

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of: :
:
Blue Ridge Wood Products, LLC : **U.S. EPA Docket No. RCRA-03-2020-0106**
400 Rock Run Road :
Fairless Hills, PA 19030 :
: **Proceeding under Section 3008(a) and (g) of the**
Respondent. : **Resource Conservation and Recovery Act, as**
: **amended, 42 U.S.C. § 6928(a) and (g)**
Blue Ridge Wood Products, LLC :
400 Rock Run Road :
Fairless Hills, PA 19030 :
:
Facility. :
:

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 III (“Complainant”) and Blue Ridge Wood Products, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), as amended, 42 U.S.C. § 6928(a) and (g), 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.
2. Section 3008(a) of RCRA authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA” or the “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 it to the Complainant.
3. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil monetary penalty against any person who violates any requirement of RCRA Subtitle C, EPA’s regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA.
4. 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 RCRA for the violations alleged herein.

5. 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

6. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
7. Section 3008(a) of RCRA authorizes EPA to assess penalties. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
8. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the “Pennsylvania Hazardous Waste Management Program”) in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations were authorized by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The Commonwealth of Pennsylvania has revised, and EPA has re-authorized, the Commonwealth of Pennsylvania Hazardous Waste Regulations several times subsequent to this original authorization. The most recent authorized (revised) regulations became effective on June 29, 2009 (74 Fed. Reg. 19453). The provisions of the current authorized (revised) Commonwealth of Pennsylvania Hazardous Waste Management Regulations, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a (“PAHMWR”), have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
9. When EPA last authorized the Pennsylvania hazardous waste regulations on June 29, 2009, EPA approved Pennsylvania’s incorporation by reference of the federal regulations which were in effect as of October 12, 2005, including, among other things, incorporation of 40 C.F.R. § 262.34 (Accumulation Time, which lists the requirements for the generator permit exemption). As a result, 40 C.F.R. § 262.34 (2005) is the currently federally enforceable version of that RCRA regulation in Pennsylvania. On November 28, 2016, EPA re-codified the generator permit exemption, effective on May 30, 2017. The federal requirements previously found in 40 C.F.R. § 262.34 are now re-codified at 40 C.F.R. §§ 262.15 – 262.17. The Code of Federal Regulation citations used herein are to the 2005 Federal regulations.
10. On February 15, 2019, EPA sent a communication to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (“PADEP”), giving prior notice of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

GENERAL PROVISIONS

11. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
12. Except as provided in Paragraph 11, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement.
13. Respondent agrees not to contest the jurisdiction of 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.
14. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and waives its right to appeal the accompanying Final Order.
15. 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.
16. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. 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.
18. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, defines “generator” as any person whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.
19. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, defines “owner” as the person who owns a facility or part of a facility.
20. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, define “operator” as the person responsible for the overall operation of a facility.
21. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines “person” as, *inter alia*, a corporation.
22. 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10, defines “hazardous waste” as that term is defined in 40 C.F.R. § 261.3.
23. 25 Pa. Code § 264a.570 defines “existing drip pads” as “those constructed before January 11, 1997.”

24. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines “facility” as “the land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored, or disposed.”
25. Respondent is, and at all times relevant to the allegations set forth against it in this Consent Agreement was, a Delaware corporation.
26. Respondent has been in operation at this Facility since January 1, 2016.
27. At all times relevant to the allegations set forth against it in this Consent Agreement, Respondent stored and continues to store treatment chemicals in three large tanks at the Facility, and pressure treats yellow pine construction grade lumber in two 7’ 6” cylinders. Following pressure treatment, the wood dries on a drip pad. The main building houses nine process tanks, two treatment cylinders, a drip pad and offices.
28. Previously, Respondent’s predecessors treated wood at the Facility with copper chromated arsenic (“CCA”). Wood treatment drippage containing CCA is a hazardous waste within the meaning of 40 C.F.R. § 261.3(a)(1) and (2)(ii), because it contains the toxic constituents chromium and arsenic, and is a listed hazardous waste at 40 C.F.R. § 261.31(a), with EPA Hazardous Waste No. F035. CCA was used at the Facility until 1999.
29. Since it began operating at the Facility in 2016, Respondent has been treating wood with either Ecolife or Copper Azole Type C (“CAC”). Ecolife and CAC are not considered to be hazardous wastes as defined by RCRA.
30. Respondent did not close the cylinders or drip pad in accordance 40 C.F.R. Part 264, Subpart W after the Facility discontinued using CCA. Respondent continues to manage the waste collected from the drip pad as F035 hazardous waste. Respondent’s drip pad is subject to the applicable drip pad requirements in 40 C.F.R. Part 264, Subpart W.
31. Prior owners and operators of the Facility sent notifications to PADEP and EPA regarding the waste generation status of the Facility. In 1983, Commonwealth Wood initially notified PADEP and EPA that the Facility was a RCRA Small Quantity Generator (“SQG”) of hazardous waste. In response, PADEP assigned the Facility RCRA ID No. PAD980830863. Most recently, in 2017, Respondent notified PADEP that it was an SQG of hazardous waste.
32. On May 9, 2018, two inspectors from EPA conducted a Compliance Evaluation Inspection at the Facility (“Inspection”), to examine the Facility’s compliance with Subtitle C of RCRA, the federal hazardous waste regulations set forth at 40 C.F.R. Parts 260-266, 268 and 270-273, and the authorized PAHWMR.
33. Respondent is, and at all times relevant to the allegations set forth in this Consent Agreement, was a “person,” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 25 Pa. Code § 260a.10.

34. From approximately 2016 through the present, Respondent was the “owner” and “operator” of a “facility (i.e., the Facility), as those terms are defined in 25 Pa. Code § 260a.1, which incorporates by reference the definitions of those terms as set forth in 40 C.F.R. § 260.10.
35. Respondent is, and at all times relevant to the allegations set forth in this Consent Agreement, was a “generator” of “solid waste” and “hazardous waste,” as these terms are defined in 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10.
36. Wood treatment chemical drippage was, at all times relevant to the allegations set forth in this Consent Agreement, “hazardous waste” as this term is defined in 25 Pa. Code § 260a.1, which incorporates by reference 40 C.F.R. § 260.10.
37. The Respondent was, at all times relevant to the allegations set forth in this Consent Agreement, engaged in the generation of “solid waste” and “hazardous waste,” at the Facility, and in the temporary “storage” of “solid waste” and “hazardous waste” on a “drip pad” at the Facility, as those terms are defined in 25 Pa. Code § 260a.1, which incorporates by reference the definitions of those terms as set forth in 40 C.F.R. § 260.10.
38. The drip pad at the Facility was initially constructed in approximately 1983, which is prior to January 11, 1997, and therefore it is an “existing drip pad,” as defined by 25 Pa. Code § 264a.570.

COUNT I

(Operating a Treatment, Storage, and Disposal Facility without a Permit or Interim Status)

39. The information in the preceding Paragraphs is incorporated herein by reference, as though fully set forth at length.
40. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), 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.
41. Respondent has never had a permit or interim status, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), for the storage of hazardous waste at the Facility.

Generator Accumulation of Hazardous Waste (the “Generator Permit Exemption”)

42. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) (2005) (recently recodified in 40 C.F.R. § 262.16(a)) (pertaining to “Accumulation Time”), 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:

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265

(iii) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection systems at least every 90 days;

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal;

* * *

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with all applicable requirements under 40 CFR part 268.

Failure to Meet Additional Generator Permit Exemption Conditions

43. On at least May 9, 2018, Respondent failed to post next to a telephone at the Facility the name and phone number for the emergency coordinator or the telephone number for the fire department, as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(5)(ii)(A) and (C) (2005) (recently recodified in 40 C.F.R. § 262.16(b)(9)(ii)(A) and (C)).

44. The following acts or omissions, further described in Counts III through IX, below, prevented Respondent from meeting the regulatory permit exemption conditions set forth at 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a) (2005) (recently recodified in 40 C.F.R. § 262.16(a)).

45. From January 1, 2016 to May 9, 2018, Respondent failed to comply with several requirements applicable to drip pads. Specifically, Respondent (1) failed to maintain the hydraulic conductivity of the drip pad at the Facility; (2) failed to maintain the drip pad free of cracks, gaps, corrosion and other deterioration; (3) failed to document the date, time and method of each drip pad cleaning; (4) failed to minimize tracking of hazardous

waste off the drip pad; (5) failed to hold treated wood on the drip pad until drippage ceased; and (6) failed to maintain records of inspections of the drip pad weekly and after storms to detect deterioration or leakage; as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(iii) (2005), (recently recodified in 40 C.F.R. § 262.16(a)), which further incorporates 40 C.F.R. Part 265, Subpart W. These allegations are set forth in further detail in Allegations III through VIII, below.

46. From at least January 1, 2016 through May 5, 2017, Respondent failed to maintain records of weekly inspections of hazardous waste accumulation areas, as required by 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i) (2005) (recently recodified in 40 C.F.R. § 262.16(a)), which further incorporates 40 C.F.R. § 265.174, as set forth in further detail in Allegation IX, below.
47. For each of the reasons and during each of the dates and time periods identified, above, Respondent failed to comply with the permit exemption conditions set forth in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), as identified in Paragraphs 43 through 46, above, for temporary (*i.e.*, 90 days or less), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such sections.
48. Therefore, requirements of 40 C.F.R. Parts 264, 265 and 273, and the permit requirements of 40 C.F.R. Part 270 applied to the Facility, because Respondent failed to meet certain conditions of the permit exemption.
49. From at least January 1, 2016 (the date that Respondent began operating the Facility) until May 9, 2018, (date of the Inspection), Respondent violated the requirements of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), by storing hazardous waste at the Facility without a permit.

COUNT II

(Failure to Maintain Manifest Signed by Destination Facility)

50. The allegations of each of the preceding Paragraphs are incorporated herein by reference as though fully set forth at length.
51. 25 Pa. Code § 262a.10, incorporates by reference 40 C.F.R. Part 262, Subpart B ("The Manifest"), and Subpart D ("Recordkeeping and Reporting"), with exceptions not relevant herein.
52. 40 C.F.R. § 262.20(a)(1) provides, in relevant and applicable part, that "[a] generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal . . . must prepare a Manifest . . . according to instructions included in the appendix to this part."
53. 40 C.F.R. § 262.23(a) further provides that "[t]he generator must (1) Sign the manifest certification by hand; and (2) Obtain the handwritten signature of the initial transporter

and date of acceptance on the manifest; and (3) Retain one copy, in accordance with § 262.40(a)."

54. 40 CF.R. § 262.40(a) provides that "[a] generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter."
55. 40 CF.R. § 262.42(b) provides:
- A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.
56. When a copy of Manifest #005963856 SKS, dated June 23, 2017, was not received with the handwritten signature of the TSDF within 60 days of the date the wastes were accepted by the initial transporter, Respondent failed to submit to the EPA Regional Administrator a legible copy of the manifest, with some indication that the it had not received confirmation of delivery.
57. The waste sent under that Manifest arrived at the designated receiving facility, Spring Grove Resource Recovery Inc., on July 13, 2017. However, Respondent did not receive a copy of the Manifest signed by the receiving facility until the day of the EPA Inspection on May 9, 2018, when Spring Grove Recovery Inc. sent a copy of the signed Manifest to Respondent by facsimile.
58. Therefore, from July 13, 2017 (the date that the waste arrived at the designated facility) through May 9, 2018 (the date that Respondent received the Manifest signed by the destination facility), Respondent violated the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 CF.R. § 262.40(a), by failing to maintain a Manifest signed by the designated facility for hazardous waste shipped under Manifest #005963856 SKS.
59. In the alternative, from August 22, 2017 (60 days after June 23, 2017, when the waste was accepted by the initial transporter) to May 9, 2018 (the date of the EPA Inspection), Respondent violated the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 CF.R. § 262.42(b), by failing to timely submit to EPA a legible copy of the Manifest, with some indication that Respondent had not received confirmation of delivery.

COUNT III**(Failure to Maintain Hydraulic Conductivity of the Drip Pad)**

60. The allegations of each of the preceding Paragraphs are incorporated herein by reference as though fully set forth at length.
61. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(a)(4)(i) (pertaining to “Design and Operating Requirements” for Drip Pads), provides that drip pads must:
- [h]ave a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with § 264.572(b) instead of § 264.572(a).
62. During the Inspection on May 9, 2018, there were cracks, corrosion and puddling of wood treatment chemicals on the drip pad.
63. On at least May 9, 2018 (date of the Inspection), Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(a)(4)(i), by failing to maintain the hydraulic conductivity of the drip pad at the Facility.

COUNT IV**(Failure to Maintain Drip Pad Free of Cracks, Gaps, Corrosion or other Deterioration)**

64. The allegations of each of the preceding Paragraphs are incorporated herein by reference as though fully set forth at length.
65. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(c) (pertaining to “Design and Operating Requirements” for Drip Pads), provides:
- Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.
66. During the Inspection on May 9, 2018, there were cracks, corrosion and puddling of wood treatment chemicals on the drip pad.

67. On at least May 9, 2018 (date of the Inspection), Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(c), by failing to keep the Facility drip pad free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

COUNT V

(Failure to Document the Date and Time of Each Cleaning and the Cleaning Procedure Used in the Facility's Operating Log)

68. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
69. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(i) (pertaining to "Design and Operating Requirements" for Drip Pads), provides:

The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator must determine if the residues are hazardous as per 40 CFR 262.11 and, if so, must manage them under parts 261-268, 270, and section 3010 of RCRA.

70. During the Inspection on May 9, 2018, the EPA inspectors asked to review documentation of the date and time of each cleaning of the drip pad and the cleaning procedure used. While records were maintained as of May 5, 2017, Facility personnel could not produce drip pad cleaning records prior to that date.
71. From at least January 1, 2016 through May 5, 2017, Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(i), by failing to maintain documentation of the date and time of each cleaning of the drip pad and the cleaning procedure used.

COUNT VI

(Failure to Minimize Tracking of Hazardous Waste or Hazardous Waste Constituents Off the Drip Pad)

72. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
73. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(j) (pertaining to "Design and Operating Requirements" for Drip Pads), provides:

Drip pads must 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.

74. During the Inspection on May 9, 2018, there was hazardous waste, in the form of dripped wood treatment chemicals, on the ground and off the drip pad. Some of this waste had dripped off of treated wood, and some of the waste had been tracked outside by a forklift.
75. On at least May 9, 2018 (date of the Inspection), Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(j), by failing to operate and maintain the Facility drip pad 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.

COUNT VII

(Failure to Hold Wood on Drip Pad Until Drillage Ceased)

76. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
77. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(k) (pertaining to “Design and Operating Requirements” for Drip Pads), provides:
- 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.
78. During the Inspection on May 9, 2018, there was hazardous waste, in the form of dripped wood treatment chemicals, on the ground and off the drip pad. Some of this waste had dripped off of treated wood.
79. On at least May 9, 2018 (date of the Inspection), Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.573(k), by failing to hold treated wood on the Facility drip pad until drillage has ceased.

COUNT VIII

(Failure to Maintain Records of Inspections of Drip Pad Weekly and after Storms)

80. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
81. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.574(b) (pertaining to “Inspections” of Drip Pads), provides:

While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

- (1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;

- (2) The presence of leakage in and proper functioning of leak detection system.
 - (3) Deterioration or cracking of the drip pad surface.
82. At the time of the Inspection on May 9, 2018, the EPA inspectors observed that Respondent had not kept records of inspections prior to May 5, 2017. Therefore, there was no evidence that the company had inspected the drip pad weekly and after storms to detect deterioration and leakage.
 83. Furthermore, where the Respondent did have some drip pad inspection records, the records did not mention cracks or deterioration of the drip pad.
 84. Nevertheless, the inspectors did observe cracks in the drip pad and pooling of treatment chemicals, as well as sheet metal covering a large portion of the drip pad and obscuring the surface of the drip pad underneath.
 85. From at least January 1, 2016, through May 5, 2017, Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.15 and 40 C.F.R. § 264.574(b), by failing to maintain records of inspections of the drip pad weekly and after storms to detect deterioration and leakage.

COUNT IX

(Failure to Maintain Records of Weekly Inspections of Hazardous Waste Storage Areas)

86. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
87. 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.174 (pertaining to “Inspections” of containers) requires:

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system cause by corrosion or other factors. See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.
88. During the Inspection on May 9, 2018, Facility personnel provided to the EPA inspectors the “Hazardous Waste Storage Area Log” for review. Through this review and through subsequent communications with Facility personnel, the EPA inspectors learned that Respondent had failed to keep inspection records for the hazardous waste accumulation area from January 1, 2016 through May 5, 2017.
89. From at least January 1, 2016 through May 5, 2017, Respondent violated the requirements of 25 Pa. Code § 264a.1, which incorporates by reference 40 C.F.R. § 264.15 and 40 C.F.R. § 264.174, by failing to maintain records of weekly inspections of areas where hazardous waste containers are stored.

COUNT X
(Failure to Properly Mark Universal Waste Lamps)

90. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
91. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), requires that, for small quantity generators of universal waste lamps, each lamp or container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste-Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”
92. During the Inspection on May 9, 2018, there were approximately seven lamps that were standing on end and sticking up out of a cardboard box. These lamps were leaning on other boxes, with about 3’ of each lamp completely uncontainerized and exposed. The cardboard box and the lamps were unlabeled and undated.
93. On at least May 9, 2018 (date of the Inspection), Respondent violated the requirements of 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14(e), by failing to label one box and approximately seven universal waste lamps with one of the required phrases.

COUNT XI
(Failure to Keep Container of Universal Waste Lamps Closed)

94. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
95. 25 Pa. Code § 266b.1, which incorporates by reference the federal hazardous waste requirements of 40 C.F.R. § 273.13(d)(1), (pertaining to “Waste Management” of Universal Waste) requires:
- (d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
96. As stated in Count X, above, during the Inspection on May 9, 2018, there were approximately seven lamps that were standing on end and sticking up out of a cardboard box. These lamps were leaning on other boxes, with about 3’ of each lamp completely uncontainerized and exposed.

97. On at least May 9, 2018, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13(d)(1), by failing to keep closed two containers of universal waste lamps.

COUNT XII

(Failure to Have a Method to Demonstrate the Length of Time That Universal Waste Lamps Have Been Accumulated)

98. The allegations in the preceding Paragraphs are incorporated herein by reference, as though fully set forth at length.
99. 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), requires that a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date that it becomes a waste or has been received. 40 C.F.R. § 273.15(c)(1) provides that the handler may make this demonstration by placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received. 40 C.F.R. § 273.15(c)(2) though (6) provides that this demonstration may also be made by marking each individual item with the date that it becomes a waste, maintaining an inventory system that identifies the earliest date that items became waste, placing universal waste in specific accumulation areas that identify the earliest date that items became waste, or any other method that clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
100. During the Inspection on May 9, 2018, there were approximately 7 lamps that were standing on end and sticking up out of a cardboard box, as described in Count X above, and the cardboard box and the lamps were undated.
101. On at least May 9, 2018, Respondent violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.15(c), by failing to label one box and approximately seven universal waste lamps with the earliest date that these items became waste, and failing to have at the Facility any other method to clearly demonstrate the length of time that universal waste was being accumulated.

CIVIL PENALTY

102. In settlement of 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-THREE THOUSAND THREE HUNDRED TWENTY DOLLARS (\$33,320.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
103. The civil penalty is based upon 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 EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("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 EPA's civil penalty policies to account for inflation.

104. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-03-2020-0106;
- b. All checks shall be made payable to the "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously, by email and by first class mail, to:

Natalie Katz
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
katz.natalie@epa.gov

105. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

106. 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 EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
107. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
108. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
109. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
110. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

111. 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.
112. Respondent certifies that any information or representation it has supplied or made to 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. EPA shall have the right to institute further actions to recover appropriate relief if 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 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

113. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

114. 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 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 RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

115. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which 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). EPA reserves any rights and remedies available to it under 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

116. 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

117. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, 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

118. 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: BLUE RIDGE WOOD PRODUCTS, LLC

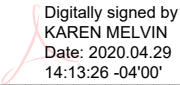
Date: 4/23/2020

By: Courtney K. Hutcherson
Courtney Hutcherson, Managing Member

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, 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.

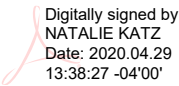
Date: 04/29/2020

By: **KAREN MELVIN**  Digitally signed by
KAREN MELVIN
Date: 2020.04.29
14:13:26 -04'00'

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: April 29, 2020

By: **NATALIE KATZ**  Digitally signed by
NATALIE KATZ
Date: 2020.04.29
13:38:27 -04'00'

Natalie L. Katz
Sr. Assistant Regional Counsel
U.S. EPA – Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Blue Ridge Wood Products, LLC	:	U.S. EPA Docket No. RCRA-03-2020-0106
400 Rock Run Road	:	
Fairless Hills, PA 19030	:	
	:	
Respondent.	:	Proceeding under Section 3008(a) and (g) of the
	:	Resource Conservation and Recovery Act, as
	:	amended, 42 U.S.C. § 6928(a) and (g)
	:	
Blue Ridge Wood Products, LLC	:	
400 Rock Run Road	:	
Fairless Hills, PA 19030	:	
	:	
	:	
Facility.	:	
	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Blue Ridge Wood Products, LLC, 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 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Penalty Policy”), and the statutory factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g).

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), 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-THREE THOUSAND THREE HUNDRED TWENTY DOLLARS (\$33,320.00)**, in accordance with the payment provisions set forth in the Consent Agreement, 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 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

**JOSEPH
LISA**

Digitally signed by
JOSEPH LISA
Date: 2020.04.30
09:26:12 -04'00'

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Blue Ridge Wood Products LLC 400 Rock Run Road Fairless Hills, PA 19030	:	U.S. EPA Docket No. RCRA-03-2020-0106
	:	
Respondent.	:	Proceeding under Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6928(a) and (g)
	:	
Blue Ridge Wood Products LLC 400 Rock Run Road Fairless Hills, PA 19030	:	
	:	
Facility.	:	
	:	

CERTIFICATE OF SERVICE

I certify that on April 30, 2020, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. 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:

Served via E-Mail to:

Bryan Franey
Manko, Gold, Katcher & Fox
bfraney@mankogold.com

Courtney Hutcherson
Blue Ridge Wood Products LLC
afpchutcherson@embarqmail.com

Thomas Duncan
Manko, Gold, Katcher & Fox
tduncan@mankogold.com

Copies served via E- Mail to:

Natalie Katz
Senior Assistant Regional Counsel
ORC – 3RC40
U.S. EPA, Region III
katz.natalie@epa.gov

Steve Forostiak
Inspector
ECAD – 3ED22
U.S. EPA, Region III
forostiak.stephen@epa.gov

In Re: Blue Ridge Wood Products LLC

EPA Docket No. RCRA-03-2020-0106

Dated: April 30, 2020

BEVIN
ESPOSITO

Digitally signed by
BEVIN ESPOSITO
Date: 2020.04.30
14:17:11 -04'00'

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III