

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

BEFORE THE ENVIRONMENTAL APPEALS BOARD

IN THE MATTER OF: )  
)  
Southern Wood Piedmont Company, ) Docket No.: RCRA-HQ-2011-5014  
Rayonier Inc. )  
)  
Respondents. )

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. Complainant, United States Environmental Protection Agency ("EPA"), and Respondents, Southern Wood Piedmont Company (hereinafter "Southern Wood Piedmont") and Rayonier Inc. (hereinafter "Rayonier"), (each a "Party" and collectively, the "Parties") having agreed to settle this action, consent to the terms of this Consent Agreement ("Agreement") and the attached proposed Final Order, hereby incorporated by reference, before the taking of any testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Agreement and the attached proposed Final Order.

2. This civil administrative action is instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments ("HSWA") of 1984 (collectively "RCRA"), 42 U.S.C. § 6928(a).

3. Rosemarie A. Kelley, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, and Karin Leff, Acting Director, Regional Support Division, Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance, are authorized, by lawful delegation, to institute and

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settle civil administrative actions brought pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

4. The Complainant and Respondents, having sought to settle the matter, have agreed to the terms of this Agreement and attached proposed Final Order in order to resolve this action without hearing or other litigation.

5. The terms of this Agreement and attached proposed Final Order constitute a full and final settlement between the Parties for all claims for civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the alleged violations of RCRA and corresponding state regulations as addressed in Section VI (Conclusions of Law) of this Agreement.

Compliance with this Agreement and attached proposed Final Order shall not be a defense to any other actions commenced pursuant to federal, state, and/or local environmental laws that are not otherwise resolved by this Agreement and proposed Final Order. Nothing in this Agreement and proposed Final Order shall relieve Respondents of the duty to comply with all provisions of RCRA and any other federal, state, and/or local laws, statutes, or regulations applicable to each Respondent.

6. Respondents neither admit nor deny the specific factual allegations in this Agreement. 40 C.F.R. § 22.18. Respondents neither admit nor deny the conclusions of law in Section VI of this Agreement.

7. Respondents agree to pay the civil penalty specified in Section VII (Terms of Agreement) as full and final settlement for all claims specified in this Agreement. 40 C.F.R. § 22.18(b).

8. Each Party to this Agreement shall bear its own costs and attorneys' fees in the action resolved by this Agreement and attached proposed Final Order.

## II. JURISDICTION/WAIVER OF RIGHT TO A HEARING

9. This Agreement is entered into pursuant to Section 3008(a) of 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,” 40 C.F.R. Part 22 (hereinafter the “Consolidated Rules”).

10. The Consolidated Rules provide that where the parties agree to the settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order. The Parties agree to the commencement and conclusion of this cause of action as prescribed by the Consolidated Rules, 40 C.F.R. Part 22, and more specifically by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

11. Respondents stipulate that EPA has the authority to bring an administrative action for these violations, to compel compliance, and to assess civil penalties pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a). For purposes of this proceeding, Respondents stipulate that EPA’s Environmental Appeals Board has jurisdiction over the subject matter that is the basis of this Agreement and attached proposed Final Order and personal jurisdiction over the Respondents per 40 C.F.R. § 22.18.

12. Solely for purposes of this proceeding, Respondents hereby waive their right to request a judicial or administrative hearing on any issue of fact or law set forth in this Agreement pursuant to RCRA Section 3008(b), 42 U.S.C. § 6928(b). Respondents waive their right to appeal the proposed Final Order accompanying this Agreement pursuant to 40 C.F.R. § 22.18.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the EPA Administrator may authorize a state to administer the RCRA hazardous waste program in lieu of the federal

program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, or of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, which may be subject to the assessment of civil penalties and issuance of compliance orders as provided by Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

14. The states of Florida, Georgia, Ohio, and South Carolina (collectively the “Affected States”) have been authorized, pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to administer a state hazardous waste program in accordance with the notice provided in the Federal Register:

**Florida:** The EPA Administrator granted the State of Florida final authorization to administer a state hazardous waste program in lieu of the federal government’s base RCRA program on January 29, 1985, effective February 12, 1985 (50 Fed. Reg. 3908). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective January 30, 1988 (52 Fed. Reg. 45,634 (Dec. 1, 1987)), January 3, 1989 (53 Fed. Reg. 50,529 (Dec. 16, 1988)), February 12, 1991 (55 Fed. Reg. 51,416 (Dec.14, 1990)), April 6, 1992 (57 Fed. Reg. 4371 (Feb. 5, 1992)), April 7, 1992 (57 Fed. Reg. 4738 (Feb. 7, 1992)), July 20, 1992 (57 Fed. Reg. 21,351 (May 20, 1992)), January 10, 1994 (58 Fed. Reg. 59,367 (Nov. 9, 1993)), September 9, 1994 (59 Fed. Reg. 35266 (July 11, 1994)), October 17, 1994 (59 Fed. Reg. 41,979 (Aug. 16, 1994)), December 27, 1994 (59 Fed. Reg. 53,753 (Oct. 26, 1994)), June 2, 1997 (62 Fed. Reg. 15,407 (Apr. 1, 1997)), October 22, 2001 (66 Fed. Reg. 44,307 (Aug. 23, 2001)), October 21, 2002 (67 Fed. Reg. 53,886 (Aug. 20, 2002) and 67 Fed. Reg. 53,889 (Aug. 20, 2002)), December 13, 2004 (69 Fed. Reg. 60,694 (Oct. 14, 2004)), and October

9, 2007 (72 Fed. Reg. 44,973 (Aug. 10, 2007)). The authorized Florida program, through RCRA Cluster IV, was incorporated by reference into the C.F.R. on January 20, 1998, effective March 23, 1998 (63 Fed. Reg. 2896). Florida received corrective action authority on September 18, 2000, effective November 18, 2000 (65 Fed. Reg. 56,256). The EPA-authorized Florida regulations are codified at FLA. ADMIN. CODE r. 62-730.001 *et. seq.* See also 40 C.F.R. §§ 272.500 and 272.501.

**Georgia:** The EPA Administrator granted the State of Georgia final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program on August 7, 1984, effective August 21, 1984 (49 Fed. Reg. 31,417). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective September 18, 1986 (51 Fed. Reg. 24,549 (July 7, 1986)), September 26, 1988 (53 Fed. Reg. 28,383 (July 28, 1988)), September 24, 1990 (55 Fed. Reg. 30,000 (July 24, 1990)), April 15, 1991 (56 Fed. Reg. 5656 (Feb. 12, 1991)), July 10, 1992 (57 Fed. Reg. 20,055 (May 11, 1992)), January 25, 1993 (57 Fed. Reg. 55,466 (Nov. 25, 1992)), April 27, 1993 (58 Fed. Reg. 11,539 (Feb. 26, 1993)), January 18, 1994 (58 Fed. Reg. 60,388 (Nov. 16, 1993)), June 27, 1994 (59 Fed. Reg. 21,664 (Apr. 26, 1994)), July 10, 1995 (60 Fed. Reg. 24,790 (May 10, 1995)), October 30, 1995 (60 Fed. Reg. 45,069 (Aug. 30, 1995)), May 6, 1996 (61 Fed. Reg. 9108 (Mar. 7, 1996)), November 17, 1998 (63 Fed. Reg. 49,852 (Sept. 18, 1998)), December 13, 1999 (64 Fed. Reg. 55,629 (Oct. 14, 1999)), March 30, 2001 (66 Fed. Reg. 8090 (Nov. 28, 2000)), September 16, 2002 (67 Fed. Reg. 46,600 (July 16, 2002)), January 21, 2003 (67 Fed. Reg. 69,690 (Nov. 19, 2002)), September 16, 2003 (68 Fed. Reg. 42,605 (July 18, 2003)), April 20, 2005 (70 Fed. Reg. 12,973 (Jan. 27, 2005)), and June 26, 2006 (71 Fed.

Reg. 23,864 (Apr. 25, 2006)). The EPA-authorized Georgia regulations are codified at GA COMP. R & REGS. 391-3-11-.01 *et. seq.*

**Ohio:** The EPA Administrator granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program on June 28, 1989, effective June 30, 1989 (54 Fed. Reg. 27,170). The EPA Administrator granted final authorization to administer RCRA and certain HSWA requirements effective June 7, 1991 (56 Fed. Reg. 14,203 (Apr. 8, 1991), as corrected on June 19, 1991 and effective on August 19, 1991 (56 Fed. Reg. 28,088)), September 25, 1995 (60 Fed. Reg. 38,502 (July 27, 1995)), December 23, 1996 (61 Fed. Reg. 54,950 (Oct. 23, 1996)), January 24, 2003 (68 Fed. Reg. 3429 (Jan. 24, 2003)), January 20, 2006 (71 Fed. Reg. 3220 (Jan. 20, 2006)), and October 29, 2007 (72 Fed. Reg. 61,063 (Oct. 29, 2007)). The EPA-authorized Ohio regulations are codified at OHIO ADMIN. CODE 3745-50-01. *et. seq.* See also 40 C.F.R. §§ 272.1800 and 272.1801.

**South Carolina:** The EPA Administrator granted the State of South Carolina final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program on November 8, 1985, effective November 22, 1985 (50 Fed. Reg. 46,437). The EPA Administrator granted final authorization to administer additional RCRA and certain HSWA requirements effective November 7, 1988 (53 Fed. Reg. 34,758 (Sept. 8, 1988)), April 12, 1993 (58 Fed. Reg. 7865 (Feb. 10, 1993)), January 30, 1995 (59 Fed. Reg. 60,901 (Nov. 29, 1994)), June 25, 1996 (61 Fed. Reg. 18,502 (Apr. 26, 1996)), December 4, 2000 (65 Fed. Reg. 59,135 (Oct. 4, 2000)) and October 22, 2001 (66 Fed. Reg. 43,798 (Aug. 21, 2001)), and May 27, 2005 (70 Fed.

Reg. 15,594 (Mar. 28, 2005)). The EPA-authorized South Carolina regulations are codified at S.C. CODE REGS. 61-79.124.1 *et. seq.*

15. EPA has provided a notice of commencement of this action, as appropriate, to the Affected States, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

### III. PARTIES BOUND

16. This Agreement shall take full effect upon signing and filing of the attached proposed Final Order by the Environmental Appeals Board and shall apply to and be binding upon the Parties, and their respective officers, directors, employees, successors, and assigns.

17. Each Party certifies that at least one of its undersigned representatives is fully authorized by the Party whom he or she represents to enter into the terms and conditions of the Agreement and to execute it on behalf of that Party.

### IV. DEFINITIONS

18. Unless otherwise expressly provided herein, terms used in the Agreement that are defined in RCRA, 42 U.S.C. §§ 6902-6991i, or in regulations promulgated under RCRA, 40 C.F.R. Parts 260-270, or in a state's authorized hazardous waste program, shall have the same meaning assigned to them therein.

19. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

- a. "Affected States" shall mean Florida, Georgia, Ohio, and South Carolina.<sup>1</sup>
- b. "Alternative I" shall mean the first alternative of the financial test found at FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f)(1)(i)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§

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<sup>1</sup> Any alleged violations of financial assurance requirements involving Respondent Southern Wood Piedmont's facility located in Chattanooga, Tennessee are not addressed in this Consent Agreement.

264.143(f)(1)(i) and 264.145(f)(1)(i)) (Georgia), OHIO ADMIN. CODE 3745-66-45(E)(1)(a) (Ohio), and S.C. CODE REGS. 61-79.265.145(e)(1)(i) (South Carolina).

c. "Alternative II" shall mean the second alternative of the financial test found at FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f)(1)(ii)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143(f)(1)(ii) and 264.145(f)(1)(ii)) (Georgia), OHIO ADMIN. CODE 3745-66-45(E)(1)(b) (Ohio), and S.C. CODE REGS. 61-79.265.145(e)(1)(ii) (South Carolina).

d. "Applicable State Permits" shall mean Permit Nos. 0072515-001-HF and 0072515-004-HF, issued by Florida for the Baldwin Facility on July 12, 2000 and Oct. 13, 2006, respectively; Permit No. HW-066(D), issued by Georgia for the Augusta Facility on November 14, 2004; and Permit No. HW-069(D), issued by Georgia for the East Point Facility on May 8, 1996.

e. "Complainant" shall mean the United States Environmental Protection Agency or EPA.

f. "Compliant Financial Assurance" shall mean financial assurance that meets the standards set out in 40 C.F.R. Parts 264 and 265, Subpart H (or the authorized state requirements), as applicable.

g. "Consent Agreement" or "Agreement" shall mean this Consent Agreement and attached proposed Final Order. In the event of conflict between this Agreement and any Attachment, this Agreement shall control.

h. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In

computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business the next working day.

i. "Financial Mechanism" shall mean a trust fund, payment or performance surety bond, insurance, letter of credit, written guarantee, or demonstration through the financial test.

j. "Notify" and "Submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail or dispatch by express courier.

k. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral and, in some cases, an associated lower case letter.

l. "Parties" shall mean Complainant and Respondents.

m. "Relevant Time Period" shall mean the time period addressed by this Agreement, which includes the time period of Respondents' 2005, 2006, 2007, 2008 and 2009 financial assurance submissions.

n. "Respondents" shall mean the Southern Wood Piedmont Company and Rayonier Inc.

o. "Section" shall mean a portion of this Agreement identified by a roman numeral.

## V. FINDINGS OF FACT

### A. Background on Respondents and their Corporate Structure.

20. Respondent Southern Wood Piedmont is the owner and operator of the following facilities that treat, store, or dispose of hazardous waste (hereinafter "TSDs") that are subject to this Agreement and attached proposed Final Order:

- a. Florida
  - i. 900 North Center Street, Baldwin, Florida 32234 (EPA ID# FLD004053450) (“Baldwin Facility”);
- b. Georgia
  - ii. 1650 Nixon Road, Augusta, Georgia 30903 (EPA ID# GAD051034387) (“Augusta Facility”);
  - iii. 1745 Connally, East Point, Georgia 30364 (EPA ID# GAD067560870) (“East Point Facility”);
- c. Ohio
  - i. 279 Industrial Park Drive, Waverly, Ohio 45690 (EPA ID# OHD089431001) (“Waverly Facility”); and
- d. South Carolina
  - i. 591 Springfield Road, Spartanburg, South Carolina 29303 (EPA ID# SCD049690001) (“Spartanburg Facility”) (collectively the “Facilities”).

21. Respondent Southern Wood Piedmont’s corporate office is located at P.O. Box 5447, Spartanburg, South Carolina 29304 and it is incorporated in the state of Delaware.

22. Respondent Rayonier is the higher-tier parent corporation of Respondent Southern Wood Piedmont. Respondent Rayonier’s corporate office is located at Jacksonville, Florida and it is incorporated in the state of North Carolina.

**B. Respondent Southern Wood Piedmont’s Financial Assurance Requirements.**

23. Respondent Southern Wood Piedmont’s Baldwin Facility, Augusta Facility, and East Point Facility are permitted TSDs that each operated under the Applicable State Permits during the Relevant Time Period.

24. Respondent Southern Wood Piedmont's Waverly Facility and Spartanburg Facility are interim status TSDs:

- a. Waverly Facility received interim status in December, 1981.
- b. Spartanburg Facility received interim status in December, 1981.

25. During the Relevant Time Period, Respondent Southern Wood Piedmont was required to provide financial assurance for closure obligations at the Augusta Facility pursuant to Permit No. HW-066(D), Section I.F.3, referencing the requirements under 40 C.F.R. §§ 264.142 and 264.143, and Section I.A.1, noting that references to the federal regulations are specific regulations adopted by the Georgia Environmental Protection Division.

26. During the Relevant Time Period, Respondent Southern Wood Piedmont was required to provide financial assurance for post-closure obligations at the following facilities:

- a. Baldwin Facility pursuant to Permit No. 0072515-001-HF, Part I.2., referencing the requirements under 40 C.F.R. Part 264 Subpart H and FLA. ADMIN. CODE r. 62-730.180(6), and Permit No. 0072515-004-HF, Part I.2., referencing the requirements under 40 C.F.R. Part 264 Subpart H and FLA. ADMIN. CODE r. 62-730.180(6).
- b. Augusta Facility pursuant to and Permit No. HW-066(D), Section I.F.3, referencing the requirements under 40 C.F.R. §§ 264.144 and 264.145, and Section I.A.1, noting that references to the federal regulations are specific regulations adopted by the Georgia Environmental Protection Division;
- c. East Point Facility pursuant to Permit No. HW-069(D), Section I.F.3., referencing the requirements under 40 C.F.R. §§ 264.144 and 264.145, and Section I.A.1, noting that references to the federal regulations are specific regulations adopted by the Georgia Environmental Protection Division;

- d. Waverly Facility pursuant to OHIO ADMIN. CODE 3745-66-45; and
- e. Spartanburg Facility pursuant to S.C. CODE REGS. 61-79.265.145.

27. During the Relevant Time Period, Respondent Southern Wood Piedmont was required to provide financial assurance for corrective action obligations at the following facilities:

- a. Baldwin Facility pursuant to Permit No. 0072515-001-HF, Part I.2., referencing the requirements under 40 C.F.R. Part 264 Subpart H and FLA. ADMIN. CODE r. 62-730.180(6), and Permit No. 0072515-004-HF, Part I.2., referencing the requirements under 40 C.F.R. Part 264 Subpart H and FLA. ADMIN. CODE r. 62-730.180(6) and 62-730.226;
- b. Augusta Facility pursuant to Permit No. HW-066(D), Section I.F.3., referencing the requirements under 40 C.F.R. Part 264 Subpart H, Section III.U.4., referencing the requirements under 40 C.F.R. § 264.101(b), and Section I.A.1, noting that references to the federal regulations are specific regulations adopted by the Georgia Environmental Protection Division; and
- c. East Point Facility pursuant to HW-069(D), Section I.F.3., referencing the requirements under 40 C.F.R. Part 264 Subpart H, Section III.T.4., referencing the requirements under 40 C.F.R. § 264.101(b), and Section I.A.1, noting that references to the federal regulations are specific regulations adopted by the Georgia Environmental Protection Division.

**C. Communications Regarding Respondents' Financial Assurance Submissions.**

28. On April 21, 2009, the Tennessee Department of Environment and Conservation sent a request for information to Respondent Rayonier regarding Respondents' financial assurance submissions, which Respondent Rayonier responded to on April 30, 2009.

29. On June 16, 2009, EPA sent an information request ("EPA Information Request") to Respondent Rayonier pursuant to RCRA Section 3007, 42 U.S.C. § 6927, regarding Respondents' financial assurance submissions, which Respondent Rayonier responded to on August 19, 2009 ("Information Request Response").

30. In September of 2009, EPA began discussions with the Affected States regarding Respondent Southern Wood Piedmont's potential violations of RCRA financial assurance requirements. EPA also consulted with the Affected States before sending a notice of violation to Respondent Southern Wood Piedmont.

31. On February 4, 2010, EPA sent Respondent Southern Wood Piedmont a notice of violation alleging that Respondent Southern Wood Piedmont had violated the closure, post-closure, and/or corrective action financial assurance requirements of Section 3004 of RCRA, 42 U.S.C. § 6924, FLA. STAT. ANN. § 403.724, GA. CODE. ANN. § 12-8-68, OHIO REV. CODE ANN. § 3734.12, S.C. CODE ANN. § 44-56-60, and the implementing regulations at 40 C.F.R. Parts 264 and 265 Subparts H, FLA. ADMIN. CODE r. 62-730.180, GA. COMP. R & REGS. 391-3-11-.05, OHIO ADMIN. CODE 3745-66-45, S.C. CODE REGS. 61-79.265 Subpart H, and TENN. COMP. R. & REGS. 1200-1-11-.06(8), and the Applicable State Permits. A copy of the notice of violation was provided to the Affected States.

32. Respondent Southern Wood Piedmont responded to EPA's notice of violation on April 1, 2010. Respondent Southern Wood Piedmont completed the relief requested in EPA's

February 4, 2010 notice of violation by submitting, in March of 2010, compliant financial assurance instruments to the Affected States in the form of written guarantees provided by Respondent Rayonier with documentation for an Alternative I financial test demonstration.

33. Following the issuance of a notice of violation to Respondent Southern Wood Piedmont, EPA engaged in further discussions with the Affected States regarding Respondent Southern Wood Piedmont's alleged violations of RCRA financial assurance requirements and notified the Affected States that EPA intended to commence an enforcement action against Respondents for the alleged violations cited in the notice of violation described in Paragraph 31.

**D. Financial Assurances Submitted by Respondents during the Relevant Time Period.**

34. To meet its financial assurance obligations for closure, post-closure, and/or corrective action during the Relevant Time Period, Respondent Southern Wood Piedmont obtained corporate guarantees from its higher-tier parent company, Respondent Rayonier.

35. Respondent Rayonier, as the higher-tier parent corporation of Southern Wood Piedmont, submitted documentation required for an Alternative II financial test demonstration as part of the guarantees provided on behalf of Southern Wood Piedmont to the Affected States during the Relevant Time Period. The documentation included, in part, letters from the guarantor's Chief Financial Officer ("CFO Letters") and written corporate guarantees.

36. During the Relevant Time Period, as part of the bond rating portion of the financial test, Respondent Rayonier did not use a current bond, at the time of the submissions, that was rated by Standard & Poor's ("S&P") or Moody's. In the 2004, 2005 and 2006 CFO Letters, Respondent Rayonier instead listed a revolving credit facility, issued on November 24, 2003, with a maturity date of November 24, 2006 ("2003 Credit Facility"), as identified in Rayonier's Information Request Response. In the 2007, 2008, and 2009 CFO Letters,

Respondent Rayonier listed an unrated revolving credit facility, issued on August 4, 2006, with a maturity date of August 4, 2011 (“2006 Credit Facility”), as identified in Rayonier’s Information Request Response. Rayonier did not have outstanding bond issuances in its own name.

**E. Respondents’ Relevant Financial Assurance Submissions for the Baldwin Facility.**

37. In the 2005 and 2006 financial assurance submissions to Florida for the Baldwin Facility, Respondent Rayonier identified the 2003 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

38. In the 2007, 2008, and 2009 financial assurance submissions to Florida for the Baldwin Facility, Respondent Rayonier identified the 2006 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

**F. Respondents’ Relevant Financial Assurance Submissions for the Augusta Facility and the East Point Facility.**

39. In the 2005 and 2006 financial assurance submissions to Georgia for the Augusta Facility and the East Point Facility, Respondent Rayonier identified the 2003 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

40. In the 2007, 2008, and 2009 financial assurance submissions to Georgia for the Augusta Facility and the East Point Facility, Respondent Rayonier identified the 2006 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

41. As part of the 2005, 2006, 2007, 2008, and 2009 financial assurance submissions to Georgia for the Augusta Facility and the East Point Facility, Respondent Rayonier provided CFO Letters that contained different language than the specific wording specified in the State’s regulations for the requirements of the CFO Letters. The different language in Respondent Rayonier’s CFO Letters provided to Georgia in the financial assurance submissions during the

Relevant Time Period included the replacement of the term “bond rating” with “public debt rating” and the term “bond” with “debt facility” in the language for the Alternative II test criteria. In each of the 2005, 2006, 2007, 2008, and 2009 CFO Letters submitted to Georgia for the Augusta Facility and East Point Facility, Respondent Rayonier certified that the wording of the CFO Letter was identical to the wording specified in the applicable State regulations.

42. As part of the 2005, 2006, 2007, and 2008 financial assurance submissions to Georgia for the Augusta Facility and the East Point Facility, the written guarantees provided by Respondent Rayonier contained different language than the wording specified in the State’s regulations for the requirements of the guarantees. At the direction of the Georgia Department of Natural Resources, Respondent Rayonier resubmitted a revised written guarantee in a letter dated August 1, 2008. In each of the 2005, 2006, 2007, and the original 2008 written guarantees submitted to Georgia for the Augusta Facility and the East Point Facility, Respondent Rayonier certified that the wording of the guarantee was identical to the wording specified in the applicable State regulations.

**G. Respondents’ Relevant Financial Assurance Submissions for the Waverly Facility.**

43. In the 2005 and 2006 financial assurance submissions to Ohio for the Waverly Facility, Respondent Rayonier identified the 2003 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

44. In the 2007, 2008, and 2009 financial assurance submissions to Ohio for the Waverly Facility, Respondent Rayonier identified the 2006 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

45. As part of the 2005, 2006, 2007, 2008, and 2009 financial assurance submissions to Ohio for the Waverly Facility, Respondent Rayonier provided CFO Letters that contained

different language than the wording specified in the State's regulation for the requirements of the CFO Letters. The different language in Rayonier's CFO Letters provided to Ohio in the financial assurance submission for 2005 included the replacement of the term "bond rating" with "public debt rating" and the term "bond" with "debt facility" in the language for the Alternative II test criteria. In each of the 2005, 2006, 2007, 2008, and 2009 CFO Letters submitted to Ohio for the Waverly Facility, Respondent Rayonier certified that the wording of the CFO Letter was identical to the wording specified in the applicable State regulations.

46. As part of the 2005, 2006, 2007, 2008, and 2009 financial assurance submissions to Ohio for the Waverly Facility, the written guarantees provided by Respondent Rayonier contained different language than the wording specified in the State's regulations for the requirements of the written guarantees. In particular, the different language in Rayonier's written guarantees included the misidentification of several chapters and rules of the Ohio Administrative Code in Recitals 4 and 8 of the guarantees. In each of the 2005, 2006, 2007, 2008, and 2009 written guarantees submitted to Ohio for the Waverly Facility, Respondent Rayonier certified that the wording of the guarantee was identical to the wording specified in the applicable State regulations.

**H. Respondents' Relevant Financial Assurance Submissions for the Spartanburg Facility.**

47. In the 2005 and 2006 financial assurance submissions to South Carolina for the Spartanburg Facility, Respondent Rayonier identified the 2003 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

48. In the 2007, 2008, and 2009 financial assurance submissions to South Carolina for the Spartanburg Facility, Respondent Rayonier identified the 2006 Credit Facility in the current bond rating section of the CFO Letter for the Alternative II financial test criteria.

49. As part of the 2005, 2006, 2007, 2008, and 2009 financial assurance submissions to South Carolina for the Spartanburg Facility, Respondent Rayonier provided CFO Letters that contained different language than the wording specified in the State's regulations for the requirements of the CFO Letters. The different language in Rayonier's CFO Letters provided to South Carolina in the financial assurance submissions during the Relevant Time Period included the replacement of the term "bond rating" with "public debt rating" and the term "bond" with "debt facility" in the language for the Alternative II test criteria. In each of the 2005, 2006, 2007, 2008 and 2009 CFO Letters submitted to South Carolina for the Spartanburg Facility, Respondent Rayonier certified that the wording of the CFO Letter was identical to the wording specified in the applicable State regulations.

50. As part of the 2005, 2006, 2007, 2008, and 2009 financial assurance submissions to South Carolina for the Spartanburg Facility, the written guarantees provided by Respondent Rayonier contained different language than the wording specified in the State's regulations for the requirements of the written guarantees. In particular, the different language in Respondent Rayonier's written guarantees included an additional provision in Recital 9 that stated that the "guarantor may cancel this guarantee by sending notice by certified mail to the [South Carolina Department of Health and Environmental Control] Director and to [Southern Wood Piedmont], such cancellation to become effective no earlier than 120 days after receipt of such notice by both [South Carolina Department of Health and Environmental Control] and [Southern Wood Piedmont], as evidenced by the return receipts." In each of the 2005, 2006, 2007, 2008 and 2009 written guarantees submitted to South Carolina for the Spartanburg Facility, Respondent Rayonier certified that the wording of the guarantee was identical to the wording specified in the applicable State regulations.

I. **Respondents' Most Recent Financial Assurance Submissions.**

51. In March of 2010 and 2011, Respondent Southern Wood Piedmont obtained written guarantees from Respondent Rayonier to meet Southern Wood Piedmont's financial assurance obligations for closure, post-closure, and/or corrective action. Respondent Rayonier submitted documentation for an Alternative I financial test demonstration as part of the guarantees provided on behalf of Respondent Southern Wood Piedmont to the Affected States. Respondent Rayonier also submitted a third party liability demonstration for the Augusta Facility in 2010 and 2011.

VI. CONCLUSIONS OF LAW

A. **Applicable Hazardous Waste Requirements.**

52. Respondents are each a "person" as defined in FLA. ADMIN. CODE r. 62-730.020 (incorporating by reference 40 C.F.R. § 260.10) (Florida), GA. COMP. R & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 260.10) (Georgia), OHIO ADMIN. CODE 3745-50-10 (95) (Ohio), and S.C. CODE REGS. 61-79.124.2 (South Carolina).

53. Respondent Southern Wood Piedmont, during the Relevant Time Period, was the "owner" and "operator," of facilities that "treat," "store," or "dispose" of "hazardous" waste as defined in FLA. ADMIN. CODE r. 62-730.020 and 62-730.220 (incorporating by reference 40 C.F.R. §§ 260.10 and 270.2) (Florida); GA. COMP. R & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 260.10) (Georgia); OHIO ADMIN. CODE 3745-50-10 (32), (54), (90), (91), (118) and (133) (Ohio); and S.C. CODE REGS. 61-79. 260.10 (South Carolina).

54. Pursuant to Sections 2002 and 3004(a) and (t) of RCRA, 42 U.S.C. §§ 6912 and 6924(a) and (t), EPA promulgated rules pertaining to owners and/or operators of TSDs for financial responsibility that are set forth in 40 C.F.R. Parts 264 and 265, Subparts H, FLA.

ADMIN. CODE r. 62-730.180 (Florida), GA. COMP. R & REGS. 391-3-11-.05 (Georgia), OHIO ADMIN. CODE 3745-66-40 (Ohio), and S.C. CODE REGS. 61-79.265 Subpart H (South Carolina).

55. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, an owner or operator of a TSD is prohibited from treating, storing, or disposing of hazardous waste unless it has obtained a permit or interim status. *See also* FLA. ADMIN. CODE r. 62-730.220 (incorporating by reference 40 C.F.R. § 270.1(c) (Florida); GA. COMP. R & REGS. 391-3-11-.11 (incorporating by reference 40 C.F.R. § 270.1(c) (Georgia); OHIO REV. CODE ANN. §§ 3734.02, 3734.05 (Ohio); and S.C. CODE REGS. 61-79.270.1 (South Carolina). Pursuant to 40 C.F.R. § 270.4, compliance with the permit is compliance with RCRA. *See also* FLA. ADMIN. CODE r. 62-730.220 (incorporating by reference 40 C.F.R. § 270.4) (Florida); and GA. COMP. R & REGS. 391-3-11-.11(f) (incorporating by reference 40 C.F.R. § 270.4) (Georgia).

56. Pursuant to Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), permits issued under Section 3005 of RCRA, 42 U.S.C. § 6925, shall contain schedules for corrective action and assurances of financial responsibility for completing such corrective action. *See also* 40 C.F.R. § 264.101(b); FLA. ADMIN. CODE r. 62-730.180 (Florida); and GA. COMP. R & REGS. 391-3-11-.05 (Georgia).

57. Owners and/or operators of permitted TSDs must choose a Financial Mechanism in order to establish financial assurance for closure of a facility. GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.143) (Georgia). One type of Financial Mechanism that an owner and/or operator may choose is the written guarantee, which may be obtained from a person's direct or higher-tier parent corporation, a firm whose parent corporation is also the parent corporation of the owner and/or operator, or a firm with a "substantial business relationship" with the owner and/or operator. GA. COMP. R. & REGS. 391-3-11-.05

(incorporating by reference 40 C.F.R. § 264.143(f)(10)) (Georgia). Facilities that opt to obtain a guarantee to satisfy their financial assurance requirements must provide a written guarantee by the guarantor that is identical to specified wording. GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143(f)(10), 264.145(f)(11) and 264.151(h)(1) (Georgia)). At the conclusion of the written guarantee, an authorized signatory for the guarantor must certify that the wording of the guarantee is identical to the wording specified in the regulations. GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.151(h)(1)) (Georgia). The guarantor must also meet the requirements of the corporate financial test including, if using Alternative II of the financial test, “[a] current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s.” GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.143(f)(1)(ii)(A)) (Georgia). The guarantor, in addition to providing the written guarantee, must also submit documentation that it meets the corporate financial test, including a letter signed by the guarantor’s CFO that is identical to specified wording. GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143(f)(3)(i) and 264.151(f)) (Georgia). The CFO Letter must, if the guarantor is using Alternative II of the corporate financial test, identify the current rating for the guarantor’s most recent bond issuance from S&P or Moody’s. *Id.* At the conclusion of the CFO Letter, the CFO must certify that the wording of the letter is identical to the wording in the regulations, as required under GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.151(f) (Georgia)).

58. Owners and/or operators of permitted or interim status TSDs must choose a Financial Mechanism in order to establish financial assurance for post-closure of a facility. FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145, except

amendments made in 57 Fed. Reg. 42,832 (Sept. 16, 1992)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.145) (Georgia), OHIO ADMIN. CODE 3745-66-45 (Ohio), and S.C. CODE REGS. 61-79.265.145(e) (South Carolina). One type of Financial Mechanism that an owner and/or operator may choose is the written guarantee, which may be obtained from a person's direct or higher-tier parent corporation, a firm whose parent corporation is also the parent corporation of the owner and/or operator, or a firm with a "substantial business relationship" with the owner and/or operator. FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f)(11), except amendments made in 57 Fed. Reg. 42,832 (Sept. 16, 1992)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.145(f)(11)) (Georgia), OHIO ADMIN. CODE 3745-66-45(E)(11) (Ohio), and S.C. CODE REGS. 61-79.265.145(e)(11) (South Carolina). Facilities that opt to obtain a guarantee to satisfy their financial assurance requirements must provide a written guarantee by the guarantor that is identical to specified wording. FLA. ADMIN. CODE r.62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f)(11) and 264.151(h)(1), except amendments made in 57 Fed. Reg. 42,832 (Sept. 16, 1992) (Florida)), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143(f)(10), 264.145(f)(11) and 264.151(h)(1) (Georgia)), OHIO ADMIN. CODE 3745-66-11(E)(11) and 3745-55-51(H)(1) (Ohio), and S.C. CODE REGS. 61-79.265.151 App. H 1, as required under S.C. CODE REGS. 61-79.265.145(e)(11) and 61-79.264.151(h)(1) (South Carolina). At the conclusion of the written guarantee, an authorized signatory for the guarantor must certify that the wording of the guarantee is identical to the wording specified in the regulations. FLA. ADMIN. CODE r.62-730.180 (incorporating by reference 40 C.F.R. § 264.151(h)(1), except amendments made in 57 Fed. Reg. 42,832 (Sept. 16, 1992) (Florida)), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §

264.151(h)(1)) (Georgia), OHIO ADMIN. CODE 3745-55-51(H)(1), and S.C. CODE REGS. 61-79.265.151 App. H 1, as required under S.C. CODE REGS. 61-79.264.151(h)(1) (South Carolina). The guarantor must also meet the requirements of the corporate financial test including, if using Alternative II of the corporate financial test, “[a] current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor’s or Aaa, Aa, A, or Baa as issued by Moody’s.” FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f)(1)(ii)(A)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.145(f)(1)(ii)(A)) (Georgia), OHIO ADMIN. CODE 3745-66-45(E)(1)(b)(i) (Ohio), and S.C. CODE REGS. 61-79.265.145(e)(1)(ii)(A) (South Carolina). The guarantor, in addition to providing the written guarantee, must submit documentation that it meets the corporate financial test, including a letter signed by the guarantor’s CFO that is identical to specified wording. FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. §§ 264.145(f)(3)(i) and 264.151(f)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.145(f)(3)(i) and 264.151(f)) (Georgia), OHIO ADMIN. CODE 3745-66-45(E)(3)(a) and 3746-55-51(F) (Ohio), and S.C. CODE REGS. 61-79.265.145(e)(3)(i), 61-79.264.151(f), and 61-79.265.151 App. F (South Carolina). The CFO Letter must, if the guarantor is using Alternative II of the corporate financial test, identify the current rating for the guarantor’s most recent bond issuance from S&P or Moody’s. *Id.* At the conclusion of the CFO Letter, the CFO must certify that the wording of the letter is identical to the wording in the regulations, as required under FLA. ADMIN. CODE r.62-730.180 (incorporating by reference 40 C.F.R. § 264.151(f), except amendments made in 57 Fed. Reg. 42,832 (Sept. 16, 1992) (Florida)), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.151(f) (Georgia)), OHIO ADMIN. CODE

3745-55-51(F), and S.C. CODE REGS. 61-79.265.151 App. F, as required under S.C. CODE REGS. 61-79.264.151(f) (South Carolina).

59. Owners and/or operators who are required to establish a corrective action program for permitted TSDs must provide financial assurance for completing such corrective action. 40 C.F.R. §§ 264.101(b); FLA. ADMIN. CODE r. 62-730.180 (Florida); and GA. COMP. R & REGS. 391-3-11-.05 (Georgia).

**B. EPA's Conclusions Regarding the Alternative II Financial Test Bond Rating Requirements.<sup>2</sup>**

60. Respondent Rayonier, during the Relevant Time Period, submitted written guarantees with Alternative II of the corporate financial test to demonstrate that Respondent Southern Wood Piedmont had financial assurance for closure, post-closure, and/or corrective action at the Baldwin Facility, Augusta Facility, East Point Facility, Waverly Facility, and Spartanburg Facility, as required by the Applicable State Permits, OHIO ADMIN. CODE 3745-66-45, and S.C. CODE REGS. 61-79.265.145.

61. Respondent Rayonier, the guarantor, as part of its demonstration that it meets the criteria of the corporate financial test, provided information on a revolving credit facility. *See* Section V, Paragraph 36.

62. A guarantor for an owner and/or operator that has a hazardous waste permit or interim status must meet the requirements of the corporate financial test including, if using Alternative II of the corporate financial test, "his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's." FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f)(1)(ii)(A)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §

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<sup>2</sup> References to state and/or federal regulations in this Subsection are references to the requirements as contained in the hazardous waste permits listed in Section V (Findings of Fact) or are references to interim status regulations.

264.145(f)(1)(ii)(A)) (Georgia), OHIO ADMIN. CODE 3745-66-45(E)(1)(b)(i) (Ohio), and S.C. CODE REGS. 61-79.265.145(e)(1)(ii)(A) (South Carolina).

63. EPA determined that Respondent Rayonier did not provide, as required by FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f)(1)(ii)(A)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. § 264.145(f)(1)(ii)(A)) (Georgia), OHIO ADMIN. CODE 3745-66-45(E)(1)(b)(i) (Ohio), and S.C. CODE REGS. 61-79.265.145(e)(1)(ii)(A) (South Carolina), a current rating for its most recent bond issuance from S&P or Moody's, but instead listed the 2003 Credit Facility in 2005 and 2006 financial assurance submissions and the 2006 Credit Facility in 2007, 2008, and 2009 financial assurance submissions. EPA has determined that neither Respondent Rayonier's 2003 Credit Facility nor Respondent Rayonier's 2006 Credit Facility met the criteria of the current bond rating requirement under Alternative II of the corporate financial test or the conditions to be a guarantor as required by FLA. ADMIN. CODE r.62-730.180 (incorporating by reference 40 C.F.R. § 264.145(f) (Florida)), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143(f) and 264.145(f) (Georgia)), OHIO ADMIN. CODE 3745-66-45(E) (Ohio), S.C. CODE REGS. 61-79.265.145(e) (South Carolina).

**C. EPA's Conclusions Regarding the Improperly Worded Written Guarantees.**<sup>3</sup>

64. Respondent Rayonier, during the Relevant Time Period, submitted written guarantees with Alternative II of the corporate financial test to demonstrate that Respondent Southern Wood Piedmont had financial assurance for post-closure at the Waverly Facility and Spartanburg Facility, as required by OHIO ADMIN. CODE 3745-66-45 and S.C. CODE REGS. 61-79.265.145.

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<sup>3</sup> See n.2, *supra*.

65. The written guarantees provided by Respondent Rayonier during the Relevant Time Period for the Waverly Facility and Spartanburg Facility contained multiple deviations from the required language for such guarantees and Respondent Rayonier improperly certified that the language of the guarantees was identical to the wording in the states' respective regulations. *See* Section V, Paragraphs 46 and 50; *see also* OHIO ADMIN. CODE 3745-66-11(E)(11) and 3745-55-51(H)(1) (Ohio), and S.C. CODE REGS. 61-79.265.151 App. H 1, as required under S.C. CODE REGS. 61-79.265.145(e)(11) and 61-79.264.151(h)(1) (South Carolina). Therefore, EPA determined that Respondent Rayonier did not meet the wording requirements of the written guarantee or the conditions to be a guarantor as required by OHIO ADMIN. CODE 3745-66-11(E)(11) and 3745-55-51(H)(1) (Ohio), and S.C. CODE REGS. 61-79.265.151 App. H 1, as required under S.C. CODE REGS. 61-79.265.145(e)(11) and 61-79.264.151(h)(1) (South Carolina).

**D. EPA's Conclusions Regarding the Improperly Worded CFO Letters.**<sup>4</sup>

66. Respondent Rayonier submitted CFO Letters as part of the written guarantees provided during the Relevant Time Period to demonstrate financial assurance for closure, post-closure, and/or corrective action at the Augusta Facility, East Point Facility, Waverly Facility, and Spartanburg Facility, as required by the Applicable State Permits, OHIO ADMIN. CODE 3745-66-45, and S.C. CODE REGS. 61-79.265.145.

67. The CFO Letters contained multiple deviations from the required language for such letters and, thus, Respondent Rayonier improperly certified that the letters contained identical language to the states' respective regulations. *See* Section V, Paragraphs 41, 45, and 49; *see also* GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143(f)(3)(i), 164.145(f)(3)(i) and 264.151(f)) (Georgia); OHIO ADMIN. CODE 3745-66-

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<sup>4</sup> *See* n.2, *supra*.

45(E)(3)(a) and 3745-55-51(F) (Ohio); and S.C. CODE REGS. 61-79.265.151 App. F, as required under S.C. CODE REGS. 61-79.265.145(e)(3)(i) and 61-79.264.151(f) (South Carolina).

Therefore, EPA determined that Respondent Rayonier did not meet the wording requirements for the CFO Letters or the conditions to be a guarantor as required by GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143(f)(3)(i) & (10), 264.145(f)(3)(i) & (11) and 264.151(f) (Georgia); OHIO ADMIN. CODE 3745-66-45(E)(3)(a) & (11) and 3745-55-51(F) (Ohio); and S.C. CODE REGS. 61-79.265.151 App. F, as required under S.C. CODE REGS. 61-79.265.145(e)(3)(i) & (11) and 61-79.264.151(f) (South Carolina).

**E. EPA's Overall Conclusions Regarding the Financial Assurance Requirements.<sup>5</sup>**

68. EPA has determined that because Respondent Southern Wood Piedmont, during the Relevant Time Period, relied on the guarantees described in Section V (Findings of Fact), Respondent Southern Wood Piedmont did not have compliant financial assurance during the Relevant Time Period at the five (5) TSDs subject to this Agreement, as the guarantees failed to meet the requirements of FLA. ADMIN. CODE r. 62-730.180 (incorporating by reference 40 C.F.R. § 264.145, except amendments made in 57 Fed. Reg. 42,832 (Sept. 16, 1992)) (Florida), GA. COMP. R. & REGS. 391-3-11-.05 (incorporating by reference 40 C.F.R. §§ 264.143, 264.145, and 264.147) (Georgia), OHIO ADMIN. CODE 3745-66-45 (Ohio), S.C. CODE REGS. 61-79.265.145 (South Carolina). Respondent Southern Wood Piedmont's failure to comply with the financial assurance requirements for closure at one of its TSDs; for post-closure at five of its TSDs; and for corrective action at three of its TSDs, constitutes violations of RCRA and the corresponding state regulations as addressed in this Section, and therefore subjects Respondent Southern Wood Piedmont to penalties as provided in Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

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<sup>5</sup> See n.2, *supra*.

## VII. TERMS OF AGREEMENT

69. Based on the foregoing, the Parties agree to the entry of this Agreement on the following terms.

70. Respondent Southern Wood Piedmont shall maintain compliance with the applicable financial assurance requirements mandated by RCRA Subtitle C (or authorized state requirements) or by the hazardous waste permits and Respondent Rayonier shall comply with the applicable obligations under RCRA Subtitle C (or authorized state requirements) as a guarantor of Southern Wood Piedmont's financial assurance obligations at all TSDs subject to this Agreement.

### A. Civil Penalty.

71. The proposed penalty in this matter is consistent with the "RCRA Civil Penalty Policy" (revised June 23, 2003). The RCRA Civil Penalty Policy is based upon Section 3008 of RCRA, 42 U.S.C. § 6928.

72. Respondents agree that the alleged violations of RCRA and the corresponding state regulations, as described in Section VI (Conclusions of Law) of this Agreement, shall be resolved by paying a civil penalty in the sum of \$ 317,000, within thirty (30) Days of issuance of the Final Order. *See* RCRA Section 3008(a) and (g), 42 U.S.C. §§ 6928(a) and (g); 40 C.F.R. § 22.31(c). EPA has notified the Affected States of this Agreement and proposed Final Order that resolves the alleged violations described herein.

73. Respondents shall pay the civil penalty via wire transfer to the following account:

Federal Reserve Bank of New York  
ABA No.: 021030004  
Account No.: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency." Field Tag 6000 should include the notation "IN THE MATTER OF: Southern Wood Piedmont Company and Rayonier Inc., Docket No. RCRA-HQ-2011-5014."

74. Respondents shall forward evidence of the wire transfer to EPA, within five (5)

Working Days of payment, to:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
Ariel Rios Building  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

and

Cari Shiffman, Attorney-Adviser  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW (MC: 2249A)  
Washington, DC 20460

and

Lulu Cheng, Attorney-Adviser  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW (MC: 2272A)  
Washington, DC 20460.

For deliveries by courier, UPS, or Fed Ex, Respondent shall use the following addresses:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Ronald Reagan Building, EPA Mail Room  
1300 Pennsylvania Avenue, NW  
Washington, DC 20004

and

Cari Shiffman, Attorney-Adviser  
U.S. Environmental Protection Agency

Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW  
Ariel Rios South, Rm. 4146A  
Washington, DC 20004

and

Lulu Cheng, Attorney-Adviser  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW  
Ariel Rios South, Rm. 4232R  
Washington, DC 20004.

75. Failure to pay the full amount of the penalty assessed under this Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty, as well as interest, administrative costs, and a late payment penalty. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, the civil penalty must be paid in accordance with the requirements of Paragraphs 72, 73, and 74.

76. EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim and Respondent Southern Wood Piedmont agrees to pay these amounts under this Agreement and attached proposed Final Order. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the date payment is due pursuant to Paragraph 72 on any portion of the civil penalty agreed to herein that remains unpaid after thirty (30) Days from the date of the issuance of the Final Order. Pursuant to 31 U.S.C. § 3717, Respondent Southern Wood Piedmont must pay the following amounts on any amount overdue:

- a. Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest

will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a).

b. Late Payment Penalty. On any portion of a civil penalty more than ninety (90) Days delinquent, Respondent Southern Wood Piedmont must pay a late payment penalty of six (6) percent per annum, which will accrue from the date the penalty payment became delinquent. This late payment penalty is in addition to charges which accrue or may accrue under subparagraph a.

77. For purposes of state and federal income taxes, Respondents shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made pursuant to the Final Order. Any attempt by Respondents to deduct any such payment shall constitute a violation of this Agreement and the Internal Revenue Code. 26 U.S.C. § 162(f).

**B. Certification.**

78. Nothing in this Agreement and proposed Final Order shall relieve Respondents of the duty to comply with all provisions of RCRA and any other federal, state, and/or local laws, statutes, or regulations applicable to each Respondent, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, other than with respect to the specific violations addressed directly in this Agreement.

79. By signing this Agreement, Respondents certify that the information they have supplied to EPA concerning this matter, including their responses to the EPA Information Requests, was at the time of submission and is, to the best of Respondents' knowledge, information and belief, truthful, accurate, and complete for each such submission, response, and statement. Respondents understand that there are significant penalties for submitting false or

misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

**C. Reservation of Rights.**

80. This Agreement and the Final Order, when issued by the Environmental Appeals Board, and upon payment by Respondents of the civil penalty in accordance with Section VII (Terms of Agreement), shall resolve only those civil claims against Respondents specified herein. Nothing herein shall be construed to limit the authority of EPA or the United States to bring an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at any of the TSDs listed in Section V may present an imminent and substantial endangerment to health, or the environment, nor shall anything in this Agreement or attached proposed Final Order be construed to resolve any allegation of criminal liability, in the event there is evidence of such liability.

81. EPA reserves the right to revoke this Agreement if and to the extent that any information or certification provided by Respondents was materially false or inaccurate at the time such information or certification was provided to EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondents oral notice of its intent to revoke, which shall not be effective until received by Respondents in writing.

82. If Respondents fail to comply with any provision contained in this Agreement and the Final Order issued by the Environmental Appeals Board, Respondents waive any rights they may possess in law or equity to challenge the authority of EPA to bring a civil action in the

appropriate United States District Court to compel compliance with the Agreement and the Final Order or to seek an additional penalty for such noncompliance.

**D. Submittal to the Environmental Appeals Board.**

83. The Parties agree to submit this Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.

**E. Effective Date.**

84. This Agreement shall become effective upon issuance of the Final Order by the Environmental Appeals Board.

**F. Other Matters.**

85. All of the terms and conditions of this Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Agreement shall be null and void if any term or condition of this Agreement is held invalid or is not executed by all of the signatory Parties in identical form, or is not approved in such identical form by the Environmental Appeals Board.

86. Any communication from EPA to Respondents regarding this Consent Agreement and Final Order shall be directed to: Rayonier Inc., c/o General Counsel, 1301 Riverplace Boulevard, Jacksonville, Florida, 32207; and Dean A. Calland, Babst, Calland, Clements & Zomnir, P.C., Two Gateway Center, Pittsburgh, PA 15222.

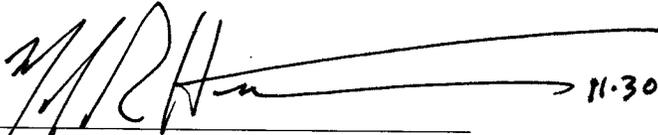
THE UNDERSIGNED PARTIES agree to the terms of this Consent Agreement and attached proposed Final Order IN THE MATTER OF: Southern Wood Piedmont Company and Rayonier Inc.

For Respondents:



11.30.2011

Southern Wood Piedmont Company  
William P. Arrants  
President



11.30.2011

Rayonier Inc.  
Michael R. Herman  
Vice President and General Counsel

THE UNDERSIGNED PARTIES agree to the terms of this Consent Agreement and attached proposed Final Order IN THE MATTER OF: Southern Wood Piedmont Company and Rayonier Inc.

For Complainant:

 12/7/2011  
Rosemarie A. Kelley  
Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (MC: 2249A)  
Washington, DC 20460

 12/7/11  
Karin Leff  
Acting Director  
Regional Support Division  
Office of Site Remediation Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (MC: 2272A)  
Washington, DC 20460