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EPA REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

GEORGIA-PACIFIC WOOD PRODUCTS  
LLC

Coos Bay, Oregon

Respondent.

DOCKET NO. CWA-10-2019-0009

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,393 per day for each day during which the violation continues, up to a maximum

penalty of \$267,415. See also 83 Fed. Reg. 1190 (January 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Georgia-Pacific Wood Products LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **Statutory and Regulatory Framework**

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. §§ 122.2 & 110.1 (2014 & 2015).

3.5. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.6. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.”

3.8. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharge from facilities classified under Standard Industrial Classification codes 2421 (General Sawmills and Planing Mills), 2411 (Logging), and 2499 (Woods Products, Not Elsewhere Classified). 40 C.F.R. § 122.26(b)(14).

3.9. The state of Oregon, through the Oregon Department of Environmental Quality (ODEQ), is authorized pursuant to CWA Section 402(b), to administer the NPDES permitting program for stormwater discharges associated with industrial activity.

3.10. On October 1, 2011, ODEQ issued the 1200-Z Stormwater Discharge General Permit (2012 General Permit) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2012 General Permit became effective on July 1, 2012, and it expired on June 30, 2017. The 2012 General Permit authorizes, subject to the terms and conditions of the permit, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classification codes 2421, 2411, and 2499.

3.11. On August 1, 2017, ODEQ renewed the 1200-Z General Stormwater Discharge General Permit (2017 General Permit). The 2017 General Permit became effective on August 1, 2017, and it expires on July 31, 2022. The 2017 General Permit authorizes, subject to the terms and conditions of the permit, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classification codes 2421, 2411, and 2499.

### **General Allegations**

3.12. Respondent is a limited liability company licensed to do business in the state of Oregon and is a “person” as defined in CWA Section 502(5), 33 U.S.C. § 1362(5).

3.13. At all times relevant to this action, Respondent owned and operated the property located at 63779 Mullen Road in Coos Bay, Oregon (“Facility”).

3.14. The primary operations conducted by Respondent at the Facility include lumber milling and planing, which are activities categorized under Standard Industrial Classification code 2421 (General Sawmills and Planing Mills). Additional operations include activities categorized under Standard Industrial Classification codes 2411 (Logging) and 2499 (Woods Products, Not Elsewhere Classified).

3.15. On November 28, 2016, an authorized representative of EPA conducted a compliance investigation of the Facility to determine Respondent’s compliance with the 2012 General Permit and CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342.

3.16. At the time of the inspection, the Facility discharged stormwater via six outfalls, namely Outfalls 1, 2, 3, 3A, 4, and 5, into Isthmus Slough. The Facility’s stormwater discharges contain “pollutants” within the meaning of Sections 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.17. The six outfalls at the Facility are “point sources” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.18. Isthmus Slough is a tributary of Coos Bay, which is an inlet of the Pacific Ocean. Isthmus Slough is a traditionally navigable water that may be susceptible to use in interstate commerce and is a “water of the United States” as defined at 40 C.F.R. § 122.2 (2014 & 2015), and therefore a “navigable water” as defined under CWA Section 502(7), 33 U.S.C. § 1362(7).

3.19. By discharging industrial stormwater from the Facility into waters of the United States, Respondent engaged in the “discharge of pollutants” from point sources within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.20. At all times relevant to this action, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility under the 2012 General Permit or the 2017 General Permit with permit numbers 107154 and ORR221385, respectively.

3.21. As part of the inspection, EPA requested records concerning Respondent’s compliance with the 2012 Permit including the Stormwater Pollution Control Plan (“SWPCP”) for the Facility. At that time, Respondent provided EPA with a SWPCP dated October 2016.

#### **Alleged Violations**

3.22. Based on the inspection and EPA’s review of the Respondent’s discharge monitoring reports (DMRs), SWPCP, monthly inspection reports, training records, and corrective action reports, EPA alleges that Respondent violated certain terms and conditions of the 2012 General Permit and the 2017 General Permit, and therefore violated CWA Section 301, 33 U.S.C. § 1311.

#### **Count 1: Failure to Collect Representative Samples**

3.23. Schedules B.2.b and F.C.1 of the 2012 General Permit and the 2017 General Permit require that samples be representative of the discharge. Schedule B.2.b states that, unless approved by ODEQ, all samples must be taken at monitoring points specified in the SWPCP before the stormwater joins or is diluted by stormwater from a different drainage area of the facility or areas outside the facility.

3.24. At the time of the inspection, Respondent collected stormwater samples from Outfall 1 at the location where Outfall 1 discharges into Isthmus Slough. Before reaching

Outfall 1, stormwater in Drainage Basin 1 commingled with stormwater from an adjacent residential community.

3.25. EPA alleges that Respondent violated Schedule B.2.b and Schedule F.C.1 by failing to collect representative samples at Outfall 1 for at least the period from December 2013 to June 2018. Violations of the 2012 General Permit and the 2017 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2: Failure to Maintain Control Measures

3.26. Schedule A.1.i of the 2012 General Permit and the 2017 General Permit requires that Respondent clean, maintain and repair all control measures, including stormwater structures, catch basins, and treatment facilities to ensure effective operation and in a manner that prevents the discharge of pollution.

3.27. Schedule F.B.1 of the 2012 General Permit and the 2017 General Permit provides that Respondent must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permit registrant to achieve compliance with the conditions of this permit.

3.28. Drainage Basin 2 contains a tide gate to prevent brackish water from Isthmus Slough from flowing into Drainage Basin 2 during high tide. During the inspection, the tide gate was inoperable and Facility representatives indicated that it had been inoperable for approximately one year.

3.29. Stormwater in Drainage Basin 2 is routed through a bio-swale that is used to treat stormwater prior to discharge at Outfall 2. At the time of the inspection, the bio-swale in Drainage Basin 2 showed signs of sediment accumulation impacting the growth of vegetation.

3.30. EPA alleges that Respondent violated Schedules A.1.i and F.B.1 of the 2012 General Permit and the 2017 General Permit by failing to maintain and repair stormwater control measures for at least the period from January 2016 to July 2018. Violations of the 2012 General Permit and the 2017 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3: Failure to Complete Adequate Tier 1 Corrective Action Response

3.31. Schedule A.10 of the 2012 General Permit requires Respondent to conduct a Tier 1 corrective action response within 30 days of obtaining monitoring results that demonstrate an exceedance of any statewide benchmark in Schedule A.9 of the 2012 General Permit, sector specific benchmark in Schedule E, or reference concentrations for impairment pollutants identified in the permit assignment letter.

3.32. To complete a Tier 1 corrective action response, Schedule A.10.a requires that Respondent (i) investigate the cause of the elevated pollutant levels; (ii) review the SWPCP and the selection, design, installation and implementation of control measures to determine whether SWPCP revisions are necessary to ensure compliance with the 2012 General Permit; and (iii) summarize the results of the investigation and the corrective actions in a Tier 1 report that is retained on site and submitted to ODEQ upon request. Schedule A.10.b requires Respondent to “[i]mplement the corrective actions before the next storm event if possible or as soon as practicable.”

3.33. Schedule E of the 2012 General Permit sets forth sector specific requirements associated with a permittee’s primary industrial activity and any co-located industrial activities. Pursuant to Schedule E, industrial activities associated Standard Industrial Classification codes 2421, 2411, and 2499 are required to meet the requirements of Sector A.



3.34. Schedule E.A.3 sets forth sector specific benchmarks for Sector A. According to Table E.A-1, discharge from areas associated with SIC 2421 and 2499 are subject to a discharge benchmark concentration of 120.0 mg/L of chemical oxygen demand (COD).

3.35. Outfall 2 exceeded the discharge benchmark concentration for COD on nine instances between July 2013 and February 2016, including on November 19, 2015; December 22, 2015; January 28, 2016; and February 18, 2016.

3.36. In response to the exceedances of the discharge benchmark concentration for COD on November 19, 2015; December 22, 2015; January 28, 2016; and February 18, 2016, Respondent drafted Tier 1 corrective action reports dated December 10, 2015; January 12, 2016; March 7, 2016; and March 11, 2016, respectively. Each Tier 1 corrective action report contained an identical summary of Respondent's corrective action response.

3.37. EPA alleges that Respondent violated Schedule A.10 of the 2012 General Permit by failing to complete an adequate Tier 1 corrective action response on at least 4 instances between December 2015 and March 2016. Violations of the 2012 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4: Failure to Monitor Outfall 3A

3.38. Schedule B.2.c of the 2012 General Permit and the 2017 General Permit provides that each stormwater outfall must be monitored unless, *inter alia*, the discharge point has effluent that is substantially similar to the effluent(s) of a monitored discharge point and the same Best Management Practices ("BMPs") are implemented and maintained at the similar discharge points or drainage areas that lead to the discharge points.

3.39. Schedule B.2.c defines substantially similar effluent(s) as "discharges from drainage areas serving comparable activities where the discharges are expected to be similar in

composition. The determination of substantial similarity of effluent(s) must be based on past monitoring data or an analysis of industrial activities and site characteristics.”

3.40. Respondent’s SWPCP stated that Outfall 3A is not monitored because its effluent is substantially similar to the effluent of Outfall 3 and the same BMPs are practiced in the areas that lead to the outfalls. At the time of the inspection, Facility representatives confirmed that Outfall 3A was not monitored.

3.41. During the inspection, an EPA representative observed that industrial activities in Drainage Sub-basin 3 include log storage, mechanic shop activities, and finished lumber storage, whereas activities in Drainage Sub-basin 3A consists mainly of finished lumber storage, and the discharge includes drainage from the Coos River Highway Bridge. The stormwater exiting Outfall 3 is treated with an oil/water separator, whereas Outfall 3A discharges untreated stormwater.

3.42. Schedule B.2.e and Table 4 of the 2012 General Permit require that Respondent monitor for benchmark pollutants four times per year, and for impairment pollutants twice per year. Accordingly, Respondent was required to monitor for benchmark pollutants four times per year until ODEQ granted the Facility a waiver for certain pollutants on October 29, 2014. Respondent was required to monitor for impairment pollutants, including manganese, twice per year for the duration of the term of the 2012 General Permit.

3.43. Schedule B.2.f and Table 5 of the 2017 General Permit require that Respondent monitor for benchmark pollutants four times per year, and for impairment pollutants twice per year.

3.44. EPA alleges that Respondent violated Schedule B.2.c of the 2012 General Permit and the 2017 General Permit by failing to monitor discharges from Outfall 3A from July 2013 to

March 2018. Violations of the 2012 General Permit and the 2017 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5: Failure to Properly Monitor Oil and Grease

3.45. Schedule A.9 and Table 3 of the 2012 General Permit provide that total oil and grease is a statewide benchmark applicable to each point source discharge of stormwater associated with industrial activity.

3.46. Schedule B.2.e of the 2012 General Permit requires Respondent to monitor for all benchmark pollutants, including oil and grease, four times per year.

3.47. Schedule F.C.3 of the 2012 General Permit provides, “Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136, unless other test procedures have been specified in this permit.”

3.48. Table II of 40 C.F.R. § 136.3 provides that the appropriate container material to analyze oil and grease samples is glass.

3.49. At the time of the inspection, the Facility collected oil and grease samples in a plastic collection container attached to a sample pole. The Facility then transferred the samples to a second plastic container that was shipped to the laboratory for analysis.

3.50. EPA alleges that Respondent violated 40 C.F.R § 136 and Schedule F.C.3 of the 2012 General Permit by failing to use the required container while monitoring oil and grease. Violations of the 2012 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$79,394.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
young.teresa@epa.gov

Stacey Kim  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-201  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Kim.stacey@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such

nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this Consent Agreement, including its right to request a hearing under 40 C.F.R. § 22.15( c) and Section 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B), and (4)(C), its right to appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B), its right to seek federal judicial review of the Consent Agreement and Final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and its right to appeal this Consent Agreement. Respondent also consents to the issuance of this Consent Agreement without further adjudication.

4.12. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent

and Complainant.

DATED:

11/29/18

FOR RESPONDENT:

William Goodman

William Goodman, General Manager –  
Western Lumber  
Georgia-Pacific Wood Products LLC

DATED:

12-18-2018

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

GEORGIA-PACIFIC WOOD PRODUCTS  
LLC

Coos Bay, Oregon

Respondent.

DOCKET NO. CWA-10-2019-0009

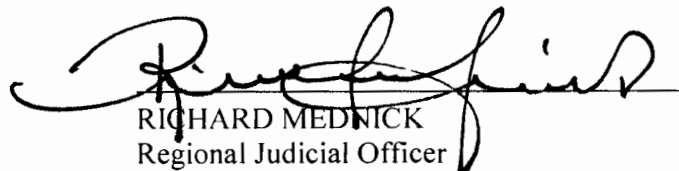
**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.
4. This Final Order shall become effective upon filing.



SO ORDERED this 19<sup>th</sup> day of December, 2018.

  
RICHARD MEDNICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Georgia-Pacific Wood Products LLC, DOCKET NO.: CWA-10-2019-0009**, was filed with the Regional Hearing Clerk on the date below.

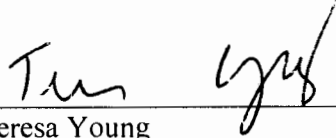
The undersigned certifies that a true and correct copy of the document was delivered to:

J. Matthew Moore  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on the date below to:

Alison Lathrop  
Senior Counsel - Environmental  
Georgia-Pacific LLC  
133 Peachtree Street, NE  
Atlanta, Georgia 30303

DATED this 21 day of December, 2018.

  
\_\_\_\_\_  
Teresa Young  
Regional Hearing Clerk  
EPA Region 10