of the new source performance standards ("NSPS") program. Realizing the importance of up-to-date technology, Congress mandated that NSPS be reviewed at least every eight years:

The Administrator shall, at least every **8 years**, review and, if appropriate, revise such standards following the procedure . . . for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B) (emphasis added).

The NSPS for kraft pulp mills, found in Subpart BB of 40 C.F.R. Part 60, were originally promulgated in 1978. 43 Fed. Reg. 7568 (Feb. 23, 1978). The last time EPA reviewed those standards, as required by the CAA, was in 1986. *See* 51 Fed. Reg. 18,538 (May 20, 1986). The Administrator was therefore required to review the standards by 1994, at the latest, or determine that the review required by section 111(b)(1)(B) is not appropriate in light of readily available information on the efficacy of such standard. 42 U.S.C. § 7411(b)(1)(B). The Administrator has done neither over the last 25 years. The Administrator therefore has not complied with the mandatory duty set forth in section 111(b)(1)(B) by failing to perform the required review by 1994 or any time thereafter.

### **III. THE KRAFT PULP MILL PERFORMANCE STANDARDS DO NOT REFLECT THE BEST DEMONSTRATED SYSTEM OF EMISSION REDUCTION**

In addition to performing the mandatory eight-year review of the NSPS for kraft pulp mills, the Administrator must also revise them to ensure that they reflect the current, best demonstrated technology. Section 111(b)(1)(B) mandates that the Administrator consider additional reductions that have been achieved in practice when revising performance standards:

When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

42 U.S.C. § 7411(b)(1)(B). TRS emissions have continued to decline since the NSPS for kraft pulp mills was last promulgated.<sup>6</sup> In addition, EPA recently approved stricter standards for PM emissions from kraft recovery furnaces in the state of California. *See* 74 Fed. Reg. 20877 (May 6, 2009).

These examples demonstrate that technology has improved substantially in the last quarter century. Revision of the kraft pulp mill NSPS is necessary to achieve the greatest emissions limitation possible with demonstrated systems of emission reduction.

### **IV. THE EPA MUST REVISE THE KRAFT PULP MILL PERFORMANCE STANDARDS TO CONTROL ALL AIR POLLUTANTS**

The performance standards for kraft pulp mills currently limit only PM and TRS, although kraft pulp mills emit a number of additional air pollutants – including greenhouse gases – that endanger public health and welfare. The Administrator must provide standards for all air pollutants that endanger public health and welfare when reviewing and revising the NSPS for kraft pulp mills.

A number of ways in which EPA can further reduce emissions from kraft pulp mills currently exist. For example, states have taken the initiative to regulate air pollutants other than PM and TRS from kraft pulp mills despite the fact that the pollutants are not currently subject to NSPS. *See, e.g.,* Md. Code Regs. 26.11.14.06 (controlling VOCs from kraft pulp mills). There are also a variety of options for reducing nitrogen oxides from kraft pulp mills,<sup>7</sup> despite the fact that EPA declined to regulate nitrogen oxides when the NSPS for kraft pulp mills were last revised. *See* 49 Fed. Reg. 2448 (Jan. 19, 1984). The

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<sup>6</sup> T.K. Das & A.K. Jain, *Pollution Prevention Advances in Pulp and Paper Processing*, 20 ENVIRONMENTAL PROGRESS 87, Figure 1 (2001).

<sup>7</sup> National Assoc. of Clean Air Agencies (NACAA), *CONTROLLING NITROGEN OXIDES UNDER THE CLEAN AIR ACT: A MENU OF OPTIONS* 68-71 (July 1994).

demonstrated feasibility of reducing additional pollutants emitted by these sources necessitates the review of the NSPS for kraft pulp mills.

Furthermore, EPA should review the kraft pulp mills NSPS to reduce greenhouse gas emissions. Since these standards were last revised, EPA has recognized the significant dangers of accumulated greenhouse gases in the atmosphere and has begun the process of regulating mobile and stationary source that emit them. EPA acknowledged the potentially catastrophic consequences of continued greenhouse gas emissions in its Endangerment Finding. 74 Fed. Reg. 66,496 (Dec. 15, 2009). As discussed above, the pulp and paper industry constitutes a significant source of greenhouse gases in the United States. Consequently, the Administrator is violating CAA section 111(b)(1), 42 U.S.C. § 7411(b)(1), by failing to conduct a review of the NSPS to add greenhouse gas emissions limitations for kraft pulp mills.

In summary, the Administrator has violated her nondiscretionary duty to review the NSPS for kraft pulp mills, even though she has made no determination that such review is not appropriate in light of readily available information on their efficacy. The review should be undertaken immediately because the performance standards currently limit emissions only of PM and TRS, but fail to regulate emissions of other dangerous air pollutants, including greenhouse gases. Moreover, the kraft pulp mill performance standards do not reflect the greatest reductions possible in practice even for PM and TRS.

**V. THE EPA MUST PROMULGATE NEW EMISSION GUIDELINES FOR DESIGNATED POLLUTANTS EMITTED BY EXISTING KRAFT PULP MILLS UNDER CAA SECTION 111(d)**

Section 111(d) of the CAA provides a mechanism for addressing air pollution emitted from existing sources for which a NSPS has been established. 42 U.S.C. § 7411(d)(1)(A). Air pollutants for which there is a NSPS, but that are not criteria air pollutants, are called “designated pollutants.” 40 C.F.R. § 60.21(a). The Administrator must publish “emission guidelines” providing information, such as health and welfare impacts, reduction potential, and best demonstrated technology, for the control of designated pollutants. 40 C.F.R. § 60.22(b). These guidelines are implemented by state agencies who formulate plans to curb emissions of designated pollutants from existing sources. *Id.*; 42 U.S.C. § 7411(d)(1).

Emission guidelines for TRS emitted by kraft pulp mills were published in 1979 but have never been revised. 44 Fed. Reg. 29,828 (May 22, 1979); *see also* 45 Fed. Reg. 67,146 (Oct. 9, 1980) (corrections to the original guidelines). It has been over 30 years since these guidelines were published. Technology for pollution reduction has advanced dramatically; thus, these emission guidelines must be revised to reflect the pollution reductions that are achievable with today’s technology.

In addition, when promulgating new performance standards for greenhouse gases, the Administrator must also publish new emission guidelines for greenhouse gases emitted by existing kraft pulp mills.

Without updated emission guidelines and support documents, states have been, and will continue to be, unable to optimally control air pollution from existing kraft pulp mills. The current absence of updated information violates the purpose of the CAA and endangers the health and welfare of U.S. citizens.

## VI. CONCLUSION

The Administrator has violated her nondiscretionary duty under CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), to review the new source performance standards for kraft pulp mills within eight years. In addition, she has violated her nondiscretionary duty under CAA section 111(d), 42 U.S.C. § 7411(d), to publish emission guidelines that reflect the current knowledge regarding, among other things, health and welfare impacts, best demonstrated technology, and greatest reduction potential for designated pollutants from kraft pulp mills.

## VII. CONTACT INFORMATION

Pursuant to 40 C.F.R. § 54.3, we provide our names and addresses:

Center for Biological Diversity 351 California St., Ste. 600 San Francisco, CA 94104	Greenpeace, Inc. 75 Arkansas St. San Francisco, CA 94107-2434	Port Townsend Airwatchers PO Box 1653 Port Townsend, WA 98368
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## VIII. COUNSEL

We have retained legal counsel to represent us. Counsel's contact information is:

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If the Administrator does not act within 60 days to correct this violation of the CAA, the Center, Greenpeace and PTAW will pursue litigation in federal court against the EPA and will seek appropriate relief regarding these violations, including injunctive and declaratory relief. If you have any questions, wish to discuss this matter, or believe this notice is in error, do not hesitate to contact us.

Sincerely,

*Vera Pardee*

Vera Pardee  
Center for Biological Diversity

*Helen Kang by Vera Pardee*  
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