

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103**



**In the Matter of:** : **U.S. EPA Docket No. RCRA-03-2024-0086**  
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**Appalachian Timber Services, LLC** : **Proceeding under Sections 3008 (a) and (g) of the**  
**393 Edgar Given Parkway** : **Resource Conservation and Recovery Act (RCRA),**  
**Sutton, West Virginia 26601 (Braxton** : **as amended, 42 U.S.C. §§ 6928(a) and (g)**  
**County)** :  
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**Respondent.** :  
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**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and the Appalachian Timber Services Company, LLC (“Respondent” or “ATS”, collectively the “Parties”), pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939g,

the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270, and the applicable authorized West Virginia Hazardous Waste Management Regulations (WVHWMR), Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), provides that the EPA can authorize a state to carry out its hazardous waste program *in lieu of* the federal program in the state, in which case the state regulations become the applicable hazardous waste management regulations. However, RCRA clearly intended, and expressly states in Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), that the EPA may issue an order or commence a civil action in an authorized state, after giving notice to the state. It is the EPA’s practice that, if the EPA does take enforcement action in an EPA-authorized state, then the EPA provides such notice to the state prior to the enforcement action. The WVHWMR were originally authorized by the EPA pursuant to RCRA Section 3006, 42 U.S.C. § 6926, on May 10, 2000, effective on July 10, 2000 (65 Fed. Reg. 29973 (May 10, 2000)), and were reauthorized on October 16, 2003, effective on December 15, 2003 (68 Fed. Reg. 59542 (Dec. 15, 2003)), and on November 25, 2013, effective January 24, 2014 (78 Fed. Reg. 70225 (November 25, 2013)). The WVHWMR incorporates by reference 40 C.F.R. as of June 16, 2010.
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by letter dated August 31, 2020, the EPA notified the West Virginia Department of Environmental Protection (“WVDEP”) of the EPA’s intent to commence this administrative action against Respondent in response to violations of RCRA Subtitle C that are alleged herein.

### **GENERAL PROVISIONS**

7. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

8. Except as provided in Paragraph 7, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
9. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
10. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
11. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
12. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. Respondent is a corporation organized under the laws of the State of Delaware.
15. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 42 U.S.C. § 6903, W.Va. Code R. § 33-20-2.1.
16. Respondent is, and at all times relevant to this Consent Agreement, was the "owner" and "operator" of a "facility", described in Paragraph 17, below, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in W.Va. Code R. § 33-20-2.1.
17. The facility referred to in Paragraph 16, above, including all of its associated equipment and structures (hereinafter the "Facility"), is a wood treating facility located at 393 Edgar Parkway, Sutton, West Virginia, 26601.
18. Respondent was at all times relevant to this Consent Agreement and Final Order, a "generator" of, and has engaged in the "storage" in "containers" at the Facility of materials described below that are "solid wastes" and "hazardous wastes", as those

terms are defined in 40 C.F.R. § 260.10, as incorporated by reference by W.Va. Code R. § 33-20-2.1.

19. Respondent was, at all times relevant to this Consent Agreement and Final Order, a small quantity generator of hazardous waste, which is defined as a generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, that never accumulates more than 6000 kilograms of hazardous waste at any time at its Facility. Respondent is assigned EPA ID No. WVD063461958.
20. On September 26, 2019, a representative of the EPA conducted a RCRA Compliance Evaluation Inspection at the Facility.
21. At the time of the Inspection, “hazardous wastes” generated by Respondent, identified in Paragraphs 22 - 23, below, were in “storage” in containers at the Facility.
22. Respondent generates waste creosote at the Facility which is a listed hazardous waste (EPA Hazardous Waste No. F034) within the meaning of W.Va. Code R. § 33-20-3.1.
23. Respondent generates waste aerosol can contents at the Facility which is a characteristic hazardous waste (EPA Hazardous Waste No. D001) within the meaning of W.Va. Code R. § 33-20-3.1 because it exhibits the characteristic of ignitability.

### **Count 1**

#### **Operation of a Hazardous Waste Storage Facility without a Permit**

24. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
25. W.Va. Code R. § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provide, in pertinent part, that a person may not own or operate a facility for the treatment, storage or disposal of hazardous waste unless such person has first obtained a permit for such facility or has qualified for interim status for the facility.

#### **Failure to Comply with Subpart W Drip Pad Requirements**

26. W.Va. Code R. § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(iii), provides in applicable and relevant part: “Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that hazardous waste is placed:

(iii) On drip pads and the generator complies with subpart W of 40 C.F.R. part 265. . .”

27. At the time of the Inspection, Respondent failed to comply with Subpart W of 40 C.F.R. Part 265 as further elaborated in Counts 3, 4, 5, and 6 below.

Failure to Keep Hazardous Waste Containers Closed

28. W.Va. Code R. § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.34(d)(2), which references 40 C.F.R. § 265.173(a), provides that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less, without a permit or without having interim status provided that, among other things, the generator keeps containers of hazardous waste closed except when adding or removing waste.
29. At the time of the Inspection, Respondent had a 55-gallon drum with an aerosol can puncturing unit attached to it. The puncture unit was in the open position and no waste was being added or removed from the container. The 55-gallon drum was being used to collect aerosol can contents that are managed by Respondent as a D001 hazardous waste.

Failure to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment

30. W.Va. Code R. § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.34(d)(4), which references 40 C.F.R. § 265.31, provides that a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that, among other things, the generator’s facility is designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
31. At the time of the Inspection, Respondent had the following conditions at the Facility:
- a. Creosote drippage was present at the ends of the tram lines on the ground, off of the concrete, on the gravel and on the surrounding soil. Pools of creosote drippage collected underneath the tram lines in pans and on absorbent pads;
  - b. The concrete surrounding drip pans was stained from creosote drippage; and,

- c. The concrete pads and asphalt of the Facility Storage area were stained with staining / creosote drippage.
- 32. For the reasons set forth above, at the time of the Inspection, Respondent failed to comply with the conditions for the temporary storage of hazardous waste by a generator that are required pursuant to W.Va. Code R. § 33-20-5.1 which incorporates by reference 40 C.F.R. § 262.34 (a)(1)(iii) and (d), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such sections.
- 33. At the time of the Inspection, Respondent violated W.Va. Code R. § 33-20-11, 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), by operating a hazardous waste storage facility without a permit, interim status or a valid exemption to the permit requirement.
- 34. In failing to comply with W.Va. Code R. § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

### **Count 2**

#### **Failure to keep Hazardous Waste Containers Closed When Not Adding or Removing Waste**

- 35. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 36. W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.173(a) requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
- 37. At the time of the EPA Inspection, Respondent had a 55-gallon drum with an aerosol can puncturing unit attached to it. The 55-gallon drum was being used to collect aerosol can contents which are managed by the facility as a D001 hazardous waste. The puncture unit was in the open position and waste was not being added or removed, thus failing to comply with W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.173(a).
- 38. At the time of the EPA Inspection, Respondent violated W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.173(a) by having at the Facility a container holding hazardous waste that was not closed during storage.
- 39. In failing to comply with W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.173(a), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count 3**

**Failure to Minimize Risk of Release of Hazardous Waste to the Environment**

40. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
41. W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.31, requires that facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
42. At the time of the Inspection, the following conditions were present at Respondent's Facility which did not comply with W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.31:
  - a. Creosote drippage was present at the ends of the tram lines on the ground, off of the concrete, on the gravel and on the surrounding soil. Pools of creosote drippage collected underneath the tram lines in pans and on absorbent pads;
  - b. The concrete surrounding drip pans was stained from creosote drippage; and,
  - c. The concrete pads and asphalt of the Facility Storage area were stained with Staining / creosote drippage.
43. At the time of the EPA Inspection, Respondent violated W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.31, by failing to design, construct, maintain, and operate the Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
44. In failing to comply with W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.31, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count 4**

**Failure to obtain and re-certify annually a PE Assessment  
for the facility's existing Drip Pad**

45. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
46. W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.571, requires that for existing drip pads as defined in 40 C.F.R. § 264.570, the owner or operator must evaluate the drip pad and determine whether it meets all of the requirements of 40 C.F.R. Subpart W, except the requirements for liners and leak detection systems of 40 C.F.R. § 264.573(b). The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer, that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of 40 C.F.R. § 264.573 are complete.
47. At the time of the EPA Inspection, Respondent's existing drip pad did not meet all conditions of 40 C.F.R. § 264.573. In addition, the Respondent had not obtained a Professional Engineer's Assessment of Respondent's compliance with the 40 C.F.R. Subpart W Drip Pad requirements, nor had the Respondent annually re-certified the Professional Engineer's Assessment for the drip pad at Building C, known as the CCA Plant, at the Facility.
48. At the time of the EPA Inspection, Respondent violated W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.571, by failing to have an annually re-certified Professional Engineer's Assessment on file at the Facility.
49. In failing to comply with W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.571, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

**Count 5**

**Failure to Operate and Maintain the Drip Pad in a Manner to Minimize Tracking of  
Hazardous Waste Off the Drip Pad**

50. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
51. W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j), requires drip pads to be operated and maintained in a manner to minimize tracking of



hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

52. At the time of the EPA Inspection, Respondent did not have measures in place to minimize waste tracking off the Facility drip pad, as required by 40 C.F.R. § 264.573(j). Drillage and staining were found at the Facility's storage yard area, storage pads and the asphalt cap of the storage yard. Staining from drillage on the dirt and gravel at the ends of the tram rails corresponds with pathways used by employees.
53. At the time of the EPA Inspection, Respondent violated W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j), by failing to operate and maintain the drip pads at the Facility in a manner to minimize tracking of hazardous waste or hazardous constituents off the drip pads.
54. In failing to comply with W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(j), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

#### **Count 6**

#### **Failure to Hold Treated Wood on the Drip Pad Until Drillage Has Ceased**

55. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
56. W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(k), requires that after being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drillage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.
57. At the time of the EPA Inspection, drillage was apparent on the pads and ground in the Facility's storage yard, indicating that the treated wood was not kept on the drip pad over the drip pans for a sufficient amount of time for it to cease drilling.
58. The Facility did not have a procedure to determine the amount of time treated wood should remain on the drip pad prior to being moved to the storage area, as required by W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(k). In addition, the Facility did not maintain records to document that the treated wood was held on the drip pad until the drillage ceased, as required by W.Va. Code R. § 33-20-7.2.
59. At the time of the EPA Inspection, Respondent violated W.Va. Code R. § 33-20-7.2,

which incorporates by reference 40 C.F.R. § 264.573(k), by failing to hold treated wood on the drip pad until drippage has ceased and failing to maintain required records.

60. In failing to comply with W.Va. Code R. § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.573(k), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

#### **Count 7**

#### **Failure to Completely Fill Out Hazardous Waste Manifest**

61. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
62. W.Va. Code R. § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.20(a), requires a generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal, to prepare a Manifest (OMB control number 2050-0039) on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the instructions included in the appendix to 40 C.F.R. Part 262.
63. At the time of the EPA Inspection, Manifest No. 016931977 JJK was undated, which did not comply with the requirements included in the appendix to 40 C.F.R. Part 262 for completion of the Manifest.
64. At the time of the EPA Inspection, Respondent violated W.Va. Code R. § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.20(a), by failing to properly fill out Manifest No. 016931977 JJK.
65. In failing to comply with W.Va. Code R. § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.20(a), the Facility was in violation of 40 C.F.R. § 262.20(a) and is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

#### **CIVIL PENALTY**

66. In settlement of the EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **THIRTY-NINE THOUSAND SIX-HUNDRED EIGHTY-ONE dollars (\$39,681.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
67. The civil penalty is based upon the EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were

applied to the particular facts and circumstances of this case with specific reference to the EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June 2003 and May 2020 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation.

68. Respondent agrees to pay a civil penalty in the amount of \$39,681.00 ("Assessed Penalty") within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.
69. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
70. When making a payment, Respondent shall:
  - a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, **EPA Docket No. RCRA-03-2024-0086**,
  - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Daniel T. Gallo  
Sr. Assistant Regional Counsel  
[gallo.dan@epa.gov](mailto:gallo.dan@epa.gov),

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov),

and

U.S. EPA Region 3 Regional Hearing Clerk  
[R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov).

"Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

71. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed per this Consent Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the Effective Date of this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate. Any lower rate would fail to provide Respondent adequate incentive for timely payment.
  - b. Handling Charges. Respondent will be assessed monthly a charge to cover the EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, the EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
  - c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.
72. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
  - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
  - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
73. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
74. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
75. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed the EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
76. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. §162(f)(2)(A)(ii), performance of the Compliance Order, under **Paragraphs (79 and 80)** (RCRA Drip Pad Work Plan Implementation), is restitution or required to come into compliance with law.
77. The parties consent to service of the Final Order by e-mail at the following valid email addresses: gallo.dan@epa.gov (for Complainant), and jennifer.hughes@step toe-johnson.com (for Respondent).
78. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, **including** amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may

subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Appalachian Timber Services, LLC, Respondent, herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to the EPA’s Cincinnati Finance Center at [henderson.jessica@epa.gov](mailto:henderson.jessica@epa.gov), within 30 days after the Final Order ratifying this Consent Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
  - i. notify the EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of the Final Order per Paragraph **87**; and
  - ii. provide the EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

### **COMPLIANCE ORDER**

79. **RCRA Drip Pad Work Plan Implementation.** As a condition of this settlement, Respondent is hereby ORDERED, pursuant to Section 3008(a) of the Act, 42 U.S.C. § 6928(a), and does consent, to implement and execute Attachment A, Final ATS Drip Pad Work Plan, dated May 30, 2024 (“Work Plan”), of this Consent Agreement and Final Order at Respondent’s Facility.
80. The Work Plan requires Respondent to perform the requisite Compliance Tasks, each of which is also referred to as the “Proposed Schedule of Activities” in the Work Plan, and shall consist of:

- a. Submit PE approval of steel tray design
  - i. Deadline: **7 Days** from the Effective Date of this Consent Order
- b. Install steel tray on Tramline #1
  - i. Deadline: **45 days** from receipt of the EPA's approval of work plan
- c. Obtain interim Professional Engineer (PE) Assessment and submit copy to the EPA
  - i. Deadline: **30 days** from completion of improvement to Tramline #1
- d. Install steel tray on Tramline #2
  - i. Deadline: **60 days** from completion of improvement to Tramline #1
- e. Install steel tray on Tramline #3
  - i. Deadline: **45 days** from completion of improvement to Tramline #2
- f. Final PE Assessment\*
  - i. Deadline: **Within 1 year** of the Effective Date of this Consent Order.
  - ii. Submit a copy of the Final PE Assessment to the EPA within **14 days** of its completion.
- g. First Annual PE Assessment\*
  - i. Deadline: **Within 1 year** of the Final PE Assessment.
  - ii. Submit a copy of the first Annual PE Assessment to the EPA within 14 days of its completion.

\*Upon completion of the Work Plan, in the event the Professional Engineer cannot certify the Drip Pad to be compliant with 40 C.F.R. Subpart W, Respondent will immediately take all necessary steps to attain PE certification. If the PE assesses the drip pad as noncompliant in the Final Assessment, then Respondent shall:

- 1) Submit a Remedial Work Plan within **30 days** of Final PE Assessment; and
- 2) Take all necessary steps to achieve Subpart W compliance of the Facility's drip pad by no later than **60 days** after PE's Final Assessment.

#### **GENERAL SETTLEMENT CONDITIONS**

81. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order

does not contain any confidential business information or personally identifiable information from Respondent.

82. Respondent certifies that any information or representation it has supplied or made to the EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

#### **CERTIFICATION OF COMPLIANCE**

83. Respondent certifies to the EPA, upon personal investigation and to the best of its knowledge and belief, that with the exception of those outstanding compliance actions that Respondent is required to implement in the "Compliance Order" section above, it is otherwise in current compliance with regard to the violations alleged in this Consent Agreement.

#### **OTHER APPLICABLE LAWS**

84. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the RCRA, or any regulations promulgated thereunder.

#### **RESERVATION OF RIGHTS**

85. This Consent Agreement and Final Order resolves only the EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare,



or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). The EPA reserves any rights and remedies available to it under the Resource Conservation and Recovery Act (“RCRA”), the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

**EXECUTION /PARTIES BOUND**

86. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

**EFFECTIVE DATE**

87. The effective date of this Consent Agreement and Final Order (“Effective Date”) is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

**ENTIRE AGREEMENT**

88. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: Appalachian Timber Services, LLC

Date: 6/25/2024

By:   
Rick Gibson  
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: \_\_\_\_\_  
[Digital Signature and Date]  
Karen Melvin, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA – Region 3  
Complainant

Attorney for Complainant:

By: \_\_\_\_\_  
[Digital Signature and Date]  
Daniel T. Gallo  
Sr. Assistant Regional Counsel  
U.S. EPA – Region 3

**Attachment A, Final ATS Drip Pad Work Plan, dated May 30, 2024**



630 Cross Lanes Drive  
Nitro, West Virginia, 25143  
Phone: 304.776.6717  
Fax: 304.776.6769

May 30, 2024

Dan Gallo  
Sr. Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: Final ATS Drip Pad Work Plan  
Notice of Potential Violations and Opportunity to Confer Letter  
Appalachian Timber Services  
393 Edgar Given Parkway  
Sutton, West Virginia 26601  
RCRA ID No. WVD063461958  
EnviroProbe Project #20-0128-010

Dear Mr. Gallo:

On behalf of Appalachian Timber Services (ATS), EnviroProbe Integrated Solutions, Inc. (EnviroProbe) is submitting this work plan to satisfy requirements made by the United States Environmental Protection Agency (USEPA) resulting from a Compliance Evaluation Inspection (CEI) at the above-referenced facility.

During a CEI conducted by USEPA on September 26, 2019, it was observed that the facility contained what appeared to be a drip pad regulated under 40 CFR Part 264 Subpart W, but that was not being operated as such. This drip pad consists of a set of three (3) winched tramlines underlain by steel pans. The tramlines are used to load and unload wooden cross ties from retorts that preserve the wood in a process involving heat, pressure, and creosote.

A review of documents obtained from ATS, the West Virginia Department of Environmental Protection (WVDEP), and the USEPA indicated the tramlines were designed and installed in agreement with, and with the approval of, USEPA and WVDEP in 1998. This tram upgrade was performed pursuant to a 1997 administrative consent order. The three (3) tramlines will be collectively referred to

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Members: PEC Premiere ♦ Avetta ♦ ISNetworld ♦ SafeLand ♦ BROWZ ♦ NDA ♦ CAWV ♦ IOGAWV ♦ WVONGA ♦ OMEGAWV

herein as the drip pad, with the understanding that they are three separate systems that were designed and installed in a consistent manner.

The subsequent Notice of Potential Violations letter issued by USEPA to ATS indicated four (4) potential violations related to the operation of the onsite drip pad. EnviroProbe was contracted to evaluate the drip pad regarding compliance with Subpart W and the potential violations. EnviroProbe performed a site visit on December 18, 2023 to perform an initial review and inspection of the drip pad construction and operational mechanics. Based on this site visit, EnviroProbe offers the following:

#### **IV. Failure to Minimize Risk of Release of Hazardous Waste to the Environment**

The CEI report indicated the following under this Count as it relates to the operation of the drip pad:

- a. *Creosote drippage was present at the ends of the tram lines on the ground, off of the concrete, on the gravel and on the surrounding soil. Pools of creosote drippage collected underneath the tram lines in pans and on absorbent pads at the Facility.*
- b. *The concrete surrounding drip pans was stained from creosote drippage. This concrete is not managed as 40 C.F.R. Part 264 Subpart W drip pad, which increases the risk of release to the environment.*

Tramlines are operated onsite via a winching system that pulls carts loaded with treated wood above a double-layered steel drip pad, which is covered by a roof to prevent rain entering the drip pad. Additionally, the edges of the steel drip pad are turned up at an angle and the ground slopes away from the steel pad to prevent stormwater run on from the facility yard to enter the drip pad. The winches themselves are covered with steel shrouds (to protect from precipitation) with steel collection pans on the rear bottom to collect creosote that may drip off the winch cable while the winch is in operation. The roof over the drip pad does not extend over all of the winches, necessitating winch shrouds to prevent rainwater from washing creosote onto the ground.

During EnviroProbe's site visit, no drippage of creosote was observed on the ground at the facility, including in the locations identified in the CEI report. A review of the photographs attached to the CEI report evidenced that drippage identified in Count IV.a of the CEI was material that had overshot the pans at the rear bottom of the winches (not the double-layer steel drip pans along the trams) that were intended to catch this overspray. A review of the photographs attached to the CEI report

evidenced that drippage identified in Count IV.b of the CEI was staining identified beneath one of the winches, which rests on a bare concrete foundation.

EnviroProbe has proposed installing ¼ inch plate steel trays beneath the existing winches. The steel trays would sit on top of the concrete foundation and beneath the winches. These trays would fully encapsulate the footprint of the winches and extend approximately 18 inches to the rear of the winch reel. Current drip trays behind the winch reels are approximately four (4) inches wide. Additionally, the existing rain shrouds covering the winches would be expanded to accommodate the size of the steel trays to prevent rainwater accumulation. As the existing tramlines are already underlain by steel liners that meet the physical definition of a drip pad in 40 CFR § 264.443(a)(4), the addition of the expanded trays and winch shrouds will allow full compliance with 40 CFR § 264.443(a)(4) by eliminating the mechanism through which creosote contacted the gravel at the facility.

Drippage and pooled creosote identified in the CEI report will be managed pursuant to a revised operations and maintenance schedule in accordance with requirements of 40 CFR Part 264, Subpart W. Specifically, the drip pad will be maintained in a condition that will allow for a minimum of weekly visual inspections and drippage or pooled creosote will be cleaned up immediately. ATS understands that “immediately” in this context is defined as within 24 to 72 hours. Drippage cleaned up as part of the maintenance program will be handled in accordance with the facility’s existing hazardous waste permit and applicable waste handling regulations. Specific management plans and record-keeping documents will be included in a revised Contingency Plan.

In the interim until the included remedy is complete, ATS is currently preventing releases of hazardous waste (creosote) from the tramlines through daily inspections and operational controls to ensure drippage from the rear of the winchlines does not occur. If drippage is observed, it is removed immediately and added to their waste stream for proper disposal.

#### Proposed Schedule of Activities:

In order to install the steel trays beneath the winch reels, the tramlines must be shut down while the winches are disconnected and lifted, the steel trays fabricated and installed, and the winches re-installed. ATS requests a phased schedule for installation of the trays in order to allow for minimum disruption to the production schedule as well as financial considerations:

- a. Submit PE approval of steel tray design
  - i. Deadline: **7 Days** from the Effective Date of the Consent Order
- b. Install steel tray on Tramline #1
  - i. Deadline: **45 days** from receipt of the EPA’s approval of work plan

- c. Obtain interim Professional Engineer (PE) Assessment and submit copy to the EPA
  - i. Deadline: **30 days** from completion of improvement to Tramline #1
- d. Install steel tray on Tramline #2
  - i. Deadline: **60 days** from completion of improvement to Tramline #1
- e. Install steel tray on Tramline #3
  - i. Deadline: **45 days** from completion of improvement to Tramline #2
- f. Final PE Assessment\*
  - i. Deadline: **Within 1 year** of the Effective Date of the Consent Order.
  - ii. Submit a copy of the Final PE Assessment to the EPA within **14 days** of its completion.
- g. First Annual PE Assessment\*
  - i. Deadline: **Within 1 year** of the Final PE Assessment.
  - ii. Submit a copy of the first Annual PE Assessment to the EPA within 14 days of its completion.

\*Upon completion of the Work Plan, in the event the Professional Engineer cannot certify the Drip Pad to be compliant with 40 C.F.R. Subpart W, Respondent will immediately take all necessary steps to attain PE certification. If the PE assesses the drip pad as noncompliant in the Final Assessment, then Respondent shall:

- a. Submit a Remedial Work Plan within **30 days** of Final PE Assessment; and
- b. Take all necessary steps to achieve Subpart W compliance of the Facility's drip pad by no later than **60 days** after PE's Final Assessment.

## **V. Failure to obtain and re-certify annually a PE Assessment for the facility's existing Drip Pad**

ATS has contracted with EnviroProbe to perform this assessment and certification (Neil Capper, WV PE #26276). Based on the December 18, 2023 site visit and a review of facility information, only steps outlined in Section IV of this work plan are needed to allow EnviroProbe to fully certify the drip pad as compliant with 40 CFR Part 264, Subpart W.

### Proposed Schedule of Activities:

Based on the proposed modifications as contained in Section IV and accompanying schedule for implementation of those improvements above, EnviroProbe is proposing



a phased assessment schedule as the improvements approved in the work plan are completed.

This work plan has been prepared by a West Virginia Professional Engineer and is proposed as a preliminary assessment. An interim assessment will be performed once the modifications to Tramline #1 are completed. A final assessment will be submitted on the entire drip pad, encompassing modifications on all three (3) tramlines, within 1 year of the Effective Date of the Consent Order. Following that assessment, the drip pad will be re-certified annually, starting with the first recertification within 1 year of the Final PE Assessment.

- |                           |   |
|---------------------------|---|
| a. Preliminary Assessment | Completed with submittal of this work plan                              |
| b. Interim Assessment     | Within <b>30 days</b> of completion of improvements to Tramline #1 Tray |
| c. Final Assessment       | Within <b>1 year</b> of the Effective Date of the Consent Order         |
| d. Annual Assessment      | Within <b>1 year</b> of the Final PE Assessment                         |

If PE assessment results in a non-compliant drip pad in the Final Assessment, then ATS shall:

- Submit a Remedial Work Plan within 30 days of PE's Final Assessment; and
- Take all necessary steps to achieve Subpart W compliance of the ATS drip pad by no later than 60 days after PE's Final Assessment.

## **VI. Failure to Operate and Maintain the Drip Pad in a Manner to Minimize Tracking of Hazardous Waste Off the Drip Pad**

The CEI report indicated the following under this Count as it relates to the operation of the drip pad:

*At the time of the EPA CEI, Respondent did not have measures in place to minimize waste tracking off the Facility drip pad. Drillage and staining were found at the facility's storage yard area, storage pads, and the asphalt cap of the storage yard. Staining from drillage on the dirt and gravel at the ends of the tram rails corresponds with pathways used by employees.*

Enviroprobe conducted a site inspection on December 18, 2023, and no creosote drillage was observed off of the drip pad, in the storage yard area, on the storage

pads, or on the asphalt cap of the storage yard. Additionally, a light rain was present during portions of the site visit and no sheens were observed in any of these areas.

It is important to note that ATS utilizes a variety of heavy equipment throughout the facility to move materials and products. This equipment includes both gasoline and diesel-powered equipment as well as equipment with hydraulic components. Third-party contractors also enter the property daily in tractor trailers to load and unload materials and products. De minimis oil staining and equipment leaks are possible and should be expected from the type and amount of activity occurring at ATS. While ATS treats all de minimis leaks as important maintenance issues and addresses them promptly and appropriately, it is possible, and even likely, that some surface staining exists at the facility and is likely attributable to these non-hazardous petroleum sources, and not to creosote drippage.

ATS typically holds treated wood above the drip pad for approximately 15 to 20 minutes following removal from the retorts. Through experience, this amount of time has proven sufficient for the free drippage of liquids from the wood to cease. This is confirmed visually prior to the materials being moved from the drip pad to the storage yard. If drippage has not ceased in this timeframe, it is noted in the operations log and additional time is allowed for drippage to cease prior to lumber being moved to the storage yard.

#### Proposed Schedule of Activities:

ATS management scheduled an internal Hazardous Waste Training class on February 20, 2024 to review hazardous waste handling practices, rules, regulations, and requirements. The class was conducted as a refresher of existing policies and was conducted by a certified training provider, Health and Safety Sciences, LLC. Additionally, EnviroProbe provided additional training during the class with site specific information related to hazardous waste handling with regards to the drip pad and the ongoing RCRA consent order.

### **VII. Failure to Hold Treated Wood on the Drip Pad Until Drippage Has Ceased**

The CEI report indicated the following under this Count as it relates to the operation of the drip pad:

*At the time of the EPA CEI, drippage was apparent on the pads and ground in the Facility's storage yard, indicating that the treated wood was not kept on the drip pad over the drip pans for a sufficient amount of time for it to cease dripping.*

*The Facility did not have a procedure to determine the amount of time treated wood should remain on the drip pad prior to being moved to the storage area*

*and did not maintain documentation required by W.Va. Code R. §33-20-7.2, which incorporates by reference 40 C.F.R. §264.573(k).*

ATS utilizes a visual procedure to confirm drippage has ceased. Effectively, this procedure involves a visual observation that drippage has ceased and allows a minimum of 15 minutes of visual observation after the materials have been removed from the retorts to confirm drippage has ceased.

It should be noted that the treatment process utilized at ATS involves pressure treating raw wood with creosote but following the pressure treatment process, a vacuum of approximately 20" Hg is applied to the lumber for 105 minutes while the lumber remains in the treatment unit. This vacuum is applied to mechanically remove free creosote and return it to the product tanks for future re-use.

This is one of the waste minimization processes ATS employs onsite as part of its hazardous waste management. The retort doors are then opened and air is blown across the lumber, while it is still contained within the retorts, to allow dripping to cease and that product to be collected and reused. This process is conducted over the course of 45 minutes. It is only then that the ties are removed via the tramlines onto the drip pad for confirmation drippage has ceased.

#### Proposed Schedule of Activities:

As mentioned in the previous section, ATS conducted an internal training on hazardous waste handling and management practices on February 20, 2024 and reviewed, among other items, proper procedures and company policies to manage the treatment process and drippage.

The applicable portion of the treatment process will be documented in the revised contingency plan to ensure that drippage has ceased prior to lumber removal from the drip pads. A log sheet will be added to document adherence to, and deviations from, this requirement. The revised contingency plan will include the process and procedure to allow the necessary time for drippage to cease prior to treated lumber being removed from the tram line. The revised Contingency Plan was submitted to EPA on May 14, 2024.

#### **Conclusion**

Upon completion of the activities set forth in this work plan, the undersigned expects to be able to certify that the facilities at ATS comply with the requirements of 40 CFR 264 Subpart W. The schedules of activities were designed to allow time to address any potential issues that may arise during implementation. No further steps are anticipated to be necessary upon completion of the work plan.

Should you have any questions or comments regarding this work plan please contact me via phone at 304-776-6717 or by email at [nacapper@enviroprobeinc.com](mailto:nacapper@enviroprobeinc.com).

Sincerely,



Neil A. Capper, P.E., LRS  
Manager – Environmental Services

Cc: Rick Gibson, ATS  
Jennifer Hughes, Steptoe & Johnson  
EnviroProbe, electronic file

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103



In the Matter of: :  
: :  
Appalachian Timber Services, LLC : U.S. EPA Docket No. RCRA-03-2024-0086  
393 Edgar Given Parkway : :  
Sutton, West Virginia 26601 (Braxton : Proceeding under Sections 3008 (a) and (g) of the  
County) : Resource Conservation and Recovery Act (RCRA),  
: as amended, 42 U.S.C. §§ 6928(a) and (g)  
Respondent. :  
:  
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:

**FINAL ORDER**

Complainant, the Director of the of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and the Appalachian Timber Services Company, LLC (“Respondent” or “ATS”), collectively the “Parties”, have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s October 1990 RCRA Civil Penalty Policy, as revised in June 2003 and May 2020 (“RCRA Penalty Policy”), which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA’s civil penalty policies to account for inflation.

**NOW, THEREFORE, PURSUANT TO** Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***THIRTY-NINE THOUSAND SIX-HUNDRED EIGHTY-ONE DOLLARS (\$39,681.00)***, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. §

22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of the RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103**

**In the Matter of:** :  
:   
**Appalachian Timber Services, LLC** : **U.S. EPA Docket No. RCRA-03-2024-0086**  
**393 Edgar Given Parkway** :  
**Sutton, West Virginia 26601 (Braxton** : **Proceeding under Sections 3008 (a) and (g) of the**  
**County** : **Resource Conservation and Recovery Act (RCRA),**  
: **as amended, 42 U.S.C. §§ 6928(a) and (g)**  
**Respondent.** :

---

**CERTIFICATE OF SERVICE**

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Rick Gibson, President  
Appalachian Timber Services, LLC  
rgibson@atstimber.com  
393 Edgar Given Parkway  
Sutton, West Virginia 26601

Jennifer Hughes, Of Counsel  
Steptoe & Johnson PLLC  
jennifer.hughes@steptoe-johnson.com  
Chase Tower, 707 Virginia St., 17<sup>th</sup> Floor  
Charleston, WV 25301  
P.O. Box 1588, Charleston, WV 25326-1588

Daniel T. Gallo  
Senior Assistant Regional Counsel  
U.S. EPA, Region 3  
gallo.dan@epa.gov

Rebecca Serfass, Jeremy Dearden  
Enforcement Officers  
U.S. EPA, Region 3  
[serfass.rebecca@epa.gov](mailto:serfass.rebecca@epa.gov),  
[dearden.jeremy@epa.gov](mailto:dearden.jeremy@epa.gov)

---

[Digital Signature and Date]  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 3