Georgia-Pacific LLC
Law Department

133 Peachtree Street NE (30303-1847)
P.O. Box 105605
Atlanta, Georgia 30348-5605
(404) 652-4532
(404) 584-1461 fax
www.gp.com

Alison J. Lathrop
Senior Counsel – Environmental

May 12, 2016

Via Email (Mikalian.Charles@epa.gov)

Charles Mikalian
Office of Regional Counsel
United States Environmental Protection Agency
77 West Jackson Blvd., Mail Code C-14J
Chicago, IL 60604

Re: Notice of Intent to Comply Regarding Unilateral Order for Removal Actions (UAO), Docket No. V-W-16-C-009

Dear Mr. Mikalian:

By letter dated April 14, 2016, United States Environmental Protection Agency (EPA) Region 5 issued to Georgia-Pacific LLC, Georgia-Pacific Consumer Products LP and Fort James LLC a Unilateral Administrative Order (UAO) for Removal Actions at the site of the former Otsego Township Dam in Operable Unit 5 of the Allied Paper Inc./Portage Creek/Kalamazoo River Superfund Site (the Site). Section XI of the UAO directs Georgia-Pacific to "notify EPA in writing of [its] irrevocable intent to comply with this Order" on or before the Effective Date of the order. Pursuant to Section VIII of the UAO, Georgia-Pacific's submission of written comments extended the Effective Date of the UAO to at least May 12, 2016. Section IX also directs Georgia-Pacific to describe "any 'sufficient cause' defense" pursuant to Sections 106(b) and 107(c)(3) of CERCLA.

By this letter, Georgia-Pacific states its intent to comply with the UAO, but identifies a defense that would provide sufficient cause for Georgia-Pacific to refuse to comply.

Notice of Intent to Comply

Notwithstanding the defense identified below, Georgia-Pacific intends to perform the response actions required by the UAO, including the payment of EPA's response costs as required by Section XVIII. By agreeing to comply with the UAO, Georgia-Pacific reserves any and all defenses to liability, including specifically the defense identified below.

Sufficient Cause Defense

CERCLA section 106(b) states that a recipient of a UAO that "without *sufficient cause*, willfully violates, or fails or refuses to comply with, [a UAO]" may be fined for that violation or refusal to comply. EPA's receipt of settlement proceeds with respect to the Site as part of the

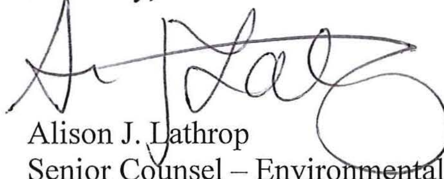
bankruptcy of Lyondell Chemical Company and its affiliates, *see In re: Lyondell Chemical Company, et al.*, No. 09-10023 (Bankr. S.D.N.Y.), provides sufficient cause for Georgia-Pacific to refuse to perform the tasks specified in the order, including specifically the repayment of EPA's response costs.

EPA already has been compensated in excess of the expected cost for Respondents to perform the work required by the TCRA. As we explained in our comments on the UAO, EPA received more than $100 million in settlement from Millennium Holdings, LLC and its affiliates as part of the Lyondell Bankruptcy. Nearly half of that money appears to compensate EPA for costs that, as of mid-2010, EPA expected to incur throughout the Site. As reflected in our comments, Georgia-Pacific objects to any demand for payment made by EPA for repayment of its response costs at the Site until the money that EPA received in settlement from Millennium for Millennium's liability at the Site as a whole has been depleted, or until a plan for the disbursement of those funds to parties performing cleanup actions at the Site has been agreed to. *See* 42 U.S.C. § 9613(f)(2).

Georgia-Pacific believes the presence of those funds provides "sufficient cause" under section 106(b)(1) to refuse to perform at least a portion of the tasks called for by the order, as well as a basis for reimbursement of Georgia-Pacific's costs in performing those tasks under section 106(b)(2). Specifically, CERCLA § 113(f)(2) states that, while a settlement between a potentially responsible party (PRP) and the Government do not discharge other PRPs, it does "reduce the potential liability of the others by the amount of the settlement." Thus, under § 113(f)(2), the total liability of PRPs at the Site should be reduced by the amount EPA received in settlement from Millennium.

We recognize that the total cost to perform removal and remedial actions at the Site may ultimately be more than the amount EPA received in settlement of its claims against Millennium. But in the absence of an agreed schedule for disbursement of those funds, either to performing PRPs or to offset EPA's oversight costs, the balance of those funds provides Georgia-Pacific sufficient cause to refuse to comply with any provision in any UAO respecting the Site that calls for Georgia-Pacific to compensate EPA for its oversight costs.

Sincerely,



Alison J. Lathrop
Senior Counsel – Environmental

cc: Nicole Wood Chi