



November 11, 2010

**Via Certified Mail - Return Receipt Requested**

Kevin Hayworth  
Ox Paperboard, LLC  
Halltown Road  
Halltown, WV 25423

Lisa P. Jackson, US EPA Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave. NW  
Washington, DC 20004

Shawn M. Garvin, Regional Administrator, US EPA Region 3  
Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

Eric H. Holder, Jr., Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Randy C. Huffman, Cabinet Secretary  
Kristin A. Boggs, General Counsel  
West Virginia Department of Environmental Protection  
601 - 57th Street SE  
Charleston, WV 25304

**Re: NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT**

Dear Mr. Hayworth:

This sixty day notice of intent to file a citizen suit pursuant to Section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, against Ox Paperboard, LLC for the violations described below is provided on behalf of Shenandoah Riverkeeper, P.O. Box 405, Boyce, VA 22620, (540)

837-1479, and the Potomac Riverkeeper, 1100 15<sup>th</sup> Street NW 11<sup>th</sup> Floor, Washington, DC 20005, (202) 222-0707. The allegations in this notice of intent to sue supplement those included in our May 4, 2009, notice letter. Shenandoah Riverkeeper is represented by Christopher P. Stroeck, Esq., Arnold & Bailey, PLLC, P.O. Box 69, 117 E. German Street, Shepherdstown, WV 25443, (304) 876-1575, and Kenneth T. Kristl, Director of the Widener Environmental and Natural Resources Law Clinic, Widener University School of Law, 4601 Concord Pike, Wilmington, DE 19803, (302) 477-2053. Any response to this notice of intent to sue should be directed to counsel.

Ox Paperboard, LLC has violated and continues to violate the CWA (see Sections 301 and 402 of the CWA, 33 USC §§ 1311 and 1342) with respect to discharges of pollutants from its Halltown Mill facility located at Halltown Road, Halltown, WV 25423. These violations result from the discharge of pollutants, including biological oxygen demand (BOD), total suspended solids (TSS), and ammonia nitrogen, in excess of the conditions set forth in Paperboard's NPDES Permit WV0005517. Such violations are specifically identified in the May 4, 2009, notice of intent to sue and incorporated herein. The following tables supplement the violations of this facility's CWA permit and list additional violations that have continued to occur from discharge point 3 into Flowing Spring Run and the Shenandoah River.

#### A. Biological Oxygen Demand (BOD) Violations

<i>Parameter</i>	<i>Length of Violation</i>	<i>Limit in Permit</i>	<i>Type of Permit Limit</i>	<i>Amount Discharged</i>	<i>Estimated Days in Violation</i>	<i>% exceeding limit</i>
BOD	1/1/08-1/31/08	30 mg/L	Average Monthly	319 mg/L	31	963%
BOD	1/1/08-1/31/08	60 mg/L	Maximum Daily	310 mg/L	31	416%
BOD	2/1/08-2/29/08	30 mg/L	Average Monthly	990 mg/L	29	3200%
BOD	2/1/08-2/29/08	60 mg/L	Maximum Daily	990 mg/L	29	1550%
BOD	3/1/08-3/31/08	30 mg/L	Average Monthly	550 mg/L	31	1733%
BOD	3/1/08-3/31/08	60 mg/L	Maximum Daily	550 mg/L	31	816%
BOD	4/1/08-4/30/08	30 mg/L	Average Monthly	102 mg/L	30	240%
BOD	4/1/08-4/30/08	60 mg/L	Maximum Daily	102 mg/L	30	70%
BOD	5/1/08-5/31/08	30 mg/L	Average Monthly	254 mg/L	31	746%
BOD	5/1/08-5/31/08	60 mg/L	Maximum Daily	254 mg/L	31	323%
BOD	6/1/08 – 6/30/08	30 mg/L	Average Monthly	43.6 mg/L	30	45%
BOD	7/1/08-	30 mg/L	Average	43.9 mg/L	31	46%

	7/31/08		Monthly			
BOD	8/1/08 – 8/31/08	30 mg/L	Average Monthly	252 mg/L	31	740%
BOD	8/1/08 – 8/31/08	60 mg/L	Maximum Daily	252 mg/L	31	320%
BOD	9/1/08 – 9/30/08	30 mg/L	Average Monthly	405 mg/L	30	1250%
BOD	9/1/08 – 9/30/08	60 mg/L	Maximum Daily	405 mg/L	30	575%
BOD	10/1/08 – 10/31/08	30 mg/L	Average Monthly	978 mg/L	31	3160%
BOD	10/1/08 – 10/31/08	60 mg/L	Maximum Daily	978 mg/L	31	1530%
BOD	11/1/08 – 11/30/08	30 mg/L	Average Monthly	510 mg/L	30	1600%
BOD	11/1/08 – 11/30/08	60 mg/L	Maximum Daily	510 mg/L	30	750%
BOD	12/1/08 – 12/31/08	30 mg/L	Average Monthly	504 mg/L	31	1580%
BOD	12/1/08 – 12/31/08	60 mg/L	Maximum Daily	504 mg/L	31	740%
BOD	1/1/09 – 1/31/09	30 mg/L	Average Monthly	810 mg/L	31	2600%
BOD	1/1/09 – 1/31/09	60 mg/L	Maximum Daily	810 mg/L	31	1250%
BOD	2/1/09 – 2/28/09	30 mg/L	Average Monthly	850 mg/L	28	2733%
BOD	2/1/09 – 2/28/09	60 mg/L	Maximum Daily	850 mg/L	28	1316%
BOD	3/1/09 – 3/31/09	30 mg/L	Average Monthly	960 mg/L	31	3100%
BOD	3/1/09 – 3/31/09	60 mg/L	Maximum Daily	960 mg/L	31	1500%
BOD	4/1/09 – 4/30/09	30 mg/L	Average Monthly	516 mg/L	30	1620%
BOD	4/1/09 – 4/30/09	60 mg/L	Maximum Daily	516 mg/L	30	760%
BOD	5/1/09 – 5/31/09	30 mg/L	Average Monthly	860 mg/L	31	2766%
BOD	5/1/09 – 5/31/09	60 mg/L	Maximum Daily	860 mg/L	31	1333%
BOD	6/1/09 – 6/30/09	30 mg/L	Average Monthly	365 mg/L	30	1116%
BOD	6/1/09 – 6/30/09	60 mg/L	Maximum Daily	365 mg/L	30	508%
BOD	7/1/09 –	30 mg/L	Average	365 mg/L	31	1116%

	7/31/09		Monthly			
BOD	7/1/09 – 7/31/09	60 mg/L	Maximum Daily	365 mg/L	31	508%
BOD	8/1/09 – 8/31/09	30 mg/L	Average Monthly	1170 mg/L	31	3800%
BOD	8/1/09 – 8/31/09	60 mg/L	Maximum Daily	1170 mg/L	31	1850%
BOD	9/1/09 – 9/30/09	30 mg/L	Average Monthly	1050 mg/L	30	3400%
BOD	9/1/09 – 9/30/09	60 mg/L	Maximum Daily	1050 mg/L	30	1650%
BOD	10/1/09 – 10/31/09	30 mg/L	Average Monthly	192 mg/L	31	540%
BOD	10/1/09 – 10/31/09	60 mg/L	Maximum Daily	192 mg/L	31	220%
BOD	11/1/09 – 11/30/09	30 mg/L	Average Monthly	690 mg/L	30	2200%
BOD	11/1/09 – 11/30/09	60 mg/L	Maximum Daily	690 mg/L	30	1050%
BOD	12/1/09 – 12/31/09	30 mg/L	Average Monthly	1920 mg/L	31	6300%
BOD	12/1/09 – 12/31/09	60 mg/L	Maximum Daily	1920 mg/L	31	3100%
BOD	1/1/10 – 1/31/10	30 mg/L	Average Monthly	3640 mg/L	31	12033%
BOD	1/1/10 – 1/31/10	60 mg/L	Maximum Daily	3640 mg/L	31	5966%
BOD	2/1/10 – 2/28/10	30 mg/L	Average Monthly	3840 mg/L	28	12700%
BOD	2/1/10 – 2/28/10	60 mg/L	Maximum Daily	3840 mg/L	28	6300%
BOD	3/1/10 – 3/31/10	30 mg/L	Average Monthly	2520 mg/L	31	8300%
BOD	3/1/10 – 3/31/10	60 mg/L	Maximum Daily	2520 mg/L	31	4100%
BOD	4/1/10 – 4/30/10	30 mg/L	Average Monthly	138 mg/L	30	360%
BOD	4/1/10 – 4/30/10	60 mg/L	Maximum Daily	138 mg/L	30	130%
BOD	5/1/10 – 5/31/10	30 mg/L	Average Monthly	1003 mg/L	31	3243%
BOD	5/1/10 – 5/31/10	60 mg/L	Maximum Daily	1003 mg/L	31	1571%
BOD	6/1/10 – 6/30/10	30 mg/L	Average Monthly	37.5 mg/L	30	25%

B. Total Suspended Solids (TSS) Violations

<i>Parameter</i>	<i>Length of Violation</i>	<i>Limit in Permit</i>	<i>Type of Permit Limit</i>	<i>Amount Discharged</i>	<i>Estimated Days in Violation</i>	<i>% exceeding limit</i>
TSS	2/1/08 – 2/29/08	30 mg/L	Average Monthly	118.5 mg/L	29	295%
TSS	2/1/08 – 2/29/08	60 mg/L	Maximum Daily	118.5 mg/L	29	97.5%
TSS	3/1/08 – 3/31/08	30 mg/L	Average Monthly	177 mg/L	31	490%
TSS	3/1/08 – 3/31/08	60 mg/L	Maximum Daily	177 mg/L	31	195%
TSS	4/1/08 – 4/30/08	30 mg/L	Average Monthly	63.6 mg/L	30	108%
TSS	4/1/08 – 4/30/08	60 mg/L	Maximum Daily	63.6 mg/L	30	6%
TSS	5/1/08 – 5/31/08	30 mg/L	Average Monthly	500 mg/L	31	1566%
TSS	5/1/08 – 5/31/08	60 mg/L	Maximum Daily	500 mg/L	31	733%
TSS	6/1/08 – 6/30/08	30 mg/L	Average Monthly	88.9 mg/L	30	196%
TSS	6/1/08 – 6/30/08	60 mg/L	Maximum Daily	88.9 mg/L	30	48%
TSS	7/1/08- 7/31/08	30 mg/L	Average Monthly	76.8 mg/L	31	156%
TSS	7/1/08- 7/31/08	60 mg/L	Maximum Daily	76.8 mg/L	31	28%
TSS	8/1/08 – 8/31/08	30 mg/L	Average Monthly	43 mg/L	31	43%
TSS	10/1/08 – 10/31/08	30 mg/L	Average Monthly	551 mg/L	31	1736%
TSS	10/1/08 – 10/31/08	60 mg/L	Maximum Daily	551 mg/L	31	818%
TSS	11/1/08 – 11/30/08	30 mg/L	Average Monthly	183 mg/L	30	510%
TSS	11/1/08 – 11/30/08	60 mg/L	Maximum Daily	183 mg/L	30	205%
TSS	5/1/09 – 5/31/0	30 mg/L	Average Monthly	37.5 mg/L	31	25%
TSS	6/1/09 – 6/30/09	30 mg/L	Average Monthly	33.0 mg/L	30	10%
TSS	7/1/09 – 7/31/09	30 mg/L	Average Monthly	33.3 mg/L	31	11%
TSS	8/1/09 – 8/31/09	30 mg/L	Average Monthly	87.8 mg/L	31	192%

TSS	8/1/09 – 8/31/09	60 mg/L	Maximum Daily	87.8 mg/L	31	46%
TSS	10/1/09 – 10/31/09	30 mg/L	Average Monthly	53.2 mg/L	31	77%
TSS	11/1/09 – 11/30/09	30 mg/L	Average Monthly	254 mg/L	30	746%
TSS	11/1/09 – 11/30/09	60 mg/L	Maximum Daily	254 mg/L	30	323%
TSS	2/1/10 – 2/28/10	30 mg/L	Average Monthly	167 mg/L	28	456%
TSS	2/1/10 – 2/28/10	60 mg/L	Maximum Daily	167 mg/L	28	178%
TSS	4/1/10 – 4/30/10	30 mg/L	Average Monthly	160 mg/L	30	433%
TSS	4/1/10 – 4/30/10	60 mg/L	Maximum Daily	160 mg/L	30	166%
TSS	5/1/10 – 5/31/10	30 mg/L	Average Monthly	51 mg/L	31	70%
TSS	6/1/10 – 6/30/10	30 mg/L	Average Monthly	50 mg/L	30	66%

#### C. Ammonia Nitrogen Violations

<i>Parameter</i>	<i>Length of Violation</i>	<i>Limit in Permit</i>	<i>Type of Permit Limit</i>	<i>Amount Discharged</i>	<i>Estimated Days in Violation</i>	<i>% exceeding limit</i>
Ammonia Nitrogen	1/1/08 – 1/31/08	6 mg/L	Average Monthly	25.2 mg/L	31	320%
Ammonia Nitrogen	1/1/08 – 1/31/08	12 mg/L	Maximum Daily	25.2 mg/L	31	110%
Ammonia Nitrogen	4/1/08 – 4/30/08	6 mg/L	Average Monthly	27.2 mg/L	30	353%
Ammonia Nitrogen	4/1/08 – 4/30/08	12 mg/L	Maximum Daily	27.2 mg/L	30	126%
Ammonia Nitrogen	8/1/08 – 8/31/08	6 mg/L	Average Monthly	18.9 mg/L	31	215%
Ammonia Nitrogen	8/1/08 – 8/31/08	12 mg/L	Maximum Daily	18.9 mg/L	31	57.5%
Ammonia Nitrogen	1/1/10 – 1/31/10	6 mg/L	Average Monthly	7.65 mg/L	31	27.5%
Ammonia Nitrogen	6/1/10 – 6/30/10	6 mg/L	Average Monthly	17.0 mg/L	30	183%
Ammonia Nitrogen	6/1/10 – 6/30/10	12 mg/L	Maximum Daily	17.0 mg/L	30	41%

Flowing Spring Run and the Shenandoah River are navigable waters of the United States consistent with the terms used in the CWA. Under Section 301(a) of the CWA, discharges of

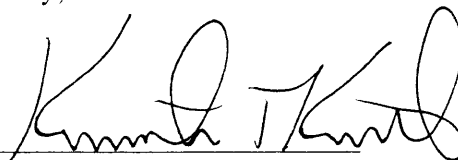
pollutants from point sources to navigable waters must be authorized by a National Pollutant Discharge Elimination System (NPDES) permit.

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States except when pursuant to and in compliance with a permit 33 U.S.C. § 1311(a), 33 U.S.C § 1342. The Act defines “pollutant” to include chemical wastes, biological materials, rock, sand, and industrial waste discharged into water 33 U.S.C. § 1362(6). “Point source” is defined as “any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure...from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). Ox Paperboard, LLC’s discharges from the Halltown Mill facility implicate these provisions.

Under Section 309(d) of the CWA, 33 USC § 1319(d), and 40 C.F.R. 19, each of the above-described violations subjects the violator to a penalty of up to \$32,500 per day. In addition to civil penalties, Potomac Riverkeeper and Shenandoah Riverkeeper will seek injunctive relief under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs including attorney’s fees.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that any negotiations may be completed before the end of the 60-day notice period.

Sincerely,

By: 

Kenneth T. Kristl

Widener Environmental and Natural Resources Law Clinic  
4601 Concord Pike  
Wilmington, DE 19803

cc: Potomac Riverkeeper  
Shenandoah Riverkeeper