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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

NORTHWEST ENVIRONMENTAL
DEFENSE CENTER, a Oregon non-profit
corporation,

Plaintiff,

v.

ROSBORO LUMBER COMPANY, an Oregon
limited liability company,

Defendant.

Civil No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND CIVIL
PENALTIES**

(Violation of Clean Water Act,
33 U.S.C. §§ 1365)

I. INTRODUCTION

1. The NORTHWEST ENVIRONMENTAL DEFENSE CENTER (“NEDC” or “Plaintiff”) bring this citizen suit under §505 of the Clean Water Act (the “Act” or the “CWA”), 33 U.S.C. §1365, against Rosboro Lumber Company (“Rosboro” or “Defendant”) for past and continuing violations of Section 301(a) of the CWA and the

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terms and provisions of Defendant's National Pollution Discharge Elimination System ("NPDES") Permit No. 101467 (the "NPDES Permit"). These violations result from Defendant's discharge of oil and grease, in excess of the conditions set forth in the NPDES Permit, as well as Defendant's continuous and ongoing failure to comply with the monitoring and reporting requirements set forth in the NPDES Permit. Plaintiff seeks declaratory and injunctive relief and the imposition of civil penalties resulting from these violations. Defendant's sawmill, laminated beam plant, plywood plant, and veneer plant are located at 2509 Main Street, Springfield, Oregon 97477.

2. Plaintiff is also seeking an award of costs and attorney fees pursuant to 33 U.S.C. § 1365(d).

II. JURISDICTION AND VENUE.

3. Jurisdiction over this action is conferred by 28 U.S.C. §§ 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justifiable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202, and 33 U.S.C. § 1365(a).

4. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to the claims occurred in this district.

III. PARTIES.

5. Plaintiff, NORTHWEST ENVIRONMENTAL DEFENSE CENTER ("NEDC"), is an Oregon non-profit corporation with its principal place of business located at 10015 SW Terwilliger Boulevard, Portland, Oregon 97219. NEDC was founded in 1969 and dedicated to the preservation and protection of the natural resources of the Pacific Northwest. NEDC's members are lawyers, scientists, students, and citizens interested in protecting the environment of the Pacific Northwest, including the waters and tributaries of the Willamette River.

6. Plaintiff and many of its members reside in the vicinity of the Willamette River and use and enjoy the Willamette River and its tributaries for recreational, scientific, aesthetic, and commercial purposes; including canoeing, kayaking, rafting, sailing, sightseeing, fishing, birdwatching, and swimming in areas directly affected by the Defendant's failure to comply with the CWA as alleged herein. Defendant's violation of the NPDES Permit negatively affects these activities, because excess oil and grease effluent and unknown discharges into Springfield Millrace, a tributary of the Willamette River, negatively impacts aquatic species of the Willamette River and contributes to a reasonable fear of pollution in the Springfield Millrace and Willamette River. This reasonable fear reduces some NEDC's members' ability to enjoy the Willamette River for a variety of recreational, professional and scientific activities.

7. The water quality of the Springfield Millrace and Willamette River, in particular, and the waters of the State of Oregon, in general, directly affects the agricultural, health, recreational, aesthetic, property and environmental interests of members of NEDC. The interests of NEDC's members have been, are being, and unless the relief requested is granted will continue to be, adversely affected by the Defendant's failure to comply with the Act and its permit. The relief sought may redress the injuries alleged.

8. Defendant's failure to adhere to the terms of the NPDES Permit also harms the organizational interests of NEDC. The protection and improvement of the water quality in the Springfield Millrace and Willamette River are an important part of NEDC's goals and missions. A critical component of this goal is ensuring compliance with the CWA. When a discharger violates its NPDES permit it adversely affects the organizational interests of NEDC. When state and federal agencies ignore or simply waive penalties without adequate guarantees of future compliance, it sets a dangerous

precedent that discharges do not have to meet the requirements of the CWA, resulting in negative environmental consequences for the Willamette River, its tributaries and the waters of Oregon. Additionally, lack of enforcement by federal and state agencies negatively affects the ability of NEDC to attract volunteers, members and funding necessary to support our organizations.

9. For the reasons described above, Plaintiff has suffered and continues to suffer injury-in-fact on account of Defendant's failure to comply with the CWA as alleged herein. Plaintiff's injury-in-fact is fairly traceable to the Defendant's conduct and would be redressed by the relief plaintiff seeks in this action.

10. Defendant is the Rosboro Lumber Company that operates a sawmill and plants (collectively, "the Facility") along the Springfield Millrace, a tributary of the Willamette River. The Facility is located at 2509 Main Street, Springfield, Oregon 97477.

11. Defendant is an Oregon limited liability corporation with an assumed name and qualifies as a "person" under the CWA.

IV. NOTICE.

12. On July 7, 2003, plaintiff gave notice to defendant for the violations of the CWA alleged in this Complaint as required by 33 U.S.C. § 1365(a) and (b). More than sixty days have elapsed since this notice was properly served to the defendant.

V. FACTS

13. Defendant's Facility is a sawmill, laminated beam plant, plywood plant, and veneer plant. Defendant has discharged pollutants into Springfield Millrace, a tributary of the Willamette River, for the past eight years pursuant to the NPDES Permit. Defendant's discharge into the Springfield Millrace results from stormwater runoff,

boiler blowdown, and cooling water. With this runoff, oil and grease flow into the Springfield Millrace, which then flows into the Willamette River.

14. Paragraph 1(c) of Schedule A of NPDES Permit No. 101467 explicitly states that oil and grease effluent shall not exceed a monthly average of 10 mg/L and a daily maximum of 15 mg/L from outfall 003. This restriction is in light of the serious affects of oil and grease on the environment. Oil and grease is known to have significant and adverse environmental effects on aquatic animals and plants in certain quantities. Furthermore, Paragraph 2 of Schedule B requires Defendant to submit DMRs to DEQ on a monthly basis by the 15th day of the following month.

15. 33 U.S.C. § 1311(a) requires compliance with all terms and conditions of an NPDES permit.

16. Despite the requirements of NPDES Permit 101467, Defendant consistently exceeded the monthly and daily discharge limits.

17. Despite the requirements of NPDES Permit 101467, Defendant consistently submitted DMRs to DEQ late.

FIRST CLAIM FOR RELIEF

The Past and Continuing Discharge of Oil and Grease by Defendant has Violated and Continues to Violate the Terms and Conditions of NPDES Permit No. 101467 and thus Section 301(a) of the CWA.

18. Plaintiff re-alleges and incorporates paragraphs 1 through 17 above.

19. Section 301(a) of the CWA requires compliance with all terms and conditions included in an NPDES permit issued pursuant to Section 402 of the Act. 33 U.S.C. §1311(a).

20. NPDES Permit No. 101467 is explicit that that oil and grease effluent shall not exceed a monthly average of 10 mg/L and a daily maximum of 15 mg/L. (See attachment A).

21. Defendant's discharge of oil and grease has resulted in at least one hundred twenty-nine (129) violations of NPDES Permit 101467 since the permit took effect on March 24, 1997.

22. Plaintiffs have a good faith belief that Defendant is in continuing violation of NPDES Permit No. 101467 and will continue to violate either the oil and grease effluent limitation or other permit terms and conditions.

23. Every day that the Facility has exceeded its discharge limit for oil and grease effluent constitutes a separate and distinct violation of the terms of NPDES Permit No. 101467 and therefore a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a). Defendant should be assessed civil penalties up to the statutory maximum of \$27,500 per day for violations occurring between March 2002 and April 2003 (\$3,547,500.00), pursuant to 33 U.S.C. § 1319(d), § 1365(a)(1); 40 CFR §§ 19.1-19.4. Defendant should be enjoined from discharging to Springfield Millrace until it can guarantee compliance with all permit terms and conditions relating to oil and grease. Plaintiff is entitled to its costs of litigation, including reasonable attorney fees and expert witness fees pursuant to 33 U.S.C. § 1365(d) of the CWA for enforcing these effluent limitations.

SECOND CLAIM FOR RELIEF

The Defendant's Past and Continuing Failure to Monitor Effluent and Report DMRs to DEQ as Required by Law has Violated and Continues to Violate the Terms of NPDES Permit No. 101467 and thus Section 301(a) of the CWA.

24. Plaintiff re-alleges and incorporates paragraphs 1 through 23 above.

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26. Section 301(a) of the CWA requires compliance with all terms and conditions included in an NPDES permit issued pursuant to Section 402 of the Act. 33 U.S.C. §1311(a).

27. NPDES Permit No. 101467 specifically required and continues to require Defendant to submit the monitoring reports on DEQ approved forms “by the 15th day of the following month.”

28. Between June 2001 and March 2003 Defendant has failed to submit DMRs in compliance with the requirements of the NPDES Permit at least 4 times.

29. Plaintiffs have a good faith belief that Defendant is in continuing violation of NPDES Permit 101467 and will continue to violate the monitoring and reporting violations in NPDES Permit 101467 in the future.

30. Every day that Defendant has failed to comply with the monitoring and reporting requirements of the NPDES Permits constitutes a separate and distinct violation of the terms of those NPDES permit and therefore a violation of Section 301(a) and Section 308(a) of the Act, 33 U.S.C. §1311(a). Defendant should be assessed civil penalties up to the statutory maximum of \$27,500 per day for every violation that occurred between June 2001, and the present (\$110,000.00), pursuant to 33 U.S.C. § 1319(d), § 1365(a)(1); 40 CFR §§ 19.1-19.4. Defendant should be ordered to comply with the monitoring and reporting requirements in the NPDES Permit. Plaintiff is entitled to its costs of litigation, including reasonable attorney fees and expert witness fees pursuant to 33 U.S.C. § 1365(d) of the CWA.

PRAYER FOR RELIEF.

WHEREFORE, plaintiff respectfully requests that the Court:

1. Declare that the Defendant has violated and continues to violate the terms of NPDES Permit No. 101467 and the Clean Water Act;
2. Enjoin the Defendant from discharging effluent until it can guarantee compliance with all permits terms and conditions related to oil and grease and other pollutants that could be involved in the discharge;
3. Order the Defendant to pay civil penalties up to the statutory maximum of \$3,658,500.00 representing \$27,500 per day, per violation for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§1319(d) and 1365(a) and 40 C.F.R. §§19.1-19.4;
4. Maintain continuing jurisdiction over Defendant to ensure that reporting obligations are met and that facility upgrades meet the effluent limitations and other conditions in NPDES Permit 101467;
5. Award to Plaintiff its costs, expenses, expert witness fees, and reasonable attorney fees as authorized by the Act, 33 U.S.C. §1365(d);
6. Grant plaintiff such further relief as this Court deems just, proper, and equitable.

DATED this 11th day of September, 2003.

Respectfully submitted,

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